Federal court system. It meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects in 20 CFR Part 655

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

For the reasons stated in this document, 20 CFR part 655 is proposed to be amended as follows:

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

§ 655.42 Advertising in the area of intended employment.

(a) Where to conduct recruitment. The employer must place an advertisement for the job opportunity on at least one website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment.

(b) Nature of the recruitment. The advertisement must be clearly visible on the website’s homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the requirements set forth in § 655.41.

(c) Proof of recruitment. An employer must retain documentation in accordance with § 655.56(c)(2)(ii) that demonstrates compliance with paragraphs (a) and (b) of this section. Such documentation must include screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement.

(d) Transition period for applications with dates of need prior to October 1, 2019. (1) All employers submitting an Application for Temporary Employment Certification with a date of need on or after October 1, 2019 must place and retain documentation of an electronic advertisement in accordance with paragraphs (a) through (c) of this section.

(2) An employer submitting an Application for Temporary Employment Certification with a date of need prior to October 1, 2019 may elect to place two newspaper advertisements in compliance with requirements in paragraphs (d)(2)(i) through (iv) of this section, in lieu of placing and retaining documentation of the electronic advertisement required by paragraphs (a) through (c) of this section.

(i) The employer must place an advertisement (which must be in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (d)(2)(ii) of this section), in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and the workers likely to apply for the job opportunity.

(ii) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(iii) The newspaper advertisements must satisfy the requirements in § 655.41.

(iv) The employer must maintain copies of newspaper pages (with date of publication and full copy of the advertisement), or tear sheets of the pages of the publication in which the advertisements appeared, or other proof of publication furnished by the newspaper containing the text of the printed advertisements and the dates of publication, consistent with the document retention requirements in § 655.56. If the advertisement was required to be placed in a language other than English, the employer must maintain a translation and retain it in accordance with § 655.56.

3. Amend § 655.48 by revising paragraph (a)(1) to read as follows:

§ 655.48 Recruitment report.

(a) * * *

(1) The name of each recruitment activity or source (e.g., job order and the name of the website as required in § 655.42(a) on which the job opportunity was advertised);

* * * * *

4. Amend § 655.71 by revising paragraph (c)(2) as follows:

§ 655.71 CO-ordered assisted recruitment.

(2) Designating the sources where the employer must recruit for U.S. workers, directing the employer to place the advertisement(s) in such sources;

* * * * *

Kirstjen M. Nielsen,
Secretary of Homeland Security.

R. Alexander Acosta,
Secretary of Labor.

[FR Doc. 2018–24498 Filed 11–8–18; 8:45 am]

BILLING CODE 4510–FP–P; 9111–97–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[Docket No. ETA–2018–0002]

RIN 1205–AB90

Modernizing Recruitment Requirements for the Temporary Employment of H–2A Foreign Workers in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (the Department or DOL) is proposing regulatory revisions that would...
modernize the recruitment an employer seeking H–2A nonimmigrant agricultural workers must conduct when applying for a temporary labor certification. In particular, the Department is proposing to replace the print newspaper advertisements that its regulations currently require with electronic advertisements posted on the internet, which the Department believes will be a more effective and efficient means of disseminating information about job openings to U.S. workers. The Department is proposing to replace, rather than supplement, the newspaper requirements because it believes that exclusive electronic advertisements posted on a website appropriate for the workers likely to apply for the job posted on a website available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide appropriate aids, such as readers or print magnifiers. The Department will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

Instructions: Label all submissions with “RIN 1205–AB90.” Please submit your comments by only one method.

Please be advised that the Department will post all comments received that relate to this notice of proposed rulemaking (NPRM) on http://www.regulations.gov. Follow the website instructions for submitting comments (under “Help” > “How to use Regulations.gov”).

Mail and Hand Delivery/Courier: Submit written comments and any additional material to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

Comments under the Paperwork Reduction Act (PRA): In addition to filing comments with ETA, persons wishing to comment on the information collection (IC) aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Office for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503, Fax: (202) 395–6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. See Paperwork Reduction Act section of this proposal for particular areas of interest.

