

WEST VIRGINIA DIVISION OF HIGHWAYS
ADMINISTRATIVE OPERATING PROCEDURES
SECTION II, CHAPTER 11

SECTION TITLE: PAYROLL/PERSONNEL
CHAPTER TITLE: IMMIGRATION PROCEDURES

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I. INTRODUCTION

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Congress passed and the President signed into law the Immigration Reform and Control Act of 1986 on November 6, 1986. Put briefly, the current law says that employers should hire only American citizens and aliens who are authorized to work in the United States. The law places certain responsibilities on all employers, including government jurisdictions, to verify the citizenship status or authorization to work of all employees hired after November 6, 1986.

Under the law, all applicants for employment must provide employers with proof of U.S. citizenship or legal immigrant status. To comply with the law, employers must state on an Immigration and Naturalization Service form (Form I-9), under penalty of perjury, that the identity and eligibility of a person being recruited, employed, or being referred for employment has been verified by examining appropriate documents. The employee must swear on the form, also under penalty of perjury, to his or her eligibility for employment. This procedure incorporates Federal, State, and DOH policy regarding the law.

The Governor has directed persons in the Division of Highways who are authorized to hire employees to generally take the following actions:

- Determine that all new hires after May 31, 1987 have completed and signed Employment Verification Forms (I-9) within three work days after employment;
- Examine documents for employee identification, record information of Form I-9 and sign the form;
- Retain the form for three years or for one year past the end of employment of the individual, whichever is longer; and
- Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

II. INFORMATION REQUIREMENTS

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The U.S. Immigration and Naturalization Services Employment Eligibility Verification Form (I-9) is to be completed on all new employees and re-employees. Information requirements pertinent to the immigration law and completion of Form I-9 for Division of Highways employments are as follows:

- Prominently display the fact that the Division of Highways intends to hire only U.S. citizens and aliens who are authorized to work in the United States.
- All Forms I-9 for employees hired between November 7, 1986 and May 31, 1987 were to have been completed before September 1, 1987.
- Section One (Employee Information and Verification) of Form I-9 for employees hired after May 31, 1987 is to be completed by the employee the first day of employment and the required documents from the appropriate lists (see the next two *bullets*, below) are to be presented to the Division of Highways representative within three days (by the third day of employment).

The Division of Highways representative must complete Section Two (Employer Review and Verification) within three business days of a hiring (third day of employment).

- The Division of Highways representative cannot specify documents to be presented, but must accept any prescribed documents or combination of documents listed on Form I-9 (see Section VI, Forms) or on the list under "IV.B.". The employer should **thoroughly** examine the document(s) provided by the person. Documents should appear to be genuine and to relate to the individual presenting them. See "IV.C." for sample document illustrations.
- Employers must establish both the identity and employment eligibility of individuals seeking employment. Part Two (Employer Review and Verification) of Form I-9 is divided into three lists (Lists A, B and C). Documents on List A establish **both** identity and employment eligibility. Documents on List B establish **only** identity while documents on List C establish **only** employment eligibility. Therefore, completion of the employer's part of Form I-9 requires that one of the following documents or combination of documents be presented and examined by the employer:
 - one document from List A **OR**
 - one document from List B **AND** one document from List C.

Based on which type of document(s) is/are presented, the employer will document the information required on List A **OR** List B **AND** List C.

- If an employee cannot present appropriate document(s) within three days of employment, the employee must show the Division of Highways representative a **receipt** (within three days) showing that the document(s) have been applied for, and

must present the actual document(s) within 21 days of the hire.

- Documents must be presented within the time frame stated herein in order for the employee to continue to work.
- Any documents copied must be filed with the applicable Form I-9 and not used for any other purpose. The Form I-9 and documents must be retained for three years after the date of hiring, or one year after the date the employment is terminated, whichever is **later**.
- Division of Highways' representatives are responsible for re-verifying employment eligibility of employees whose **employment eligibility documents carry an expiration date**. If an employee's **work authorization** expires and you want to continue employing the individual, the employee must present a document that either shows an extension of employment eligibility or that is a new grant of work authorization and a new Form I-9 will need to be completed. If the employee cannot produce such a document, that person is no longer eligible to work. Continuing to employ that person is a violation of the law, even if the employee was previously authorized to work.
- A Social Security Number starting with a "9" is an invalid number. A Social Security Card is not valid unless signed. An official card is required. Metal replicas, copies, etc. are not suitable.
- All employees whose present names differ from birth names, because of marriage or other reasons, must print or type their birth names in the appropriate space of Section One of Form I-9. Also, employees whose names change after employment verification should report these changes to their employer. Name changes of employees which occur after initial preparation of Form I-9 should be recorded on the form by lining through the old name, printing the new name and the reason (such as marriage), and dating and initialing the changes. Employers should not attempt to delete or erase the old name in any fashion.
- If a person assists the employee in completing Form I-9, the preparer must certify the form by signing it and printing his or her complete name and address in the appropriate blocks.
- The originals of Forms I-9 and a copy of the appropriate document(s) are to be sent to Human Resources Division along with the employee orientation. The appropriate organization should also maintain a copy of each Form I-9 and the appropriate document(s).

