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## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **20 CFR Part 655**

#### **RIN 1205-AB65**

### **Labor Certification Process for Logging Employment and Non-H-2A Agricultural Employment**

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Final rule; rescission of regulations.

**SUMMARY:** This final rule rescinds the regulations for employers in the logging industry utilizing foreign workers. The regulations became obsolete after a rulemaking in 2010 reassigned them elsewhere in the Code of Federal Regulations. The Department of Labor (“Department”) is issuing this final rule to remove the obsolete regulations.

**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:** Subpart C, Labor Certification for Logging Employment and Non-H-2A Agriculture Employment, was made obsolete by the inclusion of “logging employment” within the definition of “agricultural labor or services” in the Department of Labor’s final rule, Temporary Agricultural Employment of H-2A Aliens in the United States, 75 FR 6884 (Feb. 12, 2010). The effect of including “logging employment” within the definition of “agricultural labor or services,” 20 CFR 655.103(c)(4), was to include within the program requirements for temporary employment of foreign workers in agriculture (H-2A) employers seeking to temporarily employ foreign workers in logging occupations. The Department proposed the inclusion of logging employment in the H-2A program in its notice of proposed rulemaking (NPRM). 74 FR 45906 (Sept. 4, 2009). After considering comments from the public on the subject, the inclusion of logging in the H-2A was finalized in the 2010 rule. Therefore, employers seeking to temporarily employ foreign workers in logging operations are now governed by the regulations in Subpart B applicable to H-2A agricultural work, and Subpart C no longer has 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 regarding the inclusion of logging employment in the H-2A program were provided in the 2009 NPRM, and this rule simply rescinds Subpart C, which is no longer operable.

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 reason, 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 - 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 - Federalism

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 - Indian Tribal Governments

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 - Government Actions and Interference with Constitutionally Protected Property Rights

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 - Civil Justice

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 - Energy Supply

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 A and C 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 A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

**Subpart C - [Removed and Reserved]**

2. Remove and reserve subpart C, consisting of §§ 655.200 through 655.215.

Signed in Washington, DC, this 17<sup>th</sup> day of October, 2013.

**Eric M. Seleznow,**

Acting Assistant Secretary

Employment and Training Administration

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