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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 235, 264, 286, and 299

[INS No. 1931–98]

RIN 1115–AF24

Requirements for Biometric Border Crossing Identification Cards (BCCs) and Elimination of Non-Biometric BCCs on Mexican and Canadian Borders

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, requires the establishment of regulations governing the issuance and use of border crossing identification cards (BCCs) containing biometric information. See 8 U.S.C. 1101(a)(6) and note. To satisfy documentary requirements for admission to the United States, Mexican nationals who are not permanent residents must possess either a BCC or a valid passport and a nonimmigrant visa issued at a consulate abroad. Canadians and certain other residents of Canada are not required to possess a visa, but they must present documentation of any waivers of inadmissibility. This rule amends the Immigration and Naturalization Service (Service) regulations by requiring that an alien seeking admission to the United States by presentation of a BCC must present a BCC that contains biometric information that is machine readable. The biometric information on the card will be verified by machine at the ports-of-entry (POEs) where feasible or by other reliable means. This rule further eliminates certain former

versions of BCCs and clarifies the validity period of waivers of inadmissibility issued under 8 CFR 212.4. This rule promotes uniformity and clarity in the adjudication and production processes, and is necessary to comply with the congressional mandates set forth in section 104 of the IIRIRA.

DATES: *Effective date:* October 1, 2002.

Comment date: Written comments must be submitted on or before January 31, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, you must include INS No. 1931–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment. Comments can also be submitted electronically at insregs@usdoj.gov. When submitting comments electronically, please make sure to place the INS No. 1931–98 in the subject box.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, U.S. Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, Telephone (202) 305–9247.

SUPPLEMENTARY INFORMATION:

Background

This rule is essential to meet the requirements of section 104 of the IIRIRA, which amended section 101(a)(6) of the Immigration and Nationality Act (Act) (codified as amended at 8 U.S.C. 1101(a)(6) and 1101 note (2002)). The definition of a BCC and related requirements are covered by section 101(a)(6) of the Act. The IIRIRA, section 104 establishes two new requirements: (1) A machine-readable biometric identifier must be included in any document issued on or after April 1, 1998, that is designated as a “border crossing identification card,” and (2) an alien who presents such a card cannot be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien who presents the card on or after October 1, 2002.

Section 601 of the Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107–173, 116 Stat. 543 (May 14, 2002) amended section 104 of IIRIRA to extend the deadline from October 1, 2001 to October 1, 2002 for presentation of the biometric BCC at the borders. The deadline had previously been extended from 1999 to 2001. (Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Sec. 410(b), Public Law 105–277, 112 Stat. 2681 (October 21, 1998)). Between October 1, 2001 and the passage of the most recent deadline extension in the Border Security Act, the Service required border crossers to present the new biometric BCC, passports, visas, other appropriate documents, or valid waivers if required. After enactment of the Border Security Act extension, the Service again accepted unexpired non-biometric BCCs. This regulation ends the acceptance of the non-biometric BCCs as required by law.

The Service and the Department of State (DOS) have realigned their responsibilities so that each agency specializes in part of the BCC adjudication and production process: The DOS adjudicates all applications for the biometric BCCs for Mexicans, and the Service produces most such BCCs. The DOS also produces some of the BCCs. Canadian BCCs are no longer produced. Canadians and certain other Canadian residents are not required to possess a visa or BCC; however, waivers of any relevant grounds of inadmissibility will continue to be required of eligible Canadians and Canadian residents. See 8 U.S.C. 1182(d)(3–4); 8 CFR 212.1(a); 8 CFR 212.4, and 8 CFR 212.7. The concept for the realignment of responsibilities for the adjudication and production of BCCs grew out of discussions with the DOS about areas where the two agencies’ programs interface.

This rule eliminates the use of Form I–175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I–190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I–185, Nonresident Alien Canadian Border Crossing Card, and Form I–586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of

Form I-186 (previous version of the Mexican BCC Card), Form I-185 and Form I-586 BCCs. The rule also prohibits the use of the non-biometric BCC portion of the combined B-1/B-2 visitor visa and border crossing identification card (B-1/B-2 Visa/BCC) (or similar combination stamp in a passport) that the DOS issued prior to April 1, 1998. The B-1/B-2 visas contained on the older DOS-issued cards will remain valid until their expiration dates unless otherwise revoked or voided.

