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administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party.

EFFECTIVE DATE NOTE: At 77 FR 10169, Feb. 21, 2012, § 655.74 was removed and reserved, effective Apr. 23, 2012.

§ 655.75 Decision and order of administrative law judge.

(a) The administrative law judge shall issue a decision. If any party desires review of the decision, including judicial review, a petition for Administrative Review Board (Board) review thereof shall be filed as provided in § 655.76. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order affirming the decision, or unless and until 30 calendar days have passed after the Board's receipt of the petition for review and the Board has not issued notice to the parties that the Board will review the administrative law judge's decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator, WHD; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the WHD Administrator assesses back wages for wage violation(s) of § 655.22(e), (g), or (j) based upon a PWD obtained by the Administrator from OFLC during the investigation and the administrative law judge determines that the Administrator's request was not warranted, the administrative law judge shall remand the matter to the Administrator for further proceedings on the Administrator's determination. If there is no such determination and remand by the administrative law judge, the administrative law judge shall accept as final and accurate the wage determination obtained from OFLC or, in the event the employer filed a timely appeal under § 655.11, the final wage determination resulting from that process. Under no circumstances shall the administrative law judge determine the validity of the wage determination or require submission into evidence or disclosure of source data or the names of establishments contacted in developing the survey which is the basis for the PWD.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

EFFECTIVE DATE NOTE: At 77 FR 10169, Feb. 21, 2012, § 655.75 was removed and reserved, effective Apr. 23, 2012.

§ 655.76 Appeal of administrative law judge decision.

(a) The WHD Administrator or an employer desiring review of the decision and order of an administrative law judge, including judicial review, shall petition the Department's Administrative Review Board (Board) to review the decision and order. To be effective, such petition shall be received by the Board within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for the Board's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which

would assist the Board in determining whether review is warranted.

(c) Whenever the Board determines to review the decision and order of an administrative law judge, a notice of the Board's determination shall be served upon the administrative law judge, upon the Office of Administrative Law Judges, and upon all parties to the proceeding within 30 calendar days after the Board's receipt of the petition for review. If the Board determines that it will review the decision and order, the order shall be inoperative unless and until the Board issues an order affirming the decision and order.

(d) Upon receipt of the Board's notice, the Office of Administrative Law Judges shall within 15 calendar days forward the complete hearing record to the Board.

(e) The Board's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (e.g., briefs); and

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Board shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5220, Washington, DC 20210. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, shall be received by the Board either on or before the due date.

(g) Copies of all documents filed with the Board shall be served upon all other parties involved in the proceeding.

(h) The Board's final decision shall be served upon all parties and the administrative law judge.

EFFECTIVE DATE NOTE: At 77 FR 10169, Feb. 21, 2012, § 655.76 was removed and reserved, effective Apr. 23, 2012.

§ 655.80 Notice to OFLC and DHS.

(a) The WHD Administrator shall, as appropriate, notify DHS and OFLC of the final determination of a violation and recommend that DHS not approve petitions filed by an employer. The Administrator's notification will address the type of violation committed by the employer and the appropriate statutory period for disqualification of the employer from approval of petitions.

(b) The Administrator shall notify DHS and OFLC upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer, and no timely petition for review is filed with the Department's Administrative Review Board (Board); or

(3) Where a timely petition for review is filed from an administrative law judge's decision finding a violation and the Board either declines within 30 days to entertain the appeal, or reviews and affirms the administrative law judge's determination; or

(4) Where the administrative law judge finds that there was no violation by an employer, and the Board, upon review, issues a decision holding that a violation was committed by an employer.

EFFECTIVE DATE NOTE: At 77 FR 10169, Feb. 21, 2012, § 655.80 was removed and reserved, effective Apr. 23, 2012.

§ 655.81 Application filing transition.

(a) *Compliance with these regulations.* Except as provided in paragraphs (b) and (c) of this section, employers filing applications for H–2B workers on or after the effective date of these regulations where the date of need for the services or labor to be performed is on or after October 1, 2009, must comply with all of the obligations and assurances in this subpart. SWAs will no longer accept for processing applications filed by employers for H–2B workers for temporary or seasonal nonagricultural services on or after January 18, 2009.

(b) *Applications filed under former regulations.* (1) For applications filed with the SWAs serving the area of intended employment prior to the effective date of these regulations, the SWAs shall continue to process all active applications under the former regulations and transmit all completed applications to the appropriate NPC for review and