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IMPACT OF FEDERAL LABOR AND SAFETY LAWS ON THE U.S. SEAFOOD INDUSTRY

WEDNESDAY, MAY 6, 2015

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m., in Room SR–428A, Dirksen Senate Office Building, Hon. David Vitter, Chairman of the Committee, presiding.


OPENING STATEMENT OF HON. DAVID VITTER, CHAIRMAN,
AND A U.S. SENATOR FROM LOUISIANA

Chairman Vitter. Good afternoon. We are going to start our hearing today on the Impact of Federal Labor and Safety Laws on the U.S. Seafood Industry. Thanks for joining us today.

We are going to be hearing from two panels of expert witnesses and stakeholders, a Federal panel who I will introduce in a minute, and then a stakeholder panel. I want to thank all of our witnesses for being here today to testify on these important issues.

As anyone who has visited Louisiana knows, we enjoy great quality seafood and that plays a major role in our culture and our economy, and this is true for other States in the United States and it is an important part of our economy. In Louisiana, that seafood industry supports 20,000 jobs in the State with an annual economic impact of over $1.7 billion.

More regionally, the Gulf States produce 70 percent of the nation’s oysters, 69 percent of domestic shrimp, and are a leading producer of domestic hard- and soft-shell blue crabs. More broadly, the seafood industry is responsible for creating jobs and revenue that supports so many families along the Gulf, in Alaska, and elsewhere, including the East Coast and the West Coast.

Seafood processors in Louisiana and across the Gulf Coast rely on seasonal foreign workers to fill the most labor-intensive positions throughout the sector. These workers come to the United States legally under the H–2B visa program. This program is vital to many in the seafood business, as many of these operations take place in small rural communities where access to a stable, reliable labor force can be extremely difficult.

Recently, we have seen the difficulty of compliance with this program increase, most notably the Department of Labor’s decision to stop accepting private wage rate surveys, which has often forced
businesses to reallocate their financial resources, and that has been a big, big cost increase for these businesses.

Another area that requires attention is ensuring the safety of seafood that is being imported into the country. It is imperative that we ensure that foreign imports are playing by the same rules and regulations that our domestic producers operate under, and that is one of the reasons I introduced the Imported Seafood Safety Standards Act. This legislation increases inspection rates, quality standards, and penalties in order to protect American families.

In closing, we need to make sure that Federal regulations of all types, like the two areas I have highlighted, do not unfairly and negatively impact our small domestic seafood providers. What Washington bureaucrats often fail to realize is that their rule-making can literally put some small businesses, like domestic seafood producers, out of business. So, we need to focus on these and other regulatory areas.

Again, I thank everyone for being here today and I look forward to our discussion.

With that, I will turn it over to our Ranking Member, Senator Shaheen.

OPENING STATEMENT OF HON. JEANNE SHAHEEN, RANKING MEMBER, A U.S. SENATOR FROM NEW HAMPSHIRE

Senator Shaheen. Thank you, Mr. Chairman, and thank you to all of our panelists this afternoon for being here.

As the Chairman said, seafood is a big issue in my home State of New Hampshire just as it is in Louisiana. Even though we only have 18 miles of coastline, it is an industry that is important to the State, both because of our tourism industry and the fishing—the pleasure boat fishing that goes on off the coast of New Hampshire, but also because we have not only a small fishing industry, but we also have a fish processing industry in New Hampshire.

And, Mr. Chairman, in the interest of brevity and because I have to leave early, I am going to submit my full statement for the record, but I just wanted to raise a couple of concerns.

One is not directly related to this hearing, but since we are talking about seafood, I feel compelled to talk about the concerns that we have in New Hampshire and the Northeast relative to the fishing quotas that have been set by the Department of Commerce and specifically by NOAA. Over the past few years, the Federal Government has found that the declining levels of cod in the Gulf of Maine have been dramatic. There is some disagreement about that among scientists and among the fishing industry, but they have set very dramatic, very low quotas that have almost totally decimated the fishing industry in New Hampshire, and again, I appreciate that that is not the subject of today's hearing, but it is an issue that we are very concerned about and I think it is something that we need to deal with because of its impact on our small business fishing fleet in New Hampshire.

The other issue that is relevant to today’s discussion is one that is having an impact in New Hampshire, as well, and that is the impact of creating a separate Federal program to remove catfish inspection authority from the FDA. As some of you probably already know, the 2008 farm bill transferred the inspection of catfish alone
from FDA to the Department of Agriculture and it left the FDA with the jurisdiction of all other seafood products. That means that all of our seafood processors that handle catfish will now be subject to two separate sets of regulations. This is a costly and unnecessary burden on these businesses. It will kill jobs and hurt economic development.

And, in fact, just the prospect of this regulation has put a freeze on job creation in some of those companies in New Hampshire. One seafood company, High Liner Foods, which I have had the opportunity to tour, has put on hold the job expansion that they would like to do because of the uncertainty around these regulations, and Mr. Chairman, I would like to enter this letter from High Liner Foods for the record, if I can.

[The letter follows:]
May 5, 2015

The Hon. Jeanne Shaheen
United States Senate
506 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Shaheen:

I am writing to express continued opposition to the USDA catfish inspection program. This program, created under the pretense of food safety, is a trade barrier that will increase seafood costs for consumers across the nation. The program will have a lasting negative impact on our company, our customers, and our Portsmouth employees.

High Liner has a long storied tradition in the seafood industry. Our operations recently relocated to Portsmouth and we are proud to have over 214 Granite State workers in our family. We provide consumers with innovative seafood products so they can enjoy the health benefits of seafood. The architects of the catfish program want to implement a program that raises our costs by restricting options for sourcing safe seafood, from both the U.S. and globally. That will impact our operations.

The USDA program is not justified on a food safety basis, as even USDA regards catfish as a “low risk food.” If implemented, the program will trigger an immediate ban on imported catfish, restricting the supply of whitefish and raising our costs. The program is an obvious trade barrier. That is why all the major agricultural groups that care about exports want to repeal this program; they know that they will feel the brunt of any trade retaliation against the United States.

I was disappointed that, despite these flaws, the 2014 Farm Bill did not eliminate the catfish program. But we want to look forward and get this problem corrected.

As a Senator that cares about trade and jobs, we ask for your help in eliminating a program that the President and the Government accountants say should go. Repealing the USDA program will remove a significant impediment to better serving our consumers and building our New Hampshire business. I am confident that you are still the best shot we have in Congress to defeat this ridiculous piece of legislation.

Sincerely,

Bill DiMento
Vice President of Quality Assurance, Sustainability, and Government Affairs

High Liner Foods
183 International Drive, Portsmouth, NH, 03801 T 603.818.5204 | C 508.397.2450
Chairman VITTER. Without objection.

Senator SHAHEEN. This duplicative regulation does not just affect the seafood industry and it is not really about food safety, I believe. I think it is an effort to set up trade barriers against foreign catfish that will dramatically affect not only the seafood processing business in New Hampshire and this country, but it also could put us open to challenge at the WTO and trade retaliation against other agricultural industries.

So, Mr. Chairman, I have been working with other members of the Senate to try and repeal this duplicative program. I hope we can do that. I think it is unnecessary and I hope that we will have the opportunity to do that and to further discuss this, not just in this committee, but when we get to the floor of the Senate.

So, thank you again to our panelists for being here and I look forward to the discussion today.

[The prepared statement of Senator Shaheen follows:]
May 6, 2015

Good morning. Thank you, Chairman Vitter, for hosting this hearing, and thank you all for being here today.

In New Hampshire, the seafood sector is an important part of the New Hampshire economy - from commercial and recreational fishermen and commercial processors on the Seacoast to restaurants throughout the state. I’m pleased we will have an opportunity to discuss the impact of federal regulations on this important sector.

I understand that there are a number of issues facing the constituents of the Chairman in Louisiana, and I look forward to hearing more about those concerns. I’d like to take a few minutes to discuss some of the issues facing my constituents in New Hampshire.

First, although it is not within the scope of this hearing, it’s clear that we need a new approach to address the current fishing crisis in New England. Over the past few years, the federal government has found declining levels of cod in the Gulf of Maine and has instituted drastic cuts to fishing quotas for this species – a critical source of revenue for New Hampshire fishermen. These sudden and severe restrictions have led to significant economic harm to the coastal communities in my state and threatens the future of the entire New Hampshire fishing industry. I look forward to discussing with the Chairman how we can examine this issue further.

Another issue I would like to discuss further today is the harmful effects of creating a separate federal program to remove catfish inspection authority from FDA. As some of you here likely already know, the 2008 Farm Bill transferred the inspection of catfish alone from FDA to USDA, while leaving FDA with the jurisdiction of all other seafood products. This means that all our seafood processors that handle catfish will now be subject to two separate sets of regulations. This is a costly and unnecessary burden on these businesses that will kill jobs and hurt economic development.

In fact, just the prospect of this regulation has put a freeze on business development and job creation in New Hampshire. One seafood company, High Liner Foods, has plans to expand and create jobs. But they can’t go forward if it means subjecting themselves to two separate regulatory standards.

But this duplicative regulation does not just affect the seafood industry. It is, in fact, not even about food safety; rather, it is a thinly veiled trade barrier against foreign catfish. Since there is no scientific basis for the program, any WTO nation that currently exports catfish to the U.S. could challenge it and secure WTO-sanctioned trade retaliation against our critical agricultural export industries – like beef, soy, poultry, pork, grain, fruit and cotton. And in fact, our trading partners are already threatening this retaliation in the WTO and in Trans-Pacific Partnership negotiations.

I believe that we should repeal this unnecessary program, and I have authored bipartisan legislation to do so with Senator McCain.
Today, I plan to discuss the FDA’s role in seafood inspection and the effects of transferring authority for this one species to a separate federal agency.

Thank you, Mr. Chairman, and I look forward to hearing from today’s witnesses.
Chairman Vitter. Thank you, Senator Shaheen.

We will now go to our first panel of witnesses, our Federal panel. I will introduce both and then we will hear their testimony and have discussion following their testimony.

Dr. Steven Solomon is Deputy Associate Commissioner for Regulatory Affairs at the FDA, and he was appointed to that in April 2014. Prior to his appointment, he served in several capacities at the FDA since 1990. Dr. Solomon holds a D.V.M. degree from Ohio State University and a Master’s of Public Health from Johns Hopkins University. Prior to joining the FDA, he owned and operated a private veterinary practice.

And, he will be followed by Ms. Portia Wu, Assistant Secretary of the Employment and Training Administration within the U.S. Department of Labor. She was appointed to that in April 2004 and she now leads that Employment and Training Administration with its mission to address our nation’s workforce needs through high quality training and employment programs. Prior to that, she held a number of positions in public, nonprofit, and private sector situations, including serving at the White House on the Domestic Policy Council as Special Assistant to the President for Labor and Workforce Policy. Ms. Wu holds a Yale Law School degree and a degree from Yale College and a Master’s degree from Cornell, and is originally from Albany, New York.

Welcome to both of you, and we will start with Dr. Solomon.


Dr. Solomon. Good afternoon, Chairman Vitter, Ranking Member Shaheen, and members of the committee. I am Dr. Steve Solomon, Deputy Associate Commissioner for Regulatory Affairs at the Food and Drug Administration, and I appreciate the opportunity to appear before you today to discuss the agency’s ongoing efforts to oversee the safety of the U.S. seafood supply.

FDA has a strong regulatory program in place to ensure the safety of both domestic and imported seafood. In fact, the Hazard Analysis and Risk Preventive Control framework of FDA’s seafood safety program is a basis for the preventive controls requirements for other FDA regulated foods called for in the FDA Food Safety Modernization Act, or FSMA. The agency has a variety of tools to ensure compliance with seafood safety requirements, including inspections of both domestic and foreign processing facilities, a hundred percent electronic screening of all imported products, examination of sampling of domestic seafood and seafood offered for import in the United States, domestic surveillance sampling of imported products, inspection of seafood importers, and foreign country program assessments.

In today’s testimony, I want to discuss FDA’s regulatory framework for overseeing the safety of the U.S. seafood supply, emphasizing the agency’s risk-based efforts with regard to imported seafood.

Processors of fish and fishery products are subject to FDA’s Hazard Analysis Critical Control Point, or HACCP, regulation. In
short, the regulation requires both domestic and foreign processors of fish and fishery products to understand the food safety hazards associated with their process and product and require a preventive system to control for those hazards. Every processor is required to have and implement a written HACCP plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur. Foreign processors who export seafood to the United States also have to have—apply to the HACCP regulation.

In addition, HACCP regulations require importers to understand the hazards associated with the products they are importing and to take positive steps to verify that they obtain shipments from foreign processors who comply with these requirements.

In recent years, there have been reports of seafood in the United States being labeled with incorrect market names. FDA is aware that there may be economic incentives for some seafood producers and retailers to misrepresent the identity of the seafood species that they sell to buyers and consumers. While seafood fraud is often an economic issue, we have heightened concerns when species substitution poses a public health risk.

The agency has invested in significant scientific advancements to enhance its ability to identify seafood species using state-of-the-art DNA sequencing. FDA is actively working to transfer this technology, which will enable the seafood industry and others to monitor and test their products to confirm the species purchase is correct.

Turning now to imports specifically, it is the importers’ responsibility to offer for entry into the United States product that is fully compliant with all applicable U.S. laws. FDA has numerous tools and authorities that enable the agency to take appropriate action regarding imported product. In recent years, the agency has significantly increased its number of foreign food inspections. Furthermore, if FDA requests to inspect a foreign facility and is refused, FSMA gave the agency the authority to not allow that facility’s food submission into the United States.

Besides HACCP inspection of foreign facilities, the agency also conducts surveillance of food offered for import at the border to check for compliance with U.S. requirements. FDA reviews all import entries electronically prior to the product being allowed into the country. The agency has implemented an automated screening tool, the PREDICT system, which significantly improves FDA’s screening of imported food. PREDICT utilizes the admissibility history of the firm and/or a specific product and incorporates the inherent risk associated with the product. For example, a PREDICT review includes the facility inspection history, data quality concerns, sample analytical findings, and type of product that the firm offers for entry into U.S. commerce.

Based on this electronic screening, the agency will direct resources to the most critical entries that have the greatest impact on public health. A subset of the import entries flagged may be physically inspected and/or sampled at varying rates depending on the type of the seafood product and the risk factors described.

Another key regulatory tool for controlling imported goods is the Import Alert. Import Alerts inform FDA field personnel that the agency has sufficient evidence or other information about a par-
ticular product, producer, shipper, or importer to believe that future shipments of an importer product may be violative. On the basis of that evidence, FDA field personnel may detain the article that is being offered for import in the United States without physically examining the product. The agency has over 45 active seafood Import Alerts that focus on imports from certain firms, products, and/or countries based upon past violations or public health concerns.

An Import Alert shifts the burden to the importer to demonstrate that the product meets FDA regulatory requirements. For example, FDA imposed a country-wide Import Alert on five aquaculture species from China in June 2007 due to the presence of unapproved animal drugs. These entries are currently subject to private laboratory testing before they are allowed into domestic commerce.

Finally, I would like to note that the FDA is working globally to better accomplish its mission to promote and protect the public health of the United States. As one example, the agency has conducted foreign country assessments to evaluate the country’s laws for and implementation of good aquaculture practices. FDA uses the information from country assessments to target better surveillance sampling of imported aquaculture products, informs its planning of foreign seafood HACCP inspections, provide additional evidence for potential regulatory actions, and improve collaboration with foreign government and industry to achieve better compliance with FDA’s regulatory requirements.

In closing, oversight of the safety of the U.S. food supply continues to be a top priority for FDA. The agency has a strong regulatory program in place for seafood products. We will continue to work with our domestic and international partners to ensure the safety of both domestic and imported seafood.

Thank you again for the opportunity to appear before you today, and I would be happy to answer any questions.

[The prepared statement of Dr. Solomon follows:]
TESTIMONY OF

STEVEN M. SOLOMON, D.V.M., M.P.H.
DEPUTY ASSOCIATE COMMISSIONER
FOR REGULATORY AFFAIRS

FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
UNITED STATES SENATE

MAY 6, 2015

For Release Only Upon Delivery
INTRODUCTION

Good afternoon, Chairman Vitter, Ranking Member Shaheen, and Members of the Committee. I am Dr. Steven Solomon, Deputy Associate Commissioner for Regulatory Affairs at the Food and Drug Administration (FDA or the Agency), which is part of the Department of Health and Human Services (HHS). Thank you for the opportunity to appear before you today to discuss the Agency’s ongoing efforts to oversee the safety of the U.S. seafood supply.

In the interest of public health, it is vital that both domestically-processed and imported seafood are safe, wholesome, and properly labeled. FDA has had a strong regulatory program in place since the mid-1990s to ensure the safety of domestic and imported seafood. In fact, the hazard analysis and risk-based preventive controls framework of FDA’s seafood-safety program is a basis for the preventive controls requirements for other FDA-regulated foods called for in the FDA Food Safety Modernization Act (FSMA), enacted in 2011. For this reason, FSMA specifically exempts seafood from some of its requirements. However, FSMA also provides the Agency with a number of new authorities that will help improve the safety of domestic and imported FDA-regulated foods, including seafood.

The Agency has a variety of tools to ensure compliance with seafood safety requirements, including inspections of domestic and foreign processing facilities, examination and sampling of domestic seafood and seafood offered for import into the United States, domestic surveillance sampling of imported products, inspections of seafood importers, evaluations of filers of seafood products offered for import, and foreign country program assessments. FDA works closely with our foreign, Federal, state, local, and Tribal partners to share relevant information and ensure that products in U.S. commerce meet applicable FDA requirements.
Seafood is one of the most highly-traded commodities in the world. The Agency recognizes that success in protecting the American public depends increasingly on our ability to reach beyond U.S. borders and engage with its government regulatory counterparts in other nations, as well as with industry and regional and international organizations, to encourage the implementation of science-based standards to ensure the safety of products before they reach our country.

In my testimony today, I will discuss FDA’s regulatory framework for overseeing the safety of the U.S. seafood supply, emphasizing the Agency’s efforts with regard to imported seafood.

**FDA’S SEAFOOD SAFETY PROGRAM**

Because fish are cold-blooded and live in aquatic environments, fish and fishery products pose unique food safety challenges, which are quite different from those posed by land animals. FDA has developed extensive expertise in these areas over decades of regulating this commodity. Experts in FDA’s Center for Food Safety and Applied Nutrition (CFSAN) are responsible for evaluating the hazard to public health presented by chemical, including toxins, and microbiological contaminants in fish and fishery products. FDA operates the Gulf Coast Seafood Laboratory in Alabama, which specializes in seafood microbiological, chemical, and toxins research. In addition, seafood research is conducted at CFSAN’s research laboratory in College Park, Maryland. FDA, in collaboration with the National Oceanic and Atmospheric Administration at the Department of Commerce, also represents the United States at the Codex Alimentarius Commission’s Committee on Fish and Fishery Products, the international food safety standard-setting body for this commodity.
FDA operates a mandatory safety program for processing of fish and fishery products. As a cornerstone of that program, FDA publishes the Fish and Fishery Products Hazards and Controls Guidance, an extensive compilation of the most up-to-date science and policy on the hazards that affect fish and fishery products and effective controls to prevent their occurrence. The document, currently in its fourth edition, has become the foundation of fish and fishery product regulatory programs around the world.

**Seafood Hazard Analysis Critical Control Point (HACCP) Regulation and Inspections**

Processors of fish and fishery products are subject to FDA’s Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products, commonly known as the HACCP regulation. In short, this regulation requires both domestic and foreign processors of fish and fishery products to understand the food-safety hazards associated with their process and product and, through a system of preventive controls, to control for those hazards. Every processor is required to have and implement a written HACCP plan whenever a hazard analysis reveals one or more food-safety hazard(s) that is/are reasonably likely to occur. Foreign processors who export seafood products to the United States must operate in conformance with seafood HACCP regulations. In addition, HACCP regulations require importers to take positive steps to verify that they obtain shipments from foreign processors who comply with the regulation requirements. Congress, in FSMA, directed FDA to put in place a similar preventive controls system as the seafood HACCP program for other FDA-regulated foods as a way to prevent problems rather than reacting to them after they occur. The Agency is working to finalize rules to implement these preventive controls for FDA-regulated foods beyond seafood covered by the
HACCP regulation.

The field staff in FDA’s Office of Regulatory Affairs (ORA) is responsible for overseeing regulatory compliance for fish and fishery products produced in the United States and for those products imported from abroad. The field staff conducts inspections of fish and fishery product processing establishments, conducts follow-up investigations to track foodborne illnesses, and performs other activities designed to oversee the safety of these products. The HACCP inspection approach is used by FDA during domestic and foreign inspections of seafood processors to focus its attention on the parts of seafood production and processing that are most likely to affect the safety of the product. Specifically, the approach allows FDA to evaluate processors’ overall implementation of their HACCP systems over a period of time by having access to the firms’ HACCP plans, including monitoring, corrective action, and verification records. In this model, it is the seafood industry’s responsibility to develop and implement HACCP controls and the regulatory Agency’s to oversee that the industry complies.

FDA allocates its inspection resources based mostly on the risk of the product. Examples of high-priority products include ready-to-eat products, such as hot or cold smoked fish, scombrotxin-forming fish, such as tuna or mahi-mahi, aquacultured seafood products, and fish packed in reduced oxygen packages. Even though inspectional coverage is based primarily on product risk, FDA district offices may adjust that coverage to inspect a particular establishment, such as one that may have been associated with a consumer complaint or illness or one with a poor compliance history. Domestic seafood processors are inspected at least once every three years. FDA also conducts inspections of foreign seafood processors, and in Fiscal Year (FY) 2014 conducted 303 inspections under the foreign seafood program.
The regulatory sanctions that FDA has available to apply to domestic and foreign processors of fish and fishery products that are non-compliant include Warning Letters, seizure of products, injunction against further non-compliant practices, and/or prosecution of an individual or establishment. FSMA provided FDA with additional tools, such as the authority to issue a mandatory recall for certain foods (other than infant formula, for which FDA already has recall authority), when a company fails to voluntarily recall certain foods that meet certain criteria after being asked to do so by the Agency. In addition, FDA can now order administrative detention of any article of food, if there is reason to believe that it is adulterated or misbranded. These new enforcement tools, combined with FDA’s new authority under FSMA to suspend the registration of a facility if the Agency determines that food manufactured, processed, packed, received, or held by such facility has a reasonable probability of causing serious adverse health consequences or death, enable the Agency to more effectively prevent unsafe food from entering commerce. I will describe the Agency’s authorities specific to imports later in my testimony.

Working with Government and Industry Partners

FDA also works closely with the states and industry to ensure the safety of the U.S. seafood supply. In addition to the seafood HACCP inspections performed by FDA inspectors, FDA currently contracts with 24 state regulatory agencies to perform seafood HACCP inspections. These state partners operate under equivalent regulatory, operational, enforcement, and compliance protocols, and their inspectors are trained by FDA. There are 929 seafood HACCP inspections scheduled to be performed by our state partners in FY 2015.
The U.S. food safety program that controls molluscan shellfish (oysters, clams, mussels, and scallops) safety is called the “National Shellfish Sanitation Program” (NSSP). The NSSP is a Federal-state cooperative program with oversight provided by FDA in cooperation with state shellfish experts and other members of the Interstate Shellfish Sanitation Conference (ISSC). The purpose of the NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through Federal/state cooperation and uniformity of state shellfish programs. Thirty-five states have certified shellfish shippers participating in the NSSP. FDA’s Interstate Certified Shellfish Shippers List (ICSSL) is published monthly on FDA’s website for use by food control officials, the seafood industry, and other interested persons. The shippers listed on the ICSSL have been certified by regulatory authorities in the United States, Canada, Korea, New Zealand, and Mexico under the uniform sanitation requirements of the NSSP. Canadian, Korean, New Zealand, and Mexican shippers are included under the terms of the shellfish sanitation agreements FDA has with the governments of these countries. State and local retail food codes modeled after the FDA Food Code contain requirements that make it unlawful for retailers and food service operators to obtain raw molluscan shellfish from sources not included on the ICSSL.

DNA Testing to Address Seafood Fraud

In recent years, there have been reports of seafood in the United States being labeled with an incorrect market name. FDA is aware that there may be economic incentives for some seafood producers and retailers to misrepresent the identity of the seafood species they sell to buyers and consumers. While seafood fraud is often an economic issue, species substitution can be a public health risk (e.g., substituting a scombrototoxin- or ciguatoxin-associated fish for a non-toxin-
associated fish). For this reason, the Agency has invested in significant technical improvements to enhance its ability to identify seafood species using state-of-the-art DNA sequencing. DNA sequencing has greatly improved FDA’s ability to identify misbranded finfish seafood products in interstate commerce or offered for import into the United States. The Agency has trained and equipped eight field laboratories across the country to perform DNA testing as a matter of course for suspected cases of misbranding and for illness outbreaks due to finfish seafood, where the product’s identity needs to be confirmed. FDA also trained analysts from the U.S. Customs and Border Protection (CBP) and the National Marine Fisheries Service in its new DNA-based species identification methodology. FDA has made its protocol for using DNA sequencing for the identification of finfish products as well as itsDNA reference standards publicly available through the FDA website. As a follow up to its now established capacity to identify finfish products using DNA, FDA has recently developed a protocol and a DNA reference library to extend these identification capabilities to include commercial species of shrimp, crab, and lobster. The Agency has already posted some of its DNA reference sequences for shrimp, crab, and lobster on its website and anticipates releasing the protocol to the public this year after final peer review, which will enable the seafood industry to monitor and test their products to confirm the species.

With DNA testing capacity in place, FDA has conducted DNA testing on fish that have a history of being misidentified in an effort to determine the accuracy of the market names on their labels. These sampling efforts specifically targeted seafood reported to be at the highest risk for mislabeling and/or substitution, including cod, haddock, catfish, basa, swai, snapper, and grouper. As FDA announced in September 2014, the sampling and testing conducted as part of this project found that the fish species was correctly labeled 85 percent of the time. The Agency
has the authority to take enforcement action against products in interstate commerce that are adulterated or misbranded and refuse admission of products imported or offered for import that appear to be adulterated or misbranded. FDA will use the results from this testing to help guide future sampling, enforcement, and education efforts designed to ensure that seafood offered for sale in the U.S. market is labeled with an acceptable market name for the species. For instance, the Agency is conducting sampling and testing, in cooperation with state and local authorities, to look for mislabeling at the retail level. We also have posted on the FDA website a three-part learning module on proper seafood labeling to help the seafood industry, retailers, and state regulators ensure the proper labeling of seafood products offered for sale in the U.S. marketplace.

REGULATION OF FOOD IMPORTS

FDA’s authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) provides a broad statutory framework to ensure that imported foods are safe, wholesome, and accurately labeled. It is the importer’s responsibility to offer for entry into the United States product that is fully compliant with all applicable U.S. laws. Under the seafood HACCP regulation, HACCP controls are required for both domestic and foreign processors of fish and fishery products. Additionally, the regulation requires that U.S. importers take certain steps to verify that their foreign suppliers meet the requirements of the regulation. As mentioned earlier, FDA uses a variety of measures to enforce processors’ compliance with seafood HACCP, including inspections of foreign processing facilities, use of a screening system to sample imported products, domestic surveillance sampling of imported products, inspections of seafood importers, evaluations of filers of seafood products, foreign country program assessments, and relevant
information from our foreign partners and FDA foreign office posts.

When an FDA-regulated product is offered for import into U.S. commerce, CBP procedures ensure that FDA is notified. If the product appears to be adulterated or misbranded, based on examination or other information, such as prior history of the product, manufacturer, or country, FDA will give notice advising the owner or consignee of the appearance of a violation under the FD&C Act and the right to provide testimony or evidence (such as a laboratory analysis by an independent laboratory) to rebut the appearance of the violation. In some circumstances, importers may request permission to recondition the product to bring it into compliance with applicable requirements and regulations. If the product is ultimately refused admission, it must be destroyed, unless it is exported by the owner or consignee within 90 days of the date of the notice of refusal.

In 2002, the Congress gave FDA new authorities to enhance protection of the food supply in the Public Health Security and Bioterrorism Preparedness and Response Act. One of the most important provisions is the requirement that FDA be provided prior notice of food (including animal feed) that is imported or offered for import into the United States. This advance information enables FDA, working closely with CBP, to more effectively target food that may be intentionally contaminated with a biological or chemical agent or which may pose a significant health risk to the American public. Suspect shipments then can be intercepted before they arrive in the United States and held for further evaluation. To enhance targeting efforts on commercial imports, FDA participates in the Commercial Targeting and Analysis Center, which consists of CBP and nine other participating Federal agencies.
FDA has numerous other tools and authorities that enable the Agency to take appropriate action regarding imported products. In recent years, the Agency has significantly increased the number of inspections of foreign food manufacturers. For example, FDA conducted 1,336 foreign food facility inspections in FY 2014, compared to 153 inspections in 2008. Looking specifically at seafood, the Agency conducted 303 foreign seafood facility inspections in FY 2014, compared to 95 inspections in 2008. Furthermore, FSMA gave FDA the authority to refuse admission into the United States of food from a foreign facility, if FDA is refused entry by the facility or the country in which the facility is located upon FDA’s request to inspect such facility.

Besides physical inspections of domestic and foreign facilities, the Agency’s field force also conducts surveillance of food offered for import at the border to check for compliance with U.S. requirements. As part of our surveillance work at the border, FDA utilizes a risk-based approach to allocate resources, with priority given to high-risk food safety issues. FDA screens all import entries electronically prior to the products’ entering the country, and a subset of those are physically inspected at varying rates, depending on the potential risk associated with them. Based on the risk ranking, the Agency will direct resources to the more critical activities that have a greater impact on public health. In FY 2014, FDA processed approximately 938,000 entries of imported seafood, while our field staff performed nearly 26,000 physical examinations of seafood imports and collected over 5,600 samples of domestic and imported seafood for analysis at FDA field laboratories.

The Agency has implemented an automated screening tool, the Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT) system, which significantly improves FDA’s screening of imported food. PREDICT uses automated data mining and pattern discovery
to identify data anomalies with regard to import and compliance history of a firm and/or a specific product, such as the facility inspection history; results of previous field exams, sample analyses, and facility inspections; and types of products that the firm offers for entry into U.S. commerce. For example, if a firm historically imports fresh seafood and suddenly imports canned seafood, this information is detected by PREDICT and may trigger a decision by the Agency to conduct an examination of the new type of imported product.

Another key tool for screening imported goods is the Import Alert. Import Alerts inform FDA field personnel that the Agency has sufficient evidence or other information about a particular product, producer, shipper, or importer to believe that future shipments of an imported product may be violative. On the basis of that evidence, FDA field personnel may detain the article that is being offered for import into the United States without physically examining the product. The Agency has over 45 active seafood-specific Import Alerts that prevent imports from certain firms and/or countries based upon past violations. When an Import Alert is issued and FDA detains a shipment, the importer has an opportunity to introduce evidence to demonstrate that the product is not violative. Most commonly the existence of an Import Alert shifts the burden to the importer to conduct testing to demonstrate that the product meets FDA regulatory requirements. FDA decisions to remove a product, manufacturer, packer, shipper, grower, country, or importer from detention without physical examination would be based on evidence establishing that the conditions that gave rise to the appearance of a violation have been resolved and the Agency has confidence that future entries will be in compliance with the FD&C Act.

FDA also performs laboratory analysis on a sampling of products offered for import into the United States and performs periodic filer evaluations to ensure that import data being provided to
FDA is accurate. Certain violations relating to imported food may lead to civil or criminal charges.

**Working with Foreign Counterparts**

FDA is working globally to better accomplish its mission to promote and protect the public health of the United States. The Agency has strengthened and better coordinated its international engagements by establishing permanent FDA posts abroad in strategic locations, such as India and China. The posting of FDA staff in certain overseas regions is a key part of the Agency’s strategy for expanding oversight of imported food. An expanded overseas presence allows for greater access for FDA inspections and for greater engagement with foreign industry and foreign counterpart agencies. This all helps to ensure that products shipped to the United States meet applicable FDA requirements.

FDA is working with foreign counterparts in many areas. For example, FDA has worked closely with the Chinese government on inspections, particularly for seafood. FDA imposed a country-wide Import Alert on all farm-raised catfish, basa, shrimp, dace, and eel from China in June 2007, due to the presence of unapproved animal drugs and/or unsafe food additives. Shipment of products covered by the Import Alert may be detained, without physical examination, at the time they are offered for import into U.S. commerce. The shipments can be released by FDA after evidence is provided to overcome the appearance that the products are violative. In October 2014, FDA and representatives from China’s General Administration of Quality Supervision, Inspection, and Quarantine visited various facilities along the aquaculture supply chain in two provinces, including shrimp farms, feed stores, feed mills, retail facilities
that sell aquaculture drugs and chemicals, and processing facilities, to better understand China's food safety control systems.

The Agency has conducted foreign country assessments to evaluate the country's laws for, and implementation of, good aquaculture practices. Specifically, FDA evaluates the country's controls, including licensing and permitting, inspections, and training programs for aquaculture products. FDA uses the information from country assessments to better target surveillance sampling of imported aquaculture products, inform its planning of foreign seafood HACCP inspections, provide additional evidence for potential regulatory actions, such as an Import Alert, and improve collaboration with foreign government and industry contacts to achieve better compliance with FDA's regulatory requirements. For example, the country assessments for China in 2006, Chile in 2008, and India in 2010 resulted in increased sampling and testing for aquaculture products from these countries (e.g., eel from China, salmon from Chile, and shrimp from India).

PRESIDENTIAL TASK FORCE ON COMBATING ILLEGAL, UNREPORTED, AND UNREGULATED FISHING AND SEAFOOD FRAUD

As mentioned previously, FDA is aware that there may be economic incentives for some seafood producers and retailers to misrepresent the identity of the seafood species they sell to buyers and consumers, and we have conducted DNA testing on fish that have a history of being misidentified, in an effort to combat seafood fraud. In June 2014, President Obama issued a Presidential Memorandum, “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the
memorandum establishes a Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), to be co-chaired by the Secretaries of State and Commerce. FDA, as a part of HHS, serves on the Task Force. The Task Force released its action plan in March 2015. Among other things, the plan directs the Task Force to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce. The plan also directs the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into U.S. commerce. FDA is working with its government partners to implement these recommendations in order to ensure that imported seafood is properly labeled.

CONCLUSION

Oversight of the safety of the U.S. food supply continues to be a top priority for FDA. The Agency has a strong regulatory program in place for seafood products. FDA will continue to work with our domestic and international partners to ensure the safety of both domestic and imported seafood.

Thank you, again, for the opportunity to appear before you today. I would be happy to answer any questions.
Chairman VITTER. Thank you very much, Doctor. Now, we will hear from Ms. Wu. Welcome.

STATEMENT OF PORTIA WU, ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Ms. Wu. Thank you, Mr. Chairman. Chairman Vitter, Ranking Member Shaheen, members of the committee, thank you for having me here today to discuss the H–2B program and the seafood industry. My name is Portia Wu and I am the Assistant Secretary at the Employment and Training Administration at the Department of Labor. Together with the Department of Homeland Security, we administer the H–2B program.

The H–2B program allows employers to meet legitimate needs for temporary foreign workers and the Department takes very seriously its statutory responsibility to administer this program and to ensure that U.S. workers have meaningful access to these job opportunities, that their wages and working conditions are not adversely affected. These efforts also help protect foreign-born workers from exploitation.

The Department recognizes the vital role that the H–2B program plays for the seafood industry. Many seafood employers are multi-generational family-owned businesses and they are a source of cultural pride in coastal areas. The jobs these businesses provide are critical to local communities and create additional jobs in other related industries.

And, Mr. Chairman, as you referenced, these businesses are often in remote or rural areas and so they can struggle to attract and retain a sufficient workforce necessary to provide seafood products for the United States and for the world. Thus, many do depend on temporary workers, including temporary foreign workers.

Over the last five years, employers in some of the largest seafood producing States, like Louisiana and Maryland, were among the top ten users of the H–2B program, and last year, approximately 55 percent of the seafood jobs certified by the Department of Labor were located in the Gulf Coast States, ranging from shrimp boat deckhands in Texas to seafood and crawfish processors and packagers in Louisiana.

We understand that seafood employers and others are impacted by the current annual 66,000 number cap on H–2B workers. That cap is set by Congress. And, we are again seeing demand nationwide that exceeds that cap.

The Department is committed to maintaining a fair and reliable application process for those who use the program. However, unfortunately, in recent years, we have faced difficulties in achieving stability in this program because the Department of Labor’s H–2B regulations have been subject to numerous cases brought in court by both employers and worker advocates. In fact, this litigation ultimately resulted in temporarily suspending the processing of H–2B applications earlier this year.

Last week, in order to quickly reinstate the H–2B program and also to bring certainty, stability, and continuity to that program, the Department of Labor and the Department of Homeland Security jointly issued two new regulations. One is an interim final rule establishing the overall framework for the H–2B program. I should
note that is an interim final rule, so it is open for public comment until June 29. The other is a final updated wage rule that allows the use of private wage surveys in certain circumstances in keeping with a recent court decision.

These rules immediately restore processes for approving prevailing wage requests and labor certification applications so the program can continue to operate. They expand employer requirements for recruitment and consideration of U.S. workers so United States workers have a fair shot at finding and applying for these jobs. It also permits employers in the seafood industry to continue to stagger the entry of their H–2B workers into the United States.

The regulations strengthen worker protections by clarifying employer obligations with respect to wages, working conditions, and benefits that must be offered to H–2B and U.S. workers alike.

And, finally, as I noted, the rules explicitly include the use of private wage surveys, which were restricted by a recent court decision, and they—so, we set guidelines for how these surveys can now be used, and that includes State surveys, which are often used in the seafood industry.

Both the Department of Labor and DHS are trying to ensure a smooth transition between the former regulations and the new rules. First and foremost, anyone who had already applied under the old rules or who were in line does not have to change anything. They will continue to operate under the prior regulations.

Second, the new regulations allow an expedited process for employers who have a start date of need before October 1, 2015, so people will have time to quickly transition.

In conclusion, the Department of Labor strives to maintain an H–2B program that is both responsive to legitimate employer needs where qualified U.S. workers are not available and to provide adequate protections for U.S. and foreign temporary workers. Doing so is not only good for law-abiding employers, including employers in the seafood industry, but also for the many U.S. workers seeking jobs in fields that rely heavily on the H–2B program.

Thank you again for this opportunity and I look forward to answering your questions.

[The prepared statement of Ms. Wu follows:]
STATEMENT OF
PORTIA WU
ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING
U.S. DEPARTMENT OF LABOR
BEFORE THE
SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
May 6, 2015

Introduction

Mr. Chairman and Members of the Committee, I want to thank you for this opportunity to appear before this Committee to testify about H-2B regulations and the seafood industry. I am Portia Wu, Assistant Secretary for the Department of Labor’s (DOL) Employment and Training Administration (ETA).