Mexican Border Crossing Cards

How Were Mexican BCCs Issued Prior to This Rulemaking?

Under the previous procedures, both the Service and the DOS adjudicated and produced Mexican BCCs. The Service issued BCCs on Form I-586 and Form I-186. Several different revisions of the Forms have been issued (last revision 1997). The Service adjudicated about 240,000 BCC applications per year at more than 30 southwest border POEs. Approximately 180,000 BCC applications were approved annually.

The DOS adjudicated about 800,000 BCC applications per year at its eight consular posts in Mexico. The DOS non-biometric BCCs were also issued in several formats, including a document that is a combination B-1/B-2 Visa/BCC and a similar combination stamp in the person's passport. In 1998, the DOS published regulations on application procedures and criteria for the new biometric BCC (Form DSP-150). See 22 CFR 41.32. Those procedures must be followed by all Mexican applicants seeking BCCs. Following publication of this rule, the Service's previous regulations concerning applications for the older non-biometric cards will no longer be effective.

How Many of the Service-Issued BCCs Are Now in Use, and Why Must They Be Replaced?

In 1998 when the biometric BCCs became available and all other versions ceased to be produced, the Service had estimated that between 2 and 5 million of the non-biometric, Service-issued BCCs remained in circulation. The number of such cards has steadily declined as the older versions of both the Service-issued and DOS-issued cards have been replaced with the biometric BCC. The Service and DOS have adjudicated and produced nearly 6 million BCCs with a biometric identifier.

Section 104 of the IIRIRA requires that each BCC issued on or after April 1, 1998, include a biometric identifier

that is machine readable, and that each alien presenting a BCC on or after October 1, 2002, be refused admission unless the biometric identifier on the card matches the biometric identifier of the alien. None of the BCCs issued before April 1, 1998, contain the required biometric identifier. Thus, they cannot be accepted for admission into the United States on or after October 1, 2002. Therefore, an individual who wishes to continue using a BCC (rather than obtaining a B-1/B-2 visa at a consulate) must replace his or her older BCC with the new biometric BCC in order to be admitted to the United States on or after October 1, 2002.

Is a DOS-Issued Combination B-1/B-2 Visa/BCC Document or Stamp Issued Before April 1, 1998, Still Valid for Admission?

The BCC portion will no longer be valid for admission because it does not contain the required biometric identifier. The B-1/B-2 visa portion will remain valid for admission until its expiration date, unless the alien is subject to a ground of inadmissibility that has not been waived. However, a holder of any B-1/B-2 visa, including a visa documented on a non-biometric BCC, must also present his or her passport, unless otherwise exempt from the passport requirement. Since the DOS-issued BCCs are considered both a nonimmigrant visa and a BCC, they will not be subject to this card replacement requirement and may continue to be used only as a nonimmigrant visa after October 1, 2002, with a passport.

Is a Biometric BCC Mandatory for Mexican Nationals?

No. A biometric BCC may be presented in lieu of a passport and visa. A nonimmigrant Mexican national may present any of the following documents for admission into the United States: (1) A valid, unexpired visa and unexpired passport if the alien is otherwise admissible; (2) A valid, unexpired biometric BCC (DSP-150) if the alien is otherwise admissible and provided that the inspector has matched the biometric identifier on the card to the bearer's corresponding characteristic(s). If the biometric authentication is unsuccessful, the alien cannot be permitted to cross the border, as required under section 104 of IIRIRA. A passport may be required under 8 CFR 212.6 if the BCC-bearer is not arriving from Mexico or Canada, or is arriving from Canada but has been in another country other than the United States or Canada since leaving Mexico; (3) a non-biometric DOS-issued combination BCC/B-1/B-2 visa (or similar stamp in

a passport) may be accepted on the basis of the unexpired B-1/B-2 visa portion only. The non-biometric BCC portion of the card (or stamp) is no longer valid on or after October 1, 2002. As usual with a B-1/B-2 visa, a valid, unexpired passport is also required. A Form I-94 should be issued unless the individual is otherwise exempt from the Form I-94 requirement by regulation; or (4) other applicable documents may be accepted depending on the alien's eligibility for admission (e.g., Form I-512, Authorization for Parole; Form I-194, Notice of Advance Permission to Enter as Non-immigrant Pursuant to 212(d)(3)(A) or (B) of the Act).

