

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 274a

[CIS No. 2441-08; Docket No. USCIS-2008-0001]

RIN 1615-AB69

#### Documents Acceptable for Employment Eligibility Verification

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations governing the types of acceptable identity and employment authorization documents and receipts that employees may present to their employers for completion of the Form I-9, Employment Eligibility Verification. Under this interim rule, employers will no longer be able to accept expired documents to verify employment authorization on the Form I-9. This rule also adds a new document to the list of acceptable documents that evidence both identity and employment authorization and makes several technical corrections and updates. The purpose of this rule is to improve the integrity of the employment verification process so that individuals who are unauthorized to work are prevented from obtaining employment in the United States. A copy of the amended Form I-9 reflecting these and other form-related changes is being published as an attachment to this rule.<sup>1</sup>

**DATES:** *Effective Date.* This rule is effective February 2, 2009.

*Comment Date:* Written comments must be submitted on or before February 2, 2009.

<sup>1</sup>Note: Form I-9 is published for informational purposes only and will not be codified in Title 8 of the Code of Federal Regulations.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2008-0001, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210. To ensure proper handling, please reference DHS Docket No. USCIS-2008-0001 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210. Contact Telephone Number (202) 272-8377.

#### FOR FURTHER INFORMATION CONTACT:

Stephen McHale, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 470 L'Enfant Plaza East, SW., Suite 8001, Washington, DC 20529-2610, telephone (888) 464-4218 or e-mail at [Everify@dhs.gov](mailto:Everify@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The supplementary section is organized as follows:

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## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. Comments that will provide the most assistance to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority supporting that change.

*Instructions:* All submissions received must include the agency name and DHS Docket No. USCIS-2008-0001 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210.

## II. Background and Purpose

All employers and agricultural recruiters and referrers for a fee<sup>2</sup> (hereinafter collectively referred to as "employer(s)") are required to verify the identity and employment authorization of each individual they hire for employment in the United States, regardless of the individual's citizenship. See Immigration and Nationality Act (INA) section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). As part of the verification process, employers must complete the Form I-9, "Employment Eligibility Verification," retain the form for a statutorily-

<sup>2</sup>Title 8 CFR 274a.2(a)(1) provides that "[f]or purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural associations, agricultural employers, or farm labor contractors (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470)." \* \* \* See 8 CFR 274a.2(a)(1).

established period of time, and make the form available for inspection by certain government officials. See INA sec. 274A(b), 8 U.S.C. 1324a(b); 8 CFR 274a.2. On the Form I-9, a newly-hired employee must attest to being a U.S. citizen or national, a lawful permanent resident (LPR), or an alien authorized to work in the United States. The employee then must present to his or her employer a document or combination of documents designated by statute and regulation as acceptable for establishing identity and employment authorization. The employer must examine the documents, record the document information on Form I-9, and attest that the documents reasonably appear both to be genuine and to relate to the individual presenting the documents.

The Form I-9 has three categories of documents that may be accepted, alone or in combination, by employers for employment authorization verification:

(1) *List A*—documents that establish both identity and employment authorization<sup>3</sup> (e.g., U.S. passport; Form I-551, “Permanent Resident Card;” and Form I-766, “Employment Authorization Document”);

(2) *List B*—documents that establish only identity (e.g., State-issued driver’s license or identification card); and

(3) *List C*—documents that establish only employment authorization (e.g., State-issued birth certificate and social security account number card).

See INA sec. 274A(b)(1)(B), (C) and (D), 8 U.S.C. 1324a(b)(1)(B), (C) and (D); 8 CFR 274a.2(b)(1)(v)(A), (B) and (C). An individual must present to his or her employer either one document from List A or one document each from List B and List C. The employer may not specify a document or combination of documents that the employee must present. INA sec. 274B(a)(6), 8 U.S.C. 1324b(a)(6); 8 CFR 274a.1(1)(2).

If the employee cannot present an acceptable document from one of the three lists, he or she may present an acceptable substitute document, referred to as a “receipt.” 8 CFR 274a.2(b)(1)(vi) (commonly referred to as “the receipt rule”). The receipt satisfies the document presentation requirement for a short period of time, at the end of which the employee must present the actual document or other document(s) specified in the regulations as acceptable to present. An employer may accept a receipt, however, only under

specific circumstances prescribed under 8 CFR 274a.2(b)(1)(vi). For example, if a document acceptable under Lists A, B, or C is stolen or lost, the new hire may provide a receipt for the application for the replacement document, in lieu of the actual document, as long as he or she provides the replacement document within 90 days of hire. If the individual employee is an alien whose employment authorization or employment authorization documentation expires, the employer must reverify the employee’s continued employment authorization by the expiration date by reviewing any acceptable list A or list C document.<sup>4</sup> 8 CFR 274a.2(b)(1)(vii).

