

Employment and Training Administration, Labor

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other parties involved in the proceeding.

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

§ 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.

§ 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 non-

agricultural 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 issuance of a labor certification determination.

(2) For applications filed with the SWAs serving the area of intended employment prior to the effective date of these regulations that were completed and transmitted to the NPC, the NPC shall continue to process all active applications under the former regulations and issue a labor certification determination.

(c) *Applications filed with the NPC under these regulations.* Employers filing applications on or after the effective date of these regulations where their date of need for H-2B workers is prior to October 1, 2009, must receive a prevailing wage determination from the SWA serving the area of intended employment. The SWA shall process such requests in accordance with the provisions of § 655.10. Once the employer receives its prevailing wage determination from the SWA, it must conduct all of the pre-filing recruitment steps set forth under this subpart prior to filing an *Application for Temporary Employment Certification* with the NPC.

[73 FR 78052, Dec. 19, 2008. Redesignated at 74 FR 25985, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 25985, May 29, 2009, § 655.5 was redesignated as § 655.81 and suspended, effective June 29, 2009.

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers)

SOURCE: 75 FR 6959, Feb. 12, 2010, unless otherwise noted.

§ 655.100 Scope and purpose of subpart B.

This subpart sets out the procedures established by the Secretary of the

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United States Department of Labor (the Secretary) under the authority given in 8 U.S.C. 1188 to acquire information sufficient to make factual determinations of:

(a) Whether there are sufficient able, willing, and qualified United States (U.S.) workers available to perform the temporary and seasonal agricultural employment for which an employer desires to import nonimmigrant foreign workers (H-2A workers); and

(b) Whether the employment of H-2A workers will adversely affect the wages and working conditions of workers in the U.S. similarly employed.

§ 655.101 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.

The Secretary has delegated her authority to make determinations under 8 U.S.C. 1188 to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). The determinations are made by the OFLC Administrator who, in turn, may delegate this responsibility to designated staff members; e.g., a Certifying Officer (CO).

§ 655.102 Special procedures.

To provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the Immigration and Nationality Act (INA), while not deviating from statutory requirements, the OFLC Administrator has the authority to establish, continue, revise, or revoke special procedures for processing certain H-2A applications. Employers must demonstrate upon written application to the OFLC Administrator that special procedures are necessary. These include special procedures currently in effect for the handling of applications for sheepherders in the Western States (and adaptation of such procedures to occupations in the range production of other livestock), and for custom combine harvesting crews. Similarly, for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock, the OFLC Administrator has the au-

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thority to establish monthly, weekly, or semi-monthly adverse effect wage rates (AEWR) for those occupations for a statewide or other geographical area. Prior to making determinations under this section, the OFLC Administrator may consult with affected employer and worker representatives. Special Procedures in place on the effective date of this regulation will remain in force until modified by the Administrator.

§ 655.103 Overview of this subpart and definition of terms.

(a) *Overview.* In order to bring non-immigrant workers to the U.S. to perform agricultural work, an employer must first demonstrate to the Secretary that there are not sufficient U.S. workers able, willing, and qualified to perform the work in the area of intended employment at the time needed and that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. This rule describes a process by which the Department of Labor (Department or DOL) makes such a determination and certifies its determination to the Department of Homeland Security (DHS).

(b) *Definitions.* For the purposes of this subpart:

Administrative Law Judge (ALJ). A person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

Adverse effect wage rate (AEWR). The annual weighted average hourly wage for field and livestock workers (combined) in the States or regions as published annually by the U.S. Department of Agriculture (USDA) based on its quarterly wage survey.

Agent. A legal entity or person, such as an association of agricultural employers, or an attorney for an association, that:

(1) Is authorized to act on behalf of the employer for temporary agricultural labor certification purposes;

(2) Is not itself an employer, or a joint employer, as defined in this subpart with respect to a specific application; and

(3) Is not under suspension, debarment, expulsion, or disbarment from