U.S. Department of Labor
Employment & Training Administration

ETA New Releases

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 U.S. Department of Labor proposes rules to modernize H-2A program

WASHINGTON — The U.S. Department of Labor's Employment and Training Administration (ETA) and Employment Standards Administration (ESA) today jointly proposed rules to modernize the H-2A program for employing foreign workers in temporary or seasonal agricultural jobs.

"This issue must be addressed now, or our country will see eroding competitiveness in its agricultural sector, crops being left to rot in the fields, and increasing shifting of domestic food production to overseas," said Secretary of Labor Elaine L. Chao. "These proposed changes to the H-2A program will provide farmers with an orderly and timely flow of legalworkers and increase protections for both U.S. and foreign workers."

This package of proposed changes follows the administration's announcement that the Labor Department would review the program's current regulations, most of which have not been updated in more than 20 years, and propose changes to provide the nation's farmers with an orderly and timely flow of legal workers while protecting the rights of both U.S. and H-2A workers.

During this review, the department identified a number of practices that have contributed to making the program difficult to use. Currently, only a little more than 75,000 workers participate in the H-2A program, while there are an estimated 600,000 to 800,000 illegal immigrant workers on America's farms.

The proposed changes will modernize the broken H-2A program so that it can serve its intended purpose of providing farm employers with a legal means to hire agricultural workers when no U.S. workers can be found. The methodology for calculating wages for H-2A workers would be revised to better reflect wages by locality, occupation and skill level. More precisely tailoring H-2A wages to the condition of local labor markets will better protect the wages and working conditions of U.S. workers.

The proposed changes build, in part, upon the successful re-engineering of the permanent labor certification program, which was modernized in March 2005. The updates in the current effort include reducing duplication of government effort by requiring employers to file H-2A applications directly with the department's Employment and Training Administration rather than file with state agencies. The proposal also mentions plans to build out an Internet-based system in the future.

To improve protections for domestic workers, changes are proposed that would increase the length of time employers would be required to recruit for domestic workers before they are permitted to apply for H-2A workers. Additionally, new tools and enhanced penalties to ensure

employer compliance with the H-2A program are being proposed. Those enhanced tools would include audits, revocation of certifications, increased debarment authority and substantial increases in fines, up to $100,000 for violations resulting in serious injury or death of a worker.

The proposed rule is available on the department's www.doleta.gov Web site and will be officially published in the *Federal Register* soon.

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