Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377–06; DHS Docket No. ICEB–2006–0004]

RIN 1653–AA59

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Rescission

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend its regulations by rescinding the amendments promulgated on August 15, 2007, and October 28, 2008, relating to procedures that employers may take to acquire a safe harbor from receipt of no-match letters. Implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. After further review, DHS has determined to focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs.

DATES: Comments must be submitted not later than September 18, 2009.

ADDRESSES: Comments may be submitted, identified by DHS Docket No. ICEB 2006–0004, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail/Courier: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, Office of Investigations—MS 5112, 500 12th Street, SW., Washington, DC 20536–5112.024 To ensure proper handling, please reference DHS Docket No. ICEB–2006–0004 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536–20024.

FOR FURTHER INFORMATION CONTACT: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, Office of Investigations—MS 5112, 500 12th Street, SW., Washington, DC 20536. Telephone: 202–732–3988 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or arguments on all aspects of the rule. Comments that will most assist DHS will reference a specific portion of the rule and explain the reason for any recommended change. Comments should include data, information, and the authority that supports the recommended change. Comments previously submitted to this docket do not need to be submitted again.

Instructions for filing comments: All submissions received must include the agency name and DHS docket number ICEB–2006–0004. All comments received (including any personal information provided) will be posted without change to *http://www.regulations.gov*. See **ADDRESSES**, above, for methods to submit comments. Mailed submissions may be paper, disk, or CD–ROM.

Reviewing comments: Public comments may be viewed online at *http://www.regulations.gov* or in person at U.S Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street, SW., Room 1000, Washington, DC 20024, by appointment. To make an appointment to review the docket you must call telephone number 202–307–0071.

II. Background

It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing the alien is not authorized to work in the United States. Immigration and Nationality Act of 1952, as amended (INA), section 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). It is also unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment. INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

All persons or entities that hire, or recruit or refer persons for a fee, for employment must verify the identity and employment eligibility of all employees hired to work in the United States. INA section 274A(a)(1)(B), (b)(1), (b)(2), 8 U.S.C. 1324a(a)(1)(B), (b)(1), (b)(2). Under the INA, this verification is performed by completing an Employment Eligibility Verification form (Form I–9) for all employees, including United States citizens. INA section 274A(b)(1), (b)(2), 8 U.S.C. 1324a (b)(1), (b)(2); 8 CFR 274a.2. An employer, or a recruiter or referrer for a fee, must retain the completed Form I–9 for three years after hiring, recruiting or referral, or, where the employment extends longer, for the life of the individual's employment and for one year following the employee's departure. INA section 274A(b)(3), 8 U.S.C. 1324a(b)(3). These forms are not routinely filed with any Government agency; employers are responsible for maintaining these records, and they may be requested and reviewed by DHS Immigration and Customs Enforcement (ICE). INA section 274A(b)(1)(E)(3); 8 CFR 274a.2(b)(2), (c)(2); *see* 71 FR 34510 (June 15, 2006) (Electronic Signature and Storage of Form I–9, Employment Eligibility Verification).

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W–2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter, such as an ''Employer Correction Request,'' that informs the employer of the mismatch. The letter is commonly referred to as an employer ''no-match letter.'' There can be many causes for a no-match, including clerical error and name changes. One potential cause may be the submission of information for an alien who is not authorized to work in the United States and who may be using a false SSN or a SSN assigned to someone else. Such a letter may be one indicator to an employer that one of its employees may be an unauthorized alien.

ICE sends a similar letter (currently called a ''Notice of Suspect Documents'') after it has inspected an employer's Employment Eligibility Verification forms (Forms I–9) during an investigation audit and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I–9 was assigned to that person. (After a Form I–9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.)

Over the years, employers have inquired of the former Immigration and Naturalization Service, and now DHS, whether receipt of a no-match letter constitutes constructive knowledge on the part of the employer that he or she may have hired an alien who is not authorized to work in the United States. On August 15, 2007, DHS issued a rule describing the legal obligations of an employer following receipt of a no-match letter from SSA or a letter from DHS regarding employment verification forms. See 72 FR 45611. The rule also established ''safe-harbor'' procedures for employers receiving no-match letters.

