DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The Department of Justice is not a major regulatory agency, and it carries out its vital investigative, prosecutorial, and other law enforcement activities principally through means other than the regulatory process. Even so, the Department does have significant responsibilities for implementing the Americans with Disabilities Act (ADA) as well as the immigration laws, including the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. The Department's key regulatory goals and initiatives are set forth in detail below.

The Department has worked actively to implement the general regulatory principles of Executive Order 12866. Relatively few of the Department's rules are significant regulatory actions requiring review by the Office of Management and Budget (OMB) under the Executive Order. Accordingly, the orientation of the OMB review process to focus on significant rules has required the Department to increase its own efforts to ensure that all of its regulations are carefully reviewed for consistency with the Administration's regulatory principles, including the large majority of rules that are not reviewed directly by OMB as significant regulatory actions.

Pursuant to section 4(c) of Executive Order 12866, the Department of Justice provides the following statement of regulatory priorities, focusing in particular on five regulatory initiatives in the areas of civil rights and immigration.

In addition to the specific initiatives set forth below, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this Regulatory Plan, those components carry out key roles in implementing the Department's law enforcement priorities. In particular, the Drug Enforcement Administration (DEA) is responsible for controlling abuse of narcotics and dangerous drugs by restricting the aggregate supply of those drugs. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA has various regulatory actions under development relating to the drug control requirements and to streamlining initiatives undertaken pursuant to the Administration's Regulatory Reinvention initiative.

Also, the Federal Bureau of Investigation will be promulgating regulations under the Communications Assistance to Law Enforcement Act of 1994 (CALEA). Congress enacted CALEA to address the recent and continuing advances in telecommunications technology which have impaired and, in some instances precluded, law enforcement agencies from fully conducting various types of court-authorized electronic surveillance. The Attorney General is authorized to reimburse carriers for all of the reasonable costs directly associated with the modifications they perform on equipment, facilities, and services deployed on or before January 1, 1995. These regulations will provide the cost accounting standards for reimbursements.

Civil Rights

The Department and its Civil Rights Division are deeply committed to a rigorous and revitalized approach to the enforcement of this Nation's civil rights laws. In keeping with that commitment, the Division will be reviewing, updating, and improving its civil rights regulations, which are the Division's basic enforcement tools. As a priority for the coming year, the Division is completing the initial ADA rulemaking cycle by amending its regulations under the ADA to incorporate revised standards applicable to new buildings and facilities used by State and local governments. The Department's Regulatory Plan has one civil rights initiative.

The Department is planning to make revisions in its regulations implementing title II of ADA (and conforming changes to title III) in order to incorporate the revised accessibility design guidelines developed by the Architectural and Transportation Barriers Compliance Board (the Access Board). Subtitle A of title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. Title III of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability by public accommodations and in commercial facilities. The Access Board's new guidelines for State and local buildings and facilities are the subject of a related, pending rulemaking proceeding, and have been subject to considerable scrutiny through the Board's regulatory process. The Department of Justice, which is required by statute to promulgate regulations that do not go below the Access Board's minimum guidelines, has proposed to incorporate them into the Department's title II rule.

These amendments to the ADA regulations are an important step forward in fulfilling the promise of the ADA in ushering in a new era of opportunity and dignity for the many millions of Americans with disabilities. These regulations, which will apply to new construction and to alterations of State and local buildings and facilities, will open doors that have shut out people with disabilities in the past.

Immigration

The Immigration and Naturalization Service (INS) is responsible for facilitating the entry of persons legally admissible as visitors or as immigrants to the United States, for preventing unlawful entry or receipt of immigration benefits by those who are not entitled to receive them, and for apprehending or removing those aliens who enter or remain illegally in the United States. Though many of the Administration's goals for more effective immigration process require either new statutory authority or increased resources, the regulatory process is a vital aspect of carrying out the goals of the immigration laws.

Certainly, one of the regulatory challenges facing the Department of Justice is to improve the effectiveness of those regulatory efforts. Commissioner Meissner established three fundamental goals at the time of her confirmation: to increase the professionalism of the Service, to provide immigration control with compassion, and to build the Service's role in immigration policy leadership and communication. The regulatory priorities for the Service follow those priorities, though other desired improvements may require legislative action. Four INS initiatives are included in this regulatory plan.