III. DISCRIMINATION

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The new immigration law also prohibits discrimination. Under this law you may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging or recruiting because of that individual's national origin or, in the case of a citizen or intending citizen, because of his or her citizenship status.

Employers can avoid discrimination by applying the verification procedures of the Act to all newly hired employees and by hiring without respect to the national origin or citizenship status of those authorized to work in the United States. Seeking identity and employment

eligibility documents only from individuals of a particular national origin or from those who appear or sound foreign violates the new immigration law and may also be a violation of Title VII of the Civil Rights Act of 1964. Employers should not discharge present employees, refuse to hire new employees, or otherwise discriminate on the basis of foreign appearance, language or name. It is a violation of Title VII to discriminate against employees or applicants for employment on the basis of national origin.

The Division of Highways, in order to be in compliance with this law, must strictly adhere to the previously cited requirements. An Immigration Naturalization Services Officer or a Department of Labor Officer must be presented the Form I-9 for inspection upon request. The Division of Highways will be given at least three days advance notice of an inspection. Penalties will be imposed if an investigation reveals that the Division of Highways has violated the new immigration law.

Requests for additional information or guidance should be addressed to Human Resources Division.

IV. **EXHIBITS**

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EXHIBIT A - POLICY POSTER

POLICY POSTER

The American Policy is our Policy:

**We Hire Only U.S. Citizens
and
Lawfully Authorized Alien Workers**

Provided by:
The Immigration and Naturalization Service
Washington, D.C. 20536

EXHIBIT B - DOCUMENT LISTS

DOCUMENT LISTS

LIST A Documents That Establish Identity and Employment Eligibility

- United States Passport
- Certificate of United States Citizenship, (INS Form N-560 or N-561)
- Certificate of Naturalization, (INS Form N-550 or N-570)
- Unexpired foreign passport which:
 - Contains an unexpired stamp which reads "Processed for I-551, Temporary Evidence of Lawful Admission for permanent residence, Valid until _____, Employment authorized;" or
 - Has attached thereto a Form I-94 bearing the same name as the passport and contains an employment authorization stamp, so 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 I-94.
- Alien Registration Receipt Card (INS Form I-151) or Resident Alien Card (INS Form I-551), provided that it contains a photograph of the bearer.
- Temporary Resident Card, (INS Form I-688)
- Employment Authorization Card, (INS Form I-688A)

LIST B Documents That Establish Identity

For individuals 16 years of age or older:

- State-issued driver's license or state-issued identification card containing a photograph. If the driver's license or identification card does not contain a photograph, identifying information should be included, such as name, date of birth, sex, height, color of eyes, and address.
- School identification card with a photograph
- Voter's registration card
- United States Military card or draft record
- Identification card issued by federal, state or local government agencies
- Military dependent's identification card
- Native American tribal documents
- United States Coast Guard Merchant Mariner Card
- Driver's license issued by a Canadian government authority

For individuals under age 16 who are unable to produce one of the documents listed above:

- School record or report card
- Clinic doctor or hospital record
- Daycare or nursery school record

LIST C Documents That Establish Employment Eligibility

- Social Security number card, other than one which has printed on its face "not valid for employment purposes."
Note: This must be a card issued by the Social Security Administration; a facsimile (such as a metal or plastic reproduction that people can buy) is not acceptable.
- An original or certified copy of a birth certificate issued by a state, county, or municipal authority bearing its official seal.
- Unexpired INS employment authorization
- Unexpired re-entry permit (INS Form I-327)
- Unexpired Refugee Travel Document, (INS Form I-571)
- Certification of Birth issued by the Department of State, (Form FS-545)
- Certification of Birth Abroad issued by the Department of State, (Form DS-1350)
- United States Citizen Identification Card, (INS Form I-197)
- Native American tribal document
- Identification Card for use of Resident Citizen in the United States, (INS Form I-179)