The former Immigration and Naturalization Service (INS) issued the first Form I-9 and list of acceptable documents in 1987. 52 FR 16216-01 (May 1, 1987) (regulatory list of acceptable documents); 52 FR 21454-01 (Jun. 5, 1987) (Notice introducing Form I-9); see also 53 FR 8611-01 (Mar. 16, 1988). After reports that the large number of acceptable Form I-9 documents led to employer confusion and that a reduction in the number of documents could lead to less employment discrimination, INS published rules in 1993 and 1995 proposing reductions in the number of acceptable documents. See 60 FR 32472-01 (Jun. 22, 1995); 58 FR 61846-01 (Nov. 23, 1993). Thereafter, in response to legislative action reducing the statutory list of acceptable documents,<sup>5</sup> INS published an interim rule in 1997 and a proposed rule in 1998. 62 FR 51001 (Sept. 30, 1997) (interim rule), *modified by* 64 FR 6187 (Feb. 9, 1999); 63 FR 5287 (Feb. 2, 1998) (proposed rule). On November 7, 2007, USCIS issued a press release notifying the public that the Form I-9 had been revised to reflect changes to documents implemented under the 1997 interim rule. See “USCIS Revises Employment Eligibility Verification Form” (Nov. 7, 2007) at <http://www.uscis.gov/files/pressrelease/FormI9Update110707.pdf>. This press release was followed by a notice published in the **Federal Register** describing the changes made to the Form I-9 and stating when DHS will begin enforcing the changes. 72 FR 65974-01 (Nov. 26, 2007). Neither the former INS nor USCIS published a final

rule following the 1998 proposed rule. Instead, this rulemaking action supersedes the 1998 NPRM, although comments received during that rulemaking action informed the development of this rulemaking action.

DHS recognizes that the Form I-9 process plays an integral role in ensuring a legal workforce in the United States and is committed to minimizing vulnerabilities in the Form I-9 process. As is evident from past legislative action and rulemaking efforts, an overly expansive Form I-9 document list that includes expired documents compromises the effectiveness and security of the Form I-9 process. After reevaluating the statutory requirements (INA sec. 274A(b)(1), 8 U.S.C. 1324a(b)(1)) and reviewing the regulatory list of documents currently acceptable for the Form I-9, DHS has identified several aspects of the list that are in need of change in order to strengthen the effectiveness of the Form I-9 process. In so doing, this interim rule introduces a requirement that all documents must be unexpired for the Form I-9. DHS invites post-promulgation comments from the public on this interim rule for consideration in a subsequent final rule.

### III. Changes to the List of Acceptable Documents and Receipts

#### A. Requiring Unexpired, Valid Documents

Under current regulations, the U.S. passport and all List B documents are acceptable for the Form I-9 even if they are expired. See 8 CFR 274a.2(b)(1)(v)(A)(1) and (B). Using its authority to place conditions on acceptable documents for the Form I-9 (see INA sec. 274A(b)(1)(E), 8 U.S.C. 1324a(b)(1)(E)), DHS is providing in this rule that expired documents are no longer acceptable for the Form I-9. See revised 8 CFR 274a.2(b)(1)(v). DHS has determined that this action is necessary to ensure that acceptable documents reliably establish identity and employment authorization and that documents that are used fraudulently to an unacceptable degree are not included on the list of acceptable documents. Expired documents are prone to fraudulent use in the Form I-9 process by aliens seeking unauthorized employment. Being of little use to their owners, expired documents fall prey to counterfeiters who, for a small sum, can substitute unauthorized aliens’ photographs and other identifying information. Unauthorized aliens then use these documents to obtain employment. Establishing a requirement that all documents must be unexpired

<sup>4</sup> Note that an expiration date on Form I-551 does not trigger the reverification requirement. See “Handbook for Employers, Instructions for Completing the Form I-9” (M-274) (Rev. 11/01/07), <http://www.uscis.gov>, “Handbook for Employers”) page 26.

<sup>5</sup> Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), section 412, Pub. L. No. 104-208, 110 Stat. 3009-666 (1996).

<sup>3</sup> Current regulations use the term “employment eligibility” rather than “employment authorization.” To be consistent with the statute, this rulemaking uses the term “employment authorization.” See INA sec. 274A(b)(1)(B) and (C), 8 U.S.C. 1324a(b)(1)(B) and (C).

closes this loophole and sets a bright-line standard for U.S. employers. Moreover, such a requirement honors the limits placed by document issuance authorities on their documents. Finally, by requiring unexpired documents, there is a greater likelihood that such documents will contain up-to-date security features that will make them less vulnerable to counterfeiting and fraud.

In its 1998 proposed rule, the former INS proposed precluding expired documents from use for the Form I-9. 63 FR at 5302. Out of the 73 comments received in response to the proposed rule, 15 comments addressed this proposal. Five commenters favored the change. Ten commenters indicated a clear preference against the change, focusing primarily on identity documents with some specifying that their objection applied to List B documents only. Those who favored the change stated that expired documents do not provide a reliable representation of the holder's identity, such as when the expired document includes an outdated photograph.

DHS considered the comments from the 1998 proposed rule for this interim rule and has noted them in this discussion to acknowledge that some members of the public may face challenges in accessing unexpired documents for Form I-9 purposes. As stated above, DHS believes that precluding the use of expired documents for the Form I-9 is essential for improving the security of the employment verification process. The U.S. Department of State (DOS), DHS, and many States have taken and are continuing to take significant steps to improve the security features of their documents. See Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005; REAL ID Act of 2005, div. B, Public Law No. 109-13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. 30301 note); Enhanced Border Security and Visa Entry Reform Act of 2002, section 303(b), Public Law 107-173, 116 Stat. 543, 553 (2002). In keeping with these efforts, DHS has determined that it is appropriate to amend the regulations governing the Form I-9 process to require that all documents must be unexpired to be acceptable for the Form I-9.

