

(1) Prior to, or concurrently with, the accomplishment of the tasks required by paragraph (b)(2) of this AD, reinforce the wing structure at the inboard pylon rear pickup area of both wings (including performing high-frequency eddy current rototests, corrective actions if necessary, and installing a larger reinforcing plate and packer plate) in accordance with Airbus Service Bulletin A340-57-4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999.

(2) Concurrently with, or subsequent to, the accomplishment of the tasks required by paragraph (b)(1) of this AD, replace five existing fillets with five new fillets and one

existing firewall with one new firewall on each of the left and right wing inboard pylons, in accordance with Airbus Service Bulletin A340-54-4003, Revision 01, dated April 26, 2000.

(c) If any discrepancy is found during any inspection or rototest required by paragraphs (a)(2) or (b)(1) of this AD, prior to further flight, accomplish applicable repairs in accordance with Airbus Service Bulletin A330-57-3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999 (for Model A330 series airplanes); or Airbus Service Bulletin A340-57-4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999 (for Model A340

series airplanes). If the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

**Note 2:** Accomplishment of the modifications required by paragraphs (a)(1) and (a)(2) or paragraphs (b)(1) and (b)(2) of this AD, prior to the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD, as follows, is considered acceptable for compliance with the applicable actions this AD:

TABLE 1.—PRIOR SERVICE BULLETINS CONSIDERED ACCEPTABLE FOR COMPLIANCE

Model	Service bulletin	Revision level	Date
A330 .....	A330-54-3005	Original .....	March 25, 1996.
A330 .....	A330-57-3021	Original .....	March 25, 1996.
	A330-57-3021	01 .....	September 1, 1998.
	A330-57-3021	02 .....	April 9, 1999.
A340 .....	A340-57-4025	Original .....	March 25, 1996.
	A340-57-4025	01 .....	September 1, 1998.
A340 .....	A340-54-4003	Original .....	March 25, 1996.

**Alternative Methods of Compliance**

(d) 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, International Branch, ANM-116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and send it to the manager, International Branch ANM-116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the international Branch, ANM-116.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Except as provided by paragraph (c) of this AD, the actions must be done in accordance with Airbus Service Bulletin A330-57-3021, Revision 03, including Appendices 01 and 02, dated November 5, 1999; Airbus Service Bulletin A340-57-4025, Revision 02, including Appendices 01 and 02, dated November 5, 1999; Airbus Service Bulletin A330-54-3005, Revision 01, dated October 19, 1999; and Airbus Service Bulletin A340-54-4003, Revision 01, dated April 26, 2000; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of May 14, 2001 (66 FR 21074, April 27, 2001). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 2000-178-121(B) and 2000-179-147(B), both dated May 3, 2000.

**Effective Date**

(g) This amendment becomes effective on August 20, 2001.

Issued in Renton, Washington, on July 25, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-19259 Filed 8-2-01; 8:45 am]

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 656**

**RIN 1205-AB25**

**Labor Certification Process for the Permanent Employment of Aliens in the United States; Refiling of Applications**

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

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the

Department of Labor (Department or DOL) is amending its regulations relating to the permanent employment of aliens in the United States. This final rule permits employers to request, in certain circumstances, that any labor certification application for permanent employment in the United States that is filed on or before August 3, 2001, be processed as a reduction in recruitment request. ETA anticipates that the amendment will reduce the backlog of labor certification applications for permanent employment in State Employment Security Agencies (SESA's). ETA believes this measure to reduce backlogs will result in a variety of desirable benefits, such as a reduction in processing time for both new applications and those applications currently in the queue, and will facilitate the development and implementation of a new, more efficient, system for processing labor certification applications for permanent employment in the United States.

**EFFECTIVE DATE:** The amendments contained in this final rule will take effect on September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Contact Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4318, Washington, DC 20210. Telephone: (202) 693-3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Backlogs of applications for permanent alien employment certification have been a growing problem in ETA regional and SESA offices. These increasing backlogs have resulted in an increase in the time it takes to obtain a determination on an application for permanent employment in the United States.

Recent measures to reduce backlogs in ETA's regional offices have met with considerable success. Consequently, ETA is now turning its attention to reducing the number of backlogged cases in SESA's. Instituting measures to reduce backlogs in SESA's without first reducing backlogs in regional offices would not have resulted in a reduction in mean processing time, because it would have merely resulted in transfers of backlogged applications from the SESA's to ETA's regional offices.

