

# 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 235

[Docket No. USCBP-2012-0030]

RIN 1651-AA95

### Extension of Border Zone in the State of New Mexico

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Under current Department of Homeland Security (DHS) regulations, certain nonimmigrant Mexican nationals presenting a Border Crossing Card, or other proper immigration documentation, are not required to obtain a CBP Form I-94 (Form I-94), Arrival/Departure Record, if they remain within 25 miles of the border (75 miles in Arizona). This document proposes to amend the DHS regulations to extend the distance these visitors may travel in New Mexico without obtaining a Form I-94 from 25 miles to 55 miles. This change is intended to promote commerce and tourism in southern New Mexico while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.

**DATES:** Written comments must be submitted by October 9, 2012.

**ADDRESSES:** You may submit comments identified by *docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2012-0030.
- *Mail:* Regulations and Rulings, Office of International Trade, Customs and Border Protection, Attention: Border Security Regulations Branch, 799 9th Street NW., 5th Floor, Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on this rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, CBP Office of Field Operations, telephone (202) 344-3003.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

##### Executive Summary

Under current Department of Homeland Security (DHS) regulations, certain nonimmigrant Mexican nationals presenting a Border Crossing Card, or other proper immigration documentation, are not required to obtain a CBP Form I-94 (Form I-94), Arrival/Departure Record, if they remain within 25 miles of the U.S.-Mexico border (75 miles in Arizona). This region is known as the border zone and includes portions of Arizona, California, New Mexico, and Texas. Although the border zone was intended to promote the economic stability of the border region by allowing for freer flow

of travel for Mexican visitors with secure documents, New Mexico has no metropolitan areas and few tourist attractions within 25 miles of the border and thus benefits very little from the current 25-mile border zone. Consistent with Executive Order 13563, in order to facilitate commerce, trade, and tourism in southern New Mexico, while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States, DHS is proposing to extend the distance certain Mexican nationals admitted to the United States as nonimmigrant visitors may travel in New Mexico without obtaining a Form I-94 from 25 miles to 55 miles from the U.S.-Mexico border. In addition to promoting the economy in this area and facilitating legitimate travel, the proposed extension would increase CBP's administrative efficiency by reducing unnecessary paperwork burdens associated with the I-94 process and allowing CBP to focus resources on security enhancing activities to the greatest extent possible.

Therefore, pursuant to the immigration rulemaking authority found in 8 U.S.C. 1103, DHS is proposing to amend 8 CFR 235.1(h) to expand the area in which certain Mexican nationals may travel without having to obtain a Form I-94 from 25 miles to 55 miles from the U.S.-Mexico border in the state of New Mexico.

The majority of Mexican nationals who are exempt from the Form I-94 requirement possess and apply for admission to the United States with a Border Crossing Card (BCC). The BCC is issued by the Department of State and is an approved document to establish identity and citizenship at the border and also serves as a B-1/B-2 visitor's visa. The BCC includes many security features such as vicinity-read Radio Frequency Identification (RFID) technology and a machine-readable zone; using these features, CBP is able to electronically authenticate the BCC and biometrically compare the biometrics, photo and fingerprints, of the individual presenting the BCC against State Department issuance records in order to confirm that the document is currently valid and that the person presenting the document is the one to whom it was issued.

The proposed extension of the border zone would not change the threshold requirements for admission into the

United States, including permanent residence abroad, intent and duration of the visit, and eligibility. It would also not affect the 30-day time limit of the border zone applicable to BCC holders or the 72-hour time limit of the border zone applicable to Mexican nationals presenting a visa and passport.