The H-2B program allows U.S. employers to meet a legitimate need for temporary, foreign workers. DOL is responsible for issuing foreign labor certifications for this program and other temporary worker programs. In addition, under the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act, ETA also funds state and local workforce systems and therefore we are responsible for connecting U.S. workers to jobs, including in the seafood industry. ETA will continue to fund these activities under the Workforce Innovation and Opportunity Act, which supersedes WIA and the Wagner-Peyser Act.

As I will explain today, our new H-2B regulations are intended to support our nation’s businesses – including the seafood industry – by expeditiously reinstating the H-2B program to allow for access to foreign workers in cases where U.S. workers are not available. These regulations will bring certainty, stability, and continuity to the program in response to litigation on multiple fronts that has jeopardized the continuity of the H-2B program.

DOL’s Role in the H-2B Program

The Immigration and Nationality Act (INA) establishes the H-2B nonimmigrant visa classification for employers to bring foreign workers to the United States to perform non-agricultural services or labor on a temporary basis if qualified U.S. workers capable of performing such services or labor cannot be found in this country (8 U.S.C. 1101(a)(15)(H)(ii)(b)). Section 214(c) of the INA requires employers to petition the Department of Homeland Security (DHS) to classify such temporary workers as H-2B nonimmigrants. The INA also requires DHS to consult with appropriate agencies of the Government, which DHS has long interpreted to include DOL, before adjudicating an employer’s petition seeking to employ individuals under the H-2B nonimmigrant visa classification.

Under DHS regulations, before DHS can adjudicate an H-2B petition, the petitioner must receive a certification from DOL that there are insufficient qualified workers in the U.S. to perform the temporary labor or services for which the employer seeks foreign workers, and that the employment of the foreign workers will not have an adverse effect on the wages and working conditions of U.S. workers similarly employed (see 8 CFR 214.2(h)(6)(ii)(A) and (D)). Each DOL H-2B labor certification is specific to the employer and the temporary period of employment requested and corresponds to the geographic location in which the employer attempted to recruit U.S. workers for the job opportunity. That certification also includes the
obligation to offer and pay the required prevailing wage rate issued by DOL for the occupation and area of intended employment. After being granted a temporary labor certification by DOL, the employer may petition DHS for approval to bring foreign workers into the U.S. to fill the employer’s need for requested labor or services stated in the approved H-2B temporary labor certification. If the petition is approved by DHS, foreign workers may then go to a U.S. embassy or consulate in their country to apply for an H-2B nonimmigrant visa from the Department of State. If the visa application is approved, the worker is issued a visa that he or she can use to apply for admission to the United States at a port of entry to perform the temporary work.

DOL strives to administer its part of the H-2B program, and other temporary worker programs, in a manner that is responsive to legitimate employer needs for labor where qualified U.S. workers are not available, and that provides adequate protections for U.S. and foreign temporary workers under our Nation’s immigration and labor laws. In this context the regulations governing the H-2B program establish the minimum wages and employer obligations that apply to both H-2B and U.S. workers, as well as the recruitment criteria employers must meet to demonstrate eligibility to hire foreign labor. The Department’s Office of Foreign Labor Certification issues prevailing wage determinations and temporary labor certifications in accordance with those regulatory standards to help ensure that U.S. workers have meaningful access to these job opportunities, and that the wages and working conditions of U.S. workers are not adversely affected by the employment of foreign workers though a temporary worker program. In addition, the Department’s Wage and Hour Division enforces the laws within its jurisdiction that apply to all covered workers, such as the Fair Labor Standards Act, as well as specific worker protections in the H-2B program that not only help protect foreign workers from exploitation, but also provide similarly-employed U.S. workers with wages and working conditions that are at least equal to those provided to temporary foreign workers.

The H-2B program is capped at 66,000 visas per fiscal year. Workers engaged in temporary non-agricultural employment under the H-2B program come from a diverse set of countries and work in a range of industries. Each year, significant numbers of H-2B workers work in landscaping, forestry, hospitality services, construction, and seafood. Seafood industry employers who use the H-2B program each year are small and seasonal businesses primarily located in states along the eastern and gulf coasts. Because participation in the program is limited by the statutory cap, employer demand for foreign workers in the H-2B visa program often exceeds the current statutory limit. In Fiscal Year (FY) 2010, DOL certified approximately 3,726 temporary labor certification applications covering more than 93,000 worker positions. By FY 2014, employer requests for temporary non-agricultural labor certifications increased almost 25 percent with DOL certifying more than 4,638 temporary labor certification applications covering more than 94,000 worker positions. Within just the first six months of FY 2015, DOL certified more employer applications for H-2B workers than during all of FY 2014, many of them small businesses.

The H-2B Program and the Seafood Industry

First, I want to address the H-2B program and its relationship with the seafood industry. DOL understands that many seafood employers are family-owned businesses—some spanning generations—which proudly provide seafood products for domestic and international markets and that struggle each year to attract and retain a productive and stable workforce. We know that the seasonal jobs these businesses provide are critical to local communities, create additional jobs in other related industries, and are a source of cultural pride in coastal areas. DOL is
committed to maintaining a fair and reliable application process for these small and seasonal businesses.

Over the last five years, employers in some of the largest seafood-producing states were among the top ten users of the H-2B program. DOL has consistently certified H-2B applications for seasonal seafood jobs primarily located in Louisiana, Maryland, Virginia, Texas, North Carolina, and Massachusetts. In FY 2014, we certified more than 5,700 work positions related to the harvesting, processing, and packaging of seafood including, but not limited to, crab, shrimp, crawfish, and oysters, which is a 15 percent increase in program usage over the prior year. Approximately 55 percent of the certified seafood jobs were located along the Gulf Coast states, ranging from shrimp boat deckhands in Texas to seafood and crawfish processors and packagers in Louisiana. Employer temporary labor certification applications in the seafood industry during FY 2014 were certified 92 percent of the time and processed by the Department, on average, within 16 days of receipt — this is compared to a certification rate of 84 percent and an average processing time of 18 days for all other H-2B employers.

Achieving Stability in the H-2B Program

In recent years, DOL and DHS have faced difficulties in achieving stability in the H-2B program because DOL’s H-2B regulations have been subject to litigation brought by both employers and worker advocates. The history of H-2B-related litigation has dictated the timing and in part the substance of the Departments’ issuance of new regulations on April 29, 2015, which I discuss in further detail below. The two new regulations that DOL and DHS have just jointly issued are: the Temporary Non-Agricultural Employment of H-2B Aliens in the United States, Interim Final Rule and Request for Comments (2015 IFR), which establishes the overall framework for the H-2B program, and the Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Final Rule (2015 Wage Final Rule), which implements the complete wage methodology for the H-2B prevailing wage process. These regulations are designed to bring stability, certainty, and clarity to the program.

Background on DOL’s H-2B Program Regulations and Litigation

Before 2008, DOL used regulations to structure the H-2B program, but set many substantive program standards in sub-regulatory guidance. Since 2008, DOL has published several regulations governing the H-2B program, including:

- A 2011 Wage Rule revising the wage methodology from the 2008 H-2B Rule, 76 FR 3452 (2011 Wage Rule), which never took effect because, as explained below, Congress declined to fund administration and enforcement;
- A 2012 H-2B rule setting program requirements other than prevailing wages for the H-2B program, 77 FR 10038 (2012 H-2B Rule), which never took effect because, as explained below, its implementation and enforcement was enjoined; and
- A 2013 Interim Final Rule issued jointly with DHS revising the wage methodology for setting H-2B prevailing wages, 78 FR 24047 (2013 IFR), which took effect in April 2013.
Litigation Involving DOL’s Rulemaking Authority and Procedures

DOL’s authority to issue its own regulations in the H-2B program is the subject of dispute in the Federal appellate courts. The U.S. Court of Appeals for the Third Circuit concluded that DOL has independent authority under the INA to issue H-2B program regulations to provide advice to DHS. See Louisiana Forestry Ass’n v. Perez, 745 F.3d 653 (3d Cir. 2014). Contrary to that decision, the U.S. Court of Appeals for the Eleventh Circuit affirmed a trial court preliminary injunction concluding that DOL lacks authority under the INA to independently issue H-2B regulations. See Bayou Lawn & Landscape Servs. v. Sec'y of Labor, 713 F.3d 1080 (11th Cir. 2013). These conflicting court decisions have made it difficult for DOL to carry out its duties under the INA.

On remand from the Eleventh Circuit, the district court in Bayou vacated the 2012 H-2B rule, and permanently enjoined DOL from enforcing the rule on the ground that DOL lacks rulemaking authority in the H-2B program. See Bayou Lawn & Landscape Servs. v. Sec’y of Labor, No. 3:12-cv-183 (N.D. Fla. Dec. 18, 2014) (Bayou II). DOL has appealed that decision to the Eleventh Circuit. Due to this injunction and vacatur of the 2012 H-2B Rule, DOL had continued to operate the program under the 2008 H-2B Rule. However, on March 4, 2015, the same district court that vacated DOL’s 2012 rule also vacated the 2008 H-2B Rule and permanently enjoined DOL from enforcing it, See Perez v. Perez, No. 14-cv-682 (N.D. Fla. Mar. 4, 2015). Based on the Perez vacatur order and the permanent injunction, DOL was required to immediately cease implementing its H-2B labor certification regulations to comply with the court’s order. In response to a motion from DOL, the court in Perez subsequently stayed its vacatur, ultimately until May 15, 2015, which allowed the Department to continue processing H-2B temporary labor certification applications under the 2008 H-2B Rule pending publication of the new DOL-DHS joint 2015 IFR. On April 30, 2015, the Perez Court lifted the stay of its vacatur of DOL’s 2008 rule because DOL and DHS replaced it with a new comprehensive H-2B rule published in the Federal Register on April 29, 2015.

When DOL’s 2008 H-2B regulations were vacated, DOL had no prior regulations it could implement to operate the H-2B program, nor was it able to run the H-2B program based on sub-regulatory guidance. At least two federal courts have made clear that DOL cannot set substantive requirements for its temporary labor certification programs through sub-regulatory guidance that has not gone through notice and comment procedures. See Mendez v. Perez, 754 F.3d 1002 (D.C. Cir. 2014) (holding that DOL violated the procedural requirements of the APA when it established requirements that “set the bar for what employers must do to obtain approval” of the H-2A labor certification application, including wage and housing requirements, in guidance documents); Comité de Apoyo a los Trabajadores Agrícolas v. Solis, No. 2:09-cv-240, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010) (CATA I) (holding that DOL’s failure to issue its pre-2008 H-2B guidance document through the notice and comment process was a procedural violation of the Administrative Procedure Act (APA)).

Litigation and Congressional Action Involving H-2B Prevailing Wage Rates

DOL’s prevailing wage regulations, which are established so that the importation of foreign workers will not have an adverse effect on the wages of U.S. workers, have also been the subject of litigation and Congressional appropriations riders. In CATA I, a district court invalidated DOL’s then-existing methodology, which included setting the H-2B prevailing wage based on skill levels. In response, DOL issued the 2011 Wage Rule, which concluded, among other things, that the vast majority of H-2B jobs involved unskilled labor, and that setting the
prevailing wage based on skill levels had little relevance in the H-2B program. Shortly before the 2011 Wage Rule came into effect, Congress issued an appropriations rider effectively barring implementation of the 2011 Wage Rule, and the same rider was issued in every appropriations enactment until January 2014. During the period DOL was unable to implement the 2011 Wage Rule, DOL continued to rely on the 2008 H-2B Rule, which allowed employers to use wages based on skill levels. In 2013, however, a district court vacated the problematic provision in the 2008 H-2B rule requiring skill-level-based prevailing wages (20 CFR 655.10(b)(2)), and ordered DOL to come into compliance in 30 days, See Comite de Apoyo a los Trabajadores Agricolas v. Solis, 933 F. Supp. 2d 700 (E.D. Pa. 2013) (CATA II).

In response to the court’s order in CATA II, and in order to address the Eleventh Circuit’s decision in Bayou raising questions about DOL’s regulatory authority, DOL and DHS jointly promulgated the 2013 IFR, which again revised the wage methodology, eliminating the four-tiered wage based on skill levels and generally establishing the Occupational Employment Statistics (OES) mean wage as the prevailing wage. The 2013 IFR also permitted the use of employer-provided surveys as an alternative to the OES wage. However, in December 2014, the U.S. Court of Appeals for the Third Circuit vacated the regulatory provisions that permitted employers to submit the employer-provided surveys as an alternative to that OES wage, concluding that those provisions had substantive and procedural defects under the APA. See Comite de Apoyo a los Trabajadores Agricolas v. Perez, 774 F.3d 173, 191 (3d Cir. 2014). This vacatur prohibited DOL from accepting employer-provided surveys unless it engaged in further rulemaking.

The 2015 H-2B Interim and Wage Final Rules

On April 29, 2015, DOL and DHS jointly issued two regulations: the 2015 IFR establishing the overall framework for the H-2B temporary labor certification program, and the 2015 Wage Final Rule implementing the complete wage methodology for the H-2B prevailing wage process. As noted, these regulations are intended to bring certainty, stability, and continuity to the H-2B program after a period of uncertainty brought on by litigation.

The 2015 IFR strengthens recruitment and protections for U.S. workers, ensuring that they have a greater chance of finding and applying for jobs for which employers are seeking H-2B workers, and that U.S. workers who are doing essentially the same jobs as H-2B workers have the eligibility for the same rights and benefits as those workers.

For example, the 2015 IFR improves U.S. worker access to jobs by requiring employers to extend recruitment efforts relating to the position described in the temporary labor certification until 21 days before the employer’s date of need. This addresses an inadequacy in the 2008 rule, under which employers conducted a minimal recruitment effort almost four months before the start date of work. U.S. applicants—particularly unemployed workers—seeking temporary work often need work right away and cannot wait for four months. Under the 2015 IFR, employers must also make jobs available to former U.S. employees who worked for the employer in the occupation in the prior year, except those terminated for cause or who quit. The 2015 IFR also requires DOL to establish a national electronic registry that will improve U.S. worker access to these jobs. In areas of substantial unemployment the employer may be required to conduct additional recruitment efforts to ensure more opportunities for and a greater response from available and qualified U.S. workers.

In addition, employers bringing in foreign workers under the H-2B program must:
• Show temporary need to help prevent the program from being used for jobs that are really permanent and, therefore, not available to temporary foreign workers;
• Guarantee employment for a total number of work hours equal to at least three-fourths of the workdays during the periods for which they have requested H-2B workers, for both H-2B and U.S. workers in corresponding employment; and
• Pay visa fees of H-2B workers, the inbound transportation and related subsistence costs of workers who complete 50 percent of the job order period, and the outbound transportation and related subsistence expenses of employees who complete the entire work period.

The 2015 IFR also contains a number of provisions that will lead to increased transparency and address potential issues around foreign labor recruitment, such as requiring employers to 1) disclose their use of foreign labor recruiters in the solicitation of workers, which was the subject of a recent Government Accountability Office report issued in March 2015; 2) provide workers with earnings statements that clearly specify hours worked and offered and deductions from pay; and 3) display a poster describing employee rights and protections. And finally, the 2015 IFR strengthens DOL’s enforcement and program integrity mechanisms by, for example, extending the potential period of debarment from the H-2B program resulting from employer violations from three to five years, and providing the Department with enhanced authority to revoke a temporary labor certification based on fraud, willful misrepresentation, or substantial program violations. (Additional information can be found at http://www.foreignlaborcert.doleta.gov/)

The 2015 IFR also permits employers in the seafood industry, in certain circumstances, to stagger the entry of their H-2B workers into the United States (general users of the program must bring all their H-2B workers into the U.S. when work begins). Under section 108 of the Consolidated and Further Continuing Appropriations Act, 2015 (the “2015 Appropriations Act”), Pub. L. No. 113-235, 128 Stat. 2130, 2464, staggered entry of H-2B nonimmigrants employed by employers in the seafood industry is permitted under certain conditions. DOL and DHS have incorporated the requirements into the 2015 IFR.

The companion joint 2015 Wage Final Rule establishes the complete prevailing wage methodology for the H-2B program, which includes permitting employers to submit employer-provided surveys to set the prevailing wage in limited circumstances. We believe that this offers employers flexibility, while simultaneously ensuring that the prevailing wage is established at a level that meets DOL’s obligation to ensure no adverse effect on U.S. workers similarly employed.

The 2015 Wage Final Rule retains as the primary prevailing wage the mean wage of all workers in the occupation in the geographic area of the H-2B work based on the OES survey. The OES mean wage has been governing prevailing wage determinations since April 2013, and the vast majority of employers using the H-2B program have been using this wage rate. The Wage Final Rule made two changes to streamline the prevailing wage process and address recent litigation concerning employer-provided surveys.

First, and significantly for many employers in the seafood industry, the Wage Final Rule permits the submission of employer-provided surveys in the following limited circumstances: (1) if the OES does not collect data for the geographic area or the OES reports the wage rate in the geographic area at only the national level for the occupation; (2) if the job opportunity is not
included within an occupational classification of the OES or is within an occupational classification of the OES designated as a general “all other” classification; or (3) where the survey is independently conducted by a state entity. Based on DOL’s extensive experience partnering with the states to collect wage data, DOL and DHS have determined that occupational wage surveys conducted and issued by state agencies, such as state agricultural, natural resources, or maritime agencies, or state colleges and universities, are neutral and reliable, and that they will not suffer the same shortcomings as other employer-provided surveys. Therefore, as long as these surveys meet the methodological standards contained in the new regulations, the Department will continue to accept state-conducted surveys.

Second, the Wage Final Rule no longer permits use of wage determinations under the Davis-Bacon Act (DBA) and the McNamara-O’Hara Service Contract Act (SCA) to set the prevailing wage in the H-2B program. The decision to discontinue these wage sources in the H-2B program is based largely on DOL’s challenges in conforming the SCA and DBA categories to employer requests for prevailing wages in the H-2B program, and the desire to issue consistent prevailing wage determinations (PWDs) in the H-2B program. SCA and DBA will remain in force and effect independent of the H-2B program for all workers performing work under government contracts.

Smooth Transition between Former Regulations and the 2015 IFR

Both DOL and DHS are trying to ensure a smooth transition between the former regulations and the 2015 IFR and Wage Final Rule. All H-2B labor certifications granted under the provisions of the 2008 Final Rule will continue to be valid for the positions and period of employment certified. Pending applications for prevailing wage determination or for temporary labor certification will be processed under the regulations in place at the time they were filed (the 2008 Final Rule, as amended by the 2013 IFR). The 2015 regulations also include flexibility for employers who are seeking workers with a start date of need before October 1, 2015 by establishing a process for expedited recruitment of U.S. workers, including credit for recruitment employers had already completed under the 2008 Final Rule. The regulations grant these employers the ability to obtain a prevailing wage simultaneously with filing the application for temporary labor certification so that employers who are affected by the change in regulations can still quickly access the workers they need. Employers with a start date of need on or after October 1, 2015, must file their H-2B temporary labor certification applications under the regular filing procedures of the 2015 IFR.

Employers with an existing PWD or a pending or approved H-2B temporary labor certification also may submit a request for a Supplemental PWD (SPWD) in order to request a prevailing wage based on an alternate wage source. Such supplemental determinations will only apply to those H-2B workers who were not yet employed by the employer on the date the SPWD was issued, and will not apply to H-2B workers who were already working for the employer on or before the date of the SPWD, or U.S. workers who were recruited and hired under the original job order. Seafood employers using staggered entry likewise may request SPWDs.

To reduce the burdens and save time for employers who have recurring temporary needs, DOL will implement over time a new pre-filing process allowing an employer to “register” its temporary need for a specific number of positions the employer needs and will continue to need. Instead of having to prove temporary need each time the employer files an H-2B application, the employer will submit an H-2B registration in the first year this process is implemented and the registration will be valid for a period of up to three consecutive years during which the employer
will benefit from the streamlined application process. The Department will also continue to accept H-2B temporary labor certification applications for professional athletes, tree planting and related reforestation, and professional/outdoor entertainers under the existing special procedures.\footnote{The 2015 IFR does not include the regulatory provision authorizing DOI to create new special procedures. A recent decision by the U.S. Court of Appeals for the D.C. Circuit held invalid such a provision in DOI's H-2A temporary agricultural worker program. *Mendocino v. Perez*, 754 F.3d 1002, 1024 (D.C. Cir. 2014).}

**Conclusion**

The Department will continue to focus on maintaining a fair and reliable H-2B temporary labor certification process while enforcing necessary protections for both U.S. and nonimmigrant foreign workers. To do so is good not only for workers but also for the law-abiding employers, including those who most participate in this capped visa program, including our nation’s seafood employers. The Department has worked hard to prepare robust guidance for employers to help them navigate the new regulations, including a technical, dedicated Web page with Frequently Asked Questions and other resources that explain the differences between the old and new regulations, and guide employers on how to file their applications. In addition, the Department published a number of Factsheets that help employers comply with program obligations. We hope that these will significantly reduce the time and effort employers must invest to successfully use the H-2B program. The Department is confident that as program users become more familiar with these new requirements, overall program compliance will continue to increase and any delays attributed to failure to follow the program’s rules will continue to decrease.

Mr. Chairman and Members of the Committee, thank you again for the opportunity to discuss the U.S. Department of Labor’s role in addressing regulatory issues related to the H-2B program and its relevance to the seafood industry. I look forward to answering your questions.
Chairman Vitter. Okay. Thank you, Ms. Wu, and we will start with our questions, and let me begin with you on one of the topics you discussed directly, and that is private wage surveys.

Is it not correct that the new rule you were describing greatly limits compared to past practice, greatly narrows and limits the use of private wage surveys?

Ms. Wu. Senator, it is true that in December last year, we had—our previous rule allowed significant use of private wage surveys. That use was enjoined by a court in December of last year and the court's opinion lays out a great deal of reasoning, including concerns about how private wage surveys might undercut wages and some other reasons that, for example, surveys that use only entry-level wages are not permissible under the law. They found that to be a violation of the law.

At that time, we had to immediately suspend the use of surveys because of the court's order. However, with our new rule, we allow surveys in limited circumstances. There are some, and again, it is in keeping with the court's order, where, for example, an occupation is not well represented in the Occupational Employment Statistics.

We also specifically allow for State conducted surveys, and I know this is a subject of particular interest in the seafood industry because many States do this. There are some basic criteria in keeping with the court's order. For example, as I mentioned, you have to look at average wages in an industry, not simply entry-level wages. But, we believe that this may be an opportunity for many in the seafood industry to take advantage of this provision. We actually—I was talking with some of your folks from Louisiana today and we are putting out some assistance next week to explain to people how they can use these surveys.

In the transition provisions, we also said that, for example, if you already got your certification but you have not brought your workers in and you are wondering, can I go back and get a new survey wage, as long as it complies with our basic criteria, we put in a provision to allow people to go back and adjust that wage.

Chairman Vitter. Well, Ms. Wu, as you know, there is a lot of concern that the new system is too narrow and narrows the use of these surveys way beyond anything that would be absolutely required or demanded by the court. What is your reaction to that critique, which I think is a fair one?

Ms. Wu. Thank you, Senator. I think we believe that the new provisions are in keeping with the court's order. I should note, the State-provided surveys, frankly, we may be getting some criticism from the other side that it may be going beyond what the court allowed. So, there are many points of view on it.

But, I do think that this provision of State-provided surveys may be an avenue that industries, particularly the seafood industry, could take advantage of and have taken advantage of in the past.

Chairman Vitter. Does use of these State surveys allow for recognizing differences which exist from one local area to others within the State?

Ms. Wu. Yes, Senator, it could. Obviously, it is up to the State as to what level of detail is conducted in the surveys. They certainly could provide a survey where there are differences in local-
ity. Obviously, with different sorts of tasks in the industry, they would have different levels of wages. And, the Department is not in the business of dictating how employers should pay their wage or not. I know some employers, for example, use piece rate. They will be able to continue doing so.

Chairman Vitter. Okay. And, Dr. Solomon, my understanding is that in 2014, only about 2.77 percent of all seafood imports were inspected. Do you think that percentage is adequate, and if not, what does the FDA plan to do differently?

Dr. Solomon. So, the seafood safety system that I described during my testimony is multi-faceted, so there are many components of it. First, it is putting the Hazard Analysis Critical Control Point regulations into place, which puts the burden on the processor to produce safe product. Then, we have oversight by doing foreign inspections of them. Then, we also conduct inspections of HACCP regulations by the importers.

So, the testing that takes place at the border is a verification activity or a surveillance activity to try and find if there is any flaws in the system and how it is working and to identify them and it is verification activities.

So, we test at different rates a sampling. So, taking generic rates for seafood, we test higher rates for certain products, certain commodities, higher risk areas in much higher rates than that because we want to have additional verification for those particular aspects which pose the greatest safety concerns.

Chairman Vitter. I understand all of that. I did not mean to suggest by my question that you just do one thing, you just stop 2.77 percent at the border and test it. So, as part of that overall effort, do you think the net inspection rate of 2.77 percent is adequate?

Dr. Solomon. Examination at the border as a verification activity at the various rates we do, we think is a viable control measure in light of all the other measures that we have in place.

Chairman Vitter. So, you have no plans to increase it?

Dr. Solomon. With the resources we currently have, we would not just increase sampling testing. If the agency had additional resources, we would focus on all the aspects of the framework, the regulatory structure that I described.

Chairman Vitter. Why would you increase it if you had more resources?

Dr. Solomon. Greater oversight and greater confidence in how the system is working. We would do more foreign inspections. We would do more importer examinations. But, once again, not on a universal basis, on a risk basis, on the products——

Chairman Vitter. So, the level you do now is not optimal?

Dr. Solomon. Uh, we think we actually have very few foodborne illnesses associated with seafood products, but with more resources, the agency could do more.

Chairman Vitter. Okay. I am just trying to understand. You are suggesting it is adequate, but in the next sentence, you said you would certainly do more with more money.

Dr. Solomon. So, it is a risk basis in terms of looking at the products that are coming in. With additional resources, we could
Chairman Vitter. Doctor, certainly in the past, the following has happened. A batch of actually tested and rejected seafood imports has been simply shipped to another port of entry. What in your overall system today categorically prevents that?

Dr. Solomon. So, we have a notification system, electronic notification system. When we refuse an entry, that electronic notification system not only notifies Customs and Border Protection, but all the other FDA district offices and ports.

Chairman Vitter. And, so, how is that batch tagged indelibly so that that notification is meaningful so that those other ports can identify the same batch we are talking about?

Dr. Solomon. So, as you may be aware, we have been working for many years to try and get a marking rule that would provide that marking of the product. That is not in place yet, but right now, we do notifications based off the data that we have of who the importer is, what the commodity line is, and make sure that everyone is aware about that shipment was refused.

Chairman Vitter. So, if they—so, there is not a set marking rule, so if they change the packaging or any of the markings, they could very possibly get away with what I am describing?

Dr. Solomon. The system is not foolproof, I agree with you, but we do do notifications.

Chairman Vitter. Okay. Well, I mean, I would suggest that is a bigger hole than simply saying it is not absolutely foolproof, but we will pursue that.

Senator Shaheen.

Senator Shaheen. Thank you, Mr. Chairman.

Dr. Solomon, as I said in my opening statement, I am very concerned that we are in the process of setting up a new program under the Department of Agriculture to separate catfish out from all other seafood and inspect them separately. I think it is duplicative and it does not make sense.

So, I wonder if you could talk a little bit about the program that has been operating under FDA, which up until now has had the responsibility for inspecting catfish. Can you tell us how it has functioned and whether or not catfish consumption has posed a risk to human health. Is there a reason why we should be setting up a separate program?

Dr. Solomon. So, the last part of the question, catfish is not one of the species that we particularly target as being a risky product. It is not a product that is typically eaten or consumed raw. It is cooked beforehand. It is not put into reduced oxygen packaging, some of the other risk factors that may be associated with it. So, we handle catfish under the same framework that I described before. We have both inspections, domestic inspections, foreign inspections, the HACCP controls in place that have been adequately controlling issues associated with catfish.

Senator Shaheen. So, and just to be clear, it is not the FDA or the Department of Labor or USDA that has set up this program separately. It was Congress that did this in the farm bill. But, there was not a safety risk to human health from catfish that triggered this effort, is that how you would analyze the situation?
Dr. Solomon. I am not aware of any specific safety hazards unique to catfish.

Senator Shaheen. Thank you. And, I know it may be hard for you to put a cost figure on the inspection of catfish under the FDA jurisdiction, that it may take you some time to come up with that. It is my understanding that right now, the USDA's catfish inspection program, it is estimated that it will cost about $14 million a year to operate. So, I am going to ask you to take for the record and try and get for this committee the cost of the inspection of catfish under FDA jurisdiction, if you would.

Dr. Solomon. We would be happy to provide that back to you.

Senator Shaheen. Okay. Thank you.

Ms. Wu, I appreciate the fact that the Department is in a challenging position relative to how to make the H–2B visa program work, given that we have not yet taken up comprehensive immigration reform, which would go a long way towards addressing this challenge. But, in the meantime we do have small businesses in my State, we heard from the Chairman in Louisiana, who are using the H–2B program and are confused about how the new rules will affect their business. So, can you talk a little bit about how you are addressing outreach to those small businesses that are affected.

Ms. Wu. Absolutely, Senator. As I noted, we have a bunch of fact sheets on our Web site. We are also doing some sort of webinars and outreach next week to talk with people. We always—we have frequent listening sessions. We recognize the use of this program by small business. We are happy to answer any questions.

We have very detailed questions about, you know, if I already submitted my application, what happens to me now. And, I think, as I noted, for people who had already submitted their application before this whole court case in April, they can just keep going along. They got approved. They can keep going along, running the program the way they were going to do it this summer. There will be changes in the future.

For those who want workers before October 1, we put in a sort of expedited process. As you may know, DHS administers the cap, but the cap was hit fairly early this year. But, we continue to process requests for labor certification, because there are some exceptions. So, we are happy to answer any questions. We are doing outreach to small businesses.

Senator Shaheen. And, so, when you advertise those webinars that you are doing, do you notify the Small Business Administration so they can get it out to the Small Business Development Centers to share that with other businesses around the country? How do you get the word out that you are doing those kinds of webinars?

Ms. Wu. Well, first and foremost, we use the contacts list that we have of the users of the program, because, obviously, the Small Business Administration deals with many, many businesses who do not even know what the H–2B program is.

Senator Shaheen. Right.

Ms. Wu. So, we really focus on the contacts that we have and work with our colleagues at DHS and others to make sure that we get the word out. But, if you have other suggestions or if you are concerned about the employers in your State, we would be happy...
to conduct some targeted outreach there. We also work with many of the associations who follow these regulations very closely. We make sure we get the word out to them. And, we have regular listening sessions with them to hear about their concerns.

I will note the new comprehensive rule is an interim final rule. We took comments on a similar rule in 2011–2012. We made some changes, in part in recognition of the concerns of small business. We are taking comments again and we very much welcome people’s comments on how we can improve the program and make it usable for them.

Senator Shaheen. So, just because I am still not quite clear, if anybody has—if a company has applied for H–2B visas in the past, would they get a notification of proposed rule changes, of various outreach efforts that you are doing automatically because they are on your list?

Ms. Wu. They should. They should. I will check with my operations people——
Senator Shaheen. Okay.
Ms. Wu. Yes, we do.
Senator Shaheen. Behind you, they are nodding.
[Laughter.]
So, hopefully, that means that any New Hampshire company that has applied in the past will get those notifications.

Ms. Wu. Yes, that is our hope.
Senator Shaheen. Thank you very much.
Chairman Vitter. Thank you.
Next is Senator Ayotte.
Senator Ayotte. Thank you, Chairman.
I wanted to follow up on the question that Senator Shaheen had asked Dr. Solomon about the catfish program. As far as I can tell, the U.S. FDA handles seafood inspections for all other forms of seafood, correct?

Dr. Solomon. That is correct.
Senator Ayotte. And, so, there is no reason why you could not continue to handle independently the inspection as you did before Congress on its own created this duplicative inspection regime, the inspection of catfish, which is actually a low-risk species, correct?

Dr. Solomon. We are currently, since that rule is not in effect yet, we are currently handling all the catfish inspections.

Senator Ayotte. And in the end, as I understand it—you know, it has been interesting to me, we have nine GAO reports on this topic, and those nine GAO reports actually consistently recommend eliminating the newly created by Congress USDA program that, as I understand—you would not know these numbers—but as I understand, has already spent $20 million. Not one fish has been inspected. Obviously, the FDA has handled the inspection of seafood for a long time. And, here we are in the Congress going to—already spent another, you know, USDA, trying to stand up duplicative inspection, already spent $20 million on it, and as Senator Shaheen mentioned, it is going to cost USDA, the estimate is, $14 million a year to continue doing what you already do quite well.

So, I do not know if you have had a chance to look at these GAO reports. Have you?

Dr. Solomon. Not nine of them, but I have read some.
Senator AYOTTE. And, do you agree that you can handle the inspection of catfish, that we do not really need another office to inspect catfish?

Dr. SOLOMON. The program has worked effectively as far—from FDA’s perspective.

Senator AYOTTE. Right. So, this is a great example of government run amok, truthfully, because the notion that we already have the FDA doing its job inspecting seafood, and to carve out just catfish so that we can spend millions of dollars more to have the USDA have another office inspecting catfish, which you are already doing quite well, for one species of fish—you know, these are the kinds of things that I think people look at Washington and they say, what are you all doing down there?

So, I really hope, you know, that we will have some common sense on this and allow you to continue to do what you have been doing historically rather than creating another—continuing to plunk millions of dollars into a duplicative program.

I also wanted to follow up, Ms. Wu, on the H–2B issue. I share—obviously, I serve in New Hampshire with Senator Shaheen, and what I have heard in New Hampshire, many of our seasonal businesses depend on these workers. In fact, in Portsmouth, Nashua, Laconia, they had the most H–2B visas granted. But, the abrupt breaks and a burdensome process, especially for smaller business, have been very, very difficult. So, when are we going to make sure that we are not in the same position we were this year as we look to the application process next year, you know, given that this is—people have to plan on what their workforce needs are?

Ms. WU. Thank you, Senator. It has been frustrating, I know. It has been frustrating for us trying to run a program. I am sure it has been frustrating and frightening, frankly, for a lot of small businesses when these abrupt court decisions come along and halt us from doing something we have been doing in the program, make us suspend this. I mean, it has really been very difficult.

That is why we asked for a stay with the court order so we could keep running the program this spring, and now we have issued comprehensive rules—even though the Department of Labor believes we have the authority to do this on our own, because of the legal challenges, we jointly issued these regulations with DHS. So, I think we feel like we are at least insulating ourselves from that level of legal attack. Unfortunately, we do continue to see attacks from all sides on this program, but we hope that brings some certainty and stability. And, we also are trying to include some provisions that will make things easier over the long run for businesses using this program.

Senator AYOTTE. Well, I really appreciate that, because just the feedback I have gotten from businesses in New Hampshire on the program is that under the administration, it has become more complicated, more difficult, more paperwork, and as I look at the new H–2B interim and wage final rules that were issued on April 29, it is more than 100 pages, and I see the burden on employers increasing. So, I hope when you look at this that we need to decrease the burden on employers, not create more paperwork, especially when many of them, as you know, this is something that they do
every year and they have been in the program already. So, thank
you for being here today.
Chairman VITTER. Thank you.
And next, we will go to Senator Cantwell.
Senator CANTWELL. Thank you, Mr. Chair.
Dr. Solomon, I wanted to ask you about Russian pollack. Last
fall, I sent a letter, led by my colleague, Senator Murkowski, to the
FDA Commissioner Hamburg requesting to fix this labeling prob-
lem. The FDA has authority to change the acceptable market name
of product from pollack, and not just Alaska pollack. The change
would prevent Russian pollack from being labeled as United States
Alaskan pollack. So, we requested that the FDA make this change
in September and now it is May of 2015. So, do you agree that the
term “Alaskan pollack” would give consumers the impression that
the product is from Alaska?
Dr. SOLOMON. So, the determination about the species naming is
handled by our Center for Food Safety and Applied Nutrition. They
have what they call a seafood list. I know that your submission—
that issue is before that group. They look at both the species name,
they work with fish taxonomists and look at the DNA sequencing
that talks about these different species, and I know they have that
issue under review.
Senator CANTWELL. And, so, when will we hear about that deci-
sion?
Dr. SOLOMON. I know they are actively working on it. I do not
have that. We will be happy to try and get back with you.
Senator CANTWELL. Okay. Do you think, in your view, is the Rus-
sian pollack industry a sustainable fishing industry specifically—
scientifically, I guess I would say?
Dr. SOLOMON. So, I do not think I am qualified to speak on that.
We look at fish from a food safety perspective and we are not, you
know, related to the trade issues or other issues associated with it.
Senator CANTWELL. Well, I think we see things, obviously, about
it. They are known for labor issues. Just last month, a Russian pol-
lack catcher/processor vessel sank in the Bering Sea. Only 63 crew
members survived. Sixty-nine were lost. Forty percent of the crew
were—they are illegally from countries like Burma, Ukraine, Lat-
via. And, so, these lives are being lost because of lack of training
and survival skills, and then consumers are seeing a product that
is labeled Alaska and is not really Alaskan pollack. So, we hope
that you will get a decision through the FDA about this and look
at both the way the industry is operating and the right that con-
sumers have to understand this product. Thank you.
Thank you, Mr. Chairman.
Chairman VITTER. Okay. Thank you both very much. We will ex-
cuse you and call up our second panel of witnesses. As they get sit-
uated, I am going to go ahead and be introducing all three of them.
We are really pleased to be joined by Dr. Mike Strain, the Com-
misioner of the Louisiana Department of Agriculture and For-
erey, who was elected to that position in 2007, sworn into office
in January 2008. Dr. Strain holds a Doctorate in Veterinary Medi-
cine from LSU and opened the Claiborne Hill Veterinary Hospital
in Covington soon after he received that degree.
We are also joined by Mr. John P. Connelly, President of the National Fisheries Institute, America’s leading trade association advocating for the full seafood supply chain. John was Chairman of the International Coalition of Fisheries Associations and a board trustee of the Marine Stewardship Council and is currently a board member of the International Seafood Sustainability Organization.

And, we are also joined by Mr. Frank Randol, President of Randol, Incorporated. Frank is a seafood processor from Lafayette, Louisiana. He has over 40 years of experience in the industry and also owns Randol’s Restaurant in Lafayette, Louisiana.

Welcome to all of you, and we will start with Dr. Strain.

**STATEMENT OF MIKE STRAIN, D.V.M., COMMISSIONER, LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY**

Dr. Strain. Thank you. Good afternoon, Chairman Vitter. Thank you very much for the opportunity to come here and speak today. My name is Dr. Mike Strain. I am the Louisiana Commissioner of the Department of Agriculture, Forestry, and Aquaculture. I am testifying today on behalf of the Louisiana Department of Agriculture.

State Departments of Agriculture are responsible for a wide variety of programs, including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities. Our department oversees all agriculture activities within the State, including the markets for products produced by our farmers, and especially what we are here to talk about today in seafood, in the crawfish industry, which falls under my purview.

First of all, I would like to thank Ms. Wu and other members of the Department of Labor for allowing us to come and visit with them on March 23 about this issue and have a very open and frank discussion.