On July 26, 2000, the Department published a Proposed Rule in the **Federal Register** soliciting comment on the proposed amendment to the permanent labor certification regulations.

## II. Statutory Standard and Implementing Regulations

Before the Immigration and Naturalization Service (INS) may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. [8 U.S.C. 1182(a)(5)(A)].

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required

findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA or Act.) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of its attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers.

## III. Department of Labor Regulations

The Department of Labor has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the fact-finding process designed to develop information sufficient to support the granting of a permanent labor certification. These regulations describe the nationwide system of public employment service offices available to assist employers in finding available U.S. workers and how the fact-finding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR parts 651 through 658, and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 also sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure that there is an adequate test of the availability of U.S. workers to perform the work, and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

## IV. Reduction in Recruitment Requests

On October 1, 1996, because of the increasing workloads, ETA issued General Administrative Letter No. 1-97, *Measures for Increasing Efficiency in the Permanent Labor Certification Process* (GAL 1-97). The GAL instituted a

number of measures to increase efficiency which were achievable under current regulations. One of the measures to increase efficiency was to encourage employers to file requests for a reduction in recruitment (RIR) under § 656.21(i) of the permanent labor certification regulations. Requests for RIR processing are given expedited processing at ETA's regional offices. The RIR provision allows certifying officers to reduce partially or completely the employer's recruitment efforts through the SESA's, for example, by decreasing or eliminating the number of days which the job order and/or ad must be run. The notice requirement at § 656.20(g) can be reduced partially, but it cannot be eliminated, since it is based on a statutory requirement. See Immigration Act of 1990, Pub. L. 101-649, sec. 122 (b) (Nov. 29 1990).

The RIR provision may be utilized by certifying officers when the labor market has been adequately tested within 6 months prior to the filing of the application and there is no expectation that full or partial compliance with the prescribed recruitment measures will produce qualified and willing applicants.

The emphasis on the use of RIR has worked well and has contributed significantly to ETA being able to manage its increasing case load with limited staff resources. Backlogs in both the regional offices and SESA's would undoubtedly be substantially larger if the use of RIR had not been encouraged by GAL 1-97.

ETA has concluded that backlogs in SESA's could be substantially reduced if employers are allowed to have applications that were not originally filed as RIR cases and which meet the appropriate criteria removed from the SESA's processing queues and processed as RIR cases. Furthermore, reducing or eliminating the backlogs would facilitate the implementation of a new permanent employment certification system that ETA has been developing.

This regulatory change does not change any of the substantive requirements for getting an RIR application certified nor does it materially diminish any of the protections afforded U.S. workers. It merely permits employers to request that applications filed under the basic labor certification process be converted to RIR processing without losing their original filing date. As explained in the Proposed Rule, the filing date is important to employers because, according to INS regulations, "[t]he priority date of any petition for classification under section 203(b) of the

Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the request for certification was accepted for processing by any office within the employment service system.” See 8 CFR 204.5(d). Currently, employers with cases in the queue which could qualify for RIR processing are reluctant to make such requests since, under current regulations, that would result in a loss of their original filing date which, in turn, would result in a loss of the alien’s visa priority date. This is a serious disincentive for many employers where the alien beneficiary comes from a country where the visa numbers are backlogged. Therefore, the Department is taking this action to permit qualified applications to be converted to RIR processing with no loss of filing date.

#### V. Analysis of Comments on the July 26, 2000 Proposed Rule

To obtain public input to assist in the development of final regulations, the Department published a proposed rule in the **Federal Register** on July 26, 2000, and invited public comment. In the development of this final rule the Department has carefully considered the comments received in response to the proposed rule.

The proposed rule elicited 12 comments, including one from the American Immigration Lawyers Association (AILA), one from the American Council on International Personnel, Inc. (ACIP), one from the Federation for American Immigration Reform (FAIR), one from a SESA, and eight from members of the general public. AILA and ACIP generally supported the Department’s proposal and submitted comments that are primarily procedural in nature. FAIR opposes implementation of the proposal unless such implementation were to be coupled with what FAIR describes as adequate worker protections. The SESA supports the Department’s efforts to reduce case backlogs in SESA processing queues but does not believe that the proposal will have any significant effect towards that end. Of the eight members of the general public submitting comments, two took a neutral position on the proposal but recommended further clarification concerning precisely when an application becomes ineligible for conversion, and the other six were generally supportive of the proposal but requested that it be broadened to allow an even larger number of applications to qualify. These comments are discussed in further detail below.