FOR FURTHER INFORMATION CONTACT:
William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 513–7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), establishes the 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. 1184(c)(1) and 1188. Among other things, the INA requires the Secretary of Homeland Security to consult with appropriate agencies of the Government—and in particular, DOL—before approving a petition to employ H–2A nonimmigrant agricultural workers. 8 U.S.C. 1184(c)(1). To that end, the Secretary of Homeland Security may not approve a petition to employ H–2A workers unless the petitioning employer has applied to the Secretary of Labor (Secretary) for a certification that:

(A) There are not sufficient U.S. 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); see also 20 CFR 655.100. The Secretary has delegated his statutory responsibility to make this certification—known as a “temporary labor certification”—to the Assistant Secretary for Employment and Training, Secretary’s Order 06–2010 (October 20, 2010) and the Assistant Secretary has, in turn, delegated the authority to the Office of Foreign Labor Certification (OFLC). 20 CFR 655.101.

The INA specifies a number of conditions under which the Secretary cannot grant a temporary labor certification. 8 U.S.C. 1188(b). One such condition is where “[t]he Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.” 8 U.S.C. 1188(b)(4). The “positive recruitment” that the INA requires “is
in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer’s job offer.” 8 U.S.C. 1188(b)(4). An employer’s obligation to engage in this recruitment terminates “on the date the H–2A workers depart for the employer’s place of employment.” Id.

Since 1987, the Department has relied on regulations promulgated under the authority of the INA to review and evaluate an application for a temporary labor certification under the H–2A visa classification. 20 CFR part 655, subpart B. The last significant revisions to these regulations, which are published in 20 CFR part 655, subpart B, took effect in 2010, following notice and comment rulemaking. 75 FR 6884 (Feb. 12, 2010) (2010 Final Rule). Pursuant to these regulations, the “positive recruitment” mandated by the INA is defined as “[t]he active participation of an employer or its authorized hiring agent, performed under the auspices and direction of the OFLC, in recruiting and interviewing individuals in the area where the employer’s job opportunity is located and any other State designated by the Secretary as a traditional or expected labor supply with respect to the area where the employer’s job opportunity is located, in an effort to fill specific job openings with U.S. workers.” 20 CFR 655.103.

The standards and procedures governing the positive recruitment of U.S. workers are set forth in sections 655.151–655.154. These regulations generally require, among other things, that an employer seeking H–2A temporary labor certification (1) place two print advertisements in a newspaper of general circulation serving the area of intended employment, § 655.151(a); (2) contact former U.S. workers who were employed in the previous year, § 655.153; and (3) recruit U.S. workers in up to three additional states designated by the Secretary as states of traditional or expected labor supply, § 655.154. As relevant here, section 655.151(a) requires an employer seeking an H–2A temporary labor certification to place a print advertisement in the regularly published daily edition with the widest circulation in the area of intended employment. Both advertisements must meet the minimum content requirements set forth in section 655.152, and the employer is required to maintain documentation of the actual newspaper advertisements in the event of an audit or other review, as required by section 655.167(c)(1)(i).

In addition, under section 655.154, an employer must conduct positive recruitment within a multistate region of traditional or expected labor supply where an OFLC Certifying Officer (CO) finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Paragraph (c) of this section leaves the precise nature of the additional positive recruitment that an employer must conduct to the discretion of the CO. In practice, however, the Department has generally directed employers to place print advertisements in newspapers with the largest circulations in the states identified by the CO as traditional or expected labor supply states.

**B. Need for New Rulemaking**

The Department is proposing to modernize the recruitment that an employer must conduct under its regulations by replacing print newspaper advertisements with electronic advertisements posted on the internet. After due consideration, the Department believes that advertisements posted on the types of websites described below will reduce burden on employers and applicants, and be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that section 655.151 currently requires.

