more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs—housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1820 and 1832 of title 38 United States Code, and the enabling legislation.

Approved: March 10, 1989.

Edward J. Derwinski,

Administrator.

38 CFR Part 36, Loan Guaranty, is proposed to be amended by as follows:

PART 36—[AMENDED]

1. In § 36.4301, the first sentence of the introductory text for the definition for "net value" is revised, an authority citation is added for the introductory text, and paragraph (4) and an authority citation are added to read as follows:

§ 36.4301 Definitions.

* * * * *

"Net value". The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for the Government's costs of funds from the time the property is acquired until it is sold, property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. * * *

(Authority: 38 U.S.C. 1832)

* * * * *

(4) *Government cost of funds.* The estimated interest cost of funds payable for property acquisition is determined by multiplying the average holding time (expressed in years) from property acquisition to resale for properties acquired under § 36.4320 of this part which were sold during the preceding fiscal year by an interest rate equivalent to the yield on Treasury obligations with a maturity comparable to such average holding time. This yield is calculated from the "Treasury Market Bid Yields at Constant Maturities: Bills, Notes and Bonds" as prepared by the Department of the Treasury showing the average yields on Treasury obligations for selected maturities. Source data for the calculation are the average yields during the last month of the preceding fiscal year for the next lower and next higher maturities as compared to the average holding time. The yield for the average holding time is interpolated from the yields for these maturities. Based on fiscal year 1988 data, the percentage of fair market value representing the Government's cost of funds will be 4.45 percent. The fiscal year and the percentage will be updated annually through a notice in the **Federal Register.** The first three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years, and the percentage of fair market value representing the Government's cost of funds will be added to the quotient, to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual cost incurred over the last 3 years plus the estimated interest cost to the Government of funds payable for property acquisition in the current fiscal year. Based on fiscal year 1988 data, the percentage to be used when calculating net value will be 15.08 percent, which consists of 10.63 percent representing estimated actual costs plus 4.45 percent representing estimated interest costs. The fiscal year and the percentages will be updated annually through a notice in the **Federal Register.**

(Authority: 38 U.S.C. 1832)

* * * * *

§ 36.4323 [Amended]

2. In § 36.4323, paragraph (a), remove the word "his" where it appears in the first sentence and add, in its place, the word "the".

In § 36.4323, paragraph (b), remove the word "him" where it appears.

In § 36.4323, paragraph (g), remove the word "1817(a)" where it appears and add, in its place, the word "1813".

3. In § 36.4323, paragraph (e) is revised and to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. Chapter 37 shall constitute a debt owing to the United States by such veteran. The amount of debt owing pursuant to this paragraph will exclude the amount by which inclusion of estimated interest costs to the Government for property acquisition and holding time in the determination of the net value of the property increased the claim paid by the Secretary.

(Authority: 38 U.S.C. 1832)

[FR Doc. 89-7661 Filed 3-29-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN: 2900-AD39

Loan Guaranty: Payment of Loan Guaranty Claims

AGENCY: Department of Veterans Affairs.[1]

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to implement the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. VA will continue to specify a minimum amount for credit to the veteran's indebtedness and accept conveyance of the security property only if, based on the net value of the property, it is in the Government's best interest to do so. The new law prescribes the use of different dates for use in computation of the loan indebtedness in connection with the determination of net value and payment of the claim under loan guaranty in cases involving VA requested forbearance, voluntary bankruptcy or excessive delay, caused by VA, in the liquidation sale. These amendments are designed to conform the regulations to the new law.

DATES: Comments must be received on or before May 1, 1989. Comments will be available for public inspection until May 10, 1989. It is proposed to make these regulations effective 30 days after final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 10 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233–6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

When a VA guaranteed loan goes into default and servicing efforts by the holder and VA fail, the holder proceeds with termination of the loan. The rights and duties of the holder and VA in connection with termination of the loan and disposition of the property are governed by 38 CFR 36.4320. In most cases, VA established a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the net value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the security. If the property is sold to the holder at the foreclosure sale for a price no higher than the amount specified by VA, the holder may convey the property to VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, VA acquires the loan security (the home) and normally reduces its claim liability.

