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Labor Dept. Issues New Rules for Guest Workers

By [JULIA PRESTON](#)

The Labor Department on Friday unveiled rules that reshape a program for foreign migrants in work other than agriculture, which officials said would strengthen protections for those workers and also spur recruitment of Americans for such jobs. It was the latest move in a protracted battle between employers and the Obama administration over the nation's temporary guest workers.

The [extensive rules](#) — 575 pages long — make [important changes](#) across the program, which is known as H-2B. The changes were hailed by advocates for guest workers, who said they would make it more difficult for businesses to exploit vulnerable foreign migrants and hire them to undercut Americans.

But reflecting the divisions over the program, employers who use it regularly said the new rules, which will take effect April 23, would make the process too slow and cumbersome for their seasonal businesses and would ultimately lead to the loss of American jobs.

“This is another log in the road to derail the whole industry here,” said Jack Brooks, a crab processor from the Chesapeake Bay in Maryland who is a member of a group of employers in the H-2B program, the Coalition to Save America's Seafood Industry. “If you take the seafood people away, tens of thousands of American jobs are at risk,” Mr. Brooks said.

The H-2B program has long been used by many kinds of seasonal, mostly small, businesses, including seafood fishermen and processors, amusement parks and hotels and landscapers.

Under the new rules, the Labor Department will create a nationwide electronic registry where employers must post all jobs they are seeking to fill with H-2B workers. Also, the recruitment period of Americans is expanded, requiring employers to hire any qualified local worker who applies up to three weeks before the start of an H-2B contract.

The Labor Department also ended a labor market certification process that allowed employers to simply assert that they had searched for American workers. Now employers will have to consult formally with State Workforce Agencies to demonstrate that they could not find Americans for the jobs.

Employers will be required to pay a guest worker's transportation costs from the home country after the migrant completes half of the contract period. Employers will also have to pay for the trip home when the worker finishes the job or is dismissed early, as well as all visa fees.

For the first time, employers will be required to pay foreign workers for three-quarters of the period of a contract, even if there is no work for the migrants to perform. This provision was greeted by employers with particular alarm.

The rules will "ensure that the program is used as intended by making these jobs more accessible to U.S. workers and providing stronger protections for every worker," Secretary of Labor [Hilda L. Solis said in a statement](#).

"Over all, we think these rules are a huge step forward," said Jennifer J. Rosenbaum, the legal director of the [National Guestworker Alliance](#), which is based in New Orleans. "They remove incentives to try to get around hiring an unemployed American by hiring exploitable guest workers instead." She pointed to new provisions ensuring that migrants can raise complaints and consult with unions over work conditions without retaliation from employers.

The rules sharpened the different perceptions between Labor Department officials and H-2B employers over the availability of Americans for the jobs they are offering, which involve low-wage, often strenuous work.

"We would love to have it like we had it back in the 1960s and 1970s when we had all the American workers we could get," said Mr. Brooks, the crab processor. "Now our search for American workers is never-ending. At the end of the day we can't find local workers."

The rules bar foreign recruiters from charging fees to workers who will come to the United States under the H-2B program. The Labor Department is seeking to eliminate foreign recruiters who saddle migrants with debts before they arrive in the United States, which workers struggle to pay off on their wages here.

Last year, employers won one round in the H-2B fight by appealing to Congress about a separate set of Labor Department rules on wages in the program. Employers, who argued they would be forced to more than double wages, persuaded Congress to pass an amendment that blocked them from taking effect at least until October.

http://www.nytimes.com/2012/02/11/us/rules-revised-for-h-2b-guest-worker-program.html?_r=1&nl=todaysheadlines&emc=tha23