

meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs that have a direct relation to food service operations, such as wages of cooks and dining hall supervisors; fuel, water, electricity, and other utilities used for the food service operation; and other costs directly related to the food service operation. Charges for transportation, depreciation, overhead and similar charges may not be included. Receipts and other cost records for a representative pay period must be retained and must be available for inspection by the CO for a period of 1 year.

(2) *Effective date for higher charge.* The employer may begin charging the higher rate upon receipt of a favorable decision from the CO unless the CO sets a later effective date in the decision.

(c) *Appeal.* In the event the employer's petition for a higher meal charge is denied in whole or in part, the employer may appeal the denial. Appeals will be filed with the Chief Administrative Law Judge. ALJ's will hear such appeals according to the procedures in 29 CFR part 18, except that the appeal will not be considered as a complaint to which an answer is required. The decision of the ALJ is the final decision of the Secretary.

§ 655.1315 Administrative review and de novo hearing before an administrative law judge.

(a) *Administrative review—(1) Consideration.* Whenever an employer has requested an administrative review before an ALJ of a decision by the CO: Not to accept for consideration 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, which will hear and decide the appeal as set forth in this section) to review the record for legal sufficiency. The ALJ may not remand the case and may not receive evidence in addition to what the CO used to make the determination.

(2) *Decision.* Within 5 business days after receipt of the ETA case file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's decision by written decision. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the Administrator, OFLC, and DHS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

(b) *De novo hearing.* (1) *Request for hearing; conduct of hearing.* Whenever an employer has requested a de novo hearing before an ALJ of a decision by the CO: Not to accept for consideration 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 viola-

tions 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