Also with me today is the Director of the National Association of State Departments of Agriculture, which I am a Vice President, Dr. Barbara Glenn. My statement is also consistent with the position of the National Association of State Departments of Agriculture, representing commissioners, secretaries, and directors across all 50 States and four Territories, in the development, implementation, and communication of sound public policy and programs which support and promote American agricultural industry while promoting and protecting the environment and our consumers.

In order to feed our increased U.S. population, we must have a stable agricultural labor supply. The ability of seasonal businesses to keep their doors open and retain their full-time U.S. employees relies upon having successful peak seasons to offset the rest of the year when business is slow. During their busy seasons, companies must supplement their permanent staff with temporary seasonal employees. Employers spend thousands of dollars and hundreds of hours in their efforts to fill these positions.

Unfortunately, even in today’s tough economic climates, there are not enough local workers available to fill all the temporary seasonal positions, and efforts to obtain U.S. workers to relocate for temporary seasonal employment have not been successful. As a result, businesses must utilize the H–2B guest worker program to
find seasonal workers and workers for their peak workforce needs. The H–2B program is vitally important for many industries, including forestry, nursery, landscaping, outdoor amusement, restaurant and hospitality, tourism, livestock, horse training, sugar, and many others.

In Louisiana, the seafood industry, which includes crawfish, shrimp, crabs, oysters, and catfish, is in a critical situation because seafood processors traditionally cannot fill their temporary or seasonal vacancies with U.S. workers. Many of these businesses are located in rural areas that simply do not have sufficient populations to supply their extra workforce needs. Additionally, many who are willing to work want full-time, year-round jobs. Indeed, many of the jobs in these locales that are year-round and are full-time depend on the various processors operating for their own jobs and business operations.

In 2014, Louisiana hired 5,546 H–2B workers. For each H–2B worker, it is estimated that 4.64 American jobs are created and sustained.

Over the last ten years, Louisiana has seen many natural challenges to the agricultural sector of our economy, with Hurricanes Katrina and Rita, floods on the Mississippi River, spilling water through the spillways into the Atchafalaya Basin, and drought. The H–2B regulations released on April 29, 2015, by the U.S. Department of Labor and the U.S. Department of Homeland Security could impact an already fragile industry’s economic competitiveness.

The seasonal industries have had to weather several years of regulatory instability. The H–2B wage rule that the Department of Labor adopted on January 19, 2011, imposed a new, untested wage determining methodology that would significantly increase costs for small and seasonal small businesses. After being blocked by Congress in April 2013, the DOL issued an interim final rule that included the same methodology for setting wages, but recognized the importance of State wage surveys. Unfortunately, the new rule released two weeks ago is virtually identical to the rule that was blocked by Congress, causing additional obstacles for employers in the program.

In December 2014, the Department of Labor announced that it would no longer allow the private wage rate surveys that were developed by many State Departments of Agriculture, including Louisiana. My staff has spent countless hours gathering information to accurately depict the current wages that the industry is paying in our geographic location. This action forced employers into accepting higher prevailing wages that are not representative of the wages that are being paid domestically.

To make matters worse, the H–2B worker caps have already been exceeded and now many seafood processors have not received the workers that they need. Seafood processing has already begun early in the spring, and with the crawfish industry especially, it is time sensitive. These actions have a negative impact on the seafood industry and related commerce sectors, such as restaurants, etcetera.

Two months ago, the LSU Ag Center conducted a rapid economic analysis of the recent H–2B policy changes from the U.S. Depart-
ment of Labor for the Louisiana seafood industry. The assessment was conducted in response to potential changes in the cost and availability of labor stemming from a mid-year cap on H–2B permits and the Department of Labor announcement that it would no longer accept the private wage rate surveys. Results indicate that for every one dollar of employee compensation created by the seafood preparation and packaging industry in Louisiana, employee compensation increased by $2.06 across all sectors of the Louisiana economy. This includes the original one dollar of employee compensation created by the seafood preparation and packaging industry plus $1.06 of induced multiplier effects across all sectors of the economy.

Total income generated by H–2B visa workers in the Louisiana seafood industry is estimated between $36 and $43 million. Based on the assumption of $35 million in revenue, the loss of this revenue for any given number of firms would lead to a total reduction in labor income across the entire Louisiana economy, eventually leading to a number of companies closing. The economic impact of two processing facilities closing is $5.3 million, and with five firms shutting down, $13.3. Louisiana has already faced a number of processing facilities closing due to hurricanes and oil spills and the industry simply cannot be sustained without a stable workforce.

I am certain that not only is the seafood industry in Louisiana impacted, but the entire United States seafood industry will be affected by these actions. Our markets are subject to particularly fierce competition from abroad. For example, the Chinese have been extremely aggressive in trying to corner the U.S. crawfish market. This predatory practice and behavior began in 1993 and it has continued. The Chinese presently control over 50 percent of the market and are poised to capture even a larger market share if our producers are put at a further competitive price and labor disadvantage.

Without temporary H–2B guest seasonal workers to process seafood, Louisiana seafood processors would shut down, eliminating the primary market for our fishermen and our farmers to sell their catch. As a result, foreign seafood would gain a stronger foothold in the U.S. market and our fishermen and farmers who produce and harvest crawfish, shrimp, crabs, oysters, and catfish would be devastated and a key segment of the Louisiana economy crippled.

Once we lose the processors, we would not be able to depend on them coming back in future years. Therefore, the losses because of the processors scale back and do not have the ability to operate during the season will have irreparable and bad repercussions now and in the future.

The short-term consequence of an immediate expulsion of this vital segment of the workforce will cause a production crisis in a wide variety of seafood processing, field and nursery crops, sugar processing, forestry, livestock, restaurant industry, and others. This would leave the United States and our State of Louisiana no alternative but to import many food products from countries with surplus foreign labor. This is unacceptable. We must do everything in our power to grow and support America’s jobs and economy.

We are asking for your help. We must streamline and expedite the H–2B process. We need a working system without overburden-
some rules, unrealistic time tables, and outright road blocks. Neglecting the labor needs of agriculture will raise the costs of production in a way that harms farmers, fishers, and industries throughout America.

I appreciate your time and encourage you to work with us to find workable solutions, ways that we can facilitate rather than making it so difficult to where our processors and our industries cannot operate. Where we are at currently, we have a large crawfish harvest and we do not have enough peelers to process it and that puts us in a severe economic state, and I am sure Mr. Randol will address that, as well.

Thank you.

[The prepared statement of Dr. Strain follows:]
Senate Committee on Small Business and Entrepreneurship to discuss the "Impact of Federal Labor and Safety Laws on the U.S. Seafood Industry"

May 6, 2015

Statement of Mike Strain, DVM
Commissioner, Louisiana Department of Agriculture and Forestry

Good afternoon, Mr. Chairman. My name is Dr. Mike Strain and I am the Commissioner of the Louisiana Department of Agriculture and Forestry. I am testifying today on behalf the Louisiana Department of Agriculture and Forestry. State departments of agriculture are responsible for a wide range of programs including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities. My Department also oversees all agricultural activities within the State, including the markets for products produced by our farmers. The activities of the crawfish industry also fall under my purview.

My statement is also consistent with the position of the National Association of State Departments of Agriculture (NASDA). NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry, while protecting consumers and the environment.

In order to feed our increased U.S. population, we must have a stable agricultural labor supply. The ability of seasonal businesses to keep their doors open and retain their full-time U.S. employees relies upon having successful peak seasons to offset the rest of the year when their business is slow. During their busy seasons, companies must supplement their permanent staff with temporary seasonal employees. Employers spend thousands of dollars and hundreds of hours in their efforts to fill these positions. Unfortunately, even in today's tough economic climate, there are not enough local workers available to fill all the temporary seasonal positions, and efforts to obtain U.S. workers to relocate for temporary and seasonal employment have not been successful. As a result, businesses often must utilize the H-2B guest worker program to find seasonal workers and workers for their peak workforce needs.

The H-2B program is vitally important for many industries including forestry, nursery, landscaping, outdoor amusement, restaurant and hospitality, tourism, livestock and horse training, sugar and many others. In Louisiana, the seafood industry, which includes crawfish, shrimp, crabs, oysters and catfish, is in a critical situation because seafood processors traditionally cannot fill their temporary or seasonal job
vacancies with U.S. workers. Many of these businesses are located in rural areas that simply do not have sufficient populations to supply their extra workforce needs. Additionally, many who are willing to work want full time, year-round jobs. Indeed, many of the jobs in those locales that are year-round and full-time depend on the various food processors operations for their own jobs and business operations to be able to operate. In 2014, Louisiana hired 5,546 H-2B workers. For each H-2B worker it is estimated that 4.64 American jobs are created and sustained.

Over the last ten years, Louisiana has seen many natural challenges to the agricultural sector of our economy with Hurricanes Katrina and Rita, floods on the Mississippi River that required the release of water through the spillways into the Atchafalaya Basin, and a drought. The H-2B regulations, released on April 29, 2015, by the U.S. Department of Labor (DOL) and the U.S. Department of Homeland Security, could impact an already fragile industry’s economic competitiveness.

The seasonal industries have had to weather several years of regulatory instability. The H-2B wage rule that the Department of Labor adopted on January 19, 2011 imposed a new untested wage determination methodology that would significantly increase costs for small and seasonal small businesses. After being blocked by Congress, in April 2013, the DOL issued an interim final rule that included the same methodology for setting wages, but recognized the importance of state wage surveys. Unfortunately, the new rule, released two weeks ago, is virtually identical to the rule that was blocked by Congress causing additional obstacles for employers in the program.

In December of 2014, the DOL announced that it would no longer allow Private Wage Rate (PWR) surveys that were developed by many state departments of agriculture, including the Louisiana Department of Agriculture and Forestry. My staff has spent countless hours gathering information to accurately depict the current wages that the industry is paying in our geographic locations. This action forced employers into accepting higher prevailing wages that are not representative of the wages that are being paid domestically.

To make matters worse, the H-2B worker caps have already been exceeded and many seafood processor applications have been delayed even with early submissions. Seafood processing already began in the early spring and with the worker caps reached, this will trickle down to other agriculture industries that utilize the program.

These actions will have a negative impact on the seafood industry and the related commerce sectors such as restaurants, etc. Two months ago, the LSU AgCenter conducted a rapid economic analysis of recent H-2B policy changes from the US DOL for the Louisiana seafood industry. The assessment was conducted in response to potential changes in the cost and availability of labor stemming from a mid-year cap on H-2B permits and the DOL announcement that it would no longer allow Private Wage Rate (PWR) surveys. Results indicate that for every one dollar of employee compensation created by the
seafood preparation and packaging industry in Louisiana, employee compensation increased by $2.06 across all sectors of the Louisiana economy. This includes the original $1 of employee compensation created by the seafood preparation and packaging industry plus an additional $1.06 of induced multiplier effects across all sectors of the state economy. Total income generated by H-2B visa workers in Louisiana seafood industry is substantial and ranges from $36 million to $43 million in the State of Louisiana.

Based on the assumption of $35 million in revenue, the loss of this revenue for any given number of firms would lead to total reduction in labor income across the Louisiana economy, eventually leading to companies closing. The economic impact of two processing facilities closing is $3.3 million and with five firms shutting down, $13.3 million. Louisiana has already faced a number of processing facilities closing due to hurricanes and oil spills, and the industry simply cannot sustain without a stable workforce. I am certain that not only is the seafood industry in Louisiana impacted, but the entire United States seafood industry will be affected by these latest actions of the DOL.

Our markets are subject to particularly fierce competition from abroad. For example, the Chinese have been extremely aggressive in trying to corner the U.S. crawfish market. This predatory behavior began in 1993 and has continued unabated. The Chinese presently control over 50% of the market and are poised to capture even more market shares if our producers are put at a further competitive price disadvantage, or are put out of business, as a result of the DOL H-2B rules.

Without temporary H-2B guest seasonal workers to process seafood, Louisiana’s seafood processors would shut down, eliminating the primary market for our fishermen and farmers to sell their catch. As a result, cheaper foreign seafood would gain a stronger foothold in the U.S. market and our fishermen and farmers who produce and harvest crawfish, shrimp, crabs, oysters and catfish would be devastated and a key segment of the Louisiana economy would be crippled—lost to our economy. Once we lose the processors, we would not be able to depend on them coming back in future years. Therefore, losses because processors scale back or do not operate at all this season will have irreparable and bad repercussions now and in the future.

The short term consequence of an immediate expulsion of this vital segment of the workforce would cause a production crisis in a wide range of seafood processing, field and nursery crops, sugar processing, forestry, livestock and the restaurant industry, to name a few. This would leave the United States and our State of Louisiana no alternative but to import many food products from countries that have surplus farm labor. This is unacceptable and we must do everything in our power to grow and support America’s jobs and economy.

We are asking for your help. We must streamline and expedite the H-8 process. We need a working system without overly burdensome rules, unrealistic timeframes, and outright roadblocks. Neglecting the labor needs of agriculture will raise the cost of production in a way that harms fisherman, farmers
and industries throughout America. Mr. Chairman and members of the committee, I appreciate your
time and encourage you to work with us to find workable agriculture labor solutions that continue to
support our fisherman, our farmers, our small businesses, our economy and provide valuable products
to the nation's consumers.
Chairman Vitter. Thank you very much, Dr. Strain. We will now go to John Connelly. John, welcome.

STATEMENT OF JOHN P. CONNELLY, PRESIDENT, NATIONAL FISHERIES INSTITUTE

Mr. CONNELLY. Thank you, Chairman Vitter, for inviting the National Fisheries Institute to present our views today. Our comments will include a brief introduction, the importance of H–2B visas to seafood processors, the economics of the American seafood industry, and the U.S. seafood safety system and its results.

NFI is the nation’s most comprehensive trade association. Our members include harvesters, like those on “Deadliest Catch,” to importers who enable us to enjoy seafood from around the globe, to processors who put fish in a form that consumers recognize, to retailers and restaurants. We do represent all geographic regions, and we were particularly proud to have had the late Louisiana seafood leader, Mike Voisin of Motavatit Seafood in Houma, as our Chairman.

On H–2B visas, a functioning H–2B system is essential to seafood processors. Senator Mikulski captured many of the Senator’s concerns in her letter to Secretary Johnson last week. Quote, “The lack of available temporary foreign workers has caused chaos among businesses in Maryland that depend on the H–2B program. More than 40 percent of Maryland’s seafood processors have been unable to get the workers that they need for the 2015 crab season.” I think Dr. Strain pretty much said it all, and I think that is reflective of the rest of the seafood community in the U.S.

On economics, seafood is the most globally traded food commodity. That benefits our fishing communities, as we send high quality and bountiful American seafood to Northern Asia and throughout Europe. Trade also benefits the more than 525,000 Americans that process, distribute, and sell imported seafood. Those jobs are found in nearly every State and are an important reminder that trade benefits the U.S. not just when we export.

Seafood trade also benefits farm States in two ways. About 18 percent of all soy goes into fish farms, many of those fish farms in Asia. And, two, the countries to which American farmers increasingly seek to send our ag products are countries that export seafood to America. We cannot expect to open Asian markets to U.S. pork, beef, poultry, corn, dairy, and soy if we shut off access to our seafood markets.

To seafood safety, NFI has been a long and strong supporter of seafood safety in word and deed. NFI has worked closely with academia and regulators to understand how to best implement HACCP. NFI joined you, Mr. Chairman, as an early and strong supporter of FSMA. And, NFI works with the Alliance for a Stronger FDA to urge Congress to appropriate the needed resources for the agency to meet its statutory obligations.

As Dr. Solomon aptly and fully described the HACCP system, I will not duplicate that extensive discussion.

I will close, though, speaking to results. Results, after all, are what matters. The fact is, the Centers for Disease Control analyzed and reported illnesses from all foods. Over the five-year period end-
ing in 2010, CDC found that 141 of 122,000, that is, 0.001156, or 0.12 percent of illnesses were caused by imported seafood.

Most of us love baseball. It is a great day to go down to the Nats game. But, we recall going to the games with our dads, clutching that mitt, and hoping to catch that foul ball. Unfortunately, we often came home crestfallen because we rarely, if ever, did, because the chance of catching a foul ball is the exact same as becoming sick from imported seafood, 0.001156, or 0.12 percent.

As an example of the effectiveness of the FDA, and again, while the hearing focus is not on the USDA catfish program, I did want to acknowledge the leadership of Senators Shaheen and Ayotte and others on this committee in working in a bipartisan manner to eliminate a program that USDA’s own risk experts have said will not improve public health, primarily because the FDA regulation of catfish, both domestic and imported, has reduced illnesses to less than two per year. That is a safe product.

It is because of the stringent requirements of HACCP, a system required for both domestic and imported seafood, a system that requires problems to be fixed thousands of miles away from America and not caught at the border, that Congress acknowledged and exempted companies in seafood HACCP compliance from some of FSMA’s key provisions. NFI agrees with Congress' determination. The safety of domestic and imported seafood is excellent.

Thank you.

[The prepared statement of Mr. Connelly follows:]
Statement of John Connelly
President, National Fisheries Institute

United States Senate Committee on Small Business and Entrepreneurship
“Impact of Federal Labor and Safety Laws on the U.S. Seafood Industry”

May 6, 2015

The National Fisheries Institute (NFI) appreciates the opportunity to appear at today’s hearing on the “Impact of Federal Labor and Safety Laws on the U.S. Seafood Industry.”

Before discussing seafood safety, on behalf of the roughly 300 NFI member companies, I would like to thank Senators Vitter and Shaheen for the panel discussion on the recent released H-2B regulations. These regulations released by the Department of Homeland Security and the Department of Labor (DHS and DOL) will make the program more costly and complicated for small businesses to hire workers for seafood processing. Instead of issuing commonsense reforms, DHS and DOL sought to issue almost an identical rule as they released in 2012, which has met objections from Congress, stakeholders, and has been blocked in federal court. It is important that Congress pass legislation that creates a predictable and reliable H-2B program.

National Fisheries Institute and Its Engagement in Seafood Safety

The National Fisheries Institute has been the leading voice for the fish and seafood industry and America’s largest seafood trade association for nearly 70 years. NFI promotes high quality and sustainable seafood as the daily protein food choice for feeding American families. NFI members span the entire seafood value chain --- from Alaska vessel owners, Pacific processors, Midwest importers, East Coast clam harvesters, Southern shellfish producers, to national distributors and seafood restaurants --- all with a common goal of providing nutritious and wholesome seafood meals to American families, while adhering to the highest standards of food safety.

NFI and its member companies have had a long record of positive engagement on both food safety and economic integrity. NFI has worked with the Food and Drug Administration to meet the requirements of the FDA Hazard Analysis & Critical Control Points (HACCP) system for the production of seafood products from both domestic and international sources. As discussed in greater detail below, HACCP is a comprehensive, science-based system of hazard control designed to eliminate food safety risks at their source, instead of relying solely on inspection and testing of the finished products to verify food safety. NFI members’ engagement on these issues goes back to the establishment of the seafood HACCP program in 1997, and will continue going forward.

In addition:

- NFI was an early supporter of the Food Safety Modernization Act (FSMA), the most comprehensive food safety reform legislation in decades.
- NFI is a member and former board director of the Alliance for a Stronger FDA, and as such supports increased appropriations for FSMA implementation and FDA enforcement of FSMA requirements.
- NFI members are also members of the Better Seafood Board, an association of companies each of which pledges to abide by federal prohibitions against mislabeling, short-weighting, and other illegal practices that cheat NFI companies and the consumers they serve.

With this engagement in mind, NFI offers the following thoughts on the unparalleled nutritional value of fish, the benefits to the national economy provided by NFI member companies and their suppliers, and the food safety profile of both imported and domestic seafood products.

**Health Benefits of Consuming Seafood**

Seafod provides a variety of essential nutritional benefits that in some cases are available in fish and nowhere else. Seafood is a nutrient-dense food that is an excellent source of protein, vitamins and minerals. Specifically, fish are one of the best sources for long-chain omega-3 fatty acids DHA and EPA, which are essential in the prevention or mitigation of common, chronic diseases as well as in reducing the risk of heart disease in adults. As such, it is no surprise the 2010 Dietary Guidelines for Americans recommend consuming at least 8 ounces of seafood per week.

Fish are excellent sources of EPA and DHA. Numerous recent, large-scale studies have demonstrated the importance of EPA and DHA for pregnant and nursing women and their children, and especially in fetal and early childhood neurodevelopment. The Joint Food & Agriculture Organization (“FAO”) and the World Health Organization (“WHO”) of the United Nations determined in 2011 that the real risk of seafood to women and their babies during pregnancy is not eating enough fish.¹

On this point in particular, scientists from government and universities, and healthcare professionals have all concluded that for moms and moms-to-be, and their babies, the overall benefits of this level of seafood consumption outweigh any risks. Dr. Stephen Ostroff, M.D., Acting Commissioner of Food and Drugs Administration, explicitly stated the need for pregnant women and young children to consume seafood:

For years many women have limited or avoided eating fish during pregnancy or feeding fish to their young children. But emerging science now tells us that limiting or avoiding fish during pregnancy and early childhood can mean missing out an important nutrients that can have a positive impact on growth and development as well as on general health.

¹[http://whqlibdoc.who.int/trs/who_trs_918.pdf](http://whqlibdoc.who.int/trs/who_trs_918.pdf)
**Economic Impact of U.S. Agriculture Export Products and the Seafood Industry**

Since the nation’s earliest days, the food industry has been central to U.S. economic health and a driver of other, related industries, such as waterborne and highway freight transportation, restaurants, and hospitality and lodging. The seafood industry contributes to the American economy in three important ways:

1. Harvesting and processing of fish caught in U.S. waters;
2. Trade of seafood that is transformed in American processing operation into meals Americans enjoy (including the hundreds of millions provided to American consumers by NFI members); and
3. Fish meal and related products that are used as ingredients in aquaculture and livestock production and as additives in food and even medical products.

First, the direct economic benefits of seafood for the American table are significant. The U.S. seafood industry encompasses a full supply chain of economic partners. From harvesters on the water, to exporters and importers arranging for global trade, through secondary processors adding value and putting fish into a recognizable product, to retailers and restaurant groups, the industry represents a variety of related and interdependent businesses.

The Department of Commerce’s economic analysis states that the seafood industry generates over 1,270,000 jobs in the U.S. with a sales impact of $140,660,993,000. Of those jobs, U.S. harvested seafood creates 744,850 jobs. These jobs are the fishermen and women following traditions started by the nation’s earliest settlers and working their craft from Louisiana to Alaska, and now extending to fish farming from Maine to California.

Department of Commerce’s economic analysis also states that imported seafood creates another 525,291 American jobs, or about 4 in every 10 American seafood jobs. Imported seafood also generates about 64% of the sales of the seafood industry and creates about 56% of the value added to fish in the United States. These seafood imports support American processing jobs from Seattle to Portsmouth to Buhl to Denver to Brownsville to Miami.

Lastly, there is an important but little-noted connection between U.S. agricultural exports and imported seafood. In particular farmed fish and shellfish that is raised overseas uses U.S. fish meal, soybeans and soybean products, and other farm products. In 2014, American farmers exported a record $152.5 billion of food and other agriculture goods to consumers worldwide. According to the U.S. Department of Agriculture (USDA), every $1 billion of these exports

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supported 6,800 American jobs. U.S. agricultural exports have been larger than U.S. agricultural imports since 1960, generating a surplus in U.S. agricultural trade. This surplus helps balance the deficit in nonagricultural U.S. merchandise trade.

International trade — and the role of the American farmer in that trade — are at the top of the Senate’s agenda right now, with consideration of Trade Promotion Authority. One of the universally embraced objectives of TPA is opening new markets for American farmers and knocking down barriers to agricultural products. In light of that, it is critical to understand that the Pacific Rim nations that often supply seafood to American consumers are also nations that increasingly welcome our pork, beef, soybeans, poultry, and dairy. The truism that trade is a two-way street is more apt today than ever before, and U.S. trade policy must reflect that.

**Food Safety**

*The Food Safety Modernization Act*

Any discussion of food safety must begin by recognizing the significant reforms put in place by Congress in the Food Safety Modernization Act in 2010. NFI was an early supporter of FSMA and appreciates the support of the Chairman as an original cosponsor.

The legislation is characterized by its “preventive controls” approach, which requires two things. First, it requires the regulated industry to develop and implement preventive control plans tailored to the challenges that the particular food item presents all along the supply chain. Second, this approach obligates FDA to implement a risk-based inspection strategy. Congress recognized, when considering FSMA, that blanketing FDA resources equally over every food and every facility is not only a waste of tax dollars and enforcement assets, but actually increases the risks posed by the complex and varied U.S. food industry. The preventive controls approach Congress adopted is modeled on concepts learned through two decades of Seafood HACCP development and implementation. When it enacted FSMA, Congress ratified the food safety approach that has been in place for domestic and imported seafood since 1998. Congress felt that Seafood HACCP was such a success that it exempted from the preventive controls and related foreign supplier verification requirements for companies in compliance with Seafood HACCP.

*The Food and Drug Administration Seafood Inspection Program — Hazard Analysis & Critical Control Points*

It is important to emphasize that all seafood products sold in the United States, both imported and domestically-produced, must meet the same stringent food safety laws and regulations, including FDA’s Seafood HACCP regulation and food facility registration requirements.

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3 [http://www.jcc.senate.gov/public/?rs=Files.Serve&File_id=266a0b37-5142-4545-b806-ef9ddf8b9c2f](http://www.jcc.senate.gov/public/?rs=Files.Serve&File_id=266a0b37-5142-4545-b806-ef9ddf8b9c2f)

4 [https://www.congress.gov/bill/111th-congress/senate-bill/510/text?q=%7B%22search%22%3A%5B%22Food+Safety+Modernization+Act%22%5D%2C%22%5B%22Food+Safety+Modernization+Act%22%7D%5D](https://www.congress.gov/bill/111th-congress/senate-bill/510/text?q=%7B%22search%22%3A%5B%22Food+Safety+Modernization+Act%22%5D%2C%22%5B%22Food+Safety+Modernization+Act%22%7D%5D)
The FDA HACCP regulation imposes a set of stringent and tailored requirements on the production of fish and fishery products, both domestic and imported seafood (including any food item in which seafood is a characterizing ingredient) and is applied to all seafood processors, importers, and wholesalers. In addition to required specific sanitation controls, the Seafood HACCP program obligates regulated companies to meet seven basic requirements:

1. Conduct a hazard analysis and identify preventative measures;
2. Identify critical control points (CCP);
3. Establish critical limits;
4. Monitor each CCP;
5. Establish corrective action to be undertaken when a critical limit deviation occurs;
6. Establish a record keeping system; and
7. Establish verification procedures.

By carefully identifying potential sources of contamination throughout the production process and requiring continuous monitoring, extensive recordkeeping and verification that control measures are in place, a strong HACCP program ensures a high degree of food safety. As a final measure of food safety assurance, FDA conducts inspections of firms and food products to confirm that HACCP principles are being appropriately applied. Similarly, all imported food products are subject to targeted and random FDA inspection when offered for import at U.S. ports of entry.

Imported seafood must meet the same food safety standards and HACCP requirements as seafood produced or processed in the United States. HACCP requires any problems to be identified and eliminated or mitigated at their source. For imported seafood that means problems must be fixed thousands of miles from the U.S. border. Importers are required to take steps to verify that their imported products are obtained from foreign processors that fully comply with the Seafood HACCP Regulation. This requirement makes sure that the safety of imported seafood is equivalent to the safety of seafood harvested or processed domestically. And, it is in the best interest of domestic processors to ensure that all of their raw material supplies—from overseas and domestic—are safe and wholesome.

Although the HACCP concept was developed in the United States, and the United States was one of the first countries to mandate its application to seafood, HACCP has become a universally-recognized industry standard for almost all seafood traded worldwide. It has been endorsed by the Codex Alimentarius Commission, the World Health Organization, and the UN FAO as an effective, non-discriminatory food safety mechanism. Most developed countries and a long list of developing countries have adopted HACCP requirements for domestic and imported seafood and other food products, including the European Union, Canada, Australia, New Zealand, Japan, Vietnam, Brazil, Thailand and many others.

The rapid and widespread adoption of HACCP as a food safety control system worldwide reflects its well-documented ability to minimize food safety risks, as well as its flexibility to be effectively applied in nearly all types and sizes of processing facilities. And, as the de facto world standard for the international seafood trade, the adoption of HACCP provides a high-level of regulatory harmonization and coordination that facilitates world trade and reduces the
potential for individual countries to erect technical barriers to trade based on arbitrary or non-science based safety concerns, all while providing a high margin of consumer food safety.

In addition to HACCP, FDA uses a comprehensive and layered approach to seafood safety. Its tools include:

- Inspections at the border are not the start of the seafood safety system, and are only one part of FDA’s enforcement system. PREDICT (Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting) enables FDA to target its inspections on countries or companies that have exhibited problems in the past. This enables increased testing on products that FDA deems of higher regulatory and enforcement interest. This is an appropriate use of government’s resources.
- Any company subject to an Import Alert (another agency enforcement tool) must provide evidence that all shipments of the food in question meets the agency’s standards. Import Alerts are in effect a 100% importer-financed border testing program.
- FDA compliance actions against wayward firms and food items posing a heightened risk. Since 1998, FDA has issued more than 1,200 Warning Letters to seafood processors, initiating heightened agency scrutiny over those firms’ operations.

This aggressive oversight is a demonstration of a food safety agency using the tools at its disposal to ensure a safe seafood supply, rather than a perceived sign of a weak system.

**Seafood Safety System: The Results**

So, FDA uses a number of tools to ensure seafood safety, from both domestic and imported sources. What are the results? Impressive. The safety of seafood imports and the effectiveness of FDA seafood regulations have been established over several decades of increasingly globalized fisheries trade and confirmed by U.S. government agencies.

The Centers for Disease Control and Prevention analyzed 6 years of reported foodborne illnesses data from 2005-2010, from across the country. CDC found that less than 2 percent of the more than 120,000 reported illness were attributed to imported food. An even smaller percentage of reported illnesses — 0.12 percent — were caused by imported seafood. The CDC found that 141 of the 122,000 reported illnesses were connected to imported seafood.

In light of outcomes such as this, Congress expressly exempted the seafood industry from the preventive controls and foreign supplier verification activities (outlined above) that the FSMA imposed on the rest of the food industry.1

Nevertheless, no system is perfect; and any food industry subsector can find ways to improve. But the reasonable approach to protecting public health without severely disrupting

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2 [http://www.cdc.gov/media/releases/2012/p0314_foodborne.html](http://www.cdc.gov/media/releases/2012/p0314_foodborne.html)
3 FSMA, §§ 103(j)(1)(A) and 301(e)(1).
markets, creating regulatory uncertainty and threatening international trade relations is to strengthen the system already in place. That is why NF1 has supported providing FDA with the specific funding and staffing levels prescribed in Section 401 of the FSMA.

Any suggested improvements, too, must be applied evenly to domestic as well as imported seafood. This is critically important to ensure that any new legislation or regulation meets basic World Trade Organization obligations for nondiscrimination and also to avoid retaliatory imposition of similar measures on the nearly $6 billion in U.S. seafood that American watermen and aquaculturists produce and ship overseas every year.

There is no question that HACCP is a powerful tool for eliminating most food safety risks, and it is and should remain the first line of defense against food safety risks posed by fish of any origin. Under current regulations U.S. importers and processors are responsible for ensuring that HACCP systems are fully implemented and that imports fully meet the standards applied to domestic supplies. The HACCP system requires 100% compliance with the science-based regulations. Random inspections at the port of entry by FDA provide a second line of defense against the possibility that harmful products could reach US consumers.

Conclusion

NF1 appreciates the opportunity to provide views on seafood safety from the perspective of over 300 NF1 member companies. In this undoubtedly vital area of the American food industry, it is essential to rely on the facts and in particular on the reported food safety outcomes. Though any industry can do better, those outcomes demonstrate that seafood, imported and domestic, is a well-managed, safe, and wholesome product that Americans can feel confident feeding their families.
Chairman Vitter. Thank you very much. And now, we will hear from Mr. Frank Randol. Frank, welcome.

STATEMENT OF FRANK B. RANDOL, PRESIDENT, RANDOL, INC., LAFAYETTE, LA

Mr. RANDOL. Thank you, Chairman Vitter, and for the members that are not here, Ranking Member Shaheen, Senator Cardin. I want to thank you for inviting me here to testify about the guest worker program that we refer to as H–2B.

The program is a vital part of the survival—this program is vital to the survival of seafood processing, especially in Louisiana and Maryland. The program—I will—and I am getting shook. Excuse me. Just let me go.

Chairman Vitter. Sure.

Mr. RANDOL. It is vital. I will submit my statements for the record, in addition to a number of exhibits that will provide a useful reference for the committee. I will now provide my oral comments.

I am here to express my concerns for the future of my business and other small businesses that struggle daily to succeed. I started Randols in 1971, starting small—one man, one truck. After four decades, Randols has grown in size and scope. We are transitioning to the next generation. The future is in my sons that work my business, allowing me to pull back.

Hurdles over the last four years were detailed by the Commissioner—floods, hurricanes, oil spills, lack of product, predatory imports from China, yet the single most pressing issue for us has always been the lack of labor.

In the 1970s, when I started my business, I was lucky enough to have the refugees from Vietnam come in, so we brought in roughly 40 to help us get through that time. Over the course of the years, we came to the 1990s, when that started to wane just a little bit. We discovered the H–2B program and started bringing in the guest workers from Mexico. We started with 40, dwindled to 30, now we are to 25.

I am here to talk about the H–2B guest worker program, the legal—legal—temporary workers that we get from visas to support businesses from farming, fishing, to restaurants, wholesale, and retail food operations. The attached declarations that I have submitted from Dr. Strain, filed in our suit of 2011 against the Department of Labor, gives an overview of the importance of the H–2B program to the Louisiana economy.

The H–2B application process has been a growing and expensive challenge. Since DOL took over the initial wage certification from the State in 2008, the process has become increasingly more time consuming and costly. Initially, I did the paperwork myself, but now, I have to turn it over to someone else more qualified to run through the governmental hoops. Many people are using legal or international immigration attorneys to do their paperwork. The stack of paperwork here represents what was submitted on the October 2014 application for the first cap. The same amount was re-submitted for the second cap, so it would be twice that stack.

We missed both caps. Our plant was scheduled to open February 2015. We are still waiting to see if we will be getting any workers
this year so we can open and salvage a part of it. Last year, we were processing between 6,000 and 8,000 pounds of seafood daily, and like I said, right now, we are shuttered.

Often, we hear the remark, why, if you pay more money, then you will get the labor you need. We feel that that is not the case. It is more about the job than the money in our seafood industry. After missing the cap—both caps—we tried something different, seven prison trustees. After one day, one prison trustee said, “I would rather go back to jail than to peel crawfish.”

[Laughter.]

The warden picked him up, brought him back, we did not see him again. The remaining trustees continued to shrink until after a two-week effort, they were all gone.

Now, union activity has started to increase and created problems for us, and recently, the NLRB has surfaced and getting involved. We have referenced this in documents that we brought as exhibits.

We need—urgently, we need fixes to save the H–2B program for small businesses. Congress has to take action now. The lost opportunity to fix the problems created by DHS and DOL last year have already done severe harm in Louisiana. Some of Louisiana's small businesses will not recover. Others may be forced to cross the border. As in the past, we need immediate Congressional action to block the new DHS and DOL proposals of last Wednesday. The H–2B Workforce Coalition has submitted a statement which we have attached as an exhibit.

In addition, we need to resume the H–2B returning worker, guest worker exemption from the annual cap. We also have to return to the authority of determining prevailing wages to the States. Additionally, we feel we need a seat at the table with DOL, just like the National Guest Workers Alliance. SBA's Office of Advocacy needs to be more aggressive in confronting DHS and DOL as policy changes are being discussed.

And, part of what came up today, as I was listening to the testimony, is what we have been hearing, that somehow, what is happening here was caused by a judge or was caused by industry. You know, we just do not see it that way. We are small people, but we do know that no matter where it was caused or what, somehow, when something like this happens, if there is an error or whatever, the people that make the error still have their jobs. But in our case, we are small. We do not survive.

So, there is some give and take that has got to take place here, and that is really why I am here. Somebody had to come up and tell you about what is going on back home, the little guys that are having problems. And, some of the big guys have the same problem. Hershey had these problems the last part of—from 2007 on to 2011 when they decided to open up in Monterrey, Mexico, and most of their growth has already been funneled into that plant for their—American chocolate is now the Americas’ chocolate.

We have one right here, Elmer’s, Louisiana, Ponchatoula, largest employer in Ponchatoula. He hires—he uses H–2B. He missed the cap and he is struggling. He is trying to make his orders for this year. Small business. He is up against somebody like Hershey. I am not saying that they are going to Mexico. This is good chocolate. It needs to stay home.
I would be happy to answer any questions you may have. Thank you again.

[The prepared statement of Mr. Randol follows:]
Written Statement of Frank B. Randol
President, Randol, Inc
Lafayette, Louisiana to the Senate Small Business and Entrepreneurship Committee
May 6, 2015

Thank you Chairman Vitter, Ranking Member Shaheen, Senator Cardin and Members of the Committee for inviting me to testify about an extremely important program for the small business community, the GUEST WORKER PROGRAM referred to as the H-2B program. This program is vital for the survival of seafood processing small businesses especially in Louisiana and Maryland.

I will submit my statement for the record in addition to a number of exhibits that will provide a useful reference for the Committee.

I will now provide my oral remarks.

I'm here to express my concerns about the future of my business and other small businesses that struggle to daily succeed...

After completing active duty service as a Lieutenant in the US Army, I returned to La. and started Randols (1971)...starting small ... one man one truck...

After four decades Randols has grown in size and scope... we are transitioning to the next generation ...the future is in my sons that work the business allowing me to pull back...

Continuous natural and man-caused obstacles to running my business

Hurdles (over 4 decades):

  Floods-

    Mississippi River diversions thru Atchafalaya Basin

  Hurricanes-

    Katrina, Rita, Ike, Gustav, etc

  Oil spills-

    BP

  Lack of product (catch)-
drought, cost of crop production

Predatory imports from China-

Chinese dumping (CDSOA) …$1.67 lb was the import price quote used in first World Trade Court action

Lack of labor-

Changes in H2B rules and Feds grabbing authority from Louisiana

The attached declaration (Exhibit) by Dr. Mike Strain filed in our 2011 lawsuit against the DoL gives an overview of the importance of the H-2B program to the Louisiana economy.