In order to better serve increased numbers of naturalization applicants and ensure the integrity of the naturalization process, two specific initiatives are being included in this regulatory plan. First, INS will revise and strengthen the current system for approving testing entities to administer standardized tests of U.S. history and government and written English for persons applying to become naturalized

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citizens. Strengthening this system will result in improved service for applicants and in more efficient use of INS resources. In addition, INS is exploring options for increasing the availability of high-quality, low cost assistance to applicants for naturalization and other immigration benefits, including recognizing qualifying community-based organizations to provide assistance to applicants on a fee-for-service basis. Such services would be available not only for naturalization applicants, but also for other applicants for other types of immigration benefits.

Another major program area to be addressed in this regulatory plan is the Service's ongoing effort to facilitate the U.S. business community's ability to comply with the Employer Sanctions provisions of the Immigration Control and Reform Act. Over the past year the Service has published a supplemental proposed rule which not only further reduced the number of acceptable documents for verifying employment eligibility, but also proposed the addition, based on public comments, of an employee attestation provision. Additionally, the Service will be promulgating regulations which will propose to eliminate references to several types of employment authorization documents (EADs) and to phase in replacement of these documents by a new, more secure, EAD.

DOJ—Civil Rights Division (CRT)

FINAL RULE STAGE

50. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS

Priority:

Other Significant

Legal Authority:

42 USC 12134; 42 USC 12186; 5 USC 301; 28 USC 509; 28 USC 510; PL 101-336

CFR Citation:

28 CFR 35; 28 CFR 36; 28 CFR 37; 28 CFR 38

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rules implementing titles II and III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by public entities (title II) and in places of public accommodation and commercial facilities (title III). Those regulations included accessibility guidelines required for facilities covered by title III -- The ADA Standards for Accessible Design (ADA Standards) -- but did not specifically include guidelines for facilities covered by title II, such as courthouses or prisons. Title II entities now have the option of using the ADA Standards (without certain exceptions applicable only to title III facilities) or another existing standard, the Uniform Federal Accessibility Standards.

The final rule will amend titles II and III to adopt a revised version of the ADA Standards, which incorporates new guidelines for facilities typically covered by title II. The new guidelines were issued as the interim final ADA Accessibility Guidelines by the Access Board and were published on the same day as the Department's proposed rule.

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including titles II and III. Sections 204(c) and 306(c) of the ADA provide that the Attorney General shall promulgate regulations implementing titles II and III that are consistent with the Access Board's ADA guidelines. Because the Department of Justice is required by statute to promulgate regulations that do not go below the Access Board's minimum guidelines, and because this rule will adopt standards that are consistent with the guidelines issued by the Access Board, as also required by statute, this rule is required by statute.

Summary of the Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above in the Legal Authority and in Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. All comments (including those that suggest alternatives to the current proposed guidelines) received by the Department on the proposed rule and by the Access Board on its current interim rule and its guidelines published December 21, 1992, have been thoroughly analyzed and considered by the Department. The Department anticipates publishing a supplemental notice of proposed rulemaking to clarify certain issues prior to the publication of the final rule.

Anticipated Costs and Benefits:

The Clinton Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to the built environment to persons with disabilities will be better served.

The Access Board has analyzed the impact of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they are a significant regulatory action for purposes of Executive Order 12866. The Access Board has prepared a Regulatory Assessment, which includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered.

The Access Board has determined that this proposed rule will have a significant economic impact on a substantial number of small entities and, therefore, has included the flexibility analysis required by the Regulatory Flexibility Act in its regulatory assessment. The Access Board has made every effort to lessen the economic impacts of its proposed rule on small entities, but recognizes that such impacts are the necessary result of the mandate of the ADA itself. The Access Board's analysis also applies to the Department's proposed

adoption of the revised ADAAG. The Department's proposed procedural amendments will not have a significant economic impact on small entities.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments, but recognizes that the guidelines will have some federalism impacts. These impacts are discussed in the Access Board's Regulatory Assessment, which also applies to the Department's proposed rule.