#### A. Timing of RIR Conversion Requests

Eight commenters addressed issues concerning the timing of an employer’s request for an RIR conversion and when an application becomes ineligible for such a conversion. Of these eight commenters, some simply requested clarification of the Department’s position while several others recommended specific outcomes. The proposed rule stated that:

[The] amendment to the RIR regulation at 20 CFR 656.21(i) would allow an employer to file a request to have an application filed on or before July 26, 2000, which has not been sent to the regional office, processed as a RIR request under § 656.21(i), provided that recruitment has not been conducted pursuant to §§ 656.21(f) and/or (g).

ACIP recommended that the rule should be modified to permit conversion at any time prior to the time that results of recruitment must be submitted to the SESA and provided specific regulatory text as part of its comments that it asserts would achieve that result. Several commenters questioned whether the RIR conversion procedures will be available to employers that initially filed RIR applications that were subsequently remanded back to the State agency for lack of adequate advertising in order to engage in the recruitment efforts required under the basic labor certification process. Others questioned whether applications that have been forwarded to the Regional office prior to recruitment to resolve issues such as a challenge to the SESA prevailing wage determination are eligible for RIR conversion. Two members of the general public requested clarification as to whether the proposed amendment’s language limiting RIR conversion eligibility to those applications for which “recruitment has not yet been conducted pursuant to paragraphs (f) and/or (g) of [§ 656.21]” refers to both the paragraph in section (f) concerning SESA requests for employers to make corrections to applications prior to the commencement of recruitment activities, and the paragraph in section (g) concerning print advertisements. One member of the general public suggested that applications should be eligible for RIR conversion provided that they are submitted with adequate evidence of advertising prior to any “significant correspondence” having been sent by the SESA to the employer. Another requested that, at the very least, the regulation should say that RIR conversion is only permitted where recruitment has not yet been requested by the SESA, so that a failure to place a timely advertisement would not be

rewarded for some cases with permission to process the case as an RIR and considered grounds for inactivating other cases because the employer didn’t ask for an RIR conversion. Lastly, two other members of the general public stated their belief that RIR conversions should be permitted even if recruitment under the basic process has been completed.

The Department has carefully considered the various options suggested by commenters and has determined that the best result would be to adopt a bright-line test for a cutoff date for RIR eligibility. The Department believes that the use of such a standard will clear up the confusion that has been expressed by commenters. Towards that end, this Final Rule provides that an employer may request an RIR conversion up until the point that the SESA has placed the job order pursuant to § 656.21(f)(1). The date of the job order’s placement shall be determinative in evaluating whether an RIR conversion request may be granted by the certifying officer.

As noted in the Proposed Rule, since the RIR procedures were designed to expedite processing by permitting employers to substitute recruiting conducted prior to filing the application for the recruiting required by § 656.21, it would be incongruous to entertain an RIR request from an employer who had already commenced the mandated recruiting. The Department simply cannot ignore any potential availability of U.S. applicants and believes such applications should be approved or denied based upon those recruitment efforts.

In response to commenters who questioned whether RIR is still permitted where corrections are needed, the Department believes that applications may still be converted to RIR processing if changes are needed and the SESA so notifies the employer. Consistent with GAL 1–97, the SESA should resolve any items that need to be corrected prior to transmitting the application to the certifying officer. GAL 1–97 further provides that where there are deficiencies that would have affected the recruitment, the SESA should advise the employer that it is unlikely that the certifying officer will approve the RIR and suggest that the employer continue to pursue its application under the basic labor certification process. However, the SESA should not use the fact that corrections are necessary as a means to thwart an employer’s legitimate efforts to convert an application to the RIR process.