## Background

Title 8 of the Code of Federal Regulations (CFR) contains DHS regulations regarding immigration. Under § 235.1(h)(1) of the DHS regulations (8 CFR 235.1(h)(1)), each arriving nonimmigrant who is admitted to the United States is issued a Form I-94, Arrival/Departure Record, as evidence of the terms of admission, subject to specified exemptions. Among other things, the Form I-94 collects information about the visitor's destination in the United States. This form is not required for a Mexican national admitted as a nonimmigrant visitor with certain documentation if he or she remains within 25 miles of the U.S.-Mexico border (75 miles within Arizona), for no more than either 30 days or 72 hours, depending upon the type of travel document the nonimmigrant visitor possesses. The area bounded by these limits is referred to in this document as the border zone. To be admitted to the border zone without a Form I-94, a Mexican national must be in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC), or a passport and valid visa, or for a Mexican national who is a member of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma, a Form I-872 American Indian Card. See 8 CFR 235.1(h)(1)(iii) and (v). To obtain these documents, applicants must be vetted extensively by DHS and/or the Department of State (DOS). The vetting process includes collection of information, such as fingerprints, photographs, and other information regarding residence, employment and reason for border crossing, and an interview, as well as security checks to identify any terrorism concerns, disqualifying criminal history, or past immigration violations.

Mexican nationals traveling beyond these specified zones, or who will remain beyond the time periods indicated above or seek entry for purposes other than as a temporary visitor for business or pleasure, are required to obtain and complete a Form I-94. At land border ports of entry, the Form I-94 issuance process requires a secondary inspection that includes review of travel documents, examination of belongings, in-depth

interview, database queries, collection of biometric data, and collection of a fee (currently, \$6.00). A Form I-94 issued at a land border is generally valid for multiple entries for six months.

## History of the Border Zone

Since 1953, Mexico and the United States have agreed to make special accommodations for Mexican nationals who cross the U.S.-Mexico border into the immediate border area to promote the economic stability of the region. On November 12, 1953, the United States and Mexico entered into an agreement concerning the U.S.-Mexico border area, which included a provision allowing Mexican nationals who resided near the border to be issued border crossing-identification cards. These cards could be used for multiple applications for admission during the validity of the card. Although the agreement did not define the size of the border area, subsequent federal regulations have defined this region. In November 1982, the former Immigration and Naturalization Service (INS) promulgated regulations outlining a 25-mile border zone within which Mexican border crossing card holders could travel without obtaining a Form I-94. See 47 FR 49953. In 1999, INS extended the border zone from 25 miles to 75 miles in Arizona, as there are no metropolitan areas within 25 miles of the border in Arizona. See 64 FR 68616.

In addition to a geographic limit, the border zone also has a time limit. Prior to 2004, eligible Mexican nationals were permitted to enter the 25-mile border zone (75 miles in Arizona) for up to 72 hours without having to obtain a Form I-94. In 2004, CBP expanded this time limit to 30 days for Mexican nationals presenting a BCC. See 69 FR 50051. The increased time limit accommodated the realities of trade, tourism and commerce along the U.S.-Mexico border and promoted administrative efficiency. For other Mexican nationals admitted to the border zone without a Form I-94, including those presenting a visa and passport, CBP retained the 72-hour time limit.<sup>1</sup>

<sup>1</sup> Prior to the implementation of the Western Hemisphere Travel Initiative (WHTI), Mexican nationals were permitted by 8 CFR 212.1(c)(1)(ii) to enter the United States without a visa or passport if they were 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. Mexican nationals entering the United States pursuant to 8 CFR 212.1(c)(1)(ii) could also be admitted to the border zone for up to 72 hours without obtaining a Form I-94. However, the WHTI land and sea final rule (73 FR 18384) eliminated this waiver of the visa and passport requirement.

## The Border Crossing Card (BCC)

Before October 1, 2002, the term "border crossing card" was used to refer to several different documents. Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and subsequent amendments, codified at 8 U.S.C. 1101(a)(6) and 8 U.S.C. 1101 note, changed the definition of a border crossing card to require the inclusion of a machine readable biometric identifier on all border crossing identification cards. The Enhanced Border Security and Visa Entry Reform Act of 2002 also established requirements for "visa and entry document," as well as deployment and implementation at ports of entry to biometrically compare and authenticate such documents. See Pub. L. 107-173; 116 Stat. 543. Effective October 1, 2002, the Form DSP-150, B-1/B-2 Visa and Border Crossing Card became the border crossing card valid for entry into the United States. See 67 FR 71443. The BCC is an approved document to establish identity and citizenship at the border and also serves as a B-1/B-2 visitor's visa.