What Are the Application Procedures for Replacing the Non-Biometric BCCs?

The application procedures for replacing a non-biometric BCC are described in the regulation published by the DOS at 22 CFR 41.32. The DOS consular officers in Mexico accept and adjudicate the application for replacement BCCs. After receiving an appropriate card order from the DOS, the Service (or DOS in some cases) will process and produce the biometric BCC (DSP-150, B-1/B-2 Visa and Border Crossing Card), through its Integrated Card Production System (ICPS). The Service sends the cards to the DOS and the DOS will then return the biometric BCC to the applicant.

Each time the bearer presents this biometric BCC to an immigration officer at the border, the officer must make sure that the biometric identifier on the BCC matches the bearer's characteristics. If the biometric identifier does not match, the person will not be admitted to the United States.

If An Immigration Officer Voids and Cancels Either a Biometric or a Non-Biometric BCC For Any Reason, What Procedures Will Apply?

If an alien's BCC is voided and cancelled and the alien presenting the BCC does not possess other valid admission documents (such as a visa and a passport), he or she may be denied admission, unless the Service grants a discretionary waiver of the applicable ground of inadmissibility, or for an unforeseen emergency under sections 212(d)(3) or 212(d)(4) of the Act, or determines that the alien should be paroled into the United States under section 212(d)(5) of the Act. If a waiver or parole is not granted, the Service, in its discretion, may permit the alien to withdraw his or her application for admission and seek appropriate documentation for his or her future admission. See 8 CFR 235.4. In certain cases, the alien may be subject to

expedited removal under section 235(b)(1) of the Act and 8 CFR 235.3. The expedited removal provisions give immigration officers at POEs the authority to order aliens removed, without further hearing or review (unless they request asylum or express a fear of persecution) if they apply for admission without proper documents, or seek to procure documentation or admission by fraud or misrepresentation. Following consultation with a wide variety of immigrant, legal, and community-based groups, the Service developed extensive detailed regulations and procedures to ensure fair and consistent application of the expedited removal process. These procedures further ensure that individuals who express fears of persecution or torture are given an opportunity for a determination of credible fear and to apply for asylum where appropriate. See 8 CFR 235.3. During the transition period of the new biometric BCC, immigration officers generally will not apply the expedited removal procedures to aliens who present only their older, non-biometric BCCs, even if they do not meet the criteria discussed above for granting a section 212(d)(4)(A) waiver. Unless there is fraud, willful misrepresentation, evidence that the applicant is an imposter, or other serious violations involved in the alien's application for a visa or application for admission, the alien will be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

If there is evidence of fraudulent documentation or willful misrepresentation, or other serious violations, the Service may take appropriate investigative and enforcement actions, where necessary. These enforcement actions may include administrative procedures and criminal charges.

Where the person is not subject to the expedited removal procedures, this rule restates the existing procedures that will be applied when a BCC is declared void and cancelled. The individual will be advised that he or she may request a hearing before an immigration judge to determine admissibility in accordance with 8 CFR 235.6 and may be represented by an attorney of his or her choice with no expense to the government. The person will be provided with a list of free legal services providers. If the applicant chooses not to have a hearing, the BCC will be cancelled and the applicant will receive a notice of the action taken and the reasons for that action. If the BCC was issued by the DOS, the Service will also notify the DOS in writing of the reasons

for the voidance of the BCC. Where applicable, the alien may also be ordered removed under the expedited removal provisions.

Canadian Border Crossing Cards

How Will the Issuance of Canadian BCCs Be Affected by This Rulemaking?

As a result of the IIRIRA mandate and the realignment of responsibilities with the DOS, the issuance of Canadian BCCs (Form I-185) ceased as of April 1, 1998. Long existing regulations permit Canadians to travel temporarily to the United States without visas. 8 CFR 212.1(a). Currently, Canadian BCCs are used primarily for Canadian citizens and certain other Canadian residents in possession of an approved Form I-194, Notice of Approval of Advance Permission to Enter as Nonimmigrant, following a request for a discretionary waiver of inadmissibility under section 212(d)(3) of the Act. The Canadian card is both a BCC and documentation of the waiver, which is noted separately on the card. This procedure allows Canadian citizens, who would otherwise be inadmissible, to enter the United States.

