

decision will be the final decision of the Secretary.

(f) *Debarment involving members of associations.* If the Administrator, OFLC determines a substantial violation has occurred, and if an individual employer-member of an agricultural association acting as a joint employer is determined to have committed the violation, the debarment determination will apply only to that member of the association unless the Administrator, OFLC determines that the association or other association members participated in the violation, in which case the debarment will be invoked against the complicit association or other association members.

(g) *Debarment involving agricultural associations acting as joint employers.* If the Administrator, OFLC determines a substantial violation has occurred, and if an agricultural association acting as a joint employer with its members is found to have committed the violation, the debarment determination will apply only to the association, and will not be applied to any individual employer-member of the association unless the Administrator, OFLC determines that the member participated in the violation, in which case the debarment will be invoked against any complicit association members as well. An association debarred from the H-2A temporary labor certification program will not be permitted to continue to file as a joint employer with its members during the period of the debarment.

(h) *Debarment involving agricultural associations acting as sole employers.* If the Administrator, OFLC determines a substantial violation has occurred, and if an agricultural association acting as a sole employer is determined to have committed the violation, the debarment determination will apply only to the association and any successor in interest to the debarred association.

§ 655.1319 Document retention requirements.

(a) *Entities required to retain documents.* All employers receiving a certification of the *Application for Temporary Employment Certification* for agricultural workers under this subpart are required to retain the documents and

records as provided in the regulations cited in paragraph (c) of this section.

(b) *Period of required retention.* Records and documents must be retained for a period of 3 years from the date of certification of the *Application for Temporary Employment Certification*.

(c) *Documents and records to be retained.* (1) All applicants must retain the following documentation:

(i) Proof of recruitment efforts including:

(A) Job order placement as specified in § 655.102(e)(1);

(B) Advertising as specified in § 655.102(g)(3), or, if used, professional, trade, or ethnic publications;

(C) Contact with former U.S. workers as specified in § 655.102(h);

(D) Multi-state recruitment efforts (if required under § 655.102(i)) as specified in § 655.102(g)(3);

(ii) Substantiation of information submitted in the recruitment report prepared in accordance with § 655.102(k)(2), such as evidence of non-applicability of contact of former employees as specified in § 655.102(h);

(iii) The supplemental recruitment report as specified in § 655.102(k) and any supporting resumes and contact information as specified in § 655.102(k)(3);

(iv) Proof of workers' compensation insurance or State law coverage as specified in § 655.104(e);

(v) Records of each worker's earnings as specified in § 655.104(j);

(vi) The work contract or a copy of the *Application for Temporary Employment Certification* as defined in 29 CFR 501.10 and specified in § 655.104(q);

(vii) The wage determination provided by the NPC as specified in § 655.108;

(viii) Copy of the request for housing inspection submitted to the SWA as specified in § 655.104(d); and

(2) In addition to the documentation specified in paragraph (c)(1) of this section, H-2ALCs must also retain:

(i) Statements of compliance with the housing and transportation obligations for each fixed-site employer which provided housing or transportation and to which the H-2ALC provided workers during the validity period of the certification, unless such housing and transportation obligations were met by the H-2ALC itself, in

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which case proof of compliance by the H-2ALC must be retained, as specified in § 655.101(a)(5);

(ii) Proof of surety bond coverage which includes the name, address, and phone number of the surety, the bond number of other identifying designation, the amount of coverage, and the payee, as specified in 29 CFR 501.8; and

(3) Associations filing must retain documentation substantiating their status as an employer or agent, as specified in § 655.101(a)(1).

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Purpose and Scope of Part 656

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656.40 Determination of prevailing wage for labor certification purposes.

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AUTHORITY: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101-649, 109 Stat. 4978; and Title IV, Public Law 105-277, 112 Stat. 2681.

SOURCE: 69 FR 77386, Dec. 27, 2004, unless otherwise noted.

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of part 656.

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA or Act) (8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain immigrant visas for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Secretary of Homeland Security that:

(1) There are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures through which such immigrant labor certifications may be applied for, and granted or denied.

(c) Correspondence and questions about the regulations in this part should be addressed to: Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210.

[69 FR 77386, Dec. 27, 2004, as amended at 71 FR 35522, June 21, 2006]