Risks:

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31808
NPRM Comment Period End	08/19/94	
Final Action	09/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local

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DOJ—Immigration and Naturalization Service (INS)

PROPOSED RULE STAGE

51. STANDARDIZED TESTING FOR NATURALIZATION; PROCEDURES FOR APPROVAL OF TEST PROVIDERS

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

8 USC 1103; 8 USC 1423; 8 USC 1443; 8 USC 1447; 8 USC 1448

CFR Citation:

8 CFR 312

Legal Deadline:

None

Abstract:

The Immigration and Naturalization Service (INS) is amending part 312 in its entirety to address recent changes to the testing requirements under the Immigration and Nationality Technical Corrections Act of 1994 (P.L. 103-416) and to revise and strengthen the current system for approving testing entities to administer standardized tests of U.S. history and government and written English for persons applying to become naturalized citizens of the United States. Concurrent efforts are also underway to develop new standardized examinations and comprehensive study materials for applicants.

Statement of Need:

Over the past two fiscal years, the number of naturalization applications filed with the INS has more than doubled from previous levels; in fiscal year 1996, the total number of naturalization applications filed will exceed 1.1 million. In 1991, INS instituted a program which allows approved non-governmental testing organizations to administer standardized tests of U.S. history and government and written English on behalf of the Service. Six national organizations are currently approved to administer tests, and these six organizations have affiliates around the country. The INS needs to establish new regulations which will strengthen and improve INS oversight of nongovernmental testing organizations to prevent fraud and preserve the integrity of the citizenship program.

Summary of the Legal Basis:

The legal authority for these regulatory modifications is set forth above in Legal Authority. No aspect of these actions is required by statute or court order.

Anticipated Costs and Benefits:

The INS anticipates a relatively low cost for staff time and resources necessary to implement new guidelines to the field on revised testing procedures and to review applications from organizations seeking approval to administer citizenship tests on behalf of INS. There will be a greater need for resources and use of staff time for monitoring and oversight of approved testing organizations and their affiliates to ensure ongoing compliance with regulatory requirements. The anticipated benefits from revising the current regulations include: more efficient use of INS resources by prescreening individuals who are unable to demonstrate the required knowledge, thereby eliminating interviews for these individuals; increased reliability and decreased fraud in test results through the use of new standardized tests and oversight of nongovernmental testing organizations. The INS anticipates that these benefits will substantially exceed the costs.

Risks:

The risks inherent in not pursuing this regulatory initiative include: persistence of structural flaws in the current system which require correction by regulation; INS' inability, without regulatory change, to take adequate measures to minimize fraud in the testing process; and diminished public trust in the reliability and integrity of the naturalization process.

Timetable:

Action	Date	FR Cite
NPRM	02/00/97	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal

Additional Information:

INS No. 1275-93

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DOJ—INS

52. RECOGNIZED PROVIDERS OF IMMIGRATION ASSISTANCE AND FORMS PREPARATION SERVICES

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

8 USC 1103; 8 USC 1252b; 8 USC 1362; 8 USC 1421; 8 USC 1443; 8 USC 1447; 8 USC 1448; 8 CFR 2.1

CFR Citation:

8 CFR 292; 8 CFR 310

Legal Deadline:

None

Abstract:

This regulatory change is part of the Immigration and Naturalization Service's efforts to increase the availability of high-quality, low-cost assistance to applicants for naturalization and other immigration benefits. It will clarify some regulatory provisions which have been confusing to affected parties and expand the partnership between INS and community-based organizations. This change will provide procedures by which qualifying nonprofit entities may be designated to provide assistance on a fee-for-service basis to applicants for various immigration benefits.

Statement of Need:

The Service now receives far more applications for naturalization and other benefits than in previous years. For example, the number of naturalization applications filed has more than tripled from 1992 levels, and is expected to exceed 1.1 million in fiscal year 1996. Other applications, including adjustment of status applications and family reunification petitions, have also been subject to dramatic increases. Some applications are filed without the required signature or the correct fee. Others have blanks where required information should appear or are improperly completed. Returning such applications or waiting for applicants to provide additional information is an inefficient and costly use of government resources, and often results in delay for the applicant.

Many different voluntary organizations help individuals prepare their applications. The Service has learned that these applications are more likely to be complete and legible, expediting processing. Further some organizations provide information regarding INS requirements and procedures, which helps individuals decide whether and when to file applications for naturalization and other immigration benefits. Some organizations are currently designated to provide certain services under Board of Immigration Appeals (BIA) regulations, but the services such organizations can provide is limited because they cannot collect adequate fees to fund such services. There is also a problem with unscrupulous organizations which mislead or otherwise take advantage of applicants, or which file fraudulent applications. INS believes that increasing the availability of competent, low-cost assistance will increase the efficiency and effectiveness of its adjudications processes and result in improved service to INS customers.

