DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 651, 653, 655, and 658

Wage and Hour Division

29 CFR Part 501

[DOL Docket No. ETA–2025–0007]

RIN 1205–AC25

Recission of Final Rule: Improving Protections for Workers in Temporary Agricultural Employment in the United States

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

ACTION: Proposed rule.

SUMMARY: The Department of Labor (Department or DOL) is proposing to amend its regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H–2A nonimmigrant status (H–2A workers) and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. This notice of proposed rulemaking (NPRM or proposed rule) that would rescind provisions contained within a final rule published by the Department on April 29, 2024, which adopted a number of unnecessary, burdensome, and costly requirements on employers. Specifically, these provisions include, but are not limited to, substantial new requirements associated with the material terms and conditions offered by employers to H–2A workers that are not commonly provided to other U.S. workers, including progressive discipline policies for cause-based employment terminations, anti-retaliation measures for certain workers engaged in self-organization and other concerted activities, and expanding the authority and scope for a State Workforce Agency (SWA) to discontinue employment services to employers, which prevents those employers from accessing the H–2A program, while eliminating employers' option to request a hearing prior to the SWA's final determination. Further, the final rule imposed extensive highly-sensitive data collection requirements on employers related to their use of foreign labor recruiters, including personal names and physical addresses abroad, as well as detailed personal information associated with all owners of the employers, operators of the place(s) of employment, and supervisor(s) and manager(s) of workers employed under the terms of the work contract, with very limited or no practical utility to the agency's statutory decision making. A brief summary of this rulemaking can be found at *www.regulations.gov* by searching by the RIN: 1205–AC25.

DATES: Interested persons are invited to submit written comments on this proposed rule on or before September 2, 2025.

ADDRESSES: You may submit comments electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and docket number ETA–2025–XXXX0007 in your comments. All comments received will become a matter of public record and will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR parts 651, 653, and 658, contact Kimberly Vitelli, Administrator, Office of Workforce Investment, Employment and Training Administration, Department of Labor, Room C–4526, 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, 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–3018, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

1. Immigration and Nationality Act

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), establishes an ''H–2A'' nonimmigrant visa classification for a worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature.'' 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* 8 U.S.C. 1184(c)(1) and 1188.[1] Agricultural labor or services includes the types of labor and services ''defined by the Secretary of Labor in regulations,'' as well as the Internal Revenue Code definition of ''agricultural labor'' at ''section 3121(g) of title 26,'' the Fair Labor Standards Act definition of ''agriculture'' at ''section 203(f) of title 29,'' and ''the pressing of apples for cider on a farm . . . .'' 8 U.S.C. 1101(a)(15)(H)(ii)(a).

The admission of foreign workers under this classification involves a multi-step process before several Federal agencies. A prospective H–2A employer must first apply to the Secretary of Labor (Secretary) for a certification that:

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1). The INA prohibits the Secretary from issuing this certification—known as a ''temporary labor certification''—unless both of the above referenced conditions are met and none of the conditions in 8 U.S.C. 1188(b) apply concerning strikes or lock-outs, labor certification program debarments, workers' compensation assurances, and positive recruitment.

The Secretary has delegated the authority to issue temporary agricultural labor certifications to the Assistant Secretary for Employment and Training, who in turn has delegated that authority to ETA's Office of Foreign Labor Certification (OFLC).[2] In addition, the Secretary has delegated to the Department's Wage and Hour Division (WHD) the responsibility under sec. 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), to assure employer compliance with the

[1] For ease of reference, sections of the INA are referred to by their corresponding section in the United States Code.

[2] *See* Secretary's Order 06–2010 (Oct. 20, 2010), 75 FR 66268 (Oct. 27, 2010).

terms and conditions of employment under the H–2A program.[3]

Once an employer obtains a temporary labor certification from DOL, it may then file a nonimmigrant visa petition with the Secretary of Homeland Security. *See* 8 U.S.C. 1184(c).[4] If the employer's petition is approved, the foreign workers whom it seeks to employ must, generally, apply for a nonimmigrant H–2A visa at a U.S. Embassy or consulate abroad. *Id.* Finally, if the foreign worker is coming from abroad, he or she must apply to U.S. Customs and Border Protection for admission to the United States.[5]

2. Wagner-Peyser Act

The Wagner-Peyser Act of 1933 established the United States Employment Service (ES), a nationwide system to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. 29 U.S.C. 49 *et seq.* Section 3(a) of the Act sets forth the basic responsibilities of the Department in the ES, which include assisting in coordinating the State public employment service offices throughout the country and in increasing their usefulness by prescribing standards for efficiency, promoting uniformity in procedures, and maintaining a system of clearing labor between the States. 29 U.S.C. 49b. The Act further authorizes the Department ''to make such rules and regulations as may be necessary to carry out [its] provisions.'' 29 U.S.C. 49k.

Consistent with the aims of sec. 3(a), the ES system provides labor exchange services to its participants and has undergone numerous changes to align its activities with broader national workforce development policies and statutory requirements. The Workforce Innovation and Opportunity Act (Pub. L. 113–128), passed in 2014, expanded upon the previous workforce reforms in the Workforce Investment Act of 1998 and, among other things, identified the ES system as a core program in the One-Stop local delivery system, also called the American Job Center network.

In 1974, the case *National Ass'n for the Advancement of Colored People (NAACP), Western Region, et al.* v. *Brennan et al.,* No. 2010–72, 1974 WL 229 (D.D.C. Aug. 13, 1974), resulted in a detailed court order mandating various Federal and State actions consistent with applicable law (Richey Order). The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system relating to farmworker ES services. In 1977 and 1980, consistent with its authority under the Wagner-Peyser Act, the Department published regulations at 20 CFR parts 651, 653, and 658 to implement the requirements of the Richey Order. Part 653 sets forth standards and procedures for providing services to migrant and seasonal farmworkers (MSFWs) and provides regulations governing the Agricultural Recruitment System (ARS), a system for interstate and intrastate agricultural job recruitment. Part 658 sets forth standards and procedures for the administrative handling of complaints alleging violations of ES regulations and of employment-related laws, the discontinuation of services provided by the ES system to employers, the review and assessment of State agency compliance with ES regulations, and the process the Department must follow if State agencies are not complying with the ES regulations.

B. Current Regulatory Framework

Since 1987, the Department has operated the H–2A temporary labor certification program under regulations promulgated pursuant to the INA. Prior to publication of a final rule in 2024, the majority of the Department's regulations governing the H–2A program were published in 2010 and many were updated in a final rule published in 2022.[6] The standards and procedures applicable to the certification and employment of workers under the H–2A program are found in 20 CFR part 655, subpart B, and 29 CFR part 501. In addition, prior to 2015, the Department had issued special procedures for the employment of foreign workers in the herding and production of livestock on the range as well as animal shearing, commercial beekeeping, and custom combining occupations.[7] The Department incorporated the provisions for employment of workers in the herding and production of livestock on the range into the H–2A regulations, with modifications, in 2015.[8] The provisions governing the employment of workers in the herding and production of livestock on the range are now codified at 20 CFR 655.200 through 655.235. In 2022, the Department amended the H–2A regulations by modifying the minimum standards and conditions of employment that employers must offer to workers, revising standards for determining the prevailing wage rate, expanding its enforcement authority to combat program abuse, and codified standards and procedures for employers that employ workers engaged in itinerant animal shearing, commercial beekeeping, and custom combining activities at 20 CFR 655.300 through 655.304.[9] Relatedly, the regulations implementing the Wagner-Peyser Act at 20 CFR parts 651, 653, and 658 establish the ARS, through which employers can recruit U.S. workers for agricultural employment opportunities, and which prospective H–2A employers must use to recruit U.S. workers as a condition of receiving a temporary agricultural labor certification.

In 2024, the Department again amended the ES and H–2A regulations by adopting a number of new requirements associated with the material terms and conditions offered by employers to H–2A workers and workers recruited through the ARS, such as incorporating progressive discipline policies for cause-based employment terminations, anti-retaliation measures for workers engaged in concerted activities, expanding regulatory criteria and procedural requirements permitting a State Workforce Agency to discontinue

[3] *See* Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

[4] Under sec. 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, reference to the Attorney General's or other Department of Justice Official's responsibilities under sec. 1184(c) have been expressly transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202, 271(b).

[5] *See generally* 8 U.S.C. 1225; 8 CFR part 235.

[6] Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6884 (Feb. 12, 2010) (2010 H–2A Final Rule); Final Rule, *Temporary Agricultural Employment of H–2A Nonimmigrants in the United States,* 87 FR 61660 (Oct. 12, 2022) (2022 H–2A Final Rule).

[7] *See* Training and Employment Guidance Letter (TEGL) No. 32–10, *Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H–2A Program* (June 14, 2011), *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3042;* TEGL No. 15–06, Change 1, *Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock under the H–2A Program* (June 14, 2011), *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3044;* TEGL No. 17–06, Change 1, *Special Procedures: Labor Certification Process for Employers in the Itinerant Animal Shearing Industry under the H–2A Program* (June 14, 2011), *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3041;* TEGL No. 33–10, *Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H–2A Program* (June 14, 2011), *https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3043;* TEGL No. 16–06, Change 1, *Special Procedures: Labor Certification Process for Multi-State Custom Combine Owners/Operators under the H–2A Program* (June 14, 2011), *https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3040.*

[8] Final Rule, *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,* 80 FR 62958 (Oct. 16, 2015) (2015 H–2A Herder Final Rule).

[9] 2022 H–2A Final Rule, 87 FR at 61771.

employment services to an employer, and imposing new data collection requirements related to the use of foreign labor recruiters and personal information associated with all owners of the employers, operators the place(s) of employment, and the supervisor(s) and manager(s) of workers employed under the terms of the work contract.[10]

C. Need for Rulemaking

On August 26, 2024, the United States District Court for the Southern District of Georgia issued a preliminary injunction order in the case *Kansas* v. *U.S. Department of Labor,* 749 F. Supp. 3d 1363 (S.D. Ga. 2024) (''*Kansas*'') prohibiting DOL from enforcing the entire 2024 H–2A Final Rule in 17 states and with respect to certain entities.[11] The preliminary injunction specifically prohibits DOL from enforcing the 2024 H–2A Final Rule in the states of Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia, and against Miles Berry Farm and the members of the Georgia Fruit and Vegetable Growers Association as of August 26, 2024.

In addition, on November 25, 2024, the United States District Court for the Eastern District of Kentucky issued a preliminary injunction in the case of *Barton* v. *U.S. Department of Labor,* 757 F. Supp. 3d 766 (E.D. Ky. 2024) (''*Barton*''), enjoining and restraining the Department from implementing, enacting, enforcing, or taking any action in any manner to enforce certain provisions of the Farmworker Protection Rule in 4 additional states and with respect to certain entities.[12] This preliminary injunction applies to the Commonwealth of Kentucky and the States of Alabama, Ohio, West Virginia, and a large number of individual and association plaintiffs to this proceeding, including Richard Barton; Doug Langley; Benny Webb; Dale Seay; David DeMarcus, II; David DeMarcus, Sr.; Steve Stakelin; Agriculture Workforce Management Association, Inc. (including its shareholders and members); North Carolina Growers' Association, Inc. (including all members of that non-profit association); Workers and Farmer Labor Association (including all members of that non-profit association); USA FARMERS, Inc. (including all members of that non-profit association); and National Council of Agricultural Employers (including all members of that non-profit association). The *Barton* order prohibits the Department from implementing, enacting, enforcing, or taking any action in any manner to enforce the following provisions of the 2024 H–2A Final Rule: seat belt modifications to enhanced safety requirements including but not limited to 20 CFR 655.122(h)(4); any and all worker voice and empowerment provisions, and provisions allowing workers to invite and accept guests under § 655.135 and any and all parallel provisions under 29 CFR 501.4, including but not limited to 20 CFR 655.135(h), 655.135(m), and 655.135(n); updated information collection requirements including but not limited to § 655.130(a); and new minimum pay requirements including but not limited to §§ 655.120(a) and 655.122(l).

Also on November 25, 2024, the United States District Court for the Southern District of Mississippi issued a nationwide stay pursuant to 5 U.S.C. 705 in *International Fresh Produce Association* v. *U.S. Department of Labor,* 758 F. Supp. 3d 575 (S.D. Miss. 2024) (''*IFPA*'') staying the effective date of 20 CFR 655.135(h)(2) and (m) in the 2024 H–2A Final Rule until the conclusion of proceedings in the case, including any appellate proceedings.[13] The additional plaintiffs in this proceeding include a broad coalition of state and national agricultural associations, including the American Farm Bureau Federation, Mississippi Farm Bureau Federation, Stone County Farm Bureau, Chamber of Commerce of the United States of America, AmericanHort, Florida Fruit & Vegetable Association, North American Blueberry Council, Texas International Produce Association, State of Mississippi, and U.S. Apple Association.

On the other hand, on May 5, 2025, the U.S. District Court for the Eastern District of North Carolina upheld the 2024 Final Rule in *North Carolina Farm Bureau Federation* v. *U.S. Department of Labor,* 2025 WL 1296245,---F. Supp. 3d.----(E.D.N.C. 2025) (''*NCFBF*''). There, the court concluded that the rule was a lawful exercise of the Department's authority under the INA, that the rule was not arbitrary and capricious, and that the rule did not conflict with other laws.

In these litigations challenging the Department's 2024 H–2A Final Rule, three different district courts recognized that the public had a substantial interest in having agencies act within their congressionally designated authority and concluded that many of the 2024 H–2A Final Rule provisions are contrary to specific Constitutional protections, other laws, or are arbitrary or capricious. These three courts granted the plaintiffs' requests for preliminary relief, concluding that the plaintiffs were likely to succeed on their claims challenging various provisions of the rule and that the evidence weighs in favor of a finding of irreparable harm because, among other considerations, the costs of compliance related to the rule are nonrecoverable. Although the courts in the *Kansas* and *Barton* cases noted that ''§ 1188 [of the INA] affords the DOL discretion to promulgate regulations that protect American workers from being adversely affected by the issuance of H–2A visas,'' the *Barton* court, citing the *Kansas* court, when discussing those provisions the court deemed to have conflicted with the National Labor Relations Act (NLRA), affirmed that the Department ''cannot create law, and the DOL cannot create rights that Congress has not. The DOL cannot make both executive rules and congressional laws.'' [14] For example, the *IFPA* court, when discussing the worker empowerment provisions, agreed that a plain reading of the statute does not confer a ''broad grant of authority as to allow DOL to effectively provide collective action rights to H–2A workers in the name of reducing the adverse effect of the H–2A program on domestic workers'' and pointed out that ''the language does not support the conclusion that DOL can prescribe these kinds of rights as part of the 'criteria for certification[.]' '' [15]

In light of these district court decisions and the Administration's policy (*e.g.,* Executive Order 14192, *Unleashing Prosperity Through Deregulation*) to significantly reduce the private expenditures required to comply with Federal regulations to secure America's economic prosperity and national security and the highest possible quality of life for each citizen, the Department has determined that the regulatory requirements and policies contained in the 2024 H–2A Final Rule must be reconsidered and proposes revisions in this NPRM. The Department concludes that the proposals outlined in this rulemaking, if adopted, would better ensure that the H–2A program's regulatory framework is a more reasonable balance between the statute's competing goals of providing an adequate labor supply and protecting

[10] Final Rule, *Improving Protections for Workers in Temporary Agricultural Employment in the United States,* 89 FR 33898 (Apr. 29, 2024) (2024 H–2A Final Rule).

[11] *Kansas,* 749 F. Supp. 3d at 1383.

[12] *Barton,* 757 F. Supp. 3d at 794.

[13] *IFPA,* 758 F. Supp. 3d at 594.

[14] *Barton,* 757 F. Supp. 3d at 777.

[15] *IFPA,* 758 F. Supp. 3d at 588 (citing 8 U.S.C. 1188(c)(3)(i)).

the jobs of domestic agricultural workers.

II. Discussion of Proposed Rule

A. Worker Voice and Empowerment Provisions

The Department proposes to rescind requirements added by the 2024 H–2A Final Rule that were collectively referred to in that rule as ''protections for worker voice and empowerment.'' Specifically, the Department proposes to: (1) rescind revisions to 20 CFR 655.135(h) and 29 CFR 501.4 that expanded activities protected from retaliation; (2) rescind 20 CFR 655.135(m) that required employers to permit workers engaged in agriculture as defined by 29 U.S.C. 203(f) of the Fair Labor Standards Act (FLSA) to designate a representative of their choosing in investigatory interviews; and (3) rescind the definitions of ''labor organization'' and ''key service provider'' added by the 2024 H–2A Final Rule at 20 CFR 655.103(b). The Department proposes to return to language at 20 CFR 655.135(h), and 29 CFR 501.4 in effect as of June 27, 2024, and remove these two definitions from 20 CFR 655.103(b).

