BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 652

RIN 1205-AC23

Wagner-Peyser Act Staffing, Delay of Merit Staffing Compliance Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor's (Department's) Employment and Training Administration (ETA) is delaying by 1 year the date by which State grantees, as a condition on their grant funds, must comply with the regulatory requirements in the 2023 Wagner-Peyser Act Staffing Final Rule regarding the grant-funded staffing models States must use to deliver services in the Wagner-Peyser Act Employment Service (ES). The 2023 Final Rule became effective on January 23, 2024, and provided that all States have until January 22, 2026, 24 months after the effective date of the rule, to comply with the staffing requirements. With this 1-year delay, the compliance date is now January 21, 2027.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kimberly Vitelli, Administrator, Office of Workforce Investment, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C-4526, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The Wagner-Peyser Act of 1933, 29 U.S.C. 49 et seq., established the ES program, which is a nationwide program of labor-exchange services. The ES program seeks to improve the

functioning of the nation's labor markets by matching job seekers with employers that are seeking workers. Section 3(a) of the Wagner-Peyser Act directs the Secretary of Labor (Secretary) to assist States in coordinating the State public service employment offices throughout the country. The Department had historically relied on the Secretary's authority in section 3(a) and 5(b) to require States to provide labor exchange services with State "merit staff," meaning government employees hired and managed under a merit-based personnel system described in 5 CFR 900, Subpart F.

Beginning in the early 1990s, the Department provided Colorado and Massachusetts with flexibility to set their own staffing requirements for the provision of ES services. In 1998, the Department permitted Michigan similar flexibility to deliver ES services, pursuant to a settlement agreement arising out of *Michigan v. Herman*, 81 F. Supp. 2d 840 (W.D. Mich. 1998).

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), Pub. L. No. 113-128, which amended the Wagner-Peyser Act. WIOA did not include an ES merit-staffing requirement. Regulations implementing WIOA were published in the *Federal Register* on August 19, 2016 (81 FR 56072) and were effective on October 18, 2016. Among the provisions codified in the 2016 WIOA regulations was 20 CFR § 652.215, which continued to require the use of State merit-staffing for the delivery of ES services, except for the three States that were previously granted exemptions: Colorado, Massachusetts, and Michigan.

Through rulemaking effective February 5, 2020, the Department removed the requirement that ES services be provided only by State merit staff (85 FR 592) (hereinafter referred to as the "2020 Final Rule"). In the preamble to the 2020 Final Rule, the Department explained that it sought to allow States maximum flexibility in staffing arrangements to allow them to better align WIOA and ES staffing. Following the 2020 Final Rule, several States were approved to use a variety of staffing models to provide their ES services, as described in their approved WIOA State plans.

On November 24, 2023, the Department issued the Wagner-Peyser Act Staffing Final Rule (88 FR 82658) (hereinafter referred to as "the 2023 Final Rule") to reinstate a requirement for States to use State merit staff to provide labor exchange services in the ES, with limited exceptions, see 20 CFR 652.215 (2024). The 2023 Final Rule also made changes to the ES Monitor Advocate System regulations in 20 CFR parts 653 and 658. This rule became effective on January 23, 2024, and provided States until January 22, 2026, 24 months from the effective date, to comply with the State merit-staffing requirement. The Department is issuing this final rule amending § 652.215 to delay implementation of the State merit-staffing requirement for an additional year, until January 21, 2027. This final rule does not affect States' obligations to comply with other requirements in the 2023 Final Rule, such as the changes to 20 CFR parts 653 and 658.

Reason for Compliance Date Delay

On January 31, 2025, President Trump issued Executive Order 14192, "Unleashing Prosperity Through Deregulation" (90 FR 9065) making it the policy of the executive branch to "alleviate unnecessary regulatory burdens placed on the American people." On July 1, 2025, the Department issued the proposed rule, Wagner-Peyser Act Employment Service Staffing (90 FR 28239), proposing to remove the State merit-staffing requirement, which would allow States to choose the staffing model that provides the required ES services in the most efficient way for their State. The comment period on that rulemaking closed on September 2, 2025. The Department continues to engage in that rulemaking process. The Department is issuing this final rule delaying the January 22, 2026, compliance date to reduce regulatory burden on States and to enable the Department to complete its rulemaking process.