The Department is basing this proposal on several considerations. First, available data indicates that farmworkers in the United States very rarely, if ever, learn about job opportunities through print newspaper advertisements. According to recent data available from the National Agricultural Workers Survey (NAWS), farmworkers did not identify print newspaper advertisements as a source for obtaining their current job.2 This data is consistent with the Department’s experience conducting audit examinations of labor certifications approved under the current rule, as well as anecdotal evidence that the Department has received from stakeholders, who report that print newspaper advertisements are not an effective method of recruiting prospective U.S. workers for agricultural job opportunities.

Second, available data also suggests that U.S. workers are now much more likely to turn to the internet to search for work than classified advertisements in print newspapers. For instance, a recent survey conducted by the Pew Research Center indicated that 79 percent of Americans research jobs online, whereas only 32 percent use “ads in print publications,” and only four percent found ads in print publications to be the most useful tool in obtaining their recent employment.3 This trend is likely to continue as U.S. workers gain increased and more convenient access to the internet via smartphones and other digital devices,4 and print newspaper circulation continues to decline.5 Consequently, classified advertisements in print editions are becoming a less effective means of notifying U.S. workers about available job opportunities.6


recognition of this fact, many newspapers now offer online classified employment listings using multi-
platform content providers, and popular online job search websites power the job
boards of thousands of newspaper sites, providing a lower cost recruiting option for employers and job seekers alike.7

Finally, electronic advertisements offer employers a less expensive, more
convenient means of broadly disseminating information about their
job opportunities to potential U.S.
workers. Many job search websites offer
standard advertising packages for free or at significantly lower marginal costs
than the standard print newspaper
advertisement, and advertisements can
be posted on these sites for longer
periods than a typical print newspaper
advertisement remains in circulation,
providing greater exposure of the
employer’s job opportunity to U.S.
workers at no additional cost to the
employer. Moreover, unlike print
advertisements, which are subject to
publishing deadlines that can delay
exposure of the job opportunity to U.S.
workers, an electronic advertisement
can be posted within minutes or hours
of submission to the website.

In light of the foregoing, the
Department is proposing to revise the
recruitment that an employer must
carry out under section 655.151 to
replace print newspaper advertisements
with the electronic advertisements
posted on the internet described below. The Department is also proposing minor
amendments to sections 655.167 and
655.225 to conform those sections to the
proposed elimination of print
newspaper advertisements.

II. Discussion of Proposed Revisions to
20 CFR Part 655, Subpart B

A. Revise Section 655.151 To Replace
Newspaper Advertisements With
Electronic Advertisements

The Department is proposing to revise
section 655.151(a) to replace the
requirement that an employer place
print newspaper advertisements with a
requirement that the employer advertise
its job opportunity on a website that is
widely viewed and appropriate for use
by workers who are likely to apply for
the job opportunity in the area of
intended employment. The Department
proposes to remove the word
“occupation” from the text in order to
address a possible redundancy in the
language. This proposed drafting change
is stylistic only, and the Department
intends to effect no substantive change
by it.

The proposed rule would not mandate
that an employer post its advertisement
on a specific website. Rather, proposed
section 655.151(a) would allow an
employer to place an advertisement on
any of a variety of websites that are
widely viewed and appropriate for use
by workers who are likely to apply for
the job opportunity in the area of
intended employment, including
websites operated by state or local
agricultural associations, job search
websites that advertise agricultural job
opportunities, and other classified
advertisement websites with sections
focused on local jobs.

The Department anticipates that
advertisements posted on the types of
websites described above will provide
greater exposure of agricultural job
opportunities to U.S. workers than the
print newspaper advertisements that
section 655.151 currently requires,
because they can be more easily
accessed by U.S. workers across a much
larger geographic area and for a longer
period. The Department included
websites operated by state or local
agricultural associations as an example
of an appropriate website because some
state farm bureaus, commissions, and
cooperatives provide services that help
agricultural employers recruit farm
labor for seasonal work, and the
Department believes these organizations
can be a valuable asset in advertising
and coordinating farm labor demands
across employers and leveraging social
media to connect employers with
potential workers in the state or local
area.