Questions were also raised with respect to applications that have been forwarded to the regional office prior to recruitment and whether they may also be eligible for RIR conversion. As far as the Department can determine there is a relatively small number of cases that are now in regional office queues for which no recruiting has yet to occur. If the certifying officer remands such applications back to State agencies for further processing, the final rule permits RIR conversion requests provided that the application was initially filed prior to August 3, 2001. The Department, however, rejects AILA's suggestion that the regulation be revised to allow RIR to be requested in these cases by filing conversion requests directly with the regional certifying officer. Section 656.21(i)(1) provides that the employer shall file its written request for RIR processing at the appropriate Job Service office. The Proposed Rule did not contemplate changing the basic structure of the RIR processing procedures which require that the employer request for RIR processing be submitted to the SESA having jurisdiction over the area of intended employment. We believe that orderly processing dictates that all such requests be filed with the SESA, whether the request is submitted with the application initially, or when submitted to the SESA under the RIR conversion procedures set forth in this final rule. Lastly, the Department does not believe that there are a large enough number of pre-recruitment cases in regional office queues for the amendment to have much of a beneficial effect on State agency backlogs. There appears to be such a small number of applications that could conceivably benefit from the suggested amendment that the Department does not believe such changes to the regulations governing RIR processing are warranted.

A member of the general public asserted that once the RIR conversion procedures have been implemented there will be employers requesting State agencies to hold up advertising on an application until the employer has had adequate time to conduct the recruitment activities and/or to gather evidence that will support a future RIR conversion request. We are mindful of this possibility. We are also concerned about the administrative complexities of keeping track of such cases. On the other hand, it is our objective to use RIR processing to the maximum extent possible. Therefore, the Department intends to explore this issue with the regional certifying officers and SESA's

responsible for administering the labor certification program.

#### *B. RIR Conversion Procedures*

Eight commenters stressed a need for very clear guidelines that will specify the procedures to be followed with respect to RIR conversion requests by employers, SESA's, and regional offices. AILA suggested two potential procedures; one for situations in which amendments to the application are necessary, and one for applications for which no amendments are required. ACIP suggested similar procedures that differ only to the extent that they presuppose the need for a new part A of Form ETA 750. FAIR offered its view that employers who convert applications to RIR status should not be allowed to make any changes in the job duties or requirements and suggested that to do so would present yet another opportunity to "game the system." Four members of the general public requested that the Department process converted RIR applications expeditiously since the priority dates of such cases are much older than RIR applications currently being processed.

The Department agrees with the majority of commenters that ETA must offer clear guidelines to SESA's and regional offices on how RIR conversion requests are to be processed. The Department does not, however, accept ACIP's blanket assumption that a new part A of Form ETA 750 will be required in all situations where applications are converted to RIR processing as a result of this regulatory change. We also reject FAIR's suggestion that no amendments to such applications be permitted. Many of these applications, especially those in high-volume SESA's, have been in the queue for extended periods of time. Therefore, it is to be expected that there may be a need to make changes to the job opportunity and/or increase the rate of pay offered due to an increased prevailing wage rate applicable to the occupation and area or, in many cases, an increase in the employer's own pay scale. With respect to changes in the content of labor certification applications, the Department did not intend in offering the proposed amendment to change the long standing procedures for handling such requests. If the duties and requirements of the job offer are changed to such an extent that it becomes a new job opportunity, the application would need to be refiled with the State agency as a new application. However, minor changes such as an increased wage offer or slightly different job duties are permitted as long as it remains essentially the same job opportunity.

While the Department agrees with the general thrust of AILA's suggestions regarding the procedures to be followed, we do not believe it is prudent to put such explicit guidance in the regulations. Rather, this preamble will serve to clarify the Department's intent. When a written request for conversion is received by the SESA, the request letter and supporting documentation will be added to the case file and the application will be removed from the regular labor certification application queue and placed in the RIR queue. If operating experience indicates that further guidance is needed ETA will issue to the SESA's and regional offices a policy directive outlining in further detail the procedures to be followed in adjudicating such requests.

In dealing with applications that do not require amendments, ETA envisions that the procedures will operate consistent with the preamble to the proposed rule which stated:

The proposed regulation also provides that for the request to have a previously filed application processed as an RIR request it must be accompanied by documentary evidence of good faith recruitment conducted within the 6 months immediately preceding the date of the request.

With respect to applications for which amendments are required, such as an increase in the rate of pay offered or a change of address, ETA has concluded that amendments can be handled in the same fashion as they are currently handled by employers making the amendments directly on the form and initialing the changes. To the extent employers currently make their amendments by letter or by submitting a new application form, those procedures will continue to be followed.

In response to comments suggesting that converted RIR applications be processed expeditiously since the priority dates are older than RIR applications currently being processed, GAL 1-97 provides that RIR applications are to be given expedited processing unless they contain deficiencies. However, converted RIR applications will not be processed any differently than applications that were initially filed under the RIR provisions of the regulations. Such applications will continue to be processed by regional offices along with other RIR requests in the order in which they are received.