The Department has considered any reliance interests that the compliance date for merit staffing in the 2023 Final Rule may have engendered. Because this rule merely extends the delay of enforcement of staffing requirements for State grantees and does not impose any new requirements, the rule does not implicate any serious reliance interests on the part of the States.

Further, in addition to the two years in which States have not been required to be in compliance following the 2023 Final Rule, States were not subject to any program-wide staffing requirements as of February 5, 2020, the effective date of the 2020 Final Rule, which allowed States to choose their staffing model. This final rule therefore does not implicate serious reliance interests on the part of other stakeholders, and, in any event, any reliance interests are outweighed by the need to avoid regulatory confusion and the potential burden of implementing the 2023 Final Rule only to have the regulatory requirement potentially change soon after.

Because the delay would relieve the affected State governments of the regulatory staffing requirement at 20 CFR 652.215 for 1 year, this rulemaking is considered a deregulatory action under Executive Order 14192.

II. Section-by-Section Discussion of the Delay

Paragraph (a) of 20 CFR 652.215 requires that, absent authorization prior to 2020 for a different staffing model, States must deliver ES services using State merit staff, i.e., staff employed by the State according to the merit-system principles in 5 CFR part 900, subpart F. Paragraph (d) of § 652.215 provides that States must comply with this requirement no later than January 22, 2026. In this final rule, the Department is revising the date in paragraph (d) to provide States until January 21, 2027, to comply with the requirements of this section. This change in paragraph (d) delays the compliance date by 1 year.

III. Procedural and Other Matters

A. Administrative Procedure Act

The Department is issuing this final rule without prior public notice and comment or a delayed effective date, pursuant to the applicable exemption in the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2), for grant-related matters. Section 553(a)(2) provides that the rulemaking requirements of the APA, including prior notice and the opportunity for public comment, do not apply to matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." The plain meaning of the phrase "relating to" is "a

broad one – to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connections with."[1]

Delaying compliance with § 652.215 in the Wagner-Peyser Act ES regulations relates to grants because it concerns a condition on States' receipt of grant funding from the Department. In order to receive statutorily allotted grant funds, see 29 U.S.C. 49e, States must first accept the provisions of the Wagner-Peyser Act, and they must designate a State agency with the ability to carry out program activities under the Act in cooperation with the Department, see 29 U.S.C. 49c. Each State must enter into a "grant agreement" with the Department, under which it agrees to comply with the provisions of the Act and "all applicable rules and regulations." 20 CFR 652.4. The Wagner-Peyser Act ES regulations at 20 CFR parts 651, 652, 653, 654, and 658, promulgated pursuant to the Department's rulemaking authority under 29 U.S.C. 49k, thus operate as terms and conditions of the grant awards to States. Violations can result in a requirement for States to repay grant funds or other appropriate sanctions. 20 CFR 652.8(g)–(h).

As described above, the grant condition at § 652.215 requires almost all States to deliver program services using State staff employed according to prescribed merit principles and provides that States must comply by January 22, 2026. This condition on staffing models affects how States expend their grant funds, because States use these grant funds to pay their ES staff. It does not apply to State staff who are not funded through grants under the Wagner-Peyser Act. The condition also affects the manner in which States deliver all the services that they are required to provide under their grants. See 20 CFR 652.215(a) (cross-referencing the list of required labor exchange services in § 652.3, as well as the provisions of parts 653 and 658). Delaying compliance with this grant condition therefore relates to grants within the plain meaning of the APA, 5 U.S.C. 553(a)(2).

The Department's use of the exemption provided under sec. 553(a)(2) is consistent with recent uses of the exemption by other Federal agencies. See, e.g., *Preserving Community and*

[1] *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992).

Neighborhood Choice, 85 FR 47899 (Aug. 7, 2020) (invoking the exemption to repeal Department of Housing and Urban Development rule because it required certification and obligations of Federal grantees).