The total indebtedness upon which a guaranty claim is based usually includes interest from the date of first uncured default until the date of loan termination. When the termination of a loan is delayed, the potential claim amount increases because of the interest charge which continues to accrue. If the delay extends for a sufficient time, a case in which VA would otherwise have acquired the property could become one in which VA will pay the maximum claim and allow the lender to dispose of the property. Lenders prefer having the election to convey the property to the Administrator and try to minimize the number of cases in which they must themselves dispose of the foreclosed property. These cases are sometimes referred to as "no-bid" cases, as VA does not provide a minimum bid which the lender must make at foreclosure, since VA will not be offering to accept conveyance of the property at that price.

Pub. L. 100–198 reduces the number of no-bids in cases involving either VA requested forbearance, voluntary bankruptcy or excessive delay in the liquidation sale caused by VA. In these cases, the law requires an adjustment of the dates used by VA to decide whether or not to offer the holder an election to convey the property and to compute the claim. Under the new formulas, VA will exclude from the guaranty claim payment and from the no-bid calculation interest which accrues during periods of forbearance granted at VA's request, and when the veteran files for voluntary bankruptcy. As a result, a number of cases which would otherwise result in "no-bids" will instead result in VA acquiring the property and paying a smaller claim. The cutoff adjustment in a VA-requested forbearance or bankruptcy situation will only be made if doing so will result in VA offering to acquire the property when the case would otherwise be a no-bid. In cases where VA is at fault for the delay in foreclosure, for example, a failure to provide bidding instructions in a timely manner, VA will also exclude from the no-bid calculation interest which accrues during the period of delay, but will allow such interest in the computation of the guaranty claim.

Section 36.4319(b) will be amended to revise and clarify the time frame within which the loan holder is expected to deliver a copy of the notice of sale. This section will also be amended to require the holder to submit a statement of the account indebtedness and a copy of the liquidation appraisal request at the time the notice of sale is delivered, unless these items were previously submitted. The statement of account is necessary for VA to determine whether VA will specify an amount and offer to acquire the property. The liquidation appraisal is also necessary in this regard and the appraisal request shows that it has been ordered by the holder in a timely fashion.

The second sentence of § 36.4320(f), concerning the period for which interest may be included in a claim, has been deleted as it unnecessarily duplicates the formulas set forth in § 36.4321.

Section 36.4321 has been revised to incorporate the new formulae for computing claims and net value, as previously discussed, in accordance with Pub. L. 100–198.

Editorial changes have also been made, to eliminate the use of gender specific pronouns, to assure the use of plain English, and to correct typographical errors.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations simply implement new claims formulae in accordance with Pub. L. 100–198, for defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1832 and 1820 of Title 38, United States Code, and the enabling legislation.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Veterans.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

PART 36—[AMENDED]

1. In § 36.4319, paragraph (b), the last sentence of paragraph (d), paragraph (f), and their authority citations and the authority citation for paragraph (e) are revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction within 30 days prior to the scheduled liquidation sale, or 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 1832)

* * * * *

(d) * * * Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 1832)

(e) * * *

(Authority: 38 U.S.C. 1832)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(Authority: 38 U.S.C. 1832)

2. In § 36.4320, the introductory text and authority citation for the introductory text of paragraph (f) are revised to read as follows:

§ 36.4320 Sale of security.

* * * * *

(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1832)

* * * * *

3. Section 36.4321 is revised to read as follows:

§ 36.4321 Computation of guaranty claims; Subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) *Adjustment of cutoff dates.* (1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 210(c))

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(Authority: 38 U.S.C. 210(c))

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 210(c))

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federal register

Friday
March 31, 1989

Part IV

Department of Labor

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of Regulations, 29 CFR Part 500 reflecting: (1) Changes in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) concerning the utilization of undocumented workers brought about by the Immigration Reform and Control Act of 1986 (IRCA); (2) clarification of registration procedures concerning submission of renewal applications; and (3) clarification of the definition of "on a seasonal or other temporary basis." Proposed regulations were published on May 6, 1987.