On August 29, 2007, the American Federation of Labor and Congress of Industrial Organizations, and others, filed suit seeking declaratory and injunctive relief in the United States District Court for the Northern District of California. *AFL–CIO, et al.* v. *Chertoff, et al.*, No. 07–4472–CRB, D.E. 1 (N.D. Cal. Aug. 29, 2007). The district court granted plaintiffs' initial motion for a temporary restraining order against implementation of the August 2007 Final Rule. *AFL–CIO* v. *Chertoff*, D.E. 21 (N.D. Cal. Aug. 31, 2007) (order granting motion for temporary restraining order and setting schedule for briefing and hearing on preliminary injunction). On October 10, 2007, the district court granted the plaintiffs' motion for preliminary injunction. *AFL–CIO* v. *Chertoff*, 552 F.Supp.2d 999 (N.D. Cal. 2007) (order granting motion for preliminary injunction).

The court raised three issues regarding DHS's rulemaking action implementing the No-Match final rule: Whether DHS had (1) supplied a reasoned analysis to justify what the court viewed as a change in the Department's position—that a no-match letter may be sufficient, by itself, to put an employer on notice, and thus impart constructive knowledge, that employees referenced in the letter may not be work-authorized; (2) exceeded its authority (and encroached on the authority of the Department of Justice (DOJ)) by interpreting the anti-discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (1986), INA section 274B, 8 U.S.C. 1324b; and (3) violated the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, by not conducting a regulatory flexibility analysis. DHS subsequently published a supplemental notice of proposed rulemaking (SNPRM) and supplemental final rule to clarify certain aspects of the 2007 No-Match final rule and to respond to the three findings underlying the court's injunction.. See *e.g.* 73 FR 15944 (Mar. 26, 2008), 73 FR 63843 (Oct. 28, 2008). Neither the SNPRM nor final rule, however, changed the safe-harbor procedures or applicable regulatory text. The implementation of the rule remains enjoined.

III. Basis for Policy Change

On January 20, 2009, President Barack Obama was sworn into office. Shortly thereafter, on January 21, 2009, Janet Napolitano was sworn in as the Secretary of Homeland Security. Following the transition, the Secretary conducted a review of existing programs and regulations to determine areas for reform or improved efficiency. Pursuant to this review, DHS has determined that improvements in U.S. Citizenship and Immigration Services' (USCIS) electronic employment verification system (E-Verify), along with other DHS programs, provide better tools for employers to reduce incidences of unauthorized employment and to better detect and deter the use of fraudulent identity documents by employees. As discussed below, DHS therefore has concluded that rescinding the August 2007 No-Match Rule and 2008 Supplemental Final Rule will better achieve DHS's regulatory and enforcement goals.

DHS has determined that a more appropriate utilization of DHS resources would be to focus enforcement/community outreach efforts on increased compliance through improved verification, including increased participation in the USCIS's E-Verify employment eligibility verification system, the U.S. Immigration and Customs Enforcement's ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs. This decision is part of a Government-wide reexamination of regulatory processes.

Further development of the USCIS E-Verify employment eligibility verification system warrants refocusing DHS's priorities on the implementation of that compliance protocol. DHS believes E-Verify is an essential tool for employers committed to maintaining a legal workforce. E-Verify compares employee information from the Form I–9 against more than 455,000,000 records in the SSA database and more than 80,000,000 records in DHS immigration databases.

E-Verify has expanded exponentially in the past several years to include over 138,000 employers representing over 500,000 locations; on average, 1,000 employers enroll in E-Verify each week. Participation has more than doubled each fiscal year since 2007. As of August 1, 2009, more than six million queries have been run through the system in FY 2009. Accuracy of the E-Verify program also has improved. An independent evaluation completed in December 2008 found that approximately 96.9 percent of all cases queried through E-Verify are instantly found to be work-authorized. Of the 3.1 percent of queries that resulted in a mismatch of the information in SSA or DHS databases, 0.3 percent of queries were successfully contested. The remaining 2.8 percent either did not contest the determination or were unsuccessful in contesting, or were found unauthorized to work at the secondary verification stage.