The Department invites comments on
whether it should establish qualifying
criteria (e.g., minimum number of
unique visitors per month) or more
specifically define the types of websites
that would fulfill the requirement in
proposed section 655.151, and whether
the regulation should explicitly exclude
advertisements placed on websites of
agricultural associations that serve as
agents or sole or joint employers of H–
2A workers, as defined in section
655.103. The Department also solicits
comments on whether, instead of
eliminating print newspaper
advertisements, it should instead offer
electronic advertisements as an
alternative means of satisfying the
requirement in section 655.151. The Department is not
proposing this option, given the data
and trends discussed in Section I.B.,
which suggest that electronic
advertisements will be more effective in
disseminating information about
available job opportunities to the
American workforce. The Department
invites comments on whether there are
agricultural employers that lack the
technology or internet access necessary
to place the electronic advertisements
described in the proposed rule, and if so,
how the Department should
determine whether such employers have
met their obligation to engage in
positive recruitment of U.S. workers.
For instance, the Department could
leave current recruitment requirements
in place as an option for such
employers. The Department solicits
comments on whether there are
alternative methods that would more
broadly and effectively disseminate
information about available job
opportunities to U.S. agricultural
workers.

Proposed section 655.151(b) specifies
that an employer’s advertisement must
be clearly visible on the website’s
homepage or be easily retrievable using
the search tools on the website. Any
advertisement that is not clearly visible
on the website’s homepage must be
easily retrievable. The Department will
consider an advertisement to be easily
retrievable if it can be quickly accessed
using a prominently displayed link on
the website’s homepage or the search
tools and filters that are prominently
displayed on the website’s homepage.
Each navigation choice or interaction
that a job seeker has with the website
should take him or her closer to the job
opportunity being advertised, and
applicants should be able to quickly
locate job vacancies using a number of
search criteria, such as occupation, job
or position title, geographic location,
pay range, and keywords in the job
description. The employer must use
commonly understood terms and
keywords to describe its job opportunity
when placing the advertisement, so that
U.S. workers who are likely to apply for
the position will retrieve the
advertisement when using the website’s
search function.

Proposed section 655.151(b) would
also require an employer to post the
electronic advertisement for a period of
no less than 14 consecutive calendar
days. Unlike the print newspaper
advertisements that an employer must
place under the current rule, which are
typically published once, many
websites offer standard advertising
packages that allow an employer to
place an advertisement for a weekly
period or up to 30 calendar days for free
or at a significantly lower marginal cost

7 See Christine Del Castillo, Does Anyone
Advertise Jobs in Newspapers Anymore?, Workable,
May 19, 2016, https://resources.workable.com/blog/
newspaper-job-ads.
employers that seek additional time to understand and comply with the proposed regulatory revisions, while simultaneously permitting employers that wish to place electronic advertisements immediately upon the effective date of the final rule the ability to do so. The transition provision is intended to better ensure, among other things, that employers who have purchased newspaper advertising space in advance do not lose the benefit of such purchase.

However, the option to elect between the placement of newspaper and electronic advertisements would apply only to those applications with a start date of need prior to October 1, 2019. All employers submitting an Application for Temporary Employment Certification with a start date of need after the transition period ends (i.e., employers with dates of need beginning on or after October 1, 2019) would be required to place an advertisement in accordance with the proposed revisions to section 655.151(a)–(c).