Also included in the proposed rule were provisions applicable to employers of special agricultural workers, including "replenishment workers" (admitted beginning in 1990). Those provisions have been deleted from this final rule since the rules concerning Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services are covered in 29 CFR Part 502, which was published as a final rule on September 9, 1988. This document provides the Department's response to the remaining comments received on the proposed regulations. In addition, this document provides changes designed to clarify the administrative procedure under which a party may request review by the Secretary of an Administrative Law Judge Decision and Order.

EFFECTIVE DATE: These final regulations will become effective May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Telephone (202) 523–8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On May 6, 1987, a notice of proposed rulemaking with a request for comments was published in the **Federal Register** (52 FR 16859) to implement changes to MSPA resulting from IRCA and for other reasons.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the proposed regulation.

Background

MSPA was enacted in 1983 and, like its predecessor the Farm Labor Contractor Registration Act (FLCRA), specifically prohibited the knowing employment of aliens not lawfully admitted for permanent residence or who had not been authorized by the Attorney General to accept employment. This prohibition was applicable only to farm labor contractors. Until 1986, FLCRA and MSPA were the only Federal laws with such a prohibition. Sanctions for violation included assessment of civil money penalties, injunctive action, and the revocation or refusal to issue or renew a contractor's certificate of registration.

Enactment of IRCA made the prohibition against the knowing employment of unauthorized workers applicable to all employers. The prohibition became part of the Immigration and Nationality Act (INA) and was removed from MSPA. Determinations regarding the status of aliens are the responsibility of the Immigration and Naturalization Service (INS) and are subject to regulations issued by that agency. Accordingly, MSPA regulations are amended to reflect the changes required by IRCA. It should be noted, however, that a determination by INS that a farm labor contractor has knowingly employed an unauthorized alien is still a basis for DOL action regarding that contractor's certificate of registration.

IRCA also requires the furnishing of certificates to an agent of the United States Government by all employers who, during the period October 1, 1988 to September 30, 1992, employ workers whose status was adjusted under Sections 210 (seasonal agricultural workers) and 210A (additional seasonal agricultural workers, or replenishment agricultural workers) of the INA in seasonal agricultural services. Additional reports are required during the period October 1, 1989, to September 30, 1992, to replenishment agricultural workers who are admitted under section 210A engaged in seasonal agricultural services. Special employment protection is also provided with respect to such replenishment workers. All of these requirements are set forth in full in 29 CFR Part 502, 53 FR 35154 (September 9, 1988). Therefore they are not included in this regulation.

Discussion of Comments

Three comments were received concerning seven sections of the proposed regulations. The following summarizes the comments received, states the Department's response to those comments and indicates any changes which have been made as a result of those comments on a section-by-section basis. Discussion of comments on §§ 500.171 and 500.172 concerning protections afforded with respect to replenishment workers is not included but these comments were considered in the promulgation of Part 502.

Section 500.20(y) Definitions

One commenter expressed the view that the language in paragraph (y) stating that "the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) is codified in 8 U.S.C. 1101 *et seq.* . . ." is in error and has, in fact, never been codified. INA has, however, been set out in the U.S. Code at Title 8. The language in paragraph (y) is, therefore, amended to read "set out" instead of "codified."

Section 500.51(g) Refusal To Issue or To Renew, or Suspension or Revocation of Certificate of Registration

One commenter suggested that the taking of certificate action against a farm labor contractor who is found to have violated section 274(a) (1) or (2) of INA, which prohibits the knowing employment of illegal aliens, should be reserved for "pattern and practice" violators under INA and/or for violators who have not paid fines and penalties levied by INA after issuance of final orders. This section lists the criteria under which the Secretary may initiate an action to deny a farm labor contractor certificate of registration. Since paragraph (g) reflects the actual criteria of the INA, no change was made to this section.

Section 500.212 Request for Hearing

One commenter expressed concern that the time period for requesting a hearing was being changed from ". . . no later than thirty (30) days after service of the notice . . . 'to' . . . no later than thirty (30) days after the date of issuance of the notice. . . ." The time period for requesting a hearing has not been changed. The new language provides clarification of the existing procedures as governed by the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" as stated in § 500.219 of these regulations. No change was made.

Other Provisions

No comments were received on the following proposed amendments, which are being adopted as final.

Section 500.1(i)(4) Purpose and Scope

Section 500.1(i)(4) discusses the fact that MSPA prohibits a farm labor contractor from recruiting, hiring, employing, or using, with knowledge, the services of aliens not lawfully admitted for permanent residence or who have not been authorized by the Attorney General to accept employment. It also discusses the use of optional form WH–509 to self certify that an applicant is a citizen of the U.S. Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section and form WH–509 are deleted.

Section 500.20 Definitions

Both "migrant agricultural worker" (defined in paragraph (p)) and "seasonal agricultural worker" (defined in paragraph (r)) are defined as "an individual who is employed in agricultural employment of a seasonal or other temporary nature. . . ." Following this common beginning, each definition explained the provisions unique to that category of worker. The term "on a seasonal or other temporary basis" was defined within the discussion of "seasonal agricultural worker," although it was intended to apply equally to both types of agricultural worker. In order to clarify that "on a seasonal or other temporary basis" pertains equally to both a "migrant agricultural worker" and a "seasonal agricultural worker," this definition is being redesignated as paragraph "s." All subsequent paragraphs are also redesignated to maintain the proper alphabetical sequence.

Section 500.50(b)(1) Duration of Certificate

Section 500.50(b)(1) is expanded to fully explain what constitutes the "filing" of an application for renewal of a certificate of registration.

Section 500.58 Prohibition Against Recruiting, Hiring, Employing, or Using an Alien not Lawfully Admitted for Permanent Residence or Authorized by Attorney General to Accept Employment

Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section is deleted.

Section 500.59 Good Faith Reliance on Documents

Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section is deleted.

Section 500.147 Continuation of Matters Involving Violations of Section 106 of MSPA

IRCA removed the prohibition concerning illegal aliens from MSPA and these regulations. This new section provides that any matter involving a certificate action or a civil money penalty assessment, for a violation of section 106 of MSPA or section 500.58 of these regulations, which occurred prior to June 1, 1987, shall continue through final administrative determination.

Additional Procedural Changes

The following procedural amendments contained in § 500.220 and §§ 500.263 through 500.269 are designed to clarify the administrative procedure under which a party may request review by the Secretary of an Administrative Law Judge Decision and Order, and are being adopted as a final rule without prior notice and comment. The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rulemaking merely reflects agency organization, procedure, or practice, which is thus exempt from notice and comment by virtue of section 553(b)(A) of the APA.

Section 500.220 General

A minor amendment is made to § 502.220 to conform to the rules of the Department's Administrative Law Judges at 29 CFR Part 18. Thus the regulation provides that where an exception is filed by mail, five days will be added to the prescribed time for filing.

Section 500.263 Authority of the Secretary

Section 500.263 is amended to provide that the Secretary may modify a decision whenever in the Secretary's view it warrants modification.

Section 500.264 Procedures for Initiating Review

A new § 500.264 spells out the procedures for petitioning for review by the Secretary.

Section 500.265 Implementation by the Secretary

Section 500.265 makes it clear that the Secretary may exercise review on the Secretary's own motion or acceptance of a party's petition, and provides the content of the Secretary's Notice of Intent to Modify or Vacate the Decision.

Section 500.267 Filing and Service

This section specifies filing procedures.

Section 500.268 Final Decision of the Secretary

This section has been amended to provide that the Secretary's decision shall be issued within 120 days from the Secretary's Notice of Intent, granting the petition for review.

Section 500.269 Stay Pending Decision of the Secretary

This section has been amended to provide that the Secretary will seek a stay of proceedings in district court where the Secretary has issued a Notice of Intent. In addition, the section makes it clear that filing a petition with the Secretary does not toll the time for filing an appeal in district court.

Editorial Changes

The following editorial changes have been made to improve the rule.

Authority

The authority citation for Part 500 is revised to reference the Immigration and Nationality Act, section 210A(f), Pub. L. 99–603, 100 Stat. 3359 (8 U.S.C. 1161(f)).

Table of Contents

Subparts B, E, and F, of the Table of Contents have been revised.

Section 500.20 Definitions

In paragraphs (p)(1)(ii) and (r)(2)(i)(C), the section reference is corrected to read 101(a)(15)(H)(ii)(a).

Section 500.220 Service of Determinations and Computation of Time

The heading for this section has been changed but the content is essentially the same as stated in the proposed rule. The Department has concluded that the rule will be improved by adopting the language of those sections in 29 CFR Part 18 which were previously referenced.

Executive Order 12291

These regulations are not a major rule under Exective Order 12291 because they are not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act (Pub. L. 96-354.94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule does not, in itself, impose any additional requirements upon small entities. This rule implements changes to MSPA that result from the enactment of IRCA and makes other changes for clarification purposes. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, the regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Carpooling, Day-Haul, Farmer, Farm labor contractor, Health, Housing, Housing standards, Immigration, Insurance, Investigation, Migrant agricultural workers, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Seasonal agricultural workers, Transportation, Wages, Manpower training programs, Labor, Safety.

For the reasons set out in the preamble, Chapter V of Title 29 of the Code of Federal Regulations, Part 500, is amended to read as set forth below.

Signed at Washington, DC this 23rd day of March, 1989.

Elizabeth Dole,

Secretary of Labor.

Alan C. McMillian,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

PART 500—[AMENDED]

29 CFR Part 500 is amended as follows:

1. The authority citation for Part 500 is revised to read as set forth below.

Authority: Pub. L. 97-470, 96 Stat. 2583, as amended (29 U.S.C. 1801-1872); Secretary's Order No. 5-83, 48 FR 15352; and Employment Standards Order No. 83-1, 48 FR 15352; Immigration and Nationality Act, sec. 210A(f), Pub. L. 99-603, 100 Stat. 3359 (8 U.S.C. 1161 (f)).

2. Subparts B, E, and F of the table of contents have been revised to read as follows:

Subpart B—Registration of Farm Labor Contractors and Employees of Farm Labor Contractors Engaged in Farm Labor Contracting Activities

Registration Requirements: General

Sec.

500.40 Registration in general.
500.41 Farm labor contractor is responsible for actions of his farm labor contractor employee.
500.42 Certificate of Registration to be carried and exhibited.
500.43 Effect of failure to produce certificate.

Applications and Renewal of Farm Labor Contractor and Farm Labor Contractor Employee Certificates

500.44 Form of application.
500.45 Contents of application.
500.46 Filing an application.
500.47 Place for filing application.

Action on Application

500.48 Issuance of certificate.
500.50 Duration of certificate.
500.51 Refusal to issue or to renew, or suspension or revocation of certificate.
500.52 Right to hearing.
500.53 Nontransfer of certificate.
500.54 Change of address.
500.55 Changes to or amendments of certificate authority.
500.56 Replacement of Certificate of Registration or Farm Labor Contractor Employee Certificate.

Additional Obligations of Farm Labor Contractors and Farm Labor Contractor Employees

500.60 Farm labor contractors' recruitment, contractual and general obligations.
500.61 Farm Labor contractors must comply with all worker protections and all other statutory provisions.
500.62 Obligations of a person holding a valid Farm Labor Contractor Employee Certificate of Registration.

Subpart E—Enforcement

500.140 General.
500.141 Concurrent actions.
500.142 Representation of the Secretary.
500.143 Civil money penalty assessment.
500.144 Civil money penalties—payment and collection.
500.145 Registration determinations.
500.146 Continuation of matters involving violations of FLCRA.
500.147 Continuation of matters involving violations of section 106 of MSPA.

Agreements With Federal and State Agencies

500.155 Authority.
500.156 Scope of agreements with Federal agencies.
500.157 Scope of agreements with State agencies.
500.158 Functions delegatable.
500.159 Submission of plan.
500.160 Approved State plans.
500.161 Audits.
500.162 Reports.

Central Public Registry

500.170 Establishment of registry.

Subpart F—Administrative Proceedings

General

500.200 Establishment of procedures and rules of practice.
500.201 Applicability of procedures and rules.

Procedures Relating to Hearing

500.210 Written notice of determination required.
500.211 Contents of notice.
500.212 Request for hearing.

Procedures Relating to Substituted Service

500.215 Change of address.
500.216 Substituted service.
500.217 Responsibility of Secretary for service.

Rules of Practice

500.220 General.
500.221 Commencement of proceeding.
500.222 Designation of record.
500.223 Caption of proceeding.

Referral for Hearing

500.224 Referral to Administrative Law Judge.
500.225 Notice of docketing.
500.226 Service upon attorneys for the Department of Labor—number of copies.

Procedures Before Administrative Law Judge

500.231 Appearances; representation of the Department of Labor.
500.232 Consent findings and order.

Post-Hearing Procedures

500.262 Decision and order of Administrative Law Judge.

Modification of Vacation of Order of Administrative Law Judge

500.263 Authority of the Secretary.
500.264 Procedures for initiating review.
500.265 Implementation by the Secretary.
500.266 Responsibility of the Office of Administrative Law Judges.
500.267 Filing and Service.
500.268 Final decision of the Secretary.
500.269 Stay pending decision of the Secretary.

Record

500.270 Retention of official record.
500.271 Certification of official record.

3. Section 500.0 is amended by designating the existing undesignated paragraph as (a) and by adding a new paragraph (b) which reads as follows:

§ 500.0 Introduction.

* * * * *

(b) These regulations include provisions necessitated by the Immigration Reform and Control Act's (IRCA) amendment to the Immigration and Nationality Act (INA). IRCA amended MSPA to remove section 106 thereof prohibiting the employment of illegal aliens. Matters concerning certificate actions or the assessment of civil money penalties, for a violation of section 106 of MSPA which occurred prior to June 1, 1987, continue through final administrative determination as stated in § 500.147.

7. Section 500.20 is amended by revising paragraph (p)(1)(ii) to read as follows:

§ 500.20 Definitions.

* * * * *

(p) * * *

(1) * * *

(ii) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

* * * * *

8. Section 500.20 is amended by revising paragraph (r)(2)(i)(C) to read as follows:

§ 500.20 Definitions.

* * * * *

(r) * * *

(2) * * *

(i) * * *

(C) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

* * * * *

9. In § 500.20, paragraphs (s) through (w) are designated as paragraphs (t) through (x); and paragraph (r)(2)(iii), introductory text is redesignated as paragraph (s) introductory text; paragraph (r)(2)(iii)(A) is redesignated as paragraph (s)(1); paragraph (r)(2)(iii)(B) is redesignated as paragraph (s)(2): paragraph (r)(2)(iv) is redesignated as paragraph (s)(3); paragraph (r)(2)(v) is redesignated as paragraph (s)(4).

10. Section 500.20 is further amended by adding a new paragraph (y) which reads as follows:

§ 500.20 Definitions

* * * * *

(y) The "Immigration and Nationality Act" (INA) as amended by the "Immigration Reform and Control Act of 1986" (IRCA) to effectively control unauthorized immigration to the United States and for other purposes, is set out in 8 U.S.C. 1101 *et seq.*

* * * * *

13. In section 500.50, paragraph (b)(1) is revised to read as follows:

§ 500.50 Duration of certificate.

* * * * *

(b) *Certificate renewal of farm labor contractors and farm labor contractor employees.* (1) A certificate issued under the Act and these regulations may be temporarily extended by the filing of a properly completed and signed application with the Secretary at least thirty days prior to the expiration date. "Filing" may be accomplished by hand delivery, certified mail, or regular mail.

