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U.S. Department of Labor For Immediate Release  
Office of Public Affairs  
Washington, D.C.  
Release Number: 11-1404-NAT

Sept. 22, 2011  
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## **US Labor Department postpones revising wage calculations for H-2B program** *Delay avoids administering the H-2B program under potentially conflicting court orders*

**WASHINGTON** – The U.S. Department of Labor’s Employment and Training Administration today announced a 60-day postponement of the effective date for the final rule concerning the wage methodology for the temporary nonagricultural employment H-2B program. The delay will permit the various courts involved in ongoing litigation surrounding the implementation of the rule to determine the appropriate venue for the resolution of all claims and allow the department to avoid the possibility of administering the H-2B program under potentially conflicting court orders.

In consideration of these pending challenges, the department determined under Section 705 of the Administrative Procedure Act that the interest of justice would be served by postponing the effective date of the rule from Sept. 30, 2011, until Nov. 30, 2011. A Federal Register notice to that effect will be published next week.

The H-2B program allows the entry of foreign workers into the U.S. when qualified U.S. workers are not available and the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. The H-2B program is limited by law to a cap of 66,000 visas per year.

The department published a final rule on Jan. 19, 2011, that revised the wage methodology for the H-2B program and set the effective date of the wage rule as Jan. 1, 2012. On June 16, 2011, in response to a challenge, the U.S. District Court for the Eastern District of Pennsylvania invalidated that date and ordered the department to announce a new effective date within 45 days.

In response to that court’s order, the department issued a notice of proposed rulemaking on June 28, 2011, which proposed that the wage rule take effect 60 days from the date of publication of a final rule. After a period of public comment, the department published a final rule on Aug. 1, 2011, which set the new effective date for the wage rule as Sept. 30, 2011, without altering the substance of the rule.

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