B. Retain Section 655.154’s Requirement for Positive Recruitment

As previously discussed, employers seeking H–2A temporary labor certification are statutorily required to engage in positive recruitment of U.S. workers in multistate regions of traditional or expected labor supply. Under section 655.154(c), when a job opportunity is located in an area served by traditional or expected labor supply states, the CO will designate no more than three states for each area of intended employment listed on the employer’s application and describe the additional positive recruitment steps that the employer must conduct. In determining the specific recruitment steps that an employer must conduct, the CO must consider “the normal recruitment efforts of non H–2A agricultural employers of comparable or smaller size in the area of intended employment, and the kind and degree of recruitment efforts which the potential H–2A employer made to obtain foreign workers.” Section 655.154(b). The Department’s standard practice has been to require an employer to place print advertisements in newspapers serving the traditional or expected labor supply states designated by the CO, see 75 FR at 6930; however, given the data and trends discussed in Section I.B., the Department does not intend to continue this practice. While the Department continues to believe that the CO must evaluate the appropriate locations and methods for advertising to U.S. workers in traditional or expected labor supply states on a case-by-case basis, where the Department determines that an electronic advertisement placed under proposed section 655.151 is a sufficient means of recruiting U.S. workers in the traditional or expected labor supply states identified for the employer’s job opportunity, this advertisement will likely fulfill the positive recruitment requirement by section 655.154.

C. DOL-Assisted Advertising

The Department has taken initial steps toward creating an online platform to assist employers in complying with the requirements for electronic advertising under this proposed rule. Pending the outcome of this rulemaking, the Department intends to leverage the latest advertising technologies by establishing a mechanism to make advertising data available to popular job-search websites. Specifically, the Department is evaluating the development of a centralized platform to automate the electronic advertising of approved H–2A job opportunities. The Department anticipates that, once fully developed and implemented, this electronic advertising platform would maintain a standard set of data on each job opportunity that can be integrated with a wide array of job search website technologies. Through this platform, DOL would make available to job-search websites real-time access to the information that employers provide about their job opportunities subject to agreement to abide by terms of service. The companies that operate job-search websites would execute standard protocols to pull new H–2A jobs from the online platform in real time for advertising to U.S. workers. DOL is not proposing to mandate the use of the new electronic advertising platform but instead would make participation voluntary for H–2A employers. If developed as currently envisioned, the Department expects that employers would provide information about their job opportunities, as part of their H–2A applications for temporary labor certifications, and indicate their intention to use the electronic advertising platform. Employers that elect to use this platform would have information about their job opportunities transmitted by the Department to companies offering to provide advertising services, which in turn would advertise these jobs on the companies’ job-search websites. The Department believes that facilitating employers’ use of technology is in the best interest of employers and U.S. workers. Because information about the job opportunities otherwise already be provided at the time of filing the H–2A application for a temporary labor
The Department proposes to claim an exception under 5 U.S.C. 553(d)(1) from the 30-day delayed effective date requirement on the basis that this rule relieves the restriction against online advertising of jobs for which an employer seeks to hire H–2A workers. The final rule would relieve regulated parties of the requirement that they only place paper advertisements in newspapers of general circulation in the area of intended employment. During the transition period, which would apply to all employers who file an Application for Temporary Employment Certification with a date of need prior to October 1, 2019, the rule would allow employers to select between placing two paper newspaper advertisements or placing an online advertisement. After the transition period ends, the rule would altogether replace the newspaper advertising requirement with online advertising, which is anticipated to be more cost-effective and flexible for employers, as well as a more effective way of reaching U.S. workers who may be able, willing, and qualified for the employers’ job opportunities. The online advertising would also provide flexibility for U.S. workers who are job seekers to identify and apply for the job opportunities for which employers seek to hire H–2A workers. The Department anticipates that allowing employers additional time to transition away from advertising by newspaper over an approximately six-month period after the rule’s publication would provide needed flexibility, and thus provide employers with notice and time to conform their business practices to the new rule. Therefore, this rule would take effect immediately upon publication of the final rule.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)’s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Sec. 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O. Id. OMB has determined that this proposed rule is a significant, but not economically significant, regulatory action under Sec. 3(f) of E.O. 12866. Consequently, OMB has reviewed this rule.

E.O. 13563 directs agencies to propose or adopt a rule 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. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action because the cost savings to H–2A employers associated with the rule are larger than the costs. The estimated cost savings associated with this regulatory action are derived from the proposed revision to section 655.151(a), which would replace print newspaper advertisements with electronic advertisements posted on the internet.

