



## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Parts 653 and 655

#### Wage and Hour Division

#### 29 CFR Part 501

[DOL Docket No. ETA–2019–0007]

### Temporary Agricultural Employment of H–2A Nonimmigrants in the United States; Ratification of Department’s Actions

**AGENCY:** Employment and Training Administration and Wage and Hour Division, Department of Labor

**ACTION:** Ratification.

**SUMMARY:** The Department of Labor is publishing notification of the Assistant Secretary for Employment and Training’s and the Administrator of the Wage and Hour Division’s ratification of the rule published October 12, 2022, titled *Temporary Agricultural Employment of H–2A Nonimmigrants in the United States*.

**DATES:** This ratification was signed on January 7, 2025.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding 20 CFR part 653, contact Kimberly Vitelli, Administrator, Office of Workforce Investment, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–3980 (this is not a toll-free number).

For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number).

For further information regarding 29 CFR part 501, contact Daniel Navarrete, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division,

Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via Teletypewriter (TTY)/ Telecommunications Device for the Deaf (TDD) by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On July 26, 2019, the Department of Labor (“DOL” or “Department”) issued a notice of proposed rulemaking (“NPRM”) in the Federal Register (“FR”) to amend its regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. *See Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 84 FR 36168 (July 26, 2019) (“NPRM”). The NPRM was open for public comment for 60 days from July 26, 2019 until September 24, 2019. *See id.* at 36168.

On October 12, 2022, DOL published a final rule in the FR that adopted much of the regulatory text proposed in the NPRM, with some significant changes. *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 87 FR 61660 (Oct. 12, 2022) (“Final Rule”).<sup>1</sup> The Final Rule included improvements to the minimum standards and conditions of employment that employers must offer to workers, improvements to program integrity measures, such as program debarment for substantial violations of program requirements, revisions to the standards and procedures for determining prevailing wage rates, and revisions to modernize and

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<sup>1</sup> On January 11, 2021, DOL transmitted to the Office of the Federal Register (“OFR”) a draft of an unpublished draft final rule covering certain aspects of the NPRM. On January 20, 2021, prior to the draft final rule being published in the FR and prior to OFR making it available for public inspection, DOL requested that OFR withdraw the document from processing “for the purpose of reviewing issues of law, fact, and policy raised by the rule.” *See Announcement, U.S. Department of Labor Withdraws Forthcoming H-2A Temporary Agricultural Program Rule for Review*, (Jan. 20, 2021), <https://perma.cc/CTW2-VH2U>.

simplify the temporary employment certification process. The Final Rule went into effect on November 14, 2022.

Since publication of the Final Rule, a question has been raised in litigation concerning whether a separate rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in the Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), was approved by the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture. 8 U.S.C. 1188, Statutory Note.<sup>2</sup> With respect to the Final Rule, prior to its issuance in October 2022, the Final Rule was provided to the Departments of Homeland Security and Agriculture through the interagency review process prescribed by Executive Order 12866. On November 7, 2024, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, approved the Final Rule.

To resolve any possible uncertainty with respect to the Final Rule, the Department, through its Assistant Secretary for Employment and Training and its Administrator of the Wage and Hour Division, is ratifying the Final Rule. Under established case law, an agency may, through ratification, “purge[] any residual taint or prejudice left over from” a potential defect in a prior governmental action.<sup>3</sup> The Department is issuing this ratification out of an abundance of caution, and this ratification is not a statement that the Final Rule is invalid absent this ratification.

## **II. Ratification**

By virtue of the authority vested in the Secretary of Labor by law, including by the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (“INA”), and as delegated to the Assistant Secretary for Employment and Training, 75 FR 66268, and the Administrator of the Wage and Hour Division, 75 FR 55352, we are affirming and ratifying a

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<sup>2</sup> Although this provision vests approval authority in the “Attorney General,” the Secretary of Homeland Security now may exercise this authority. See 6 U.S.C. 202(3)–(4), 251, 271(b), 291, 551(d)(2), 557; 8 U.S.C. 1103(c) (2000).

<sup>3</sup> *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).

prior action by Martin J. Walsh, Secretary of Labor. On October 12, 2022, the Employment and Training Administration and the Wage and Hour Division published in the FR the Final Rule codifying amendments to the Department's regulations regarding the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. 87 FR 61660 (Oct. 12, 2022).

The Final Rule was signed by Secretary Walsh. We have full and complete knowledge of the Final Rule action taken by former Secretary Walsh. Subsequent to the Secretary of Homeland Security's documented approval of the Final Rule dated November 7, 2024, in consultation with the Secretary of Labor and Secretary of Agriculture, and out of an abundance of caution and to avoid any doubt as to its validity, we have independently evaluated the Final Rule and the basis for adopting it. We have determined that the amendments to the regulations in the Final Rule are consistent with the Secretary of Labor's statutory responsibility to certify that there are insufficient able, willing, and qualified U.S. workers available to perform the needed work and that the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. We have also determined that the changes adopted in the Final Rule strike an appropriate balance between the statute's competing goals of providing employers with an adequate supply of legal agricultural labor and protecting the wages of workers in the United States similarly employed by strengthening protections for workers, modernizing and simplifying the H-2A application and temporary labor certification process, and easing regulatory burdens on employers. We also agree with the Department's certification that the Final Rule does not have a significant economic impact on a substantial number of small entities. *See* 87 FR 61660, 61787.

Therefore, pursuant to our authorities as the Assistant Secretary for Employment and Training and the Administrator of the Wage and Hour Division, and based on our independent review of the action and the reasons for taking it, we hereby affirm and ratify the Final Rule, as

of January 7, 2025, including all regulatory analysis certifications contained therein. This action is taken without prejudice to any right to litigate the validity of the Final Rule as approved and published on October 12, 2022. Nothing in this action is intended to suggest any legal defect or infirmity in the approval or publication of the Final Rule.

**José Javier Rodríguez,**  
Assistant Secretary, Employment and Training Administration, Labor.

**Jessica Looman,**  
Administrator, Wage and Hour Division, Labor.

[FR Doc. 2025-00526 Filed: 1/8/2025 4:15 pm; Publication Date: 1/13/2025]