To modify the current regulations, this rule removes the terms "unexpired" and "expired" from those documents currently listed in the regulations with these limitations (e.g., "unexpired foreign passport that contains a temporary I-551 stamp" and "unexpired Employment Authorization

Document"). Rather than modify each acceptable document with the term "unexpired," this rule imposes a general requirement that all documents must be unexpired to be acceptable for the Form I-9. See revised 8 CFR 274a.2(b)(1)(v). A document containing no expiration date, such as the Social Security account number card, will be deemed unexpired.

DHS invites comments on whether this rule's prohibition on the use of expired documents for the Form I-9 should be modified to permit employers to accept List B identity documents that have expired within the last 90 days (or other limited time period) of the date they are presented to the employer for the Form I-9.

#### *B. Adding Documentation for Citizens of the Federated States of Micronesia and the Republic of the Marshall Islands*

In 2003, the Compacts of Free Association between the United States and the Federated States of Micronesia (FSM) and Republic of the Marshall Islands (RMI) were amended. See Compact of Free Association Amendments Act of 2003, Public Law 108-188 (2003). Under both the preexisting Compacts and the Compacts as amended, most citizens of the RMI and the FSM are eligible for admission to the United States as nonimmigrants, including the privilege of residing and working in the United States. The amendments to the Compacts included provisions that eliminated the need for citizens of the FSM and the RMI to obtain an Employment Authorization Document (Form I-766), although they may still apply for one if they wish. As provided by the Compact Amendments, FSM and RMI citizens admitted under the Compacts may present valid FSM or RMI passports with evidence of their admission under the Compacts to satisfy Form I-9 requirements.<sup>6</sup> To conform the Form I-9 regulations with the requirements of the Compacts, USCIS is including a List A provision specifically tailored to these FSM and RMI citizens. See new 8 CFR 274a.2(b)(1)(v)(A)(6).

#### *C. Revising References to Temporary I-551s*

List A refers to temporary I-551 stamps in unexpired foreign passports as acceptable documents. See 8 CFR 274a.2(b)(1)(v)(A)(3). DHS issues

<sup>6</sup>There is also a Compact of Free Association with the Republic of Palau (Compact of Free Association Approval Act, Pub. L. No. 99-658 (Nov. 14, 1986)) providing similar employment and residency privileges for citizens of Palau, but the Compact has not been amended to include a similar Form I-9 documentation provision. Therefore, the amendment to the regulations does not include Palau.

temporary I-551 stamps to LPRs on either unexpired foreign passports or Forms I-94, "Arrival-Departure Record," to serve as temporary documentation of LPR status while they wait for the actual Form I-551. Although the regulations refer to temporary I-551 "stamps," DOS has been affixing machine-readable immigrant visas (MRIVs) that contain a pre-printed temporary I-551 notation in the foreign passports of aliens immigrating to the United States for several years. The pre-printed temporary I-551 notation is triggered after the bearer is admitted to the United States as an LPR. To update the regulations to reflect this alternate temporary I-551 document, this rule modifies the reference in List A to temporary I-551 stamps on unexpired foreign passports to include pre-printed temporary I-551 notation on MRIVs. 8 CFR 274a.2(b)(1)(v)(A)(3). Because the pre-printed notation is not included on Forms I-94, this rule does not make any changes to regulatory references to temporary I-551 stamps on Forms I-94. See 8 CFR 274a.2(b)(1)(vi)(B).

#### *D. Eliminating Forms I-688, I-688A, and I-688B*

DHS notes that Form I-688, "Temporary Resident Card," and Forms I-688A and I-688B, "Employment Authorization Cards," are no longer issued and has determined that any such documents that were previously issued have expired. Therefore, this rule removes these documents from List A and any references to the documents in the receipt provision at 8 CFR 274a.2(B)(1)(vi)(C). USCIS now issues Forms I-766 to those who formerly received Forms I-688, I-688A, or I-688B. The Form I-766 remains on List A. 8 CFR 274a.2(b)(1)(v)(A)(4).

#### *E. Adding References to Form I-94A*

This rule updates the list of acceptable documents and receipts by including "Form I-94A" next to each reference to the Form I-94, "Arrival-Departure Record." See revised 8 CFR 274a.2(b)(1)(v)(A)(5) and (b)(1)(vi)(B) and (C). The Form I-94A is nearly identical to the Form I-94 except that all fields are computer-generated rather than being annotated by hand.

#### *F. Revising Reference to Social Security Account Number Card ("Social Security Card")*

This interim rule replaces the current reference to the List C document, "Social Security number card," with the statutory term "Social Security account number card." Revised 8 CFR 274a.2(b)(1)(v)(C)(1). This document is

commonly referred to as the Social Security card. The rule also revises the restriction on the acceptability of Social Security account number cards. The statute provides that a Social Security account number card, "other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States" is an acceptable List C document. *See* INA sec. 274A(b)(1)(C)(i), 8 U.S.C. 1324a(b)(1)(C)(i). The current regulations provide that unacceptable cards are those that include the following legend: "not valid for employment purposes." 8 CFR 274a.2(b)(1)(v)(C)(1). Over the years since Social Security account number cards have included employment restrictions, the legend printed on the face of the cards has changed. Therefore, the restriction stated in the current regulations is inadequate. This rule revises the restriction to track the statutory language.

#### IV. Technical Changes

##### A. Correcting References to Employment Eligibility

This interim rule replaces the term "employment eligibility" with "employment authorization" in each place that "employment eligibility" appears in the verification provisions of the regulations relevant to the substantive changes made by this rule, 8 CFR 274a.2(a) and (b)(1). This change is necessary to conform the regulations to the statute, which uses the term "employment authorization" and not "employment eligibility." *See* INA sec. 274A(b)(1)(B) and (C), 8 U.S.C. 1324a(b)(1)(B) and (C).