1. Subject-by-Subject Analysis

The Department’s analysis below considers the expected impacts of the following aspects of the proposed rule against the baseline (i.e., the 2010 Final Rule): (a) The replacement of newspaper advertisements with electronic advertisements, and (b) the time it takes the regulated community to read and review the rule.

a. Electronic Advertisements

The Department is proposing to modernize the positive recruitment that an employer must conduct under its regulations by eliminating the use of
print newspaper advertisements and replacing it with electronic advertisements posted on the internet, which will make the job opportunity more broadly available to U.S. workers. Specifically, the Department is proposing to revise section 655.151(a) to replace print newspaper advertisements requirements with a requirement for an electronic advertisement posted on a website that is widely viewed and appropriate for use by workers who are likely to apply for the job opportunity in the area of intended employment. As discussed in section I.B. of this NPRM, the basis for this proposal is rooted in the Department’s determination that electronic advertisements will be a more effective and efficient means of recruiting U.S. workers than the print newspaper advertisements that its regulations currently require.

i. Cost Savings

To estimate the cost savings to employers that would result from the proposed rule, the Department first calculated the average number of H–2A temporary labor certifications approved in Fiscal Year (FY) based on data from FY 2015–2017, which yielded an annual average of 9,796.\(^8\) Next, the Department identified the top five states in which prospective H–2A employers received temporary labor certifications, and it researched the cost of placing a newspaper advertisement in the most populous city in each of these states (for several newspapers, including large and local papers) that would satisfy the content requirements set forth in section 655.152.\(^9\) The Department then averaged the data it obtained to estimate the average cost of complying with section 655.151. Based on these data, the Department determined that the average cost of placing the newspaper advertisements required by section 655.151 is $672 (or $336 for each advertisement).

As mentioned above, the Department believes, based on preliminary research, employers can choose to advertise using online job search websites free of charge, so removing the requirement to advertise in a print newspaper would result in a cost savings equal to the cost of complying with the current

\(^{10}\) Although section 655.151 currently requires employers to advertise on two consecutive days, one of which must be a Sunday, the Department did not identify a significant difference in cost between advertisements placed on Sundays and weekdays, so the Department did not distinguish between these two costs when calculating total advertising cost savings. To estimate the annual cost savings of newspaper advertising costs that employers will avoid under the proposed rule, the Department multiplied the average annual number of approved H–2A temporary labor certifications (9,796) by the average newspaper advertising cost of $672. This yielded an average annual cost savings of $6.58 million.

b. Time To Understand Rule

During the first year that this rule would be in effect, employers seeking H–2A workers would need time to learn about the new requirements. The Department estimates that many employers participating in the H–2A program would learn about the requirements of the new rule from an industry newsletter or bulletin. The Department assumes that the amount of time required to understand the rule change to be 10 minutes. The proposed rule addresses only the job advertising requirements for employers seeking H–2A workers.

i. Costs

This requirement represents a cost to employers participating in the H–2A program in the first year of the rule. The Department estimates this cost by multiplying the time required to read and review the new rule (10 minutes) by the median hourly wage of a human resources manager at an agricultural business ($31.84),\(^{11}\) multiplied by a factor of two (2) to account for fringe benefits and overhead, which yields a cost of $10.61 per employer. The Department estimates the total cost of reading and reviewing the rule by multiplying $10.61 by the average number of employers participating in the H–2A program over FY 2015–2017 (6,676). This calculation results in a cost of $70,855 in the first year.

DOL acknowledges, however, that there are some potentially limited situations—particularly in rural communities—where the upfront costs associated with accessing the internet and learning how to post such advertisements may result in notable opportunity costs for employers. DOL believes that very few employers do not have access to the internet. For those employers that do not currently have internet access, DOL estimates that it will take two hours to access the internet (which may include transportation to the nearest library), research the websites and pick one to use, establish an account on that website, learn how to post a job on the website, and establish an email account. In addition, employers would need to make additional trips to check for responses from U.S. workers. For employers with access to the internet who are not familiar with posting such advertisements online, there will be some up-front costs associated with the time it takes to research job advertisement sites, establish an account, and learn how to post a job on the website.