In September 2007, E-Verify began to automatically flag inconsistent data and allow employers to double-check the data they entered into E-Verify before issuing a tentative non-confirmation, thereby reducing data entry errors and initial mismatches by approximately 30 percent. Cross-checking queries against USCIS naturalization data reduced citizenship mismatches by approximately 39 percent. As of May, 2008, E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival and departure information for non-citizens to its databases. This step reduced hundreds of E-Verify mismatches that had resulted from data entry delays, thus allowing newly arriving workers to enter the country legally and start working immediately. In February 2009, USCIS began incorporating Department of State passport data into E-Verify in order to check citizenship status information in the event of a mismatch with SSA, reducing the number of mismatches for citizens who did not personally complete the naturalization process, but derived citizenship from their parents, eliminating several hundred more mismatches.

Finally, to reduce the premium on identity theft to commit immigration fraud, the E-Verify program introduced a photograph screening capability into

the verification process in September 2007, allowing an employer to check the photos on Employment Authorization Documents or Permanent Resident Cards (green card) against images stored in USCIS databases. Through use of the photo tool, hundreds of cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment.

In FY 2010, USCIS plans to improve the E-Verify system's ability to automatically verify international students and exchange visitors through the incorporation of ICE's Student and Exchange Visitors Information System (SEVIS) data into E-Verify. By incorporating SEVIS nonimmigrant student visa data into the automatic initial E-Verify check, the number of students and exchange visitors who receive initial mismatches should be reduced. In 2010, ICE will be launching a new version of SEVIS, SEVIS II, which will include employment eligibility information that E-Verify will be able to access electronically. Currently, the SEVIS database is checked manually by immigration status verifiers after an initial mismatch is issued. See, *Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students,* 73 FR 21260 (Apr. 21, 2008) (proposed rule); 73 FR 55683 (Sept. 26, 2008) (final rule) (establishing fees and cost base for SEVIS II).

DHS is dedicated to providing this service to employers and continuing to make improvements to the system to address issues such as usability, fraud, discrimination, and further improve the system's automatic verification rate. E-Verify will continue to be a key element of DHS's ability to deter employment of unauthorized aliens and illegal immigration.

Additionally, the ICE Mutual Agreement between Government and Employers (IMAGE) program assists employers to develop a more secure and stable workforce and to enhance fraudulent document awareness through education and training to combat unlawful employment and reduce vulnerabilities. Employers can reduce unauthorized employment and the use of fraudulent identity documents by voluntarily participating in the IMAGE program. As part of IMAGE, ICE and USCIS provide education and training on proper hiring procedures, fraudulent document detection, and the use of the E-Verify employment eligibility verification program. Since 2006, ICE has partnered with industry to provide ''best practices,'' training, and recommended tools that industry can use to comply with worksite laws and requirements. In FY 2008, ICE outreach coordinators in 26 field offices made 517 IMAGE presentations to more than 8,300 businesses. DHS believes that a comprehensive strategy to address worksite enforcement creates a culture of industry compliance. To that end, IMAGE outreach efforts have increased significantly since the inception of the program.

Opportunities for employment remain a primary motivation for aliens seeking illegal entry into the United States. ICE's worksite enforcement program targets unscrupulous employers who prey upon these aliens by subjecting them to poor or unsafe working conditions or paying them sub-standard wages. ICE's multi-faceted worksite enforcement strategy targets two types of employers: employers whose business model relies upon an unauthorized workforce, and employers who place the national security of the United States at risk by employing unauthorized workers in sensitive critical infrastructure industries.

