

## News Release

ETA News Release: [02/11/2010]

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Release Number: 10-198-NAT

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- [Fact Sheet](#)
- [News Release en Español](#)
- [Secretary Solis' Conference Call Audio - English & Español](#)

### Secretary of Labor Hilda L. Solis announces final rule for H-2A program

#### *Labor certification for temporary agricultural employment of H-2A workers in US to strengthen worker protection for both American and foreign workers*

WASHINGTON — U.S. Secretary of Labor Hilda L. Solis today announced a new rule regarding the H-2A program. The Labor Department will publish in the Feb. 12 edition of the *Federal Register*, a final rule governing the labor certification process and enforcement mechanisms for the H-2A temporary agricultural worker program. The final rule is being published to strengthen worker protections for both U.S. and foreign workers and to ensure overall H-2A program integrity. The rule will be effective March 15, 2010.

The H-2A nonimmigrant visa classification applies to foreign workers coming to or already in the U.S. to perform agricultural work of a temporary or seasonal nature. The U.S. Department of Homeland Security may not approve an H-2A visa petition unless the Department of Labor, through its Employment and Training Administration, certifies that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers.

Additionally, through its Wage and Hour Division, the department enforces the terms and conditions of the labor certification and enforces worker protections.

"This new rule will make it possible for all workers who are working hard on American soil to receive fair pay while at the same time expand opportunities for U.S. workers," said Secretary Solis. "The actions that we have taken through this rulemaking also will enable us to detect and remedy different forms of worker violations."

During fiscal year 2009, employers filed 8,150 labor certification applications requesting 103,955 H-2A workers for temporary agricultural work. The Department of Labor certified 94 percent of the applications submitted for a total of 86,014 workers.

This final rule is the result of the department's review of the policy decisions underlying a previous revision of the H-2A regulations, published in late 2008. The department's review focused on the process for obtaining labor certifications, the method for determining the H-2A Adverse Effect Wage Rate, and the protections afforded to both the temporary foreign workers as well as the domestic agricultural workforce. The final rule includes stronger mechanisms for enforcement of the worker protection provisions required by the H-2A program.

Overall benefits of the final rule include increased wages for workers and greater access to the domestic labor market. The new rule ensures that U.S. workers in the same occupation working for the same employer, regardless of date of hire, receive no less than the same wage as foreign workers; provides more transparency by creating a national electronic job registry where job orders will be posted through 50 percent of the contract period; and protects against worker abuses by prohibiting cost-shifting from the employer to the worker for recruitment fees, visa fees, border crossing fees and other U.S. government mandated fees.

To [view a fact sheet](#) and more information about the benefits of the new H2A Rule, visit: <http://www.dol.gov>.

## Fact Sheet

Read the [news release](#).

### LABOR CERTIFICATION FOR TEMPORARY AGRICULTURAL EMPLOYMENT OF H-2A ALIENS IN THE UNITED STATES (H-2A WORKERS)

On September 4, 2009, the Department published in the Federal Register a Notice of Proposed Rulemaking proposing to amend the 2008 regulations governing the labor certification process under the H-2A temporary agricultural worker program. The comment period initially was planned to end on October 5, 2009 but was extended to October 20, 2009. The timeline for completion of a Final Rule targets January 6, 2010 for submission to the Office of Management and Budget for review, with a tentative publication on February 12, 2010.

Under the Immigration and Nationality Act, the Department of Labor must ensure that U.S. workers are provided access to temporary agricultural jobs, and that both U.S. and foreign workers are provided with appropriate worker protections. This rulemaking reflects the Administration's commitment to providing fair wages and strong labor protections for this vulnerable group of workers.

#### Major Features of the Final Rule:

- The employer must provide the Department with documentation that it has complied with the prerequisites for bringing H-2A workers into the country, including the requirements related to recruiting for qualified U.S. workers, instead of simply attesting to compliance.
- Returns to using the USDA Farm Labor Survey as the basis for determining the Adverse Effect Wage Rate (AEWR). The 2008 rule used the Occupational Employment Statistics Survey, which resulted in a substantial reduction of worker wages (an average of over \$1.00/hour).
- Reinstates the critical role of the State Workforce Agencies (SWA) in assisting employers by using their expertise on local labor market conditions and recruitment patterns, thereby expanding job opportunities for U.S. workers.
- Reinstates the requirement that the SWA inspect and approve employer-provided housing before the Department issues an H-2A labor certification.
- Requires that all employer-provided transportation meet, at a minimum, the same Federal standards for vehicle safety, vehicle insurance and driver licensure applicable to most other agricultural workers.
- Strengthens revocation and debarment authorities by providing WHD with independent debarment authority in addition to ETA, raises civil money penalties and expands audit authority to include housing.
- Continues to include logging as an H-2A occupation. The NPRM proposed to add other forestry-related occupations such as tree planting and related reforestation activities as well as pine straw gathering, but this was not included in the Final Rule in response to concerns from both the industry and advocates about the costs and the workers' potential loss of MSPA protections, including a private right of action.
- Creates a national electronic job registry for all H-2A job orders to improve U.S. worker access to agricultural jobs and help growers find workers from across the U.S.
- Extends H-2A program benefits to workers in "corresponding employment" (other workers employed by an H-2A employer in any work included in the job order and any work performed by the H-2A workers) to ensure that similarly employed U.S. workers are not provided with lower wages or fewer benefits.
- Requires employers to provide workers with copies of the job orders no later than before departure, including from the workers' home countries and to display a poster describing employee rights and protections in English and another language common to the workers at the work site.
- Prohibits the use of multi-area itineraries by H-2A Labor Contractors, ending the practice of moving H-2A workers from site to site in multiple areas of employment under one labor certification. Labor contractors participating in this program will now have the same regulatory standards as fixed-site farmers. Required surety bond amounts for H-2ALCs have been increased.
- Prohibits the approval of labor certification applications for worksites where workers are on strike or locked out and protects U.S. workers who are denied employment or laid off.