

# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 274a

[INS No. 1738-95]

RIN 1115-AE21

#### Employer Sanctions Modifications; Warning Notices; Generation of Blank Employment Eligibility Verification Forms (Forms I-9)

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by allowing the Service to issue a Warning Notice to employers in those cases where the Service has determined that a person or entity has violated section 274A of the Immigration and Nationality Act (the Act). The Warning Notice will be issued in those cases generally characterized by the identification of minor verification violations and the expectation of future compliance by the violator. This amendment is necessary to state expressly current Service policy and practice regarding the issuance of a Warning Notice in lieu of a Notice of Intent to Fine. This rule will also allow employers to generate blank copies of the Employment Eligibility Verification Form (Form I-9) electronically and provides for single-sided reproduction of the Form I-9, as well as the currently permitted double-sided reproduction. This is intended to save employers the cost of purchasing Forms I-9 and the burden of making double-sided copies of the form.

**DATES:** This interim rule is effective October 7, 1996. Written comments must be submitted on or before November 6, 1996.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1738-95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Angelo V. Sorrento, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone (202) 514-0747.

#### SUPPLEMENTARY INFORMATION:

##### Background

Over the past year, the Service has been reviewing its employer sanctions policies and procedures to facilitate employer compliance with the law and to improve enforcement efforts. This rule is part of the Service's effort to achieve that goal.

##### Regulatory Changes

The Service's regulations require all employers to complete Forms I-9, as evidence of verification of the identify and employment eligibility of each employee hired after November 6, 1986. Currently, the regulations permit the use of a Form I-9 which has been printed by the Superintendent of Documents, reproduced by public or private entities, or electronically generated, in accordance with the requirements set forth in 8 CFR 299.4.

This rule amends 8 CFR 274a.2 by allowing employers to electronically generate blank Forms I-9, provided that the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under § 274a.2(b). When copying or printing the Form I-9, the text of the two-sided form may be reproduced in either double-sided or single-sided copies.

The Service is also amending 8 CFR 274a.9 to allow the Service to either issue and serve a Notice of Intent to Fine (NIF), Form I-763, upon an alleged

violator after the Service has determined that the person or entity has violated section 274A of the Act, or issue a Warning Notice, Form I-846, for minor verification violations in those cases where the Service expects future compliance by the violator. A Warning Notice notifies employers that they are not in full compliance with the immigration laws relating to employment. The expectation is that, after issuance of the Warning Notice, the relatively minor violations will be corrected by the employer and not repeated. Employers served with a Warning Notice will benefit by avoiding fines normally levied by the issuance of a NIF. This rule will bring the regulations into conformance with existing Service policy and will allow the Service to issue a Warning Notice in lieu of a NIF and the Department of Labor to continue to issue Warning Notices.

The Service's implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(1). The reasons and the necessity are as follows: this rule relieves a restriction and is beneficial to both public and private entities by facilitating employer compliance with the immigration laws.

#### *Regulatory Flexibility Act*

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule is intended to allow for the relief of fines on small entities for minor verification violations contained in section 274A of the Act. This rule also reduces an employer's burden of procuring Forms I-9 by allowing for the blank electronic generation of this form in single-sided copies.

#### *Executive Order 12866*

This rule is not considered by the Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and

Budget has waived its review process under section 6(a)(3)(A).

#### *Executive Order 12612*

The regulations adopted herein will not have substantial different 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, in accordance with Executive Order 12612, it is determined that this rules does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

Administrative practice and procedure, Alien 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. In § 274a.2 paragraph, (a) is amended by revising the fifth and sixth sentences to read as follows:

#### **§ 274a.2 Verification of employment eligibility.**

(a) *General.* \* \* \* Employers may electronically generate blank Forms I-9, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under § 274a.2(b). When copying or printing the Form I-9, the text of the two-sided form may be reproduced by making either double-sided or single-sided copies. \* \* \*

\* \* \* \* \*

3. Section 274a.9 is amended by:

- Revising the third sentence of paragraph (b);
- Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (f) respectively; and
- Adding a new paragraph (c), to read as follows:

#### **§ 274a.9 Enforcement procedures.**

\* \* \* \* \*

(b) *Investigation.* \* \* \* If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue

and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. \* \* \*

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

\* \* \* \* \*

Dated: August 8, 1996.  
Doris Meissner,  
*Commissioner, Immigration and Naturalization Service.*  
[FR Doc. 96-25659 Filed 10-4-96; 8:45 am]  
BILLING CODE 4410-10-M

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 92**

[Docket No. 95-054-2]

#### **Importation of Horses from CEM Countries**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the importation of horses from countries affected with contagious equine metritis by incorporating new testing and treatment protocols for mares and stallions, providing for the use of accredited veterinarians to monitor horses temporarily imported into the United States for competition purposes, incorporating a new testing protocol for thoroughbred horses in training in their country of origin, and removing the requirements for endometrial cultures and clitoral sinusectomies in mares. These changes will update, clarify, and streamline the existing regulations and will simplify the requirements for importing horses from countries affected with contagious equine metritis without increasing the risk of the disease being introduced into or disseminated within the United States.

**EFFECTIVE DATE:** November 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joyce Bowling, Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-6479; or E-mail: jbowling@aphis.usda.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, §§ 92.300 through 92.326 of the regulations, pertains to the importation of horses into the United States. Sections 92.301 and 92.304 of the regulations contain specific provisions for the importation and post-entry handling of horses from countries affected with contagious equine metritis (CEM), a highly contagious bacterial venereal disease.

On June 4, 1996, we published in the Federal Register (61 FR 28073-28085, Docket No. 95-054-1) a proposal to amend the regulations by:

- Reorganizing the CEM regulations to eliminate duplication and to make their provisions easier to find and use;
- Removing the requirements for clitoral sinusectomies and endometrial cultures in female horses and establishing new protocols for the collection of specimens for culturing;
- Incorporating new testing and treatment protocols for stallions and test mares;
- Incorporating a new testing protocol for thoroughbred horses in training in their country of origin; and
- Providing for the use of accredited veterinarians to monitor horses from CEM-affected countries that are temporarily in the United States for competition purposes.

We solicited comments concerning our proposal for 60 days ending August 5, 1996. We received eight comments by that date. They were from a horse transporter/customs house broker, a State veterinarian, two private practice veterinarians, two thoroughbred owners/breeders associations, a horse industry council, and the director of a CEM quarantine facility. All of the commenters supported the proposed rule, although six of them offered suggestions or sought clarification regarding the changes proposed in the proposed rule. Those comments are discussed below.

### *Collection of Specimens*

In the proposed rule, we proposed that for all mares over 731 days of age offered for importation or in quarantine in an approved State, specimens would be collected from the mucosal surfaces of the urethra, clitoral sinuses, and cervix. Six of the commenters disagreed with those proposed collection sites for two main reasons: (1) The commenters