I’m here today to talk about the H-2B (guest worker) program …legal temporary workers that get work visas to support businesses from farming and fishing to restaurants and wholesale and retail food operations

1970’s Vietnamese …sponsored Family of 40

'90 s… H-2B…Mexican labor (40 then 30 now 25)…

H-2B application process a growing and expensive challenge

Since DoL took over initial wage certification from the States (2008), the process has become increasingly more time consuming and difficult…initially I did the paperwork myself but have had to turn it over to someone else more qualified to run through the government hoops… just like many people have to use CPAs

These papers (Exhibits) represents what was submitted (Oct 2014) for the first application (CAP 1:First Half FY15)… the same amount was re-submitted (Jan 2015) for the second application (CAP 2:Second Half FY15)… We missed both CAPs…our plant was scheduled to open Feb 2015…we are still waiting to see if we will get workers so we can open and salvage part of this year…

Availability of domestic labor is a continuing problem

Last year we were processing between 6-8,000 lbs seafood daily…having missed both CAPs we have little hope that the plant will open this year… missing the 2015 crawfish & blue crab season…

Often we hear comments like “if you pay more money then you will get the labor you need”… we feel that it’s more about the job than the money… it’s probably considered by most to be one of American’s least desired jobs…
Recent recruitment (Exhibit)... 7 prison trustee’s... after first day one trustee said he would rather go back to jail than peel crawfish (Exhibit)... the Warden was informed and he never returned... the remaining trustees in training continued to shrink until we halted the effort after 2 weeks...

**Union activity has created even more problems**

National GuestWorkers Alliance (NGA) letter dated August 2012 (Exhibit) requesting a meeting “to negotiate a long-term solution and reach an agreement” to the reported “significant labor abuse” in the seafood industry...

**NLRB now getting involved**

Signed agreement to educate (Exhibit).

**Urgently Needed Fixes to Save the H-2B Program for Small Businesses**

Congress has to take action now. The lost opportunity to fix the problems created by DHS and DoL last year has already done severe harm in Louisiana...some Louisiana small businesses will not recover.

As in the past, we need immediate Congressional action to block the new DHS/DoL proposals of last Wednesday. The H2B Workforce Coalition statement is attached.

**In addition,**

**We need to resume the H-2B returning guest worker exemption from the annual cap.**

**We need to return authority for determining prevailing wages to the states.**

**We need a seat at the table at DoL just like the NGA...and the SBA Office of Advocacy needs to be more aggressive in confronting DHS and DoL as policy changes are being discussed.**

I would be happy to answer any questions you may have.
Chairman VITTER. Thank you very much, Frank, and let us start with you, since you offer such a great real world perspective.

If you can—I know you touched on it in your testimony—walk through the specific, concrete impact to your business that the various recent Department of Labor changes and rulings have had, number one. Number two, if you have any reaction so far—and it may be too new, maybe you do not—but, if you have any reaction so far of the new Department of Labor guidance moving forward on wage surveys.

Mr. RANDOL. Let me start from the back. It is more of the same, as I see it, from DOL. We have reviewed this stuff. It is stuff that does not work. I mean, program rules, 75 percent guarantee. Hurricane comes, I cannot turn them back, got to keep them for ten months and got to pay them. That does not work in Louisiana.

As far as the parity, if I pay one person this, another person has to be paid the same. In the seafood industry, we pay for productivity. You know, we might bring them in at entry level, but we give them the incentives through piece work. They accelerate. They get better. They might enter at a nominal rate, but a lot of these people get up to these larger rates, $12 to $15 an hour, peeling crawfish. That is attainable.

Chairman VITTER. Just to take those two examples, as far as you know, is any of that mandated by statutory law, or is it just a creation of the Department of Labor?

Mr. RANDOL. Creation. These mandates are killers for us. You know, you all write the laws, they interpret the laws, and then we try to say that is not what you meant, and that is what I have been doing for the last decade. You saw me up here in 2006. It was very easy to predict or see where we were going, and now we are here, you know, when I first came to discuss this. The pain is in reality, and the pain to me. I feel it because I am in it and I cannot get out of it.

We got through the process. We missed the first cap. I have been at this for a half a year, trying to make a deadline that was imposed—I can only start four months before I need them, four months, and I have been at it for six months and I am still not in the last step, which would gain me access in six weeks to bring them in. The real lifting is at the border to determine whether these people really need to come in. We demonstrated that we do not have the workforce here, but——

Chairman VITTER. Frank, if I can interrupt for a second, if I can just through the record ask Ms. Wu, we talked about two specific requirements that you mentioned that are just flat out unworkable in the real world from your perspective. Ms. Wu, if you could submit for the record any statutory basis that requires the Department of Labor to do that, because from what I see, there is none. Thank you.

Go ahead, Frank.

Mr. RANDOL. Okay. The last one, we see that a lot of this stuff is outlined in the H–2B Coalition paper, but what comes to mind is open up a job order that starts four months out and you have to take it 20 days to where these people are coming inside the country and leave it open. So, normally, we—you know, we have demonstrated that there are no people that want this job. But
these are just some of the few, and what I have offered to DOL is, you know, the NGA apparently has their ear. Let us let small business somehow be in the process so that we do not see the results of a mandate, but we have a team effort to try to move forward. Because, like I say, when they impose these things, we feel the pain. A lot of people go out of business.

Chairman Vitter. Right. Let me ask both you and Dr. Strain if you have any specific reaction yet to their new guidance about allowing private, including State, surveys. Is it workable? Is it not? Is it reasonable? Is it too narrow? Do you have any reaction yet?

Dr. Strain. Mr. Chairman, the reaction I have is that we have been using the State prevailing wage rate surveys for many years, and when you look at the final rule, it says they will be used in limited exceptions. And, so, now we have several different methodologies to determine a wage rate. I mean, simply let us continue to use the prevailing wage rate rule.

If you look at it in the seafood industry and the crawfish industry, the State prevailing wage rate, as determined by the LSU Ag Center and my office, it is currently $8.66. That is a floor. But, they are also paid on piecemeal, and you have some—you have workers that make $12, $15, $18 an hour depending on production. This sets a minimum wage.

So, let us not—if you look at what is in the interim rule there, it is very—it is complicated. We need to simplify this.

Chairman Vitter. Okay. And, Dr. Strain, I also wanted to touch on my Imported Seafood Safety Act.

Dr. Strain. Yes, sir.

Chairman Vitter. Mr. Chairman, the American public, when they go to the market, 100 percent of the mammalian proteins for beef and pork and 99 percent for poultry—there is a specialty thing for poultry, if you have a very small amount, less than 10,000 chickens, you can sell them, but it is very tiny—but all those proteins are inspected. They are monitored from the farm all the way through slaughter. They are inspected at slaughter and they are tested and back-traced. The American public believes their seafood that they consume is inspected and safe at that same level.

If you look at the CDC report, and I am going to quote their press release, March 14, 2012, it says that we currently import about 85 percent of our seafood, 60 percent of our fresh produce, and we currently import about 50 percent of our crawfish. And, I quote, “CDC experts reviewed outbreaks from their Foodborne Disease Outbreak Surveillance System from 2005 to 2010. During that five-year period, 39 outbreaks, 2,348 illnesses, were linked to im-
ported food from 15 countries. Of those outbreaks, 17, half, occurred in 2009 and 2010. Overall, fish, 17 outbreaks, were the most common source of implicated imported foodborne disease outbreaks, followed by spices. Nearly 45 percent of the imported foods causing outbreaks came from Asia."

The American public assumes that we are doing this testing. We know that we are not. Less than three percent of the imported seafood. Eighty-five percent of the seafood consumed in the United States is imported, and less than three percent is being tested.

Furthermore, when you look at that particular issue, if you look in a container of seafood, there could be, in the case of crawfish, there could be up to 20 different lots—20 different lots, different origins, coming together. So, when you think that it is all a blended product and you take one sample and that it is consistent with everything in the container, it is not.

And, when you look at the particular issues that we are talking about, we are talking about antibiotics that are banned from the United States, such as chloramphenicol, chemicals such as malachite green that are banned from the United States.

And, so, when you look at that, it is imperative that we all be on the same level playing field. And, when you start talking about why we need to test this seafood and you say, well, how are we going to stop port shopping, well, it is very simple, is that we need to make sure that we have eyes on at the processing level in those foreign countries, and I think some of that will take into effect in the future under the Food Safety Modernization Act, but that is somewhere in the future, and that container be accompanied by a certificate stating that it has been tested, and that when—if you get—and if that container comes in and you retest that container and it is not what it says, then it can either return directly and be certified to go back to the country of origin or be destroyed on site.

Now, our department, I am responsible—I oversee the Department of Animal Health and Food Safety and we have a food inspection program. We also work hand in hand with the USDA Animal and Plant Health Inspection Service, to where we do joint meat inspection. We do State plants and we can work jointly on Federal plants where those products can cross State lines. But, I am not permitted to test imported seafood. Now, I can look at the containers to make sure that, and as I, as the Commissioner of the Office of Metrology, Weights, Measures, and Standards, that if there is a pound of seafood in there, there is supposed to be a pound. But, we are not allowed to take samples and test it for contaminants.

So, just like we are having a working relationship and we have a cooperative endeavor agreement with the Federal Government to do the other protein inspections, let us have the same arrangements where my inspectors who are out at those plants looking at other things—and we do label inspections for the Federal Government, as well—give us the authority under cooperative endeavor agreement to be a further arm. We have testing labs in Louisiana. We do half of the seafood testing.

Chairman VITTER. And, so, if that were done, which I certainly support and am advocating through my bill, that would be fully
consistent with the Federal standards. It would not be using different standards in any way. You would just be additional cops on the beat, correct?

Dr. STRAIN. That is correct. And, if you—and, what we do, our standards, our procedures are in alignment with the Federal procedures.

Chairman VITTER. Right. Right.

Dr. STRAIN. And, we should have standards as high as the European Union.

Chairman VITTER. Right.

Dr. STRAIN. They test, and I believe it is up to 15 to 20 percent of all the products going to the EU. We should meet at least those standards.

Chairman VITTER. Right. Well, thank you all very much.

We are going to wrap up, but in doing so, let me also ask through the record if Dr. Solomon could supplement his testimony with a response to this question. Dr. Strain mentioned the use of chemicals on imported seafood that are banned in the United States. Why should not that practice be presumptive grounds to not allow that seafood into the country, if Dr. Solomon could respond for the record.

Thank you all very much. I think this was very informative and productive, particularly focusing on Department of Labor activity and regulations and the safety regime for seafood imports.

Thanks very much, and our hearing is adjourned.

[Whereupon, at 3:54 p.m., the committee was adjourned.]
APPENDIX MATERIAL SUBMITTED
April 30, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary Perez:

We write in support of a robust, comprehensive joint agency final rule on the H-2B foreign labor certification program. Our constituents include business owners who depend on the H-2B program for temporary nonagricultural labor, but also qualified U.S. workers who need access to jobs and strong worker protections. We urge you to work with the Department of Homeland Security to promulgate a comprehensive rule for the H-2B visa program that enables the program to help business owners while still ensuring strong protections for all workers.

As you know, the Department of Labor announced a final rule in February 2012 to improve the H-2B visa program. However, that 2012 rule was never implemented after it was preliminarily enjoined by the District Court for the Northern District of Florida in April 2012.

We fully support the added protections the 2012 rule provided and urge you to make your new joint rule mirror the 2012 rule as much as possible. These important worker protections include provisions to increase recruitment of U.S. workers, the creation of a national registry of all H-2B job postings to help U.S. workers learn of available temporary jobs, and the extension to U.S. workers of benefits such as transportation costs and prevailing wages currently available to H-2B workers. We appreciate that the joint interim final rule contains strong worker protections, and we urge you to continue this approach when the rule is finalized.

We recognize that the H-2B program provides valuable, qualified workers to many businesses across the United States and support the continuation of the program. However, we urge you to use this opportunity to strengthen protections for both H-2B and U.S. workers. A robust joint rule that includes strong worker protections will enhance the H-2B program, help protect H-2B workers from exploitation, and help Americans looking for work.

We look forward to hearing from you.

Sincerely,
U.S. signed agreement with Mexico to teach immigrants to unionize

BY SEAN HIGGINS | MARCH 30, 2015 | 5:00 AM

The federal government has signed agreements with three foreign countries — Mexico, Ecuador and the Philippines — to establish outreach programs to teach immigrants their rights to engage in labor organizing in the U.S.

The agreements do not distinguish between those who entered legally or illegally. They are part of a broader effort by the National Labor Relations Board to get immigrants involved in union activism.

The five-member board is the agency that enforces the National Labor Relations Act, the main federal law covering unions. In 2013, Lafe Solomon, the board’s then-acting general counsel, signed a “memorandum of understanding” with Mexico’s U.S. ambassador. The current general counsel, Richard Griffin, signed additional agreements with the embassies of Ecuador and the Philippines last year.

“These are the only countries that the NLRB has MOUs with,” said spokeswoman Jessica Kobranski.

The agreements are substantially similar, with several sections repeated verbatim in each one. All three documents state that the No. 1 cure for this is to educate those who may not be aware of the Act, including those employees just entering the workforce, by providing information designed to clearly inform [that nation’s] workers in the United States of America their rights under the Act and to develop ways of communicating such information (e.g., via print and electronic media, electronic assistance tools, mobile device applications, and links to the NLRB’s web site from the [country’s] web sites) to the workers residing in the United States of America and their employers.”

The board has said the law’s protections for workers engaged in union organizing extend even to people who are not legally authorized to work in the U.S. An employer who fires an illegal immigrant worker — which is required under federal immigration law — can be sanctioned by the board if it decides the worker’s union activism was the real reason for the dismissal.
In the documents, the countries’ foreign consulates agree to help locate foreign nationals living in the U.S. who might aid the NLRB in investigations, trials or compliance matters involving businesses and to develop a system for the consulates to refer complaints from foreign workers to the board’s regional offices.

The documents also call for systems to inform foreign businesses operating in the U.S. of their responsibilities to their employees under federal labor law. In testimony before the House Appropriations Committee on March 24, Griffin characterized that as the principal focus of the agreements.

“We have executed letters of agreement with foreign ministries designed to strengthen collaborative efforts to provide foreign business owners doing business in the United States, as well as workers from those countries, with education, guidance and access to information regarding their rights and responsibilities under our statute,” he told lawmakers.

Griffin, formerly a top lawyer for the International Union of Operating Engineers, testified that the agreements save taxpayer money because they would “pay dividends as employers will be able to avoid unintentionally violating our statute and workers will be educated about their statutory rights to engage with one another to improve their conditions of employment, both of which benefits taxpayers, and the country as a whole, through increased economic growth.”

If the main intention is to provide legal information to foreign employers, it is not clear why the board pursued agreements with those countries, which represent a relatively small portion of businesses operating in the U.S.

A November study by the Bureau of Economic Analysis found that Mexican businesses operating in the U.S. employ slightly less than 69,000 people total. The numbers employed by Ecuadorian and Philippine businesses operating in the U.S. are so small, the bureau doesn’t publish a measurement for either one.

By comparison, Canadian businesses employ well over a half-million people in the U.S. British businesses employ nearly a million, Japanese nearly 720,000 and German 620,000.

Mexico and the Philippines, one the other hand, represent two of the countries providing the most immigrants to the U.S. Mexico accounts for 11.6 million immigrants living in the U.S., the most from any single country, according to the Migration Policy Institute. The Philippines is fourth overall, accounting for 1.8 million.

A 2013 board press release stated the Mexican agreement was “an outgrowth of initial negotiations between the NLRB’s Chicago office and the Mexican Consulate in Chicago. The framework has been used by other federal labor agencies, including the Department of Labor and the Equal Employment Opportunity Commission, which have similar agreements with the Mexican Embassy and its consulates.”

The release quoted Solomon saying, “With coordination from the consulates, we expect to meet with Mexican workers around the country to help forge innovative solutions to issues specific to their needs.”

Last month, Griffin instituted a new policy in which the board will “facilitate obtaining visas for illegal immigrants if their status impedes it from pursuing a labor violation case against a business. The policy gives illegal immigrants living in the U.S. a strong incentive to engage in labor activism, because doing so will make employers reluctant to fire them and potentially get them a visa, and therefore legal status, if they are fired.”
Tangle over guest workers traps Louisiana crawfish trade

By Jonathan Kaminsky

NEW ORLEANS (Reuters) - It is nearing peak harvesting season for Louisiana crawfish, but a shortage of migrants to peel them is hurting the industry, largely because of a fight over foreign guest workers that has stirred fears Chinese imports will gain ground.

The worker shortfall, which Louisiana officials estimate will cut its frozen crawfish output by more than half, at a cost of up to $50 million, is largely the result of a long conflict over rules and wages for seasonal laborers under the H-2B visa program.

Louisiana's crawfish processors, who lead the United States in output of the tricky-to-peel shellfish, are hurting badly, says Frank Randol.

His Lafayette plant, for example, would normally have 40 workers peeling thousands of bite-sized crawfish tails everyday, but now stands idle.

"We finally stabilized our industry," Randol said, referring to a period of recovery after a tariff on cheaper Chinese imports was imposed 18 years ago. "And now this chops the legs out from under us."

In southern Louisiana, where whole boiled crawfish are a cherished spring and early summertime staple, hopes are fading that the output of peeled, frozen tail meat can be salvaged.

The labor shortages are not limited to Louisiana. This week, U.S. Senator Barbara Mikulski, Democrat of Maryland, said her state's crab industry was set to fall short of the temporary workers it needs by more than 40 percent.

CONTENTIOUS NEW RULES

Kevin Dartez, whose Abbeville, Louisiana facility peels and sells both crawfish and crabs, said losing his guest labor will mean heavy losses. He refuses to bring on unauthorized immigrants and has found locals largely unwilling to take on such tedious unskilled work.

"The crawfish season is screwed," he said. "The crabs aren't getting peeled either."

Each year, the U.S. lets in up to 66,000 workers under the H-2B program, many from Mexico, for jobs ranging from hotel maid to landscaper.

Employers have to prove to the Labor Department that their wages are fair and that workers will not disadvantage American job-seekers before visas are granted by the
Department of Homeland Security. The workers must return home after their fixed-term jobs end.

Critics of Louisiana's crawfish processors, and of businesses relying on H-2B laborers generally, say many exploit a largely powerless migrant workforce, and that legal and legislative challenges to Obama administration efforts to make the program more worker-friendly have slowed the application process.

"This is largely a crisis they've brought on themselves," said Jacob Horwitz, a labor organizer with the New Orleans-based National Guestworker Alliance.

Crawfish processors counter the current problem was triggered by the Labor Department responding to a December court order on wages by forcing them to resubmit applications too late to secure workers.

The situation was exacerbated when the Labor Department stopped processing H-2B applications for two weeks in March after a separate court decision found it lacked rule-making authority over the program. Once that ruling was stayed, the Department of Homeland Security received an uptick in applications and within days announced the worker cap was filled.

This week, the Labor and Homeland Security departments jointly unveiled new H-2B rules seen as favoring workers on pay and protections, but which are expected to come under congressional scrutiny.

In Louisiana, with processors buying fewer crawfish, farmers and fishermen have little choice but to keep them in the muddy water or sell them by the side of the road at cut-rate prices.

Sherbin Collette, mayor of Henderson, a fishing community in the southern part of the state, said the labor shortage is shaping up as the worst crisis the industry has faced since cheap Chinese imports nearly wiped out the domestic frozen crawfish supply in the 1990s.

"This is almost as critical as a hurricane coming to hit us," Collette said.

(Reporting by Jonathan Kaminsky. Editing by Jill Serjeant and Andre Grenon)
8/20/12

Crawfish Processors' Alliance Inc.
1008 Vincent Berard Road
Breaux Bridge, LA 70517
Telephone: 337-667-6118

Dear Mr. Adam Johnson,

As you know there have been significant labor abuse reported and serious government investigations into labor and immigration violations in the Seafood industry this season. Most significantly the issues at the Walmart supplier CJ's Seafood, as reported in multiple news outlets including local Lafayette area news and National news including the following:

International Business Times - 6/6/12
"Mexican Guest Workers Claim Wal-Mart Supplier Stole Their Wages"

Huffington Post - 6/14/12
"Labor Department's Guestworker Reforms Blocked by GOP, Democratic Senators"
http://www.huffingtonpost.com/2012/06/14/labor-department-guest-worker-reforms_n_1597509.html

The Daily Beast - 6/14/12
"Walmart 'Unable to Substantiate' Forced Labor Claims at Seafood Supplier"
http://www.thedailybeast.com/articles/2012/06/14/walmart-unable-to-substantiate-forced-labor-claims-at-seafood-supplier.html

The Guardian - 6/22/12
"Walmart Supply Workers Complain of Mistratment by Company's Contractors"
http://www.guardian.co.uk/business/2012/jun/22/walmart-supply-workers-mistreatment-contractors

International Business Times - 6/25/12
"Labor Rights Advocates: A Dozen Wal-Mart Suppliers Received 482 Federal Citations"

New York Times - 6/30/12
"Walmart Suspends Seafood Supplier over Work Conditions"

The Guardian - 6/30/12
"Walmart Suspends Seafood Supplier over Working 'Violations'"
http://www.guardian.co.uk/business/2012/jun/30/walmart-suspends-seafood-supplier

Reuters - 6/30/12
"Walmart Suspends Louisiana Seafood Supplier"
http://www.reuters.com/article/2012/06/30/walmart-supplier-suspension-idUSBRE8HU2YS20120630

The Nation - 7/3/12
"The Big Bad Business of Fighting Guestworker Rights"

New York Times editorial - 7/9/12
"Forced Labor on American Shores"

NPR's On Point - 7/11/12
"Forced Labor in the USA"
http://onpoint.wbur.org/2012/07/10/forced-labor-in-the-usa

The New York Times - 7/24/12
"CJ's Seafood Fined for Labor Abuses"
http://www.nytimes.com/2012/07/25/business/cjs-seafood-fined-for-labor-abuses.html?_r=1

Given these issues we are writing to set up a meeting with you to negotiate a long-term solution and reach an agreement that will prevent this kind of abuse from happening in the future and prevent the industry from being negatively impacted as a result of publicity around reports of labor violations.

Jacob Horwitz
Lead Organizer
National Guestworker Alliance
Cc:

Michael LeBlanc – Director
Terry Guidry – Vice President
Frank B. Randol- Secretary
Dexter Guillory- Treasurer
Craig West – Director
Michael K. Hengens – Vice President

217 North Prieur Street | New Orleans, LA 70112 | Tel: 504-309-5165 | Fax: 504-309-5205
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

THE LOUISIANA FORESTRY ASSOCIATION, INC., et al. )
Plaintiffs, )
v. )
HILDA L. SOLIS, et al. )
Defendants. )

Case No. 1:11-cv-01623
Judge: DRELL
Magistrate: KIRK

Declaration of Michael Strain D.V.M.

1. My name is Michael Strain, D.V.M. I am the elected Commissioner of Agriculture and Forestry for the State of Louisiana. My Department oversees all agricultural commerce and activities within the State, including the markets for products produced by our farmers. The activities of the sugar cane, crawfish and forestry industries also fall under my purview, and I give this Declaration as part of my official duties as Commissioner. I was elected to this office in 2007. I was awarded a Doctorate in Veterinary Medicine in 1983 by Louisiana State University.

2. I am also a member of the National Association of State Departments of Agriculture (NASDA) that "represents the state departments of agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry, while protecting consumers and the environment." During the NASDA spring meeting in February, the members unanimously endorsed "work on ... H2B labor reform to ... make the labor wage rate more competitive." Many of my colleagues...
have the same concern I do: the proposed wage rule makes the wages LESS competitive and
must not be allowed to go into force.

3. In order to feed our increased U.S. population, we must have a stable agricultural
labor supply. The ability of seasonal businesses to keep their doors open and retain their full-time
U.S. employees relies upon having successful peak seasons to offset the rest of the year when
their business is slow. During their busy seasons, companies must supplement their permanent
staffs with temporary seasonal employees. Employers spend thousands of dollars and hundreds
of hours in their efforts to fill these positions. Unfortunately, even in today’s tough economic
climate, there are not enough local workers available to fill all the temporary seasonal positions,
and efforts to obtain U.S. workers to relocate for temporary and seasonal employment have not
been successful. As a result, businesses often must utilize the H-2B guest worker program to find
seasonal workers and workers for their peak workforce needs.

4. Louisiana has seen many natural challenges to the agricultural sector of our
economy in the Hurricanes Katrina and Rita, floods on the Mississippi River that required the
release of water through the spillways into the Atchafalaya Basin, and a drought. The last thing
our agriculture, forestry, seafood and sugar industries need is an assault on their economic
competitiveness by the U.S. Department of Labor’s H-2B wage rule, which I understand is
scheduled to go into effect on September 30, 2011.

5. Our markets are subject to particularly fierce competition from abroad. For
example, the Chinese have been extremely aggressive in trying to corner the U.S. crawfish
market. This predatory behavior began in 1993 and has continued unabated. The Chinese
presently control over 50% of the market and are poised to capture even more market share if our
producers are put at a further competitive price disadvantage - or are put out of business - as a result of the Department of Labor H-2B wage rule.

6. The H-2B wage rule that the Department of Labor adopted on January 19, 2011 that I now understand will go into effect on September 30, 2011, instead of January 1, 2012, imposes a new untested wage determination methodology that will significantly increase costs for small and seasonal small businesses. It threatens both H-2B jobs, as well as full-time permanent U.S. workers’ jobs in those businesses. Some of our Louisiana businesses that are dependent on the availability of H-2B guest workers between September 30 and January 1 would not have been affected at all or would have been affected much less severely are particularly in jeopardy now because they had not thought they would be affected this season. They made their business plans, commitments and contracted sales based on a January 1, 2012, date and not a September 30, 2011, date for implementing the new rule. There is not a way to remedy their problems if this new rule is allowed to go into effect.

7. The short term consequence of an immediate expulsion of this vital segment of the workforce would cause a production crisis in a wide range of field and orchard crops, seafood processing, sugar processing, forestry, livestock and the restaurant industry, to name a few. This would leave the United States and our State of Louisiana no alternative but to import many food products from poorer countries that have surplus farm labor. This not acceptable and must be stopped.

8. The Louisiana economy relies heavily on agricultural production. In Louisiana, the H-2B program is a critical enabler in agricultural processing. In 2009, according to the U.S. Department of Labor, Louisiana ranked as the state with the fifth largest use of the H-2B program in the U.S. with 7,716 H-2B job positions certified statewide.
9. The H-2B program is important for the seafood industry, which includes crawfish, shrimp, crabs, oysters and catfish, because seafood processors traditionally cannot fill their temporary or seasonal job vacancies for seafood peelers with U.S. workers. Many of these businesses are located in rural areas that simply do not have sufficient populations to supply their extra workforce needs. Additionally, many who are willing to work and available want full time, year round jobs. Indeed, many of the jobs in those locales that are year round and full time depend on the various food processors operations for their own jobs and business operations to be able to operate. Without temporary H-2B guest seasonal workers to peel seafood, Louisiana’s seafood processors would shut down, eliminating the primary market for our fishermen and farmers to sell their catch. As a result, cheaper foreign seafood would gain a stronger foothold in the U.S. market and our fishermen and farmers who produce and harvest crawfish, shrimp, crabs, oysters and catfish would be devastated and a key segment of the Louisiana economy would be crippled—lost to our economy. Once we lost the processors, we would not be able to depend on them operating in future years, and so losses because processors scale back or do not operate at all this season will have irreparable and bad repercussions now and in the future.

10. Farmers need to have stable and competitive markets for their harvests. Many rice farmers harvest crawfish from their rice paddies so that they have a dual crop from that land. The income from selling crawfish to processors is essential for the viability of many farms. Therefore, the jobs of the tractor drivers on those farms and the jobs of employees who provide the fuel, seedlings and other products and services needed to produce the rice and the crawfish on those farms are linked to our ability to have enough temporary workers at the processing facilities at the right time at wage rates that do not create chaos in their other employees' wage
and benefit structures and that are reasonable in real world ways are essential to the maintenance of both rice farming and crawfish farming operations.

11. The number of currently permitted seafood processors within the State is as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crawfish</td>
<td>49</td>
</tr>
<tr>
<td>Shrimp</td>
<td>78</td>
</tr>
<tr>
<td>Crab</td>
<td>24</td>
</tr>
<tr>
<td>Oyster shucking plants</td>
<td>30</td>
</tr>
<tr>
<td>Oyster dealers/shippers</td>
<td>48</td>
</tr>
<tr>
<td>Fish</td>
<td>35</td>
</tr>
<tr>
<td>Alligator</td>
<td>15</td>
</tr>
</tbody>
</table>

12. We also have H-2B workers certified to operate sugar mill boilers, handle bagasse burning in the steam boilers, and maintain the equipment. While we grow sugar cane all year and start the next crop as soon as this year’s crop is harvested, most mills only operate about 100 days, starting about October 1. This is an industry, along with some of our seafood processing, that is particularly hard hit by what the Department of Labor is going to do this year: the sugar mills and some of our seafood businesses that operate in the fall would not have suffered immediate effects from this new rule and wage setting methodology if it had been put into effect on January 1, 2012, instead of September 30. It is impossible to staff those mills fully with U.S. workers when the operating job is so short term, and as in other parts of our Louisiana industry, many jobs depend on the H-2B workers being available when they are needed and the employers being able to pay them wage rates that are planned for and that are not out of line with other jobs at the mills, including full time, year round jobs. If the sugar mills go down, there will be no
need for the U.S. workers who do have year round jobs handling maintenance and other off season jobs—or those who grow the cane. Without the sugar boilers in the sugar mills and other H-2B employees who work the mills, sugar mills would be unable to process or purchase our farmers’ sugar cane crop, thereby killing the entire sugarcane industry, Louisiana’s number one agronomic crop, which in 2010 was valued at $1 billion. Moreover, thousands of other jobs that are dependent on sugarcane processing would be lost. There are many temporary, seasonal jobs that H-2Bs perform at the sugar mills, and it is fair to say that the mills would be unable to operate if they had to depend on being able to hire legal U.S. workers for the jobs in which H-2B visa workers are employed.

13. The same can be said for landscapers who rely on H-2B workers for installing plants and shrubbery. Furthermore, without H-2B workers, our nursery crop producers would lose the primary market for selling nursery plants.

14. The housing market is very poor and timber prices are low. Landowners owning forestland in Louisiana have seen income from timber investments shrink, costs rise, and mills close due to the poor economic conditions in the area and across the country. Most of the forestland in Louisiana is family owned and landowner income cannot justify paying more to manage their forest, and certainly not to reforest their timberlands after harvest, especially at higher wage rates that will be affecting tree planters’ costs this year.

15. The lack of reforestation from planting improved seedlings from forest nurseries will have an immediate adverse effect from the absence of economic activity associated with replanting as scheduled and most desirable from a scheduling standpoint. It will also be a long-term effect on availability of future forest resources when the economy and housing turn around. Delaying planting this year even until just next season will necessarily mean that timber that
would be ready for harvest will require another year of growth. That is leaving an asset unused for a year even if planting can resume next year.

16. With the loss of jobs already experienced by the forest industry because of the economy, any cost increases will worsen the situation.

17. Landowners are also hearing from reforestation contractors that because of the uncertainty about the new wage guidelines and anticipated rise in costs, the contractors will not perform any service this season. So even if the landowner were willing to pay a higher price, the landowner may be unable to locate anyone to do the tree planting. The future of forestry is in jeopardy because of the new H-2B wage guidelines.

18. Louisiana can ill afford a loss from the $3.1 billion dollars generated in the State from forestry each year or a loss in employment from one of Louisiana’s largest manufacturers.

19. I have reviewed the “2011 Louisiana Forestry Facts” that is attached as Exhibit 1 to this Declaration. This one-page fact summary is published by the Louisiana Forestry Association and is based on data published by the Louisiana Department of Agriculture and Forestry and the LSU Ag Center, the Louisiana Department of Employment and Training, and data that is collected by the Association itself. Based on my knowledge of the importance of the forestry industry in the State in my role as Commissioner of Agriculture and Forestry, I believe the information in that summary is accurate and reflects the contributions of that industry to the economic well being of this State and to providing employment for the citizens of this State.

20. While the numbers of H-2B workers in absolute terms is very small in comparison to the whole agricultural workforce in this State, the contributions the H-2B workers make in maintaining our agricultural operations is essential.
I have read the foregoing and swear that it is true under penalty of perjury. Executed this 

24th day of September 2011.

_____________________

Michael Swan, D.V.M.
2011 Louisiana Forestry Facts*

How much forestland does Louisiana have?
Forests cover 14 million acres, about 50% of Louisiana's land area, making it the most forested state in the nation. Fifty-nine of the state's 64 parishes contain land capable of producing sufficient timber to support forest-industry activities as well as provide habitat for wildlife, recreation, and beauty, and all the other environmental benefits timberlands provide.

Who owns Louisiana’s forestland?
There are 48,000 owners of Louisiana forestland. Private non-industrial landowners own 81% of the state's forested land. Forest productivity is very low and some non-industrial landowners are using the land for other purposes. This is an indication that a majority of Louisiana's forestland has been leased to large timber companies with long-term management plans.

Do we put the trees back?
Louisiana landowners (industrial and non-industrial) reforest the land each year with over 128 million seedlings, an average of 2,000 trees per acre (640 acres per hectare), and at least 29 trees per acre throughout the state population distribution.

What is the economic value of forestry to Louisiana?
The impact of forestry and forest-products industries on our economy in 2010 was $3.1 billion up from $2.5 billion in 2009 and less than $3.3 billion in 2008. Other forest products included: $4.2 billion in 2007, $5.3 billion in 2004, $3.7 billion in 2005, and $3.3 billion in 2002. In 2002, Louisiana was the 2nd highest state in the US for forest-related income. In 1997, Louisiana was the 3rd highest state in the US for forest-related income.

How much timber does Louisiana harvest?
In 2010, 11.9 million board feet of sawtimber and 6.3 million cords of wood were harvested compared to 7.9 million board feet of cuttimber and 6.1 million cords of wood in 2009. Other forest products included: $4.2 billion in 2007, $5.3 billion in 2004, $3.7 billion in 2005, and $3.3 billion in 2002. In 2002, Louisiana was the 2nd highest state in the US for forest-related income. In 1997, Louisiana was the 3rd highest state in the US for forest-related income.

How much do woodworkers earn from timber?
Louisiana timber consumers and their employees earned $4.6 billion in 2010 compared to $4.1 billion in 2009. In 2008, the figure was $4.0 billion. This was down from $5.94 million in 2007. They were paid $669 million in 2006, $669 million in 2005, and $599 million in 2004.

What is the economic impact of forestry to Louisiana?
Forests support some 130 primary wood-using industries (such as sawmills and paper mills) located throughout the state and 750 secondary wood-using industries (including furniture manufacturers, cabinet makers, millwork plants and others that use the products produced by primary wood-using industries).

How many people does Louisiana's forest industries employ?
Forests were the second largest manufacturing employer in Louisiana, providing almost 12,694 jobs (2nd Qtr 2010) compared to 12,526 in 2009. The average employment figure for forestry was 12,597 in 2010, 12,666 in 2009, and 12,756 in 2008. This was down from 13,013 million in 2007. They were paid $914 million in 2006, $914 million in 2005, and $814 million in 2004.

What is the economic impact of forestry to Louisiana?

State and local governments benefit directly from timber revenues.

Source: Louisiana Forestry Association, Louisiana Dept. of Agriculture and Forestry, USDA Forest Service and the Louisiana Department of Employment and Pensions.

For more information, visit the Louisiana Forestry Association at www.laforestry.com.

EXHIBIT 1 TO DECLARATION OF MICHAEL STRAIN, D.V.M.
We have had several issues in the past with the various governmental agencies.

Example #1 For instance, we had one H2B employer that we submitted a 9141 request for wage determination. DOL had a question, told us they had requested information via email (request was never received in our office). DOL voided the PWD and employer had to restart the process again from the very beginning causing many delays and potentially being capped out.

Example #2 We know of one employer who has a seafood processing plant that specializes in the processing of wild alligator, which is the month of September in Louisiana yearly. Normally his work visa is from very late August through late September, this season he was asking for the following dates of 8/19/2015 – 9/26/2015 for 15 workers. For this 2015 alligator season he is OUT before even being allowed to begin the process according to regulation. He cannot begin to open a job order or advertise until 120 days prior to his start date which would be no earlier than the weekend of April 25, 2015. The cap was reached on March 26, 2015. (a month prior than his being able to even begin the recruitment process).

This small Louisiana business will not even have a chance of obtaining a work visa as no more H2B visas will be allotted until October 1, 2015. This employer has workers who have been coming in excess of 10 years to process alligators. He is unable to find a local workforce that is willing to work this very short, seasonal processing time frame. The H2B program allowed him to have a reliable workforce and to keep his American workers employed as well. THIS program is very unfair in the manner that the H2B work visas are being distributed. The above are just two examples that have happened recently, however, we personally know of several different similar situations.
<table>
<thead>
<tr>
<th>H&amp;I 2016</th>
<th>Activity</th>
<th>Current Process</th>
<th>Problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>PWD DC</td>
<td>Employer prepares 9141</td>
<td>Estimated to take 60 days for H2B</td>
<td>Has been running smoothly via the icert system</td>
</tr>
<tr>
<td></td>
<td>Prevailing Wage Determination</td>
<td>PWD will email receipt confirmation</td>
<td>* long wait if you have problems</td>
</tr>
<tr>
<td></td>
<td>Mail or upload via icert website</td>
<td>PWD will email wage response</td>
<td>** when surveys were allowed you would start at the 7-8 months prior.</td>
</tr>
<tr>
<td></td>
<td>(begin min 6 mo before start date)</td>
<td></td>
<td>:! a long time to work and suddenly be out of the cap at the end! And have a much higher wage - without any warning?!</td>
</tr>
<tr>
<td>Employer</td>
<td>Upon receipt of PWD from DC employer opens a job order online with the SWA/no interaction or assistance from state level</td>
<td>Employer proceeds and performs all required newspaper activity and recruiting without assistance</td>
<td>a long time to prepare and suddenly if you don't know what you are doing you can run into trouble once app is submitted to CNPC. Employer must know FR regs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ID must be open min 10 days at SWA</td>
<td>** if you have delays it can put you out!</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Usually takes 30 days to complete app</td>
<td></td>
</tr>
<tr>
<td>DOL/CNPC Chicago</td>
<td>Employer prepares and submits 9142 to the CNPC for certification</td>
<td>Must include all required information from the Federal Register</td>
<td>Same as above</td>
</tr>
<tr>
<td>DOL</td>
<td>DOL review application and stamped approved returned to petition with certified application</td>
<td>Approved application is returned to employer to then send off to DHS</td>
<td>Seems to be slowing down</td>
</tr>
</tbody>
</table>
DHS/USCIS
I-129 Application
Employer completes and mails to Vermont for adjudication

Vermont - fee is $325 for application Expedited premium process is $1225. and an additional $150 anti fraud fee guaranteed to start within 15 days 15 days - not guaranteed approval will email I797 approval notice will mail original to petitioner

do have the worry of cap release of 33,000 for April 1 and Oct 1 Numbers being being distributed four months prior to release date An occasional petition can be lost and not arrive, usually takes congressional inquiry to make things happen at that point

KCC
DHS sends approved application to Kentucky Consular Service center for Fraud Protection Screening and then forwards on to consulates for petition scheduling.

KCC does background check/screening on employer, most do not know this is taking place.

This does not usually cause delays

CSC
Appointments are scheduled online with CSC.

CSC - ** Added appx 4 years ago** The are to be allowed 3 business days before you can even question why you can't schedule yet. This is a contract agency with the government. They should be required to add staff for busy times, I called this office over 2 months ago and have yet to receive a return call, finally figured out scheduling system on our own. We DO NOT ask them to schedule our appointments, only to help us figure out their online website!

Kelly attended training in Atlanta in Dec with DOL/DHS/Consulates This system was "new and improved" is actually "difficult to navigate"
**note that worker cannot begin the DS 160 until he has employer EAC/WAC assigned number from DHS confirmation.**

<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consulate</td>
<td>Worker is screened/interviewed at the consulate - 2 day appts ASC - day 1 fingerprints &amp; photos Consulate - day 2 - interview/visa</td>
<td>Relatively smooth - Visa is pasted into the passport book visa controls the date that worker may be employed and by which employer</td>
</tr>
<tr>
<td>Border</td>
<td>Workers received I-94</td>
<td>White card stapled in the back of passport</td>
</tr>
<tr>
<td>Travel</td>
<td>Travel to worksite</td>
<td>Paid for by the employer</td>
</tr>
<tr>
<td>Arrive</td>
<td>Worker must complete employment paperwork</td>
<td></td>
</tr>
</tbody>
</table>

** Dec Dol/DHS mtg.gov stated that less than 2% of the agricultural community use the H2A program. However this is 2% is the target group for the audits.
Level I (Entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarity with the employer's methods, practices, and programs. These employees may perform higher-level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Level II (Qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job offer warrants a wage determination at Level II would be the requirement for training, education, and/or experience that are generally required as described in the O*NET job profile.

Level III (Experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over such staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET job profile would be indicators that a Level III wage should be considered.

Level IV (Fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibility.

2. Procedure for Determining Wage Level

The NFWHC shall use O*NET information to identify the tasks, work activities, knowledge, and skills generally required for performance in an occupation. A comparison between the particulars of the employer's job offer and the requirements for similar (O*NET) occupations shall be used to determine the appropriate wage level. It
Level 3

Skill Level
Explanations
Use hand or hand tools to perform routine cutting and trimming of meat, poultry, and seafood.

Job Zones Updated
July 1, 2014

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is $7.25/hr effective July 24, 2009.

Example 2

The Foreign Labor Certification Data Center is developed and maintained by the State of Utah under contract with the US Department of Labor, Office of Foreign Labor Certification.
<table>
<thead>
<tr>
<th>Skill Level</th>
<th>Level 1 Wage: $8.25 hour - $17,368 year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 2 Wage: $10.08 hour - $20,960 year</td>
</tr>
<tr>
<td></td>
<td>Level 3 Wage: $11.81 hour - $24,565 year</td>
</tr>
<tr>
<td></td>
<td>Level 4 Wage: $13.54 hour - $28,163 year</td>
</tr>
</tbody>
</table>

Mean Wage (N=28): $11.81 hourly $24,565 year

This wage applies to the following O*Net occupations:

O*Net ID: 24-2111.00 Laborers and Freight, Stock, and Material Movers, Hand

Manually move freight, stock, or other materials or perform other general labor. Includes all manual laborers not elsewhere classified.

O*Net ID: 24-2121.00 Laborers and Freight, Stock, and Material Movers, Hand

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the Skill Level page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is $7.25/hr effective July 24, 2009.
You selected the All Industries database for 7/2014 - 6/2015.

Your search returned the following: Print Format
Area Code: 20910
Area Title: Lafayette, LA MSA

OSA/SOC Code: 51-3022
OSA/SOC Title: Meat, Poultry, and Fish Cutters and Trimmers
GeoLevel: 1
Level 1 Wage: $5.14 hour - $10,331 year
Level 2 Wage: $9.00 hour - $18,720 year
Level 3 Wage: $9.87 hour - $20,530 year
Level 4 Wage: $12.23 hour - $25,316 year

Mean Wage (N=229): $9.87 hour - $20,530 year

This wage applies to the following O*Net occupations:
51-3032.00 Meat, Poultry, and Fish Cutters and Trimmers

Use hand or heat tools to perform routine cutting and trimming of meat, poultry, and seafood.

O*Net* Job Zone: 1
Education & Training Code: No Level Set

For more information on determining the proper occupation and wage level see the new Tracing Wage Guidance on the Skill Level page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is $7.25/hr effective July 24, 2009.

http://www.flodatacenter.com/OesQuickResults.aspx?code=51-3022&area=29180&year=1... 1/16/2011
Summary Report for:
51-3022.00 - Meat, Poultry, and Fish Cutters and Trimmers

Use hand or hand tools to perform routine cutting and trimming of meat, poultry, and seafood.

Sample of reported job titles: Meat Cutter, Trimmer, Deboner, Wing Scorer, Breast Trimmer

View report: Summary Details Custom

Tasks
- Use knives, cleavers, meat saws, bandsaws, or other equipment to perform meat cutting and trimming.
- Clean, trim, slice, and section carcasses for future processing.
- Cut and trim meat to prepare for packing.
- Remove parts, such as skin, feathers, scales or bones, from carcasses.
- Inspect meat products for defects, bruises or blemishes and remove them along with any excess fat.
- Produce hamburger meat and meat trimmings.
- Process primal parts into cuts that are ready for retail use.
- Obtain and distribute specified meat or carcasses.
- Separate meats and byproducts into specified containers and seal containers.
- Weigh meats and tag containers for weight and contents.

Tools & Technology

Tools used in this occupation:
- Commercial use cutlery — Boning knives, Butcher knives, Meat cleavers, Meat banding tools
- Cutting machinery — Deboning machines, Meat saws, Meat-cutting bandsaws; Shredding machines
- Dicing machinery — Cubing machines
- Filling machinery — Needle machines
- Forming machinery — Hamburger patty makers, Pressing machines
- Staple guns — Pneumatic staple guns

Technology used in this occupation:
- Data base user interface and query software — Data entry software
- Internet browser software — Web browser software
- Inventory management software — Meat inventory software

http://www.onetonline.org/link/summary/51-3022.00

1/16/2015
Point of sale POS software — Sales software

Knowledge

Production and Processing — Knowledge of raw materials, production processes, quality control, costs, and other techniques for maximizing the effective manufacture and distribution of goods.

Food Production — Knowledge of techniques and equipment for planting, growing, and harvesting food products (both plant and animal) for consumption, including storage/handling techniques.

Skills

Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.

Coordination — Adjusting actions in relation to others’ actions.

Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.

Monitoring — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.

Speaking — Talking to others to convey information effectively.

Abilities

Problem Sensitivity — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.

Arm/Hand Steadiness — The ability to keep your hand and arm steady while moving your arm or while holding your arm and hand in one position.

Manual Dexterity — The ability to quickly move your hand, your hand together with your arm, or your two hands to grasp, manipulate, or assemble objects.

Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.

Oral Expression — The ability to communicate information and ideas in speaking so others will understand.

Finger Dexterity — The ability to make precisely coordinated movements of the fingers of one or both hands to grasp, manipulate, or assemble very small objects.

Information Ordering — The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).

Near Vision — The ability to see details at close range (within a few feet of the observer).

Speech Clarity — The ability to speak clearly so others can understand you.

Speech Recognition — The ability to identify and understand the speech of another person.

Work Activities

http://www.cotronline.org/link/summary/51-3022.00

1/16/2015
Handling and Moving Objects — Using hands and arms in handling, installing, positioning, and moving materials, and manipulating things.

Performing General Physical Activities — Performing physical activities that require considerable use of your arms and legs and moving your whole body, such as climbing, lifting, balancing, walking, stooping, and handling of materials.

Training and Teaching Others — Identifying the educational needs of others, developing formal educational or training programs or classes, and teaching or instructing others.

**Work Context**

Spend Time Standing — 87% responded "Continually or almost continually."

Spend Time Using Your Hands to Handle, Control, or Feel Objects, Tools, or Controls — 60% responded "Continually or almost continually."

Wear Common Protective or Safety Equipment such as Safety Shoes, Glasses, Gloves, Hearing Protection, Hard Hats, or Life Jackets — 75% responded "Every day."

Physical Proximity — 55% responded "Moderately close (at arm's length)."

Contact With Others — 50% responded "Constant contact with others."

Indoors, Environmentally Controlled — 75% responded "Every day."

Face-to-Face Discussions — 45% responded "Every day."

Responsibility for Outcomes and Results — 35% responded "High responsibility."

Time Pressures — 65% responded "Every day."

Responsible for Others’ Health and Safety — 35% responded "High responsibility."

**Job Zone**

<table>
<thead>
<tr>
<th>Title</th>
<th>Job Zone One: Little or No Preparation Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>Some of these occupations may require a high school diploma or GED certificate.</td>
</tr>
<tr>
<td>Related Experience</td>
<td>Little or no previous work-related skill, knowledge, or experience is needed for these occupations. For example, a person can become a waiter or waitress even if he/she has never worked before.</td>
</tr>
<tr>
<td>Job Training</td>
<td>Employees in these occupations need anywhere from a few days to a few months of training. Usually, an experienced worker could show you how to do the job.</td>
</tr>
<tr>
<td>Job Zone Examples</td>
<td>These occupations involve following instructions and helping others. Examples include taxi drivers, amusement and recreation attendants, counter and rental clerks, nonfarm animal caretakers, continuous mining machine operators, and waiters/waitresses.</td>
</tr>
</tbody>
</table>

**SVP Range**

(Below 4.0)

**Education**

<table>
<thead>
<tr>
<th>Percentage of Respondents</th>
<th>Education Level Required</th>
</tr>
</thead>
</table>

http://www.onetonline.org/link/summary/51-3022.00

1/16/2015
Less than high school diploma
High school diploma or equivalent Y

Interests
Interest code: R
Realistic — Realistic occupations frequently involve work activities that include practical, hands-on problems and solutions. They often deal with plants, animals, and real-world materials like wood, tools, and machinery. Many of the occupations require working outside, and do not involve a lot of paperwork or working closely with others.

Work Styles

Dependability — Job requires being reliable, responsible, and dependable, and fulfilling obligations.
Attention to Detail — Job requires being careful about detail and thorough in completing work tasks.
Concern for Others — Job requires being sensitive to others' needs and feelings and being understanding and helpful on the job.
Cooperation — Job requires being pleasant with others on the job and displaying a good-natured, cooperative attitude.
Self Control — Job requires maintaining composure, keeping emotions in check, controlling anger, and avoiding aggressive behavior, even in very difficult situations.
Adaptability/Flexibility — Job requires being open to change (positive or negative) and to considerable variety in the workplace.
Integrity — Job requires being honest and ethical.
Stress Tolerance — Job requires accepting criticism and dealing calmly and effectively with high stress situations.
Persistence — Job requires persistence in the face of obstacles.
Achievement/Effect — Job requires establishing and maintaining personally challenging achievement goals and exerting effort toward mastering tasks.

Work Values

Support — Occupations that satisfy this work value offer supportive management that stands behind employees. Corresponding needs are Company Policies, Supervision: Human Relations and Supervision: Technical
Relationships — Occupations that satisfy this work value allow employees to provide service to others and work with co-workers in a friendly, non-competitive environment. Corresponding needs are Co-workers, Moral Values and Social Service.
Working Conditions — Occupations that satisfy this work value offer job security and good working conditions. Corresponding needs are Activity, Compensation, Independence, Security, Variety and Working Conditions.
Related Occupations

35-2011.00 Cooks, Fast Food
35-2014.00 Cooks, Restaurant
35-2015.00 Cooks, Short Order
35-2021.00 Food Preparation Workers □ Bright Outlook
35-3021.00 Combined Food Preparation and Serving Workers, Including Fast Food □
35-3041.00 Food Servers, Nonrestaurant □
35-8011.00 Dining Room and Catering Attendants and Bartender Helpers □
35-8021.00 Dishwashers □
51-3031.00 Butchers and Meat Cutters
51-3023.00 Slaughterers and Meat Packers

Wages & Employment Trends

Median wages (2013) $11.12 hourly, $23,120 annual

State wages

Employment (2012) 163,000 employees
Projected growth (2012-2022) Slower than average (3% to 7%)
Projected job openings (2012-2022) 49,000

State trends

Top industries (2012) Manufacturing, Retail Trade

Job Openings on the Web

Sources of Additional Information

Disclaimer: Sources are listed to provide additional information on related jobs, specialties, and/or industries. Links to non-DOL internet sites are provided for your convenience and do not constitute an endorsement.


http://www.onlinelink.org/link/summary/51-3022.00

1/16/2015
FLC Wage Results New Quick Search New Search Wizard

You selected the All Industries database for 7/2014 - 6/2015.

Your search returned the following: Print Format

Area Code: 29180
Area Title: Lafayette, LA MSA
OSA/SOC Code: 53-7062
OSA/SOC Title: Laborers and Freight, Stock, and Material Movers, Hand
GeoLevel: 1

Level 1 Wage: $8.56 hour - $17,865 year
Level 2 Wage: $10.46 hour - $21,757 year
Level 3 Wage: $12.35 hour - $25,688 year
Level 4 Wage: $14.25 hour - $29,665 year
Mean Wage (m=396): $12.35 hour - $25,688 year

This wage applies to the following O*Net occupations:

53-7062.00 Laborers and Freight, Stock, and Material Movers, Hand
Manually move freight, stock, or other materials or perform other general labor. Includes all manual laborers not elsewhere classified.
O*Net ~ 302200.00

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the Skill Level page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is $7.25/hr effective July 24, 2009.

DeShaun on LAP51NQ082 with DISTILLER
Summary Report for:
53-7062.00 - Laborers and Freight, Stock, and Material Movers, Hand

Manually move freight, stock, or other materials or perform other general labor. Includes all manual laborers not elsewhere classified.

Sample of reported job titles: Dock Worker, Laborer, Line Tender, Loader, Material Handler, Merchandiser, Pickup/Receiving Associate, Receiver, Receiving Associate, Shipping and Receiving Materials Handler, Warehouse Worker

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Move freight, stock, or other materials to and from storage or production areas, loading docks, delivery vehicles, ships, or containers, by hand or using trucks, tractors, or other equipment.</td>
<td></td>
</tr>
<tr>
<td>Sort cargo before loading and unloading.</td>
<td></td>
</tr>
<tr>
<td>Attach identifying tags to containers or mark them with identifying information.</td>
<td></td>
</tr>
<tr>
<td>Read work orders or receive oral instructions to determine work assignments or material or equipment needs.</td>
<td></td>
</tr>
<tr>
<td>Stack cargo in locations such as transit sheds or in holds of ships as directed, using pallets or cargo boards.</td>
<td></td>
</tr>
<tr>
<td>Record numbers of units handled or moved, using daily production sheets or work tickets.</td>
<td></td>
</tr>
<tr>
<td>Install protective devices, such as bracing, padding, or strapping, to prevent shifting or damage to items being transported.</td>
<td></td>
</tr>
<tr>
<td>Direct succulents and position receptacles, such as bins, carts, or containers so they can be loaded.</td>
<td></td>
</tr>
<tr>
<td>Attach slings, hooks, or other devices to lift cargo and guide loads.</td>
<td></td>
</tr>
<tr>
<td>Maintain equipment storage areas to ensure that inventory is protected.</td>
<td></td>
</tr>
</tbody>
</table>

Tools & Technology

Tools used in this occupation:
- Forklifts
- Lift trucks
- Hammers — Claw hammers
- Hoists — Power hoists
- Pallet trucks — Pallet jacks; Pallet transport trucks
- Track cranes — Overhead cranes
- Wrapping machinery — Bonding machines

http://www.onetonline.org/link/summary/53-7062.00
Technology used in this occupation:

- Data base user interface and query software — Data entry software
- Industrial control software — Machine control software
- Inventory management software — Inventory tracking software
- Spreadsheet software

Knowledge

No knowledge met the minimum score.

Skills

No skills met the minimum score.

Abilities

Static Strength — The ability to exert maximum muscle force to lift, push, pull, or carry objects.

Multilimb Coordination — The ability to coordinate two or more limbs (for example, two arms, two legs, or one leg and one arm) while sitting, standing, or lying down. It does not involve performing the activities while the whole body is in motion.

Trunk Strength — The ability to use your abdominal and lower back muscles to support part of the body repeatedly or continuously over time without giving out or fatiguing.

Control Precision — The ability to quickly and repeatedly adjust the controls of a machine or a vehicle to exact positions.

Manual Dexterity — The ability to quickly move your hand, your hand together with your arm, or your two hands to grasp, manipulate, or assemble objects.

Near Vision — The ability to see details at close range (within a few feet of the observer).

Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.

Stamina — The ability to exert yourself physically over long periods of time without getting winded or out of breath.

Deductive Reasoning — The ability to apply general rules to specific problems to produce answers that make sense.

Dynamic Strength — The ability to exert muscle force repeatedly or continuously over time. This involves muscular endurance and resistance to muscle fatigue.

Work Activities

Performing General Physical Activities — Performing physical activities that require considerable use of your arms and legs and moving your whole body, such as climbing, lifting, balancing, walking, stooping, and handling of materials.

http://www.onetonline.org/link/summary/53-7062.00

1/16/2018
Handling and Moving Objects — Using hands and arms in handling, installing, positioning, and moving materials, and manipulating things.

Identifying Objects, Actions, and Events — Identifying information by categorizing, estimating, recognizing differences or similarities, and detecting changes in circumstances or events.

Controlling Machines and Processes — Using either control mechanisms or direct physical activity to operate machines or processes (not including computers or vehicles).

Operating Vehicles, Mechanized Devices, or Equipment — Running, maneuvering, navigating, or driving vehicles or mechanized equipment, such as forklifts, passenger vehicles, aircraft, or water craft.

Establishing and Maintaining Interpersonal Relationships — Developing constructive and cooperative working relationships with others, and maintaining them over time.

Evaluating Information to Determine Compliance with Standards — Using relevant information and individual judgment to determine whether events or processes comply with laws, regulations, or standards.

Communicating with Supervisors, Peers, or Subordinates — Providing information to supervisors, peers, orsubordinates by telephone, in written form, e-mail, or in person.

Getting Information — Observing, receiving, and otherwise obtaining information from all relevant sources.

Making Decisions and Solving Problems — Analyzing information and evaluating results to choose the best solution and solve problems.

Work Context

Face-to-Face Discussions — 93% responded “Every day.”

Work With Work Group or Team — 71% responded “Extremely important.”

Spend Time Using Your Hands to Handle, Control, or Feel Objects, Tools, or Controls — 55% responded “Continuously or almost continuously.”

Wear Common Protective or Safety Equipment such as Safety Shoes, Gloves, Hearing Protection, Hard Hats, or Life Jackets — 87% responded “Every day.”

Time Pressure — 72% responded “Every day.”

Frequency of Decision Making — 71% responded “Every day.”

Indoors, Environmentally Controlled — 81% responded “Every day.”

Importance of Being Exact or Accurate — 29% responded “Extremely important.”

In an Open Vehicle or Equipment — 75% responded “Every day.”

Contact With Others — 56% responded “Constant contact with others.”

Job Zone

Title | Job Zone Two: Some Preparation Needed

Education | These occupations usually require a high school diploma.

Related Experience | Some previous work-related skills, knowledge, or experience is usually needed. For example, a teller would benefit from experience working directly with the public.

Job Training | Employees in these occupations need anywhere from a few months to one year of working with experienced employees. A recognized apprenticeship program may be associated with these occupations.

http://www.onetonline.org/link/summary/53-7062.00

1/16/2015
Job Zone: These occupations often involve using your knowledge and skills to help others.
Examples: Examples include sheet metal workers, forest firefighters, customer service representatives, physical therapists, salespersons (retail), and tellers.
SVP Range: (4.0 to < 6.0)

Education

<table>
<thead>
<tr>
<th>Percentage of Responding</th>
<th>Education Level Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>70%</td>
<td>High school diploma or equivalent</td>
</tr>
<tr>
<td>19%</td>
<td>Less than high school diploma</td>
</tr>
<tr>
<td>5%</td>
<td>Some college, no degree</td>
</tr>
</tbody>
</table>

Credentials

Interests

Interest code: R

Realistic — Realistic occupations frequently involve work activities that include practical, hands-on problems and solutions. They often deal with plants, animals, and real-world materials like wood, tools, and machinery.
Many of the occupations require working outside, and do not involve a lot of paperwork or working closely with others.

Work Styles

Dependability — Job requires being reliable, responsible, and dependable, and fulfilling obligations.
Stress Tolerance — Job requires accepting criticism and dealing calmly and effectively with high stress situations.
Achievement/Effort — Job requires establishing and maintaining personally challenging achievement goals and exerting effort toward mastering tasks.
Integrity — Job requires being honest and ethical.
Attention to Detail — Job requires being careful about detail and thorough in completing work tasks.
Cooperation — Job requires being pleasant with others on the job and displaying a good-natured, cooperative attitude.
Adaptability/Flexibility — Job requires being open to change (positive or negative) and to considerable variety in the workplace.
Self Control — Job requires maintaining composure, keeping emotions in check, controlling anger, and avoiding aggressive behavior, even in very difficult situations.

http://www.onetonline.org/link/summary/53-7062.00

1/16/2015
Initiative — Job requires a willingness to take on responsibilities and challenges.  
Persistence — Job requires persistence in the face of obstacles.

Work Values

Relationships — Occupations that satisfy this work value allow employees to provide service to others and work with co-workers in a friendly, non-competitive environment. Corresponding needs are Co-workers, Moral Values, and Social Service.

Support — Occupations that satisfy this work value offer supportive management that stands behind employees. Corresponding needs are Company Policies, Supervision: Human Relations and Supervision: Technical.

Working Conditions — Occupations that satisfy this work value offer job security and good working conditions. Corresponding needs are Activity, Compensation, Independence, Security, Variety and Working Conditions.

Related Occupations

43-5041.00  Meter Readers, Utilities
47-2151.00  Poleplacers
47-2171.00  Reinforcing Iron and Rebar Workers
47-4031.00  Fence Erectors  Bright Outlook
47-0061.00  Ball-Track Laying and Maintenance Equipment Operators  * Go Green
51-5113.00  Print Binding and Finishing Workers
51-7041.00  Sewing Machine Setters, Operators, and Tenders, Wood
51-6111.00  Packaging and Filling Machine Operators and Tenders
51-6196.07  Molding and Casting Workers
53-7051.00  Industrial Truck and Tractor Operators

Wages & Employment Trends

Median wages (2013) $11.52 hourly, $23,970 annual
State wages  
Employment (2012) 2,157,000 employees
Projected growth (2012-2022) 8% to 14%
Projected job openings (2012-2022) 22,500
State trends  
Top Industries (2012) Transportation and Warehousing
Administrative and Support Services

Job Openings on the Web

Sources of Additional Information

Disclaimer: Sources are listed to provide additional information on related jobs, specialties, and/or industries. Links to non-DOL Internet sites are provided for your convenience and do not constitute an endorsement.

Cap Count for H-2B Nonimmigrants

The H-2B Program

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs.

For more information about the H-2B program, see the link “H-2B Non-Agricultural Workers.”

What is the H-2B Cap?

There is a statutory numerical limit, or “cap,” on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year. Currently, Congress has set the H-2B cap at 66,000 per fiscal year, with 33,000 for workers who begin employment in the first half of the fiscal year (October 1 – March 31) and 33,000 for workers who begin employment in the second half of the fiscal year (April 1 – September 30). Any unused numbers from the first half of the fiscal year will be available for employers seeking to hire H-2B workers during the second half of the fiscal year, however, unused H-2B numbers from one fiscal year do not carry over into the next.

Workers who are exempt from the H-2B cap

Petitions for the following workers are exempt from the H-2B cap:

- H-2B workers in the United States or abroad who have been previously counted towards the cap in the same fiscal year;
- Current H-2B workers seeking an extension of stay;
- Current H-2B workers seeking a change of employer or term of employment;
- Fish crew members, fish crew leaders, and fish processors;
- H-2B workers performing labor or services from November 28, 2009, until December 31, 2018, in the Commonwealth of Northern Mariana Islands and Guam.

Additionally, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against the cap.

Once the H-2B cap is reached, USCIS will only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap

USCIS has reached the congressionally mandated 66,000 cap for fiscal year (FY) 2015. March 30, 2015 was the final receipt date for cap-subject H-2B worker petitions requesting an employment start date after October 1, 2015. The final receipt date is the date USCIS received enough cap-subject petitions to reach the annual limit of 66,000 H-2B workers for FY 2015.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Petitioning</th>
<th>Target Beneficiaries</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B: 1st half FY 2015</td>
<td>33,000</td>
<td>On Jan. 26, 2015, the cap for the 1st half of FY 2015 was reached.</td>
<td></td>
<td>33,000</td>
<td>1/26/2015</td>
<td></td>
</tr>
<tr>
<td>H-2B: 2nd half FY 2015</td>
<td>33,000</td>
<td>On March 30, 2015, the annual cap for FY 2015 was reached.</td>
<td></td>
<td>33,000</td>
<td>3/30/2015</td>
<td></td>
</tr>
</tbody>
</table>

1 Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be lower than the actual cap.

2 If the cap is not reached for the 1st half of the fiscal year, those unused numbers will be available for use during the 2nd half of the fiscal year. In some fiscal years, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

This page can be found at http://www.uscis.gov/h-2b-count
Cap Count for H-2B Nonimmigrants

The H-2B Program

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs. For more information about the H-2B program, see the link to the left under "H-2B Non-Agricultural Workers."

What is the H-2B Cap?

There is a statutory numerical limit, or "cap," on the total number of aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year will be made available for use by employers seeking to hire H-2B workers during the second half of the fiscal year. There is no "carry over" of unused H-2B numbers from one fiscal year to the next.

Persons who are exempt from the H-2B cap

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted again against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt from the H-2B cap:

- Fish and processors, fish and processing technicians and supervisors of fish and processing;
- From November 28, 2006 until December 31, 2019, workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Pending</th>
<th>Target (Beneficiaries)</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B, 1st half FY 2015</td>
<td>33,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H-2B, 2nd half FY 2015</td>
<td>33,000</td>
<td>14,740</td>
<td>1,779</td>
<td>16,519</td>
<td>2/27/2015</td>
<td></td>
</tr>
</tbody>
</table>

1 Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and rejections. This number will always be higher than the actual cap.

2 As noted, if the cap is not reached for the 1st half of the fiscal year, those numbers will be made available for use during the 2nd half of the fiscal year. In some fiscal years, therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

This page can be found at http://www.uscis.gov/h-2b_count

Cap Count for H-2B Nonimmigrants

The H-2B Program

The H-2B non-agricultural temporary worker program allows US employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs.

For more information about the H-2B program, see the link to the left under "H-2B Non-Agricultural Workers."

What is the H-2B Cap?

There is a statutory numerical limit, or "cap," on the total number of aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year will be made available for use by employers seeking to hire H-2B workers during the second half of the fiscal year. There is no "carry over" of unused H-2B numbers from one fiscal year to the next.

Persons who are exempt from the H-2B cap

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted again against the H-2B cap. Similarly, the spouses and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt from the H-2B cap:

- Fish and shellfish harvesters, fish and shellfish processors, and fish and shellfish preparers.
- Fish and shellfish harvesters, fish and shellfish processors, and fish and shellfish preparers who are nonmarried single workers employed in the Commonwealth of the Northern Mariana Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

**UPDATE:** The congressionally mandated H-2B cap for the first half of fiscal year (FY) 2015 has been reached. Jan. 26, 2015 was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2015. The final receipt date is when USCIS received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the first half of FY 2015. This means that no cap numbers from the first half of FY 2015 will carry over to the second half of FY 2015, which begins on April 1, 2015.

### Cap Count for Fiscal Year 2015

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Pending</th>
<th>Target Beneficiaries</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B 1st Half FY 2015</td>
<td>33,000</td>
<td>14,740</td>
<td>1,775</td>
<td>33,000</td>
<td>16,516</td>
<td>2/27/2015</td>
</tr>
<tr>
<td>H-2B 2nd Half FY 2015</td>
<td>33,000</td>
<td>14,740</td>
<td>1,775</td>
<td>33,000</td>
<td>16,516</td>
<td>2/27/2015</td>
</tr>
</tbody>
</table>

1. Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

2. As noted, if the cap is not reached for the 1st half of the fiscal year, those numbers will be made available for use during the 2nd half of the fiscal year. As some fiscal years, therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

This page can be found at [http://www.uscis.gov.h-2b-count](http://www.uscis.gov.h-2b-count)

Cap Count for H-2B Nonimmigrants

U.S. Citizenship and Immigration Services

Cap Count for H-2B Nonimmigrants

The H-2B Program

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs. For more information about the H-2B program, see the link to the left under "H-2B Non-Agricultural Workers."

What Is the H-2B Cap?

There is a statutory numerical limit, or "cap," on the total number of aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 65,000 per fiscal year, with 33,000 to be allocated for employment beginning in the first half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the second half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year will be made available for use by employers seeking to hire H-2B workers during the second half of the fiscal year. There is no "carry over" of unused H-2B numbers from one fiscal year to the next.

Persons who are exempt from the H-2B cap:

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt from the H-2B cap:

- Fish care processors, fish care technicians and/or supervisors of fish care processing.
- From November 28, 2009 until December 31, 2015, workers performing labor or services in the Commonwealth of Northern Marianas Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

UPDATE: The congressionally mandated H-2B cap for the first half of fiscal year (FY) 2015 has been reached. Jan. 26, 2015 was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2015. The final receipt date is when USCIS received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the first half of FY 2015. This means that no cap numbers from the first half of FY 2015 will carry over to the second half of FY 2015, which begins on April 1, 2015.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Filing</th>
<th>Target Beneficiaries</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B, 1st half FY 2015</td>
<td>33,000</td>
<td></td>
<td></td>
<td></td>
<td>1/26/2015</td>
<td></td>
</tr>
<tr>
<td>H-2B, 2nd half FY 2015</td>
<td>33,000</td>
<td>14,740</td>
<td>1,779</td>
<td>16,519</td>
<td>2/27/2015</td>
<td></td>
</tr>
</tbody>
</table>

1 Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and rejections. This number may always be higher than the actual cap.

2 As noted, if the cap is not reached for the first half of the fiscal year, those numbers will be made available for use during the second half of the fiscal year for all fiscal years. Therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the second half of the fiscal year.

This page can be found at: [http://www.uscis.gov/h-2b-count](http://www.uscis.gov/h-2b-count)
USCIS Temporarily Suspends Adjudication of H-2B Petitions Following Court Order

As of March 3, 2015, USCIS is temporarily suspending adjudication of Form I-129 petitions for temporary non-agricultural workers while the agency considers the appropriate response to the court order in Perez v. Perez, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015).

Due to this decision, starting March 6, the Department of Labor (DOL) is no longer accepting or processing requests for prevailing wage determinations or applications for temporary labor certifications in the H-2B program. DOL is considering its options in light of the court's decision. (See DOL Office of Foreign Labor Certification for more details.)

Because H-2B petitions require temporary labor certifications issued by DOL, USCIS has also temporarily suspended adjudication of H-2B petitions. USCIS will continue adjudicating H-2B petitions for non-agricultural temporary workers on Guam if the petitions are accompanied by temporary labor certifications issued by the Guam Department of Labor.

Starting March 6, 2015, USCIS has also suspended premium processing for all H-2B petitions until further notice. If a petitioner has already filed an H-2B petition using the premium processing service and the agency did not act on the case within the 15 calendar-day period, USCIS will issue a refund.

Please continue to check www.uscis.gov for updates.

Last Reviewed/Updated: 03/06/2015

http://www.uscis.gov/news/uscis-temporarily-suspends-adjudication-h-2b-petitions-following-court-order... 03/06/2015
Cap Count for H-2B Nonimmigrants

The H-2B Program

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs.

For more information about the H-2B program, see the link to the left under "H-2B Non-Agricultural Workers."

What is the H-2B Cap?

There is a statutory numerical limit, or "cap," on the total number of aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year will be made available for use by employers seeking to hire H-2B workers during the second half of the fiscal year. There is no "carry over" of unused H-2B numbers from one fiscal year to the next.

Persons who are exempt from the H-2B cap

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted against the H-2B cap. Similarly, the spouse and child(ren) of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt from the H-2B cap:

- Fish processing workers, fish processing technicians and supervisors of fish processing;
- From November 28, 2008 until December 31, 2018, workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

UPDATE: The Congressionally mandated H-2B cap for the first half of fiscal year (FY) 2015 has been reached. Jan. 26, 2015 was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2015. The final receipt date is when USCIS received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the first half of FY 2015. This means that no cap numbers from the first half of FY 2015 will carry over to the second half of FY 2015, which begins on April 1, 2015.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Pending</th>
<th>Total</th>
<th>End of Last Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B, 1st half FY 2015</td>
<td>33,000</td>
<td></td>
<td></td>
<td>11,105</td>
<td>2/13/2015</td>
</tr>
<tr>
<td>H-2B, 2nd half FY 2015</td>
<td>33,000†</td>
<td>9,761</td>
<td>1,345</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

† Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

As noted, if the cap is not reached for the 1st half of the fiscal year, those numbers will be made available for use during the 2nd half of the fiscal year. In some fiscal years, therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

*This page can be found at http://www.uscis.gov/h-2b-count

Cap Count for H-2B Nonimmigrants

The H-2B Program

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Persons who are exempt from the H-2B cap:

- Fish and fishery technicians and pond supervisors.
- Workers in the territories of Guam, the Northern Mariana Islands, and the Commonwealth of the Northern Mariana Islands.

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted again against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt from the H-2B cap:

Fiscal Year 2016 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2016, the chart below will be regularly updated.

**UPDATE.** The congressionally mandated H-2B cap for the first half of fiscal year (FY) 2016 has been reached. Jan. 28, 2015 was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2015. The final receipt date is when USCIS received enough cap-subject petitions to reach the limit of 33,000 H-2B workers for the first half of FY 2016. This means that no cap numbers from the first half of FY 2016 will carry over to the second half of FY 2016, which begins on April 1, 2016.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Pending</th>
<th>Target Beneficiaries</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B 1st half FY 2016</td>
<td>33,000</td>
<td>On Jan 28, 2015, the cap for the 1st half of FY 2015 was reached.</td>
<td></td>
<td></td>
<td>11,106</td>
<td>2/13/2015</td>
</tr>
<tr>
<td>H-2B 2nd half FY 2016</td>
<td>33,000</td>
<td>9,761</td>
<td>1,345</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

2 As noted, if the cap is not reached for the 1st half of the fiscal year, none of the numbers will be made available for use during the 2nd half of the fiscal year. In some fiscal years, therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

This page can be found at http://www.uscis.gov/h-2b-count


2/24/2015
Cap Count for H-2B Nonimmigrants

The H-2B Program

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Persons who are exempt from the H-2B cap

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt the H-2B cap:

- Fish can processors, fish can technicians and/or supervisors of fish can processing.
- From November 28, 2009 until December 31, 2013, workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

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<table>
<thead>
<tr>
<th>H-2B 1st Half FY 2015</th>
<th>33,000</th>
<th>On Jan. 26, 2015, the cap for the 1st half of FY 2015 was reached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B 2nd Half FY 2015</td>
<td>33,000</td>
<td>5,810</td>
</tr>
</tbody>
</table>

1 Refer to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

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More Information
- H-2A and H-2B - Signature Requirements For Electronically Filed Temporary Labor Certifications and the H Classification Supplement to Form I-129 Questions & Answers
- Calculating Intermittent Stays for the H-2 Classifications
- USCIS Announces 58 Countries Whose Nationals are Eligible for H-2A and H-2B Participation
- Reminder: Certain Fees May Not Be Collected From H-2A and H-2B Workers

Forms
- I-129B, Petition for a Nonimmigrant Worker
- Premium Processing
- Employment Based Forms

Other USCIS Links
- VIBE Program
- TITLE 8 CODE OF FEDERAL REGULATIONS (8 CFR)
- Numerical Limitation Exemption for Nonimmigrants Employed in the CNMI and Guam (§143.48)

Last Reviewed/Updated: 02/10/2015
Cap Count for H-2B Nonimmigrants

The H-2B Program

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Persons who are exempt from the H-2B cap

Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted against the H-2B cap. Similarly, the spouse and children of H-2B workers classified as H-4 nonimmigrants are not counted against this cap. Additionally, petitions for the following types of workers are exempt the H-2B cap:

- Fish can processors, fish can technicians and/or supervisors of fish can processing.
- From November 28, 2009 until December 31, 2019, workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) and/or Guam.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Fiscal Year 2015 H-2B Cap Count

As USCIS receives H-2B petitions for Fiscal Year 2015, the chart below will be regularly updated.

<table>
<thead>
<tr>
<th>Cap Type</th>
<th>Cap Amount</th>
<th>Beneficiaries Approved</th>
<th>Rejections Pending</th>
<th>Target Rejections</th>
<th>Total Available</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B 1st half FY 2015</td>
<td>33,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1/28/2015</td>
</tr>
<tr>
<td>H-2B 2nd half FY 2015</td>
<td>33,000</td>
<td>2,155</td>
<td>4,852</td>
<td></td>
<td>7,012</td>
<td>10/23/2015</td>
</tr>
</tbody>
</table>

1 Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

2 As noted, if the cap is not reached for the 1st half of the fiscal year, those numbers will be made available for use during the 2nd half of the fiscal year. In some fiscal years, therefore, depending on demand for H-2B workers, more than 33,000 cap-subject persons may be granted H-2B status during the 2nd half of the fiscal year.

This page can be found at [http://www.uscis.gov/work-relations/99457.txt](http://www.uscis.gov/work-relations/99457.txt)
<table>
<thead>
<tr>
<th>Cap Type</th>
<th>First Available</th>
<th>Beneficiaries Approved</th>
<th>Beneficiaries Petitioning</th>
<th>Total Beneficiaries</th>
<th>Total</th>
<th>Date of Last Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>H-2B: 1st Half FY 2016</td>
<td>33,000</td>
<td>18,841</td>
<td>4,729</td>
<td>23,570</td>
<td>12/28/2014</td>
<td></td>
</tr>
<tr>
<td>H-2B: 2nd Half FY 2016</td>
<td>33,000</td>
<td>0</td>
<td>1,231</td>
<td>1,231</td>
<td>12/28/2014</td>
<td></td>
</tr>
</tbody>
</table>

1. Refers to the estimated number of beneficiaries needed to be included on petitions filed with USCIS to reach the H-2B cap, with an allowance for withdrawals, denials, and revocations. This number will always be higher than the actual cap.

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This page can be found at http://www.uscis.gov/h-2b_count
Kelly J. Couch

From: tlc.chicago@dol.gov
Sent: Thursday, April 16, 2015 3:16 PM
To: kellycouch1@gmail.com
Cc: kellycouch1@gmail.com
Subject: H2B: WITHDRAWAL NOTIFICATION TO REQUESTOR POINT OF CONTACT

Re: Withdrawal of Case Number: H-400-15011-726210

This is an official notification that the ETA Form 9142 - Application for Temporary Employment Certification, filing date 01/11/2015, covering 25 worker(s) for the position of Crab and crawfish seafood processors during the period of employment beginning 02/16/2015 through 12/05/2015 (case number H-400-15011-726210) has been WITHDRAWN in accordance with your request received on 04/02/2015.

Reason:
Other Acceptable Withdrawal Reason

No further action will be taken by the U.S. Department of Labor on this case.

Withdrawn case on 4-2-15. Notify
email not reco until 4-16-15.
April 2, 2015

Randol, Inc.
2320 Kalliste Saloom Road
Lafayette, LA 70508
337-981-7080

STATEMENT REQUESTING WITHDRAWL OF CERTIFIED APPLICATION

Dear CNPC,

This is to confirm that we are requesting to WITHDRAW our certified application H-400-15011-726210. In addition, we will be mailing today via priority mail a package that contains the same previously certified ETA 9142B application for H2B employees.

Should you need anything further please do not hesitate.

Thank You,

Frank Randol

Please note we withdrew 1st application as cap had already been reached. This would allow us to resubmit a 2nd application (all new people) to try for 4-1-15 release date.
USPS Tracking

Tracking Number: 8470/0349933075133998927

Updated Delivery Date: Saturday, April 4, 2015
Scheduled Delivery Date: Friday, April 3, 2015, 10:30 am
Money Back Guarantee
Signed for By: PLAIDED H CHICAGO, IL 60605 H 15:03 am

Product & Tracking Information
Postal Service: FedEx
Postal Service Express 1-Day
Expedited: Yes
Address: ICDT
Up to $100 insurance included
Any additional apply

DATE: 4/3/15
STATUS: DELIVERED
CHICAGO, IL 60605

4/3/15, 10:54 am Arrived at Post Office CHICAGO, IL 60603
4/3/15, 7:05 am Arrived at USPS Facility CHICAGO, IL 60601
4/3/15, 5:07 pm Departed USPS Facility BATON ROUGE, LA 70805
4/3/15, 7:10 pm Arrived at USPS Drop Off Facility BATON ROUGE, LA 70805
4/2/15, 10:00 am Departed Post office NEW ORLEANS, LA 70110
4/2/15, 12:20 pm Acceptance NEW ORLEANS, LA 70110

Available Actions
Arrival of Delivery
Track Updates

Track Another Package

Tracking or receipt number: Track 1.
<table>
<thead>
<tr>
<th>Label Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9470 1035 9930 0012 3555 07</td>
<td>Click-N-Ship® Label Record</td>
</tr>
</tbody>
</table>

**PRIORITY MAIL EXPRESS**

**Click-N-Ship® Label Record**

**DO NOT MAIL**

**Label Information**

**From:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>KELLY J. COUCH</td>
<td>COUCH APPLICATION SERVICE ASSISTANCE LLC</td>
<td>231 PECAN AVE, NEW ORLEANS, LA 70112-2113</td>
</tr>
</tbody>
</table>

**To:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>CERTIFYING OFFICER HSB - H-002</td>
<td>1025 EAGLE AVENUE, CHICAGO, IL 60626-0001</td>
<td></td>
</tr>
</tbody>
</table>

**Signature Service:**

**Ship Date:** 06/01/2013

**Scheduled Delivery Date:** 06/03/2013

**Signature:**

**Total postage & fees:** $33.11

**Packaging & handling:**

**Insurance:**

**Total:**

**Total:**

**Usps Employee For service failure refunds, follow standard refund procedures.
January 26, 2015

Randol, Inc.
C/O COUCH KELLY J.
COUCH APPLICATION SERVICE
ASSISTANCE, LLC
231 PECAN AVENUE

NEW ROADS, LA 70760

Dear Employer:

On December 5, 2014, the United States Court of Appeals for the Third Circuit issued a decision in Comite de Apoyo a los Trabajadores Agricolas et al v. Solis, No. 14-3557. That order vacated the portion of the Department's H-2B wage rule (20 CFR § 655.10(f)) that permits the use of employer-provided wage surveys in making prevailing wage determinations. The prevailing wage determination that was previously issued to you and which was based on an employer provided survey is therefore invalid. The correct prevailing wage determination is set forth below. In accordance with the employer's declaration in Appendix B.1, the employer is responsible for compliance with this supplemental prevailing wage determination (PWD) upon receipt of notification by DOL.

The National Prevailing Wage Center identified the appropriate Application(s) for PWD (ETA Form 9141) associated with the occupation:

P-400-14227-355546

Additional Notes:
The employer's job duties represent a combination of 53-7082 - Laborers and Freight Stock, and Material Movers, Hand and 51-3022.00 - Meat, Poultry, and Fish Cutters and Trimmers.

STATE: LA
COUNTY: NELLA: Lafayette Parish
AREA: 2320 Kolata Saloom Rd
WAGE SOURCE: OES
PREVAILING WAGE: $12.35 per hour
SOC CODE: 53-7082
SOC TITLE: Laborers and Freight, Stock, and Material Movers, Hand

Wage increase per hour from survey
rate of 7.25/hour to 12.35 hourly
Request for Redetermination

An employer who desires to utilize an appropriate Service Contract Act or Davis Bacon Act wage determinations or a wage based on a Collective Bargaining Agreement (CBA) should file a redetermination request in accordance with DOL’s regulations at 20 CFR § 655.10(g). Such a request must be submitted within 30 days of the date of this letter. The redetermination request must clearly identify the prevailing wage determination for which review is sought and the grounds on which redetermination is sought. The employer must submit the request via email to FLC.FR.DR@ dol.gov or to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
National Prevailing Wage Center
Attn: SPW Redetermination
1341 G Street, NW
Suite 201
Washington, D.C. 20205-3105

Should the employer choose to file a new request for redetermination as a means for requesting use of an alternative prevailing wage source (SCA/DBA/CBA), the NPWC will accept requests for the purposes of this determination only. For any future prevailing wage determination requests, the employer must include a request for an alternative source with its original request. Should the employer seek to use an SCA or DBA wage determination, the request must specify precisely which SCA or DBA wage determination is being used. Redetermination cannot be requested on issues related to the ability to utilize an employer provided wage survey.

No prevailing wage issued by the U.S. Department of Labor permits an employer to pay a wage lower than the highest wage required by any applicable Federal, State, or local law.

Sincerely,

NPWC
U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604  

FINAL DETERMINATION  

January 28, 2015  

Kelly J. Couch  
Couch Application Service Assistance, LLC  
231 Pecan Avenue  
New Roads, LA 70760  

Case Number: H-400-15011-726210  

RE: Randol, Inc.  

Dear Sir/Madam:  

Your application seeking temporary labor certification under the H-2B temporary nonagricultural program has been reviewed and certified. The Department of Labor (Department) has made a final determination on your Application for Temporary Employment Certification in accordance with Departmental regulations at 20 Code of Federal Regulations (CFR) sec. 655, Subpart A. Based on the documentation and attestations provided by the employer, the Department hereby certifies that a sufficient number of able, willing and qualified U.S. workers have not been identified as being available at the time and place needed to fill the job opportunities for which certification is sought, and the employment of the H-2B temporary workers in such labor or services will not adversely affect the wages and working conditions of U.S. workers similarly employed.  

The Application for Temporary Employment Certification, ETA Form 9142, has been certified and is enclosed.  

Upon receipt of this notification, you will need to submit Form I-129 and all required documentation, including the original, certified H-2B Application for Temporary Employment Certification to the appropriate U.S. Citizenship and Immigration Service (USCIS) office. The USCIS application form and additional information can be obtained at http://www.uscis.gov.  

IMPORTANT NOTE: The employer must sign and date the ETA Form 9142 prior to submission to USCIS.
Important Reminders:

In accordance with Departmental regulations at 20 CFR sec. 655.24(a), the Department has the authority to conduct audits of certified H-2B applications. Employers selected for audit examination will receive an official letter from our office requesting documentation in support of the certified H-2B application. Failure to comply with the audit process may result in the employer being placed on supervised recruitment in accordance with Departmental regulations at 20 CFR sec. 655.50, or debarment in accordance with Departmental regulations at 20 CFR sec. 655.31.

In accordance with Departmental regulations at 20 CFR sec. 655.22(f), upon separation from employment of H-2B worker(s) employed under the labor certification application, if such separation occurs prior to the end date of the employment specified in the application, the employer will notify the Department and DHS in writing of the separation from employment not later than 2 work days after such separation is discovered by the employer. An abandonment or abscondment shall be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer. Employees may be terminated for cause.

Terminations and job abandonment notifications sent to the Department must be sent to the email address at TLC.Chicago@DOL.gov. Employers without internet access may also send written notification via facsimile to (312) 836-1688 (ATTN: H-2B Abandonment and Termination).

Questions concerning this case can be directed via e-mail to TLC.Chicago@DOL.gov, via phone at (312) 886-8000, or via facsimile at (312) 886-1688.

Sincerely,

OFLC Certifying Officer

CC: Randol, Inc.

Enclosures: ETA Form 9142
H-2B Application for Temporary Employment Certification

ETA Form 9142B

U.S. Department of Labor

Please read and review the filing instructions carefully before completing the ETA Form 9142B. A copy of the instructions can be found at https://www.foreignlaborcertolol.gov. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form electronically, ALL required fields must be completed as well as any fields where a response is conditional as indicated by the section ( *) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (same classification symbol) *
   H-2B

B. Temporary Need Information

1. Job Title: Crab and Crawfish Seafood Processors

2. SOC (ONET-OES) Code *
   63-7082

3. SOC (ONET-OES) occupation title *
   Laborers and Freight Stock and Material Movers, Hand

4. Is this a full-time position? *
   Yes

5. Period of Intended Employment
   Begin Date: 02/16/2016
   End Date: 12/02/2016

6. Total Worker Positions Being Requested for Certification *
   25

Basis for the visa classification supported by this application

   25 a. New employment *
   b. Continuation of previously approved employment *
      without change with the same employer
   c. Change in employer *
   d. New concurrent employment *
   e. Change in previously approved employment *
      without change with the same employer
   f. Amended petition *

C. Nature of Temporary Need (Choose only one of the standards) *
   4 Seasonal
   1 Peaked
   2 One-Time Occurrence
   3 Intermittent or Other Temporary Need

SEE ADDENDUM

We are a small plant who processes Louisiana seafood products crab and crawfish. In a typical year about 5000 to 9000 pounds of fresh seafood is unboxed for processing at our plant. All work is done by hand, one piece at a time. We end up with a complete product having head, shell and all waste removed. This is a time consuming and very tedious task. The seafood processor work and production are by nature, both temporary and seasonal. Beginning in Feb, when the waters begin to warm up, the season begins and these workers will pass our permanent employees throughout the warm spring and summer months throughout the fall until normally the end of Nov or beginning of Dec when the waters begin to cool off again. The seafood catch normally falls off until the warm waters return again in the spring usually late Feb-Mar yearly. Therefore workers will be needed Feb-early Dec for this seasonal, temporary need and not needed throughout the remainder of Dec, Jan and early Feb. We will use these off season months for maintenance, repairs and all general plant upkeep in order to be prepared for the arrival of crab and crawfish the following spring. Without these
### C. Employer Information

**Important Note:** Enter the full name of the individual employer, partnership, or corporation and all other required information in this section for each employee or master application filed on behalf of more than one employer under the H-2A program. Identify the main or primary employer in the section below and then submit a separate completed form for each employer by name, mailing address, and state/workplace location not under the application.

<table>
<thead>
<tr>
<th>1. Legal business name</th>
<th>Ranco, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Trade name/Doing Business As (DBA) if applicable</td>
<td>N/A</td>
</tr>
<tr>
<td>3. Address 1</td>
<td>2320 Kellis Sales Road</td>
</tr>
<tr>
<td>4. Address 2</td>
<td>N/A</td>
</tr>
<tr>
<td>5. City</td>
<td>Lafayette</td>
</tr>
<tr>
<td>6. State</td>
<td>LA</td>
</tr>
<tr>
<td>7. Postal code</td>
<td>70508</td>
</tr>
<tr>
<td>8. Country</td>
<td>UNITED STATES OF AMERICA</td>
</tr>
<tr>
<td>9. Province</td>
<td>Lafayette Parish</td>
</tr>
<tr>
<td>10. Telephone number</td>
<td>337-961-7080</td>
</tr>
<tr>
<td>11. Extension</td>
<td>N/A</td>
</tr>
<tr>
<td>12. Federal Employer Identification Number (FEIN or IRS)</td>
<td>720769014</td>
</tr>
<tr>
<td>13. NAICS code (must be at least 4 digits)</td>
<td>311712</td>
</tr>
<tr>
<td>14. Number of non-family full-time equivalent employees</td>
<td>3</td>
</tr>
<tr>
<td>15. Annual gross revenue</td>
<td>$1971</td>
</tr>
<tr>
<td>16. Year established</td>
<td>1971</td>
</tr>
</tbody>
</table>

**17. Type of employer application (please only choose one):**
- Individual Employer
- H-2A Labor Contractor or Job Contractor
- Association = Sole Employer (H-2A only)
- Association = Joint Employer (H-2A only)
- Association = Filing as Agent (H-2A only)

### D. Employer Point of Contact Information

**Important Note:** The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the attorney or other contact information listed in Section E. Unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employee under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer under the application).

| 1. Contact's last (family) name | Ranco |
| 2. First (given) name | Frank |
| 3. Middle name(s) | Beaulieu |
| 4. Contact's job title | President |
| 5. Address 1 | 2320 Kellis Sales Road |
| 6. Address 2 | N/A |
| 7. City | Lafayette |
| 8. State | LA |
| 9. Postal code | 70508 |
| 10. Country | UNITED STATES OF AMERICA |
| 11. Province | Lafayette Parish |
| 12. Telephone number | 337-961-7080 |
| 13. Extension | N/A |
| 14. Email address | kellypouch1@gmail.com |
6. Attorney or Agent Information (If applicable)

<table>
<thead>
<tr>
<th>1. Is the employer represented by an attorney or agent in the filing of this application (including associations acting as agents under the H-2A program)? Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Attorney or Agent's last (family) name</td>
<td>COUCH</td>
</tr>
<tr>
<td>3. First (given) name</td>
<td>J.</td>
</tr>
<tr>
<td>4. Middle names</td>
<td>KELLY</td>
</tr>
<tr>
<td>5. Address 1</td>
<td>231 PECAN AVENUE</td>
</tr>
<tr>
<td>6. Address 2</td>
<td>N/A</td>
</tr>
<tr>
<td>7. City</td>
<td>NEW ROADS</td>
</tr>
<tr>
<td>8. State</td>
<td>LA</td>
</tr>
<tr>
<td>9. Postal code</td>
<td>70760</td>
</tr>
<tr>
<td>10. Country</td>
<td>UNITED STATES OF AMERICA</td>
</tr>
<tr>
<td>11. Telephone number</td>
<td>225-638-7219</td>
</tr>
<tr>
<td>12. Extension</td>
<td>N/A</td>
</tr>
<tr>
<td>13. Email address</td>
<td><a href="mailto:kellycouch1@gmail.com">kellycouch1@gmail.com</a></td>
</tr>
<tr>
<td>14. Law firm/business name</td>
<td>COUCH APPLICATION SERVICE ASSISTANCE, LLC</td>
</tr>
<tr>
<td>15. Law firm/business address</td>
<td>POINTE COUPEE PARISH</td>
</tr>
<tr>
<td>16. Law firm/business phone</td>
<td>272-9380856</td>
</tr>
<tr>
<td>17. State Bar number (only for attorney)</td>
<td>N/A</td>
</tr>
<tr>
<td>18. Name of the highest court where attorney is in good standing (only if attorney)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

F. Job Offer Information

4. Job Description

| 1. Job Title | Crab and crawfish seafood processors |
| 2. Number of hours of work per week | 35 |
| 3. Hourly Work Schedule | A.M. (m, m, m, m) | P.M. (m, m, m, m) |
| 4. Does this position supervise the work of other employees? | Yes | No |
| 5. Job duties - A description of the duties to be performed MUST begin in this space. If necessary, add attachment to continue and complete description. |

Workers needed to debead, dump sacks, extract meat, fill baskets/tubers, grade, ice pack, package, peel, prepare, process, remove/discard waste, seal, wash, weigh, Box, refrigerate/freeze, load/unload trucks, and clean/disinfect work sites.
### H-2B Application for Temporary Employment Certification

**ETA Form 91428**

**U.S. Department of Labor**

#### G. Rate of Pay

<table>
<thead>
<tr>
<th>From</th>
<th>To (Optional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$12</td>
<td>$12</td>
</tr>
<tr>
<td>$35</td>
<td>$35</td>
</tr>
</tbody>
</table>

#### 2a. If Piece Rate is indicated, in question 2, specify the wage offer requirements and N/A.

#### 3. Additional Wage Information (e.g., multiple workers, applications, different work, or other special procedures).

**SEE ADDENDUM**


#### H. Recruitment Information

1. Name of State Workforce Agency (SWA) serving the area of intended employment:

   **Louisiana Workforce Commission**

2. SWA job order identification number:

   **512024**

   2a. Start date of SWA job order:

   **11/07/2014**

   2b. End date of SWA job order:

   **11/15/2014**

3. Is there a Sunday section of a newspaper (of general circulation) in the area of intended employment?

   **Yes**

   **No**

4. Name of Newspaper/Publication (must be printed in English for H-2B workers):

   **The Lafayette Daily Advertiser**

   From **11/11/2014**

   To **11/12/2014**

5. **The Lafayette Daily Advertiser**

   From **11/13/2014**

   To **11/14/2014**

6. Additional Recruitment Activities for H-2B program. Use the space below to identify the type(s) of recruitment, geographic location(s) of recruitment, and the date(s) on which recruitment was conducted.

   In addition, we ran online with the **Advertiser** on the same dates of Nov 9 and again on November 12, 2014.

   We also ran online with the Louisiana Workforce Commission from November 7 - November 12, 2014.
1. Declaration of Employer and Attorney/Agent

In accordance with Federal regulations, the employer must attest that it will abide by certain terms, assurances, and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Applications that fail to attach Appendix A or Appendix B will be considered incomplete and not accepted for processing by the ETA application processing center.

1. For H-2A Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances, and obligations contained in Appendix A.

   □ Yes □ No □ N/A

2. For H-2B Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances, and obligations contained in Appendix B.

   □ Yes □ No □ N/A

J. Preparer

Complete this section if the preparer of this application is a person other than the one identified as either Section B (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name ...........................................................................................................
   N/A

2. First (given) name ...........................................................................................................
   N/A

3. Middle initial ....................................................................................................................
   N/A

4. Job Title ...........................................................................................................................
   N/A

5. Firm/Business name ...........................................................................................................
   N/A

6. E-Mail address ...................................................................................................................
   N/A

K. U.S. Government Agency Use (ONLY)

Pursuant to the provisions of Section 101(a)(5)(B) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. Similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is from ______ to ______

Department of Labor Office of Foreign Labor Certification

Case number

CERTIFIED

L. Public Burden Statement (1/20/2003)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 2.5 hours to complete the form and 25 minutes per response for all other H-2A, the data needed, and completing and reviewing the collection of information. You are not required to respond to this collection of information unless you have been authorized to do so in writing. Please send comments regarding this burden estimate or any other aspect of the information collection to the Office of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210 or by email. Public Burden Statement. Please do not send the completed application to this address.
ADDITIONAL SECTION 6A Social Requirements

2. Employer may require background and drug screen. Costs, if any, to be borne by employer. ETA 9120.902

3. Hours and schedule may vary.

4. Pay all deductions, security fee.

5. May be placed on probationary employment, which will be terminated to ensure ETA 9120.902 on non-compliance.

6. Up to 90 days notice provided to employee otherwise.

7. No on the job training.

8. No education requirement.

9. In any event, Section 13, 14.

10. Any other provision as related to PROTOCOL agreed to under the agreement.

11. Must not be subject to drug or alcohol testing.
H-2B Application for Temporary Employment Certification
ETA Form 91429 – APPENDIX B
U.S. Department of Labor

For Use in Filing Applications Under the H-2B Non-Agricultural Program ONLY

A. Attorney or Agent Declaration

I hereby certify that I am an employee of, or hired by, the employer noted in Section C of the ETA Form 91429, and that I have been designated by that employer to act on its behalf in connection with this application. I also certify that to the best of my knowledge the information contained herein is true and correct, understanding that by knowing or furnishing false information in the preparation of this form and any supplement thereto, I may be subject to a fine of $500 for each violation, and to a fine of $10,000 and imprisonment for six months for each violation. I further certify that in making this application I have not knowingly made any false certification.

1. Attorney or agent’s last (family) name: COUCH
2. First given name: KELLY
3. Middle initial: J

4. Firm/business name: COUCH APPLICATION SERVICE ASSISTANCE, LLC

5. E-mail address: kellycouch1@gmail.com

6. Signature: [Signature]

Data signed: [Signature]

B. Employer Declaration

By virtue of the signature below, I HEREBY CERTIFY the following statements of employment.

1. The job opportunity is bona fide and one temporary position, the qualifications for which are consistent with the normal and accepted qualifications required by non-H-2B employers in the same or comparable occupations.

2. The job opportunity is not vacant because the former occupant is on sick leave or locked out in the course of a labor dispute involving a work stoppage.

3. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, sex, religion, handicap, or citizenship, and the employer has conducted an extensive search to rehire the former occupant, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants to fill the job opportunity for which certification is sought. Any U.S. workers who applied or applied for the job have or will be rehired only for lawful, job-related reasons, and the employer will retain records of all rehires.

4. The offered terms and working conditions of the job are not less favorable than those offered to the foreign workers and are not less favorable than the applicable Federal, State, or local minimum wage, and the employer will pay the offered wage.

5. The offered wage equals or exceeds the highest of the most recent prevailing wage, which is to be issued by the Department to the employer for the area in which the job is to be performed, or the applicable Federal, State, or local minimum wage, and the employer will pay the offered wage.

6. The offered wage is not based on commission, piece-rate, or other incentive, unless the employee guarantees a wage paid on a weekly, biweekly, or monthly basis that equals or exceeds the prevailing wage, or the applicable Federal, State, or local minimum wage, whichever is higher.

7. During the period of employment, the employer will comply with all applicable Federal, State, or local employment-related laws and regulations, including employment-related health and safety laws.

8. The employer has not laid off and will not lay off any similarly employed U.S. workers in the occupation that is the subject of the application for the extension of the employment certification, and that the employer has not adversely affected any similarly employed U.S. workers in the occupation that is the subject of the application for the extension of the employment certification, by laying off, discharging, orotherwise failing to rehire the workers for lawful, job-related reasons.

EPA Form 91429 - Appendix B

For Department of Labor Use Only

Page 8 of 13

Cert Number: H-002-2011-722310
Cert Status: CERTIFIED
Period of employment: [Insert period of employment]

[Signature]

Date: [Insert date]
November 21, 2014

Randols
2320 Kaliste Saloom Road
Lafayette, LA 70508

Re: Crawfish Season

Dear Randols:

The crawfish industry in the United States is a seasonal industry that is vital to Louisiana aquaculture and fisheries.

The early live crawfish are from farmed ponds and are sold primarily to the whole live restaurant market. Once the main season arrives, the wild basin crawfish start appearing on the market and the prices drop so the processing plants may start peeling for the fresh and frozen tail meat markets.

Louisiana produces approximately 126 million pounds of live weight crawfish a year. Last season the farm gate value of that crop was almost $209 million. The majority of those crawfish were managed by our processors whether destined for the live or tail meat market.

Frozen tail meat is available to the consumer year round thanks to the efforts of our processing plants. Even though our processing plants only operate for a portion of the year, consumers can count on having crawfish available whenever they desire an etouffe, a pot of jambalaya or savory bowl of gumbo.

Thank you for your dedication to this industry and best regards!

Sincerely yours,

Carrie Castille, PhD
Associate Commissioner
Randol, Inc.
2320 Kaliste Saloom Road
Lafayette, LA 70506
337-981-7080

Designated occupation: Cannery worker for seafood process plant
Payroll Reporting Period: Calendar Year 2012

<table>
<thead>
<tr>
<th>Month</th>
<th>Permanent Employment</th>
<th>Temporary Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Workers</td>
<td>Total Hours Worked</td>
</tr>
<tr>
<td>January</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>February</td>
<td>0</td>
<td>0</td>
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<tr>
<td>March</td>
<td>24</td>
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<tr>
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<tr>
<td>November</td>
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<td>3944.84</td>
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<tr>
<td>December</td>
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</tr>
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</table>

Designated occupation: Cannery worker for seafood process plant
Payroll Reporting Period: Calendar Year 2013

<table>
<thead>
<tr>
<th>Month</th>
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</tr>
</thead>
<tbody>
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<td></td>
<td>Total Workers</td>
<td>Total Hours Worked</td>
</tr>
<tr>
<td>January</td>
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<td>0</td>
</tr>
<tr>
<td>February</td>
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<td>0</td>
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<tr>
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</tr>
<tr>
<td>December</td>
<td>15</td>
<td>2137.51</td>
</tr>
</tbody>
</table>

I certify that the information contained on this monthly payroll report is accurate and based upon the individual payroll records maintained by Randol, Inc. for Calendar Year(s) 2012 and 2013.

Frank Randol, President
Randol Inc.

Date: 1/30/2014
<table>
<thead>
<tr>
<th>Month</th>
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<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Jan</td>
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<td>12-Jan</td>
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</tr>
<tr>
<td>1-Feb</td>
<td>112,056.00</td>
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</tr>
<tr>
<td>1-Mar</td>
<td>118,706.00</td>
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</tr>
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<td>1-Apr</td>
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<td>97,130.00</td>
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<tr>
<td>1-Jun</td>
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<td>12-Jun</td>
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<tr>
<td>1-Jul</td>
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<td>12-Jul</td>
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<td>1-Nov</td>
<td>97,757.00</td>
<td>12-Nov</td>
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<tr>
<td>1-Dec</td>
<td>97,124.00</td>
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<td>13-Dec</td>
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**AVG** $602,614.00 $555,954.00 $399,117.00

*OFF SEASON SALES - PROZEN*

This being true and correct monthly sales record for Randol, Inc.

[Signature]

Randol, Inc.
2220 Kalaite Saloon Rd
Lafayette, LA 70508
337-981-7080

“A/R Receivers Normally 30 Days”
Kelly J. Couch

From: Randols <randols@aol.com>
Sent: Monday, November 10, 2014 11:42 AM
To: Kelly J. Couch
Subject: Re: Randol's Sunday tear sheet

Randols Inc does NOT have Union affiliation...

Frank

Sent from Frank Randol iPhone 6+

On Nov 10, 2014, at 11:08 AM, Kelly J. Couch <kellycouch1@gmail.com> wrote:

Frank,

1. Do you have any UNION affiliation?
2. Here is a copy of Sunday 11/9/14 tear sheet.

Thanks! kc

From: Edgerson, Adrian <mailto:adigerson@gannett.com>
Sent: Monday, November 10, 2014 10:39 AM
To: Kelly Couch
Subject: RE: Contact Information Lafayette

Kelly,

Here is the tear sheet from Sunday. I will send the other tear sheet Thursday as well as get the physical tear sheets sent out to you as well.

Let me know if you need anything else.

Adrian Edgerson
Sales Consultant
Gannett | GardnerBulldog.com
888-892-4240 Toll Free
adigerson@gannett.com

From: Kelly Couch <mailto:kellycouch1@gmail.com>
Sent: Monday, November 10, 2014 11:53 AM
To: Edgerson, Adrian
Subject: Re: Contact Information Lafayette

Can you shoot me the Sun Run...then I'll need hard copies for Sun and we'd,
## North American Industry Classification System

### 2007 NAICS Definition

#### 311712 Fresh and Frozen Seafood Processing

This U.S. industry comprises establishments primarily engaged in one or more of the following: (1) deboning fresh fish by removing heads, fins, scales, bones, and entrails; (2) shucking and packing fresh shellfish; (3) manufacturing frozen seafood; and (4) processing fresh and frozen marine fish and crustaceans.

**Cross-References:** Establishments primarily engaged in:
- Canning and preserving seafood are classified in U.S. Industry 311711, Seafood Canning.

<table>
<thead>
<tr>
<th>2002</th>
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<tr>
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<tr>
<td>Corresponding Index</td>
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<tr>
<td>311712</td>
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</table>

### Figures and Tables

#### Table 1: Industry Classification System

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>311712</td>
<td>Fresh and Frozen Seafood Processing</td>
</tr>
</tbody>
</table>

### Footnotes

(PDF) or Excel opens a file in Acrobat's Portable Document Format. To view the file, you will need the Adobe Reader available free from Adobe. Excel opens a file in Microsoft Excel Format. To view the file, you will need Microsoft Excel Viewer available free from Microsoft. This symbol indicates a link to a non-government website. Outlining to these sites does not constitute an endorsement of any product, service or the information found on them. Once you link to another site you are subject to the policies of the new site.

**Source:** U.S. Census Bureau | North American Industry Classification System (NAICS) | (888) 755-2427 | naics@censtats.gov | Law

**Revised:** May 13, 2013
Dear Kelly Couch,

Thank you for your inquiry. Your application was received on January 11, 2015 and assigned for processing.

You will be receiving correspondence about your case soon.

Sincerely,

Chicago National Processing Center

*This email is intended solely for the person or entity to which it is addressed and may contain confidential and/or privileged information. Any review, dissemination, copying or other use of this e-mail by persons or entities other than the addressee is prohibited. If you have received this e-mail in error, please reply to the sender immediately that you have received the message and delete the message from any computer.*

From: Couch Application Service - Kelly [mailto:couchapplicationserv@tas.gov]
Sent: Monday, January 12, 2015 12:58 PM
To: Couch Application Service - Kelly
Subject: RE: Randols Inc. H-400-15011-726210 #1142

Dear TLC,

The website gave me this pasted error (exception occurred) however the portal shows that this case is in process.

Could you please verify that this case has been submitted for certification as I have conflicting responses from this DOL website submission. Should you need, feel free to phone. Thank you, Kelly Couch 225-638-7218

An Exception Occurred

The ICERT System is unable to process your request at this time.

Some exceptions are temporary and may resolve on your next attempt. If a second attempt does not resolve the problem, please refrain from further attempts and email ICERT Help Desk. Please refer to No. 10198008 and include a detailed explanation of your actions in the application at the time when you received this message.

Up to 10 are shown

H-400-15011-726210 H-2B Randol, Inc. 01/11/2015 in process
Dear TLC,

The website gave me this error: exception occurred however the portal shows that this case is in process.

Could you please verify that this case has been submitted for certification as I have conflicting responses from the DOL website submission. Should you need, feel free to phone. Thank you, Kelly Couch 225-638-7218

An Exception Occurred

The ICERT system is unable to process your request at this time.

Some exceptions are temporary and may resolve on your next attempt. If a second attempt does not resolve the problem, please refrain from further attempts and email ICERT Help Desk. Please refer to No. 145000 and include a detailed explanation of your actions in the application at the time you received this message.

Up to 10 are shown

H-400-15011-726210  H-28  Randol, Inc. 01/11/2015 In process

Please note new email address: kellycouch3@gmail.com

Couch Application Service Assistance, LLC.
Kelly J. Couch
231 Pocan Avenue
New Roads, LA 70760
225-638-7218 phone
225-638-7127 preferred fax
225-638-7219 alternate fax

Submitted 1/11/15
Advertisements for the position advertised in the area are run online and in local newspapers. Applicants interested in the job should contact the office of the Department of Workforce Development. Interviews for the position will be held on the specified dates.

1. SWA: Dawn Richard, 315 Traveller Road, Lafayette, LA 70508. 337-581-4130. 
   - Address: 315 Traveller Road, Lafayette, LA 70508
   - Phone: 337-581-4130
   - Email: info@sw Jaw and backpacks are required. Letter of recommendation from a previous employer is preferred. To date, no responses from Dawn. Not hired.

2. SWA: Aaron A. Brooks, 301 Cameron Street, Apartment 1, Lafayette, LA 70501. 337-332-8588. 
   - Address: 301 Cameron Street, Lafayette, LA 70501
   - Phone: 337-332-8588
   - Email: info@sw Jaw and backpacks are required. Letter of recommendation from a previous employer is preferred. To date, no responses from Aaron. Not hired.

The notices above are for the position advertised in the area. The closing date for applications is 12-22-2016. Applicants must submit resumes and a cover letter with a copy of their resume. Interviews for the position will be held on the specified dates.

I certify that the information provided is true and correct and understand that this information will be used in labor certification.

[Signature]

Date: 12-22-2016
Randols Inc.
2320 Kalliste Saloom Road
Lafayette, LA 70508
337-981-7080

Aaron J. Brooks
301 Cameron Street Apartment A
Lafayette, LA 70501

November 17, 2014

Dear Aaron,

Recently you applied online for a position with Randols, Inc. to date you have not called or came in to apply. If you are interested in the below position offered, please complete the attached application and give us a call. Thank You.

s/Frank Randol
Randols, Inc.

Job Description and advertisement:

25 temp H2B positions as crab and crawfish seafood processors (53-7062, 51-3022) approx. 10 months duration. Begins 2/16/2015 thru 12/05/2015 $7.35 hrly, (11.03 OT) 8 pm – 4 am, M-F, some Sat/Sun, hrs/schedule/overtime may vary. Employer may require post hire, random drug screen, upon suspicion or post accident, employer paid. Payroll deductions as required by law. No on the job training, no education requirement. Workers needed to dehead, dump sacks, extract meat, fil baskets/tables, grade, ice pack, package, peel, prepare, process, remove/discard waste, seal, wash, weigh. Box, refrigerator/freeze, load/unload trucks and cleanup/cartonize worksite and any other activities as related to PWD/DOL assigned SOC code as per onet online.org. Must not be allergic to crab or crawfish. 35 hrs wk. No experience required. After initial 60 hours of processing employee must be able to peel 4.25 lb or more per hour. May be paid per lb @ employer discretion, which at all time will meet or exceed ETA 9142 certified hourly wage. Unpaid 30 minute breaks available at employee discretion. Job offered by Randol Inc, contact Frank Randol, 2320 Kalliste Saloom Road, Lafayette, LA 70508, 337-981-7080 JO # 512024.
<table>
<thead>
<tr>
<th><strong>Contact Information</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant Name:</strong></td>
<td>AARON J. BROOKS</td>
</tr>
</tbody>
</table>
| **Address:** | 301 Cameron St apt a
Lafayette, LA 70501 US |
| **Primary Phone:** | (337) 222-8299(Cell/Mobile Phone) |
| **Alternate Phone:** | (337) 371-0042(Cell/Mobile Phone) |

<table>
<thead>
<tr>
<th><strong>Candidate Summary</strong></th>
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<tbody>
<tr>
<td><strong>Name and Location:</strong></td>
<td>AARON BROOKS of Lafayette, LA</td>
</tr>
<tr>
<td><strong>Occupation Experience:</strong></td>
<td>(List includes &amp; Entry/Exit Dates &amp; Experience as Meat, Poultry, and Fish Cutters and Processors)</td>
</tr>
<tr>
<td><strong>Highest Level of Education:</strong></td>
<td>11th Grade Completed</td>
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<td><strong>Indications:</strong></td>
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<tr>
<td><strong>Auto Rank:</strong></td>
<td>0%</td>
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<tr>
<td><strong>Your Rating:</strong></td>
<td>Not yet rated</td>
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<table>
<thead>
<tr>
<th><strong>Candidate Location</strong></th>
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<tr>
<td><strong>Distance from Location/Work Site:</strong></td>
<td>Estimated 5.2 miles</td>
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<tr>
<td><strong>Willing to Travel:</strong></td>
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<tr>
<td><strong>Willing To Relocate:</strong></td>
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<td><strong>Willing To Telecommute:</strong></td>
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<th><strong>Specialized Qualifications</strong></th>
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<td><strong>Typing Speed:</strong></td>
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<td><strong>Languages/Proficiency:</strong></td>
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<td><strong>Application Method:</strong></td>
<td>By Phone on 11/15/2014 10:31:32 AM</td>
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<td><strong>Applicant Status:</strong></td>
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<td><strong>Comments:</strong></td>
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<table>
<thead>
<tr>
<th>Company Name</th>
<th>Location</th>
<th>Job Title (Occupation)</th>
<th>Start/End Dates</th>
<th>Duration of Job</th>
<th>Gross Salary</th>
<th>Reason for Separation</th>
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<tbody>
<tr>
<td>Winn-Dixie Montgomery LLC</td>
<td>P O BOX 283</td>
<td>Stocker (Assessors)</td>
<td>03/2014 - 10/2014</td>
<td>7 months</td>
<td>Confidential</td>
<td>Confidential</td>
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<tr>
<td>Checkers of Lafayette Area</td>
<td>115 W Willow St Lafayette, LA</td>
<td>Cashier (Cashiers)</td>
<td>04/2014 - 05/2014</td>
<td>4 months</td>
<td>Confidential</td>
<td>Confidential</td>
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<tr>
<td>I Hop 2006</td>
<td>J 33 N Evangeline Thruway Lafayette, LA</td>
<td>Cook Chef (Chefs and Head Cooks)</td>
<td>03/2012 - 11/2013</td>
<td>1 year, 8 months</td>
<td>Confidential</td>
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<tr>
<td>Motel 6 Operating LP</td>
<td>P O BOX 283</td>
<td>Housekeeper/Custodian/Laundry Worker (Maids and Housekeeping Cleaners)</td>
<td>05/2012 - 09/2013</td>
<td>1 year, 3 months</td>
<td>Confidential</td>
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<td>Lafayette Parish School Board</td>
<td>Lafayette, LA</td>
<td>Custodial Laborer (Janitors and Cleaners, Except Maids and Housekeeping Cleaners)</td>
<td>01/2010 - 01/2011</td>
<td>1 year</td>
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<tr>
<td>Hog Wild Bar-B-Q LLC</td>
<td>Lafayette, LA</td>
<td>Dishwasher (Dishwashers)</td>
<td>05/2007 - 12/2010</td>
<td>3 years, 7 months</td>
<td>Confidential</td>
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<td>Super S</td>
<td>Baton Rouge, LA</td>
<td>Housekeeper (Janitors and Cleaners, Except Maids and Housekeeping Cleaners)</td>
<td>01/2008 - 09/2008</td>
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<td>Copeland</td>
<td>Lafayette, LA</td>
<td>Dishwasher (Dishwashers)</td>
<td></td>
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</table>
VerDate Sep 11 2014 12:00 Apr 20, 2016 Jkt 000000 PO 00000 Frm 00157 Fmt 6601 Sfmt 6601 C:\DOCS\99457.TXT SHAWN
DeShaun on LAP51NQ082 with DISTILLER

Occupational Experience

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<th>Experience</th>
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<td>No Occupational Experience</td>
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Education and Training

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<th>Course of Study</th>
<th>Issuing Institution</th>
<th>Location</th>
<th>Completion Date</th>
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<td>General High School Curriculum</td>
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<td>Lafayette, LA</td>
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Occupational Licenses & Certificates

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<th>Completion Date</th>
<th>State</th>
<th>Country</th>
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<td>No Occupational License(s) - Certificates</td>
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Skills

List View: Job 5/16

There are no skills to display

### Career Readiness Certificate Assessment

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<th>WorkKeys® Skill</th>
<th>Individual Score</th>
<th>Job Order Minimum</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Applied Mathematics</td>
<td></td>
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<tr>
<td>Locating Information</td>
<td></td>
<td>No Score Recommended</td>
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</tr>
<tr>
<td>Reading for Information</td>
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<td>Career Readiness Certificate:</td>
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### Other Foundational Skills Assessments

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<th>Job Order Minimum</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Applied Technology</td>
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<td>No Score Recommended</td>
<td></td>
</tr>
<tr>
<td>Business Writing</td>
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<td>No Score Recommended</td>
<td></td>
</tr>
<tr>
<td>Listening</td>
<td></td>
<td>No Score Recommended</td>
<td></td>
</tr>
<tr>
<td>Observation</td>
<td></td>
<td>No Score Recommended</td>
<td></td>
</tr>
<tr>
<td>Teamwork</td>
<td></td>
<td>No Score Recommended</td>
<td></td>
</tr>
<tr>
<td>Writing</td>
<td></td>
<td>No Score Recommended</td>
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</table>

### Typing Speed

No data available for this item.