Although the Canadian BCC is no longer issued, Canadians who require and are eligible for a waiver of inadmissibility still must possess appropriate documentation of the waiver. Individuals who require but do not have any documentation of a waiver of inadmissibility must apply for one according to the procedures in 8 CFR 212.4. If eligible, a waiver applicant will be issued a Form I-194, Notice of Approval of Advance Permission to Enter as Nonimmigrant. The rule further provides that an unexpired waiver of inadmissibility that was previously granted and documented on a BCC issued to a Canadian or other Canadian resident exempt from the visa requirements under 8 CFR 212.1 remains valid, although the non-biometric BCC portion of the card does not. The Service is considering alternative documentation for waivers issued to Canadians and certain other Canadian residents.

In addition, with the issuance of this rule, approvals of new applications for the exercise of discretion under section 212(d)(3) of the Act may be granted for a maximum period of 5 years. All admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the waiver authorization. The period for which the alien's admission is authorized shall not exceed the period justified, subject to the limitations specified in 8 CFR part 214 (Nonimmigrant Classes). The section

212(d)(3) waiver allows the applicant to apply for admission into the United States without reapplying for a discretionary waiver for the same grounds of inadmissibility upon each application for admission into the United States. Previous regulations restricted the granting of such waiver approvals to 1 year unless the DOS had recommended a longer period. The extension of the period of validity of waiver approvals will provide long-term documentation (the Form I-194 will be valid for up to 5 years) to approved waiver applicants.

Proposed Changes

What Exactly Does This Rule Do?

This rule establishes the procedures to terminate the use of current non-biometric BCCs and introduces a card that is machine-readable and contains a personal biometric identifier of the alien. The rule also provides a requirement that the biometric characteristic contained in any BCC presented for admission on or after October 1, 2002, must be matched to the alien presenting the card. The rule further removes references to application forms and documents that can no longer be used. Specifically this rule:

(1) Amends 8 CFR 103.7 to remove references to Form I-175 and Form I-190.

(2) Amends 8 CFR 212.1 to prohibit the use of the former non-biometric BCCs, to add references to allow the use of the biometric DSP-150, B-1/B-2 Visa and Border Crossing Card; and to add the requirement that the biometric identifier on any BCC presented must be matched to the alien presenting the BCC at time of admission before the alien will be permitted to enter the United States.

(3) Amends 8 CFR 212.4 to extend the maximum period of validity of a waiver authorization issued under section 212(d)(3)(A) or (B) of the Act from 1 to 5 years and restructures the section for the purpose of clarity. Further amends 8 CFR 212.4 to provide that a waiver previously issued in conjunction with a Form I-185, Nonresident Alien Canadian Border Crossing Card, may remain valid although the Form I-185 itself is void.

(4) Amends 8 CFR 212.6 to change the title; add a reference to the biometric Form DSP-150, B-1/B-2 Visa and Border Crossing Card, to be issued by the DOS; specify the application process for the DOS-issued card; limit the remaining validity period of the current border crossing cards; give authority to Service officers to physically cancel the

former non-biometric DOS-issued cards; and provides for the replacement of the former versions of specified Service-issued BCCs.

(5) Amends 8 CFR 214.2 to eliminate the use of the Nonresident Alien Mexican Border Crossing Card (Form I-186 or I-586) and allows for the use of the Form DSP-150, B-1/B-2 Visa and Border Crossing Card, for applications for admission of aliens pursuant to the North American Free Trade Agreement. Substantive changes have not been made to this section.

(6) Amends 8 CFR 235.1(f)(1)(iv) to reference § 212.1(c) for Mexican documentary requirements.

(7) Amends 8 CFR 264.1 to remove references to Form I-175 and Form I-190.

(8) Removes 8 CFR 264.4, which refers only to the collection of fees for applications for BCCs, in its entirety.