Because of the uncertainties, we are unable to provide an estimate of the number of employers who do not have access to the internet, or those who have access to the internet but are unfamiliar with posting jobs online, and would incur these additional costs to post advertisements online. DOL seeks comment from the public on the likely magnitude and incidence of these costs. However, online advertisements for H–2A employment would increase the visibility of job openings to potential U.S. workers and increase the number of workers that would be able to access these jobs. This benefit would not significantly outweigh any cost potentially incurred by the negligible number of employers that might be affected by the transition from print newspaper advertisements to online job postings. The Department therefore believes that the net societal benefit of implementing this rule would be maximized if all H–2A employers are required to utilize online advertisements. As such this rule constitutes a deregulatory action.

2. Summary of Impacts

The Department estimates the total first-year costs of the proposed rule to be $70,855. This cost results from the time required to read and review the proposed rule. This cost is incurred by employers seeking H–2A workers subject to proposed 655.151(a). The Department estimates first-year cost savings of $6.58 million. This cost savings results from replacing the requirement that employers place print newspaper advertisements with a requirement that employers place internet advertisements. Net first-year cost savings of $6.58 million would provide opportunity cost savings to employers. DOL seeks comment from the public on the likely magnitude and incidence of these costs. However, online advertisements for H–2A employment would increase the visibility of job openings to potential U.S. workers and increase the number of workers that would be able to access these jobs. This benefit would not significantly outweigh any cost potentially incurred by the negligible number of employers that might be affected by the transition from print newspaper advertisements to online job postings. The Department therefore believes that the net societal benefit of implementing this rule would be maximized if all H–2A employers are required to utilize online advertisements. As such this rule constitutes a deregulatory action.
cost savings amount to $6.51 million. This estimated cost savings excludes any increase in costs to employers without current access to the internet and any up-front costs incurred by those unfamiliar with posting job advertisements online who need to establish accounts, and invest time in learning how to post online.

Generally, annual cost savings are expected to be $6.58 million in all years following the first year due to the lack of monetized costs regarding the time required to read and review the proposed rule. The 10-year discounted net cost savings of the proposed rule range from $46.15 million to $56.06 million (with 7- and 3-percent discount rates, respectively). The annualized net cost savings of the proposed rule is $6.57 million (with 7- and 7-percent discount rates). When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of this proposed rule are $6.57 million at a discount rate of 7 percent (excluding any up-front cost or increased costs to employers without access to the internet).

C. Regulatory Flexibility Act

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 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. The Department reviewed the impacts of the proposed rule for two North American Industry Classification System (NAICS) Codes that frequently request H–2A temporary labor certifications—NAICS 115115: Farm Labor Contractors & Crew Leaders, and NAICS 111998: All Other Miscellaneous Crop Farming. The Small Business Administration (SBA) estimates that revenue for a small business with NAICS Code 115115 is $15 million and for NAICS Code 111998 is $750,000. The impact of the proposed rule would be less than 1 percent of annual revenue for the small businesses in these industries with the employment size fewer than 5 ($710,717 for NAICS 115115 and $340,835 for NAICS 11). Based on this determination, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval using emergency clearance procedures outlined at 5 CFR 1320.13. More specifically, this rule proposes to replace print newspaper advertisements with an advertisement posted on a website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment. The proposed rule would require that this advertisement be clearly visible on the website’s homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the advertising content requirements set forth in §655.152. Under the proposed rule and in accordance with 20 CFR 655.167(c)(1)(ii), an employer would be required to retain documentation demonstrating that it posted an electronic advertisement in compliance with the requirements in the proposed rule, including screen shots of the web page on which the advertisement appears and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement. The employer must be prepared to produce all information and records contained in this information collection for the Department or other federal agencies in the event of an audit examination, investigation, or other enforcement proceedings in the H–2A program. The Department is using technology to reduce burden by replacing newspaper advertisements with electronic advertisements. The information collection requirements associated with this rule are summarized as follows:

Agency: DOL–ETA.
Type of Information Collection: New. Title of the Collection: Advertising Requirements for Employers Seeking to Employ H–2A Nonimmigrant Workers.
Agency Form Number: None.
Affected Public: Private Sector—businesses or other for-profits.
Total Estimated Number of Respondents: 9,796.
Average Responses per Year per Respondent: 2.
Total Estimated Number of Responses: 19,592.
Average Time per Response: 7 minutes per application.
Total Estimated Annual Time Burden: 1,142 hours.
Total Estimated Other Costs Burden: $0.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of 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.
This NPRM, if finalized, does not exceed the $100 million expenditure in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Department has not prepared a statement under the Act.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This NPRM, if finalized, is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This proposed rule has not been found to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Executive Order 13132: Federalism

This NPRM, if finalized, does not have federalism implications because it does not have substantial direct effects 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. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

H. Executive Order 13175, Indian Tribal Governments

This NPRM, if finalized, does not have “tribal implications” because it 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 Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.


This NPRM, if finalized, will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This NPRM, if finalized, will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis. Environmental Impact Assessment

This action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This action is therefore categorically excluded from further review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375. Executive Order 13211, Energy Supply

This NPRM, if finalized, has not been identified to have impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis. Executive Order 12630, Constitutionally Protected Property Rights

This NPRM, if finalized, will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis. Executive Order 12988, Civil Justice Reform Analysis

This NPRM, if finalized, was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Department has determined that this proposed rule meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects in 20 CFR Part 655

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

For the reasons stated in this document, 20 CFR part 655 is proposed to be amended as follows:

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

1. The authority citation for part 655 is revised to read as follows:


2. Revise § 655.151 to read as follows:

§ 655.151 Advertising in the area of intended employment.

(a) Where to conduct recruitment. The employer must place an advertisement for the job opportunity on at least one website that is widely viewed and appropriate for use by U.S. workers who are likely to apply for the job opportunity in the area of intended employment.

(b) Nature of the recruitment. The advertisement must be clearly visible on the website’s homepage or be easily retrievable through the website, posted for a period of no less than 14 consecutive calendar days, publicly accessible to U.S. workers at no cost using the latest browser technologies and mobile devices, and satisfy the requirements set forth in § 655.152.
§ 655.225 Post-acceptance requirements for herding and range livestock.

* * * * *

(d) The employer will not be required to place an advertisement as required in § 655.151.

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Molly E. Conway,
Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–24497 Filed 11–8–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52


Revisions to the Source-Specific Federal Implementation Plan for Navajo Generating Station, Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing limited revisions to the source-specific federal implementation plan (FIP) that regulates emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the reservation lands of the Navajo Nation near Page, Arizona. We are proposing to lower the emission limitation for particulate matter (PM) to conform to the most stringent emission limitation currently applicable to NGS under another EPA regulation, and to replace the opacity limitation and annual PM source testing requirement with a requirement to demonstrate compliance with the lower PM emission limitation using a continuous emission monitoring system for particulate matter.

DATES: Any comments on this proposal must arrive by December 10, 2018.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R09–OAR–2018–0590, at http://www.regulations.gov, or via email to lee.anita@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section. For the EPA’s full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972–3958, lee.anita@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

A. Action

In this action, the EPA is proposing limited revisions to the FIP for NGS that we promulgated on October 3, 1991 ("1991 FIP"), March 5, 2010 ("2010 FIP"), and August 8, 2014 ("2014 FIP").1 The provisions of the 1991 action are codified in the Code of Federal Regulations (CFR) at 40 CFR 52.145(d), and the 2010 and 2014 regulations are codified at 40 CFR 49.5513. We refer collectively to the provisions from the 1991, 2010, and 2014 actions as the “FIP” or the “NGS FIP.” The NGS FIP includes federally enforceable emission limitations for PM, opacity, sulfur dioxide (SO2), and oxides of nitrogen (NOx).

Generally, the EPA is proposing to move provisions from the 1991 FIP to a different section of the CFR and to

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1 See 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 79 FR 46552 (August 8, 2014).