The 2024 H–2A Final Rule created new activities that were protected from retaliation at 20 CFR 655.135(h)(1) and (2), and made parallel edits to 29 CFR 501.4(a)(1) and (2). The protected activities in § 655.135(h)(1) and 29 CFR 503.4(a)(1) were applicable to all people, regardless of whether they were engaged in agriculture as defined by the FLSA. These activities remained similar to those protected activities that had existed before the 2024 H–2A Final Rule, but made two important revisions; specifically, the 2024 H–2A Final Rule newly expressly protected (1) consultation with a key service provider on matters related to H–2A, and (2) filing a complaint, instituting, or causing to be instituted any proceeding, or testifying, assisting, or participating (or is about to testify, assist or participate) in any investigation, proceeding or hearing under or related to any applicable Federal, State, or local laws or regulations, including safety and health, employment, and labor law. The Department framed these changes as clarifications of existing rights; the Department noted that workers were already entitled to access and meet with many different key service providers to discuss or assert rights under the H–2A program without fear of retaliation under the Department's previous regulatory framework. Similarly, the 2024 H–2A Final Rule noted that existing 20 CFR 655.135(e) already required employers to comply with all applicable Federal, State, and local laws, and existing § 655.135(h)(1) and (5) already prohibited retaliation against workers who assert their rights under the H–2A program, and therefore the changes were only to make these rights explicit.

However, the protected activities implemented by the 2024 H–2A Final Rule in 20 CFR 655.135(h)(2) and 29 CFR 501.4(a)(2) were significantly different from the previous regulatory scheme. Specifically, these protections were limited to workers who were engaged in agriculture as defined by 29 U.S.C. 203(f) of the Fair Labor Standards Act (FLSA), because these workers were exempt from the protections of the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.* These new protected activities were directly related to rights applicable to non-exempt workers under the NLRA, specifically: (1) engaging in activities related to self-organization, including any effort to form, join, or assist a labor organization; engaging in other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions; or refusing to engage in any or all of such activities; and (2) refusing to attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer's opinion concerning any activity protected by this subpart; or listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning any activity protected by this subpart. The new protection at § 655.135(m), introduced by the 2024 H–2A Final Rule, similarly applied only to those workers who were exempt from the NLRA, but afforded protections similar to those afforded by the NLRA. The 2024 H–2A Final Rule reasoned that these new protections, which were modeled on certain protections in the NLRA, were not preempted by the NLRA, as they applied only to those agricultural workers that are excluded from the NLRA. *See* 89 FR at 33963.

However, at this point, multiple courts have found the ''worker voice and empowerment'' provisions unlawful. Specifically, in *Kansas,* the U.S. District Court for the Southern District of Georgia preliminarily enjoined the Department from enforcing the 2024 H–2A Final Rule in multiple states and against certain entities and members of certain associations, finding that the worker voice and empowerment provisions of the 2024 H–2A Final Rule violated the NLRA, and thus were not in accordance with law, because they created ''collective bargaining rights'' for workers whom Congress intended to exclude from the NLRA. The *Kansas* court issued a preliminary injunction specifically prohibiting the Department from enforcing the 2024 H–2A Final Rule in the states of Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia, and against an individual employer and the members of a growers association as of August 26, 2024. Later, the District Court for the Eastern District of Kentucky agreed with this reasoning in *Barton,* and preliminarily enjoined certain portions of the Final Rule in Alabama, Kentucky, Ohio, and West Virginia, and with respect to a group of individuals and associations. On the same day, the United States District Court for the Southern District of Mississippi ruled in *IFPA* that the Department had exceeded its statutory authority in promulgating the regulations—specifically those related to worker voice and empowerment. The court issued a Section 705 stay of the effective date of 20 CFR 655.135(h)(2) and (m) in the 2024 H–2A Final Rule nationwide until the conclusion of proceedings in the case, including any appellate proceedings. By contrast, *NCFBF* concluded that the H–2A Final Rule was a lawful exercise of the Department's authority under the INA.[16]

The 2024 H–2A Final Rule also expanded the prohibition of unfair treatment requirements at § 655.135(h) to include as protected activity consultation with ''key service providers.'' The 2024 H–2A Final Rule also added a definition of that term at § 655.103(b). The present definition includes the following: a health-care provider; a community health worker; an education provider; a translator or interpreter; an attorney, legal advocate, or other legal service provider; a government official, including a consular representative; a member of the clergy; an emergency services provider; a law enforcement officer; and any other provider of similar services.

This provision was intended to apply broadly, and not only to those workers engaged in agriculture under the FLSA. As this provision is not directly related to self-organization and collective action, it is not implicated by court decisions weighing the effect of the NLRA, and was not addressed in the decisions cited above, unlike the provisions in § 655.135(h)(2). The Department believes the definition of

[16] *NCFBF,* 2025 WL 1296245.

''key service provider'' within this provision is vague and overly broad and the lack of constraining or limiting language within this definition impermissibly expands the universe of protected activity a person can engage in. Specifically, at § 655.135(h)(1)(v), the provision states that an employer violates the law where there is any ''unfair treatment'' against any person who has ''[c]onsulted with a key service provider on matters related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188.'' The provisions then define ''key service provider'' at § 655.103(b) as ''A health-care provider; a community health worker; an education provider; a translator or interpreter; an attorney, legal advocate or other legal service provider; a government official, including a consular representative; a member of the clergy; an emergency services provider; a law enforcement officer; and any other provider of similar services.'' The lack of constraining or limiting language in the definition of ''key service provider,'' most notably with the inclusion of ''any other provider of similar services,'' is concerning because it impermissibly expands the universe of potential protected activity in which a person can engage in. It further creates a regulatory environment in which an employer has no reasonable understanding of when a person is engaging in protected activity. The Department proposes to rescind this provision. The Department also seeks comment on whether consultation with any of the categories of persons identified in the definition of key service providers should be retained as a protected activity under 20 CFR 655.135(h) and 29 CFR 501.4(a).

The Department also proposes to rescind the regulations at 20 CFR 655.135(h)(1)(vii) and 29 CFR 501.4(a)(1)(vii) prohibiting discrimination against workers who have ''[f]iled a complaint, instituted, or caused to be instituted any proceeding, or testified, assisted, or participated (or is about to testify, assist or participate) in any investigation, proceeding or hearing under or related to any applicable Federal, State, or local laws or regulations, including safety and health, employment, and labor laws.'' The Department believes that this provision is duplicative of other rights under the H–2A regulations and other Federal, State, and local laws. The Department seeks comment on this proposal, including on whether this provision should be retained for the purpose of clarity.

In light of these decisions, and upon further consideration, the Department has determined that 20 CFR 655.135(h), 655.135(m), and 29 CFR 501.4, as amended by the 2024 Final Rule, may not be authorized by the INA and/or may be inconsistent with the NRLA. The Department further believes granting H–2A workers these worker-empowerment rights is not necessary to ensure that U.S. workers are not adversely affected by H–2A workers, especially given that U.S. workers do not enjoy the same worker-empowerment rights. The Department thus proposes to remove the edits made by the 2024 H–2A Final Rule and revert to the regulations in effect as of June 27, 2024. The Department similarly proposes to rescind the definitions of ''key service provider'' and ''labor organization'' added by the 2024 H–2A Final Rule at § 655.103(b). The Department invites comment on all aspects of this proposal, including any alternatives.

B. Access to Worker Housing

The Department proposes to rescind current 20 CFR 655.135(n) relating to guest access to worker housing that was added by the 2024 H–2A Final Rule. This provision requires employers to allow workers residing in employer-furnished housing to invite, or accept at their discretion, guests to their living quarters and/or the common areas or outdoor spaces near such housing during time that is outside of the workers' workday subject only to certain limited restrictions. The 2024 H–2A Final Rule reasoned that these new provisions were needed to protect workers' fundamental First Amendment rights of association and access to information and to prevent adverse effect on the working conditions of workers in the United States similarly employed. To support its reasoning, the Department argued that the isolation of H–2A workers, when combined with these workers' unique vulnerabilities, renders them particularly at risk of being subject to workplace abuses, labor exploitation, and trafficking. The Department noted that the Supreme Court's decision in *Cedar Point Nursery* v. *Hassid,* 141 S. Ct. 2066 (2021), did not specifically address the type of provision at issue in § 655.135(n). 89 FR 34021 (citing authorities).

In its decision issuing a preliminary injunction in the *Barton* case, however, the United States District Court for the Eastern District of Kentucky deemed this provision an infringement on the property rights of employers amounting to a taking of the employers' property. 757 F. Supp. 3d at 789–90 (citing *Cedar Point,* 141 S. Ct. at 2075).

The Department believes that employers' property rights must be weighed appropriately with agricultural workers' associational rights. Agricultural workers in the United States, including H–2A workers and workers in corresponding employment, enjoy the rights of association and to receive information from those who wish to provide it.[17] Yet, as the *Barton* court reasoned, the 2024 housing access provision presents effectively imposes a government-mandated right of access to employer-furnished housing by third parties who are invited by an H–2 worker, without the property owners' consent and regardless of the reason for entry. Such a broad right of access appears to be inconsistent with *Cedar Point,* which struck down a California regulation that was arguably narrower, as it granted access only to a specific type of person for a specific purpose and with specific time limitations. Even the NRLA grants ''access to union organizers only when 'needed,' '' meaning there is ''no other reasonable means of communicating with the employees.'' *Cedar Point,* 141 S. Ct. at 2080–81 (Kavanaugh, J. concurring), cited at 89 FR 34021. The unqualified access granted under the 2024 housing access provision appear to be broader than ''needed'' and in any event may also lack statutory authority. The

[17] *See Rivero* v. *Montogomery Cty.,* 259 F. Supp. 3d 334, 355 (D. Md. 2017) (explaining that H–2A workers, who are lawful residents of the United States, ''are entitled to unfettered exchange of information just as much as any other individual in a community,'' and do not ''forfeit their constitutional rights by living on their employer's premises''); *see also, e.g., Petersen* v. *Talisman Sugar Corp.,* 478 F.2d 73, 82–83 (5th Cir. 1973) (holding that property owner that housed migrant farmworkers on its property ''must accommodate its property rights to the extent necessary to allow the free flow of ideas and information'' between the migrant farmworkers and the labor and faith-based organizers that wished to visit them); *Mid-Hudson Legal Servs., Inc.* v. *G & U, Inc.,* 437 F. Supp. 60, 62 (S.D.N.Y. 1977) (legal service providers had First Amendment right to enter migrant community on farm property at reasonable times for the purpose of discussing with its inhabitants the living or working conditions prevalent at the farm); *Folgueras* v. *Hassle,* 331 F. Supp. 615, 623 (W.D. Mich. 1971) (explaining that property owner who opened up portions of his property as the living areas for those working on his farm does not have the right to censor the associations, information, and friendships of the migrants living in his camps); *see also Rivero,* 259 F. Supp. 3d at 345–48 (discussing the right of service providers and other visitors ''to impart information and opinions'' to these workers in their homes); *Martin* v. *City of Struthers,* 319 U.S. 141, 141 (1943) (''For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings.'').

Department invites comment on the proposed recission of current § 655.135(n), and specifically invites any proposed alternative provisions that may effectively balance the private property rights of employers with the free speech and association rights of workers. Additionally, the Department proposes to rescind a related provision at § 655.132(e)(1) that requires H–2ALCs using housing provided by fixed-site agricultural businesses to provide proof that such fixed-site agricultural businesses have agreed to comply with the requirements at § 655.135(n). This rescission would leave intact the other requirement of § 655.132(e)(1) that was in place prior to the publication of the 2024 H–2A Final Rule relating to the submission of proof that such housing complies with applicable health and safety standards.

C. Rates of Pay and Adverse Effect Wage Rate (AEWR) Effective Dates

The Department proposes to rescind the regulations, added by the 2024 H–2A Final Rule, expressly requiring that where there is an applicable prevailing piece rate, or where an employer intends to pay a piece rate or other non-hourly wage rate, the employer must include the non-hourly wage rate on the job order along with the highest hourly rate, and must pay workers' wages using the wage rate that will result in the highest wages for each worker in each pay period. The Department proposes to revert to the regulations in effect on June 27, 2024. These changes affected §§ 655.120(a), 655.122(l), 655.210(g), 655.211, and 653.501(c).

Both the prior and current versions of § 655.120(a) require an H–2A employer, in order to comply with its obligation under § 655.122(l), to ''offer, advertise in its recruitment, and pay'' a wage that is at least the highest of several enumerated wage rates, including the AEWR and any applicable prevailing wage rate. As set forth in the 2024 H–2A Final Rule, where there is an applicable prevailing piece rate, it is usually not possible to determine until the time work is performed whether the prevailing piece rate will be higher than the highest of the applicable hourly wage rates as this will depend on worker productivity.[18] This led to conflicting interpretations of the requirements at §§ 655.120(a) and 655.122(l). The Department's Board of Alien Labor Certification Appeals (BALCA), construing earlier versions of the regulations, concluded that OFLC can only require H–2A employers to list a wage that is at least equal to the highest applicable hourly wage rate—usually the AEWR—on job orders because OFLC does not know at the certification stage whether the prevailing piece rate will be higher than the hourly wage. 89 FR 33957 (citing *Golden Harvest Farm,* 2011–TLC–00442, at *3 (BALCA Aug. 17, 2011); *Dellamano & Assocs.,* 2010–TLC–00028, at *5–7 (BALCA May 21, 2010); and *Twin Star Farm,* 2009–TLC–00051, at *4–5 (BALCA May 28, 2009)). Based on these decisions, OFLC did not require employers to list applicable prevailing piece rates on job orders and, in most instances, WHD could not enforce those prevailing piece rates even when these would have resulted in higher earnings for workers. 89 FR 33957. In contrast, the Ninth Circuit, in adjudicating a challenge to OFLC's practice of not requiring that applicable prevailing piece rates be included on job orders, held that the prior version of § 655.120(a) requires that applicable prevailing piece rates be included on job orders because a piece rate wage offers workers ''the opportunity to earn more than they might under an hourly wage.'' *Torres Hernandez* v. *Su,* 2024 WL 2559562, at *1 (9th Cir. 2024). The Ninth Circuit stated that ''allowing employers and DOL to ignore piece-rate prevailing wages under § 655.120(a) would largely nullify § 655.120(c), which defines the procedure for determining prevailing wages.'' *Id.* (''There is no reason to think that the regulations contemplate calculating piece-rate prevailing wages under § 655.120(c) but exclude such wages from consideration under § 655.120(a).'').

Anticipating the Ninth Circuit's decision in *Torres Hernandez,* DOL revised the applicable regulations. The 2024 H–2A Final Rule revised §§ 655.120(a) and 655.122(l) to expressly require that, where there is an applicable prevailing piece rate, or where an employer intends to pay a piece rate or other non-hourly wage rate, the employer must include the non-hourly wage rate on the job order along with the highest hourly rate, and to clarify that, in such instances, an employer must pay workers' wages using the wage rate that will result in the highest wages for each worker in each pay period. The Department made analogous changes to the regulations at §§ 655.210(g) and 655.211, which govern rates of pay for herding and range livestock occupations, as well as corresponding changes to § 653.501(c)(1)(iv)(E).

However, whether an employer is obligated to disclose a piece rate or other non-hourly rate in the job offer and whether that piece rate or other non-hourly rate, once disclosed, must be paid if it results in higher wages than the AEWR, remains contested and is actively being litigated. Following the Department's issuance of the 2024 H–2A Final Rule, the United States District Court for the Eastern District of Kentucky enjoined the Department from enforcing the ''new minimum pay requirements including but not limited to §§ 655.120(a) and 655.122(l)'' with respect to employers belonging to plaintiff agricultural associations, among others. *Barton,* 757 F. Supp. 3d at 794. Consistent with this injunction, the Department ceased requiring affected employers to list applicable prevailing piece rates on their job orders, only for a new claim to be filed against it challenging the cessation. Applying the Ninth Circuit's rationale, the United States District Court for the Western District of Washington ordered the Department to resume requiring employers to offer and pay applicable prevailing piece rates for work in Washington State. *Familias Unidas Por La Justicia* v. *DOL,* No. 24–cv–00637 (W.D. Wash. Mar. 28, 2025, modified Apr. 24, 2025). To ensure its compliance with both injunctions, the Department is now administering and enforcing the requirements of §§ 655.120(a) and 655.122(l) differently in different jurisdictions, resulting in two distinct regulatory schemes. Employers seeking to hire H–2A workers in most parts of the country are not required to include applicable prevailing piece rates on job orders consistent with the *Barton* order. However, that order does not affect the versions of §§ 655.120(a) and 655.122(l) that were in place prior to the 2024 H–2A Final Rule. Consistent with the Ninth Circuit's interpretation of the pre-2024 regulations in *Torres Hernandez* and with the *Familias* injunction, for work to be performed in Washington State, employers must offer and pay any applicable prevailing piece rates.

In light of this ongoing litigation and the resulting differences in enforcement nationwide, the Department proposes to rescind current § 655.120(a)(1)(vi) and (a)(2) and revert to the version of § 655.120(a) in effect as of June 27, 2024. Similarly, the Department proposes to rescind current § 655.122(l) and replace it with the version of § 655.122(l) in effect as of June 27, 2024. The reasons for rescinding §§ 655.122(l)(3) and (4), relating to productivity standards and overtime disclosure, are discussed later in this NPRM. For the same reasons, the Department proposes to rescind current § 655.210(g) and § 655.211 and replace these provisions with the versions of

[18] 89 FR at 33956–57.