Finally, ACIP recommended that the final rule include a requirement that the agency notify the petitioner within a reasonable period of time after filing for conversion on whether the labor certification application has, in fact, been converted to RIR processing. The

Department does not believe it is appropriate that any special rules be implemented regarding notification with respect to RIR conversion determinations. Furthermore, generally all requests for conversion to RIR processing will be granted. Only where the occupation listed in the application is on *Schedule B*, or the request is not timely, would the employer request for conversion to RIR processing be denied. The Department agrees that notification of action on a particular application should be provided in the normal course of business but we reject the suggestion to place a time limit in the regulation. Processing cases under the RIR procedures is virtually always accomplished in considerably less time than processing cases under the non-RIR basic process.

### C. Initial Filing Date Eligibility

AILA suggested that the cutoff date for RIR conversion eligibility should be revised to occur on the date a final or interim final rule is published. In the Proposed Rule, the Department stated that the proposed regulation would allow employers to request that a permanent labor certification application be processed as an RIR request only if the initial application was filed on or before July 26, 2000, the date of publication. As stated in the proposed rule, ETA's operating experience indicates that without such a limitation, employers may be motivated to file large numbers of cases, many of which may be inadequately prepared, simply to obtain a filing date and then convert such cases to RIR processing. This outcome would undermine the primary purposes of the proposed regulatory revision to reduce backlogs of existing cases in State agency processing queues and to facilitate the orderly transition to a new streamlined labor certification system.

In its comments, AILA said that, while it understood the Department's desire to avoid an onslaught of filings in anticipation of the regulation, it felt that the problem could as readily be avoided by using the publication date of the final or interim final regulation. AILA further asserted that the later date would provide no lead time to file applications under old procedures to take advantage of new procedures, but would enable the Department to consider as many cases as possible in this new, efficiency-improving, procedure.

The Department agrees with AILA's comments. While we continue to believe that the regulation must contain some time limitation with respect to which applications are eligible for conversion to RIR processing, we agree

that adopting the date of publication of this final rule as the cutoff date, as opposed to the date the proposed rule was published, will better serve the interests of the regulated community by expanding the pool of eligible applications without materially diminishing significant protections afforded U.S. workers. Moreover, as noted by AILA, adopting as the cutoff the date of publication of this final rule will just as readily prevent the filing of large numbers of inadequately prepared applications. Accordingly, this final rule provides that the option to request that a permanent labor certification application be converted to RIR processing applies only to applications that were initially filed on or before August 3, 2001.

### D. Justification for Regulatory Change

One commenter, FAIR, strongly asserted that the Department did not have the authority to rely on "efficiency in processing" as a permissible basis to impose what it calls "sweeping changes to the permanent alien labor certification program implicit in the proposed regulation." FAIR states that the changes conflict with the plain meaning of 8 U.S.C. 1182(a)(5)(A), the statutory provisions that form the basis for the permanent labor certification program. Further, FAIR avers that past cutbacks in federal funding for administration of the alien labor certification program are not a rational basis for the proposed regulation and that pending labor certification applications are already at acceptable levels and continue to decline. FAIR also contended that reports of an increased incidence of suspect applications support a limitation of RIR and RIR conversion to routine, fully-compliant, applications, and that applications filed under the provisions of § 245(i)<sup>1</sup> of the INA are inherently suspect and should not benefit from relaxed scrutiny under RIR processing. FAIR generally opposes the conversion of alien labor certification applications to RIR status unless adequate worker protections are included. Toward that

<sup>1</sup> Section 245(i) of the Immigration and Nationality Act allowed individuals who entered the United States legally, and otherwise qualified for permanent resident status, to complete processing for their green cards in the United States, whether or not they violated their status or overstayed a temporary visa, by paying a fee of \$1,000. After months of debate over whether to extend or terminate Section 245(i), Congress compromised on a provision that allowed individuals to apply for permanent residence within the United States under the section so long as an application for an alien labor certification was filed on the individual's behalf by January 14, 1998. This provision was recently reenacted to extend through April 30, 2001.

end, FAIR suggests that, should the Department decide that the RIR conversion proposal must go forward despite its opposition, it should include seven specific U.S. worker protections that it recommended in its comments on the proposed amendment.