The currently issued BCC is a credit card-sized document, similar to a passport card, with a ten-year validity period and includes many security features such as vicinity-read Radio Frequency Identification (RFID) technology and a machine-readable zone; using these features, CBP is able to electronically authenticate the BCC and biometrically compare the biometrics, photo and fingerprints, of the individual presenting the BCC against State Department issuance records in order to confirm that the document is currently valid and that the person presenting the document is the one to whom it was issued.

The BCC is issued by DOS, and applicants must demonstrate that they have ties to Mexico that would compel them to return after a temporary stay in the United States. Applicants undergo a DOS interview, submit fingerprints, photographs, and information regarding residence, employment and reason for frequent border crossing. DOS issues approximately one million BCCs annually that incorporate RFID technology and other security features. At ports of entry, CBP officers can verify that the individual presenting the BCC is the authorized holder through biometric match (photo and/or fingerprints) and that the document is valid by comparison against DOS's issuance records in a shared database.

As specified in 8 CFR 212.1(c)(1)(i), a visa and passport are not required of a Mexican national who is in possession

of a BCC containing a machine-readable biometric identifier and who is applying for admission as a temporary visitor for business or pleasure from contiguous territory.<sup>2</sup> The majority of Mexican nationals who are exempt from the Form I-94 requirement possess and apply for admission to the United States with a BCC. The use of BCCs strengthens the integrity and security of the admissions process while allowing qualified persons who frequently cross the U.S.-Mexico border to be processed more efficiently at ports of entry. CBP seeks comment on this assumption.

#### *Extension of the Border Zone in New Mexico*

Although the border zone was intended to promote the economic stability of the border region by allowing for freer flow of travel for Mexican visitors with secure documents, New Mexico has no metropolitan areas and few tourist attractions within 25 miles of the border and thus benefits very little from the current 25-mile border zone. In order to facilitate commerce, trade, and tourism in southern New Mexico, while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States, CBP is proposing to extend the distance Mexican nationals admitted to the United States as nonimmigrant visitors may travel in New Mexico without obtaining a Form I-94 from 25 miles to 55 miles from the U.S.-Mexico border. Several cities, state parks, and a major university are located within the proposed expanded 55-mile border zone. This would facilitate travel and expand commercial activity within the State of New Mexico.

While the extension of the border zone to 55 miles from the U.S.-Mexico border would include most of Interstate Highway I-10, there is a short stretch of I-10 that is outside the 55-mile zone. Thus, to facilitate travel, CBP is also proposing to include a provision to include all of Interstate Highway I-10 in the state of New Mexico in addition to the extension to 55 miles from the border. A map of the proposed expanded border zone can be found in the docket for this rulemaking on [regulations.gov](http://regulations.gov).

This proposal will facilitate legitimate travel for Mexican visitors that arrive in the United States at a land border. At land borders, the I-94 application process occurs at the port of entry at secondary inspection and includes an interview with a CBP officer,

fingerprinting, electronic vetting, paperwork, and the payment of a \$6 fee. CBP estimates that this process takes 8 minutes to complete. Under the current 25-mile limit, Mexican business persons, tourists, or shoppers who wish to visit any metropolitan area in New Mexico must report for secondary inspection, spend the additional time required to obtain a Form I-94, and pay the \$6 fee. If the limit is extended to 55 miles, Mexican nationals meeting the requirements for legal entry into the United States would be able to travel to metropolitan areas in New Mexico, such as the city of Las Cruces or the smaller town of Deming, and other destinations, without having to leave their vehicle, wait in line to undergo the additional I-94 application process at secondary inspection, and pay the fee.

