



DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–2020–0005]

Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H–2A Program; Ratification of Department’s Actions

AGENCY: Employment and Training Administration, Department of Labor

ACTION: Ratification.

SUMMARY: The Department of Labor is publishing notification of the Assistant Secretary for Employment and Training’s ratification of the rule published December 16, 2021, titled *Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H–2A Program*.

DATES: This ratification was signed on January 10, 2025.

FOR FURTHER INFORMATION CONTACT: 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). 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 May 6, 2021, 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 adjudication of temporary and seasonal need for employers seeking herding or production of livestock on the range job opportunities under the H–2A program. *See*

Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H-2A Program, 86 FR 24368 (May 6, 2021) (“NPRM”). The NPRM was open for public comment for 30 days until June 7, 2021. *See Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H-2A Program*, 86 FR 71373, 71376 (Dec. 16, 2021) (“Final Rule”). On December 16, 2021, DOL published the Final Rule in the FR. *See Final Rule*, 86 FR 71373. The Final Rule went into effect on January 18, 2022. *Id.*

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.¹ With respect to the Final Rule, prior to its issuance on December 16, 2021, the Final Rule was provided to the Departments of Homeland Security and Agriculture through the interagency review process prescribed by Executive Order 12866. Further, on December 31, 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, 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.² 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

¹ 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).

² *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).

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, I am affirming and ratifying a prior action by Angela Hanks, Acting Assistant Secretary for Employment and Training. On December 16, 2021, the Employment and Training Administration published in the FR the Final Rule codifying amendments to the Department’s regulations regarding the adjudication of temporary need for employers seeking to employ nonimmigrant workers in job opportunities covering the herding or production of livestock on the range. 86 FR 71373 (Dec. 16, 2021).

The Final Rule was signed by Acting Assistant Secretary Hanks. I have full and complete knowledge of the Final Rule action taken by former Acting Assistant Secretary Hanks. Subsequent to the Secretary of Homeland Security’s documented approval of the Final Rule dated December 31, 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, I have independently evaluated the Final Rule and the basis for adopting it. I 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. I 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 ensuring the Department’s adjudication of temporary or seasonal need is conducted in the same manner for all applications for temporary agricultural labor certification, consistent with statute’s requirements. I 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* Final Rule, 86 FR 71382.

Therefore, pursuant to my authority as the Assistant Secretary for Employment and Training, and based on my independent review of the action and the reasons for taking it, I hereby affirm and ratify the Final Rule, as of January 10, 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 December 16, 2021. 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.

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