For the foregoing reasons, the Department issues this final rule without prior public notice and comment or a delayed effective date.

B. Regulatory Impact Analysis

The Department has examined the impacts of this rule as required by Executive Order 12866, "Regulatory Planning and Review"; "Executive Order 13563, "Improving Regulation and Regulatory Review"; Executive Order 14192, "Unleashing Prosperity Through Deregulation"; Executive Order 13132, "Federalism"; the Regulatory Flexibility Act (RFA) (Pub. L. 96 354); section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4); and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts). Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. OIRA has determined that this final rule is a significant regulatory action and has reviewed this final rule. This final rule is considered a deregulatory action under Executive Order 14192.

This final rule would result in rule familiarization costs and cost savings to States as estimated by the delayed transfers to states by one year estimated. Rule familiarization costs represent direct costs to States associated with reviewing this final rule. The Department

anticipates that this final rule will be reviewed by Human Resources Managers (SOC code[2] 11-3121) employed by State Workforce Agencies (SWAs). The Department anticipates that it will take one Human Resources Manager an average of 10 minutes to review this rule. The U.S. Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics data show that the mean hourly wage of State government Human Resources Managers is $51.90.[3] The Department assumes a 62% benefits rate[4] and a 17% overhead rate,[5] so the full loaded hourly wage is $92.90 [=$51.90 + ($51.90 × 62%) + ($51.90 × 17%)]. Therefore, the one-time rule familiarization cost for all 54 jurisdictions (the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands) is estimated to be $836 (=$92.90 × 10 minutes × 54 jurisdictions).

The Department anticipates that the cost savings will outweigh the costs associated with rule familiarization. However, the Department is unable to quantify the specific cost savings that a limited number of States may realize due to the additional time granted for implementing the State merit-staffing provisions outlined in the 2023 final rule.

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires agencies to evaluate the economic impact of certain rules on small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. No analysis under the RFA is required for this final rule because, for the reasons discussed above, the Department is not required to engage in notice and comment under the APA.

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[2] This analysis uses codes from the Standard Occupational Classification (SOC) system and the North American Industry Classification System (NAICS).

[3] BLS, "Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200" SOC Code 11-3121, May 2024, *https://data.bls.gov/oes/#/industry/999200* (last visited January 2, 2026).

[4] BLS, "National Compensation Survey, Employer Costs for Employee Compensation," *https://www.bls.gov/ecec/data.htm* (last visited January 2, 2026). For State and local government workers, wages and salaries averaged $38.45 per hour worked in 2024, while benefit costs averaged $23.81, which is a benefits rate of 62 percent.

[5] Cody Rice, U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002, *https://www.regulations.gov/document/EPA-HQ-OPPT-2014-0650-0005* (last visited January 2, 2026).

Title II of UMRA, Pub. L. 104–4, requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This final rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA. Additionally, as discussed above, this final rule is promulgated without notice and comment. Therefore, the requirements of title II of UMRA do not apply, and the Department has not prepared a statement under UMRA.

Executive Order 13132, "Federalism," imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Executive Order 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. Executive Order 13132 also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. This final rule does not have significant federalism implications under Executive Order 13132.

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520, we are required to provide notice in the Federal Register and solicit public comment before a "collection of information" requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations. This final rule will not impose additional reporting or recordkeeping requirements under the PRA.

List of Subjects in 20 CFR Part 652

Employment, Grant programs—labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor is amending 20 CFR part 652 as follows:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

1. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. chapter 4B; 38 U.S.C. chapters 41 and 42; Secs. 189 and 503, Public Law 113-128, 128 Stat. 1425 (July 22, 2014).

Subpart C—Employment Service Services in a One-Stop Delivery System Environment

2. Amend § 652.215 by revising paragraph (d) to read as follows:

§ 652.215 What staffing models must be used to deliver services in the Employment Service?

* * * * *

(d) All States must comply with the requirements in this section no later than January 21, 2027.

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026-01117 Filed: 1/20/2026 8:45 am; Publication Date: 1/21/2026]