Employers hire undocumented workers to obtain a financial advantage over their competitors by paying lower wages, offering few if any benefits, failing to comply with tax laws, and avoiding health and safety related complaints. ICE focuses on the most egregious violators, namely employers who engage in human smuggling, identity theft, and social security number fraud. ICE also focuses on employers who use undocumented workers at our Nation's critical infrastructure sites, including airports.

DHS's worksite enforcement strategy includes a restructured process for worksite administrative fines to build a more vigorous program. ICE has established and distributed to all field offices guidance about the issuance of administrative fines and standardized criteria for the imposition of such fines. DHS expects that the increased use of the administrative fines process will result in meaningful penalties for those who engage in the employment of unauthorized workers.

ICE has also implemented a debarment policy that prevents employers from receiving Federal contracts when they are in violation of worksite laws. After completion of administrative proceedings and on the basis of a determination that an employer has violated the worksite laws, an offending employer may be excluded from doing business with the Federal Government or from receiving loans under the Recovery Act. Since this relatively new program began, thirty-one companies and forty individuals have been debarred.

ICE also created the Document and Benefit Fraud Task Forces (DBFTF) to combat the vulnerabilities exploited by identity and document fraud organizations and to maintain the integrity of the United States immigration system. The DBFTF cooperative effort leverages multiple law enforcement tools and authorities to identify, disrupt, and dismantle criminal organizations involved in immigration benefit fraud and the manufacturing and distribution of fraudulent identity documents, including United States passports, birth certificates, state-issued identification cards, social security cards, and alien registration documents. In these taskforces, ICE and USCIS work with the law enforcement functions and the Inspectors General of the Departments of Labor and State, the Social Security Administration, U.S. Postal Service, and various state and local law enforcement agencies.

The aggregate of these changes in enforcement priorities must be balanced with other efforts of the U.S. government. In addition, as noted in the 2008 Supplemental Final Rule, SSA has continued to refine the wage reporting process in ways that help to reduce potential errors resulting in a no-match letter. As noted previously, electronic filing of Forms W–2 rose from 53% of all employee reports in FY2003 to over 80% in FY2007—a 51% increase.[1] SSA has more recently reported a further increase in electronic filing of Forms W–2 to 86.3%.[2] Employers who use SSA's system are able to eliminate most no-matches in their reports and thereby significantly reduce their likelihood of receiving a no-match letter. SSA improvements in related areas have led the SSA Inspector General to question the efficacy of the continuing use of no-match letters.[3]

Finally, as noted in the Supplemental Final Rule, SSA no-match letters have also formed a basis for multiple criminal investigations by ICE and prosecutions on charges of harboring or knowingly

[1] Social Security Administration, *Performance and Accountability Report, Fiscal Year 2007* at 67–8.

[2] Social Security Administration, *Performance and Accountability Report, Fiscal Year 2008* at 175.

[3] Office of the Inspector General, Social Security Administration, *Quick Response Evaluation: Effectiveness of Educational Correspondence to Employers,* Audit Rept. No. A–030–07–17105 (Dec. 2008) (''[O]ur review showed EDCOR letters were not as successful as other SSA processes in removing suspended wage items from the ESF'').

hiring unauthorized aliens.[4] DHS has determined that focusing on the management practices of employers would be more efficacious than focusing on a single element of evidence within the totality of the circumstances.

Accordingly, DHS proposes to rescind the 2007 Final Rule and 2008 Supplemental Final Rule, and reinstate the language of 8 CFR 274.1(l) as it existed prior to the effective date of the 2007 Final Rule.

IV. Statutory and Regulatory Reviews

A. Administrative Procedure Act

DHS is publishing this proposed rule in the **Federal Register** as a discretionary request for public comment. DHS has previously stated that the regulation that is being rescinded was an interpretive, not legislative, rule. 73 FR 15951 (March 26, 2008) (supplemental proposed rule); 73 FR 63861 (Oct. 28, 2008) (supplemental final rule). DHS believes that rescission of the regulation is an interpretive rule for the same reasons that the underlying regulation being rescinded was an interpretive rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. This proposed rule would amend DHS regulations to rescind the amendments promulgated in the 2007 Final Rule and the 2008 Supplemental Final Rule relating to procedures that employers may take to acquire a safe harbor from evidentiary use of receipt of no-match letters. Implementation of the 2007 Final Rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. This rule would reinstate the language of 8 CFR 274.1(l) as it existed prior to the effective date of the 2007 Final Rule.

