

Register that amended the methodology to establish the AEW, largely adopting the proposals from the NPRM with some technical changes. *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in the Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023) (“Final Rule”). The Final Rule went into effect on March 30, 2023.

The Final Rule has become the subject of litigation in which it has been asserted that the Final Rule was improperly issued. Specifically, a question has been raised in litigation concerning whether the Final Rule was approved by the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture. 8 U.S.C. 1188, Statutory Note.¹ On April 29, 2024, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, approved the Final Rule. Prior to its issuance in February 2023, the Final Rule was provided to the Departments of Homeland Security and Agriculture through the interagency review process prescribed by Executive Order 12866.

To resolve any possible uncertainty, the Department, through its Assistant Secretary for Employment and Training, is ratifying the Final Rule. Under established case law, an agency may, through ratification, “purge[] any residual taint or prejudice left over from” a potential defect in a prior governmental action.² The Department is issuing this ratification out of an abundance of caution, and this ratification is not a statement that the Final Rule is invalid absent this ratification.

II. Ratification

By virtue of the authority vested in Secretary of Labor by law, including by the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (“INA”), and as delegated to the Assistant Secretary for Employment and Training, 75 FR 66268, I am affirming and ratifying a prior action by Brent Parton, Principal Deputy Assistant Secretary, who was then serving as Acting Assistant Secretary for Employment and Training before the current Assistant Secretary of Labor for Employment and Training assumed office. On February 28, 2023, the Employment and Training

Administration published in the FR the Final Rule codifying amendments to the regulations governing the methodology to determine the AEW for non-range H-2A occupations (all H-2A occupations other than herding and production of livestock on the range). 88 FR 12760 (Feb. 28, 2023).

The Final Rule was signed by Acting Assistant Secretary Parton. I have full and complete knowledge of the Final Rule action taken by former Acting Assistant Secretary Parton. Subsequent to the Secretary of Homeland Security’s documented approval of the Final Rule dated April 29, 2024, and out of an abundance of caution and to avoid any doubt as to its validity, I have independently evaluated the Final Rule and the basis for adopting it. I have determined that the amendments to the AEW methodology in the Final Rule are consistent with the Secretary of Labor’s statutory responsibility to certify that the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed, and that the changes adopted in the Final Rule best strike the balance between the statute’s competing goals of providing employers with an adequate supply of legal agricultural labor and protecting the wages of workers in the United States similarly employed. I also agree with the Department’s certification that the Final Rule does not have a significant economic impact on a substantial number of small entities. *See* 88 FR 12760, 12799, 12802.

Therefore, pursuant to my authority as the Assistant Secretary for Employment and Training and based on my independent review of the action and the reasons for taking it, I hereby affirm and ratify the Final Rule, as of May 3, 2024, including all regulatory analysis certifications contained therein. This action is taken without prejudice to any right to litigate the validity of the Final Rule as approved and published on February 28, 2023. Nothing in this action is intended to suggest any legal defect or infirmity in the approval or publication of the Final Rule.

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0194]

Safety Zone; Fireworks Display; Elizabeth River, Town Point Reach, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone regulation for Norfolk’s 42nd Annual Independence Day Fireworks on July 4th, 2024, to provide for the safety of life on navigable waterways of the Elizabeth River, at Town Point Reach during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Norfolk, VA. During the enforcement period, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Virginia.

DATES: The regulations in 33 CFR 165.506 will be enforced for the location identified as item 13 in table 3 to paragraph (h)(3) from 9 p.m. until 10 p.m. on July 4th, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757-668-5580 email Ashley.E.Holm@uscg.mil.

SUPPLEMENTARY INFORMATION: As noted in paragraph (c) of § 165.506, the enforcement period(s) for each safety zone identified in paragraph (h) of this section is subject to change, and the enforcement period announced here differs from the enforcement period noted in item 13 of table 3 to paragraph (h). The Coast Guard will enforce the safety zone in 33 CFR 165.506 for Norfolk’s 42nd Annual Independence Day Fireworks regulated area from 9 p.m. to 10 p.m. on Thursday, July 4th, 2024, rather than on one of the days of the first or second weekend of July. This action is being taken to provide for the safety of life on navigable waterways during this event. Section 165.506, specifies the location of the regulated area, which encompasses portions of the Elizabeth River and Town Point Reach. During the enforcement period, the entry of vessels or persons into this zone is prohibited unless specifically

¹ Although this provision vests approval authority in the “Attorney General,” the Secretary of Homeland Security now may exercise this authority. *See* 6 U.S.C. 202(3)-(4), 251, 271(b), 291, 551(d)(2), 557; 8 U.S.C. 1103(c) (2000).

² *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019).

authorized by the Captain of the Port, Sector Virginia.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide

notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: April 16, 2024.

Jennifer A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

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