§ 655.210(g) and § 655.211 in effect as of June 27, 2024. The Department also proposes to rescind the current § 653.501(c)(1)(iv)(E) and replace it with the version of § 653.501(c)(1)(iv)(E) in effect as of June 27, 2024 because these corresponding changes were made in the interest of having analogous processes and requirements, where possible, for the review of H–2A (criteria) and non-H–2A (non-criteria) clearance orders.

The Department notes that, given the *Familias* injunction, as well as the Ninth Circuit's decision in *Torres Hernandez,* both of which apply to the pre-2024 version of these provisions, the intended effect of the proposed rescission will be to clarify that employers seeking to employ H–2A workers outside of the Ninth Circuit are not required by § 655.120(a) to list applicable prevailing piece rates on job orders.

The Department requests comments on all aspects of this proposal. Specifically, the Department solicits comments from employers who pay piece rates on how and why they choose to pay piece rates, whether they use piece rates in recruiting, and how they track time and productivity on different crops. The Department also solicits comments from employees and advocates on how frequently workers are paid piece rates, and how workers will know that a piece rate will be offered on a job if these provisions are rescinded, and generally the impact of the disclosure on the job order of the availability of a piece rate. Finally, the Department solicits comments on how this proposal interacts with the Department's statutory mandate to prevent adverse effect on similarly employed workers in the United States, and that employers hire H–2A workers only when there are not sufficient workers who are able, willing, qualified, and available to perform the work.

The Department also proposes to rescind the 2024 H–2A Final Rule provisions at § 655.120(b)(2)–(3), which currently designate the effective date of each updated AEWR as the date of publication in the **Federal Register** and require employers to pay the updated AEWR immediately upon publication of the new AEWR in the **Federal Register**. Instead, the Department proposes to revert to the regulations that were in effect on June 27, 2024.

The Department reasoned in the 2024 H–2A Final Rule that such a change was necessary in order to ensure H–2A and corresponding workers receive the most current AEWR at the time work is performed, but in doing so it departed from a practice of providing a reasonable adjustment period for employers after publication of updated AEWRs. The Department has long required employers participating in the H–2A program to offer and pay the highest of the AEWR, the prevailing wage, any agreed-upon collective bargaining wage, or the Federal or State minimum wage at the time the work is performed, upon the effective date stated in the notice of new AEWRs in the **Federal Register**.[19] The 2024 H–2A Final Rule provision at § 655.120(b)(2) constituted ''a departure from more recent practice . . . which allowed a minor period for wage adjustment after publication of the FRN.'' [20] Prior to the 2024 H–2A Final Rule, the Department ''identifie[d] the effective date of the new AEWRs'' in ''the **Federal Register** notice publishing the updated AEWRs . . .'' and the Department's uncodified practice ''provid[ed] employers a short period of time (*i.e.,* up to 14 days) to update their payroll systems, such that an employer would not be required to adjust a worker's pay in the middle of a pay period, but would be required to promptly implement the adjustment.'' [21]

The Department has reconsidered the decision to deviate from practice and, similar to the Department's conclusion in the 2022 H–2A Final Rule, the Department has concluded that reinstating the prior practice of providing an AEWR effective date in FRNs that provide a period of up to 14 days for employers to identify AEWR changes and adjust payroll most effectively balances the need to ensure H–2A and U.S. workers receive timely payment of wages necessary to prevent adverse effect with the need to provide employers adequate time to adjust to new AEWRs after the Department publishes notice.[22] The Department proposes to continue to require employers to contractually agree to pay updated wages to H–2A foreign workers and corresponding workers and to make mid-contract updates to the AEWRs upon the effective date stated in the Department's FRNs, but proposes to revert to the policy of setting the effective date of the updated AEWR on a date up to 14 days after publication of the FRN. The Department believes this reinstatement of prior policy, which it previously acknowledged ''may alter employer budgets for the season,'' [23] would best balance the Department's statutory mandate to ensure the employment of H–2A foreign workers does not adversely affect the wages of workers in the United States similarly employed with the need for sound administration of the H–2A program, by providing a reasonable adjustment period for employers to receive notice of, and make changes to accommodate, updated AEWRs without imposing unnecessary regulatory burdens that may unreasonably subject employers to investigation and enforcement actions.

The Department recognizes that this issue has been the subject of contention and concern, particularly regarding the burden that this requirement would have on employers, including reasonable concerns that employers cannot immediately update payroll or pay structures, and especially cannot do so when they are required to monitor the **Federal Register** for the Department's notices, and must conduct operational planning, and that a limited adjustment period is necessary to ensure employers receive notice of the new AEWR obligation and to make payroll adjustments that in some cases may be difficult and require a brief period of time to complete. The need for a brief adjustment period is especially pertinent for employers who may be subject to multiple AEWRs—a Farm Labor Survey (FLS)-based AEWR and occupation-specific AEWR based on the Occupational Employment and Wage Statistics (OEWS) survey—under the 2023 H–2A AEWR Final Rule,[24] either one of which may be applicable upon publication of updated AEWRs, depending on which is highest. The 2024 H–2A Final Rule deviation from prior policy also failed to adequately account for the fact that FRN publication dates can be unpredictable, given the Department does not control the dates it receives the underlying FLS or OEWS data on which AEWRs are

[19] *See, e.g.,* 1987 H–2A IFR, 52 FR 20496, 20521; Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H–2A Program Handbook, 53 FR 22076, 22095 (Jun. 13, 1988) (''Certified H–2A employers must agree, as a condition for receiving certification, to pay a higher AEWR than the one in effect at the time an application is submitted in the event publication of the [higher] AEWR coincides with the period of employment.'')

[20] 89 FR at 33955.

[21] 87 FR at 61688 (*citing Notice, Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2020 Adverse Effect Wage Rates for Non-Range Occupations,* 84 FR 69774 (Dec. 19, 2019) (announcing AEWRs for 2020 on December 19, 2019, to be effective January 2, 2020)).

[22] *See id.* (declining to ''require immediate implementation'' of AEWRs or codify an AEWR effective date, instead maintaining ''current practice of stating the effective date of the new AEWRs in the **Federal Register** announcement of the new AEWRs, which may be immediate and will not be more than 14 calendar days after publication of that notice, consistent with historical and current practice.'').

[23] *See* 75 FR at 6901; 87 FR at 61688.

[24] 88 FR 12760 (Feb. 28, 2023).

based,[25] and a reasonable adjustment period provides flexibility to employers to cushion against this predictability. The Department believes reinstating the prior policy of providing a brief adjustment period would most effectively balance the need to provide reasonable flexibility to employers with the need to ensure the wages of workers in the United States similarly employed are not affected.

Therefore, the Department proposes to rescind current § 655.120(b)(2)–(3) and reinstate the § 655.120(b)(2)–(3) AEWR requirements in effect prior to the 2024 H–2A Final Rule. Under this proposal, the Department would revert to the practice that was in place, prior to the 2024 H–2A Final Rule, which allowed a minor period for wage adjustment after publication of the FRN. Under this practice, when publishing the **Federal Register** notice containing updated AEWRs, the Department would state the effective date of the new AEWRs in the notice and generally set the effective date of the new AEWRs at no later than 14 calendar days from the publication of that notice.

D. Enhanced Information Collection Requirements

The Department proposes to rescind the additional information disclosure requirements at § 655.130(a)(1)–(4) in the 2024 H–2A Final Rule, which required the employer provide, at the time of filing, the identity, location, and contact information for the owner(s) of each employer, any person or entity who operates a place of employment, and any person who manages or supervises workers employed under the H–2A Application. Additionally, the rule required employers to provide their prior trade/DBA names used in the most recent 3-year period preceding its filing of the H–2A Application. Consistent with these revisions, a new § 655.167(c)(9) included a recordkeeping provision requiring the employer to keep this information up-to-date until the end of the work contract period and retain the information for three years.

The Department anticipated that these revisions would allow the Department to gain a more accurate and detailed understanding of the scope and structure of the employer's agricultural operation and thereby assist the Department in program administration and enforcement, including in determinations of whether an employer has demonstrated a bona fide temporary or seasonal need, or, conversely, whether an employer has, through multiple related entities, sought to obtain year-round H–2A labor. The Department further reasoned that collecting this additional information would enhance the Department's enforcement capabilities by helping the Department identify, investigate, and pursue remedies from program violators and ensure that sanctions, such as debarment or civil money penalties, are appropriately assessed.

The Department has determined collection of owner, operator, manager, and supervisor information at the time of application filing presents legal risks and places extensive burdens on filers while providing limited utility in the stated goals, such as single employer test determinations.

While the collection of the information may result in identifying program violations and allow the Department to seek appropriate sanctions where violations occur, the Department need not collect this information at the time of filing, as it can seek this information when necessary to demonstrate program compliance at the time of an audit or investigation and enforcement action. The Department did not appropriately balance the likelihood of uncovering important information, such as program violations, against the burden on employers of providing such information to the Department at the time of filing. The benefit to the Department is minimal when compared to the burden placed on law-abiding employers to provide this information in every case, and the Department believes the practical utility of collecting the information at the time of filing is significantly outweighed by the burden on the public. The Department has concluded that the more practical approach is to continue to collect pertinent information such as information about owners and operators of worksites when it is necessary for enforcement or investigatory purposes. Therefore, the Department proposes rescinding the enhanced information collection provisions in the 2024 H–2A rule to permit the Department to instead collect such information in other ways as it did prior to the 2024 H–2A Final Rule, as needed, such as from the subject of an investigation rather than from all employers of H–2A workers.[26]

Therefore, the Department proposes to rescind the current § 655.130(a)(1)–(4) and reinstate the § 655.130(a) filing requirements in effect prior to the 2024 H–2A Final Rule. Under this proposal, the Department would again require only that the employer disclose information about the identity of the employer and its agent or attorney; the places where work will be performed; and, when requested by the Certifying Officer (CO), the employer's use of a foreign labor recruiter, and provide any necessary supporting documentation required at the time of filing under §§ 655.131 through §§ 655.135. Consistent with this proposal, the Department also proposes to rescind § 655.167(c)(9) governing document retention related to the § 655.130(a) requirements.

E. Seat Belts

The Department proposes to rescind the requirement, added by the 2024 H–2A Final Rule, to require the provision, maintenance, and wearing of seat belts in most employer-provided transportation. The 2024 H–2A Final Rule revised 20 CFR 655.122(h)(4) to prohibit an employer from operating any employer-provided transportation unless all passengers and the driver were properly restrained by seat belts meeting standards established by the U.S. Department of Transportation (U.S. DOT), as long as the transportation was manufactured with seat belts pursuant to U.S. DOT's Federal Motor Vehicle Safety Standards. The Department proposes to return to the language of § 655.122(h)(4) in effect as of June 27, 2024,which prior to the effective date of the 2024 H–2A Final Rule, made no mention of seat belts but required that all employer-provided transportation comply with all applicable local, State, or Federal laws and regulations and provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841, 29 CFR 500.104 or 500.105, and 29 CFR 500.120 through 500.128, and outlined other requirements for disclosure of transportation modes and use of workers' compensation for vehicle transportation purposes. In other words, the Department proposes to rescind current § 655.122(h)(4)(ii), but retain and recombine into a single paragraph § 655.122(h)(4) current § 655.122(h)(4)(i), § 655.122(h)(4)(iii), and § 655.122(h)(4)(iv).

The 2024 H–2A Final Rule reasoned that the provision of seat belts in employer-provided transportation, and the requirement that employers ensure that workers wear seat belts, was necessary to prevent adverse effect on the wages and working conditions of

[25] *See* 89 FR at 33956 (noting the Department ''does not control the publication dates of BLS and USDA data'' and ''it is administratively impractical for the Department to publish AEWRs on the same date that BLS and USDA publishes the underlying data'' and ''given the resources required to draft an FRN'').

[26] *See* 5 U.S.C. 552a(e)(2).

similarly employed workers in the United States because H–2A workers may have more limited recourse than workers in the United States similarly employed when placed in an inherently dangerous situation, such as being transported in a vehicle without seat belts. Additionally, the NPRM reasoned that unbelted passengers posed a grave safety risk to other passengers, including non-H–2A workers, in the event of a crash.[27]

The *Barton* court found the 2024 H–2A Final Rule's provision requiring the wearing of seat belts to be arbitrary and capricious because the Department did not explain how holding employers liable for an employee's failure to wear a seat belt would avoid downgrading worker safety conditions. *Barton,* 757 F. Supp. 3d at 788–89. Instead, the court reasoned, the requirement would degrade working conditions because employees would find themselves under greater levels of scrutiny and supervision. *Id.* The court further reasoned that the requirement holds H–2A employers to a higher standard than that to which other agricultural employers are subject, and noted that employers have little control over whether their employees choose to wear seat belts. *Id.* The court did not specifically address the 2024 H–2A Final Rule's requirement that employers provide and maintain seat belts in most employer-provided transportation, *id.,* yet still enjoined this portion of the rule.

Upon further review, and in light of the court's decision in *Barton,* the Department no longer believes that these requirements serve the statutory purpose of preventing adverse effect on similarly employed workers in the United States. The transportation safety requirements under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 *et seq.* and 29 CFR part 500 Subpart D, which cover many of the agricultural workers in the United States without H–2A visas, do not specifically require the provision of seat belts nor that employers ensure that workers are wearing seat belts. The current § 655.122(h)(4)(ii), therefore, requires more heightened safety measures for employers employing H–2A workers than those employing only U.S. workers, which does not meaningfully achieve the statutory goal of protecting similarly employed workers from adverse effect from the employment of foreign workers.

This proposed rescission does not affect the Department's perspective on the safety benefits of seat belts. Seat belts continue to be one of the most effective ways to prevent serious injuries and fatalities in vehicle crashes. The Department reminds employers using the H–2A program that they must continue to comply with all applicable local, State, and Federal laws relating to transportation safety, including those relating to seat belts.

The Department invites comment on the recission of current § 655.122(h)(4)(ii). Specifically, the Department seeks comment on the potential effect this proposal may have on similarly employed workers in the United States, the importance of and/or burden posed by current § 655.122(h)(4)(ii), and whether any part of this provision should be retained (*e.g.,* retaining the requirement that employers provide and maintain seat belts if the vehicle was manufactured with seat belts but not the requirement that employers require their workers to wear seat belts).

F. Termination for Cause

The Department proposes to rescind regulations defining termination for cause, establishing five conditions that must be satisfied before an employer may terminate a worker for cause, and setting recordkeeping requirements associated with termination for cause, including requirements for maintaining disciplinary records and termination records. Specifically, the Department proposes to return to the regulatory language of 20 CFR 655.122(n) as of June 27, 2024, prior to the 2024 H–2A Final Rule, which only stated that an employer was relieved of certain obligations if a worker was terminated for cause or abandoned work, and then only if timely required notification of government agencies was made, and established basic recordkeeping requirements related to this notification. In other words, the Department proposes to rescind current 20 CFR 655.122(n)(2), (n)(4)(ii) and (n)(4)(iii) and recombine the remaining language in one paragraph. The Department also proposes to rescind corresponding recordkeeping requirements at § 655.167(c)(10) and (11).

In the 2024 H–2A Final Rule, the Department defined termination for cause and outlined five conditions that must be met before a termination for cause could occur, one of which was that the employer must first correct the worker's performance or behavior using progressive discipline. The 2024 H–2A Final Rule further clarified what situations will never constitute termination for cause. The Department reasoned that these changes were necessary to promote the integrity and regularity of any such processes and to help ensure that employers do not arbitrarily and unjustly terminate workers, thereby stripping them of essential rights under the H–2A program which serve to protect similarly employed workers against any potential adverse effect from the employment of H–2A workers (namely the right to outbound transportation and subsistence, the three-fourths guarantee, and, in the case of U.S. workers, the right to be contacted in subsequent years).

Upon further review, the Department believes that these regulations are overly burdensome and unnecessary. For decades, the Department has enforced the requirement that a worker is owed outbound transportation and subsistence, the three-fourths guarantee, and, if the worker is a U.S. worker, the right to be contacted for employment the subsequent year, unless he or she is terminated for cause or abandons employment. Only in 2024 did the Department determine that it needed a rigid set of criteria and recordkeeping before it would accept any termination as being ''for cause.'' Indeed, the Department acknowledged in the 2024 H–2A Final Rule that ''[h]istorically, when determining whether a worker has been terminated for cause, the Department has reviewed all relevant factors, including, for example, the reasonableness of the rule, consistent application of a rule among employees, and whether the employer fairly reviewed the misconduct or job performance.'' [28] Upon further review, the Department believes that previous procedures were sufficient to identify when a worker was terminated for cause and seeks to remove the complicated, burdensome, and overly prescriptive framework in 20 CFR 655.122(n)(2) from the regulations.

Furthermore, certain provisions in current § 655.122(n)(2) have become untethered from the statutory mandate of protecting similarly employed workers in the United States from adverse effect from the employment of foreign workers. Specifically, the requirement that an employer progressively discipline a worker before terminating that worker for cause has no meaningful connection to preventing the employment of H–2A workers from adversely affecting the wages and working conditions of similarly employed workers in the United States. Most workers in the United States are not entitled to progressive discipline (although progressive discipline, or lack thereof, may be instructive in determining whether a reason for

[27] *See* 89 FR at 33963.