Under the proposed rule, fewer people will need to obtain I-94s at ports of entry. As a result, in addition to promoting the economy in this area and facilitating legitimate travel, the proposed extension would increase CBP's administrative efficiency by reducing unnecessary paperwork burdens associated with the I-94 process and allowing CBP to focus resources on security enhancing activities to the greatest extent possible. CBP would benefit from the flexibility to allocate its resources as efficiently as possible, especially during times of increasing budgetary constraints. Reassigning officers from the administrative Form I-94 processing to core processing will allow more resources to be dedicated to enforcement operations. Thus, this rule would allow CBP to better allocate its resources while enhancing its enforcement posture. Travelers remain subject to questioning regarding intent and purpose of travel during inspection upon arrival at the port of entry.

This rule is also expected to improve efficiency at ports of entry and inland immigration checkpoints by minimizing the time it takes to review documents for legitimate travelers. Use of travel documents containing RFID technology, such as the BCC, contribute to reducing individual inspection processing time. Law enforcement queries regarding passenger name for persons with RFID travel documents, such as the BCC, are 20 percent faster than for persons with documents containing only a machine-readable zone, and 60 percent faster than manual entry of information from a paper document. Greater use of RFID travel documents such as the BCC would allow CBP to focus its efforts on higher risk individuals while providing efficiencies in the flow of legitimate trade and travel in the area.

In addition to the above economic and administrative benefits, CBP anticipates that this extension would enhance security in this region. This stems from the fact that the BCC is CBP's preferred method of identification for Mexican nationals entering the United States at land border ports of entry and this extension would encourage more visitors to New Mexico to use the BCC. Greater use of the BCC, compared with use of a passport and visa, enables CBP to identify more quickly whether travelers present a risk and allows CBP to more effectively focus its efforts on higher risk travelers, both at ports of entry and inland immigration checkpoints. As indicated above, the use of RFID technology in the BCC enables CBP to more quickly authenticate the documents, and thus helps CBP more quickly assess whether the traveler presents a risk. CBP seeks comment on this conclusion.

The extension of the border zone would not change the threshold requirements for admission into the United States, including permanent residence abroad, intent and duration of the visit, and eligibility. This extension would also not affect the 30-day time limit of the border zone applicable to BCC holders or the 72-hour time limit of the border zone applicable to Mexican nationals presenting a visa and passport.

#### **Additional, Non-Substantive Amendments**

In addition to the substantive amendments described above, CBP also proposes two technical corrections to § 235.1 of title 8 CFR. First, in paragraph (h)(1)(iii), we propose to correct the paragraph citation from (f)(1)(v) to (h)(1)(v), as this citation was inadvertently not changed when paragraph (f) was redesignated as paragraph (h) by the WHTI air final rule (71 FR 68412).

Second, we propose to update several references to § 212.1 of title 8 CFR to reflect changes contained in the WHTI land and sea final rule (73 FR 18384). That rule included a provision allowing Mexican nationals who are members of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma to present a Form I-872 American Indian Card in lieu of either a passport and visa or BCC at land and sea ports of entry when arriving from contiguous territory or adjacent islands. This new provision was placed in paragraph (c)(1)(ii) of § 212.1, the paragraph that formerly provided for visits to Mexican consular offices (see footnote 1 above). In the WHTI land and sea final rule, the cross-references to the old paragraph (c)(1)(ii)

<sup>2</sup> If the BCC traveler is applying for admission from other than contiguous territory, he or she must present a valid passport. See 8 CFR 212.1(c)(2)(i).

found in § 235.1(h)(1) were inadvertently left unchanged. The effect is that, under current regulations, Mexican national Kickapoo Tribe members presenting a Form I-872 American Indian Card are only permitted to enter the border zone for up to 72 hours. CBP considers the Form I-872 carried by Kickapoo Tribe members to be comparable to the BCC, and intended that Kickapoo Tribe members presenting the card would be admitted to the border zone for up to 30 days. To make these corrections, CBP proposes to change the cross-reference from § 212.1(c)(1)(i) to § 212.1(c)(1) in paragraphs (h)(1)(iii)(A) and (h)(1)(v)(A), and to remove the reference to § 212.1(c)(1)(ii) from paragraphs (h)(1)(iii)(B) and (h)(1)(v)(B). Likewise, proposed paragraph (h)(1)(v)(C) would include a cross-reference to § 212.1(c)(1).