The Department views the majority of FAIR's comments and suggestions as general objections to the operation of the RIR provisions contained in the regulations governing the permanent labor certification program. Neither the proposed rule nor this final rule are or were designed to alter the general procedures applicable to the adjudication of RIR applications. At this time, the Department is not entertaining comments that apply to RIR processing generally as such comments are not within the scope of this rulemaking.

The Department also does not believe the proposed amendment in any way conflicts with the statutory provisions governing the permanent labor certification program. The RIR provisions have been in the Department's regulations in one form or another since 1977, and in their present form since 1981. The proposed amendment is simply a housekeeping rule to permit otherwise eligible applications to be processed as RIR applications even though they do not meet the current procedural requirement that the recruitment must have been conducted prior to filing the application. Every application for which RIR conversion will occur as a result of this rule could always have been withdrawn by the employer and re-filed as an RIR application. This rule merely permits such employers to convert their cases to RIR processing without the need to withdraw the existing application filed under the basic process. In so doing, the proposed amendment would permit an employer to convert to RIR processing while at the same time allowing them to retain their original filing date. After converting an application to RIR processing as a result of this final rule, the employer will still have to meet all of the long-standing regulatory criteria applicable to RIR requests and ETA policy directives issued thereunder, such as GAL 1-97.

With respect to FAIR's comments that pending alien labor certification applications are already at acceptable levels and continue to decline, the Department simply cannot agree. The number of labor certification applications in State agency processing queues still remains unacceptably high and the time it takes to process them remains unacceptably long. Any backlog of applications, regardless of the level, stands to hinder the smooth transition

to the new, more streamlined, permanent labor certification program. Further, as we work to transition to the new system, SESA's simply must clear up their existing backlog of applications in their entirety for, under the new system, SESA's will no longer be funded for processing such applications.

FAIR also contends that applications initially filed under Section 245(i) of the INA are inherently suspect and should not benefit from relaxed scrutiny under the RIR provisions of the regulations. The Department believes that no specific application, nor any specific occupation, is inherently deserving of favorable treatment on requests to grant an RIR. Similarly, no application or occupation is inherently ineligible, with the exception of those occupations listed on *Schedule B*, which are specifically precluded from consideration under RIR processing procedures by § 656.21(i) of the regulations governing the permanent labor certification program. Moreover, there simply is no readily identifiable means to determine those applications that have been filed on behalf of beneficiaries who will seek at some future date to exercise their grandfathered benefits under section 245(i) of the INA. Just because an application may have been filed on or before January 14, 1998, the original cutoff date for eligibility under section 245(i), is by no means determinative in evaluating whether a particular alien beneficiary actually intends to exercise their rights under that section. Further, GAL 1-97 makes clear that to be eligible for RIR processing, the application cannot contain deficiencies such as unduly restrictive job requirements.

One additional comment concerning the general justification for the regulatory change was submitted by the SESA, in which they observed that reducing the backlog is not simply a matter of allowing RIR processing. They are of the belief that many of the applications in the queue require additional handling to resolve issues prior to beginning recruitment or being forwarded to the regional office for certification. The Department is aware that this regulatory change is not a panacea and that some level of backlogged applications will continue to exist. The Department agrees that a number of applications in State agency processing queues contain deficiencies and are thus inappropriate for an RIR conversion.

#### *E. Other Issues*

Some commenters addressed other issues that arise under the permanent labor certification program in general

without any direct bearing on the proposed amendment, and as such, fall outside the scope of this rulemaking. ACIP firmly stated that the final promulgation of this regulation should in no way disrupt or delay processing of traditionally filed labor certification applications that are not converted to RIR processing. The SESA recommended that to reduce ongoing and future backlogs and speed up the application process, the Department should propose an amendment to the list of *Schedule A* occupations to include others for which there exists a short supply of U.S. workers. Specifically, they suggested that electrical and electronic engineers, software engineers, computer programmers, systems analysts, and foreign specialty cooks, be added to the *Schedule A* list of occupations.

In response to ACIP's concerns regarding the impact of the proposed amendment on processing times for labor certification applications filed under the basic process, administrative decisions as to how resources are allocated are outside the scope of this rulemaking. However, ETA anticipates that State agencies and regional offices will continue to process both RIR and non-RIR cases simultaneously. Backlogs have been declining for both classes of cases. The SESA's suggestion to put additional occupations on the *Schedule A* list is also outside the scope of this rulemaking. As noted above, the proposed amendment is simply a housekeeping rule to permit otherwise eligible applications to be processed as RIR applications even though they do not meet the current procedural requirement that the recruitment must have been conducted prior to filing the application.

