

July 11, 2008

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Section 2051-3

VERIFICATION CRITERIA

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, section 2051-3 to: (1) delete the existing outdated listing of Employment Authorization Document (EAD) forms in the CCR used to verify an individual's true identity and legal right to work prior to the provision of employment services and (2) substitute a reference to federal law where valid EAD forms are listed and described.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

Informative Digest/Policy Statement Overview:

California Unemployment Insurance Code section 9601.5 requires the Department's Workforce Services Branch to determine an individual's legal status and right to work based on procedures established under federal law before employment services can be provided. The Department relies on the employment verification provisions of the [Immigration and Nationality Act Section 274A \(8 U.S.C. § 1324a\)](#) and [Title 8 Code of Federal Regulations part 274a.2](#) for direction concerning acceptable documentation.

The federal list of EAD forms is revised as needed when new legislation, such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Enhanced Border Security Act of 2002, is signed into law. When the federal list is revised, the Department must revise its regulation to maintain conformance to federal law.

If section 2051-3 is revised to delete the existing outdated listing of EAD forms and simply reference federal law where the currently acceptable forms are already listed and described, the Department will not need to revise section 2051-3 each time the federal government amends the list of acceptable EAD

forms. Instead, future changes to the list of EAD forms can be addressed using appropriate administrative processes that may be quickly completed. The administrative process would consist of revising an existing Department form on an on-going administrative basis to list the valid EAD documents as set out in federal law. In addition, the Department's automated job matching system can be enhanced with customer help screens that list valid EAD documents so the Department's customers can be continuously apprised of changes in the list in conformity with federal law.

The proposed amendment is necessary to streamline the provisions of section 2051-3 and ensure that the Department's regulation always references the current federal employment authorization documents.

The following proposed amendment to CCR, title 22, section 2051-3, will:

1. Delete from this section the existing outdated listing of EAD forms.
2. Add references to the employment authorization provisions set out in the Immigration and Nationality Act Section 274A and Title 8 Code of Federal Regulations part 274a.2 that list valid EAD forms.

The proposed amendment will address the two above-referenced items.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Sections 9601.5 and 9601.7, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: The Department cannot estimate the amount of anticipated savings, but adoption of this proposal would eliminate the need for further regulatory changes, thus eliminating the administrative costs of making such changes. The total administrative costs saved would probably be a minimal amount.

Anticipated costs or savings to any State Agency: The Department cannot estimate the amount of anticipated savings, but adoption of this proposal would eliminate the need for further regulatory changes, thus eliminating the administrative costs of making such changes. The total administrative costs saved would probably be a minimal amount.

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to

businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendment will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states because this regulation makes only clarifying changes to the current regulation in substituting the existing listing of EAD documents with a reference to federal law. The Department has determined that the proposed amendment will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The cost impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Anticipated impact on housing costs: This proposed amendment will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies: None

Small Business Impact:

The Department has determined the proposed amendment will have no impact on small businesses, as the proposed amendment will not impose any new mandates, requirements or cost from the enforcement of this regulation on small businesses.

Local Mandate Determination:

The Department has determined that this proposed amendment will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

Consideration of Alternatives:

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail address and fax number indicated below).

E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than August 25, 2008, at 5 p.m.

Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address) Laura Colozzi, Legal Analyst
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Laura Colozzi, Legal Analyst
Employment Development Department
800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-7712
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

Note: In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers, Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name: Deanna Asuncion, Staff Counsel
Telephone No.: (916) 654-8410

Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on August 25, 2008.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
