

and transporting machines, equipment and personnel to, from and between logging sites.

(d) *Definition of a temporary or seasonal nature.* For the purposes of this subpart, employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

#### PREFILING PROCEDURES

##### § 655.120 Offered wage rate.

(a) To comply with its obligation under § 655.122(1), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment.

(b) If the prevailing hourly wage rate or piece rate is adjusted during a work contract, and is higher than the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed, the employer must pay that higher prevailing wage or piece rate, upon notice to the employer by the Department.

(c) The OFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the AEWRs for each State as a notice in the FEDERAL REGISTER.

##### § 655.121 Job orders.

(a) *Area of intended employment.* (1) Prior to filing an *Application for Temporary Employment Certification*, the employer must submit a job order, Form ETA-790, to the SWA serving the area of intended employment for intrastate clearance, identifying it as a job order to be placed in connection with a fu-

ture *Application for Temporary Employment Certification* for H-2A workers. The employer must submit this job order no more than 75 calendar days and no fewer than 60 calendar days before the date of need. If the job opportunity is located in more than one State within the same area of intended employment, the employer may submit a job order to any one of the SWAs having jurisdiction over the anticipated worksites.

(2) Where the job order is being placed in connection with a future master application to be filed by an association of agricultural employers as a joint employer, the association may submit a single job order to be placed in the name of the association on behalf of all employers that will be duly named on the *Application for Temporary Employment Certification*.

(3) The job order submitted to the SWA must satisfy the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in § 655.122.

(b) *SWA review.* (1) The SWA will review the contents of the job order for compliance with the requirements specified in 20 CFR part 653, subpart F and this subpart, and will work with the employer to address any noted deficiencies. The SWA must notify the employer in writing of any deficiencies in its job order no later than 7 calendar days after it has been submitted. The SWA notification will direct the employer to respond to the noted deficiencies. The employer must respond to the deficiencies noted by the SWA within 5 calendar days after receipt of the SWA notification. The SWA must respond to the employer's response within 3 calendar days.

(2) If, after providing responses to the deficiencies noted by the SWA, the employer is not able to resolve the deficiencies with the SWA, the employer may file an *Application for Temporary Employment Certification* pursuant to the emergency filing procedures contained in § 655.134, with a statement describing the nature of the dispute and demonstrating compliance with its requirements under this section. In the event the SWA does not respond within the stated timelines, the employer may use the emergency filing procedures