[28] 89 FR at 33970.

termination is pretextual). The Department believes that explicitly requiring an employer using the H–2A program to progressively discipline a worker before terminating them for cause does not meaningfully protect similarly employed workers in the United States; there may be many situations where termination for cause is appropriate even without progressive discipline, and other situations where termination for cause is not appropriate even if the employer has gone through a progressive discipline process. The 2024 H–2A final rule developed a system where any termination for cause required progressive discipline, which is not reflective of the working world for most people in the United States, where progressive discipline is generally not explicitly required by law to effectuate a termination for cause. While the Department continues to emphasize the importance of safeguarding essential and longstanding worker protections in the H–2A program (specifically, the right to outbound transportation and subsistence, the three-fourths guarantee, and, if the worker is a U.S. worker, the right to be contacted for subsequent employment), it no longer believes that explicitly requiring progressive discipline before an employer terminates a worker for cause achieves that goal.

The Department solicits comments on this proposed rescission. Specifically, the Department solicits comments as to potential effect this proposal may have on similarly employed workers in the United States, the importance of and/or burden posed by current § 655.122(n)(2), and whether any part of this provision should be retained either in regulation or in subregulatory guidance (*e.g.,* retain the definition of termination for cause in § 655.122(n)(2) but remove the five criteria, or retain § 655.122(n)(2)(i)(A)–(D) in subregulatory guidance).

The Department also proposes to rescind current 20 CFR 655.122(l)(3) and reinstate the 20 CFR 655.122(l)(2)(iii) in effect as of June 27, 2024, prior to the 2024 H–2A Final Rule. In order to align the regulations with changes to § 655.122(n)(2), the 2024 H–2A Final Rule required that all employers requiring one or more productivity standards as a condition of job retention disclose those standards in the job order, and set a ceiling on the productivity standards. Prior to the 2024 H–2A Final Rule, § 655.122(l)(2)(iii) only required disclosure and the ceiling if the employer paid by a piece rate and required the productivity standard as a condition of job retention. As the Department proposes to rescind the regulation that necessitated this change (current § 655.122(n)(2)), it similarly proposes to revert to the regulatory text of § 655.122(l)(2)(iii) before the effective date of the 2024 H–2A Final Rule. The Department solicits comments on this proposal, including on whether an employer who has productivity standards as a condition of job retention but does not pay by a piece rate should be required to disclose the productivity standards in the job order.

G. Disclosure of Foreign Labor Recruiter Information

The Department proposes to rescind all regulatory and related data collection requirements requiring employers to identify any foreign labor recruiters, and to provide copies of the agreements between the employer and such recruiter(s) at the time of filing. Specifically, the Department proposes to rescind § 655.137, *Disclosure of Foreign Worker Recruitment,* a related assurance at § 655.135(p), and § 655.167(c)(8) that provides applicable document retention requirements.

The regulatory requirements at § 655.137 govern what information and documentation an employer must provide at filing regarding foreign worker recruitment, as well as how it must maintain and update that information. These provisions also address the Department's dissemination or publication of the information it receives. Paragraph (a) requires that if the employer engaged or plans to engage an agent or foreign labor recruiter, directly or indirectly, in international recruitment, the employer, and its attorney or agent, as applicable, must provide copies of all contracts and agreements with any agent or recruiter or both, executed in connection with the job opportunity, a requirement that is also covered by the assurance at § 655.135(p). These agreements must contain the contractual prohibition against charging fees as set forth in § 655.135(k). In paragraph (b), the Department requires that applications must contain all recruitment-related information required in the *Application for Temporary Employment Certification,* as defined in § 655.103(b), including the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agents or employees of those persons and entities, to recruit prospective foreign workers for the H–2A job opportunity. Paragraph (c) of § 655.137 requires that employers must continue to keep the foreign labor recruiter information referenced in paragraphs (a) and (b) up to date until the end of the work contract period, with this updated information available in the event of a post-certification audit or upon request by the Department.

The Department is also proposing to rescind § 655.167(c)(8) governing applicable employer document retention requirements,. Finally, the Department proposes to rescind paragraph (d) of § 655.137, which required the Department to maintain a publicly available list of agents and recruiters (including government registration numbers, if any) who are party to the agreements employers submit, as well as the persons and entities the employer identified as hired by or working for the recruiter and the locations in which they are operating.

Based on a review of the 2024 H–2A Final Rule, the Department has determined it did not adequately address the legitimate concerns raised by commenters regarding the time and burden to collect this information; the need for employers to understand their information disclosure, retention, and production obligations; the ability to access this information and the timing of the collection, including the obligation and burden to update the information. The Department also did not adequately explain why this information must be collected at the time of filing *Application for Temporary Employment Certification,* in addition to similar collections at the time the employer files a petition with the Department of Homeland Security (DHS). The Department notes that DHS has statutory authority for the admission of foreign beneficiaries under the H–2A visa classification and the United States Citizenship and Immigration Services (USCIS) requires employers to provide identifying information about agents and recruiters, including addresses, at the time of filing the H–2A petition. Specifically, the Form I–129 requires the employer to provide the names and addresses of all agents, facilitators, staff, recruiters, or any person or entity that recruits or solicits prospective beneficiaries of an H–2 petition.

The Department also overstated the value the additional disclosure of information would provide in ''aiding enforcement of provisions like § 655.135(k), which prohibits seeking or receiving of recruitment fees,'' as well as the value in ''better . . . map[ping] international recruitment relationships'' to ''identify where prohibited fees are collected . . .'' [29] The fact that there exists the current practice of collecting this information in the H–2B program does not justify its collection in the H–2A program, especially in light of the

[29] 89 FR at 34026.

significant reporting burden on employers.

The 2024 H–2A Final Rule requirement to disclose contracts and agreements with international recruiters and additionally provide identifying information for the recruiter's employees and anyone within the recruitment chain engaged in foreign worker recruitment, and to maintain these records for a period of three years from certification, imposes significant burdens. The burdens include the completion of paperwork, disclosures at the time of filing, information security related to retention of identifying information, and potential breach of privacy claims, as well as imposing an unnecessarily thorough duty to inquire into every link in the international recruitment chain to ascertain the ''identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agents or employees of those persons and entities . . .'' [30] While the additional disclosures may provide H–2A foreign workers a better sense of the foreign labor recruiters used by their employers or prospective employers and ''better understand[ing] [of] the roles of recruiters . . . in the recruitment chain . . .'' [31] the Department does not think the benefit outweighs the burden. Furthermore, the Department has lacks both the resources and methods to verify, at the time of filing, that the employer provided complete information about the recruiters the employer used independently verify the validity of the data the employer provides at the time of processing, so it cannot be sure that H–2A foreign workers have accurate or complete information to decide whether a recruiter is legitimate. The inability of the Department to verify the completeness or accuracy of the information, and therefore its utility to potential H–2A workers, leads the Department to conclude it cannot justify the burden placed on employers to provide this information.

Therefore, the Department proposes to eliminate §§ 655.135(p), 655.137, and 655.167(c)(8), and maintain the existing provisions like §§ 655.135(j) and (k) that provide measurable value in protecting U.S. and foreign workers through prohibitions against unlawful fees and enforcement of related contractual obligations and provide authority for WHD to enforce compliance with these provisions. The Department believes the regulations in existence prior to the 2024 H–2A Final Rule will provide sufficient protection against exploitation and abuse of foreign workers by foreign labor recruiters and permit the Department to enforce provisions prohibiting imposition of unlawful fees in a framework that is consistent with the scope of the Department's statutory authority. The regulations at § 655.135(j), generally prohibit the employer and its agents from seeking or receiving fees related to H–2A labor certification, including recruitment costs. The regulations at § 655.135(k) more specifically require the employer to contractually prohibit in writing any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages from seeking or receiving payments or other compensation from prospective workers and to provide documentation of the prohibition upon request by the Department or a Federal party. Under these provisions, the Department may, in the course of an audit or investigation, request the employer present documentation demonstrating the contractual arrangement with a foreign labor recruiter and demonstrating compliance with the H–2A provisions and are sufficient to permit WHD to ''identify individuals charging fees, connect such individuals' relationships with recruitment agencies contracted by the employer, determine whether all entities had contractually prohibited cost-shifting as required under § 655.135(k), and hold the appropriate parties responsible,'' without imposing unnecessary burdens on employers to disclose the identity of every individual within the international recruitment chain to the Department at the time of filing the *Application for Temporary Employment Certification*.[32]

H. Minor Delays in Start Date of Work

The Department proposes to eliminate § 655.175, including the new delayed start date procedure and related assurances and obligations promulgated in the 2024 H–2A Final Rule. Instead, the Department proposes to revert to the regulatory scheme that governed the delayed start date process for many years prior to the 2024 H–2A Final Rule. Section 655.175, as well as a related recordkeeping obligation at § 655.167(c)(12) and conforming changes to §§ 655.122(i) and 655.145(b), were intended to clarify employer obligations in the event of a delay in the start of work and to distinguish post-certification delays from pre-certification Application amendments under current § 655.145(b). The rule defines a ''minor'' delay in the start of work as a delay of 14 calendar days or fewer and continues to limit these delays to situations in which unforeseen circumstances require the delay and the employer's crops or commodities would be in jeopardy prior the expiration of an additional, expedited recruitment period. The rule also requires the employer to contact the SWA and workers at least 10 business days prior to the start date and maintains the existing requirement that the employer provide housing and subsistence to any worker already traveling to the worksite. If the employer fails to provide this notice, the rule requires employers to provide compensation to workers for each day work is delayed during the delay period, at the highest hourly rate specified in the applicable regulations, for a period of up to 14 calendar days, and provide this compensation no later than the date workers would have been paid had work begun on time, similar to the Wagner-Peyser Act (WP Act) provision at § 653.501(c), which covers U.S. workers the SWA refers to the employer's job opportunity. This provision also requires employers to send notice to workers of the delay using an electronic method, when possible, and translate the notice into a language workers can understand, similar to the current work contract translation language at § 655.122(q). Consistent with these changes, § 655.167(c)(12) includes a recordkeeping provision requiring the employer to maintain a record that it sent notice of the delayed start of work.

Beginning with the 2010 H–2A Final Rule, OFLC regulations have permitted an employer to request a delay in the start date after submitting a written request to the CO and receiving the CO's approval. Section 655.145(b) in that rule explained that if the request is for a delay in the start date and is made after workers have departed for the employer's place of work, the CO may only approve the change if the employer includes with the request a written assurance signed and dated by the employer that all workers who are already traveling to the job site will be provided housing and subsistence, without cost to the workers, until work commences. Upon acceptance of an amendment, the CO would submit to the SWA any necessary modification to the job order. This provision required the employer to show that the delay was caused by unforeseeable circumstances and demonstrate that the crops or commodities will be in jeopardy prior to the expiration of an additional

[30] *Id.* at 34025.

[31] *Id.* at 34026.

[32] 89 FR at 34026.

recruitment period. It also required an employer seeking a post-certification delay in the start of work to provide housing and subsistence to workers who had already begun traveling to the place of employment and comply with the WP Act regulations at § 653.501(c). Similarly, the WP Act regulations pre-dating the 2024 H–2A Final Rule ''provide[] a process close to the start date the employer identified in the job order for the employer, the SWA, and referred farmworkers to communicate regarding the actual start date of work.'' [33] These provisions ''require[ ] an employer to notify the SWA of start date changes at least 10 business days before the originally anticipated start date and require the SWA to notify farmworkers that they should contact the SWA between 9 and 5 business days before the anticipated start date to verify the actual start date of work.'' [34]

The Department proposes to revert to the delayed start date provisions under the 2010 and 2022 H–2A Final Rules. Consistent with this proposal, the Department proposes to revise § 655.145(b) and, as discussed further below, 653.501(c), to mirror language in place beginning in the 2010 H–2A Final Rule. As under the 2010 and 2022 H–2A Final Rules, this proposed language requires the employer to request CO approval for a minor delay in the start date, demonstrate unforeseeable circumstances that jeopardize crops, and assure the CO that if the employer requests a start date delay after workers have departed for the place of employment, the employer will provide housing and subsistence to all workers who are already traveling to the place of employment, without cost to the workers, until work commences. If the employer fails to comply with its obligations, the Department may pursue revocation of the temporary agricultural labor certification under § 655.181 or debarment of the employer under § 655.182 or 29 CFR 501.20. The Department proposes to reinstate § 655.122(i)(1)(i) and (ii) as effective prior to the 2024 H–2A Final Rule, which reflect that the work contract period can be shortened by agreement of the parties with the approval of the CO. These provisions were removed during the prior rulemaking to ensure consistency with § 655.175(b), which permitted only minor delays to the start date of work and did not require CO approval of the delay. The Department also proposes to remove the recordkeeping obligation at § 655.167(c)(12), as necessary for consistency with the above proposals.

These proposals are consistent with President Trump's E.O. directing the Department to reduce regulatory complexity, reduce burdens on program users, and rescind or revise regulations that are inconsistent with the Department's clear statutory authority. The provision at § 655.145(b) provides similar flexibility to employers as § 655.175, consistent with the Department's acknowledgment that the actual day work begins may vary due to such factors as travel delays or crop conditions at the time the employer expects work to begin. This proposed rule maintains existing emergency filing procedures at § 655.134 to accommodate employers faced with exigent circumstances necessitating a longer delay in the start date of work. The Department has determined workers similarly employed are provided adequate protections in the event of a delayed start date through the pre-2024 WP Act provisions requiring notice of the delay by SWAs and compensation of U.S. workers under § 653.501(c), the requirement that employers guarantee H–2A and corresponding workers a total number of work hours equal to at least three-fourths of the workdays of the total period of employment under § 655.122(i), and the § 655.145(b) language limiting delayed start date requests to a minor period, justified by unforeseeable circumstances that jeopardize crops, and subject to CO approval, as well as a determination that the test of the U.S. labor market will not be impacted, and employer assurances related to provision of housing and subsistence to workers traveling to the worksite at the time of the delay. In contrast, the 2024 H–2A Final Rule provision providing additional notice and recordkeeping burdens and extending the WP Act compensation obligation to H–2A foreign workers was not necessary to prevent adverse effects on the wages and working conditions of similarly employed workers.

Additionally, the Department's elimination of the requirement for employers to obtain CO approval of changes to start dates reduced filing burdens on employers and administrative burdens on the Department and SWAs related to adjudication of requests and notice of delay to workers, but also made it more difficult for the Department to ensure that employers provide notice of delays to workers, provide accurate start dates in filings, and delay start dates only where necessitated by exigent circumstances unforeseeable at the time of filing and only when the Department determined the change would not impact the labor market test and the employer would comply with assurances to provide housing and subsistence to workers already en route to the worksite. The Department believes reversion to the delayed start date provisions implemented prior to the 2024 H–2A Final Rule will best balance the need for agricultural employers to respond to unforeseeable exigent circumstances and the need to ensure U.S. workers are accurately apprised of the start date of work in the event of a minor delay, and do not suffer financial hardship or material changes to terms and conditions of employment as a result of the employer's employment of H–2A foreign workers.

I. Other Regulatory Provisions Clarifying Existing Policy or Procedural Standards

The Department proposes to retain several provisions adopted in the 2024 H–2A Final Rule that merely codified existing practice or streamlined procedures and imposed no additional burdens on employers, the Department, or U.S. or foreign workers. While the Department is proposing to retain these provisions, it seeks public comment to determine if any changes are appropriate or necessary. The Department will consider any comments on the provisions listed below when developing the Final Rule.

First, the Department proposes to retain the definition of single employer and the explanation of the single employer test at § 655.103(e) and 29 CFR 501.3(d). This provision codified the test that the Department had already implemented in practice, but had not included in its regulations prior to the 2024 H–2A Final Rule. The Department believes this provision provides clarity to filers about when and how the Department will determine that two seemingly separate entities will be evaluated to determine whether they are in fact one entity for the purpose of ensuring compliance with H–2A program regulations, including the statutory requirement that an employer have a temporary or seasonal need.

Second, for similar reasons, the Department proposes to retain the streamlined procedures and modified definition relating to successors in interest at § 655.103, as well as conforming edits to §§ 651.10, 655.181, 655.182, and 29 CFR 501.20. These provisions provide greater clarity to filers than the prior regulations without placing any additional burden on them. The provisions articulate a clear methodology for determining whether an employer or agent or attorney is a

[33] 87 FR 61660, 61678 (Oct. 12, 2022) (*citing* § 653.501(c)(1)(iv)(D), (c)(3)(i) and (iv), (c)(5), and (d)(4)).

[34] *Id.* (*citing* §§ 653.501(c)(5) and (d)(4)).

successor-in-interest to a debarred entity, and whether an entity must be considered debarred from the H–2A program. By clarifying and streamlining this regulatory text, employers and agents and attorneys can make an informed decision as to whether they will be considered a debarred entity prior to preparing and submitting an H–2A application. These changes also reduced burdens on the Department and enhanced the Department's ability to protect program integrity.

Third, the Department proposes to retain the explicit prohibition against passport withholding at § 655.135(o), but redesignate the paragraph as § 655.135(m). The withholding of a worker's passport, visa, or other immigration or government identification documents is an egregious restriction of a worker's movements and may be indicative of labor exploitation or trafficking. The Department does not believe that compliance with this provision represents a significant burden to employers because most employers understand the seriousness of such an action—in some circumstances, the withholding of passports, immigration, or identity documents constitutes a criminal offense—and do not withhold worker passports. Given the minimal burden required to comply, and the importance that workers retain in control of their identity documents, the Department believes that current § 655.135(o) should be retained. Doing so will better enable the Department to combat labor exploitation and trafficking.