### Statutory and Regulatory Requirements

*Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is a “significant regulatory action,” although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

Mexican citizens entering the United States in New Mexico at land border ports of entry may present a BCC or a passport and a visa to gain admissibility to the United States. Visitors intending to travel beyond the border zone, or longer than 30 days (72 hours for certain individuals) must also obtain an I-94 form and use it in conjunction with their BCC or passport and visa. If the traveler enters using a passport and visa, they may travel up to 25 miles from the border and may remain in the United States for up to 72 hours. If they enter using a BCC, they may travel up to 25 miles from the border and may stay for up to 30 days. If they obtain a Form I-94, they may travel anywhere in the

United States and may stay for up to six months.

In practice, travelers either enter with a BCC and stay within the border zone or obtain an I-94, for use with a passport and visa or with a BCC, to go beyond the border zone. In 2011, about 900,000 Mexican citizens entered the United States in New Mexico. About sixty percent, or 540,000, of these travelers used a BCC. The remainder entered using an I-94 with their passport and visa. There were approximately 136,000 I-94s issued to Mexican citizens at New Mexico land border ports in 2011. Multiple trips are allowed during the I-94's validity period.

This rule proposes to expand the geographic limit for BCC holders. Under current regulations, BCC holders may travel anywhere within 25 miles of the border. This proposed rule would allow BCC holders to travel anywhere within 55 miles from the border or as far north as highway I-10, whichever is farther north. No new infrastructure is required to support this proposed change as CBP already has several ports of entry and inland immigration checkpoints in place throughout the state of New Mexico. In addition, local law enforcement officials have indicated that they do not anticipate any enforcement risks with expanding the geographic limit. Further, since this rule proposes to expand the area BCC holders may visit without an I-94, travelers who would have had to pay \$6 and obtain an I-94 to travel to these cities would be able to travel without paying that fee and obtaining an I-94. Therefore, CBP does not anticipate any significant costs associated with this proposed rule. CBP seeks comment on whether or not there would be any additional costs associated with this proposed rule.

This expanded border zone would allow Mexican BCC holders to travel to many New Mexico destinations that they currently need an I-94 to access, including several cities, state parks, and a major university. To the extent that BCC holders are obtaining I-94s for the purpose of visiting destinations within the expanded border zone, they would need to apply for fewer I-94s under this proposed rule. As mentioned previously, at land borders the I-94 application process is done at the port of entry at secondary inspection and includes an interview with a CBP Officer, fingerprinting, electronic vetting, paperwork, and the payment of a \$6 fee. CBP estimates that this process takes 8 minutes to complete. CBP maintains two ports of entry along the Mexican border in New Mexico—

Columbus and Santa Teresa. Between 2010 and 2011, the port of Columbus issued an average of approximately 27,000 I-94 forms per year, and the port of Santa Teresa issued an average of approximately 114,000 I-94 forms per year. CBP does not know how many of the travelers currently required to obtain these forms would benefit from the expanded geographic limit, but it believes that the percentage who would benefit will be less than 25 percent. CBP seeks comment on this assumption. CBP believes the percentage will be significantly lower for those crossing at Santa Teresa. CBP seeks comment on this assumption. Still, eliminating the need for these travelers to leave the vehicle to undergo the additional I-94 application process at secondary and pay the \$6 fee could be a significant savings for Mexican travelers who are affected and could benefit the travel and tourism industry in the U.S.-Mexico border zone. CBP seeks comment on the possible savings for Mexican travelers as well as the possible benefits of expanding the U.S.-Mexico border zone. CBP would not be adversely affected by this loss in I-94 fee revenue because this fee revenue is used exclusively to pay for the processing of the I-94. Therefore, the reduction in revenue would be offset by a reduction in workload.