(9) Amends 8 CFR 286.9 to add a reference to the Form DSP-150, B-1/B-2 Visa and Border Crossing Card, where the issuance of Form I-94 is required, and to remove 8 CFR 286.9(b)(5) and (6) which referenced the collection of fees in conjunction with the former BCC applications.

(10) Amends 8 CFR 299.1 to remove the references to BCC applications (Form I-175 and Form I-190), to the "Nonresident Alien Canadian Border Crossing Card" (Form I-185), to the "Nonresident Alien Border Crossing Card (Form I-586), and to add a reference to the new DOS Form DSP-150, B-1/B-2 Visa and Border Crossing Card.

(11) Amends 8 CFR 299.5 to remove references to Form I-175 and Form I-190.

Good Cause Exception

Implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule is that the statutory deadlines contained in section 104 of the IIRIRA of 1996, as amended, require that only BCCs bearing a machine-readable biometric identifier may be produced on or after April 1, 1998, and that a verification of the biometric identifier for all bearers of these cards must be completed before the alien may be admitted on or after October 1, 2002. The production of the new cards began on April 1, 1998, in accordance with regulations published by the DOS, and these cards are now in use. The publication of an interim rule will promote the timely institution of procedures necessary to comply with

the statute. Accordingly, since delaying the effective date of this rule is impractical and contrary to the public interest, there is good cause under 5 U.S.C. 553 to make this rule effective immediately.

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 this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals who are applicants for admission. Although some applicants may be business persons, the requirement for a machine-readable biometric identifier in any BCC presented for admission after October 1, 2002 is a statutory mandate that the Service must implement. This rule further standardizes the adjudication and production processes for BCCs, thereby improving government efficiency and service to the public. It also provides greater flexibility in the permissible validity periods for waivers under section 212(d)(3) of the Act. This is anticipated to reduce the burdens on certain frequent border crossers and thereby help to improve traffic flows at the POEs.

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 any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not 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, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department has reviewed this rule in light of Executive Order 12866, section 1(b), Principles of Regulation.

The Department has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget. The Department has assessed both the costs and benefits of this rule and has made a reasoned determination that the benefits of this regulation justify its costs. The benefits include the following: (1) Promulgation of this rule meets the statutory requirements of section 104 of IIRIRA, as amended; (2) this rule ensures consistency between the Service's regulations on BCCs and the regulations issued in 1998 by the DOS regarding the application process for the new biometric BCC (22 CFR 41.32); (3) the rule's requirement that INS inspectors must match the biometric identifier in any BCC that is presented for admission to the characteristic of the nonimmigrant card holder enhances enforcement of the immigration laws and national security by improving the verification of a border crosser's true identity; (4) the rule will reduce the ability of illegal aliens to present fraudulent BCCs at the ports and in the interior of the United States; (5) the rule maintains the validity of waivers of inadmissibility issued to certain Canadian BCC holders so that they will continue to be able to enter the country although their non-biometric BCCs are now invalid.

The costs considered by the Department include: (1) The effort required by holders of the invalid non-biometric BCC to obtain the biometric BCC (DSP-150), or a valid visa and passport by the effective date of this rule. The Department determined that the vast majority of people who wished to replace their nonbiometric BCCs had already done so by October 1, 2002 because nearly 6 million biometric BCCs have been issued since 1998, and the Service had estimated that there were between 2-5 million old cards in circulation that would require replacement; DOS also reports that the vast majority of current applicants (approximately 95%) are applying for a BCC for the first time, not replacing a nonbiometric BCC; in addition, there are no significant card processing backlogs; and (2) the costs and burdens to the public associated with the BCC application process under the DOS procedures at 22 CFR 41.32. The DOS has previously determined that the BCC application can be completed in approximately one hour and that the application fee would be \$65 for adults and \$13 for children under age 15. See

63 FR 16892-01 (April 7, 1998); 22 CFR 22.1 (schedule of fees).

The primary purpose of this rule and the Congressional mandate in section 104 of IIRIRA is to enhance the security of BCCs, reduce the prevalence of fraudulent documents presented by border crossers, and improve the ability of immigration inspectors to verify a card holder's identity. The benefits of implementing this rule outweigh any burdens it imposes.