Fourth, the Department proposes to retain current 29 CFR 501.33(b)(2), introduced by the 2024 H–2A Final Rule, to state that any issue not raised in a party's request for a hearing before the Office of Administrative Law Judges (OALJ) ''ordinarily may be deemed waived'' in any further proceedings. In the 2024 H–2A Final Rule preamble, the Department explained that issue exhaustion requirements are applicable and appropriate under the H–2A administrative review procedures and, as a result, issues not raised in a request for hearing to the OALJ may be deemed waived. This regulation codifies the Department's current practice, better informs parties of the potential consequences of failing to raise an issue in a request for review, and better preserves agency and judicial resources.

Fifth, the Department proposes to retain the severability provisions implemented by the 2024 H–2A Final Rule at § 655.190 and 29 CFR 510.10. These regulations reflect the Department's position, based on its experience enforcing and administering the H–2A provisions of the INA, that the regulations can function sensibly in the event that any specific provisions, sections, or applications are invalidated.

Sixth, the Department proposes to retain minor technical fixes made by the 2024 H–2A Final Rule. Specifically, the 2024 Final Rule edited § 655.167(c)(6) to update this paragraph's outdated cross-reference to the regulatory citation for the definition of ''work contract.'' The 2024 Rule also changed § 655.167(c)(7) to add ''to'' before ''DHS.''

Seventh, the Department proposes to retain clarifying edits made by the 2024 H–2A Final Rule to 20 CFR 655.122(l)(4) and 20 CFR 655.210(g) with respect to overtime compensation. Specifically, current regulations clarify that, if applicable, the employer must state in the job order: (1) that overtime hours may be available; (2) the wage rate to be paid for any such overtime hours; (3) the circumstances under which overtime hours will be paid; and (4) where the overtime pay is required by law, the applicable Federal, State, or local law requiring the overtime pay. The Department believes that this provision is useful for U.S. workers to understand what benefits are being offered so they may make a reasoned decision as to whether they want the job. The Department solicits comments on this provision, including whether U.S. workers consider overtime benefits when considering whether to accept an agricultural job and, if these benefits are not described in the job order, how applicants may learn about the potential for overtime pay.

The retention of these provisions is consistent with President Trump's E.O. 14192, *Unleashing Prosperity Through Deregulation,* which directs agencies to reduce regulatory burdens and simplify regulations that ''are often difficult for the average person or business to understand . . .'' and require program users to ''synthesiz[e] the collective meaning'' of sub-regulatory guidance that was not subject to the Administrative Procedures Act (APA) and for which the Department did not provide notice and opportunity to comment. The rulemaking culminating in the 2024 H–2A Final Rule provided notice and opportunity to comment on long-standing Departmental standards, such as use of the single employer test, and the 2024 H–2A Final Rule responded to those comments and codified the provisions in the regulations, providing clarity to the regulated community and Department's OALJ regarding, for example, the methods the Department uses to determine when two ostensibly distinct employers are, in fact, a single employer, as necessary to maintain program integrity, reduce instances of misrepresentation and fraud in the nonimmigrant labor certification programs, and ensure fairness for law abiding employers seeking foreign labor certification to fill legitimate labor needs. Similarly, § 655.104 streamlined the successor-in-interest provisions the Department uses across programs, including clearly explaining to the regulated community the factors the Department considers in determining successor-in-interest status and the procedures the Department follows when making such a determination in relation to a notice of debarment from the H–2A program. Finally, the provision explicitly prohibiting passport withholding merely reflects existing employer obligations pursuant to certain Federal, State, and local laws and imposes no new burdens or obligations on employers. Retaining the provision that makes this prohibition explicit in the H–2A program regulations also is consistent with the general aims of President Trump's E.O. 14159, *Protecting the American People Against Invasion,* which declares ''it is the policy of the United States to achieve the total and efficient enforcement of [U.S. immigration] laws . . .'' and directs agencies to prioritize ''enforcement of the provisions of the INA and other Federal laws related to the illegal entry and unlawful presence of aliens in the United States and the enforcement of the purposes of this order,'' including ''dismantl[ing] cross-border human smuggling and trafficking networks . . .''

J. Wagner-Peyser Act

The Department proposes to rescind some provisions adopted in the 2024 H–2A Final Rule that are not necessary for the efficient functioning of the ES. The Department proposes to rescind requirements at §§ 658.503 and .504 relating to the ES-system-wide effect of SWA determinations to discontinue services to employers and notification to the ETA Office of Workforce Investment (OW) regarding discontinuation and reinstatement, as well as at § 653.501(b)(4), which requires ES staff to consult the OWI discontinuation of services list prior to placing a job order in intra-state or inter-state clearance. Requirements for this list were established to ensure that a final decision to discontinue services to an employer would prohibit an employer from receiving any services from the ES system, not just from offices in the State that discontinued services, enabling States to meet the requirements of § 658.503(e). Ongoing litigation in

multiple jurisdictions prevents this nationally-scoped provision from taking effect, and because each State is responsible for issuing its own discontinuation determinations under part 658, subpart F, the Department believes it is appropriate for these actions to be effective only in the States in which they are issued. The Department proposes to revise § 653.501(b)(4) and paragraphs (i) and (ii) so that the State receiving the clearance order will not provide ES services to an employer for which it has already discontinued services, to remove references to a national OWI discontinuation of services list, and to rescind § 658.504(d) (while retaining clarifying changes to § 658.504 broadly). The Department also proposes to rescind changes to §§ 658.502(b) and 658.503(b) from the 2024 H–2A Final Rule that removed employers' option for pre-final determination hearings and allow employers to request a hearing only after the State makes a final determination. This change was intended to ensure a complete record of decision-making on appeal, but might have limited employers' options for appeal and introduced delay for employers seeking a hearing, and the Department is proposing to restore the option to request a hearing at § 658.502 to provide maximum process to employers using the ES system. Similarly, with regard to the basis for determining the necessity of immediate discontinuation without going through regular procedures, the Department proposes to retain only the basis that existed prior to the 2024 H–2A Final Rule. Any exceptions to a State following regular procedures should be narrow, and a lower threshold for immediate discontinuation raises the risk of insufficiently supported and erroneous decisions adversely impacting employers seeking to recruit workers. The Department invites comments on the balance between State need to act quickly in exceptional circumstances and due process for employers.

The Department proposes to retain certain provisions adopted in the 2024 H–2A Final Rule that clarify long-standing, but previously confusing, discontinuation of services provisions and align standards for foreign workers and U.S. workers rather than disadvantaging U.S. workers, and is soliciting public comment as to whether the following provisions should be retained or modified. As discussed above, the Department proposes to maintain definitions in § 651.10 for ''agent,'' ''farm labor contractor,'' and ''successor in interest.'' The Department also proposes to maintain definitions that make the ES regulations more readable and understandable and that more clearly define concepts that previously were discussed in the ES regulations yet not adequately defined. These include ''criteria clearance order,'' ''discontinuation of services,'' ''employment-related laws,'' ''joint employer,'' ''non-criteria clearance order,'' and ''week.'' The Department sought to align these new definitions with the same or similar definitions throughout the rule.

The Department proposes to retain a provision at § 653.501(b)(4)(i) that requires States to consult the OFLC and WHD debarment lists and discontinue services to any employer debarred from participating in the H–2A or H–2B foreign labor certification programs. Consistent with an America First policy direction, this provision ensures that U.S. workers are protected from the narrow set of employers the Department has already found to have committed significant violations sufficient to justify their debarment from the labor certification program.

The Department proposes to revert requirements in § 653.501(c)(1)(iv)(E) for listing wages on clearance orders, as the change to this provision in the 2024 H–2A Final Rule was made for consistency with H–2A regulations prescribing wage rate requirements, which the Department proposes above to revert. The Department also proposes to revert provisions in § 653.501(c) and (d) relating to employer obligations in the event of a delay in the start of work, from the current provisions to those that were in effect prior to the 2024 H–2A Final Rule. The current provisions require employers to notify workers in the event of a delay, and in the event of less than 10 days' notice, impose requirements on employers relating to the provision of housing, as well as compensation and benefits for up to 14 days. In order to reduce the financial burden that these regulations impose on employers, which is in addition to the burden caused by work delays, the Department proposes to revert to a guarantee of one week's pay for workers recruited through the ES system in the event of a short-notice delay, and to require SWAs to notify workers of delays and other changed circumstances. The prior provisions appropriately allocated the burden-sharing between employers, workers, and the ES system.

Lastly, the Department proposes to retain certain clarifying changes in §§ 658.501 and 658.502, and the changes in § 658.503 related to discontinuation of services. The changes in §§ 658.501(a) and 658.502(a) include clarifying changes related to discontinuing services on the bases of debarment from foreign labor certification programs or, as in § 658.501(b), fraud in those programs. The changes in § 658.502(a) require states to more thoroughly document and communicate the bases for discontinuation and the basic facts of the alleged violation, and they give greater clarity and protection to employers in submitting rebuttal evidence and information to the SWA. Discontinuations of service require a high bar and are rare, yet previous to the 2024 H–2A Final Rule, State discontinuations of service sometimes lacked sufficient documentation to explain to employers the basis of a discontinuation, making it difficult for employers to remedy the violation. These provisions ensure States discontinue services only upon thorough review and documentation of violations. Similarly, the Department proposes to retain 2024 H–2A Final Rule changes in §§ 658.503(a), (c), (d) and (f) that clarify processes States must follow prior to discontinuing services, particularly the full documentation and notification required before a discontinuation can take effect. In § 658.503(b), the 2024 H–2A Final Rule describes previously existing requirements for when immediate discontinuation is appropriate, and adds requirements that the State document the facts that led to the immediate discontinuation and notify employers of the details of the discontinuation and their ability to request a hearing. The Department proposes to retain these provisions, in order to ensure employers have adequate information and opportunity to respond, in furtherance of affording maximum process to employers participating in the ES. However, the Department proposes to rescind changes that limited access to a hearing and supported the OWI discontinuation of services list. In § 658.503(e), the Department proposes to retain provisions that explain what discontinuation of services means operationally, so that States and employers understand the process, and proposes to rescind language that refers to nation-wide impact of discontinuation of services, consistent with rescissions described earlier.

III. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and 14192 (Unleashing Prosperity Through Deregulation)

Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has reviewed this rule and designated it a significant regulatory action under E.O. 12866.

E.O. 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Improving Regulation and Regulatory Review, 76 FR 3821, 3821 (Jan. 21, 2011), E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. *Id.*

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. This rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.

Outline of the Analysis

Section III.A.1 describes the need for the rule. Section III.A.2 describes the process used to estimate the cost savings of the rule and the general inputs used, such as wages and number of affected entities. Section III.A.3 explains how the provisions of the rule will result in quantified costs and transfer payments and presents the calculations the Department used to estimate them. Section III.A.4 describes the quantified and unquantified transfer payments and benefits of the rescissions contained within this proposed rule. Section III.A.5 summarizes the estimated first-year and 10-year total and annualized costs and transfer payments of the rule.

Summary of the Analysis

The Department estimates that all the rescissions contained in this proposed rule will result in a significant reduction in costs, or otherwise create cost savings, as well as transfers of payments from employees to employers. As shown in Exhibit 1, the proposed rule is expected to have an annualized quantifiable net cost savings of $1.02 million and a total present value 10-year quantifiable net cost savings of $10.18 million, each at a discount rate of 7 percent.[35] The proposed rule is estimated to result in annualized quantifiable transfer payments from H–2A employees to H–2A employers of $12.66 million and present value 10-year transfer payments of $88.92 million at a discount rate of 7 percent.[36]

EXHIBIT 1—ESTIMATED MONETIZED NET COST SAVINGS AND TRANSFER PAYMENTS OF THE PROPOSED RULE

[2022 $Millions]

	Net cost savings	Transfer payments
Undiscounted 10-Year Total	$15.35	$123.42
10-Year Present Value with a Discount Rate of 3%	12.77	106.46
10-Year Present Value with a Discount Rate of 7%	10.18	88.92
10-Year Average	1.54	12.34
Annualized at a Discount Rate of 3%	1.28	12.48
Annualized with at a Discount Rate of 7%	1.02	12.66

The total quantifiable cost of the rule is associated with rule familiarization and the provisions requiring additional information disclosure on the H–2A Applications. Transfer payments are the results of the elimination of the immediate effective date for the updated AEWRs, as described below. The Department also notes that there are unquantifiable cost savings associated with the rescission of certain provisions of the 2024 H–2A Final Rule. For example, there are unquantifiable cost savings to employers that no longer need to spend time inspecting whether each worker has chosen to use their seatbelt prior to transporting workers and does not have to potentially assign a supervisor to each vehicle to enforce seatbelt usage.

1. Need for Regulation

As previously discussed and in light of these district court injunctions and the Administration's policy to significantly reduce the private expenditures required to comply with Federal regulations to secure America's economic prosperity and national security and the highest possible quality of life for each citizen, the Department has determined that the regulatory requirements and policies contained in the 2024 H–2A Final Rule must be reconsidered and proposes revisions in this NPRM. Specifically, the 2024 H–2A Final Rule adopted a number of unnecessary, burdensome, and costly requirements on employers. Specifically, these provisions include, but are not limited to, substantial new requirements associated with the

[35] The rule will have an annualized quantifiable cost of $1.28 million and a present value 10-year quantifiable cost of $12.77 million at a discount rate of 3 percent in 2022 dollars.

[36] The rule will have annualized quantifiable transfer payments from H–2A employees to H–2A employers of $12.48 million and total 10-year transfer payments of $106.46 million at a discount rate of 3 percent in 2022 dollars.

material terms and conditions offered by employers to H–2A workers that are not commonly provided to other U.S. workers, including progressive discipline policies for cause-based employment terminations, anti-retaliation measures for certain workers engaged in concerted activities, and expanding the authority and scope for a State Workforce Agency to discontinue employment services to an employer that effectively debars an employer from accessing the H–2A program without sufficient due process.

Further, the final rule imposed extensive data collection requirements on employers related to their use of foreign labor recruiters, including personal names and addresses abroad, and detailed personal information associated with all owners of the employers, operators the place(s) of employment, and supervisor(s) and manager(s) of workers employed under the terms of the work contract, often with limited or no practical utility to agency decision making. Thus, the Department has determined that the proposals outlined below will return the H–2A program's regulatory framework to a more reasonable balance between the statute's competing goals of providing an adequate labor supply and protecting the jobs of domestic agricultural workers.

2. Analysis Considerations

The Department estimated the cost savings and transfer payments of this proposed rule relative to the existing baseline (*i.e.,* the current practices for complying, at a minimum, with the H–2A program as currently codified at 20 CFR part 655, subpart B, and 29 CFR part 501).

In accordance with the regulatory analysis guidance articulated in OMB's Circular A–4 [37] and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (*i.e.,* costs, benefits, and transfer payments that accrue to entities affected). The analysis covers 10 years (from 2025 through 2034) to ensure it captures measurable costs and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2022 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4 published on October 9, 2003.

Exhibit 2 presents the number of affected entities that are expected to be impacted by this proposed rule.[38] The average number of affected entities is calculated using OFLC H–2A certification data from FY 2016 through FY 2022. Exhibit 3 presents the number of workers who are expected to be impacted by this proposed rule. The exhibit contains the number of certified H–2A workers from FY 2012 through FY 2022.

EXHIBIT 2—NUMBER OF UNIQUE EMPLOYERS BY YEAR

FY	Number
2016	6,713
2017	7,187
2018	7,902
2019	8,391
2020	7,785
2021	9,442
2022	10,571
Average	8,284

EXHIBIT 3—HISTORICAL H–2A PROGRAM DATA

FY	Workers certified
2012	85,248
2013	98,814
2014	116,689
2015	139,725
2016	165,741
2017	199,924
2018	242,853
2019	258,446
2020	275,430
2021	317,619
2022	371,619

a. Growth Rate

The Department estimated growth rates for certified H–2A workers based on program data presented in Exhibit 3 and estimated growth rates for unique H–2A employers based on program data presented in Exhibit 2.

The compound annual growth rate (CAGR) for certified H–2A workers using the program data in Exhibit 3 is calculated as 15.9 percent. This growth rate, applied to the analysis timeframe of 2025 to 2034, would result in more H–2A certified workers than projected employment of workers in the relevant H–2A SOC codes by BLS.[39] Therefore, to estimate realistic growth rates for the analysis, the Department applied the growth rate for unique employers, assuming the growth rate for unique employers and workers should be similar. The Department used FY 2016–2022 data on unique employers, where the use of FY 2016 as the first year is due to data availability on calculated unique employers. The Department calculated a CAGR based on FY 2016 unique employers (6,713) and the FY 2022 unique employers (10,571). The result is an estimate of 7.9 percent.[40]

The estimated annual growth rates for unique employers (7.9 percent) and workers (7.9 percent) were applied to the estimated cost savings and transfers of this proposed rule to forecast participation in the H–2A program.[41]

b. Compensation Rates

In Section VIII.A.3, the Department presents the measurable cost savings, including labor, associated with the implementation of the provisions of the rule. Exhibit 4 presents the hourly compensation rates for the occupational categories expected to experience a change in the number of hours necessary to comply with all the rescissions contained in this proposed rule. The Department used the mean hourly wage rate for a private sector HR Specialist (SOC code 13–1701).[42] Wage rates are adjusted to reflect total compensation, which includes nonwage factors such as overhead and fringe benefits (*e.g.,* health and retirement benefits). We use an overhead rate of 17 percent [43] and a fringe benefits rate based on the ratio of average total compensation to average wages and salaries in 2022.[44] We then multiply the loaded wage factor by the wage rate to calculate an hourly compensation rate. The Department used the hourly compensation rates presented in Exhibit

[37] OMB Circular No. A–4, *Regulatory Analysis* (2003).