Because this rule would make it unnecessary for some travelers to obtain an I-94, CBP would be able to inspect travelers more efficiently and focus its efforts on higher risk individuals. CBP expects this increase in efficiency to more than offset any new workload caused by a small increase in travelers to the United States that may result from this proposed change. The BCC is one of the most secure admissibility documents used at the border and allows for faster processing at both the port of entry and interior immigration checkpoints. BCC holders undergo extensive vetting by CBP and DOS. CBP can read the card very quickly to verify the validity of the card, the identity of the card holder, and other pertinent information about the card holder. A faster inspection would allow CBP to spend more time inspecting higher risk individuals and could therefore improve security. CBP seeks comment on this conclusion.

Perhaps the greatest benefit of this proposed rule is the potential for increased economic activity in New Mexico's border region. According to the U.S. Census Bureau's American Community Survey, the estimated poverty rate for the United States in

2006–2010 was 13.8 percent.<sup>3</sup> For the counties that would be most affected by this change, Doña Ana, Hidalgo, and Luna, the American Community Survey estimates poverty rates of 24.5 percent, 22.6 percent, and 32.8 percent, respectively. Much of the cross-border traffic is for the purpose of commerce. Mexican citizens travel to New Mexico for work, shopping, and recreation, among other things. Las Cruces, New Mexico's main population center in the proposed expanded border zone, and other smaller cities are at a disadvantage in attracting this traffic because they are outside of the current border zone. By comparison, the main population centers along the Arizona and Texas borders are within the current border zone (75 miles in Arizona and 25 miles in Texas). Thus, the current border zone creates significant disincentive for visitors from Mexico to engage in commerce in New Mexico. In addition, BCC holders can currently travel much of the highway I–10 corridor in Arizona, but are prevented from continuing into New Mexico unless they have an I–94. This rule would expand the border zone enough to allow BCC holders to travel on highway I–10 from Tucson, Arizona to Las Cruces, New Mexico and El Paso, Texas, which would benefit commerce in the entire region. CBP seeks comment on this assumption. This rule is expected to increase access to U.S. markets for Mexican travelers and is expected to result in increased travel through the New Mexico border region, which would lead to increased sales, employment, and local tax revenue. DHS requests public comment on the extent that this rule would increase economic activity in New Mexico's border region and how this rule, if finalized, would impact economic activity in the current BCC approved regions in Arizona and Texas.

In summary, by expanding the border zone for BCC holders, this rule would not impose any new costs on the public or on the United States government. Further, this rule is expected to reduce costs to visitors to the United States, improve security, and benefit commerce in a relatively impoverished region. CBP seeks comment on these conclusions.

#### *The Regulatory Flexibility Act*

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small

Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule directly regulates individuals and individuals are not considered small entities. In addition, this rule is purely beneficial to these individuals as it expands the area BCC holders may travel without needing to obtain an I–94. As explained above, DHS is not aware of any direct costs imposed on the public by expanding the geographic limit for BCC holders but is aware of a cost savings for the traveling public by expanding the geographic limit. CBP seeks comment on this conclusion.

#### *Paperwork Reduction Act*

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. CBP anticipates that the new provisions in this Rule will result in a slight decrease in the number of I–94's (Arrival/Departure Record) filed annually. CBP Form I–94 was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651–0111.

The decrease in the burden estimate for CBP Form I–94 resulting from this Rule is:

*Estimated Decrease in Number of Respondents:* 12,450.

*Estimated Time per Respondent:* 8 minutes.

*Estimated Decrease in Total Annual Burden Hours:* 1,656.

Comments concerning the accuracy of this cost estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW. (Mint Annex), Washington, DC 20229.

#### **List of Subjects in 8 CFR Part 235**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

#### **Amendments to the Regulations**

For the reasons set forth in the preamble, CBP proposes to amend 8 CFR part 235 as set forth below.

#### **PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

1. The general authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 and note, 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, and 1731–32; Title VII of Pub. L. 110–229.