### Languages and Proficiency

No data available for this item.

### Current Technology

<table>
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<tr>
<th>Technology</th>
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<tbody>
<tr>
<td>a la mode Pocket TOTAL</td>
</tr>
<tr>
<td>a la mode WinTOTAL</td>
</tr>
<tr>
<td>ADP eTIME</td>
</tr>
<tr>
<td>Akanda field operations collaborative user system FOCUS software</td>
</tr>
<tr>
<td>Apex IV Assessor</td>
</tr>
<tr>
<td>Apex IV Fee Appraiser</td>
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<tr>
<td>Apex Monh/Sketch</td>
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<tr>
<td>Ascend Property Assessment</td>
</tr>
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</table>

atValue Narrative Report Software
Axoya Systems Nutritionist Pro software
Barrington Software Cook'nPro Commercial
Bradford ClickFORMS
Bunzl Really eteighborhoods
Business Management Systems Municipal Geographic Management System MGAMS
Compass Municipal Services CAMApro
Computer assisted mass appraisal CAMA software
Computerized bed control system software
Computerized maintenance management system CMMS software
Concierge Systems Report Concierge
CostGuard software
Culinary Software Services ChefTec
Custom/CAMA software
Data entry software
EGS CALC MENU software
EGS F&B Control
Email software
Emerald Data Deed-Chek
eTrac software
FBS Data Systems Flexmls
Food Software.com iPro Restaurant Inventory, Recipe & Menu Software
GCS Property Assessment and Tax Billing
Geomechanical design analysis GDA software
GNOME Gnuchile
Govern Software GovMap
Govern Software Land and Permits Management System
Greenbrier Graphics Deed Plotter
Hansen CAMA
HornetValue Plus software
Howard and Friends Computer OMA Plus
HP 4GG+ Appraiser Fee Calculator
InforMap MapDraw Deed Wrapper
Internet browser software
Inventory tracking software
Minutran MVP Tax
Minutran ProVal Plus
Mass appraisal records system MARS software
Menu planning software
<table>
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<tr>
<th>Current Tools</th>
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<tbody>
<tr>
<td>Apple cores</td>
<td></td>
</tr>
<tr>
<td>Appraisal, mapping, and comparison data reporting systems</td>
<td></td>
</tr>
<tr>
<td>Backpack vacuums</td>
<td></td>
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<tr>
<td>Blast chillers</td>
<td></td>
</tr>
<tr>
<td>Blenders</td>
<td></td>
</tr>
<tr>
<td>Bone saws</td>
<td></td>
</tr>
<tr>
<td>Boning knives</td>
<td></td>
</tr>
<tr>
<td>Box graters</td>
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<td>Braziors</td>
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</table>

Bread slicers
Broilers
Cake decorating tools
Cappuccino makers
Carbonated beverage dispensers
Carpet shampooers
Carpet steamers
Chef's knives
Cleaning brushes
Cleaning scrapers
Clothes ironing equipment
Commercial coffee grinders
Commercial coffeemakers
Commercial dishwashers
Convection ovens
Conveyor ovens
Cream whippers
Desk top computers
Double boilers
Dry or liquid measuring cups
Dust masks
Dust mops
Dusters
Electric deep-fat fryers
Electric ovens
Electric toasters
Electronic food mills
Electronic scales
Fire suppression blankets
Floodlights
Floor burnishers
Floor scrubbing machines
Food slicers
Food processors
Food shredders
Food smokers
Fruit zesters
Garbage compactors
Gas ovens
Gas stoves
Gas-powered deep-fat fryers
Skriddies
Grills
Handheld distance meters
Hot dog cookers
Household dryers
Household washers
Housekeeping carts
Ice shaving or crushing equipment
Ice-making machines
Industrial dryers
Industrial sewing machines
Industrial vacuum cleaners
Infrared heat lamps
Instant-read pocket thermometers
Juice dispensers
Juice extractors
Kitchen fire extinguishers
Kitchen shears
Kitchen tongs
Knife sharpeners
Laptop computers
Laser measuring devices
Light commercial washing machines
Mandolines
Mapping and geographic analysis systems
Mapping or location-based analysis systems
Meat grinders
Meat slicers
Meat thermometers
Melon ballers
Microwave ovens
Mixers
Mop wringers
Multi-line telephone systems
Oyster knives
Paring knives
Pastry cutters
Pasta machines
Personal computers
Personal digital assistants PDA
Pizza ovens
Plane graters
Portion scales
Power floor buffers
Pressure washers
Pressurized steam cookers
Protective face shields
Push brooms
Real estate mapping and property description systems
Refrigerator thermometers
Rice cookers
Rolling pins
Rotisserie units
Safety blades
Safety goggles
Salamanders
Scouring pads
Serrated blade knives
Sieves
Sifters
Slicing machines
Sponges
Spray bottles
Squeegees
Standing HEPA vacuums
Steam kettles
Steam pressers
Steam tables
Steam-operated sterilizers
Step ladders
Strainers
Tile brushes
Toasters
Toilet brushes
Trash bags
Ultrasonic distance measurers
Vegetable brushes
Vegetable peelers
Vinyl gloves
Waffle makers
Washer extractors
Wet mops
Wet-dry vacuums
Woks
Work scrubs

References
Please Contact this Individual Regarding References

This job does not have a question set associated with it.

Driver's License Information

Do you have a valid Driver's license? No

Do you have access to a motor vehicle? Yes

Do you rely on public transportation? No

View/Add Notes

<table>
<thead>
<tr>
<th>Note</th>
<th>Create Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

No notes have been made.
Randol's Inc,
2320 Kaliste Saloom Road
Lafayette, LA 70508
337-981-7080

Dawn Richard
326 Travailleur Road
Lafayette, LA 70506

November 10, 2014

Dear Dawn,

Recently you applied online for a position with Randol's, Inc. to date you have not called or came in to apply. If you are interested in the below position offered, please complete the attached application and give us a call. Thank You.

s/Frank Randol
Randol's, Inc.

Job Description and advertisement:

25 temp H2B positions as crab and crawfish seafood processors (53-7062, 51-3022) approx. 10 months duration. Begins 2/16/2015 thru 12/05/2015 $7.35 hryl, (1.13 OT) 8 pm – 4 am, M-F, some Sat/Sun, hrs/schedule/overtime may vary. Employer may require post hire, random drug screen, upon suspicion or post accident, employer paid. Payroll deductions as required by law. No on the job training, no education requirement. Workers needed to dehead, dump sacks, extract meat, fill baskets/tables, grade, ice pack, package, peel, prepare, process, remove/discard waste, seal, wash, weigh. Box, refrigerate/freeze, load/unload trucks and cleanup/sanitize worksite and any other activities as related to PWD/DOL assigned SOC code per onet online.org. Must not be allergic to crab or crawfish. 35 hrs wk. No experience required. After initial 60 hours of processing employee must be able to peel 4.25 lb or more per hour. May be paid per lb @ employer discretion, which at all times will meet or exceed ETA 9142 certified hourly wage. Unpaid 30 minute breaks available at employee discretion. Job offered by Randol Inc, contact Frank Randol, 2320 Kaliste Saloom Road, Lafayette, LA 70508, 337-981-7080 JO # 512024.
### Contact Information

<table>
<thead>
<tr>
<th>Applicant Name:</th>
<th>Dawn Richard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>326 Travailleur Rd, Lafayette, LA 70506 US</td>
</tr>
<tr>
<td>Primary Phone:</td>
<td>(337) 981-4139</td>
</tr>
<tr>
<td>Alternate Phone:</td>
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</table>

### Candidate Summary

<table>
<thead>
<tr>
<th>Name and Location:</th>
<th>Dawn Richard of Lafayette, LA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupation Experience:</td>
<td>(List requires 3 months of experience as Meat, Pastry, and Fish Cultor and Tomatoe)</td>
</tr>
<tr>
<td>Highest Level of Education:</td>
<td>9th Grade Completed</td>
</tr>
<tr>
<td>Indicators:</td>
<td></td>
</tr>
<tr>
<td>Auto Rank:</td>
<td>0%</td>
</tr>
<tr>
<td>Your Rating:</td>
<td>Not yet rated</td>
</tr>
</tbody>
</table>

### Candidate Location

| Distance from Location/Work Site: | Estimated 4.1 miles |
| Willing to Travel: | Not Specified |
| Willing To Relocate: | Not Specified |
| Willing To Telecommute: | Not Specified |

### Specialized Qualifications

| Certificates: | Not Specified |
| Security Clearance: | Not Specified |
| Typing Speed: | Not Specified |
| Language/Proficiency: | Not Specified |

### Application Status

| Applicant Status: | Status unknown |

<table>
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<tr>
<th>Employment History</th>
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<tbody>
<tr>
<td><strong>Company Name</strong></td>
<td><strong>Location</strong></td>
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<tr>
<td>Little Caesars</td>
<td>Decatur, AL</td>
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<tr>
<td>High Chapparal</td>
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<table>
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<tr>
<th>Occupational Experience</th>
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<td><strong>Qualification</strong></td>
<td><strong>Course of Study</strong></td>
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### Occupational Licensees & Certificates

<table>
<thead>
<tr>
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<th>State</th>
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<tbody>
<tr>
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### Skills

**List View:** Job Skills

There are no skills to display.

### Career Readiness Certificate Assessment

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<thead>
<tr>
<th>WorkKeys® Skill</th>
<th>Individual Score</th>
<th>Job Order Minimum</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Applied Mathematics</td>
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<td>Recommended</td>
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<tr>
<td>Locating Information</td>
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### Other Foundational Skills Assessments

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<thead>
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<tbody>
<tr>
<td>Applied Technology</td>
<td>No Score</td>
<td>Recommended</td>
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<td></td>
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<td>Listening</td>
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<td>Recommended</td>
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<tr>
<td>Observation</td>
<td>No Score</td>
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<td></td>
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<tr>
<td>Writing</td>
<td>No Score</td>
<td>Recommended</td>
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</tbody>
</table>
Typing Speed
No data available for this item.

Languages and Proficiency
No data available for this item.

Current Technology
You do not have any saved technology

Current Tools
You do not have any saved tools

References
Please Contact this Individual Regarding References

This job does not have a question set associated with it.

Driver's License Information

Do you have a valid Driver's license? No

Do you have access to a motor vehicle? Yes

Do you rely on public transportation? No

View / Add Notes

No notes have been made.
<table>
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<th>System Status</th>
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<th>Inactive</th>
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<td>11/7/2014</td>
<td>11/18/2014</td>
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https://www.louisianaworks.net/hrv/vossnet/folders/emo/hr/advertfolder.aspx?crv=7d52e6f1... 11/14/2014
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<th>Views</th>
<th>Applicants</th>
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<td>11/7/2014</td>
<td>11/18/2014</td>
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<td>DeShaun on LAP51NQ082 with DISTILLER</td>
</tr>
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<td>Job Title</td>
<td>Employer Job Status</td>
<td>On-Line Status</td>
<td>System Status</td>
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<td>51224 - crab</td>
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<td>Open and available</td>
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<td>11/18/2014/9</td>
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</table>

1 Records Found
4 Records Found

https://www.louisianaworks.net/hireviewnet/jobref/num/ol/orderfolderervw 11/7/2014
Kelly,

Here is the receipt for the ad.

![Payment Receipt]

---

Adrian Edgerson  
Sales Consultant  
Gannett | CareerBuilder.com  
800-692-4340 Toll Free  
edgersona@gannett.com

From: Couch Application Service - Kelly [mailto:couchapplicationservice@gmail.com]  
Sent: Friday, November 07, 2014 3:52 PM
Couch Application Service - Kelly

From: Edgerson, Adrián <edgerson@gannett.com>
Sent: Friday, November 07, 2014 2:57 PM
To: Couch Application Service - Kelly
Subject: RE: OOPS -- forget the previous use this one... should be copy and paste

Kelly,

I have the ad copy for you below. The cost is $590.00 and is set to run this Sunday and Wednesday the 12th.

<table>
<thead>
<tr>
<th>SEAFood PROCESSor</th>
</tr>
</thead>
</table>
| 25 temp HOB positions to work at crab and seafood processor (55-709, 51-202) approx. 10 months duration. Shifts 27/8/2015 thru 1/5/2016 $17.35/hr. 11:00 AM - 7:00 PM, M-F. Some Sat/Sun hrs/time/off/time may vary. Employer may record post hire, random drug screen, upon suspicion or post accident, employer may deduct post hire, random drug screen, upon suspicion or post accident, employer may deduct
| Workers needed to perform dump tasks, order meat, order baskets, grade, cut in, pack, peel, freeze, process, remove/strand, wash, weigh, box, refrigerate/meat, food service/stock, and any other activities as related to PWD/DOF. assigned SOC code as per each online org. Must not be allergic to crab or seafood. 35 hrs/wk. No experience required. After initial 60 hours of processing employee must be able to pack 425 lb. or more per hour. May be paid per lb. or employee discretion, which at all times will meet or exceed ETA 0142 certified hourly wage. Unpaid 10 minute breaks available at employee discretion. Job offered by Randel Inc., contact Frank Randel, 2300 Kellie Benson Road, Lafayette, LA 70508, 337-991-7950 Jn # 010054

Adrián Edgerson
Sales Consultant
Gannett | CareerBuilder.com
866-692-4249 Toll Free
edgersona@gannett.com

From: Couch Application Service - Kelly [mailto:couchapplication.service@gmail.com]
Sent: Friday, November 07, 2014 4:52 PM
To: Edgerson, Adrián
Subject: OOPS -- forget the previous use this one... should be copy and paste

RUN THIS ADVERTISEMENT on Sunday and Wed Nov 9 and again on November 12, 2014.
Please call me for payment. 216-718-3586. Thanks! kc
25 temp H2B positions as crab and crawfish seafood processors (53-7062, 51-3022) approx. 10 months duration. Begins 2/16/2015 thru 12/05/2015 $7.35 hrly, (11:03 OT) 8 pm – 4 am, M-F, some Sat/Sun, hrs/schedule/overtime may vary. Employer may require post hire, random drug screen, upon suspicion or past accident, employer paid. Payroll deductions as required by law. No on the job training, no education requirement. Workers needed to dehead, dump sacks, extract meat, fill baskets/tables, grade, ice pack, package, peel, prepare, process, remove/discard waste, seal, wash, weigh. Box, refrigerate/freeze, load/unload trucks and cleanup/sanitize worksite and any other activities as related to PWD/DOL assigned SOC code as per onet online.org. Must not be allergic to crab or crawfish. 35 hrs wk, No experience required. After initial 60 hours of processing employee must be able to peel 4.25 lb or more per hour. May be paid per lb @ employer discretion, which at all times will meet or exceed ETA 9142 certified hourly wage. Unpaid 30 minute breaks available at employee discretion. Job offered by Randol Inc, contact Frank Randol, 2320 Kaliste Saloom Road, Lafayette, LA 70508, 337-981-7080 JO # 512024.
Kelly J. Couch

From: Couch Application Service <CouchApplicationService@gmail.com>
Sent: Friday, November 07, 2014 2:43 PM
To: MMHESS@LINC.LA.GOV, KELLYCOUCH1@GMAIL.COM
Subject: RANNOLES WEB APPLICATION
Attachments: scan.pdf

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.
Job Order: 512024

Office: Lafayette Career Solutions Center
Employer Information:
Employer Name: Randol Inc
How to Apply: In Person
Company Website: http://www.randol.com
Applications Comments:
Location:
Main Address:
RANDOL INC
2220 KALISTE SALOON ROAD
Lafayette, LA 70508
Mailing Address:
2220 KALISTE SALOON RD
LAFAYETTE, LA 70508
Contact:
Contact: Frank B. Randol
Phone: (337) 981-7080
Fax:
Job Details:
Ocupational Code: 5130200 Meat, Poultry, and Fish Cutters and Trimmers
Job Title: Crab and Crawfish Seafood Processors
Industry Code:
Number of Positions: 25
Earliest Date To Display: 11/7/2014
Type of Job: Seasonal
Duration: Over 180 Days
Job Duties and Skills:
Description:
25 temp H2B positions as crab and crawfish seafood processors (53-7062, 51-3022) approx. 10 months duration. Begins 2/16/2015 thru 12/05/2015 $7.35 hrly, (11.03 SST) 8 am - 4 am, M-F, some Sat/Sun, break/ sched/ overtime may vary. Employer may require post hire, random drug screen, Upon suspicion or post accident, employer paid. Payroll deductions as required by law. No on the job training, no education requirement. Workers needed to dehead, dump sacks, extract meat, fill baskets/tables, grade, ice pack, package, peel, prepare, process, remove/ discard waste, seal, weigh, weigh. Box, refrigerate/freeze, load/unload trucks and clean up/ decontaminate work site and any other activities as related to FWS/DFL assigned SOC code as per need on line.org. Must not be allergic to crab or crawfish. 35 hrs/wk. No experience required. After initial 60 hours of processing employee must be able to peel 4.25 lb or more per hour. May be paid per lb @ employer discretion, which at all times will meet or exceed FTA 9142 certified hourly wage. Unpaid 30 mile breaks available at employer discretion. Job offered by Randol Inc, contact Frank Randol, 2220 Kaliste Saloon Road, Lafayette, LA 70508, 337-981-7080, JO # 512024.
Special Software/Hardware Skills Needed: No
Special Skills:
Job Requirements:
Minimum Age:
Test Done By: No test required
Required Tests:
Hiring Requirements:
Education Level: No Minimum Education Requirement
Months of Experience: 0

Print Date: 11/7/2014 2:39:50 PM
LWIA/Region: Lafayette Parish
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<tr>
<td>Driver's License Certification:</td>
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<tr>
<td>Drivers License Endorsements:</td>
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</tr>
<tr>
<td>Compensation and Hours:</td>
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<tr>
<td>Minimum Salary: 7.25 Hour</td>
<td>Maximum Salary: 13.03 Hour</td>
</tr>
<tr>
<td>Pay Comments: Will discuss with applicant</td>
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<tr>
<td>Supplemental Compensation: No</td>
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<tr>
<td>Hours per Week: Hours Vary</td>
<td>Actual Hours:</td>
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<tr>
<td>Shift: Other, see job description</td>
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<tr>
<td>Benefits: No Benefits Listed</td>
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<td>Job Order Information to be Displayed Online:</td>
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<tr>
<td>Job Order Information Online: Company Name is displayed. One-step staff does not screen applicants</td>
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<tr>
<td>Job Application Information Needed:</td>
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<tr>
<td>Req. Section</td>
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<tr>
<td>☑ Contact Information</td>
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<tr>
<td>☐ Employment History</td>
<td>☐ Allow individuals that have never had a job to apply (eg. College graduates)</td>
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<td>☐ Certifications</td>
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<td>☐ Desired Job Type</td>
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<td>Other Information:</td>
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<td>Green Job: No</td>
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<td>Featured Job: No</td>
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<td>Federal Contractor: No</td>
<td>Court Ordered Affirmative Action: No</td>
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<td>Category: Regular (Non Domestic)</td>
<td>Job Developer Mandatory Listings: NA</td>
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<td>Status: Open and available</td>
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<td>Reason: NA</td>
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<tr>
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<tr>
<td>Job Order Followup: 12/22/2016</td>
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</table>

![Post-it Note](image)
Job Title: Crab and Crawfish Seafood Processor

Description:

23 temp positions as crab and crawfish seafood processor (53-7682, 54-3022) approx. 10 months duration. Begins 3/10/2015 (Sun) 12/03/2015 (Sun). 7:30 am - 4:30 pm, 40 hour work week, Monday - Friday, some Sat/Sun, as scheduled. Overtime may vary. Employer may require post hire drug screen, upon selection or post accident, employer paid. Payroll deductions as required by law. No on the job training, no education requirement. Workers need to be dextrous, able to lift 50 lbs, able to stand for long periods, ability to work a fast pace. Requires the ability to use commercial kitchen equipment. Basic ability to use computers. Good hand-eye coordination. Must be able to work in temperatures of 20 degrees below zero. "On the spot" breaks are available during the shift. Job offered by Randstad Inc. Contact Frank Randolf, 2320 Kaliste Saloom Road, Lafayette, LA 70508, 337-981-7080 ext. 104.

Special Skills: None

Test Required: No

Hiring Requirements:

Education Level: No Minimum Education Requirement

Months of Experience: 0

Job Category: Professional
<table>
<thead>
<tr>
<th>Job Order Print Page</th>
<th>Page 2 of 2</th>
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<tbody>
<tr>
<td>Requires a Drivers License: No</td>
<td>Near Public Transportation: Yes</td>
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<tr>
<td>Drivers License Certification:</td>
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<td>Drivers License Endorsements:</td>
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<td>Minimum Salary: $7.35 Hour</td>
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<td>Supplemental Compensation: No</td>
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<td>Hours per Week: Hours Vary</td>
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<td>Shift: Other, see job description</td>
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<td>Contact Information</td>
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<tr>
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<td>Allow individuals that have never had a job to apply (e.g., College graduates)</td>
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<td>Education History</td>
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<td>Desired Job Type</td>
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<td>Other Information:</td>
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<td>Green Job: No</td>
<td>Subsidized by ARRA (Stimulus): No</td>
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<td>Featured Job: No</td>
<td>In an Enterprise Zone: No</td>
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<tr>
<td>Federal Contractor: No</td>
<td>Court Ordered Affirmative Action: No</td>
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<td>Staff Information:</td>
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A. Employment-Based Visa Information

| 1. Overall occupation classification supported by this application (Note 2) | H-2B |

B. Requestor Point-of-Contest Information

<table>
<thead>
<tr>
<th>1. Completes form (family name)</th>
<th>COUNTRY</th>
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<tbody>
<tr>
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<td>MCDONALD</td>
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<tr>
<td>2. First (given) name</td>
<td>KELLY</td>
</tr>
<tr>
<td>3. Middle name(s)</td>
<td>J</td>
</tr>
<tr>
<td>4. Contact's job title (Owner/Manager/Contact)</td>
<td>Service Assistance</td>
</tr>
<tr>
<td>5. Address 1</td>
<td>231 PECAN AVENUE</td>
</tr>
<tr>
<td>6. Address 2</td>
<td>N/A</td>
</tr>
<tr>
<td>7. City</td>
<td>NEW ROADS</td>
</tr>
<tr>
<td>8. State</td>
<td>LA</td>
</tr>
<tr>
<td>9. Postal code</td>
<td>70760</td>
</tr>
<tr>
<td>10. Country</td>
<td>UNITED STATES OF AMERICA</td>
</tr>
<tr>
<td>11. Province (if applicable)</td>
<td>POINTE COUPEE PARISH</td>
</tr>
<tr>
<td>12. Telephone number</td>
<td>225-638-7219</td>
</tr>
<tr>
<td>13. Extension</td>
<td>N/A</td>
</tr>
<tr>
<td>14. Fax Number</td>
<td>225-638-7219</td>
</tr>
<tr>
<td>15. E-Mail Address</td>
<td><a href="mailto:kelly.mcdonald1@gmail.com">kelly.mcdonald1@gmail.com</a></td>
</tr>
</tbody>
</table>

C. Employer Information

| 1. Legal Business name | Randol Inc |
| 2. Trade name/Doin Business As (DBA) | if applicable |
| 3. Address 1           | 2320 Kaliste Saloom Road |
| 4. Address 2           | N/A     |
| 5. City                | Lafayette |
| 6. Country             | UNITED STATES OF AMERICA |
| 7. Postal code         | 70506   |
| 8. Province (if applicable) | N/A |
| 9. Telephone number    | 337-381-7000 |
| 10. Federal Employer Identification Number | 720706114 |
| 11. NAICS code (must be at least 4 digits) | 312112 |

D. Wage Processing Information

| 1. Is the employer covered by ADWA? | Q Yes Q No |
| 2. Is the position covered by a Collective Bargaining Agreement (CBA)? | Q Yes Q No |
| 3. Is the employer requesting consideration of Davis-Bacon (DBA) or McNamara-S:pahr (SCA)? | Q Yes Q No |
| 4. Social Security Number | 123-45-6789 |
| 5. Employer EIN | 987654321 |

LRA Form 6141

Department of Labor Use Only

Valid Period: 1/1/2014 to 12/31/2015

Career Office: H-2B Non-Agricultural Specialty occupations

Page 1 of 5
**Application for Prevailing Wage Determination**

**ETA Form 9141**

**U.S. Department of Labor**

---

### D. Wage Processing Information (cont.)

<table>
<thead>
<tr>
<th>4a.</th>
<th>4b.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**4. Is the employer requesting consideration of a survey in determining the prevailing wage?**

**Survey Name:**

- [ ] ICIS Gray Research Center - Graded Wheat Processor

**Survey Date of Publication:**

- [ ] 02/6/2013

---

### E. Job Other Information

#### a. Job Description:

<table>
<thead>
<tr>
<th>1. Job Title:</th>
<th>Seaford processor for crab and crawfish</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Suggested SOC (O*NET-OES) Code</td>
<td>53-7064</td>
</tr>
<tr>
<td>2a. Suggested SOC (O*NET-OES) occupation title</td>
<td>Packers and Packagers, Hand</td>
</tr>
<tr>
<td>3. Job Title of Supervisor for this Position (if applicable):</td>
<td></td>
</tr>
<tr>
<td>Owner or Manager</td>
<td></td>
</tr>
<tr>
<td>4. Does this position supervise the work of other employees?</td>
<td>[ ] Yes [ ] No</td>
</tr>
<tr>
<td>4a. If &quot;Yes&quot;, number of employees supervised</td>
<td>N/A</td>
</tr>
<tr>
<td>4b. If &quot;Yes&quot;, please indicate the level of the employees to be supervised:</td>
<td>Subordinate</td>
</tr>
<tr>
<td>5. Job Duties: Please provide a description of the duties to be performed with as much specificity as possible, including details regarding the areas/firms and products/services involved. A description of the job duties to be performed MUST begin in this space.</td>
<td></td>
</tr>
</tbody>
</table>

- [ ] Heavy seafood processors: load and unload;
- [ ] Dehead, debone, de-feet, start meat, fill buckets/tables, grid, ice pack, package, seal, prepare, process, remove unwanted waste, seal, wash, weigh boxes, refrigerate/freeze, load/unload trucks, and clean up working area. |

---

**ETA Form 9141**

For Department of Labor Use Only

- [ ] Case Number: R-201-1020-2021
- [ ] Case Status: DETERMINATION ISSUED
- [ ] Validity Period: 01/01/2021 - 12/31/2023

Page 2 of 3
E. Job Offer Information (cont.)

b. Minimum Job Requirements:

1. Education - Minimum U.S. diploma/degree required:
   - None □ High School/GED □ Associate's □ Bachelor's □ Master's □ Doctorate (PhD) □ Other degree (JD, MD, etc.)
   - If "Other degree" in question 1, specify the diploma/degree required:
     N/A

2. Does the employer require a second U.S. diploma/degree? □ Yes □ No
   - If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required:
     N/A

3. Is training for the job opportunity required? □ Yes □ No
   - If "Yes" in question 3, specify the number of months of training required:
     N/A

4. Is employment experience required? □ Yes □ No
   - If "Yes" in question 4, specify the number of months of experience required:
     N/A

5. Special Requirements - List specific skills, licenses/certificates/certifications, and requirements of the job opportunity. "SEE ADDENDUM"

6. Place of Employment Information:

   1. Worksite Address 1: 2320 Katie Balcom Road

   2. Address 2: N/A

   3. City: Lafayette

   4. County: Lafayette Parish

   5. State/Province/Territory: LA

   6. Postal code: 70503-2235

7. Will work be performed in multiple worksites within an area of intended employment? □ Yes □ No

   7a. If "Yes", identify the geographic place(s) of employment including the Metropolitan Statistical Area (MSA) or the Independent City/County/(independent city)/county(ies) (boroughs/parishes) and the corresponding state(s) where work will be performed. If necessary, submit a signed completed ETA Form 9141 with a list of the additional anticipated worksites.

   N/A

ETA Form 9141
DEPARTMENT OF LABOR USE ONLY

Page 1 of 3

Case Number: 7408-0402-892453
Case Status: Determined-
Determined
Validated Period: 07/20/2016 - 06/20/2017

189
### F. Prevailing Wage Determination

<table>
<thead>
<tr>
<th>ORS</th>
<th>ORS (An Industry)</th>
<th>ORS (ACWI - Higher Education)</th>
<th>CBA</th>
<th>DBA</th>
<th>SCA</th>
<th>Other/Alternate Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1. Prevailing wage

<table>
<thead>
<tr>
<th>PER</th>
<th>Base</th>
<th>Week</th>
<th>Bi-Weekly</th>
<th>Month</th>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 5. Prevailing wage source (choose only one)

- ORS (An Industry)
- ORS (ACWI - Higher Education)
- CBA
- DBA
- SCA
- Other/Alternate Survey

### 6. Additional notes regarding wage determination

The employer's job duties represent a combination of the occupation in item 3 and 4, plus 902.00 - Meat, Poultry, and Fish Cutters and Trimmers.

The wage determination was issued based on the employer submitted survey.

### Determination date

11/07/2014

### Evaluation date

02/08/2015
ADDENDUM

SECTION E.b.5. Special Requirements

1. After initial 60 hours of processing, employee must be able to peel 4.25 or more per hour.
2. Employer may require post hire, random drug screen, upon suspicion or post accident, employer paid.
3. Overtime, hours and schedule may vary.
4. Payroll deductions required by law.
5. May be paid per pound at employer discretion, which at all times meet or exceed ETA 91-42 certified hourly wage.
6. Unpaid 30 min breaks available at employee discretion.
7. No on the job training.
8. No education requirement.
9. M.F. some Sat/Sun, 8pm-4am.
10. And any other activities as related to PWD/DOL assigned SOC code as per online.org.
11. Must not be allergic to crab or crawfish.
Kelly J. Couch

From:ottie.potdb@dol.gov
Sent:Friday, November 27, 2014 11:01 AM
To:kellycouch1@gmail.com
Subject:PW: Determination Issued for Case Number P-400-14227-355546
Attachments:Determination9141-P-400-14227-355546_310714120056.pdf

TO: KELLY COUCH
231 PECAN AVENUE
NEW ROADS, LA 70760

Re: Case Number: P-410-14227-355546 Received: Oct 13, 2014

We have completed your Prevailing Wage Request of Oct 13, 2014 and have issued a wage determination. The Department’s prevailing wage determination for the position of seafood processors for crab and crawfish can be found under Section 4 on the attached ETA Form 9141 and is valid between Nov 7, 2014 and Feb 8, 2015. Should the employer disagree with this determination, the employer may either:

1) submit a redetermination request within 30 days of this letter in accordance with the Department’s regulations. The process for seeking a redetermination of wages involving H-2B certifications is set out at 20 CFR § 655.30(g), and the process for seeking a redetermination of wages involving PERM certifications is found at 20 CFR § 656.40(h); or

2) submit a new ETA Form 9141, Application for Prevailing Wage Determination.

Sincerely,
Office of Foreign Labor Certification
Seafood processors for crabs and crawfish

Worker needed to dehead, dump sacks, extract meat, fill baskets/totes, grade, ice pack, package, weigh, prepare, remove/post and rinse, seal, wash, weigh box, refrigerate/lavish load/unload trucks, and clean/cut and sanitize workspace.
Application for Prevailing Wage Determination
ETA Form 341
U.S. Department of Labor

I. Job Other Information (cont.)

b. Minimum Job Requirements:

1. Education: minimum U.S. diploma/degree required: □
   □ High School □ Vocational □ Associate's □ Bachelor's □ Master's □ Doctorate (PhD) □ Other degree (MD, ND, etc.)
   If other degree, indicate: __________
   Specify the diploma/degree required: __________
   N/A

2. Does the employer require a second U.S. diploma/degree? □ Yes □ No
   If Yes, indicate: __________
   Specify the second U.S. diploma/degree: __________
   N/A

3. Is there on-the-job training required? □ Yes □ No
   If Yes, indicate: __________
   Specify the type(s) of training required: __________
   N/A

4. Is employment experience required? □ Yes □ No
   If Yes, indicate: __________
   Specify the number of years of experience required: __________
   N/A

5. Specify Requirements - List specific skills, knowledge, certifications, and requirements of the job.

   SEE ADDENDUM

II. Place of Employment Information:

1. Worksite address: __________
   2202 Kiatikai, Sabum Rd
   N/A

3. City: __________
   Lafayette

4. County: __________
   Lafayette Parish

5. State/Border/Territory: __________
   LA

6. Postal code: __________
   70506-2230

7. Will work be performed in multiple workplaces within an area of intense employment or a location(s) other than the address listed above? □ Yes □ No
   If Yes, indicate: __________
   Specify the number of additional workplaces: __________
   N/A

8. If Yes, identify the geographic location(s) of employment, including each major urban area (MSA) in the metropolitan statistical area (MSA) or the counties or places/communities (APOP) and the corresponding state(s), where work will be performed. Indicate a second completed ETA Form 341 with a listing of the additional associated workplaces. Please note that wages cannot be provided for unspecified or unanticipated locations. □ Yes □ No
   If Yes, indicate: __________
   Specify the number of additional workplaces: __________
   N/A

ETA Form 341
FOR DEPARTMENT OF LABOR USE ONLY
Page 1 of 1
Due Number: 846-1127-08181301 Due Status: 05/21/2004 05/21/2004
The employer's job duties represent a combination of the occupation in item F.3 and 51-3022.00 - Meat, Poultry, and Fish Cutters and Trimmers.

The wage determination was issued based on the employer submitted survey.
SECTION E.5: Special Requirements

1. After 150 hours of processing employee must be able to peel 4.25 or more per hour.
2. Employer may require pre- or post-hire random drug screens, upon suspension of post-recruit, employer paid.
3. Overtime hours and schedule may vary.
4. Payroll deductions required by law.
5. May be paid per pound at employer discretion, which at all times meet or exceed ETA-0142 certified hourly wage.
6. Unpaid 30 min breaks available at employee discretion.
7. No on the job training.
8. No education requirement.
9. M-F, some Sat/Sun, 7am-4am.
10. Any other activities as related to PMO/OOL assigned SOC code as per online.org.
11. Must not be allergic to crab or crawfish.
Kelly J. Couch

From: ofc.portal@dol.gov
Sent: Friday, November 07, 2014 11:01 AM
To: kellyjcouch1@gmail.com
Subject: PW Determination Issued for Case Number P-400-14227-355546
Attachments: Determination9141-P-400-14227-355546,110714120046.pdf

To: KELLY CDUCH
231 PECAN AVENUE
NEW ROAD5, LA 70760

Re: Case Number: P-400-14227-355546 Received: Oct 13, 2014

We have completed your Prevailing Wage Request of Oct 13, 2014 and have issued a wage determination. The Department's prevailing wage determination for the position of Seafood processors for crab and crawfish can be found under Section E on the attached ETA Form 9141 and is valid between Nov 7, 2014 and Feb 8, 2015. Should the employer disagree with this determination, the employer may either:

1) submit a redetermination request within 30 days of this letter in accordance with the Department’s regulations. The process for seeking a redetermination of wages involving H-2B certifications is set out at 20 CFR § 655.106(b), and the process for seeking a redetermination of wages involving PERM certifications is found at 20 CFR § 656.4(b), or

2) submit a new ETA Form 9141, Application for Prevailing Wage Determination.

Sincerely,
Office of Foreign Labor Certification
Application for Prevailing Wage Determination

ETA Form 9141

U.S. Department of Labor

Please read and review the instructions carefully before completing this form and print legibly. A copy of the instructions can be found at http://www.dol.gov/esa/eta/etaforms/9141.pdf.

A. Employment-Based Visa Information

1. Indicate the type of visa classification supported by the application (write classification symbol) *
   M-28

B. Requestor Point-of-Contact Information

1. Contact's last (family) name *
   COUCH

2. First (given) name *
   KELLY

3. Middle name(s) *
   J

4. Contact's job title *
   Owner/Manager Couch Application Service Assistance

5. Address 1 *
   231 PECAN AVENUE

6. Address 2
   N/A

7. City *
   NEW ROADS

8. State *
   LA

9. Postal code *
   70760

10. Country *
    UNITED STATES OF AMERICA

11. Province (if applicable)
    POINTE COUPEE PARISH

12. Telephone number *
    225-638-7219

13. Extension
    N/A

14. Fax Number *
    225-638-7219

15. E-Mail Address
    kellycouch1@gmail.com

C. Employer Information

1. Legal business name *
   Randol Inc

2. Trade name/Doing Business As (DBA), if applicable *
   N/A

3. Address 1 *
   2320 Kaliste Saloom Road

4. Address 2
   N/A

5. City *
   Lafayette

6. State *
   LA

7. Postal code *
   70508

8. Country *
   UNITED STATES OF AMERICA

9. Province (if applicable)
   N/A

10. Telephone number *
    337-681-7080

11. Extension
    N/A

12. Federal Employer Identification Number (FEIN or IRSID) *
    7207965114

13. NAICS code (must be at least 4 digits) *
    311712

D. Wage Processing Information

1. Is the employer covered by AOSWA? *
   Yes [ ] No [ ]

2. Is the position covered by a Collective Bargaining Agreement (CBA)? *
   Yes [ ] No [ ]

3. Is the employer requesting consideration of Davis-Bacon (DBA) or Multiemployer Contract (CEC) Act? *
   Yes [ ] No [ ]

   DBA [ ] CCA [ ]
D. Wage Processing Information (cont.)

A. Is the employer requesting consideration of a survey in determining the prevailing wage? *  
   Yes  No

2a. Survey Name:  
   2. Seafood processors for crab and crawfish

2b. Survey date of publication:  
   10/20/2013

E. Job Offer Information

a. Job Descriptions:

   1. Job Title:  
      Seafood processors for crab and crawfish

   2. Suggested SOC (ONET/OES) code:  
      53-7064

   2a. Suggested SOC (ONET/OES) occupation title:  
      Packers and Processors, Hand

   3. Job Title of Supervisor for this Position (if applicable):  
      N/A

   Owner or Manager

4. Does this position supervise the work of other employees? *  
   Yes  No

5. If "Yes", number of employees worker § will supervise:  
   N/A

b. "Job Duties: Please provide a detailed description of the duties to be performed with as much specificity as possible, including details regarding the areas/fields and/or products/industries involved. A description of the job duties to be performed MUST begin in this space."  

   Worked needed to dehead, dump sacks, extract meat, fill baskets, tables, grade, ice pack, package, peel, prepare process, remove/ discard waste, seal, wash, weigh, box, refrigerate/ freeze, load/unload trucks, and clean up/ sanitize worksite.

