

**ACTION:** Guidance.

**SUMMARY:** The Department of Labor (the Department) is providing notice of the judicial order enjoining the Department from implementing and enforcing the Temporary Non-agricultural Employment of H-2B Aliens in the United States, published February 21, 2012 (the 2012 H-2B Final Rule). The 2012 H-2B Final Rule revised the requirements by which employers seeking H-2B workers apply for a temporary labor certification for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H-2B status. The effective date of the 2012 H-2B Final Rule was April 23, 2012. The operative date of the 2012 H-2B Final Rule was April 27, 2012. This document provides guidance to the regulated community of the injunction, by judicial order, of the 2012 H-2B Final Rule and the continuing effectiveness of the 2008 H-2B Rule until such time as further judicial or other action suspends or otherwise nullifies the order in the *Bayou II* litigation.

**DATES:** This guidance is effective May 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4312, Washington, DC 20210; Telephone (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On February 21, 2012, the Department published a Final Rule amending the H-2B regulations at 20 CFR part 655, Subpart A. 77 FR 10038, February 21, 2012. On April 23, 2012, the Department published guidance which provided that applications filed under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes, 73 FR 78020, December 19, 2008 (the 2008 H-2B Rule), must be sent to the Office of Foreign Labor Certification's (OFLC's) Chicago National Processing Center (CNPC) and postmarked no later than midnight April 26, 2012. The guidance also provided that applications postmarked on or after April 27, 2012 will be adjudicated in accordance with

the requirements described in the 2012 H-2B Final Rule.

On April 16, several plaintiffs challenged the 2012 H-2B Final Rule in the U.S. District Court for the Northern District of Florida (*Bayou Lawn & Landscape Services, et al. v. Hilda L. Solis, et al.*, 3:12-cv-00183-MCR-CJK), seeking to preliminarily enjoin the Department from implementing the rule on the basis that the Department lacked authority to issue the 2012 H-2B Final Rule and that the rule violated both the Administrative Procedure Act and the Regulatory Flexibility Act. *Bayou Lawn & Landscape Services, et al. v. Solis*, Case 3:12-cv-00183-MCR-CJK, Complaint at 5 (Apr. 16, 2012). On April 26, 2012, the U.S. District Court for the Northern District of Florida issued an order temporarily enjoining the Department from implementing or enforcing the 2012 H-2B Final Rule pending "the court's adjudication of the plaintiffs' claims." *Bayou Lawn & Landscape Services et al. v. Solis*, Case 3:12-cv-00183-MCR-CJK, Order at 8 (Apr. 26, 2012).

Therefore, employers must file H-2B labor certification applications under the 2008 H-2B Rule, using those procedures and forms associated with the 2008 H-2B Rule for which the Department has received an emergency extension under the Paperwork Reduction Act. However, please be aware that this preliminary injunction necessarily calls into doubt the underlying authority of the Department to fulfill its responsibilities under the Immigration and Nationality Act and DHS's regulations to issue the labor certifications that are a necessary predicate for the admission of H-2B workers. OFLC will post additional filing guidance on its Web site at <http://www.foreignlaborcert.doleta.gov/>.

Signed in Washington, DC, this 11th day of May 2012.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 91 and 576**

[Docket No. FR-5474-C-02]

**RIN 2506-AC31**

**Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments; Correction**

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Interim rule; correction.

**SUMMARY:** The document advises that the interim rule for the Emergency Solutions Grants program, published on December 5, 2011, displayed an incorrect RIN number. This document advises of the correct RIN number, 2506-AC31, as displayed in the heading of this document.

**DATES:** This correction is effective May 16, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410-0500; telephone number 202 708-1793 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** On December 5, 2011, at 76 FR 75954, HUD published its interim rule on the Emergency Solutions Grants program. The heading for this rule displayed a RIN number of 2506-AC29, which was incorrect. RIN number 2506-AC29 is already assigned to another HUD rule, but not yet published, on HUD's Continuum of Care program. The correct RIN number for the Emergency Solutions Grant interim rule is 2506-AC31, and this document advises of the correction.

Dated: May 10, 2012.

**Camille E. Acevedo,**

*Associate General Counsel for Legislation and Regulations.*

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