an *Application for Temporary Employment Certification;* to deny an *Application for Temporary Employment Certification;* to deny an amendment of an *Application for Temporary Employment Certification;* or to deny an extension of an *Application for Temporary Employment Certification*, the CO will send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge will immediately assign an ALJ (which may be a panel of such persons designated by the Chief Administrative Law Judge from BALCA established by 20 CFR part 656 of this chapter, but which will hear and decide the appeal as provided in this section) to conduct the *de novo* hearing. The procedures in 29 CFR part 18 apply to such hearings, except that:

(i) The appeal will not be considered to be a complaint to which an answer is required;

(ii) The ALJ will ensure that the hearing is scheduled to take place within 5 calendar days after the ALJ's receipt of the ETA case file, if the employer so requests, and will allow for the introduction of new evidence; and

(iii) The ALJ's decision must be rendered within 10 calendar days after the hearing.

(2) *Decision.* After a *de novo* hearing, the ALJ must affirm, reverse, or modify the CO's determination, and the ALJ's decision must be provided immediately to the employer, CO, Administrator, OFLC, and DHS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

§ 655.1316 Job Service Complaint System; enforcement of work contracts.

(a) Complaints arising under this subpart may be filed through the Job Service Complaint System, as described in 20 CFR part 658, Subpart E. Complaints which involve worker contracts must be referred by the SWA to ESA for appropriate handling and resolution, as described in 29 CFR part 501. As part of this process, ESA may report the results of its investigation to the Administrator, OFLC for consideration of employer penalties or such other action as may be appropriate.

(b) Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, may be referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), in addition to any activity, investigation, and/or enforcement action taken by ETA or an SWA. Likewise, if OSC becomes aware of a violation of these regulations, it may provide such information to the appropriate SWA and the CO.

§ 655.1317 Revocation of approved labor certifications.

(a) *Basis for DOL revocation.* The CO, in consultation with the Administrator, OFLC, may revoke a temporary agricultural labor certification approved under this subpart, if, after notice and opportunity for a hearing (or failure to file rebuttal evidence), it is found that any of the following violations were committed with respect to that temporary agricultural labor certification:

(1) The CO finds that issuance of the temporary agricultural labor certification was not justified due to a willful misrepresentation on the application;

(2) The CO finds that the employer:

(i) Willfully violated a material term or condition of the approved temporary agricultural labor certification or the H–2A regulations, unless otherwise provided under paragraphs (a)(2)(ii) through (iv) of this section; or

(ii) Failed, after notification, to cure a substantial violation of the applicable housing standards set out in 20 CFR 655.104(d); or

(iii) Significantly failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under sec. 218 of the INA at 8 U.S.C. 1188, this subpart, or 29 CFR part 501 (ESA enforcement of contractual obligations); or

(iv) Failed to comply with one or more sanctions or remedies imposed by the ESA for violation(s) of obligations found by that agency, or with one or

more decisions or orders of the Secretary or a court order secured by the Secretary under sec. 218 of the INA at 8 U.S.C. 1188, this subpart, or 29 CFR part 501 (ESA enforcement of contractual obligations).

(3) The CO determines after a recommendation is made by the WHD ESA in accordance with 29 CFR 501.20, which governs when a recommendation of revocation may be made to ETA, that the conduct complained of upon examination meets the standards of paragraph (a)(1) or (2) of this section; or

(4) If a court or the DHS, or, as a result of an audit, the CO, determines that there was fraud or willful misrepresentation involving the *Application for Temporary Employment Certification*.

(b) *DOL procedures for revocation.* (1) The CO will send to the employer (and his attorney or agent) a *Notice of Intent to Revoke* by means normally ensuring next-day delivery, which will contain a detailed statement of the grounds for the proposed revocation and the time period allowed for the employer's rebuttal. The employer may submit evidence in rebuttal within 14 calendar days of the date the notice is issued. The CO must consider all relevant evidence presented in deciding whether to revoke the temporary agricultural labor certification.

(2) If rebuttal evidence is not timely filed by the employer, the *Notice of Intent to Revoke* will become the final decision of the Secretary and take effect immediately at the end of the 14-day period.