#### **Executive Order 12866**

The Department has determined that this Final Rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866, in that it will 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.

While it is not economically significant, the Office of Management and Budget reviewed the final rule because of the novel legal and policy issues raised by this rulemaking.

#### **Regulatory Flexibility Act**

This final rule only affects those employers seeking immigrant workers

for permanent employment in the United States. The Department of Labor has 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 rule will not have a significant economic impact on a substantial number of small entities.

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

This 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 1 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.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Executive Order 13132**

This final rule will not have a 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.

#### **Assessment of Federal Regulations and Policies on Families**

This final rule does not affect family well-being.

#### **Paperwork Reduction Act**

The rule does not modify the existing collection of information requirements in 20 CFR 656.21.

#### **Catalogue of Federal Domestic Assistance Number**

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number

17.203, "Certification for Immigrant Workers."

### List of Subjects in 20 CFR 656

Administrative practice and procedure, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Unemployment, Wages and working conditions.

### Final Rule

Accordingly, part 656 of chapter V of title 20 of the Code of Federal Regulations is amended as follows:

### PART 656—[AMENDED]

1. The authority citations for Part 656 is revised to read as follows:

**Authority:** 8 U.S.C. 1182(a)(5)(A) and 1182(p); 29 U.S.C. 49 *et seq.*; sec.122, Pub. L. 101-649, 109 Stat. 4978.

#### § 656.21 [Amended]

2. Section 656.21 is amended by adding a new paragraph (i)(6), to read as follows:

#### § 656.21 Basic labor certification process.

(i) \* \* \*

(6) Notwithstanding the provisions of paragraph (i)(1)(i) of this section, an employer may file a request with the SESA to have any application filed on or before August 3, 2001, processed as a reduction in recruitment request under this paragraph (i), provided that recruitment efforts have not been commenced pursuant to paragraph 656.21(f)(1) of this section.

Signed at Washington, DC, this 30th day of July, 2001.

**Raymond J. Uhalde,**

*Deputy Assistant Secretary.*

[FR Doc. 01-19465 Filed 8-2-01; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8960]

RIN 1545-BA01

#### Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These temporary regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes.

**EFFECTIVE DATES:** These temporary regulations are effective August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Megan R. Fitzsimmons of the Office of Associate Chief Counsel (Corporate), (202) 622-7790 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 2, 2001, the IRS and Treasury published in the **Federal Register** (REG-107566-00, 66 FR 66; (2001-3 I.R.B. 346)) a notice of proposed rulemaking (the Proposed Regulations) under section 355(e) of the Internal Revenue Code of 1986. Section 355(e) provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or 361(c)(2) if the stock is distributed as "part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation."

The Proposed Regulations provide guidance concerning the interpretation of the phrase "plan (or series of related transactions)." The Proposed Regulations generally provide that whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. They also set forth six safe harbors, the satisfaction of which would confirm that a distribution and an acquisition are not part of a plan.

A public hearing regarding the Proposed Regulations was held on May 15, 2001. In addition, written comments were received. A number of commentators have indicated that the lack of guidance under section 355(e) is hindering the ability to undertake acquisitions and divestitures. These commentators have requested that the IRS and Treasury provide immediate guidance pending the finalization of those regulations. In response to these requests, the IRS and Treasury are promulgating the Proposed Regulations as temporary regulations in this Treasury Decision. The temporary regulations are identical to the Proposed

Regulations, except that the temporary regulations reserve section 1.355-7(e)(6) (suspending the running of any time period prescribed in the Proposed Regulations during which there is a substantial diminution of risk of loss under the principles of section 355(d)(6)(B)) and Example 7 of the Proposed Regulations (interpreting the term "similar acquisition" in the context of a situation involving multiple acquisitions).

The IRS and Treasury continue to study all of the comments received regarding the Proposed Regulations. The IRS and Treasury will continue to devote significant resources to analyzing the comments and, in the near future, expect to issue additional guidance regarding the interpretation of the phrase "plan (or series of related transactions)."

#### Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations, and, because the temporary regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these temporary regulations is Brendan P. O'Hara, Office of the Associate Chief Counsel (Corporate). However, other personnel from the Department of the Treasury and the IRS participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows: