

**PUBLICATION UPDATE**

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# Bender's Immigration Regulations Service

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Publication 695      Release 230

October 2015

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## HIGHLIGHTS

### **DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ)**

- Release 230 includes the rules as completely revised effective June 18, 2015. See below for more information.

### **Other Regulatory Changes**

- In addition to the revised DOL Rules of Practice and Procedure mentioned above, Release 230 also includes other regulatory changes published in the Federal Register through September 15, 2015. See below for information concerning the changes.

adding paragraph (d)(3) and revising paragraph (h)(2). These amendments were made by DHS-CBP final rule published at 80 FR 32267, June 8, 2015. Apart from the changes mentioned, the final rule of June 8, 2015, otherwise adopted as final the interim rule at 73 FR 32440, June 9, 2008 (which added section 217.5), and interim rule 75 FR 47701, August 9, 2010, which made amendments to the section.

**Change to Regulations Concerning Interest Rate Paid on Cash Deposited To Secure Immigration Bonds.** DHS-ICE final rule published at 80 CFR 34239, June 16, 2015 (effective August 17, 2015) revised the regulatory scheme under 8 CFR Part 293. Section 293.1 (Computation of interest) and section 293.2 (Interest rate) are amended. Former section 293.3 (Simple interest table) is replaced with a section 293.3 entitled "Time of payment." Former section 293.4 (Payment of interest) is removed. DHS states it is making the amendments to explicitly provide that the Treasury Department will set the interest rate. Treasury will notify the public of interest

## **8 CFR Regulations (Volume 1)**

**Visa Waiver Program; Electronic System for Travel Authorization (ESTA) Program and Fee for Use of System.** Section 8 CFR 217.5, Electronic System for Travel Authorization, was amended by

rate determinations by website publication or another mechanism. Under the existing regulation, the current rate of interest paid on deposits securing cash bonds is 3 percent per annum (8 U.S.C. 1363(a); 8 CFR 293.2). The new rulemaking, states DHS, is consistent with the requirement of 8 U.S.C. 1363(a) that interest payments shall be “at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.”

**BIA Size Increased to 17 Members (from 15 Members).** The size of the BIA was increased from 15 to 17 members by DOJ-EOIR interim rule published at 80 FR 31461, June 3, 2015, which amended 8 CFR § 1003.1. Reasons for the increase cited by EOIR in the preamble to the rule include: (1) EOIR is currently managing the largest caseload ever seen by the immigration court system; and (2) increased number of IJ decisions that will be appealed from, as a result of the hiring of additional immigration judges.

**Extension of Employment Authorization for Haitian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the January 12, 2010 Earthquake in Haiti.** Another extension has been granted, from January 22, 2016, until July 22, 2017. Notation has been added to the footnote at 8 CFR 214.2(f)(9).

## **DOS Regulations (Volume 2)**

**Schedule of Fees for Consular Services (22 CFR § 22.1).** The schedule of fees at 22 CFR § 22.1 has been updated to reflect amendments to Item 2.(a), Item 2.(b), Item 2.(g), and Item 8 made by DOS interim final rule published at 80 FR 53704, Sept. 8, 2015, as corrected, 80 FR 55242, Sept. 15, 2015. In addition, an entry has been made to the section history for 22 CFR 22.1

to indicate that the interim final rule of August 28, 2014 (79 FR 51247) is now adopted as final (80 FR 51464, August 25, 2015).

**Change of program duration for current YES program students from Yemen.** See note following § 62.25 for provisions quoted from DOS Public Notice 9215, published in the Rules and Regulations section of the Federal Register at 80 FR 48687, Aug. 14, 2015 (effective same date), concerning waiver of 22 CFR 62.25(c) with respect to an educational and cultural exchange program established pursuant to an arrangement between the U.S. government and the government of the Republic of Yemen.

**Intercountry Adoptions: Regulatory Change To Prevent Accreditation and Approval Renewal Requests From Coming Due at the Same Time.** 22 CFR § 96.60 (Length of accreditation or approval period) was amended by DOS final rule published at 80 FR 50195, Aug. 19, 2015 (eff Sept. 18, 2015). The amendment permits extensions of accreditation periods for certain agencies and persons. The amendment is aimed at staggering renewal requests from agencies and persons applying for accreditation or approval and to prevent renewal requests from coming due at the same time.

## **DOL Regulations (Volume 2)**

**Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ).** These rules, comprising 29 CFR Part 18, Subpart A, were completely revised by DOL final rule published at 80 FR 28768, effective June 18, 2015, as corrected at 80 FR 37539, July 1, 2015. DOL states that the revisions make the rules more accessible and useful to parties, and harmonize administrative hearing proce-

dures with the current Federal Rules of Civil Procedure and with the types of claims now heard by OALJ. As noted by DOL, the types of claims now heard by OALJ increasingly involve whistleblower and other workplace retaliation claims, in addition to a longstanding caseload of occupational disease and injury claims.

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Publication 695, Release 230, October 2015

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Publication 695 Release 230

October 2015

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Publication 695, Release 230, October 2015

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