

ACTION: Joint interim final rule.

SUMMARY: The Department of Labor (DOL) amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F-1) students in off-campus work. DOL continues to review comments submitted by the public on the interim final rule and expects to publish a final rule shortly. However, existing attestations expire at the close of July 1995. For that reason, this rule extends the period of applicability of attestations for two months, through September 30, 1995.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart J, and 29 CFR part 508, subpart J, contact Ms. Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-5263 (this is not a toll-free number).

On 20 CFR part 655, subpart K, and 29 CFR part 508, subpart K, contact the Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Immigration Act of 1990 (IMMACT) sec. 221 and Immigration and Nationality Act secs. 101(a)(15)(F) and 214 create a pilot program, of limited duration, allowing a nonimmigrant foreign student admitted on F-1 visas to work off-campus if: (1) He/she has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the institution; (2) he/she will not be employed off-campus for more than 20 hours per week during the academic term (but may be employed full-time during vacation periods and between terms); and (3) the employer provides an attestation to the Department of Labor (DOL) and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and will pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment. The employer submits such attestations to DOL and the educational institution for foreign students to receive work authorization, if otherwise qualified. The attestation process is administered by the Employment and Training Administration. Complaints and investigations regarding violations of

employer attestations are handled by the Wage and Hour Division, Employment Standards Administration. If DOL determines an employer made a materially false attestation or failed to pay wages in accordance with an attestation, the employer, after notice and opportunity for a hearing, may be disqualified from employing F-1 students under the program.

An interim final rule, requesting comments was published November 6, 1991. 56 FR 56860. The interim final rule provided that the employer's attestation may remain in effect, unless withdrawn or invalidated, through no later than September 30, 1994, the original statutory termination date for the pilot. Public Law 103-416 extended the program. Currently, existing attestations are valid through July 31, 1995. 60 FR 34131 (June 30, 1995). Analysis of the comments is ongoing. The rule published today extends attestations through September 30, 1995. A final rule is expected to be published shortly. Should that not occur, the interim final rule will be extended again.

Absent today's amendment, all previously valid attestations would expire at the close of July 31, 1995, and no new attestations could be filed. Without the amendment, F-1 students would not have work authorization under this program. New attestations filed after the effective date of today's rule also are valid through September 30, 1995, unless withdrawn or invalidated. Today's rule alleviates hardships for covered students and employers, and the limited extension gives DOL additional opportunity to complete analysis of comments on the interim final rule. For these reasons, DOL for good cause finds a proposed rule is impracticable and contrary to the public interest (5 U.S.C. 553(b)(B)); and finds good cause to make the rule effective immediately (5 U.S.C. 553(d)(3)). The rule is not significant under E.O. 12866. The rule was not preceded by a proposed rule and, thus, is not covered by the Regulatory Flexibility Act. When the interim final rule was published, however, DOL notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule did not have a significant economic impact on a substantial number of small entities. The program is not in the *Catalog of Federal Domestic Assistance*.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Text of Joint Interim Final Rule

The text of the joint interim final rule appears below:

1. Section _____.900(b)(2)(i) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

2. Section _____.900(d) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

3. Section _____.900 is amended by revising paragraph (e), to read as follows:

§ _____.900 Purpose, procedure and applicability of subparts J and K of this part.

* * * * *

(e) *Revalidation of employer attestations in effect on July 31, 1995.* Any employer's attestation which was valid on July 31, 1995, is revalidated effective on July 31, 1995, and shall remain valid through September 30, 1995, unless withdrawn or invalidated.

4. Section _____.910(b)(2)(i) is amended by removing the phrase "through July 31, 1995" and adding in lieu thereof the phrase "through September 30, 1995."

5. Section _____.910(e) is amended by removing from the first sentence the phrase "expires on September 30, 1996," and adding in lieu thereof the phrase "expires on September 30, 1996"; by removing from the first sentence the phrase "after July 31, 1995" and adding in lieu thereof the phrase "after September 30, 1995"; and by removing from the penultimate sentence the phrase "prior to July 31, 1995" and adding in lieu thereof the phrase "prior to September 30, 1995".

6. Section _____.940(d)(1)(i)(B) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".