Summary of the Legal Basis:

The legal basis of authority for these regulatory modifications is set forth above in Legal Authority. No aspect of these actions is required by statute or court order.

Anticipated Costs and Benefits:

There will be a relatively small cost for staff time necessary to determine the qualifications of organizations and their individual employees seeking designation, as well as a small cost for monitoring the ongoing quality of such services and the designees' continued compliance with the requirements. The benefits include: shortened average processing time for applications due to improved accuracy; reduced demand for INS staff to answer routine application questions or provide forms; better understanding of requirements and procedures by potential applicants; fewer filings by clearly ineligible persons, saving them and INS time and money; and the potential for enhanced relationships between INS and the public in local communities. The INS anticipates that these benefits will substantially exceed the costs.

Risks:

The risks inherent in not pursuing this regulatory initiative include: continued activity by unqualified providers who take advantage of applicants; a fee restriction which hinders the ability of BIA-qualified providers to provide the services needed by growing numbers of applicants for naturalization and other immigration services; and a continued impact on INS resources resulting from improperly filed applications.

Timetable:

Action	Date	FR Cite
NPRM (INS 1735)	05/00/97	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

State, Federal

Additional Information:

INS No. 1735-95

This regulation would have an impact on State agencies authorized to regulate the practice of law in several States. If this regulation is adopted, a State could not impose a penalty for the unauthorized practice of law on a person engaged in activities permitted under this regulation, if the person is authorized to engage in the activities pursuant to this regulation. The State could impose a penalty for unauthorized practice of law if the person were not authorized to practice pursuant to this regulation.

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DOJ—INS

53. ● EXPEDITED EXCLUSION

Priority:

Other Significant

Legal Authority:

8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 31 USC 9701; 8 CFR 2

CFR Citation:

8 CFR 208; 8 CFR 212; 8 CFR 217; 8 CFR 235

Legal Deadline:

None

Expedited Exclusion Provision of AEDPA Effective on November 1, 1996

Abstract:

On April 24, 1996 the Antiterrorism and Effective Death Penalty Act (AEDPA) was enacted. The Immigration and Naturalization Service (Service) will publish several regulations dealing with the expeditious exclusion of aliens who arrive in the United States with either counterfeit documents or no documents at all; with the treatment of

aliens who entered without inspection as applicants for admission (and are therefore subject to exclusion provisions of the law); with the mandatory detention of certain criminal aliens; with the deportation of certain convicted criminal aliens prior to the completion of their sentences; and with other portions of the AEDPA. These provisions will improve the efficiency of the Service in preventing the entry of those aliens who attempt to enter illegally, and in removing those who do.

Statement of Need:

These regulations are necessary to implement those portions of AEDPA dealing with expedited exclusion.

Summary of the Legal Basis:

AEDPA (Pub L. 104-132)

Alternatives:

The rulemaking involves new legislation requiring implementing regulations. However, great care has been taken to ensure that the regulations are narrowly tailored to meet their objectives and adhere to the principles set forth in the President's directive of March 4, 1995, regarding regulatory reinvention.

Anticipated Costs and Benefits:

Implementing this statute will involve a moderate amount of capital costs for training purposes, and a minimal amount of costs for modernization of facilities to ensure that appropriate private interview space is available in any Service locations not already adequately equipped. There will also be a moderate amount of recurring costs involved in ensuring that Asylum Officers are readily available for any cases involving aliens who request asylum or otherwise express a fear of persecution. In the long run, these costs should be more than offset by the reduction in costs for detaining excludable aliens for hearings before immigration judges.

Risks:

Failure to promulgate these regulations will result in the Department's noncompliance with AEDPA.

Timetable:

Action	Date	FR Cite
NPRM	10/00/96	
NPRM Comment Period End	12/00/96	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

INS No. 1788-96 and 1790-96

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DOJ—INS

FINAL RULE STAGE

54. CONTROL OF EMPLOYMENT OF ALIENS

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

8 USC 1101; 8 USC 1103; 8 USC 1255a; 8 USC 1255a note; 8 USC 1324a; 8 USC 1160; 8 CFR 2

CFR Citation:

8 CFR 210; 8 CFR 245a; 8 CFR 274a

Legal Deadline:

None

Abstract:

The document reduction rule (INS No. 1399-93) reduces the number of Immigration and Naturalization Service (INS)-issued documents that are acceptable for purposes of completing the Employment Eligibility Verification Form (Form I-9). This rule proposes to further simplify compliance with the employment eligibility verification requirements and address the concerns of employers who allege confusion created by the multiplicity of acceptable documents on the Form I-9.