[38] OFLC, *Performance Data, https://www.dol.gov/agencies/eta/foreign-labor/performance* (last visited Feb. 8, 2024).

[39] Comparing BLS 2032 projections for combined agricultural workers (SOC 45–2000) with a 14.8-percent growth rate of H–2A workers yields estimated H–2A workers about 178 percent greater than BLS 2032 projections. The projected workers for the agricultural sector were obtained from BLS's Occupational Projections and Worker Characteristics, *https://www.bls.gov/emp/tables/occupational-projections-and-characteristics.htm.*

[40] Calculation: 7.9% = (10,571 ÷ 6,713)(1. ÷ 6.) − 1.

[41] Proposed forecasted estimates of H–2A employer participation: 11,419 in 2023; 12,335 in 2024; 13,325 in 2025; 14,394 in 2026; 15,548 in 2027; 16,796 in 2028; 18,143 in 2029; 19,599 in 2030; 21,171 in 2031; and 22,869 in 2032.

[42] BLS, *National Occupational Employment and Wage Estimates: 13–1701* (May 2021), *https://www.bls.gov/oes/current/oes131701.htm* (last visited Feb. 8, 2024).

[43] Cody Rice, U.S. Envtl. Prot. Agency, *Wage Rates for Economic Analyses of the Toxics Release Inventory Program* 7 (June 10, 2002), *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[44] BLS, News Release, *Employer Costs for Employee Compensation—December 2022* (Mar. 17, 2023), *https://www.bls.gov/news.release/archives/ecec_03172023.pdf.* Ratio of total compensation to wages and salaries for all private industry workers: 40.23 ÷ 28.37 = 1.418.

4 throughout this analysis to estimate the labor costs for each provision.

EXHIBIT 4—COMPENSATION RATES

[2022 Dollars]

Position	Grade level	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
	(a)	(b)	(c)	(d)	(d = a + b + c)
HR Specialist	N/A	$35.13	$14.75 ($35.13 × 0.42)	$5.97 ($35.13 × 0.17)	$55.79

3. Analysis of Quantified Costs, Cost Savings, and Transfers

The Department's analysis below covers the estimated cost savings and transfer payments associated with the baseline requirements (*i.e.,* 2024 H–2A Final Rule) compared to the rescissions under this proposed rule. In accordance with Circular A–4, the Department considers transfer payments as payments from one group to another that do not affect total resources available to society. This final rule estimated the cost of rule familiarization and application additions and transfer payments associated with the elimination of the delayed effective date for updated AEWRs.

a. Quantified Costs and Cost Savings

The following sections describe the quantified costs and cost savings associated with employers having to read and understand this proposed rulemaking, not having to read and understand the 2024 H–2A Final Rule, and the rescission of the provisions requiring additional information disclosure on the H–2A Application.

i. Rule Familiarization

Under this proposed rule, H–2A employers will incur costs to familiarize themselves with the impact of the rescissions of requirements contained in the 2024 H–2A Final Rule. New employers in each subsequent year will now save time and costs trying to familiarize themselves with current requirements relative to the requirements they would have needed to familiarizing themselves with if the 2024 H–2A Final Rule were still in effect.

To estimate the costs and cost savings, the Department applied the growth rate of H–2A employers (7.9 percent) to the number of unique H–2A employers (8,284) to determine the number of unique H–2A applicants impacted in the first year. For subsequent years, the number of new employers was estimated by multiplying the previous year's employer count by the growth rate of H–2A employers (7.9 percent) and then subtracting that value from the previous year's total employer count. Exhibit 5 details the number of new employers for each year of the analysis.

EXHIBIT 5—NUMBER OF NEW EMPLOYERS BY YEAR

FY	Total employers	New employers
2025	8,938	N/A
2026	9,645	706
2027	10,406	762
2028	11,229	822
2029	12,116	887
2030	13,073	957
2031	14,106	1,033
2032	15,220	1,114
2033	16,422	1,202
2034	17,720	1,297

For the initial costs, the number of unique H–2A employers in the first year (8,938) was multiplied by the estimated amount of time required to review this rule (1 hour). This number was then multiplied by the total compensation rate of an HR specialist, as described above in Exhibit 4 ($55.79 per hour). This calculation results in a total undiscounted cost of $498,651 during the first year.

The Department estimated that the 2024 Final Rule would require H–2A employers to incur four hours of rule familiarization costs. Rescinding the 2024 Final Rule will remove those four hours of rule famliarization costs. Accounting for the one hour of rule familiarization associated with this rulemaking, the net effect is a reduction of three hours of rule familiarization costs in FY 2026–2034. Using the same total compensation rate of an HR specialist as above, this produces an undiscounted cost savings of $1,469,509 during FY 2026–2034 and an undiscounted net cost savings of $970,858 over the 10 years after the rule takes effect. Combining the FY 2025 costs with the FY 2026–2034 cost savings, the annualized net cost savings over the 10-year period are $73,188 and $49,478479,217 at discount rates of 3 and 7 percent, respectively.

ii. Additional Information Disclosure on the H–2A Application

Under the 2024 H–2A Final Rule, H–2A employers are required to submit additional information on the H–2A Application, which imposed a yearly cost as the time associated with filling out this information is required for every application for certification. The additional information includes the names, addresses, business phone numbers, and dates of birth for the owner(s) of each employer, each operator of the place(s) of employment, and all managers and supervisors of workers employed under the H–2A Application; DBA information; and information about the identity and location of any foreign labor recruiter the employer engaged, directly or indirectly, in international recruitment, as well as all persons and entities hired by or working for the recruiter or agent, and any of the agents or employees of those persons and entities.

To estimate the annual cost savings associated with proposed rescissions of the application additions contained in this rule, the Department applied the growth rate of H–2A employers (7.9 percent) to the current number of unique certified H–2A employers (8,938) to determine the number of unique H–2A employers in the first year (8,938). The number of unique certified H–2A employers in the first year is then multiplied by the growth rate again to determine the number of unique certified H–2A employers in the second year. This process is repeated each year to determine the total number of unique certified H–2A employers every year during the study period. Since it is assumed that only a single HR specialist per employer will incur the additional time investment, the estimated total yearly cost can be calculated by multiplying the total number of unique certified H–2A employers (8,938) by the HR specialist hourly wage rate ($35.13 per hour), the loaded wage factor and

the overhead rate for the private sector (1.59), and the estimated additional time taken to gather and enter the information on a yearly basis (2 hours on average). Lastly, this value is multiplied by the growth rate of unique employers (7.9 percent) to the *n*th power, with *n* being equal to the period year. The result is $997,302 in cost savings in the first year, an undiscounted average over a 10-year period of $1,437,987 in cost savings, and discounted annualized savings of $1,204,219, and $968,193 at rates of 3 and 7 percent, respectively.

b. Transfer Payments and Benefits

The following section describes the quantified and unquantified transfer payments and benefits of the rescissions contained within this proposed rule and describes the practical utility of the Department's disclosure of unquantified transfer payments and qualitative benefits associated with the 2024 Final Rule.

i. Quantified Transfer Payments

This section discusses the quantifiable transfer payments related to the elimination of the immediate effective date for the AEWR publication. The Department considers transfers as payments from one group to another that do not affect total resources available to society. The transfers measured in this analysis are wage transfers from H–2A workers to U.S. employers. H–2A workers are migrant workers who will spend some of their earnings on consumption goods in the U.S. economy but likely send a large fraction of their earnings to their home countries.[45] Therefore, the Department considers the wage transfers in the analysis as transfer payments within the global economic system.

A. Elimination of the Immediate Effective Date for Updated AEWRs

Under the 2024 H–2A Final Rule, the Department publishes the AEWR as soon as data are available, typically in the middle of December for AEWRs based on FLS data and which has an immediate effective date.[46] Under this proposed rule, the Department intends to return to its practice of providing a 2-week delay until the AEWR is effective, typically January 1st of the following year. As noted previously, this brief period provides time for employers to adjust their payroll systems and to make business decisions related to these changed costs in labor, which are particularly significant for employers planting, cultivating, and harvesting specialty crops where labor costs are often 30 to 40 percent of total operating cost. Reinstating the 2-week delay until the AEWR is effective means, employers that employ workers during the 2-week period from mid-December to early January will no longer experience a wage transfer to employees due to the elimination of the immediate effective date of the updated AEWRs.

To estimate the transfer associated with wages from employees to H–2A employers, the Department first uses FY 2020 and FY 2021 H–2A certification data to calculate the weighted average increase in AEWR from one year to the next.[47] The Department weights the average by the number of workers in each State with employment between December 14th and the end of the year to account for regional differences in employment during December. The result is an average increase in the AEWR by $1.09.[48] The Department then calculates the average number of days worked between December 14th and the end of the year (11.87) using the FY 2020 and FY 2021 H–2A certification data. The Department estimates the average annual number of workers with work during this period using the H–2A certification data (89,208).[49]

The Department determines the total amount of the transfers by multiplying the 2-year weighted AEWR difference for end-of-year employment (1.09), the 2-year average number of days worked between December 14th and the end of year (11.87), the average number of work hours in a day (7.4),[50] and the number of H–2A workers during this period (89,208). To determine the transfers for every year in the 10-year period, the total number of H–2A workers during the period is multiplied by the growth rate of H–2A workers (7.9 percent). The same process is repeated each year in the period. The total undiscounted average annual transfers associated with this provision is $12,342,109 and the discounted annualized transfers are $12,480,377 and $12,660,319 at discount rates of 3 and 7 percent, respectively. The Department also conducted a sensitivity

[45] Elimination of the immediate effective date for updated AEWRs will also result in wage transfers from workers in corresponding employment to U.S. employers, but the Department is not able to quantify this transfer due to the lack of data for workers in corresponding employment and their wages. In particular, the Department does not collect or possess sufficient information about the number of corresponding workers affected and their wage payment structures to reasonably measure the transfers to corresponding workers. Employers are not required to provide the Department, on any application or report, the estimated or actual total number of workers in corresponding employment. Although each employer, as a condition of being granted a temporary agricultural labor certification, must provide the Department with a report of its initial recruitment efforts for U.S. workers, including the name and contact information of each U.S. worker who applied or was referred to the job, such information typically reflects only a very small portion of the total recruitment period, which runs through 50 percent of the certified work contract period, and does not account for any other workers who may be considered in corresponding employment and already working for the employer. Because the report of initial recruitment efforts for U.S. workers only captures information from a limited portion of the recruitment period and does not account for workers already employed by the employer who may be in corresponding employment, the Department is not able to draw on this information to meaningfully assess the total number of corresponding workers affected or their wage payment structures, without which the Department is unable to reasonably measure the transfers from corresponding workers. The Department has consistently sought public comment on how these wage transfer impacts can be calculated but consistently receives no comments.

[46] New AEWRs based on OEWS data currently become effective on or around July 1st for the small percentage of job opportunities that cannot be encompassed within the SOC codes for AEWRs that are based on the FLS field and livestock workers (combined) data. The use of OEWS data to calculate AEWRs in limited circumstances was the result of a change made under the Department's 2023 AEWR Final Rule. *See* 88 FR 12760, 12764–65 (Feb. 28, 2023). The analysis here is limited to FY 2020 and FY 2021 H–2A certification data, during which period the AEWR was calculated based only on FLS data, and thus, the analysis focuses on the 2-week period from mid-December to early January that is associated with the publication and effective dates of FLS-based AEWRs under current practice.

[47] OFLC, *Performance Data, https://www.dol.gov/agencies/eta/foreign-labor/performance* (last visited June 18, 2025).

[48] Because FY 2020 and FY 2021 H–2A certification data do not reflect the wage increases due to the 2023 AEWR Final Rule, as explained in a previous footnote, the transfer payments estimated in the analysis are likely understated in that they may not account for the main change under that rule, namely the limited job opportunities that would be subject to updated AEWRs based on the OEWS data. See 88 FR at 12764–65. The 2023 AEWR Final Rule became effective on March 30, 2023, and, therefore, the Department does not have any readily available FY H–2A certification data to estimate wage transfer payments after the publication of the 2023 AEWR Final Rule. The Department, moreover, sought public comment on how these wage transfer impacts can be calculated but received no comments. However, the 2023 AEWR Final Rule explained that the Department anticipates a very limited number of H–2A job opportunities would be subject to the OEWS-based AEWR, as the majority of H–2A job opportunities are and will continue to remain subject to FLS-based AEWRs. See 88 FR at 12766, 12799. As such, the Department considers the impacts of the potential underestimation here to be *de minimis* because of the low incidence of job opportunities assigned the OEWS AEWR pursuant to the 2023 AEWR Final Rule.

[49] The Department uses the growth rate of H–2A workers (7.9 percent) to produce proposed forecasted estimates of H–2A workers: 96,247 in 2023; 103,840 in 2024; 112,033 in 2025; 120,873 in 2026; 130,410 in 2027; 140,699 in 2028; 151,800 in 2029; 163,777 in 2030; 176,699 in 2031; and 190,641 in 2032.

[50] The Department analyzed FY 2020 and FY 2021 certification data for end-of-year employers that reported anticipated hours per day, resulting in an average of 7.4 hours per day.

analysis using the CAGR of 15.9 percent for H–2A workers. The resulting total undiscounted average annual transfers is $18,135,595, and the discounted annualized transfers are $18,037,709 and $17,901,328 at discount rates of 3 and 7 percent, respectively.

ii. Unquantified Transfer Payments and Benefits

In the 2024 H–2A Final Rule, the Department did not provide any measurable estimates of benefits associated with the major regulatory requirements impacting employers who seek to employ H–2A workers. The Department consistently noted that it lacked any data regarding the prevalence of certain conditions (*e.g.,* number of workers impacted by work start date delays, frequency of employers paying higher piece rates, transportation related accidents) to make measurable determinations regarding the benefits of certain provisions of the 2024 H–2A Final Rule. In fact, no measurable wage transfers were estimated for employers who would otherwise have to compensate workers based on untimely notifications of a change in the work start date or even payments of piece rate wages, because no evidence was presented that such requirements were necessary due to any prevalence of employer non-compliance with the regulatory requirements in effect before the 2024 Final Rule was promulgated.

Rather, the Department made general and unsubstantiated qualitative statements noting that certain provisions ensure workers are not ''deprived of their rights using inconsistent or unfair practices'' (*i.e.,* due to unjustified terminations for cause) or ''should increase workers' dignity and safety'' or ''should help ensure that workers under the H–2A program can assert their rights without the unique risks associated with retaliation'' (*e.g.,* protection for worker advocacy and self-organization) or ''safeguards the health, safety, and dignity of those workers and also prevents the depression of working conditions for the local agricultural workforce.'' Thus, in the absence of benefits that can offer some degree of measurable balance to the quantified costs, the Department initially concludes that the expected unrecoverable compliance and transfer costs associated with the 2024 H–2A Final Rule far outweigh its expected unquantifiable transfers and benefits, which this proposed rule seeks to better balance based on the clear statutory mandates enacted by Congress for the Secretary of Labor.

5. Summary of the Analysis Concerning Costs, Cost Savings, and Transfers

Exhibit 6 summarizes the estimated total quantifiable cost savings and transfer payments of this final rule over the 10-year analysis period. The Department estimates the annualized net cost savings from the rescissions in this proposed rule $1.02 million and the annualized transfer payments (from employees to H–2A employers) at $12.66 million, each at a discount rate of 7 percent.