(i) If the application for renewal is filed by regular mail or if it is delivered in person by the applicant, it must be *received* by the Department of Labor or an authorized representative of the Department of Labor at least 30 days prior to the expiration date shown on the current certificate.

(ii) If the application for renewal is filed by certified mail, it must be *mailed* at least 30 days prior to the expiration date shown on the current certificate.

Where timely application for renewal has been filed, the authority to operate pursuant to a valid certificate under the Act and these regulations shall continue until the renewal application has been finally determined by the Secretary.

* * * * *

14. Section 500.51 is amended by adding a new paragraph (g) which reads as follows:

§ 500.51 Refusal to issue or to renew, or suspension or revocation of certificate.

* * * * *

(g) Has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act (INA) by hiring, recruiting, or referring for a fee, for employment in the United States, (1) an alien knowing the alien is an unauthorized alien as defined in section 274A(h)(3) of INA with respect to such employment, or (2) an individual without complying with the requirements concerning verification of the person's identity and employment authorization as stated in section 274A(b) of INA.

§§ 500.58 and 500.59 [Removed]

15. Sections 500.58 and 500.59 and the undesignated center heading preceding them are removed.

16. Section 500.147 is added to read as follows:

§ 500.147 Continuation of matters involving violations of section 106 of MSPA.

Any matter involving the revocation, suspension, refusal to issue or to renew a certificate of registration or any matter involving the assessment of a civil money penalty, for a violation of section 106 of MSPA, which occurred prior to June 1, 1987, shall continue through final administrative determination in accordance with the provisions of MSPA and these regulations.

19. In § 500.212, paragraph (a) is revised to read as follows:

§ 500.212 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 500.210 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after the date of issuance of the notice referred to in § 500.210.

* * * * *

20. In § 500.212, paragraph (b) is redesignated as paragraph (c); and paragraph (c) is redesignated as paragraph (b).

§ 500.220 [Redesignated as § 500.219]

21. Section 500.220 is redesignated as § 500.219.

22. A new § 500.220 is added to read as follows:

§ 500.220 Service of determinations and computation of time.

(a) Service of determinations to suspend, revoke, refuse to issue, or refuse to renew a certificate of registration or to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail or in person, service is complete upon receipt by the addressee or the addressee's representative;

(b) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or Federally observed holiday, in which case the time period includes the next business day; and

(c) When a request for hearing is filed by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

23. Section 500.263 is revised as follows:

Modification or Vacation of Order of Administrative Law Judge

§ 500.263 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever he concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor,

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge,

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, or

(d) Otherwise warrants modifying or vacating.

§ 500.264, 500.265, 500.266 [Removed and Redesignated]

24. Section 500.266 is removed, and §§ 500.264 and 500.265 are redesignated as §§ 500.265 and 500.266, and a new § 500.264 is added as follows:

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under section 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

25. Section 500.265 as redesignated is revised to read as follows:

§ 500.265 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§§ 500.267 and 500.268 [Redesignated as 500.268 and 500.269].

26. Sections 500.267 and 500.268 are redesignated as §§ 500.268 and 500.269 and a new § 500.267 is added as follows:

§ 500.267 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by that office. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

27. Section 500.268 as redesignated is revised to read as follows:

§ 500.268 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the notice of intent granting the petition, and served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

28. Section 500.269 as redesignated is revised to read as follows:

§ 500.269 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 500.264, does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, as provided in section 103(b)(2) or section 503(b)(2) of the Act, unless the Secretary issues a Notice of Intent pursuant to § 500.265.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court and the Secretary issues a Notice of Intent, the Secretary will seek a stay of proceedings in the Court until such time as the Secretary issues the final decision, as provided in § 500.268.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal under sections 103(b)(2) or 503(b)(2) of the Act shall commence from the date of the issuance of the Secretary's final decision, as provided in § 500.268.

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