In addition, DHS revised the section heading to 8 CFR 274a.2 to more accurately reflect the contents of this section. Currently, the section heading reads, "Verification of employment eligibility." This rule revises the section heading to read, "Verification of identity and employment authorization."

##### B. Replacing References to the Former INS

This rule deletes references to the former INS or replaces such references with "DHS" wherever "INS" appears in the provisions affected by this rule. *See* revised 8 CFR 274a.2(b)(1)(v)(A)(4) and (b)(1)(v)(C)(6), (7), and (8). After a transfer of functions to DHS, the INS was abolished in March 2003. *See* 6 U.S.C. 291; Homeland Security Act of 2002, Public Law No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

##### C. Correcting References to Certificates of Birth Abroad in List C

Current regulations incorrectly identify the List C documents, Forms FS-545 and DS-1350 issued by the Department of State, as "Certification of Birth Abroad." 8 CFR 274a.2(b)(1)(v)(C)(2) and (3). This rule corrects this error. The Form FS-545 is correctly entitled, "Certification of Birth," and Form DS-1350 is correctly entitled, "Certification of Report of Birth."

#### V. Form Changes

In implementing the regulatory changes being made by this rule, DHS also is revising the Form I-9 itself. Changes to the Form I-9, in addition to revisions to the list of acceptable documents, include:

- In Section 1, making "citizen of the United States" and "noncitizen national of the United States, as defined in 8 U.S.C. 1408" two separate categories in the employee attestation part of the form. Currently, the first box in that section states: "A citizen or national of the United States." Separating those two groups will eliminate one difficulty that currently exists when prosecuting those who make false claims to U.S. citizenship. Noncitizen nationals of the United States are persons born in American Samoa as provided in section 308 of the INA, 8 U.S.C. 1408; certain former citizens of the former Trust Territory of the Pacific Islands who relinquished their U.S. citizenship acquired under section 301 of Public Law 94-241 (establishing the Commonwealth of the Northern Mariana Islands) by executing a declaration before an appropriate court that they intended to be noncitizen nationals rather than U.S. citizens; and certain children of noncitizen nationals born abroad, as provided by section 308 of the INA, 8 U.S.C. 1408. A definition of noncitizen national is added to the instructions to the Form I-9.

- In Section 1, replacing "An alien authorized to work until \_\_\_/\_\_\_/\_\_\_ (Alien # or Admission # \_\_\_\_\_)" with "An alien authorized to work (A# or Admission # \_\_\_\_\_) until (expiration date, if applicable—month/day/year) \_\_\_/\_\_\_/\_\_\_".

- In the form instructions, including a paragraph that clarifies when employers need to reverify certain employees to read as follows:

"Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the

Marshall Islands). For such employees, reverification does not apply unless they choose to present in Section 2 evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766))."

Form I-9 will be included as an attachment to this rule. It will also be made available in Spanish and posted on the USCIS Web site (<http://www.uscis.gov>) at a later date.

#### VI. Regulatory Requirements

##### A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(B). DHS finds advance notice and comment for this rule to be impracticable, unnecessary, and contrary to the public interest.

In its 1998 proposed rule, the former INS proposed precluding expired documents from use for the Form I-9. 63 FR at 5302. The INS received 15 comments on the proposal to remove expired documents as discussed above. Therefore, although the INS did not finalize that NPRM, USCIS has considered those public comments in the development of this interim rule and DHS has concluded that further public comment on this issue would be unnecessary under the APA.

DHS understands that this rule is a change in its longstanding practice of accepting expired documents. However, advances in technology since the original issuance of these regulations and Form I-9, especially in recent years, increase the need for DHS to make sure that documents accepted for identity and work authorization purposes have sufficient security features and continue to ensure the integrity of the employment verification process.<sup>7</sup> Employment documentation requirements must be strengthened as soon as possible in order for DHS enforcement capabilities to stay ahead of document counterfeiters; requiring that documents be unexpired is one way to help ensure this. Continued delay created by the notice and comment requirements would result in additional damage to these important interests.

Accordingly, DHS finds that good cause exists under 5 U.S.C. 553(b) to

<sup>7</sup> DHS Fact Sheet: Combating Fraudulent Documents. August 1, 2006. Available at [http://www.dhs.gov/xnews/releases/pr\\_1158347347660.shtm](http://www.dhs.gov/xnews/releases/pr_1158347347660.shtm).

issue this rule as an interim rule. DHS nevertheless invites written comments on this interim rule and will consider those comments in the development of a final rule in this action.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, when an agency invokes the good cause exception under the Administrative Procedure Act (APA) to make changes effective through an interim final rule, the RFA does not require the agency to prepare a regulatory flexibility analysis. This rule makes changes for which notice and comment are not necessary and, accordingly, USCIS has not prepared a regulatory flexibility analysis.

#### *C. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. As outlined in the Executive Order 12866 section of this rule below, this rule may result in the expenditure in the aggregate by the private sector of more than \$100 million in the first year following its publication. However, there are no recurring costs and it will not significantly or uniquely affect small governments or other small entities. Further, no action on the part of any state, tribe, or other governmental entity is required by this rule's changes. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *D. Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804.

#### *E. Executive Order 12866*

This rule is considered by DHS to be an "economically significant regulatory action" under Executive Order 12866,

section 3(f), Regulatory Planning and Review. Accordingly, this interim rule has been reviewed by the Office of Management and Budget.

Employees are already completing, and employers are already retaining, Forms I-9. Employers are also conducting re-verifications when employment authorization expires. Likewise, U.S. Immigration and Customs Enforcement (ICE) agents already conduct Form I-9 enforcement actions. Therefore, this interim rule is not expected to impose significant new or recurring costs on employers, new employees, or the government.

*Costs for employers.* After publication of this rule, there will be some costs associated with becoming familiar with the new requirements, switching to the new forms, and retraining personnel who are familiar with the existing requirements. All employers and agricultural recruiters and referrers for a fee are required to verify the identity and employment authorization of each individual they hire for employment in the United States, regardless of the individual's citizenship. The number of employees hired each year varies greatly among firms as does the number of employees that each firm has devoted to the hiring process. Based on an analysis of data from the U.S. Department of Agriculture, National Agricultural Census<sup>8</sup>, and, U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics,<sup>9</sup> DHS has determined that there are approximately 554,000 farms, around 90,000 local government jurisdictions, and approximately 4.9 million firms in the private sector of the U.S. economy that could possibly hire an employee in the year after this rule takes effect. While many farms and companies hire no employees in a given year requiring submission of no Forms I-9, DHS assumed that the largest possible universe of employers would be affected by the rule in its first year in effect, or all entities. That means there are a total of about 5.54 million farms, businesses, and governmental entities in the U.S. that must obtain a Form I-9 from their new hires. DHS also assumed that each of the affected firms will incur a small cost to learn about the new form and regulations. The Office of Management and Budget (OMB) approved information collection reporting burden for Form I-9 is an average of 12 minutes

per response for learning about the form, completing the form, and assembling and filing the form. Because this training facet would add a few minutes to that time burden to read this rule and compare the new and old Form I-9 lists, DHS estimates that each employer will each need approximately 30 minutes to research the changes made by this rule and learn what an acceptable Form I-9 supporting document is after this rule takes effect. According the U.S. Department of Labor, Bureau of Labor Statistics quarterly report, "Employer Costs for Employee Compensation," employer compensation costs for all civilian occupations averages \$28.11 per hour worked. Therefore, based on 30 minutes per employer for 5.54 million employers, this rule will cost all employers nationwide a total of \$77,864,700 to familiarize themselves with the new requirements, switch to the new forms, and retrain personnel. This is, however, a one-time and not a repeating or annual cost. Once the transition to this interim rule and new Form I-9 is complete, DHS anticipates that the costs incurred by employers will be lower than under the existing rule because the modified lists of acceptable forms is expected to reduce confusion. DHS believes that the reduced number of documents that may be presented for verification, simplified design of the Form I-9, and more comprehensive instructions provided with the form, will make the verification process for employers easier than it is now.

*Costs for employees.* By reducing the number of documents that are acceptable, this rule will require a newly hired employee to expend some time, effort, and expense in order to obtain an acceptable, unexpired document. For example, a new hire who was able to use an expired passport or U.S. military identification card before this rule rendered those documents unacceptable will now need to obtain a current, unexpired document. Those individuals who could have used an expired document will incur a cost to obtain an alternative document, such as a State-issued driver's license or identification card, which can be presented with their social security card or birth certificate, or a passport card or passport. In order to provide an example that will illustrate this potential impact, DHS has examined what that cost may be. DHS obtained a list of the amounts charged for State-issued driver's licenses or identification cards in every state in the U.S. and the District of Columbia from the American

<sup>8</sup>Economic Class of Farms by Market Value of Agricultural Products Sold and Government Payments: 2002 [http://www.nass.usda.gov/census/census02/volume1/us/st99\\_1\\_003\\_003.pdf](http://www.nass.usda.gov/census/census02/volume1/us/st99_1_003_003.pdf).

<sup>9</sup>New Quarterly Data from BLS on Business Employment Dynamics by Size of Firm, 2005 <http://www.bls.gov/news.release/pdf/cewfs.pdf>.

Association of Motor Vehicle Administrators (AAMVA). The average cost to obtain a state-issued photo identification card was found to be \$14.40. The U.S. Department of State charges \$100 for a passport for someone age 16 and over, and a passport card costs \$20. Thus, it assumed for this example, logically, that those individuals who could have used an expired document before this rule will choose the lower-cost option and obtain a state identification card.

According to the U.S. Department of Transportation, Federal Highway Administration, of the 233 million people in the United States who are in the driving age population (age 16 and over), 209 million, or 87 percent, have a State-issued driver's license.<sup>10</sup> Also, as of 2006, almost 33 million State-issued identification cards were in effect. Therefore, there are approximately 242 million driver's licenses and identification cards held by persons age 16 and over, while the U.S. population of people who are of driving age is 233 million. The issuance of 9 million more State-issued driver's licenses and State-issued identification cards than the driving age population suggests that a very small portion of the working-age population would have neither a State-issued driver's license nor a State-issued identification card. Therefore, it is likely that very few people will be required to obtain a license in order to comply with the new requirements of this rule. On the other hand, a sample of 2000 registered voters in three states performed for a study being conducted by American University (AU) found that roughly 1.2 percent of the people surveyed did not have acceptable photo identification cards for voting purposes.<sup>11</sup> Assuming that the result from those three states would hold true nationwide, that percentage, while small, is not trivial due to the annual volume of new hires who must present Form I-9. If only 1.2 percent of the estimated 58 million annual new hires in the United States must obtain a new document, 696,000 people are affected.<sup>12</sup> As stated above, states charge

an average of \$14.40 for an identification card. In addition, DHS estimates that expenses for each affected person would also include spending about 4 hours of their personal time to obtain the card and that the worker gives up this amount of time engaging in a leisure activity. According to guidelines used by the U.S. Department of Transportation on the values of travel time, the opportunity cost of leisure time forgone for travel is calculated as 50 percent of wages. Using the employer compensation costs per hour for all civilian occupations of \$28.11, the value of leisure per hour is about \$14.06. Thus, a person could be required to expend up to \$14.40 in cash and \$56.20 in opportunity costs, or total costs of \$70.60, to obtain a State-issued identification card because of the changes made by this rule. Using the 1.2 percent figure from the AU study, this example results in an aggregate nationwide employee expense for obtaining an acceptable document of \$49,137,600.

The cost associated with the information collection burden of the Form I-9 and its instructions is discussed below in the Paperwork Reduction Act section of this rule.

#### F. Executive Order 13132

This rule would have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### G. Paperwork Reduction Act

This interim rule requires a revision to the Form I-9 (OMB Control Number 1615-0047).

Since this is an interim rule, this information collection has been submitted and approved by OMB for 180 days under the emergency review and clearance procedures covered under the PRA. During the first 60 days, USCIS is requesting comments on this information collection until February 17, 2009. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of respondents (78,000,000) × frequency of response (1) × hour per response (9 minutes or 0.15 hours). The annual recordkeeping burden is added to the total annual reporting burden that is based on 20,000,000 record keepers at (3 minutes or .05 hours) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,700,000 annual burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529.

<sup>10</sup> United States Department of Transportation, Federal Highway Administration, Highway Statistics 2006, Licensed drivers—Ratio of licensed drivers to population. Available at [http://www.fhwa.dot.gov/policy/ohim/hs06/driver\\_licensing.htm](http://www.fhwa.dot.gov/policy/ohim/hs06/driver_licensing.htm).

<sup>11</sup> Robert Pastor, et al., Voter IDs Are Not the Problem: A Survey of Three States, (Center for Democracy and Election Management, American University, Washington, DC, Jan. 9, 2008). <http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf>.

<sup>12</sup> U.S. Department of Labor, U.S. Bureau of Labor Statistics, Job Openings and Labor Turnover Survey Available at <http://data.bls.gov/PDQ/outside.jsp?survey=jl>.

**List of Subjects in 8 CFR Part 274a**

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 1. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 2. Section 274a.2 is amended by:

- a. Revising the section heading;
- b. Revising the term “eligibility” to read “authorization” in the first sentence of paragraphs (a)(3), (b)(1)(i)(B), and (b)(1)(ii)(A);
- c. Revising paragraph (b)(1)(v) introductory text;
- d. Revising paragraph (b)(1)(v)(A);
- e. Revising paragraphs (b)(1)(v)(C)(1), (2), (3), (6), (7), and (8); and by
- f. Revising paragraphs (b)(1)(vi)(B) and (C).

The revisions read as follows:

**§ 274a.2 Verification of identity and employment authorization.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(v) The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity. Only unexpired documents are acceptable. The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the Form I-9.

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment authorization:

- (1) A United States passport;
- (2) An Alien Registration Receipt Card or Permanent Resident Card (Form I-551);

(3) A foreign passport that contains a temporary I-551 stamp, or temporary I-551 printed notation on a machine-readable immigrant visa;

(4) An Employment Authorization Document which contains a photograph (Form I-766);

(5) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with a Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien’s nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form;

(6) A passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

\* \* \* \* \*

(C) \* \* \*

(1) A Social Security account number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States;

(2) Certification of Birth issued by the Department of State, Form FS-545;

(3) Certification of Report of Birth issued by the Department of State, Form DS-1350;

\* \* \* \* \*

(6) United States Citizen Identification Card, Form I-197;

(7) Identification card for use of resident citizen in the United States, Form I-179;

(8) An employment authorization document issued by the Department of Homeland Security.

(vi) \* \* \*

(B) *Form I-94 or I-94A indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I-9 that he or she is a lawful permanent resident and the individual:

(1) Presents the arrival portion of Form I-94 or Form I-94A with an unexpired foreign passport containing an unexpired “Temporary I-551” stamp and a photograph of the individual, which is designated for purposes of this section as a receipt for Form I-551; and

(2) Presents the Form I-551 by the expiration date of the “Temporary I-551” stamp or, if the stamp or statement has no expiration date, within one year from the issuance date of the arrival portion of the Form I-94 or Form I-94A; or

(C) *Form I-94 or I-94A indicating refugee status.* The individual indicates in section 1 of the Form I-9 that he or she is an alien authorized to work and the individual:

(1) Presents the departure portion of Form I-94 or I-94A containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, or a social security account number card that contains no employment restrictions; and

(2) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I-766, or a social security account number card that contains no employment restrictions and a document described under paragraph (b)(1)(v)(B) of this section.

\* \* \* \* \*

**Paul A. Schneider,**  
*Deputy Secretary.*

**Note:** The Form I-9 included as an attachment to this document should not be codified in Title 8 of the Code of Federal Regulations.