\* \* \* \* \*

2. In § 235.1, revise paragraphs (h)(1)(iii), and (h)(1)(v)(A) and (B), and add paragraphs (h)(1)(v)(C) and (D) to read as follows:

#### **§ 235.1 Scope of examination.**

\* \* \* \* \*

(h) *Form I–94, Arrival-Departure Record.* \* \* \*

(1) \* \* \*

(iii) Except as provided in paragraph (h)(1)(v) of this section, any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1) of this chapter and is admitted for a period not to exceed 30 days to visit within 25 miles of the border; or

(B) In possession of a valid visa and passport and is admitted for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) \* \* \*

(v) \* \* \*

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1) of this chapter and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 30 days; or

(B) In possession of a valid visa and passport and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 72 hours; or

(C) Exempt from visa and passport pursuant to § 212.1(c)(1) of this chapter and is admitted for a period not to exceed 30 days to visit within the State of New Mexico within 55 miles of the border or the area south of and including Interstate Highway I–10, whichever is further north; or

(D) In possession of a valid visa and passport and is admitted for a period not to exceed 72 hours to visit within the State of New Mexico within 55 miles of the border or the area south of

<sup>3</sup> U.S. Census Bureau, American Community Survey 5 year estimate (2006 to 2010), table S1701. This data can be queried via the American Fact Finder database located at <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

and including Interstate Highway I-10, whichever is further north.

\* \* \* \* \*

**Janet Napolitano,**

*Secretary.*

[FR Doc. 2012-19458 Filed 8-8-12; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22523; Directorate Identifier 2005-NM-058-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. That NPRM proposed to require drilling a drain hole in the flanged tubes for certain elevator control cable aft pressure seals; doing repetitive inspections for dirt, loose particles, or blockage of the flanged tube and drain hole for the pressure seals, and corrective action if necessary; replacing the aft air-intake duct assembly with a new or modified assembly and installing a dripshield; and installing gutters on the horizontal stabilizer center section and modifying the side brace fittings. That NPRM was prompted by reports of stiff operation of the elevator pitch control system and jammed elevator controls. This action revises that NPRM by proposing to require replacement of pressure seal assemblies, rather than the proposed drilling of drain holes; revising a certain compliance time and inspection type; adding certain optional actions; and revising the applicability. We are proposing this supplemental NPRM to prevent moisture from collecting and freezing on the elevator control system components, which could limit the ability of the flightcrew to make elevator control inputs and result in reduced controllability of the airplane. Since these actions impose an additional burden over that proposed in the previous NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

**DATES:** We must receive comments on this supplemental NPRM by September 24, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, 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 W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.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.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility 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 Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6490; fax: (425) 917-6590; email: [Kelly.McGuckin@faa.gov](mailto:Kelly.McGuckin@faa.gov).

#### 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-2005-22523; Directorate Identifier 2005-NM-058-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 because of 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

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain The Boeing Company Model 767-200, -300, -300F, and -400ER series airplanes. That NPRM published in the **Federal Register** on September 27, 2005 (70 FR 56386). That NPRM proposed to require drilling a drain hole in the flanged tubes for the E1A and E1B elevator control cable aft pressure seals; doing repetitive inspections for dirt, loose particles, or blockage of the flanged tube and drain hole for the E1A and E1B elevator control cable aft pressure seals and corrective action if necessary; replacing the aft air-intake duct assembly with a new or modified aft air-intake duct assembly and installing a dripshield; and installing gutters on the horizontal stabilizer center section and modifying the side brace fittings.

#### Actions Since Previous NPRM (70 FR 56386, September 27, 2005) Was Issued

Since we issued the previous NPRM (70 FR 56386, September 27, 2005), we have received reports of elevator control restrictions from operators who had implemented the actions specified in the previous NPRM.

Since we issued the previous NPRM (70 FR 56386, September 27, 2005), we have also received revised and new service information.

We have reviewed Boeing Service Bulletin 767-27-0204, Revision 2, dated August 16, 2011 (for Model 767-200, -300, and -300F series airplanes); and Boeing Service Bulletin 767-27-0205, Revision 2, dated August 30, 2011 (for Model 767-400ER series airplanes). We referred to Boeing Service Bulletin 767-27-0204, dated January 27, 2005; and Boeing Service Bulletin 767-27-0205, dated January 27, 2005; as the appropriate sources of service information for accomplishing the