AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 655.134 Emergency situations.

(a) *Waiver of time period.* The CO may waive the time period for filing for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the CO has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by § 655.100.

(b) *Employer requirements.* The employer requesting a waiver of the required time period must concurrently submit to the NPC and to the SWA serving the area of intended employment a completed *Application for Temporary Employment Certification,* a completed job order on the Form ETA–790, and a statement justifying the request for a waiver of the time period requirement. The statement must indicate whether the waiver request is due to the fact that the employer did not use H–2A workers during the prior agricultural season or whether the request is for good and substantial cause. If the waiver is requested for good and substantial cause, the employer's statement must also include detailed information describing the good and substantial cause which has necessitated the waiver request. Good and substantial cause may include, but is not limited to, the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions.

(c) *Processing of emergency applications.* The CO will process emergency *Applications for Temporary Employment Certification* in a manner consistent with the provisions set forth in §§ 655.140 through 655.145 and make a determination on the *Application for Temporary Employment Certification* in accordance with §§ 655.160 through 655.167. The CO may advise the employer in writing that the certification cannot be granted because, pursuant to paragraph (a) of this section, the request for emergency filing was not justified and/or there is not sufficient time to test the availability of U.S. workers such that the CO can make a determination on the *Application for Temporary Employment Certification* in accordance with § 655.161. Such notification will so inform the employer using the procedures applicable to a denial of certification set forth in § 655.164.

§ 655.135 Assurances and obligations of H–2A employers.

An employer seeking to employ H–2A workers must agree as part of the *Application for Temporary Employment Certification* and job offer that it will abide by the requirements of this subpart and make each of the following additional assurances:

(a) *Non-discriminatory hiring practices.* The job opportunity is, and through the period set forth in paragraph (d) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. Rejections of any U.S. workers who applied or apply for the job must be only for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hires and rejections as required by § 655.167.

(b) *No strike or lockout.* The worksite for which the employer is requesting H–2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.

(c) *Recruitment requirements.* The employer has and will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an *Application for Temporary Employment Certification* is made) for the job opportunity until the end of the period as specified in paragraph (d) of this section and must independently conduct the positive recruitment activities, as specified in § 655.154, until the date on which the H–2A workers depart for the place of work. Unless the SWA is informed in writing of a different date, the date that is the third day preceding the employer's first date of need will be determined to be the date the H–2A workers departed for the employer's place of business.