(3) If, after reviewing the employer's timely filed rebuttal evidence, the CO finds that the employer more likely than not meets one or more of the bases for revocation under § 655.117(a), the CO will notify the employer, by means normally ensuring next-day delivery, within 14 calendar days after receiving such timely filed rebuttal evidence, of his/her final determination that the temporary agricultural labor certification should be revoked. The CO's notice will contain a detailed statement of the bases for the decision, and must offer the employer an opportunity to request a hearing. The notice must state that, to obtain such a hearing, the employer must, within 10 calendar days of the date of the notice file a written request to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy to the Administrator, OFLC. The timely filing of a request for a hearing will stay the revocation pending the outcome of the hearing.

(c) *Hearing.* (1) Within 5 business days of receipt of the request for a hearing, the CO will send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that:

(i) The request for a hearing will not be considered to be a complaint to which an answer is required;

(ii) The ALJ will ensure that the hearing is scheduled to take place within 15 calendar days after the ALJ's receipt of the ETA case file, if the employer so requests, and will allow for the introduction of new evidence; and

(iii) The ALJ's decision must be rendered within 20 calendar days after the hearing.

(2) *Decision.* After the hearing, the ALJ must affirm, reverse, or modify the CO's determination. The ALJ's decision must be provided immediately to the employer, CO, Administrator, OFLC, DHS, and DOS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

(d) *Employer's obligations in the event of revocation.* If an employer's temporary agricultural labor certification is revoked under this section, and the workers have departed the place of recruitment, the employer will be responsible for:

(1) Reimbursement of actual inbound transportation and subsistence expenses, as if the worker meets the requirements for payment under § 655.104(h)(1);

(2) The worker's outbound transportation expenses, as if the worker meets the requirements for payment under § 655.104(h)(2);

(3) Payment to the worker of the amount due under the three-fourths

guarantee as required by § 655.104(i); and

(4) Any other wages, benefits, and working conditions due or owing to the worker under these regulations.

§ 655.1318 Debarment.

(a) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer and any successor in interest to the debarred employer, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The Administrator, OFLC finds that the employer substantially violated a material term or condition of its temporary labor certification with respect to the employment of domestic or nonimmigrant workers; and

(2) The Administrator, OFLC issues a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(b) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer represented by an agent or attorney, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The Administrator, OFLC finds that the agent or attorney participated in, had knowledge of, or had reason to know of, an employer's substantial violation; and

(2) The Administrator, OFLC issues the agent or attorney a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(c) No employer, attorney, or agent may be debarred under this subpart for more than 3 years.

(d) For the purposes of this section, a substantial violation includes:

(1) A pattern or practice of acts of commission or omission on the part of the employer or the employer's agent which:

(i) Are significantly injurious to the wages or benefits required to be offered under the H–2A program, or working conditions of a significant number of the employer's U.S. or H–2A workers; or

(ii) Reflect a significant failure to offer employment to all qualified domestic workers who applied for the job opportunity for which certification was being sought, except for lawful job-related reasons; or

(iii) Reflect a willful failure to comply with the employer's obligations to recruit U.S. workers as set forth in this subpart; or

(iv) Reflect a significant failure to comply with the audit process in violation of § 655.112; or

(v) Reflect the employment of an H–2A worker outside the area of intended employment, or in an activity/activities, not listed in the job order (other than an activity minor and incidental to the activity/activities listed in the job order), or after the period of employment specified in the job order and any approved extension;

(2) The employer's persistent or prolonged failure to pay the necessary fee in a timely manner, following the issuance of a deficiency notice to the applicant and allowing for a reasonable period for response;

(3) Fraud involving the *Application for Temporary Employment Certification* or a response to an audit;

(4) A significant failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under sec. 218 of the INA at 8 U.S.C. 1188, this subpart, or 29 CFR part 501 (ESA enforcement of contractual obligations); or

(5) A significant failure to comply with one or more sanctions or remedies imposed by the ESA for violation(s) of obligations found by that agency (if applicable), or with one or more decisions or orders of the Secretary or a court order secured by the Secretary under sec. 218 of the INA at 8 U.S.C. 1188, this subpart, or 29 CFR part 501 (ESA enforcement of contractual obligations); or

(6) A single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected.

(e) DOL procedures for debarment under this section will be as follows:

(1) The Administrator, OFLC will send to the employer, attorney, or agent a *Notice of Intent to Debar* by means normally ensuring next-day delivery, which will contain a detailed