A supplemental proposed rule published on June 22, 1995, at 60 FR 32472 proposed creating a requirement on the part of the employee to sign an attestation in section 3 of Form I-9, during the reverification process indicating that they are still authorized to work in the United States (INS No. 1399S-94). The supplemental rule also proposed the elimination of Federal identification cards as acceptable List B identity documents.

The sections of law covered by this regulation are the subject of legislation pending in Congress, and anticipated to go to conference. In the interest of avoiding the public confusion that would result from multiple changes, the Service is reserving action on these regulations until the end of the 104th Congress. At that time, if new legislation has not been enacted, the Service will make a final determination on the timetable for publication of a final rule.

Statement of Need:

In a March 1990 report, the General Accounting Office (GAO) noted that the multiplicity of acceptable work eligibility documents can give rise to confusion and uncertainty in the minds of employers seeking to determine whether individuals are eligible to work. (Immigration Reform: Employer Sanctions and the Question of Discrimination 62 (GAO/GGD-90-62, Mar. 1990)). A reduction in the number of acceptable documents should reduce confusion and uncertainty on the part of employers, and thereby reduce potential employment discrimination based upon misapplication of the employment eligibility verification requirements.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

One often repeated criticism of employer sanctions is the number of documents that are acceptable for completing the Form I-9. The Service has taken steps to address this criticism. In July 1988, the Service committed to the establishment of procedures for a uniform employment authorization policy. First, the Service limited the number and types of paper documents on which employment could be authorized. Second, the Service introduced the standardized Employment Authorization Document (Form I-688B). The Service has determined that further steps can be taken to streamline the employment

eligibility verification system by reducing the number of documents acceptable for Form I-9 purposes. On September 4, 1996, the Service issued a final regulation introducing a new, more secure employment authorization document (EAD) which will eventually replace existing EADs.

Anticipated Costs and Benefits:

Employment is often the magnet that attracts individuals to come to or stay in the United States illegally. The employer sanctions provisions help reduce the strength of this magnet by requiring employers to hire only those individuals who may legally work in the United States. This rule, by reducing the number of documents that are acceptable for employment eligibility verification purposes, will reduce confusion and uncertainty on the part of employers in the application of the employment eligibility verification requirements. This, in turn, will increase employer compliance and thereby result in more jobs being available for those who are authorized to work in the United States. In addition, by reducing confusion and uncertainty on the part of employers, this rule will reduce potential employment discrimination based upon misapplication of the employment eligibility verification requirement.

Risks:

An employment eligibility verification system that relies on a multiplicity of documents, and is difficult to understand, may result in employment discrimination based upon misapplication of the employment eligibility verification requirements. In addition, a complicated employment eligibility verification system may encourage fraud and result in individuals who are authorized to work in the United States being displaced by unauthorized individuals.

Timetable:

Action	Date	FR Cite
NPRM (INS 1399); Comment Period End 12/23/93	11/23/93	58 FR 61846
Supplemental NPRM (INS 1339S) Comment Period End 7/24/95	06/22/95	60 FR 32472
Applications Due 1-29-96 Public Notice Pilot Demonstration Program (INS 1713)	11/30/95	60 FR 61630
Appl. Extension Through 3-8-96 Public Notice Pilot Demonstration Program (INS 1713)	02/06/96	61 FR 4378
Final Rule INS No. 1399E	09/04/96	61 FR 46534
Final Rule (INS 1399)	09/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Additional Information:

INS No. 1399-92

INS No. 1399S-94 Control of Employment of Aliens Supplemental Rule.; Next action undetermined for INS No. 1399 and 1399S; decision on hold pending legislation currently before Congress.

INS No. 1399E is an extracted portion of INS No. 1399, being published separately to allow for the production of a new, more secure Employment Authorization Document.

INS No. 1713-95, Demonstration Project for Electronic I-9s, contact Robert Atwater, 202-514-2998.

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