

transportation and subsistence expenses to the place of employment; and

(3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

(p) *Deductions.* (1) The employer must make all deductions from the worker's paycheck required by law. The job offer must specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions must be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such circumstances, the job offer must state that the worker will be reimbursed the full amount of such deduction upon the worker's completion of 50 percent of the work contract period. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(2) A deduction is not reasonable if it includes a profit to the employer or to any affiliated person. A deduction that is primarily for the benefit or convenience of the employer will not be recognized as reasonable and therefore the cost of such an item may not be included in computing wages. The wage requirements of § 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under this subpart, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. The principles applied in determining whether deductions are reasonable and payments are received free and clear, and the permissibility of deductions for payments to third per-

sons are explained in more detail in 29 CFR part 531.

(q) *Disclosure of work contract.* The employer must provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable. For an H-2A worker going from an H-2A employer to a subsequent H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H-2A employer. At a minimum, the work contract must contain all of the provisions required by this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and the certified *Application for Temporary Employment Certification* will be the work contract.

APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

§ 655.130 Application filing requirements.

All agricultural employers who desire to hire H-2A foreign agricultural workers must apply for a certification from the Secretary by filing an *Application for Temporary Employment Certification* with the NPC designated by the OFLC Administrator. The following section provides the procedures employers must follow when filing.

(a) *What to file.* An employer, whether individual, association, or an H-2ALC, that desires to apply for temporary employment certification of one or more nonimmigrant foreign workers must file a completed *Application for Temporary Employment Certification* form and, unless a specific exemption applies, a copy of Form ETA-790, submitted to the SWA serving the area of intended employment, as set forth in § 655.121(a).

(b) *Timeliness.* A completed *Application for Temporary Employment Certification* must be filed no less than 45 calendar days before the employer's date of need.

(c) *Location and method of filing.* The employer may send the *Application for Temporary Employment Certification* and all required supporting documentation by U.S. Mail or private mail courier to the NPC. The Department will publish a Notice in the FEDERAL REGISTER identifying the address(es), and any future address changes, to which *Applications for Temporary Employment Certification* must be mailed, and will also post these addresses on the OFLC Internet Web site at <http://www.foreignlaborcert.doleta.gov/>. The Department may also require *Applications for Temporary Employment Certification*, at a future date, to be filed electronically in addition to or instead of by mail, notice of which will be published in the FEDERAL REGISTER.

(d) *Original signature.* The *Application for Temporary Employment Certification* must bear the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent). An association filing a master application as a joint employer may sign on behalf of its employer members. An association filing as an agent may not sign on behalf of its members but must obtain each member's signature on each *Application for Temporary Employment Certification* prior to filing.

(e) Information received in the course of processing *Applications for Temporary Employment Certification* and program integrity measures such as audits may be forwarded from OFLC to Wage and Hour Division (WHD) for enforcement purposes.

§ 655.131 Association filing requirements.

If an association files an *Application for Temporary Employment Certification*, in addition to complying with all the assurances, guarantees, and other requirements contained in this subpart and in part 653, subpart F, of this chapter, the following requirements also apply.

(a) *Individual applications.* Associations of agricultural employers may file an *Application for Temporary Employment Certification* for H-2A workers as a sole employer, a joint employer, or agent. The association must identify in the *Application for Temporary Employ-*

ment Certification in what capacity it is filing. The association must retain documentation substantiating the employer or agency status of the association and be prepared to submit such documentation in response to a Notice of Deficiency from the CO prior to issuing a Final Determination, or in the event of an audit.

(b) *Master applications.* An association may file a master application on behalf of its employer-members. The master application is available only when the association is filing as a joint employer. An association may submit a master application covering the same occupation or comparable work available with a number of its employer-members in multiple areas of intended employment, just as though all of the covered employers were in fact a single employer, as long as a single date of need is provided for all workers requested by the *Application for Temporary Employment Certification* and all employer-members are located in no more than two contiguous States. The association must identify on the *Application for Temporary Employment Certification* by name, address, total number of workers needed, and the crops and agricultural work to be performed, each employer that will employ H-2A workers. The association, as appropriate, will receive a certified *Application for Temporary Employment Certification* that can be copied and sent to the United States Citizenship and Immigration Services (USCIS) with each employer-member's petition.

§ 655.132 H-2A labor contractor (H-2ALC) filing requirements.

If an H-2ALC intends to file an *Application for Temporary Employment Certification*, the H-2ALC must meet all of the requirements of the definition of employer in § 655.103(b), and comply with all the assurances, guarantees, and other requirements contained in this part, including Assurances and Obligations of H-2A Employers, and in part 653, subpart F, of this chapter.

(a) *Scope of H-2ALC Applications.* An *Application for Temporary Employment Certification* filed by an H-2ALC must be limited to a single area of intended employment in which the fixed-site