Executive Order 13132

This rule will 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 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires the use of Optional Form DS-156, Nonimmigrant Visa Application, and Service Form I-192, Application for Advance Permission to Enter as Nonimmigrant, and Form I-193, Application for Waiver of Passport and/or Visa, which are considered information collections under the Paperwork Reduction Act. These information collections have previously been approved for use by the Office of Management and Budget (OMB). The OMB information collection control numbers are 1405-0018, 1115-0028 and 1115-0042, respectively. This rule also eliminates Form I-185, I-175, I-190, and I-586.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Reporting and recordkeeping requirements.

8 CFR Part 212

Aliens, Immigration, Passports and visas.

8 CFR Part 214

Foreign officials, Health professionals, Students.

8 CFR Part 235

Aliens, Immigration.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Maritime carriers.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. Section 103.7(b)(1) is amended by removing the entry for "Form I-175" and "Form I-190."

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

4. Section 212.1 is amended by removing paragraphs (c-1) and (c-2), and by revising paragraphs (c) and (g) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(c) Mexican nationals.

(1) A visa and a passport are not required of a Mexican national who:

(i) Is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the DOS and is applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(ii) Is a Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border.

(2) A visa shall not be required of a Mexican national who:

(i) Is in possession of a Form DSP-150, with a biometric identifier, issued by the DOS, and a passport, and is

applying for admission as a temporary visitor for business or pleasure from other than contiguous territory;

(ii) Is a crew member employed on an aircraft belonging to a Mexican company owned carrier authorized to engage in commercial transportation into the United States; or

(iii) Bears a Mexican diplomatic or official passport and who is a military or civilian official of the Federal Government of Mexico entering the United States for 6 months or less for a purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States, and the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of admission into the United States. This provision does not apply to the spouse or any of the official's family members classifiable under section 101(a)(15)(F) or (M) of the Act.

(3) A Mexican national who presents a BCC at a POE must present the DOS-issued DSP-150 containing a machine-readable biometric identifier. The alien will not be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(4) Mexican nationals presenting a combination B-1/B-2 nonimmigrant visa and border crossing card (or similar stamp in a passport), issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains admissible. A passport is also required.

(5) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* A visa and a passport are not required of an alien employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act or a valid biometric border crossing card, issued

by the DOS on Form DSP-150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f),(i) or (o) of this section. Upon a nonimmigrant's application on Form I-193, Application for Waiver of Passport and/or Visa, a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

5. Section 212.4 is amended by revising paragraph (c) to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

* * * * *

(c) *Terms of authorization.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, each authorization under section 212(d)(3)(A) or (B) of the Act shall specify:

- (i) Each section of law under which the alien is inadmissible;
- (ii) The intended date of each arrival, unless the applicant is a bona fide crewman. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;
- (iii) The length of each stay authorized in the United States, which shall not exceed the period justified and shall be subject to limitations specified in 8 CFR part 214. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;
- (iv) The purpose of each stay;
- (v) The number of entries for which the authorization is valid;
- (vi) Subject to the conditions set forth in paragraph (c)(2) of this section, the dates on or between which each application for admission at POEs in the United States is valid;
- (vii) The justification for exercising the authority contained in section 212(d)(3) of the Act; and
- (viii) That the authorization is subject to revocation at any time.

(2) *Conditions of admission.*

(i) For aliens issued an authorization for temporary admission in accordance with this section, admissions pursuant

to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization.

(ii) The period for which the alien's admission is authorized pursuant to this section shall not exceed the period justified, or the limitations specified, in 8 CFR part 214 for each class of nonimmigrant, whichever is less.

(3) *Validity.*

(i) Authorizations granted to crew members may be valid for a maximum period of 2 years for application for admission at U.S. POEs and may be valid for multiple entries.

(ii) An authorization issued in conjunction with an application for a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by the DOS shall be valid for a period not to exceed the validity of the biometric BCC for applications for admission at U.S. POEs and shall be valid for multiple entries.

(iii) A multiple entry authorization for a person other than a crew member or applicant for a Form DSP-150 may be made valid for a maximum period of 5 years for applications for admission at U.S. POEs.