As explained at 73 FR 63863, DHS does not believe the safe-harbor offered by the 2007 Final Rule and the 2008 Supplemental Final Rule imposed a mandate that forced employers to incur ''compliance'' costs for the purposes of the Regulatory Flexibility Act. Only small entities that choose to avail themselves to the safe harbor would incur direct costs as a result of the 2007 Final Rule and the 2008 Supplemental Final Rule. As this rulemaking proposes to rescind the offer of a safe harbor, this rule does not propose any compliance requirements and consequently would not impose any direct costs on small entities if promulgated as a final rule. Therefore, DHS certifies under 5 U.S.C 605(b) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. DHS invites comments from small entities regarding any direct costs commenters believe this rulemaking would impose.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law No. 104–4, 109 Stat. 48 (1995), 2 U.S.C. 1501 *et seq.*

D. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This proposed rule has not been found to be likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

E. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule constitutes a ''significant regulatory action'' under Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this rule rescinds two previously published rules that received considerable public attention and involves multiple agencies of the United States, this rule raises novel policy issues and, thereby, is subject to OMB review.

F. Executive Order 13132 (Federalism)

This rule does not have 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, in accordance with section 6 of Executive Order No. 13132, 64 FR 43,255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No.12988, 61 Fed. Reg. 4729 (Feb. 5, 1996).

H. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 8 CFR Part 274a

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

Accordingly, for the reasons set forth in the preamble, DHS proposes to

[4] 73 FR at 63848 & n.2. Further developments in the criminal cases previously noted in this rulemaking illustrate the utility of focusing attention on employer and employer management conduct. *United States* v. *Gonzales,* 2008 WL 160636 (N.D. Miss. No. 4:07–CR–140, Jan. 18, 2008) (final order of forfeiture of $310,511.75, as to Gonzalez and Tarrasco Steel Company, Inc.); *United States* v. *Insolia,* No. 1:07–CR–10251 (D. Mass), (Insolia plead guilty to harboring and submitting false social security numbers; to serve 13 to 18 months, fined $30,000; MBI plead guilty to 18 counts of knowingly hiring unauthorized workers between early 2004 and late 2006; harboring and shielding from 2004–2007; social security and mail fraud from 2005–2007; fine approximately $1,500,000, including $476,000 in restitution to employees; managers also plead guilty); *United States* v. *Rice,* No. 1:07–CR–109 (N.D.N.Y) (IFCO Systems reached corporate settlement of $2,600,000 in back pay for overtime violations and $18,100,000 in civil forfeitures. Nine IFCO managers previously plead guilty (including Rice) (indictment of seven managers for illegal immigration and employment-related practices filed).

amend part 274A of title 8 of the Code of Federal Regulations as follows:

8 CFR CHAPTER 1—DEPARTMENT OF HOMELAND SECURITY

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, 1624a, 8 CFR part 2, Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

2. Section 274a.1 is proposed to be amended by revising paragraph (l) to read as follows:

§ 274a.1 Definitions.

* * * * *

(l)(1) The term *knowing* includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

Janet Napolitano,

Secretary.

[FR Doc. E9–19826 Filed 8–18–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0715; Directorate Identifier 2008–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the occurrence of corrosion on the Auxiliary Power Unit (APU) mounting rods that could cause the APU rod to break, affecting the APU support structure integrity.

APU support structure failure could result in undetectable fire in the tail cone and possible loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 18, 2009.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim–12227–901 São Jose dos Campos–SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0715; Directorate Identifier 2008–NM–211–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agencia Nacional De Aviacao Civil—Brazil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2008–08–01, dated October 21, 2008