EXHIBIT 6—ESTIMATED MONETIZED COST SAVINGS AND TRANSFER PAYMENTS OF THIS PROPOSED RULE

[2022 $Millions]

	Net cost savings	Transfer payments
2024	$0.50	$8.56
2025	1.19	9.24
2026	1.29	9.97
2027	1.39	10.76
2028	1.50	11.60
2029	1.62	12.52
2030	1.75	13.51
2031	1.88	14.57
2032	2.03	15.72
2033	2.19	16.96
Undiscounted 10-Year Total	15.35	123.42
10-Year Total with a Discount Rate of 3%	12.77	106.46
10-Year Total with a Discount Rate of 7%	10.18	88.92
10-Year Average	1.54	12.34
Annualized with a Discount Rate of 3%	1.28	12.48
Annualized with a Discount Rate of 7%	1.02	12.66

Alternatives Considered

The Department considered two alternatives to this proposal. First, the Department considered the alternative of preserving the current regulations at 20 CFR parts 651, 653, 655, and 658, and 29 CFR part 501, as modified by the 2024 H–2A Final Rule, until litigation is resolved. This alternative was rejected because of the multiple court decisions preventing the Department from enforcing parts of the regulations as currently codified. The different court orders place different limitations on the Department's enforcement scheme (*e.g.,* some provisions are enjoined in some localities but not in others), which results in a confusing patchwork of regulatory requirements throughout the country. Retaining current 20 CFR parts 651, 653, 655, and 658, and 29 CFR part 501, as modified by the 2024 H–2A Final Rule, would be confusing and cumbersome for employers using the H–2A program to understand which provisions apply to them. Second, the Department considered reverting back to the regulations in 20 CFR parts 651, 653, 655, and 658, and 29 CFR part 501, as of June 27, 2024. This option would remove all changes effectuated by the 2024 H–2A Final Rule, regardless of their utility. The Department rejected this option because it believes that some of the provisions adopted in the 2024 H–2A Final Rule that merely codified existing practice, streamlined procedures and imposed no additional burdens on stakeholders may be worth retaining. The Department invites comments on these two regulatory alternatives, as well as other regulatory alternatives that commenters may propose.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the *Small Business Regulatory Enforcement Fairness Act of 1996,* Public Law 104–121, requires agencies to determine whether regulations will have a significant economic impact on a substantial number of small entities. The Department certifies that the recission proposed in this rulemaking does not have a significant economic impact on a substantial number of small entities. The Department presents the basis for this certification in the analysis below.

1. Description of the Number of Small Entities to Which This Proposed Rule Will Apply

a. Definition of Small Entity

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by the Small Business Administration (SBA), in effect as of December 19, 2022, to classify entities as small.[51] SBA establishes separate standards for individual 6-digit North American Industry Classification System (NAICS) industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.[52]

b. Number of Small Entities

Given that the 2024 H–2A Final Rule was promulgated and became effective on June 28, 2024, only one year ago, the Department initially concludes that the employment and annual revenue data from the business information provider Data Axle,[53] which was merged with the H–2A labor certification records maintained by OFLC for FY 2020 and FY 2021, remains valid for analytical use in this proposed rulemaking. This process allows the Department to identify the number and type of small entities in the H–2A certification data as well as provide reasonable estimates of their annual revenues. Based on these data sources, the Department determined the number of unique employers in the FY 2020 and FY 2021 certification data based on the employer name and city. The Department identified 9,927 unique employers (excluding labor contractors). Of those 9,927 employers, the Department was able to obtain data matches of revenue and employees for 2,615 H–2A employers in the FY2020 and FY2021 labor certification data.

Of those 2,615 employers, the Department determined that 2,159 were small (82.5 percent). These unique small entities had an average of 11 employees and average annual revenue of approximately $3.6 million. Of these small unique entities, 2,139 of them had revenue data available from Data Axle. The Department's analysis of the impact of this proposed rule on small entities is based on the number of small unique entities (2,139 with revenue data).

To provide clarity on the agricultural industries impacted by this proposed rule, Exhibit 7 shows the number of unique H–2A small entities employers with certifications in the FY 2020 and FY 2021 labor certification data within each NAICS code at the 6-digit level.

EXHIBIT 7—NUMBER OF H–2A SMALL EMPLOYERS BY NAICS CODE

6-Digit NAICS	Description	Number of employers	Percent	Size standard
111998	All Other Miscellaneous Crop Farming	611	29	$2.5 million.
444240	Nursery, Garden Center, and Farm Supply Stores	162	8	$21.5 million.
561730	Landscaping Services	135	6	$9.5 million.
445230	Fruit and Vegetable Markets	127	6	$9.0 million.
424480	Fresh Fruit and Vegetable Merchant Wholesalers	78	4	100 employees.
111339	Other Noncitrus Fruit Farming	78	4	$3.5 million.
112990	All Other Animal Production	57	3	$2.75 million.
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	47	2	100 employees.
424910	Farm Supplies Merchant Wholesalers	39	2	200 employees.
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	37	2	$34.0 million.
	All Other	768	36	
	Total	2,139	100	

The Department also collected employment and annual revenue data for the NAICS Agricultural major industry [54] from SUSB [55] and merged those data into the estimated costs for small businesses from the H–2A certification data for FY 2020 and FY 2021. The Department assumes that NAICS sectors related to H–2A employment (1112, 1113, 1114, 1121, 1122, 1123, 1124, 1125, and 1129) have similar representation in size distribution as the broader 2-digit industry. The Department believes it is a reasonable assumption for the analysis because the broader 2-digit industry completely covers the 4-digit NAICS industries (1112, 1113, 1114, 1121, 1122, 1123, and 1129). The size distribution in the broader 2-digit industry mirrors the average size distribution in the 4-digit NAICS industries (1112, 1113, 1114, 1121, 1122, 1123 and 1129). No small businesses are left out for estimating impact on small entities in the affected NAICS industries. This assumption allows the Department to conduct a robust analysis of the most inclusive set of small businesses, which includes the

[51] SBA *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (December 19, 2022), *https://www.sba.gov/document/support--table-size-standards.*

[52] See *https://advocacy.sba.gov/resources/the-regulatory-flexibility-act* for details.

[53] Data Axle (Aug. 2023), *https://www.data-axle.com.*

[54] Due to omissions in collected data, 6-digit and 4-digit NAICS code data were not available. See U.S. Census Bureau, *Economic Census: NAICS Codes Understanding Industry Classification Systems* (Sept. 28, 2023). *https://www.census.gov/programs-surveys/economic-census/year/2022/guidance/understanding-naics.html.*

[55] See U.S. Census Bureau, *Statistics of U.S. Businesses* (Sept. 19, 2023). *https://www.census.gov/programs-surveys/susb/data.html.*

number of firms, number of employees, and annual revenue by firm size. Using this data allows the Department to estimate the per-provision cost of this final rule as a percent of revenue by firm size.

2. Projected Impacts to Affected Small Entities

The Department estimated the incremental impacts on small entities from the baseline (*i.e.,* the current practices for complying, at a minimum, with the H–2A program as currently codified at 20 CFR part 655, subpart B) to this proposed rule. As discussed in previous sections, the Department estimates impacts using historical certification data and therefore simulates the impacts of the proposed rule to each actual employer in the H–2A program rather than using representative data for employers within a given sector. The Department estimated the costs of (a) time to read and review this proposed rule, (b) time and cost savings associated with rescinding requirements for employers to collect and maintain additional information for the application additions provision and add that information to H–2A applications, and (c) wage transfers associated with rescinding the immediate effective date from the AEWR publications and reinstituting the agency's practice of permitting a 2-week delay in the effective date. The estimates included in this analysis are consistent with those presented in the E.O. 12866 section.

The Department estimates that 2,139 unique small entities will incur a one-time cost of $55.79 to familiarize themselves with this proposed rule, based on one hour of an HR Specialist's time, as described above in Exhibit 4. This is an estimated one-time net savings of $167.37, compared to reading and understanding the 2024 H–2A Final Rule if it once again became effective, which would have required four hours of an HR Specialist's time. Small entities will experience another estimated annual savings of $111.58 due to the recission of unnecessary and burdensome requirements to collect and maintain information due to the additional disclosure requirements associated with the 2024 final rule, which had required two hours of an HR Specialist's time.

In addition to the cost of rule familiarization and the cost of information and record keeping due to application additions, each small entity may have savings in wage costs due to the rescission of the immediate effective date requirement of the AEWR. To estimate the savings associated with this rescission for each small entity, we followed the methodology presented in the E.O. 12866 section. For each certification of a small entity, the Department calculated total wage impacts of this final rule in calendar year (CY) 2020 and CY 2021 based on each certification for employment between December 14th and the end of the year and the annual increase in the AEWR. The Department estimates the wage savings to all small entities at $826, on average, in the first year.[56] The Department initially concludes that many small entities will not experience an impact related to this rescission from this final rule because they do not have workers employed at the end of December.

Exhibit 8 shows the estimated cost savings per small entity for each year of the analysis due to this proposed rule. The first-year cost savings per small entity is estimated at $1,087 at a discount rate of 7 percent. The annualized cost savings per small entity is estimated at $979 at a discount rate of 7 percent. These estimates are *average costs,* meaning that some small entities will have higher cost savings while other small entities will have lower cost savings, regardless of firm size.

EXHIBIT 8—ESTIMATED COST SAVINGS TO SMALL ENTITIES DUE TO RESCISSIONS

Year	Recission of rule familiarization costs	Rescission of application additions	Recission of AEWR immediate effective date	Average total cost savings per employer
1	$167.37	$111.71	$808	$1,087
2	167.37	111.71	872	1,151
3	167.37	111.71	941	1,220
4	167.37	111.71	1,015	1,294
5	167.37	111.71	1,095	1,374
6	167.37	111.71	1,181	1,460
7	167.37	111.71	1,264	1,543
8	167.37	111.71	1,375	1,654
9	167.37	111.71	1,483	1,762
10	167.37	111.71	1,600	1,879
First-year cost savings ($), 7% discount rate				1,087
Annualized cost savings ($), 7% discount rate				979

The Department used the cost per employer analysis in the 2024 H–2A Final Rule as the basis for estimating the cost savings of the rescissions (*i.e.,* or cost avoidances) in this proposed rule per small entity as a percentage of annual receipts. First, the Department used SBA's Table of Small Business Size Standards to determine the size thresholds for small entities within the agricultural industry.[57] Next the Department obtained data on the

[56] In CY 2020 the average wage impact to all small entities is $620 in savings, and in CY 2021 it is $1,032 in savings. Because CY 2020 and CY 2021 H–2A certification data do not reflect the wage increases due to the 2023 AEWR Final Rule, the transfer payments estimated in the analysis are likely understated. As explained in a previous footnote, the transfer payments are likely understated in that they may not account for the main change under the 2023 AEWR Final Rule, namely the limited job opportunities that would be subject to updated AEWRs based on OEWS data. See 88 FR at 12764–12765. The 2023 AEWR Final Rule explained that the Department anticipates a very limited number of H–2A job opportunities would be subject to the OEWS-based AEWR, as the majority of H–2A job opportunities are and are estimated to continue to remain subject to FLS-based AEWRs. See 88 FR at 12766, 12799. The Department therefore considers the impacts of the potential underestimation to be *de minimis* because of the low incidence of job opportunities assigned the OEWS AEWR under the 2023 AEWR Final Rule.

[57] SBA, *Table of Small Business Size Standards* Matched to North American Industry Classification System Codes, (Mar. 17, 2023), *https://www.sba.gov/document/support-table-size-standards.* The size standards, which are expressed in either average annual receipts or number of employees, indicate the maximum allowed for a business in each subsector to be considered small.

number of firms, number of employees, and annual revenue by industry and firm size category from SUSB.[58] The Department used the Gross Domestic Product deflator to convert revenue data from 2017 dollars to 2022 dollars.[59] Then, the Department divided the estimated first-year cost and the annualized cost per small business (discounted at a 7-percent rate) by the average annual receipts per firm to determine whether this final rule will have a significant or substantial economic impact on small businesses in each size category. The Department used a total cost estimate of 3 percent of revenue as the threshold for a significant individual impact and set a total of 20 percent of small entities incurring a significant impact as the threshold for a substantial impact on small entities. A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact.[60] This threshold is also consistent with that sometimes used by other agencies.[61]

Finally, when examining the impact of the rescissions contained in this proposed rule on small entities by the proportion of revenue, of the 2,139 unique small entities with revenue data in the FY 2020 and FY 2021 certification data, only 0.7 percent of employers are estimated to have more than 3 percent of their total revenue saved in the first year based on 2020 data and another 2.0 percent of employers are estimated to have more than 3 percent of their total revenue saved in the first year based on 2021 data due to the rescission of these unnecessary regulatory requirements. In addition, no individual NAICS code sector has 20 percent or more of small entities with an impact greater than 3 percent of revenue. Thus, based on this initial analysis, the Department certifies that this final rule will not impose a significant economic impact on a substantial number of small entities. Rather, the rescissions contained in this proposed rule will provide some cost ''relief'' to small entities who otherwise would have to absorb additional and unrecoverable compliance costs associated with the requirements, data collection, and record retention mandates imposed by the 2024 H–2A Final Rule.

C. Review Under the Paperwork Reduction Act

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

This rulemaking potentially affects specific information collections *Criteria and Non-Criteria Agricultural Clearance Order Forms and H–2A Application for Temporary Employment Certification in States and by Employers Covered by Injunction of the Farmworker Protection* (OMB 1205–0562), *H–2A Temporary Agricultural Labor Certification Program* (OMB 1205–0466), and *Agricultural Recruitment System Forms Affecting Migratory Farm Workers* (OMB 1205–0134)). Any changes the Department might contemplate making to these collections will be communicated through an upcoming 60-day **Federal Register** Notices. Through these notices, the Department will request public comments that will be later addressed by publishing 30-day **Federal Register** Notices and submitting information collection requests to OMB.

D. Review Under Executive Order 13132

E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. 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. The E.O. 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.

The Department has examined this proposed rescission and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this proposed rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and tribal governments.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear

[58] U.S. Census Bureau, *Statistics of U.S. Businesses* (May 10, 2022), *https://www.census.gov/programs-surveys/susb/data.html.*

[59] U.S. Bureau of Economic Analysis, *Table 1.1.9. Implicit Price Deflators for Gross Domestic Product, https://apps.bea.gov/iTable/?reqid=19step=2isuri=1categories=survey* (last visited May 30, 2023).

[60] *See, e.g.,* Final Rule, *Increasing the Minimum Wage for Federal Contractors,*79 FR 60634, 60706 (Oct. 7, 2014); Final Rule, *Discrimination on the Basis of Sex,* 81 FR 39108, 39151 (June 15, 2016); NPRM, *National Apprenticeship System Enhancements,* 89 FR 3118, 3252 (Jan. 17, 2024).

[61] *See, e.g.,* Final Rule, *Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II,* 79 FR 27106, 27151 (May 12, 2014) (Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than 3 percent annually are not economically significant).

legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOL has completed the required review and determined that, to the extent permitted by law, this proposed rescission meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. UMRA requires Federal agencies to assess a regulation's effects on State, local, and tribal governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

The Department examined this proposed rescission according to UMRA and its statement of policy and determined that the rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* 53 FR 8859 (Mar. 18, 1988), the Department has determined that this proposed rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this proposed rescission under the OMB and has concluded that it is consistent with applicable policies in those guidelines.

List of Subjects

20 CFR Part 651

Employment, Grant programs—labor.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs—labor, Reporting and recordkeeping requirements.

29 CFR Part 501

Administrative practice and procedure, Agricultural, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

For the reasons stated in the preamble, the Department of Labor proposes to amend 20 CFR parts 651, 653, 655, and 658 and 29 CFR part 501 to read as follows:

Title 20: Employees' Benefits

Employment and Training Administration

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

■ 3. The authority citation for part 653 continues to read as follows:

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

■ 4. Amend § 653.501 by:
■ a. Revising paragraph (b)(4);
■ b. Revising paragraph (c)(1)(iv)(E);
■ c. Revising paragraphs (c)(3) introductory text, (c)(3)(i) and (iv), and (c)(5); and
■ d. Adding paragraphs (d)(4), (7), and (8).

The additions and revisions read as follows:

§ 653.501 Requirements for processing clearance orders.

* * * * *

(b) * * *

(4) Prior to placing a job order into intrastate or interstate clearance, ES staff must consult the Department's Office of Foreign Labor Certification and Wage and Hour Division debarment lists.

(i) If the employer requesting access to the clearance system is currently debarred from participating in the H–2A or H–2B foreign labor certification programs, the SWA must initiate discontinuation of services pursuant to part 658, subpart F, of this chapter.

(ii) If the employer requesting access to the clearance system is currently

discontinued from receiving ES services under § 658.503 of this chapter by the order-holding SWA, the SWA must not approve the clearance order for placement into intrastate or interstate clearance.

(iii) * * *

(c) * * *

(1) * * *

(iv) * * *

(E) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

* * * * *

(3) * * *

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office in writing (email notification may be acceptable). The SWA must make a record of this notification and must attempt to inform referred workers of the change expeditiously.

* * * * *

(iv) The employer will expeditiously notify the order-holding office or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment.

* * * * *

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office at least 10 business days prior to the original date of need the employer must pay eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the clearance order. If an employer fails to comply under this section the order holding office may notify the Department's Wage and Hour Division for possible enforcement.

(d) * * *

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The SWA must make a record of this notification.

* * * * *

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels have changed since the date the clearance order was accepted, the SWA must contact immediately the applicant holding office which must inform immediately crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, SWAs must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

* * * * *

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Amend § 655.103 by removing definitions for *Key service provider* and *Labor organization.*

■ 8. Amend § 655.120 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

§ 655.120 Offered wage rate.

(a) *Employer obligation.* Except for occupations covered by §§ 655.200 through 655.235, to comply with its obligation under § 655.122(l), an employer must offer, advertise in its recruitment, and pay a wage that is at least the highest of:

(1) The AEWR;

(2) A prevailing wage rate, if the OFLC Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity, meeting the requirements of paragraph (c) of this section;

(3) The agreed-upon collective bargaining wage;

(4) The Federal minimum wage; or

(5) The State minimum wage.

(b) * * *

(2) The OFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the AEWRs for each State as a notice in the **Federal Register**.