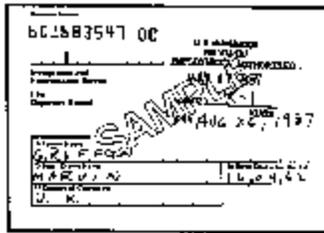
NOTE:

If a minor (under age 16) cannot produce a List A document or one of the identity documents listed in List B, he or she is exempt from producing one if: (1) a parent or legal guardian completes Section 1 and writes in the space for the minor's signature the words, "minor under age 16;" (2) the parent or legal guardian completes the "Preparer/Translator Certification;" and (3) the employer writes in Section 2 the words, "minor under age 16" under List B in the space after the words "Document Identification #." If this procedure is followed, the minor must still produce a List C document showing employment eligibility.

EXHIBIT B - DOCUMENT LIST A

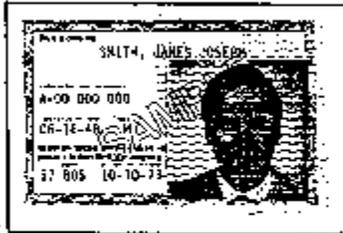
I-94 Arrival-Departure Record

Arrival-departure record issued by INS to nonimmigrant aliens and attached to an unexpired foreign passport. An individual in possession of this document may only be employed if the document bears an employment authorization stamp. The expiration date is noted on the face of the document.



Alien Registration Receipt Card I-151

Issued by INS, prior to June 1978, to lawful permanent resident (lawful immigrant) aliens. There are numerous versions of this card because it was periodically revised. Although this card is no longer issued, it is valid indefinitely. This card is also commonly referred to as a "green card."



Alien Registration Receipt Card (Resident Alien Card) I-551

Issued by INS to lawful permanent resident (lawful immigrant) aliens. Valid indefinitely, this card is commonly referred to as a "green card" and is a revised edition of Form I-151.



Alien Registration Receipt Card (Conditional Resident Alien Card) I-551

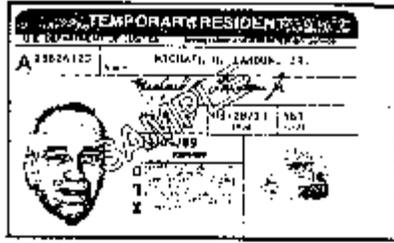
Issued by INS to conditional permanent residents such as alien spouses of United States citizens or lawful permanent residents. Although it is the same card as the I-551 issued to permanent resident aliens, this card is valid for a limited period of time. The expiration date is noted on the back of the card.



EXHIBIT C - DOCUMENT ILLUSTRATIONS

Temporary Resident Card I-688

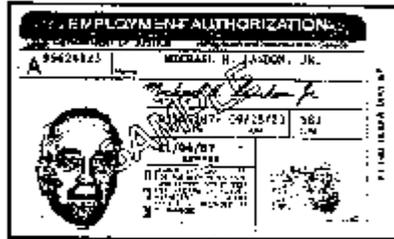
Issued by INS to aliens granted temporary resident status under the legalization or SAW programs. It is valid until the expiration date stated on the face of the document.



Persons in the United States who are in possession of this card are not to be considered as lawful permanent residents of the United States without having a permanent card of the Immigration and Nationality Act. Possession of this document is not the same as lawful permanent residence. It is not a document of the United States and does not guarantee the status of a lawful permanent resident of the United States. Section 210 of the Immigration and Nationality Act is hereby notified. The document is valid until the expiration date stated on the face of the card and must be carried at all times and is subject to inspection at any time.

Employment Authorization Card I-688A

Issued by INS to applicants for temporary resident status after their interview for legalization or SAW status. It is valid for a period of six months from issuance and has the expiration date stated on the face of the card.



The person identified on this card is an applicant for temporary resident status under a provision of the Immigration and Nationality Act, as amended by P.L. 96-508. This document is issued during its validity period by the INS to inform it was issued as a document of identity and employment eligibility required to be carried by an employee under Section 274A of the INA. This document is not a document of identity and must be carried at all times and is subject to inspection at any time.

DOCUMENT LIST B.

Sample Driver's License

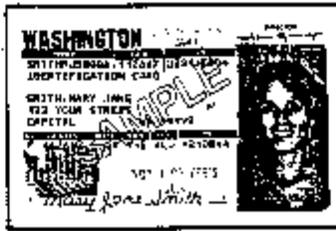
A driver's license issued by any state (including the District of Columbia, Puerto Rico, the Virgin Islands and Guam) or by a Canadian governmental authority is acceptable if it contains a photograph or other identifying information such as name, date of birth, sex, height, color of eyes and address.



