

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002-19-06 **Eurocopter France:**  
Amendment 39-12886. Docket No. 2002-SW-11-AD.

**Applicability:** Model EC 155B helicopters, with SMD45H multi-functional displays, part numbers C19209VF11, C19209VG11, C19267EF10, C19267EG10, C19267VF11, or C19267VG11, having serial numbers from 201 through 284 inclusive, which are *not* followed by the letter "M", installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required within 30 days, unless accomplished previously.

To prevent an electrical discontinuity in the grounding plane inside the SMD45H multi-functional display, which can result in overheating of the interconnection board, smoke in the cockpit, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the "AC" interconnection board of the affected SMD45H multi-functional display with a "BC" interconnection board.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on October 9, 2002.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2001-617-004(A), dated December 26, 2001.

Issued in Fort Worth, Texas, on September 13, 2002.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

[FR Doc. 02-24181 Filed 9-23-02; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

#### General Rules and Regulations, Securities Exchange Act of 1934

##### CFR Correction

In Title 17 of the Code of Federal Regulations, part 240 to end, revised as of April 1, 2002, § 240.15d-5, paragraph (c), is corrected by removing the words "and Form 10-SB".

[FR Doc. 02-55520 Filed 9-23-02; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Part 655

##### RIN 1205-AB30

#### Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority To Adjudicate Petitions; Withdrawal of Final Rule

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

**ACTION:** Withdrawal of final rule.

**SUMMARY:** The Department of Labor (Department or DOL) is withdrawing its Final Rule published in the **Federal Register** at 65 FR 43538 (July 13, 2000) pertaining to the delegation of authority from the Immigration and Naturalization Service (INS) to the Department of Labor (Department or DOL) to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States.

**DATES:** The final rule amending 20 CFR part 655, published at 65 FR 43538 (July

13, 2000) and deferred at 65 FR 67628 (November 13, 2000) and 66 FR 49275 (September 27, 2001), is withdrawn as of September 24, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Charlene G. Giles, Team Leader, Sections H-2A and H-2B, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue NW, Washington, DC 20210. Telephone (202) 693-2950 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In 2000, the INS published a Final Rule transferring to the Secretary of Labor the authority to adjudicate petitions for temporary agricultural workers and the authority to decide appeals on these decisions and to make determinations for revocation of petition approvals. 65 FR 43528 (July 13, 2000). It had an effective date of November 13, 2000. The Department of Labor published a Final Rule implementing and accepting that delegation. 65 FR 43538 (July 13, 2000). It also had an effective date of November 13, 2000.

Subsequently, the INS deferred through October 1, 2001, the effective date of the delegation. 65 FR 67616 (November 13, 2000). DOL also deferred through October 1, 2001, its acceptance of the delegation. 65 FR 67628 (November 13, 2000). The Department invited comments on the deferral of the effective date, but no comments were received in response to the invitation.

When the delegation originally was made, the Department had published a companion Notice of Proposed Rulemaking (NPRM) setting forth implementation measures necessary for the successful implementation of the delegation of authority to adjudicate petitions. 65 FR 43545 (July 13, 2000). Among the implementation measures was a new form, Form ETA 9079, Application for Alien Employment Certification and H-2A Petition, which consolidated two current forms, Form ETA 750 (Application for Alien Employment Certification) and INS I-129 (Petition for Nonimmigrant Workers). The NPRM also set forth the implementation of a new fee schedule to collect a combined fee for processing the petition and labor certification application. It was contemplated that under the administrative procedures arrived at by INS and the Department's Employment and Training Administration (ETA) to implement the delegation of the petition authority from INS to DOL, that DOL would collect the petition fee on behalf of INS and would have been reimbursed by INS for the

costs involved in processing the H-2A petition. An INS companion NPRM provided, among other things, that all petition requests and extensions of stay and change of status petitions must be filed with DOL and the current INS petition fee would be collected by DOL as part of a combined fee. 65 FR 43535 (July 13, 2000).