(iv) An authorization that was previously issued in conjunction with Form I-185, Nonresident Alien Canadian Border Crossing Card, and that is noted on the card may remain valid. Although the waiver may remain valid, the non-biometric border crossing card portion of this document is not valid after that date. This waiver authorization shall cease if otherwise revoked or voided.

(v) A single-entry authorization to apply for admission at a U.S. POE shall not be valid for more than 6 months from the date the authorization is issued.

(vi) An authorization may not be revalidated. Upon expiration of the authorization, a new application and authorization are required.

* * * * *

6. Section 212.6 is revised to read as follows:

§ 212.6 Border crossing identification cards.

(a) *Application for Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by the Department of State.* A citizen of Mexico, who seeks to travel temporarily to the United States for business or pleasure without a visa and passport, must apply to the DOS on Form DS-156, Visitor Visa Application, to obtain a Form DSP-150 in accordance with the applicable DOS regulations at 22 CFR 41.32 and/or instructions.

(b) *Use.*

(1) *Application for admission with Non-resident Canadian Border Crossing Card, Form I-185, containing separate waiver authorization; Canadian residents bearing DOS-issued combination B-1/B-2 visa and border crossing card (or similar stamp in a passport).*

(i) A Canadian citizen or other person sharing common nationality with Canada and residing in Canada who presents a Form I-185 that contains a separate notation of a waiver authorization issued pursuant to § 212.4 may be admitted on the basis of the waiver, provided the waiver has not expired or otherwise been revoked or voided. Although the waiver may remain valid on or after October 1, 2002, the non-biometric border crossing card portion of the document is not valid after that date.

(ii) A Canadian resident who presents a combination B-1/B-2 visa and border crossing card (or similar stamp in a passport) issued by the DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible.

(2) *Application for admission by a national of Mexico—Form DSP-150 issued by the DOS; DOS-issued combination B-1/B-2 visa and border crossing card (or similar stamp in a passport).*

(i) The rightful holder of a Form DSP-150 issued by the DOS may be admitted under § 235.1(f) of this chapter if found otherwise admissible and if the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(ii) The bearer of a combination B-1/B-2 nonimmigrant visa and border crossing card (or similar stamp in a passport) issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible. A passport is also required.

(iii) Any alien seeking admission as a visitor for business or pleasure, must also present a valid passport with his or her border crossing card, and shall be issued a Form I-94 if the alien is applying for admission from:

(A) A country other than Mexico or Canada, or

(B) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(c) *Validity.* Forms I-185, I-186, and I-586 are invalid on or after October 1,

2002. If presented on or after that date, these documents will be voided at the POE.

(d) *Voidance for reasons other than expiration of the validity of the form.*

(1) *At a POE.*

(i) In accordance with 22 CFR 41.122, a Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric border crossing identification card or (a similar stamp in a passport), issued by the DOS, may be physically cancelled and voided by a supervisory immigration officer at a POE if it is considered void pursuant to section 222(g) of the Act when presented at the time of application for admission, or as the alien departs the United States. If the card is considered void and if the applicant for admission is not otherwise subject to expedited removal in accordance with 8 CFR part 235, the applicant shall be advised in writing that he or she may request a hearing before an immigration judge. The purpose of the hearing shall be to determine his/her admissibility in accordance with § 235.6 of this chapter. The applicant may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He or she shall also be advised of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3, and organizations recognized under § 292.2 of this chapter located in the district where the removal hearing is to be held. If the applicant requests a hearing, the Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric border crossing identification card (or similar stamp in a passport), issued by the DOS, shall be held by the Service for presentation to the immigration judge.

(ii) If the applicant chooses not to have a hearing, the Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, shall be voided and physically cancelled. The alien to whom the card or stamp was issued by the DOS shall be notified of the action taken and the reasons for such action by means of Form I-275, Withdrawal of Application for Admission/Consular Notification, delivered in person or by mailing the Form I-275 to the last known address. The DOS shall be notified of the cancellation of the biometric Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by DOS, by means of a copy of the original Form I-275. Nothing in this paragraph limits the Service's ability to remove an alien pursuant to 8 CFR part 235 where applicable.

