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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB66

Attestation Process for Employers Using F-1 Students in Off-Campus Work

AGENCY: Employment and Training Administration, Department of Labor, in concurrence with the Wage and Hour Division, Department of Labor.

ACTION: Final rule; rescission of regulations.

SUMMARY: This final rule rescinds the regulations which provided rules governing employers seeking to hire F-1 foreign students as part-time workers off-campus. These subparts became obsolete after the authorizing statute and its two-year extension expired in 1996. Accordingly, the Department of Labor (the Department) is taking this action to remove regulations that no longer have force and effect.

DATES: Effective [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Room C-4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202-693-3010 (this is not a toll-free

number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-2768.

SUPPLEMENTARY INFORMATION:

Section 221 of the Immigration Act of 1990 (IMMACT) (Pub L. 101-649; 104 Stat. 4978) as amended by section 303(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102-232; 105 Stat. 1733), supplemented sections 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C 1101(a)(15)(F)) by creating a pilot program, of limited duration. The pilot program permitted nonimmigrant foreign students to be admitted as F-1 nonimmigrant students to work off-campus if: (1) the alien had completed one academic year as an F-1 nonimmigrant and was maintaining good academic standing at the educational institution; (2) the alien would not be employed off-campus for more than 20 hours per week during the academic term; and (3) the employer provided an attestation to the Department of Labor and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and would pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment. IMMACT, Sec 221(a). IMMACT established the program as a 3-year pilot to end September 30, 1994. The Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416; 108 Stat. 4319) revived and extended the program through September 30, 1996. The program expired on September 30, 1996, and was never extended.

The Department implemented the F-1 visa pilot program through regulations at 20 CFR 655 Subparts J and K. See 56 FR 56860 (Nov. 6, 1991), as amended by 59 FR

64776 (Dec. 15, 1994), 60 FR 61210 (Nov. 29, 1995). Because of the expiration of the statutory program, these regulations are currently without force and effect and should be rescinded.

The Department has determined that it is unnecessary to publish the rescission of these regulations as a proposed rule, as generally required by the Administrative Procedure Act (“APA”), 5 U.S.C. 553(b). The statutory provisions governing the pilot program have expired, and this rule simply rescinds the implementing regulations, which no longer have force and effect. Therefore, good cause exists for dispensing with the notice and comment requirements of the APA. 5 U.S.C. 553(b)(B). For the same reasons, good cause exists to make this rule effective immediately upon publication of this rule. 5 U.S.C. 553(d)(3).

Administrative Information

A. Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has also determined that this rule is not “economically significant” as defined in section 3(f)(1) of Executive Order 12866. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required.

B. Regulatory Flexibility Act

This rescission is not a “rule” as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2), nor is it a “final rule” following a notice of proposed rulemaking as defined in the RFA, 5 U.S.C. 604(a). Therefore, the RFA does not apply and the Department is not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act of 1995

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more, or in increased expenditures by the private sector of \$100 million or more.

D. 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 Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign based companies in domestic and export markets.

E. Executive Order 13132

The Department has reviewed this rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Department has determined that

this rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

F. Executive Order 13175

This rule was reviewed under the terms of E.O. 13175 regarding Indian Tribal Governments and was determined not to have Tribal implications. The rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. As a result, no Tribal summary impact statement has been prepared.

G. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681) requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this rule and determines that it will not have a negative effect on families.

H. Executive Order 12630

This rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

I. Executive Order 12988

This regulation has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has

been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

J. Plain Language

The Department drafted this rule in plain language.

K. Executive Order 13211

This rule is not subject to E.O. 13211 regarding Energy Supply. It will not have a significant adverse effect on the supply, distribution, or use of energy.

L. Paperwork Reduction Act

This rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Accordingly, for the reasons stated herein, the Department hereby amends 20 CFR part 655 as follows:

PART 655 - TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

1. The authority citation for part 655 and the authority citation for subparts J and K continue to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; sec. 412(e), Pub. L. 105-277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 109-423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subpart J - [Removed and Reserved]

2. Remove and reserve subpart J, consisting of §§ 655.900 through 655.950.

Subpart K - [Removed and Reserved]

3. Remove and reserve subpart K, consisting of §§ 655.1000 through 655.1060.

Signed in Washington, DC, this 17th day of October, 2013.

Eric M. Seleznow

Acting Assistant Secretary

Employment and Training Administration

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