Later in 2000, DOL reopened and extended the comment period on its NPRM. 65 FR 50170 (August 17, 2000). The INS also reopened and extended the comment period on its NPRM. 65 FR 50166 (August 17, 2000).

Commenters raised a number of issues about the proposed rules. However, the documents received by the Department during the extended comment period did not provide sufficient information to permit the Department to draft a Final Rule concerning a number of issues, such as the design of the new form and the fee structure. For that reason, the Department again deferred the effective date of the final rule until September 27, 2002 (66 FR 49275, September 27, 2001). The Department also held two informal public briefings on November 8, 2001, and November 16, 2001, to give agricultural employers and workers, their representatives, and other interested parties an opportunity to communicate their views directly to the Department regarding the proposal to delegate authority from INS to the Department to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. 66 FR 49329 (September 27, 2001). The attendees at the briefings overwhelmingly disapproved of the proposed transfer of authority between the two agencies. They stated that the proposed transfer of authority to adjudicate the agricultural petitions of the nonimmigrant workers would complicate the certification process, rather than streamline it. The agricultural employers and workers, and their representatives at the briefings, expressed the view that, even if the transfer of authority were made, DOL does not have adequate resources to handle the increased workload.

Agricultural employers and workers and their representatives strongly opposed DOL's proposal to replace the existing two forms which are used in the certification and petition process (Form ETA 750 and Form ETA I-129), with one consolidated form, Form ETA 9079. Both groups cited increased difficulties with the new form, such as requiring the employer to obtain the foreign agricultural worker's signature

as well as the requirement to accurately describe the terms and conditions of employment of complex agricultural occupations. Other criticisms made by both groups was DOL's assumption that all farmers would have access to computers which would be necessary to have to complete the new form.

Agricultural employers also indicated that the proposed fee structure would be unfavorable to small farmers, and they wished that no changes be made to the fee structure system.

The Department of Labor reviewed the concerns of the agricultural employers and workers, and determined that the concerns expressed by both groups have merit. The Department has concluded that it is in the best interests of agricultural employers and workers to withdraw the Final Rule from the CFR.

The July 13, 2000, Final Rule can be withdrawn without further notice and comment rulemaking, since the delegation of authority to adjudicate petitions from the Attorney General to the Secretary of Labor constitutes a rule of agency procedure within the subsection 5 U.S.C. 553(b)(A) exception to the APA's notice and comment procedures. While procedural rules which have substantial impact should be published for notice and comment all the Final Rule essentially would have done is transfer a function from the one agency to another, permitting employers to omit one step in the process of importing foreign agricultural workers; and this rule nullifies that transfer, maintaining the status quo.

Accordingly, for all of the foregoing reasons the Department withdraws the Final Rule published at 65 FR 45358 (July 13, 2000).

#### **Executive Order 12866**

The Department has determined that this Rule should be treated as a "significant regulatory action," within the meaning of Executive Order 12866, because of the inter-agency coordination with INS. However, this rule is not an "economically significant regulatory action" because it would not have an economic effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

#### **Unfunded Mandates Reform Act of 1995**

This Final Rule will not result in the expenditure by State, local and tribal

governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this Rule (5 U.S.C. 533(b)), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* pertaining to regulatory flexibility analysis, do not apply to this Final Rule. *See* 5 U.S.C. 603(a).

However, at the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Advocacy did not submit a comment.

#### **Executive Order 13132**

This Final Rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

#### **Paperwork Reduction Act**

The withdrawal of the Final Rule does not have any implications under the Paperwork Reduction Act of 1995.

#### **Catalogue of Federal Domestic Assistant Number**

This program is listed in the *Catalogue of Federal Domestic Assistance* as Number 17.202 "Certification of Foreign Workers for Temporary Agricultural Employment."

Signed at Washington, DC, this 18th day of September, 2002.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 02-24189 Filed 9-23-02; 8:45 am]

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