(2) *Within the United States.* In accordance with former section 242 of the Act (before amended by section 306 of the IIRIRA of 1996, Div. C, Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996.)) or current sections 235(b), 238, and 240 of the Act, if the holder of a Form DSP-150, or other combined B-1/B-2 visa and BCC, or (similar stamp in a passport) issued by the DOS, is placed under removal proceedings, no action to cancel the card or stamp shall be taken pending the outcome of the hearing. If the alien is ordered removed or granted voluntary departure, the card or stamp shall be physically cancelled and voided by an immigration officer. In the case of an alien holder of a BCC who is granted voluntary departure without a hearing, the card shall be declared void and physically cancelled by an immigration officer who is authorized to issue a Notice to Appear or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I-185, I-186 or I-586 issued by the Service and which are now invalid, or a Form DSP-150 or combined B-1/B-2 visitor visa and non-biometric BCC, or (similar stamp in a passport) issued by the DOS may be declared void by United States consular officers or United States immigration officers in Mexico or Canada.

(4) *Grounds.* Grounds for voidance of a Form I-185, I-186, I-586, a DOS-issued non-biometric BCC, or the biometric Form DSP-150 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; that he/she has abandoned his/her residence in the country upon which the card was granted; or if the BCC is presented for admission on or after October 1, 2002, it does not contain a machine-readable biometric identifier corresponding to the bearer and is invalid on or after October 1, 2002.

(e) *Replacement.* If a valid Border Crossing Card (Forms I-185, I-186, or I-586) previously issued by the Service, a non-biometric border crossing card issued by the DOS before April 1998, or a Form DSP-150 issued by the DOS has been lost, stolen, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in the DOS regulations found at 22 CFR 41.32 and 22 CFR 41.103.

PART 214—NONIMMIGRANT CLASSES

7. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 1301-1305; sec. 643, Pub. L. 104-208, 110 Stat.

3009-708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively; 8 CFR part 2.

8. Section 214.2 is amended by revising paragraph (b)(4) introductory text to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(4) *Admission of aliens pursuant to the North American Free Trade Agreement (NAFTA).* A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid, unexpired entry documents such as a passport and visa, or a passport and BCC in the case of Mexican applicants, a description of the purpose for which the alien is seeking admission, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the Canada/U.S. Free Trade Agreement and, with respect to Mexico, are those requirements which were in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

* * *

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PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

9. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

§ 235.1 [Amended]

10. Section 235.1(f)(1)(iv) is amended by revising the reference to “§ 212.1(c-1)” to read “§ 212.1(c)”.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

11. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.1 [Amended]

12. Section 264.1(a) is amended by removing the entries for Forms “I-175” and “I-190”.

§ 264.4 [Removed and reserved]

13. Section 264.4 is removed and Reserved.

PART 286—IMMIGRATION USER FEE

14. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

15. Section 286.9 is amended by revising paragraph (b)(3) and by removing paragraphs (b)(5) and (b)(6).

The revisions read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid Form DSP-150, B-1/B-2 Visa and Border Crossing Card, issued by the DOS, or a passport and combined B-1/B-2 visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, who is required to be issued Form I-94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter,

must remit the required fee for issuance of Form I-94 upon determination of admissibility.

* * * * *

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by removing the entries for Form “I-175”, and Form “I-190” and by adding an entry for Form “DSP-150”, in proper alpha numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
DSP-150	01-01-98 B-1/B-2	Visa and Border Crossing Card.

§ 299.5 [Amended]

18. Section 299.5 is amended by removing the entries in the table for Form “I-175” and Form “I-190”.

Dated: November 22, 2002.

James W. Ziglar,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-30295 Filed 11-29-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-24-AD; Amendment 39-12965; AD 2002-23-21]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary.

This amendment also requires post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary. This amendment is prompted by reports of corrosion and cracks found in certain bolt holes reworked according to the existing AD. The actions specified by this AD are intended to find and fix discrepancies of the bolt holes, which could result in fracture of the flap track, separation of the flap, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA,

Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91-03-17, amendment 39-6884 (56 FR 4534, February 5, 1991), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on July 1, 2002 (67 FR 44116). The action proposed to continue to require inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. That action also proposed to require post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA’s determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.