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**Form I-9, Employment  
Eligibility Verification**

**Instructions**

**Read all instructions carefully before completing this form.**

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the United States) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-8155.

**What Is the Purpose of This Form?**

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

**When Should Form I-9 Be Used?**

All employees, citizens, and noncitizens hired after November 6, 1986, and working in the United States must complete Form I-9.

**Filling Out Form I-9**

**Section 1, Employee**

This part of the form must be completed no later than the time of hire, which is the actual beginning of employment. Providing the Social Security Number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Noncitizen Nationals of the United States**

Noncitizen nationals of the United States are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

**Employers should note** the work authorization expiration date (if any) shown in **Section 1**. For employees who indicate an employment authorization expiration date in **Section 1**, employers are required to reverify employment authorization for employment on or before the date shown. Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present

in **Section 2** evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).

**Preparer/Translator Certification**

The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his or her own. However, the employee must still sign **Section 1** personally.

**Section 2, Employer**

For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment authorization within three business days of the date employment begins. However, if an employer hires an individual for less than three business days, **Section 2** must be completed at the time employment begins. Employers cannot specify which document(s) listed on the last page of Form I-9 employees present to establish identity and employment authorization. Employees may present any List A document **OR** a combination of a List B and a List C document.

If an employee is unable to present a required document (or documents), the employee must present an acceptable receipt in lieu of a document listed on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employees must present receipts within three business days of the date employment begins and must present valid replacement documents within 90 days or other specified time.

**Employers must record in Section 2:**

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification in **Section 2**. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they must be made for all new hires. Photocopies may only be used for the verification process and must be retained with Form I-9. **Employers are still responsible for completing and retaining Form I-9.**



For more detailed information, you may refer to the *USCIS Handbook for Employers (Form M-274)*. You may obtain the handbook using the contact information found under the header "USCIS Forms and Information."

### Section 3, Updating and Reverification

Employers must complete **Section 3** when updating and/or reverifying Form I-9. Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in **Section 1** (if any). Employers **CANNOT** specify which document(s) they will accept from an employee.

- A.** If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B.** If an employee is rehired within three years of the date this form was originally completed and the employee is still authorized to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C.** If an employee is rehired within three years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B; and:
1. Examine any document that reflects the employee is authorized to work in the United States (see List A or C);
  2. Record the document title, document number, and expiration date (if any) in Block C; and
  3. Complete the signature block.

Note that for reverification purposes, employers have the option of completing a new Form I-9 instead of completing **Section 3**.

### What Is the Filing Fee?

There is no associated filing fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

### USCIS Forms and Information

To order USCIS forms, you can download them from our website at [www.uscis.gov/forms](http://www.uscis.gov/forms) or call our toll-free number at 1-800-870-3676. You can obtain information about Form I-9 from our website at [www.uscis.gov](http://www.uscis.gov) or by calling 1-888-464-4218.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from our website at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) or by calling 1-888-464-4218.

General information on immigration laws, regulations, and procedures can be obtained by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our Internet website at [www.uscis.gov](http://www.uscis.gov).

### Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Form I-9s for three years after the date of hire or one year after the date employment ends, whichever is later.

Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR 274a.2.

### Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

**Paperwork Reduction Act**

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

FOR INFORMATIONAL  
PURPOSES ONLY

OMB No. 1615-0047; Expires 06/30/09

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**Form I-9, Employment Eligibility Verification**

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification** (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following).

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) \_\_\_\_\_
- An alien authorized to work (Alien # or Admission #) \_\_\_\_\_ until (expiration date, if applicable - month/day/year)

Employee's Signature	Date (month/day/year)
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**Preparer and/or Translator Certification** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

**Section 2. Employer Review and Verification** (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document # _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document # _____		_____		_____
Expiration Date (if any): _____		_____		_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

**Section 3. Updating and Reverification** (To be completed and signed by employer.)

A New Name (if applicable)	B Date of Rehire (month/day/year) (if applicable)
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C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title	Document #	Expiration Date (if any)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
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**LISTS OF ACCEPTABLE DOCUMENTS**

All documents must be unexpired

<b>LIST A</b> Documents that Establish Both Identity and Employment Authorization	<b>LIST B</b> Documents that Establish Identity	<b>LIST C</b> Documents that Establish Employment Authorization
<b>OR</b>		<b>AND</b>
1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
	4. Voter's registration card	
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	5. U.S. Military card or draft record	5. Native American tribal document
	6. Military dependent's ID card	
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	
	9. Driver's license issued by a Canadian government authority	
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	<b>For persons under age 18 who are unable to present a document listed above:</b>	6. U.S. Citizen ID Card (Form I-197)
	10. School record or report card	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	
		8. Employment authorization document issued by the Department of Homeland Security

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

[FR Doc. E8-29874 Filed 12-16-08; 8:45 am]  
BILLING CODE 9111-97-C

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-0836; Airspace  
Docket No. 08-AEA-23]

#### Amendment of Class E Airspace; Butler, PA; Removal of Class E Airspace; East Butler, PA

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule; confirmation of  
effective date.

**SUMMARY:** This action confirms the  
effective date of a direct final rule  
published in the **Federal Register** (73  
FR 56470) that amends Class E Airspace  
at Butler, PA to merge the existing Class  
E Airspace listed under East Butler, PA,  
and corrects a technical error to the  
airport name by correctly listing the  
Butler County Airport as Butler Co./K W  
Scholter Field Airport.

