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§ 655.4 Transition procedures.

(a) The NPWC shall continue to process an *Application for Prevailing Wage Determination* submitted prior to April 29, 2015, in accordance with the prevailing wage methodology at 20 CFR part 655, subpart A, revised as of April 1, 2009, except for § 655.10(b)(2), see 20 CFR part 655, subpart A, revised as of April 1, 2014. Employers with a pending *Application for Prevailing Wage Determination* who seek a prevailing wage based on an alternate wage source must submit a new *Application for Prevailing Wage Determination*.

(b) The NPWC shall process an *Application for a Prevailing Wage Determination* submitted on or after April 29, 2015, in accordance with the wage methodology established in § 655.10 of the final prevailing wage rule.

(c) The NPC shall continue to process an *Application for Temporary Employment Certification* submitted prior to April 29, 2015, in accordance with 20 CFR part 655, subpart A, revised as of April 1, 2009.

(d) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after April 29, 2015, and that has a start date of need prior to October 1, 2015, as follows:

(1) Employers will be permitted to file an *Application for Temporary Employment Certification* job order with the NPC using the emergency situations provision at § 655.17. The *Application for Temporary Employment Certification* must include a signed and dated copy of the new Appendix B associated with the ETA Form 9142B containing the requisite program assurances and obligations under this rule. In the case of a job contractor filing as a joint employer with its employer-client, the NPC must receive a separate attachment containing the employer-client's business and contact information (*i.e.*, sections C and D of the ETA Form 9142B) as well as a separate signed and dated copy of the Appendix B for its employer-client, as required by § 655.19.

(2) The NPC will waive the regulatory filing timeframe under § 655.15 and process the *Application for Temporary Employment Certification* and job order in a manner consistent with the handling of applications under § 655.17 for emergency situations, including the recruitment of U.S. workers on an expedited basis, and make a determination as required by § 655.50. The recruitment of U.S. workers on an expedited basis will consist of placing a new job order with the SWA serving the area of intended employment that contains the job assurances and contents set forth in § 655.18 for a period of not less than 10 calendar days. In addition, employers who have not placed any newspaper advertisements under the rule published at 20 CFR part 655, subpart A, revised as of April 1, 2009. must place one newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of § 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance.

(3) If the Chicago NPC grants a temporary labor certification, the employer will receive an original certified ETA Form 9142B and a Final Determination letter. Upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B of the *Application for Temporary Employment Certification*, retain the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to USCIS. Under the document retention requirements in § 655.56, the employer must retain a copy of the temporary labor certification and the original signed Appendix B.

(4) An employer who did not submit an *Application for a Prevailing Wage Determination* prior to April 29, 2015, but who has a start date of need prior to October 1, 2015 may submit a completed *Application for a Prevailing Wage Determination* to the NPC with its emergency *Application for Temporary Employment Certification* requesting a prevailing wage determination for the job opportunity. Upon receipt, the NPC will transmit, on behalf of the employer, a copy of the *Application for a Prevailing Wage Determination* to the NPWC for processing and issuance of a prevailing wage determination using the wage methodology established in § 655.10.

(e) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after April 29, 2015, and that has a start date of need after October 1, 2015, in accordance with all application filing requirements under this rule, and the employer must obtain a valid prevailing wage determination under the wage methodology established in § 655.10 prior to filing the job order with the SWA under § 655.16.

(f) Employers with a prevailing wage determination issued by the NPWC, or who have a pending or granted *Application for Temporary Employment Certification* on April 29, 2015, may seek a supplemental prevailing wage determination (SPWD) in order to obtain a prevailing wage based on an alternate wage source under this rule.

(1) The SPWD will apply during the validity period of the certification, except that such SPWD will be applicable only to those H–2B workers who are not yet employed in the certified position on the date of the issuance of the SPWD. The SPWD will not be applicable to H–2B workers who are already employed in the certified position at the time of the issuance of the SPWD, and it will not apply to U.S. workers recruited and hired under the original job order. For seafood employers whose workers' entry into the U.S. may be staggered under § 655.15(f), an SPWD issued under this provision will apply only to those H–2B workers who have not yet entered the U.S. and are therefore not yet employed in the certified position at the time of the issuance of the SPWD.

(2) In order to receive an SPWD under this provision, the employer must submit a new ETA Form 9141 to the NPWC that contains in Section E.a.5 Job Duties the original PWD tracking number (starting with P–400), the H–2B temporary employment certification application number (starting with H–400), and the words ''Request for a Supplemental Prevailing Wage Determination.'' Electronic submission through the iCERT Visa Portal System is preferred. Upon receipt of the request, the NPWC will issue to the employer, or if applicable, the employer's attorney or agent, an SPWD in an expedited manner and provide a copy to the Chicago NPC.

§ 655.5 Definition of terms.

For purposes of this subpart:

Act means the Immigration and Nationality Act or INA, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge (ALJ) means a person within the Department's Office of Administrative Law Judges appointed under 5 U.S.C. 3105.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification, ETA, or the Administrator's designee.

Administrator, Wage and Hour Division (WHD) means the primary official of the WHD, or the Administrator's designee.

Agent means:

(1) A legal entity or person who:

(i) Is authorized to act on behalf of an employer for temporary nonagricultural labor certification purposes;

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

(iii) Is not an association or other organization of employers.

(2) No agent who is under suspension, debarment, expulsion, disbarment, or otherwise restricted from practice before any court, the Department of Labor, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this part.

Agricultural labor or services means those duties and occupations defined in subpart B of this part.

Applicant means a U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* (ETA Form 9142B and the appropriate appendices).

Application for Temporary Employment Certification means the Office of Management and Budget (OMB)-approved ETA Form 9142B and the appropriate appendices, a valid wage determination, as required by § 655.10, and a subsequently-filed U.S. worker recruitment report, submitted by an employer