EXHIBIT C - DOCUMENT ILLUSTRATIONS

Sample State Identification Card

An identification card issued by any state (including the District of Columbia, Puerto Rico, the Virgin Islands and Guam) is acceptable if it contains a photograph or other identifying information such as name, date of birth, sex, height, color of eyes and address.



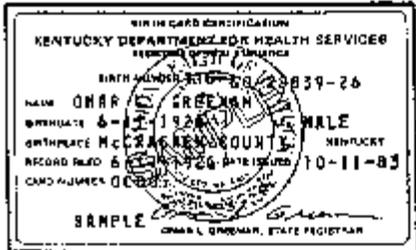
DOCUMENT LIST C.

Social Security Card

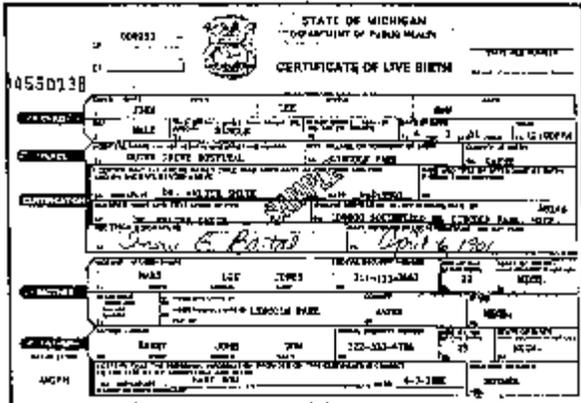


The card is invalid if altered.
 The card is invalid if not stated by the number holder unless health or age prevents signature.
 In proper use of this card and/or number by the number holder or any other person is a violation of the Social Security Act.
 This card is the property of the Social Security Administration and must be returned upon a change of name, address or SSN - PG 508 (2-20-77)
 BALTIMORE, MD 21204
 ATTN: FOLDFOLD CARD (Main) (no postage necessary)
 Department of Health and Human Services
 Social Security Administration
 Form SSA-702 (1-74) **805193176**

Sample Birth Certificates

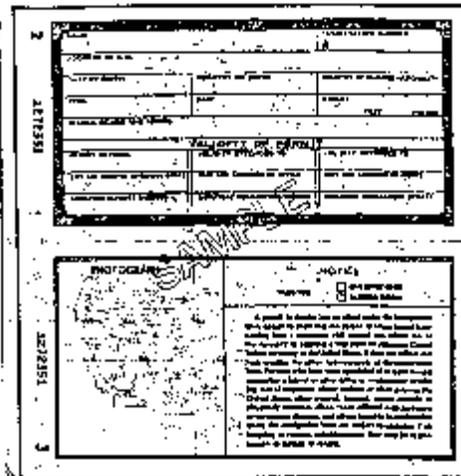


THIS CERTIFICATION IS A TRUE AND CORRECT COPY OF THE ORIGINAL BIRTH RECORD OF THE PERSON NAMED ON THE REVERSE SIDE, WHICH RECORD IS ON FILE WITH AND IN OFFICIAL CUSTODY OF THE STATE REGISTRAR OF VITAL STATISTICS AT COLUMBIA, KENTUCKY.
 ISSUED UNDER AUTHORITY OF CHAPTER 213, KENTUCKY REVISED STATUTES



Unexpired Re-Entry Permit I-327

Issued by INS to lawful permanent residents (lawful immigrant aliens) before they leave the United States for a one to two year period.



Unexpired Refugee Travel Document I-571

Issued by INS to aliens who have been granted refugee status. The expiration date is stated on page four.

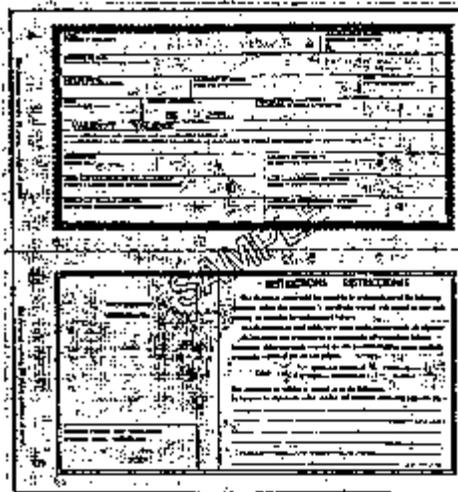


EXHIBIT C - DOCUMENT ILLUSTRATIONS