**DATES:** Effective 0901 UTC, January 15,  
2009. The Director of the Federal  
Register approves this incorporation by  
reference action under title 1, Code of  
Federal Regulations, part 51, subject to  
the annual revision of FAA Order  
7400.9 and publication of conforming  
amendments.

**FOR FURTHER INFORMATION CONTACT:**  
Melinda Giddens, Operations Support  
Group, Eastern Service Center, Federal  
Aviation Administration, P.O. Box  
20636, Atlanta, Georgia 30320;  
telephone (404) 305-5610.

#### SUPPLEMENTARY INFORMATION:

##### Confirmation of Effective Date

The FAA published this direct final  
rule with a request for comments in the  
**Federal Register** on September 29, 2008  
(73 FR 56470), Docket No. FAA-2008-  
0836; Airspace Docket No. 08-AEA-23.  
The FAA uses the direct final  
rulemaking procedure for a non-  
controversial rule where the FAA  
believes there will be no adverse public  
comment. This direct final rule advised  
the public that no adverse comments  
were anticipated, and that unless a  
written adverse comment, or a written  
notice of intent to submit such an  
adverse comment, were received within  
the comment period, the regulation  
would become effective on January 15,  
2009. No adverse comments were

received, and thus this notice confirms  
that effective date.

\* \* \* \* \*

Issued in College Park, Georgia, on  
November 28, 2008.

**Barry A. Knight,**

*Acting Manager, Operations Support Group,  
Eastern Service Center, Air Traffic  
Organization.*

[FR Doc. E8-29814 Filed 12-16-08; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-0960; Airspace  
Docket No. 08-ASW-17]

#### Establishment of Class D and Class E Airspace; Conroe, TX

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class  
D airspace and Class E airspace at Lone  
Star Executive Airport, Conroe, TX.  
Establishment of an air traffic control  
tower at Lone Star Executive Airport has  
made this action necessary for the safety  
of Instrument Flight Rule (IFR)  
operations at the airport. Class D  
airspace will revert to a Class E Surface  
Area during periods when the control  
tower is not operating. This action also  
corrects the radials used to define the  
airspace.

**DATES:** *Effective Date:* 0901 UTC, March  
12, 2009. The Director of the Federal  
Register approves this incorporation by  
reference action under 1 CFR part 51,  
subject to the annual revision of FAA  
Order 7400.9 and publication of  
conforming amendments.

**FOR FURTHER INFORMATION CONTACT:**  
Scott Enander, Central Service Center,  
Operations Support Group, Federal  
Aviation Administration, Southwest  
Region, 2601 Meacham Blvd., Ft. Worth,  
TX 76193-0530; telephone (817) 222-  
5582.

#### SUPPLEMENTARY INFORMATION:

##### History

On October 7, 2008, the FAA  
published in the **Federal Register** a  
notice of proposed rulemaking to  
establish Class D airspace and Class E  
airspace at Conroe, TX (73 FR 58512,  
Docket No. FAA-2008-0960). Interested  
parties were invited to participate in  
this rulemaking effort by submitting  
written comments on the proposal to the  
FAA. No comments were received.

Subsequent to publication, the FAA  
found that a minor correction to the  
radials defining the airspace was  
needed. This action makes that  
correction. With the exception of  
editorial changes, and the changes  
described above, this rule is the same as  
that proposed in the NPRM. Class D  
airspace designations are published in  
paragraph 5000 of FAA Order 7400.9S  
signed October 3, 2008, and effective  
October 31, 2008, which is incorporated  
by reference in 14 CFR part 71.1. Class  
E Surface Area airspace designations are  
published in paragraph 6002 of FAA  
Order 7400.9S signed October 3, 2008,  
and effective October 31, 2008, which is  
incorporated by reference in 14 CFR  
part 71.1. The Class D airspace and  
Class E airspace designations listed in  
this document will be published  
subsequently in that Order.

##### The Rule

This action amends Title 14 Code of  
Federal Regulations (14 CFR) part 71 by  
establishing Class D airspace and Class  
E Surface Area airspace extending  
upward from the surface to and  
including 2,700 feet MSL within a 4.1-  
mile radius of Lone Star Executive  
Airport, excluding that airspace within  
the 4.1-mile radius north and east of the  
intersection of the IAH 357° radial and  
the TNV 083° radial.

The FAA has determined that this  
regulation only involves an established  
body of technical regulations for which  
frequent and routine amendments are  
necessary to keep them operationally  
current. Therefore, this regulation: (1) Is  
not a "significant regulatory action"  
under Executive Order 12866; (2) is not  
a "significant rule" under DOT  
Regulatory Policies and Procedures (44  
FR 11034; February 26, 1979); and (3)  
does not warrant preparation of a  
regulatory evaluation as the anticipated  
impact is so minimal. Since this is a  
routine matter that will only affect air  
traffic procedures and air navigation, it  
is certified that this rule, when  
promulgated, will not have a significant  
economic impact on a substantial  
number of small entities under the  
criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules  
regarding aviation safety is found in  
Title 49 of the U.S. Code. Subtitle I,  
Section 106, describes the authority of  
the FAA Administrator. Subtitle VII,  
Aviation Programs, describes in more  
detail the scope of the agency's  
authority. This rulemaking is  
promulgated under the authority  
described in Subtitle VII, Part A,  
Subpart I, Section 40103. Under that  
section, the FAA is charged with  
prescribing regulations to assign the use