DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB67

Removal of Attestation Process for Facilities Using H-1A Registered Nurses

AGENCIES: 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 found which provided rules governing health care facilities using nonimmigrant foreign workers as registered nurses under the H-1A visa program. These subparts became obsolete after the authorizing statute and all extensions expired. 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. This notice is available through the printed Federal Register, and electronically at http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR.

SUPPLEMENTARY INFORMATION:

In 1989, Congress created an H-1A nonimmigrant classification exclusively for the temporary admission and employment of registered nurses, which permitted employers during a five-year pilot program to hire foreign nurses after filing a detailed attestation showing the steps they were taking to lower their reliance on foreign nurses. Immigration Nursing Relief Act of 1989 (INRA), Pub. L. 101-238, 103 Stat. 2099 (December 18, 1989), amending Sections 101(a)(15)(H)(i) and 212 of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). [1]

The H-1A nonimmigrant classification originally expired on September 1, 1995. However, on October 11, 1996, Congress enacted Public Law 104-302, 110 Stat. 3656, which extended the authorized period of stay within the United States for certain nurses in certain geographic locations in the United States experiencing a shortage of registered nurses. That legislation provided for extending the stay until September 30, 1997, of certain foreign workers who: (1) entered the United States as H-1A nurses; (2) were within the United States on or after September 1, 1995, and who were within the United

[1] The provisions which INRA added to the INA were further amended by section 162(f) of the Immigration Act of 1990 (IMMACT), Public Law 101-649, 104 Stat. 4978 (November 29, 1990), and by section 302(e) (9) and (10) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102-232, 105 Stat. 1733 (December 12, 1991).

States on October 11, 1996; and (3) whose period of authorized stay had expired or would expire before September 30, 1997 but for the enactment of the legislation. Public Law 104-302 did not provide for the approval of new H-1A petitions and related solely to extensions of stay for foreign workers who were in, or had previously been given, nonimmigrant H-1A status as registered nurses. In addition, the legislation did not affect those in H-1A status whose period of authorized stay expired after September 30, 1997, and those H-1A nurses were allowed to remain in the United States until the validity of their petition expired, which could have been as late as August 31, 2000. Congress did not further extend the stays of any H-1A nurses, and following the expiration of all H-1A periods of stay, no foreign nurses on H-1A visas were employed after August 31, 2000. Furthermore, Congress has never renewed the original H-1A program, and ultimately repealed it in 1999 in Sec. 2 (c) of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-095, 113 Stat. 1312, 1316.

The Department implemented the H-1A program through regulations at 20 CFR 655 Subparts D and E. See 55 FR 50500 (Dec. 6, 1990), as amended by 59 FR 874 (Jan. 6, 1994). Because of the expiration of the authorizing legislation, these regulations are without force and effect, and must 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). Notice to the public and provision of a public comment period for this rule is unnecessary because the enabling statute has expired, and, consequently, the regulations are now without force or effect. 5 U.S.C. 553(b)(B).

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 and 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. 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 D and E 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 D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.;* and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subpart D - [Removed and Reserved]

2. Remove and reserve subpart D, consisting of §§ 655.300 through 655.350.

Subpart E - [Removed and Reserved]

3. Remove and reserve subpart E, consisting of §§ 655.400 through 655.460.

Signed at Washington, D.C., this 18th day of October, 2013.

Eric M. Seleznow

Acting Assistant Secretary,

Employment and Training Administration

BILLING CODE 4510-FP-P

[FR Doc. 2013-27683 Filed 11/19/2013 at 8:45 am; Publication Date: 11/20/2013]