(3) If an updated AEWR for the occupational classification and geographic area is published in the **Federal Register** during the work contract, and the updated AEWR is higher than the highest of the previous AEWR, a prevailing wage for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage, or the State minimum wage, the employer must pay at least the updated AEWR upon the effective date of the updated AEWR published in the **Federal Register**.

* * * * *

■ 9. Amend § 655.122 by revising paragraphs (h)(4), (i)(1) (ii), (l), and (n) to read as follows:

§ 655.122 Contents of job offers.

* * * * *

(h) * * *

(4) *Employer-provided transportation.* All employer-provided transportation must comply with all applicable local, State, or Federal laws and regulations, and must provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841, 29 CFR 500.104 or 500.105, and 29 CFR 500.120 through 500.128. The job offer must include a description of the modes of transportation (*e.g.,* type of vehicle) that will be used for inbound, outbound, daily, and any other transportation. If workers' compensation is used to cover transportation in lieu of vehicle insurance, the employer must either ensure that the workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation and it must have property damage insurance.

(i) * * *

(1) For purposes of this paragraph (i)(1) a workday means the number of hours in a workday as stated in the job order and excludes the worker's Sabbath and Federal holidays. The employer must offer a total number of hours to ensure the provision of sufficient work to reach the three-fourths guarantee. The work hours must be offered during the work period specified in the work contract, or during any modified work contract period to which the worker and employer have mutually agreed and that has been approved by the CO.

(ii) The work contract period can be shortened by agreement of the parties only with the approval of the CO. In the event the worker begins working later than the specified beginning date of the contract, the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect.

* * * * *

(l) *Rates of pay.* Except for occupations covered by §§ 655.200 through 655.235, the employer must pay the worker at least the AEWR; a prevailing wage if the OFLC Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity, meeting the requirements of § 655.120(c); the agreed-upon collective bargaining rate; the Federal minimum wage; or the State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period.

(1) The offered wage may not be based on commission, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, semi-monthly, or monthly basis that equals or exceeds the AEWR, prevailing wage rate, the Federal minimum wage, the State minimum wage, or any agreed-upon collective bargaining rate, whichever is highest; or

(2) If the worker is paid on a piece rate basis and at the end of the pay period the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate:

(i) The worker's pay must be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had instead been paid at the appropriate hourly wage rate for each hour worked;

(ii) The piece rate must be no less than the prevailing piece rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity in the geographic area if one has been issued by the OFLC Administrator; and

(iii) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention, such standards must be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or, if the employer first applied for temporary agricultural labor certification after 1977, such standards must be no more than those normally required (at the time of the first *Application for Temporary Employment Certification*) by other employers for the activity in the area of intended employment.

(3) If applicable, the employer must state in the job order:

(i) That overtime hours may be available;

(ii) The wage rate(s) to be paid for any such overtime hours;

(iii) The circumstances under which the wage rate(s) for overtime hours will be paid, including, but not limited to, after how many hours in a day or workweek the overtime wage rate will be paid, and whether overtime wage rates will vary between places of employment; and

(iv) Where the overtime pay is required by law, the applicable Federal, State, or local law requiring the overtime pay.

* * * * *

(n) *Abandonment of employment or termination for cause.* If a worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the NPC, and DHS in the case of an H–2A worker, in writing or by any other method specified by the Department in a notice published in the **Federal Register** or specified by DHS not later than 2 working days after such abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (i) of this section, and, in the case of a U.S. worker, the employer will not be obligated to contact that worker under § 655.153. Abandonment will be deemed to begin after a worker fails to report to work at the regularly scheduled time for 5 consecutive working days without the consent of the employer. The employer is required to maintain records of such notification to the NPC, and DHS in the case of an H–2A worker, for not less than 3 years from the date of the certification.

■ 10. Amend § 655.130 by revising paragraphs (a) and removing paragraphs (a)(1), (a)(2), (a)(3), and (a)(4), to read as follows:

§ 655.130, Application filing requirements

(a) *What to file.* An employer that desires to apply for temporary agricultural labor certification of one or more nonimmigrant workers must file a completed *Application for Temporary Employment Certification,* all supporting documentation and information required at the time of filing under §§ 655.131 through 655.135, and, unless a specific exemption applies, a copy of Form ETA–790/790A, submitted as set forth in § 655.121(a). The *Application for Temporary Employment Certification* must include a valid FEIN as well as a valid place of business (physical location) in the United States and a means by which it may be contacted for employment.

■ 11. Amend § 655.132 by revising paragraph (e)(1) to read as follows:

§ 655.132 H–2A labor contractor filing requirements.

* * * * *

(e) * * *

(1) All housing used by workers and owned, operated, or secured by the fixed-site agricultural business complies with the applicable standards as set forth in § 655.122(d) and certified by the SWA; and

* * * * *

■ 12. Amend § 655.135 by:

■ a. Revising paragraph (h);

■ b. Deleting subsections (m), (n), and (p); and
■ c. Renumbering subsection (o) to (m).
The revision reads as follows:

§ 655.135 Assurance and obligations of H–2A employers.

* * * * *

(h) * * *

(1) Filed a complaint under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188; or

(5) Exercised or asserted on behalf of themself or others any right or protection afforded by 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188.

* * * * *

(m) *Passport withholding.* During the period of employment that is the subject of the Application for Temporary Labor Certification, the employer may not hold or confiscate a worker's passport, visa, or other immigration or government identification document except where the worker states in writing that: the worker voluntarily requested that the employer keep these documents safe, the employer did not direct the worker to submit such a request, and the worker understands that the passport, visa, or other immigration or government identification document will be returned to the worker immediately upon the worker's request.

* * * * *

■ 13. Remove § 655.137.

§ 655.137 [Removed]

■ 14. Amend § 655.145 by revising the section title and paragraph (b) to read as follows:

§ 655.145 Amendments to Applications for Temporary Employment Certification.

* * * * *

(b) *Minor changes to the period of employment.* The *Application for Temporary Employment Certification* may be amended to make minor changes in the total period of employment. Changes will not be effective until submitted in writing and approved by the CO. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect any change(s) would have on the adequacy of the underlying test of the domestic labor market for the job opportunity. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. If the request is for a delay in the first date of need and is made after workers have departed for the employer's place of employment, the CO may only approve the change if the employer includes with the request a written assurance signed and dated by the employer that all workers who are already traveling to the place of employment will be provided housing and subsistence, without cost to the workers, until work commences. Upon acceptance of an amendment, the CO will submit to the SWA any necessary modification to the job order.

■ 15. Amend § 655.167 by removing paragraphs (c)(8), (c)(9), (c)(10), (c)(11), and (c)(12).

■ 16. Remove § 655.175.

§ 655.175 [Removed]

■ 17. Amend § 655.210 by revising paragraph (g) to read as follows:

§ 655.210 Contents of herding and range livestock job orders.

* * * * *

(g) *Rates of pay.* The employer must pay the worker at least the monthly AEWR, as specified in § 655.211, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof.

(1) The offered wage shall not be based on commissions, bonuses, or other incentives, unless the employer guarantees a wage that equals or exceeds the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, or any agreed-upon collective bargaining rate, whichever is highest, and must be paid to each worker free and clear without any unauthorized deductions.

(2) The employer may prorate the wage for the initial and final pay periods of the job order period if its pay period does not match the beginning or ending dates of the job order. The employer also may prorate the wage if a worker is voluntarily unavailable to work for personal reasons.

(3) If applicable, the employer must state in the job order:

(i) That overtime hours may be available;

(ii) The wage rate(s) to be paid for any such overtime hours;

(iii) The circumstances under which the wage rate(s) for overtime hours will be paid, including, but not limited to, after how many hours in a day or workweek the overtime wage rate will be paid, and whether overtime wage rates will vary between-place(s) of employment; and

(iv) Where the overtime pay is required by law, the applicable Federal, State, or local law requiring the overtime pay.

* * * * *

■ 18. Amend § 655.211 by revising paragraph (a) to read as follows:

§ 655.211 Herding and range livestock wage rate.

(a) *Compliance with rates of pay.*

(1) To comply with its obligation under § 655.210(g), an employer must offer, advertise in its recruitment, and pay each worker employed under §§ 655.200 through 655.235 a wage that is at least the highest of the monthly AEWR established under this section, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action.

(2) If the monthly AEWR established under this section is adjusted during a work contract, and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay at least that adjusted monthly AEWR upon the effective date of the updated monthly AEWR published by the Department in the **Federal Register**.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 19. Amend § 658.502 by revising or adding the following paragraphs to provide an opportunity for the employer to request a hearing:
■ a. Revising paragraphs (a)(1)(ii) and (iii), and adding paragraph (a)(1)(iv);
■ b. Revising paragraphs (a)(2)(i) and (ii), and adding paragraph (a)(2)(iii);
■ c. Revising paragraphs (a)(3)(ii) and (iii), and adding paragraph (a)(3)(iv);
■ d. Revising paragraphs (a)(5)(iii) and adding paragraph (a)(5)(iv);
■ e. Revising paragraph (a)(6)(vi) and adding paragraph (a)(6)(vii);
■ f. Revising paragraphs (a)(7)(iii) and adding paragraph (a)(7)(iv);
■ g. Revising paragraph (a)(8);
■ h. Revising paragraph (b);
■ i. Adding paragraphs (c) and (d).

The additions and revisions read as follows:

§ 658.502 Notification to employers of intent to discontinue services

(a) * * *

(1) * * *

(ii) Withdraws the terms and conditions and resubmits the job order in compliance with all employment-related laws;

(iii) If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) * * *

(i) Resubmits the order with the required assurances;

(ii) If the job is no longer available, makes assurances that all future job orders submitted will contain all assurances required pursuant to the Agricultural Recruitment System for U.S. Workers at part 653, subpart F, of this chapter; or

(ii) Requests a hearing from the SWA pursuant to § 658.417.

(3) * * *

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders;

(iii) Provides adequate evidence that it has resolved the misrepresentation of terms and conditions of employment or noncompliance with assurances and provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

* * * * *

(5) * * *

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) * * *

(vi) Provides assurances that qualified workers referred in the future will be accepted or, if the time period described in § 655.135(d) of this chapter has lapsed, provides assurances that qualified workers referred on all future criteria clearance orders will be accepted; or

(vii) Requests a hearing from the SWA pursuant to § 658.417.

(7) * * *

(iii) Provides assurances that it will cooperate in future field checks; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(8) Where the decision is based on § 658.501(a)(8), the SWA must list and provide basic facts explaining the prior instances where the employer has repeatedly caused initiation of discontinuation proceedings. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days provides adequate evidence that the SWA's initiation of discontinuation in prior proceedings was unfounded or the employer requests a hearing from the SWA pursuant to § 658.417.

(b) SWA officials must discontinue services immediately in accordance with § 658.503, without providing the notice described in this section, if an employer has met any of the bases for discontinuation of services under § 658.501(a) and, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this section would cause substantial harm to a significant number of workers.

(c) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, it must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.411.

■ 20. Amend § 658.503 by:
■ a. Revising paragraph (a) to align with changes made in § 658.502 that provide the employer an opportunity to request a hearing in response the SWA's notice of its intent to discontinue ES services, reverting to the prior process that the discontinuation is effective as of the date of the SWA's notice, and to remove the requirement for the SWA to notify OWI of final determinations to discontinue ES services;
■ b. Revising paragraph (b) to align with changes made in § 658.502 that provide the employer an opportunity to request a hearing in response the SWA's notice of its intent to discontinue ES services and to remove the requirement for the SWA to notify OWI of final determinations to discontinue ES services;
■ c. Revising paragraph (e) so that the effect of the discontinuation only applies to the SWA that issued the discontinuation of ES services;

The additions and revisions read as follows:

§ 658.503 Discontinuation of services.

(a) Within 20 working days of receipt of the employer's response to the SWA's notification under § 658.502(a), or at least 20 working days after the SWA's notification has been received by the employer if the SWA does not receive a response, the SWA must notify the employer in writing of its final determination. If the SWA determines that the employer did not provide a satisfactory response in accordance with § 658.502(a), or the employer has not requested a hearing, the SWA must immediately terminate services to the employer. The SWA's notification must specify the reasons for its determination and state that the discontinuation of services is effective as of the date of the notification and that the employer may request reinstatement of ES services as described in § 658.504.

(b) Where the SWA discontinues services immediately under § 658.502(b), the SWA's written notification must specify the facts supporting the applicable basis for discontinuation under § 658.501(a), the reasons that exhaustion of the administrative procedures would cause substantial harm to workers, and that services are discontinued as of the date of the notification. The notification must also state that the employer may request reinstatement or appeal the determination by requesting a hearing pursuant to § 658.504, and that a request for a hearing relating to immediate discontinuation does not stay the discontinuation pending the outcome of the hearing.

(c) * * *

(d) * * *

(e) If the SWA discontinues services to an employer, the employer cannot participate in or receive Wagner-Peyser Act ES Services provided by the SWA to employers pursuant to parts 652 and 653 of this chapter. From the date of

discontinuance, the SWA that issued the determination must remove the employer's active job orders from its clearance system and may not process any future job orders from the employer or provide any other services pursuant to parts 652 and 653 of this chapter to the employer unless services have been reinstated under § 658.504.

(f) * * *

■ 21. Amend § 658.504 by:

■ a. Revising paragraph (a) to align with changes made in § 658.502 that provide the employer an opportunity to request a hearing in response the SWA's notice of its intent to discontinue services;

■ b. Revising paragraphs (c) and revising paragraph (d) so that the requirement for the SWA to reinstate services if ordered by an appropriate authority may occur outside of the hearing process, consistent with the prior regulatory text;

■ c. Revising paragraph (d) to remove the requirement for the SWA to notify OWI of final determinations to discontinue ES services;

The additions and revisions read as follows:

§ 658.504 Reinstatement of services.

(a) Where the SWA discontinues services to an employer under § 658.502(b) or § 658.503, the employer may submit a written request for reinstatement of services to the SWA.

* * * * *

(c) If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 22. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 note; and sec. 701, Pub. L. 114–74, 129 Stat. 584.

■ 23. Amend § 501.3(a) by removing the definitions of *Key service provider* and *Labor organization.*

■ 24. Amend § 501.4 by revising paragraph (a) to read as follows:

§ 501.4 Discrimination prohibited.

(a) A person may not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1188 or this part;

(2) Instituted or causes to be instituted any proceedings related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part; or

(5) Exercised or asserted on behalf of themselves or others any right or protection afforded by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part.

(b) * * *

Signed this 27th day of June, 2025.

Susan Frazier,

Acting Assistant Secretary, Employment and Training Administration.

Signed this 27th day of June, 2025.

Donald Harrison,

Acting Administrator, Wage and Hour Division.

[FR Doc. 2025–12315 Filed 6–30–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125710–18]

RIN 1545–BP07

Regulations Under Section 382(h) Related to Built-In Gain and Loss; Withdrawal

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws two notices of proposed rulemaking containing proposed regulations on the treatment of built-in items of income, gain, deduction, and loss taken into account by a loss corporation after an ownership change. The proposed regulations would have affected corporations that experience an ownership change under section 382(h) of the Internal Revenue Code (Code).

DATES: As of July 2, 2025, the notices of proposed rulemaking that were published in the **Federal Register** on September 10, 2019 (84 FR 47455), and January 14, 2020 (85 FR 2061), are withdrawn.

ADDRESSES: Send paper submissions to CC:PA:01:PR (REG–125710–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lilia D. Stamm at (202) 317–3598 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2019, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–125710–18) in the **Federal Register** (84 FR 47455) under section 382(h) (2019 proposed regulations) that would have modified §§ 1.382–2 and 1.382–7 of the Income Tax Regulations (26 CFR part 1). On January 14, 2020, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–125710–18) in the **Federal Register** (85 FR 2061) under section 382(h) (2020 proposed regulations) that modified certain provisions in the 2019 proposed regulations.

The 2019 proposed regulations would have adopted as mandatory, with certain modifications, (i) the safe harbor net unrealized built-in gain (NUBIG) and net unrealized built-in loss (NUBIL) computation provided in Notice 2003–65, 2003–40 I.R.B. 747, based on the principles of section 1374 of the Code, and (ii) the ''1374 approach'' (as described in Notice 2003–65) with respect to the identification of recognized built-in gain (RBIG) and recognized built-in loss (RBIL).

The 2019 proposed regulations would have modified the rules in §§ 1.382–2 and 1.382–7: (i) to eliminate the treatment of depreciation deductions on certain built-in gain assets as RBIG, in the absence of actual gain or income recognized by the loss corporation; (ii) to exclude adequately secured nonrecourse liabilities and all recourse liabilities from the initial NUBIG/NUBIL calculation, and treat post-change cancellation-of-indebtedness income as RBIG only in certain circumstances; (iii) to introduce a ''consistency rule'' in order to exclude certain change-date items allocated to the pre-change period (as defined in § 1.382–6(g)(2)) from the calculation of NUBIG and NUBIL; (iv) to exclude prepaid income as an item of RBIG; (v) to exclude dividends paid on stock during the recognition period (as defined in section 382(h)(7)) as RBIG; and (vi) to exclude section 382 disallowed business interest carryforwards (as defined in § 1.382–2(a)(7)) as items of RBIL under section 382(h)(6)(B).

The 2019 proposed regulations reflected the view that the certainty