6. Will travel be required in order to perform the job duties? *  
   Yes  No

6a. If "Yes", please provide details of the travel required, such as the area(s), frequency and nature of the travel:  
   N/A
Application for Prevailing Wage Determination
ETA Form 9141
U.S. Department of Labor

6. Job Offer/Information (cont.)

b. Minimum Job Requirements:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Education: Minimum U.S. diploma/degree required *</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] None ( [ ] High School/GED)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] Associate's ( [ ] Bachelor's)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>[ ] Master's ( [ ] Doctorate)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>[ ] Other degree (JD, MD, etc.)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>1a. If &quot;other degree&quot; in question 1, specify the diploma/degree required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Does the employer require a second U.S. diploma/degree? *</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2a. If &quot;Yes&quot; in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Is training for the job opportunity required? *</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3a. If &quot;Yes&quot; in question 3, specify the number of months of training required</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>3b. Indicate the field(s)/name(s) of training required</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Is employment experience required? *</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4a. If &quot;Yes&quot; in question 4, specify the number of months of experience required</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>4b. Indicate the occupation required</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Special Requirements - List specific skills, licenses/certificates/credentials, and requirements of the job opportunity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEE ADDENDUM</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c. Place of Employment Information:

<table>
<thead>
<tr>
<th>Address 1</th>
<th>2320 Kaliste Saloom Rd</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Lafayette</td>
</tr>
<tr>
<td>State</td>
<td>LA</td>
</tr>
<tr>
<td>ZIP Code</td>
<td>70508-2300</td>
</tr>
<tr>
<td>7a. If &quot;Yes&quot;, identify the geographic place(s) of employment indicating each metropolitan statistical area (MSA) or the independent city/county/county subdivision, (parishes/villages) and the corresponding state(s) where work will be performed. If necessary, submit a second completed ETA Form 9141 with a listing of the additional anticipated worksites, please note that wages cannot be provided for unspecified/anticipated locations.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
7. Prevailing Wage Determination

<table>
<thead>
<tr>
<th>FOR OFFICIAL GOVERNMENT USE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. FW tracking number: P-400-14227-355546</td>
</tr>
<tr>
<td>2. Date FW request received: 9/11/2014</td>
</tr>
<tr>
<td>3a. SOC (O<em>NET/O</em>NET) code: 53.0824</td>
</tr>
<tr>
<td>3a. SOC (O<em>NET/O</em>NET) occupation title: Laborers and Freight, Stock, and Material Movers, Hand</td>
</tr>
<tr>
<td>4. Prevailing wage: $7.35</td>
</tr>
<tr>
<td>4a. OES Wage Level: □ I □ II □ III □ IV □ N/A</td>
</tr>
<tr>
<td>5. Per: (Choose only one) □ Hour □ Week □ Bi-Weekly □ Month □ Year □ Piece Rate</td>
</tr>
<tr>
<td>5a. If Piece Rate is indicated in question 5, specify the wage offer requirements: N/A</td>
</tr>
<tr>
<td>6. Prevailing wage source: (Choose only one) □ OES (All Industries) □ OES (ACSWU - Higher Education) □ CBA □ DBA □ SCA □ Other/Auxiliary Source</td>
</tr>
<tr>
<td>7. Additional Notes Regarding Wage Determination: The employer's job duties represent a combination of the occupation in item F.3 and 51-3022.00 - Meat, Poultry, and Fish Cutters and Trimmers. The wage determination was issued based on the employer submitted survey.</td>
</tr>
</tbody>
</table>

8. Determination date: 11/07/2014
9. Expiration date: 02/08/2015
ADDENDUM

SECTION E.b.5: Special Requirements

1. After initial 60 hours of processing employee must be able to peel 4.25 or more per hour.
2. Employer may require post hire, random drug screen, upon suspicion or past accident, employer paid.
3. Overtime hours and schedule may vary.
4. Payroll deductions required by law.
5. May be paid per pound at employer discretion, which at times meet or exceed ETA 9142 certified hourly wage.
6. Unpaid 30 min breaks available at employee discretion.
7. No on the job training.
8. No education requirement.
9. M-F, some Sat/Sun, 8am-4am.
10. And any other activities as related to PWD/DOL assigned SOC code as per online.org.
11. Must not be allergic to crab or crayfish.
From: ofc.pom@doi.gov
Sent: Monday, October 13, 2014 9:31 AM
To: kellyjcouch1@gmail.com
Subject: ICERT: Case Number: P-400-14227-355546 Received: 10/13/2014

To: KELLY COUCH
731 PECAN AVENUE
NEW ROADS, LA 70760

Re: Case Number: P-400-14227-355546 Received: 10/13/2014

This is a confirmation email that the ETA Form 9141 - Application for Prevailing Wage Determination covering the H-2B visa classification for the position of Seafood processors for crab and crawfish has been received and submitted for processing by the U.S. Department of Labor (Department).

The Department processes all requests for prevailing wage determinations on a First-In-First-Out (FIFO) basis using the date the application was received and submitted for processing. You have the ability to check the status of this application at any time by accessing your ICERT On-Line Account at http://ICERT.doleta.gov/.
Case was successfully submitted!

Case Number: P-400-14297-555346
Employer Name: Nielson Inc.

This is a confirmation that the above referenced ETA Form 5141 Application for Prevailing Wage Determination has been received and submitted for processing by the U.S. Department of Labor (Department). If the interests of fairness and equity, all prevailing wage determination requests are processed by the Department on a first-in-first-out (FIFO) basis.

Important Notice: If you have submitted a request for a prevailing wage determination using the H-2B visa classification, the Department will make every effort to process your request in FIFO order within thirty (30) business days of receipt (29 CFR 655.10).
A. Employment-Based Visa Information

1. Indicate the type of visa classification supported by this application (write classification symbol): N-2B

B. Requestor Point-of-Contact Information

1. Contact's last (family) name: COUCH
2. First (given) name: KELLY
3. Middle name(s): J.
4. Contact's job title: Owner/Manager Couch Application Service Assistance
5. Address 1: 231 PECAN AVENUE
6. Address 2: N/A
7. City: NEW ROADS
8. State: LA
9. Postal code: 70750
10. Country: UNITED STATES OF AMERICA
11. Province (if applicable): POINTE COUPEE PARISH
12. Telephone number: 225-638-7219
13. Extension: N/A
14. Fax number: 225-638-7219
15. E-Mail Address: kelly.couch1@gmail.com

C. Employer Information

1. Legal business name: RandC Inc
2. Trade name/Doing Business As (DBA) (if applicable): N/A
3. Address 1: 2320 Kaliste Saloom Road
4. Address 2: N/A
5. City: Lafayette
6. State: LA
7. Postal code: 70508
8. Country: UNITED STATES OF AMERICA
9. Province (if applicable): N/A
10. Telephone number: 337-987-7680
11. Extension: 10
12. Federal Employer Identification Number (FEIN) (if applicable): 720705114
13. NAICS code (must be at least 4 digits): 311712

D. Wage Processing Information

1. Is the employer covered by ACWA?: Yes  No
2. Is the position covered by a Collective Bargaining Agreement (CBA)?: Yes  No
3. Is the employer requesting consideration of Davis-Bacon (DBA) or McNamarra Service Contract Act (SCA)?: Yes  No  SCA

ETA Form 9141 FOR DEPARTMENT OF LABOR USE ONLY
### D. Wage Processing Information (cont.)

3a. Survey Name: 
LSU Ag Research Center - Crab/Crawfish Processors

3b. Survey date of publication: 10/02/2013

### E. Job Offer Information

4. **Job Description:**

#### 1. Job Title
Seaford processors for crab and crawfish

#### 2. Suggested SOC (ONET/O*NET) code
- 63-7074

#### 2a. Suggested SOC (ONET/O*NET) occupation title
Packers and Packers, Hand

#### 3. Job Title of Supervisor for this Position (if applicable)
Owner or Manager

4. Does this position supervise the work of other employees? 
- Yes [ ]
- No [ ]

4a. If "Yes", number of employees worker will supervise: N/A

#### 4b. If "Yes", please indicate the level of the employees to be supervised:
- Subordinate [ ]
- Peer [ ]

#### 5. Job duties - Please provide a description of the duties to be performed with as much specificity as possible, including details regarding the areas/fields and/or products/industries involved. A description of the job duties to be performed MUST begin in this space.

Worker needed to load, dump sacks, extract meat, fill baskets/trays, grade, ice pack, package, peel, prepare, process, remove/discard waste, seal, wash, weigh, box, refrigerate/freeze, load/unload trucks, and clean up/sanitize worksite.

5. **Will travel be required in order to perform the job duties?**

- Yes [ ]
- No [ ]

5a. If "Yes", please provide details of the travel required, such as the area(s), frequency and nature of the travel: N/A

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E6a. ETA Form 9141
For Department of Labor Use Only

Case Number: 905-2054-C727-DESA
Case Source: Refer
Validity Period: N/A to N/A
<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
</tr>
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<tbody>
<tr>
<td>a.</td>
<td>Yes</td>
</tr>
<tr>
<td>b.</td>
<td>N/A</td>
</tr>
<tr>
<td>c.</td>
<td>Yes</td>
</tr>
<tr>
<td>d.</td>
<td>Yes</td>
</tr>
<tr>
<td>e.</td>
<td>No</td>
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<tr>
<td>f.</td>
<td>Yes</td>
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<td>g.</td>
<td>Yes</td>
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<td>h.</td>
<td>Yes</td>
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<td>i.</td>
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<td>No</td>
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<td>No</td>
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<td>Yes</td>
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<td>Yes</td>
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<td>n.</td>
<td>Yes</td>
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<td>v.</td>
<td>Yes</td>
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<td>Yes</td>
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<tr>
<td>x.</td>
<td>Yes</td>
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<tr>
<td>y.</td>
<td>Yes</td>
</tr>
<tr>
<td>z.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## F. Prevailing Wage Determination

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PW filing number</td>
</tr>
<tr>
<td>2.</td>
<td>Date PW request received</td>
</tr>
<tr>
<td>3.</td>
<td>SOC (O*NET/OES) code</td>
</tr>
<tr>
<td>3a.</td>
<td>SOC (O*NET/OES) occupation title</td>
</tr>
<tr>
<td>4.</td>
<td>Prevailing wage $</td>
</tr>
<tr>
<td>4a.</td>
<td>OES Wage level</td>
</tr>
<tr>
<td>5.</td>
<td>Per. (Choose only one)</td>
</tr>
<tr>
<td>5a.</td>
<td>Hour</td>
</tr>
<tr>
<td>5b.</td>
<td>Piece Rate is indicated in question 5, specify the wage offer requirements.</td>
</tr>
<tr>
<td>6.</td>
<td>Prevailing wage source (Choose only one)</td>
</tr>
<tr>
<td>7.</td>
<td>Additional Notes Regarding Wage Determination</td>
</tr>
</tbody>
</table>

**OMB Paperwork Reduction Act (1205-0455)**

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents' reply to these reporting requirements is mandatory to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 110). Public reporting burden for this collection of information is estimated to average 65 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Information and Regulatory Affairs, U.S. Department of Labor, Room C4023, 200 Constitution Ave. N.W., Washington, DC 20210. Do not send the completed application to this address.
ADDENDUM

SECTION E. B. 5. Special Requirements

1. After initial 60 hours of processing, employee must be able to peel 4.25 or more per hour.
2. Employer may require post hire, random drug screen, upon suspicion or post accident, employer paid.
3. Overtime, hours and schedule may vary.
4. Payroll deductions required by law.
5. May be paid per pound at employer discretion, which at all times meet or exceed ETA 9142 certified hourly wage.
6. Unpaid 30 min breaks available at employee discretion.
7. No on the job training.
8. No education requirement.
9. M-F, some Sat/Sun, 8pm-4:30am.
10. And any other activities as related to PWD/DOL assigned SOC code as per online org.
11. Must not be allergic to crab or crawfish.
Determining the entry-level prevailing wages for non-h-2b workers
Survey results of Louisiana South Central Region crabmeat/crawfish processors conducted the month of October, 2013.

<table>
<thead>
<tr>
<th>Column &quot;A&quot;</th>
<th>Column &quot;B&quot;</th>
<th>Column &quot;C&quot;</th>
<th>Column &quot;D&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Respondents</td>
<td>Number of Employees</td>
<td>Hourly Rate of Pay for Entry Level Worker</td>
<td>Column &quot;B&quot; x Column &quot;C&quot;</td>
</tr>
<tr>
<td>2</td>
<td>40</td>
<td>$7.25</td>
<td>$290.00</td>
</tr>
<tr>
<td>3</td>
<td>28</td>
<td>$7.50</td>
<td>$210.00</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>68</strong></td>
<td><strong>$500.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

Column "D" divided by Column "B" ($500.00 / 68) = $7.35 (Average Wage)

Company names are not listed, individual survey results can be provided by contacting Thomas Hyman, LSU AgCenter/Sea Grant Hyman@agcenter.lsu.edu

1. Respondents - Companies included in the survey are holders of appropriate Louisiana certification to purchase, process and sell crab and crawfish products. These companies hire entry-level workers to process and clean the crabmeat and crawfish meat and package into containers for sale.

2. Job description - Job description: Crawfish/Crab/Seafood processing worker/dockworker: Duties may include any or all of the following: bagging, box preparation, boxing, cleanup work area and sanitation, conveyor belt, steam room, de-back, de-head, dress work, dump sacks, extract meat from carcass (using hands, hand tools or knives), fill baskets/complex, grade, ice pack, load/unload crawfish/seafood and bass from trucks and docks, package, peel (remove shell), pre-grade, prepare, process, refrigerate or freeze, remove/discard waste products, seal, use washing machine, use vacuum pack machine, wash weight, and any other activities as related to SDC code 53-7064.

3. Employer may use any or all of the above steps, depending on individual processing plant.

4. All workers are seasonal (mid-April - late December with the peak season being June - August).

5. Survey was conducted - Based on a list of all licensed seafood processors in the south central part of Louisiana received from the Department of Health & Hospitals, attempts were made to contact seafood processors that picked and packed both crab and crawfish. The 4 companies contacted all were determined to not use h-2b employees. All 4 responded to the survey. The survey represents 68 workers during peak season.

LSU AgCenter/Sea Grant Marine Extension Louisiana Direct Seafood Program Director,
Thomas Hyman

Date 10/29/2013
Friday,
December 19, 2008

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 655 and 656

Labor Certification Process and
Enforcement for Temporary Employment
in Occupations Other Than Agriculture or
Registered Nursing in the United States
(H-2B Workers), and Other Technical
Changes; Final Rule
DEPARTMENT OF LABOR
Employment and Training Administration
20 CFR Parts 655 and 665
911 12th St., NW
Washington, DC 20210

Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes

AGENCY: Employment and Training Administration, Department of Labor, in accordance with the Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending its regulations to modernize the procedures for the issuance of labor certifications to employers sponsoring H-2B nonimmigrants for admissions to perform temporary nonagricultural labor or services and to establish the procedures for enforcing compliance with attestations made by employers. Specifically, this final rule re-arranges the application filing and review process by centralizing processing and by enabling employers to conduct pre-certification notices in the Federal Register. In addition, the rule strengthens the integrity of the H-2B program through the implementation of post-certification audits and procedures for penalizing employers who fail to comply with program requirements. This rule also makes technical changes to the regulations relating to both the H-1B program and the permanent labor certification program to reflect operational changes stemming from this modernization.

Although Congress has conferred the statutory authority to enforce H-2B program requirements on the Department of Homeland Security (DHS), recent agreements between DHS and the Department have yielded an agreement for the delegation of H-2B enforcement authority from DHS to the Department. This Final Rule contains the Wage and Hour Division (WHD) regulations establishing the H-2B enforcement procedures that the Department will institute pursuant to that agreement. Separately, this Final Rule institutes conditions and procedures for the deportation of employers, attorneys, and agents participating in the H-2B foreign labor certification process. As discussed further below, the Department intends to exercise its inherent authority under case law and general principles of program administration to limit the ability of employers to avoid participation in the certification process. Participating employers who fail to comply with program requirements may be subject to penalties.

The Department's rule in the H-2B visa program stems from its obligation, outlined in immigration regulations, to certify, upon application by a U.S. employer intending to petition DHS to admit H-2B workers, that there are not enough able and qualified U.S. workers available for the position sought to be filled and that the employment of the foreign worker(s) will not adversely affect the wages and working conditions of similarly employed U.S. workers. 8 U.S.C. 1184A(a)(15)(A)(iv)(D); 8 U.S.C. 1184A(a)(11) and 8 U.S.C. 214(h)(6).

The Department's rule in the H-2B process is currently advisory to DHS. A final rule is not required under section 553 of the Administrative Procedure Act, 5 U.S.C. 553(e).

Currently, the Department's regulations at 20 CFR part 655, Subpart A, "Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H-2B Workers)," were promulgated by the Secretary of Labor in 1989. The Secretary of Labor has delegated her advisory responsibilities described in the HHS, H-2B regulations, after they are processed by the State Workforce Agency (SWA) having jurisdiction over the area of intended employment. The SWA reviews the employer's application and job offer (comparing the employer's offered wage to the prevailing wage for the position) and forwards the completed application to DOL for further review and final determination.

Under current procedures, the employer must demonstrate that the position is not available to U.S. workers, as defined by the Secretary of Labor, or for which the employer desires to rely on a foreign worker. The H-2B program regulations at 8 C.F.R. 214(v), require the employer to file with the Department of Homeland Security (DHS) a certification indicating that there are not enough able and qualified U.S. workers available for the position. These regulations also require that the certification be filed 60 days prior to the start of work. The certification is valid for 180 days from the date of filing, subject to revocation for non-compliance with the conditions of the certification.

In general, employers seeking to hire temporary non-agricultural workers to fill vacant positions in the United States must first file certifications with the Department of Labor (DOL) to verify that they are not able to hire qualified U.S. workers for these positions.

The final rule removes the 60-day filing period for certifications. This change is intended to expedite processing times and allow for more timely notification of employers regarding their inability to hire U.S. workers.

...
labor certification must file two
origins of Form ETA 750, Part A,
with the SWA serving the area
of intended employment. Once
the application is reviewed by the SWA
and the employer conducts its required
recruitment, the SWA sends the
complete application to the appropriate
NPC. The NPC, relying on the
SWA, issues a labor certification for temporary
employment under the H-2B program,
for a specific period of time.

Prior to June 1, 2009, the NPCs
processed applications for three
temporary labor certification
requirements: the National
Permanency Consultation
Committee (NPCC), the
National Permanency Consultation
Committee (NPCC), and the
National Permanency Consultation
Committee (NPCC). The
NPCs are responsible for determining
whether the requirements are met.

Currently, the Department of Labor and the
Department of Homeland Security
have no enforcement authority or process
to ensure that the requirements are met.

Labor certification must be approved
by the Department of Labor, and
the Department of Homeland Security
must approve the application.

In the past, the SWA issued a temporary
labor certification for temporary
employment under the H-2B program,
for a specific period of time.

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for a specific period of time.
C. Current Process Involving Temporary Labor Certifications and the Need for a Reformed System

As described in the May 23, 2008, NFPM, the process for obtaining a temporary labor certification has been described to the Department as complicated, time-consuming, inefficient, and dependent upon the expenditure of considerable resources by employers. The current, duplicative process requires the employer to first file a temporary labor certification with the SWA, which reviews the application, compares the wage offer to the prevailing rate of pay for the occupation, oversees the recruitment of U.S. workers, and then transfers the application to the applicable ETA NRA, which oversees the implementation of the application. This process has been criticized as a lengthy and often unfair, and resulting delays. Application processing delays, regardless of origin, can lead to adverse labor certification ramifications for a business, especially given the current length of time it takes to receive a visa under this program, and as a result of which any processing delay may prevent an employee from securing a visa for a 2-year period during any given fiscal year.

The increasing workload of the Department and SWA poses a growing challenge to the efficient and timely processing of applications. As stated in the NFPM, the H-2B foreign labor certification program continues to increase in popularity among employers. While the actual number of visas available is limited by statute, the number of labor certifications is not. The number of H-2B labor certification applications has increased 125 percent since FY 2009. In FY 2007, the Department experienced a nearly 39 percent increase in H-2B temporary labor certification applications filing over the previous fiscal year. This increasing workload is accentuated because the SWA does not authorize the Department to charge a fee to employers for processing H-2B applications. At the same time, approved funds have not kept pace with the increased workload at the State or Federal level. This has resulted in significant disparities in processing times among the SWAs. Some observers have noted that these disparities among states unfairly advantage one set of employers (those in which the SWAs are able to timely process applications) over others (those in which SWA experience delays due to backlogs resulting from inadequate staffing or funding, or other causes).

In light of these recurring experiences, this Final Rule institutes several significant measures to streamline the Department’s administration of the program. These changes improve the process by which employers obtain labor certification and where our program experience has demonstrated additional measures would assist the Department in protecting the job opportunities and wages of U.S. workers. The Final Rule also provides greater accountability for employers through penalties, up to and including debarment, as an additional safeguard against abuse of the program.

D. Overview of Redesigned H-2B Foreign Labor Certification Program

As proposed in the NFPM and finalized in this rule, the redesigned application process will require employers to complete recruitment steps similar to those now required, but will require them to do so prior to filing the application and labor certification. Once recruitment is complete, this Final Rule maintains the requirement proposed in the NFPM that the completed application be submitted directly to ETA instead of being filed with a SWA. This Final Rule eliminates the SWA duplicative review of the H-2B application. In association with this Final Rule, the Department has redesigned the application form currently used for the H-2A and H-2B temporary labor certification programs and proposed a new ETA Form 9412. Additional information about the new application form appears in the Administrative Information section of this preamble. This rule does not eliminate or federally waive SWA activities (e.g., the job order and interstate clearance process) that may ultimately support an employer’s H-2B application but are funded and governed independently under the Wagner-Peyser Act. This rule does federalize prevailing wage determinations that are currently performed by the SWAs under this program.

To test the U.S. labor market appropriately, employers will be required to first obtain from the Chicago NFPA a prevailing wage rate to be used in the recruitment of U.S. workers. To make sure that employers in the agriculture industry understand the requirements for this program, the Department will provide additional information about the Form 9412 appears in the Administrative Information section of this preamble. The Employer must then follow recruitment steps similar to those required under the current program. Importantly, the NFPM proposed increasing the number of required advertisements by three. However, in response to concerns about the Final Rule return to the current requirement of two advertisements, although it retains the proposed requirement that one of those advertisements be placed on a Sunday. Consistent with the NFPM, this Final Rule requires the employer to attest to and document its recruitment efforts as part of the application but does not require the employer to substantiate.
supporting documentation with its application. To ensure the integrity of the process, the Final Rule requires the employer to retain documentation of its recruitment, as well as other documentation specified in the rule, for a period of 3 years from the date of certification. The employer will be required to provide this documentation in response to a request for additional information by the Certifying Officer (CO) before certification or by ETA pursuant to an audit or in the course of an investigation by the Wage and Hour Division (WHD) after a determination on the application has been issued. The Department has set the document retention requirement at 3 years rather than the proposed 8 years in response to comments received expressing concerns that 5 years would impose an unnecessary burden on small employers, especially those that use mobile or have a mobile component.

Employees or their authorized representatives (attorneys or agents) will be required to submit applications using a new form designed to demonstrate the employer’s compliance with the obligations of the H-2B program. As described in the NPRM and the Final Rule, the application will collect, in the form of attestations, information that is largely required already by the current H-2B labor certification process. These attestations are required from the employer to assure adherence to program requirements and to establish accountability. As for recruitment, employees are required to retain records documenting their compliance with all program requirements. An application that is complete will be accepted by the NPF for processing and will undergo a final review by the Department.

Based on the Department’s experience, and in response to concerns voiced in public comments about the need for H-2B stakeholder guidance and ETA staffing, we have initiated a transition period to the Final Rule at new §653.1. Although the Final Rule takes effect 90 days from publication, it will be in implementation based on employment start dates listed in the application. Employers with a date of need on or after October 1, 2018, will be governed by these new regulations. Employers with a date of need on or after the rule’s effective date but prior to October 1, 2018, will follow the transitional process described in §653.5. Additional information about the transition process appears below.

In order to further protect the integrity of the program, specific verification steps, such as verifying the employee’s Federal Employer Identification Number (FEIN) to ensure the employer is a bona fide business entity, will occur during the processing to ensure the accuracy of the information supplied by the employer. If an application does not explain in detail or document approval, the CO will issue a Request for Further Information (RFI), a process the program already employs. After Departmental review, an application will be certified or denied. As proposed in the NPRM and adopted in the Final Rule, the introduction of new post-certification audits will serve, along with WHD investigations, as both a quality control mechanism and a means of ensuring program compliance. Audits will be conducted on a rolling basis meeting certain criteria, as well as on randomly selected applications. As an event of an audit or WHD investigation, employees will be required to provide information supporting the attestations made in the application, Failure to meet the required standards or to provide information in response to an audit or investigation may result in an adverse finding on the application in question, initiating Department-supervised recruitment in future applications, and penalties.

As stated in the NPRM, the Department expects the modernized processing of applications will yield a reduction in the overall average time needed to process H-2B labor certification applications. This process is expected to lead to greater certainty and predictability for employers by reducing processing times which have exceeded our historical 48-day combined State and Federal processing timeframe.

II. Discussion of Comments on the Proposed Rule

In response to the proposed rule, the Department received 134 comments, of which 64 were unique and another 66 were duplicate form comments. Comments represented a wide range of viewpoints for the H-2B program, including individual employers, agents, industry coalitions and trade groups, advocacy and legal aid organizations, labor unions, a for-profit association, congressional oversight and authorizing committees, and individual members of the public.

The Department received comments both in support and opposition to the proposed regulation. Comments supported, for example, the anticipated efficiencies of the proposed streamlined process and the potential conversion to electronic filing. Broadly, other comments opposed the rule because they felt it would undermine program integrity or weaken worker protections and U.S. worker access to job opportunities. Still others believed the rulemaking was timely, given the recent weakening of the economy, or that the proposed rule failed to address what they believed to be key problems underlying the program. Several of these problems, such as the annual cop of 66,000 H-2B visas per year, are statutory and cannot be changed through regulation.

In addition, as described in greater detail below, the Department received comments raising a variety of concerns with specific proposals and provisions within the rule. After reviewing those comments thoughtfully and systematically, the Department has modified several provisions and retained others or as originally proposed in the NPRM.

Provisions of the NPRM that received comments are discussed below; provisions that were not commented on or revised for technical reasons have been adopted as proposed. The Department has made some technical changes to the regulatory text for clarity and to improve readability, but these changes were not designed to alter the meaning or intent of the regulations.

A. Section 653—Definition of the H-2B Program

In the Final Rule, the Department has revised the discussion on the authority of the Governor of Guam to clarify that the enforcement of the H-2B visa program in Guam resides with the Governor, pursuant to DHS regulations.

B. Section 653—Authority

The changes proposed in the NPRM, comments were received on the definitions for "agent," "attorney," "employer," "employee," "full time," "representative," and United States worker.

The proposed rule defined an agent as "a legal entity or person which is authorized to act on behalf of the employer for temporary agricultural labor certification or which itself is an employer as defined in this subpart. The term ‘agent’ specifically excludes associations or other organizations of employers." In response to comments, the Department has corrected the typographical error and replaced "agricultural" with "agricultural labor." Some commenters supported the proposed definition of agent with regard to its barring of associations or organizations of employers. One bar..."
association commented that there had been many abuses by agents in the past, including the unauthorized practice of law, and recommended the Department adopt the definition under DHS regulations at 8 CFR 202.1. We have reviewed the guidance under that section and concluded it is inappropriate for the labor certification process. The standard set by 8 CFR 202.1 is not tailored to the Department’s needs. For example, it includes, among others, law students and “qualified individuals.” We have determined these persons may not be appropriate to practice before the Department, in particular for purposes of foreign labor certification activities. That definition was designed to fit the needs of another Federal agency and would eliminate many current individuals who sit on behalf of employers in the labor certification process with the Department.

The Department acknowledges that allowing agents who are not attorneys does not fit into the categories recognized by DHS and creates a difference between the two agencies. The Department has permitted agents who do not meet those criteria to appear before it in the past. Agents who are not attorneys have represented clients before the Department in a wide array of cases since long before the development of the H-2A program, and INS is programs, where they interact with those of DHS, permit a broader range of representation. To change such longstanding practices in the context of this rulemaking would represent a major change in policy that the Department is not prepared to make at this time and was suggested in the NFRM seeking comments.

Consequently, the Department has not adopted this recommendation. The Department will maintain its longstanding practice and policy with respect to who may represent employers.

For greater clarity, a definition for “Administrator, Wage and Hour Division (WHD)” has been added to the definition section of the regulation to distinguish this official from the “Administrator, Office of Foreign Labor Certification (OFLC).” Regulatory text has been added where needed to distinguish between those officials.

The proposed rule defined an attorney as:

Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the U.S. or of the District of Columbia, and who is not under suspension or disbarment from practice before any court or before DHS or the U.S. Department of Justice’s Executive Office for Immigration Review. Such a person is permitted to act as an attorney or representative for an employer under this part, however, an attorney who acts as a representative must do so only in accordance with the definition of “representative” in this section.

In the Final Rule, the Department has modified the definition to provide more clarity regarding the bar of courts or courts that could suspend or disbar an attorney. The Department has also revised the final sentence in the definition to read: “Such a person is permitted to act as an agent or attorney for an employer under this subpart.”

In the NFRM, the Department added a definition for “employer” and made revisions to the definition of “employer.” A trade association suggested that the Department eliminate the definition of “employer” but retain the definition of “employee,” stating that the definition of “employer” adds nothing to clarify status or legal obligations under the H-2A program and eliminates broad legal concepts that add unnecessary confusion. As suggested by commenters, the Department has deleted the definition of “employer.” We agree this definition did not provide any additional clarification regarding status or legal obligations related to the H-2A program and was unnecessary.

The Department received comments that the requirement for a Federal Employer Identification Number (FEIN) as incorporated in the definition of “employer” could be problematic for some employers. One commenter recommended the use of the DUNS number as a complement to the FEIN.

The “data universal numbering system” (DUNS), which is operated by Dun & Bradstreet, issues nine-digit numbers that serve as unique identifiers and are used, in part, by the Federal Government or individual businesses to track business entities. The Department has decided to retain the definition as proposed, and notes that it is easy for employers to obtain DUNS numbers, which have the advantage of being assigned by the Internal Revenue Service due to the existence of the IRS database. In addition, the Department has added the phrase “for purposes of filing an application” to clarify the FEIN is information gathered specifically at the point of application for the H-2A labor certification. In paragraph (b)(3) of this definition, the Department has replaced “may” with “must” to clarify U.S. workers must be referred to a U.S. location for employment.

Commenters supported the inclusion of a definition for “full time.” The Department agrees with one commenter’s assertion that, consistent with program practice, the definition should not be concocted to establish an actual obligation of the number of hours that must be guaranteed each week. The parameters set forth in the definition of “full time” refer to the number of hours that are generally perceived to constitute an employer’s commitment, as distinguished from “part time,” and are not a requirement that an employer offer a certain number of hours or any other terms or conditions of employment.

The Department has also made changes to the definition of a job contends for purposes of clarity. The changes make clear that the job contractor, rather than the contractor’s client, must control the work of the individual employee.

One trade association commented that to the extent the intent of the rule is to define the respective liability of agents and representatives, it should articulate a clear set of standards for liability. The association found the definition of “representative” to be problematic and suggested deleting or revising it. The commenter questioned whether the intent of the regulation was to make the representative liable for any misrepresentation or omission made on behalf of an employer. Because of potential awkwardness with the definition and role of agent, the commenter also suggested the rule clarify if, and under what circumstances, an agent is liable for activities undertaken on behalf of an employer. The commenter recommended the Department delete the provision on the representative’s role in the consideration of U.S. workers.

Critics noted that the Department had for dictating under what circumstances a person can interview U.S. applicants for the job, and why the Department is "sizing out" attorneys within this definition.

The Department disagrees with the commenter’s interpretation of the liability of an agent or attorney for the acts of the employer. The duties of an agent or attorney may vary widely and not all duties that may be undertaken by either attorney or representative may lead to liability. The Department recognizes, however, that some of an agent’s or attorney’s duties in representing an employer may put the agent or attorney in the role of the employer and be a basis for assigning liability for the employer’s acts or omissions. For example, in undertaking to represent an employer in the H-2A program, an agent or attorney not only performs administrative tasks but also...
C. Section 655.2—Transition

The Department recognizes that implementing the provisions of the Final Rule may be somewhat difficult for employers who have already filed their applications with the SWA to begin recruiting U.S. workers. Even though the NPFM put current and future users of H-2B workers on notice regarding the Department’s intention to publish a Final Rule, the rule represents a departure from the current administration of the program. H-2B employers, including those who expressed concern regarding the time frame for a Final Rule, will require some period of time to prepare and adjust their requests for nonimmigrant workers to perform temporary seasonal or nonagricultural services or labor, particularly in tandem with changes to DHS processing of cases, and understand how to complete the Department’s new forms for requesting a prevailing wage and applying for temporary employment certification.

In response to comments, the Department is accordingly adopting a transition period, outlined in new §655.8 previously reserved. Employers filing applications for H-2B workers on or after the effective date of these regulations where the date of need for the services or labor to be performed is before October 1, 2020, will be required to obtain a prevailing wage determination from the SWA serving the area of intended employment, rather than the NPFM, but must meet all of the other pre-filing recruitment requirements outlined in this rule. After the application for ‘Temporary Employment Certification’ can be filed with the SWA. However, employers filing applications on or after the effective date of these regulations where the date of need for H-2B workers is on or after October 1, 2020, must obtain a prevailing wage determination from the SWA and comply with all of the obligations and assurances detailed in this subpart. The SWAs will no longer accept for processing applications filed by employers for H-2B workers as on or after the effective date of these regulations. Rather, the SWAs will assist the Department’s transition efforts by issuing prevailing wage determinations where the employer’s need for H-2B workers is prior to October 1, 2020. This will allow the SWAs to pre-fill the SWA’s processing requirements, obligations and assurances to become effective immediately. During the transition period, the Department expects that SWAs will continue to allow employers to file prevailing wage requests on forms they currently use in other visa programs in order to minimize any confusion and expedite the prevailing wage review process.

In order to complete the processing of applications filed with the SWA prior to the effective date of these regulations, the Department has determined that SWAs may continue to process all active applications under the former regulations and transmit all completed applications to the NPFM for review and issuance of a final determination. In circumstances where the SWA has already transmitted the completed application to the NPFM, the NPFM will complete its review in accordance with the former regulations and issue a final determination. OFLC intends to conduct several national stakeholder briefings to familiarize program users with these requirements.

D. Section 655.6—Temporary Need

Congress mandated the H-2B program be used to fill the temporary needs of employers where unemployed U.S. workers capable of performing the work can be found, 8 U.S.C. 1101(a)(15)(H)(iii). Therefore, as explained in the NPFM, the Department will continue to determine whether the employer has demonstrated that there is a need for foreign labor that cannot be met by U.S. workers and that the need is temporary in nature.

The controlling factor continues to be the employer’s temporary need and not the nature of the job duties. Matter of Muno Corp., 14 I&N Dec. 366 (Comm., 1979); cf. Global Horticulture, Inc. v. DOL, 2020 U.S. LEXIS 18 (N.D. Minn. 2020). The Department’s position is that a failure to prove a specific temporary need precludes acceptance of temporary H-2A applications.

DHS regulations at 29 CFR 241.210(b)(6)(i)(B)(ii) provide that a petitioner’s need is one of the following: (1) A time-sensitive need, in which an employer demonstrates that it has not had a need in the past for the labor or service and will need it in the future, but seeks it at the present time; (2) a seasonal need, in which the employer demonstrates that the service or labor is recurring and is traditionally tied to a season of the year; (3) a peak load need, in which the employer demonstrates that it has a need in the past for the labor or service and will need it in the future, but seeks it at the present time; (4) an intermittent need, in which the employer demonstrates that it occasionally or intermittently needs temporary workers to perform services or labor for short periods.
as long as the employer's need for the duties to be performed is temporary or finite, regardless of whether the underlying job is temporary or permanent in nature, and as long as the need exists for up to 3 years. The Final Rule permits the employer to require an employee to request annual labor certifications based on the verification of the U.S. Labor Market. As stated in the NPRM, we believe this is the best method by which to ensure U.S. worker access to these job opportunities, and that an employer's need for workers to fill positions could, in some cases, last from 3 months to 1 year. The Department received a number of comments in response to the proposed expansion of the one-time occurrence definition. A job seeker commented that the final rule does not specifically authorize the placement of a worker on a temporary basis for less than 3 years, but that it could be inferred as already having been in place for such a period of time. The Department agrees with public comments that the need to be met is only the short-term, if the add-on burden and expense of an additional labor market test does not make sense when the total period of need is less than 18 months. Therefore, an employer with a one-time need that has been approved for more than 1 year but less than 18 months will receive a labor certification covering the entire period of need, and will not be required to conduct another labor market test for the portion of time beyond 18 months. An employer requesting certification based on a one-time occurrence must have a one-time occurrence that is expected to last 3 months or more, and will be required to conduct one or more additional labor market tests.

A number of individuals and commenters were concerned that the proposed changes went beyond the original intent of the program and would leave the seasonal and part-time workforce for which it was intended without adequate numbers of visas. They raised longstanding concerns with many that the program is an unnecessarily low cap and the strong competition among industries for the limited visas. These commenters pointed that the program as designed results in a less skilled workforce than is needed to address the needs of the labor market in these areas.

Whether the Department of Homeland Security in the long-established definition of one-time occurrence which encompasses both unique non-recurring situations and also any temporary event of a short duration [that has created the need for a temporary worker]. For example, an employer could utilize the H-2B program to secure a worker to replace a permanent employee who was injured. Further, if that permanent employee, upon returning to work, subsequently suffered another injury, the same employer could utilize the H-2B program again to replace the injured employee on the basis of a one-time occurrence. A one-time occurrence might also arise when a specific project creates a need for additional workers over and above an employer's normal workforce. For example, if a shipbuilder gets a contract to build a ship, the need for workers will be over and above the normal workforce. However, the Department would not consider it a one-time occurrence if the same employer filed a continuing request for H-2B workers for each ship it built.

The NPRM required that employers request an additional labor certification annually where their one-time occurrence extends beyond 1 year. The Department agrees with public comments that, where the need is one-time only, the burden and expense of an additional labor market test does not make sense when the total period of need is less than 18 months. Therefore, an employer with a one-time need that has been approved for more than 1 year but less than 18 months will receive a labor certification covering the entire period of need, and will not be required to conduct another labor market test for the portion of time beyond 18 months. An employer requesting certification based on a one-time occurrence that it expects to last 3 months or more, however, will be required to conduct one or more additional labor market tests.

The number of individual small business commenters were concerned that the proposed changes went beyond the original intent of the program and would leave the seasonal and part-time workforce for which it was intended without adequate numbers of visas. They raised longstanding concerns with many that the program is an unnecessarily low cap and the strong competition among industries for the limited visas. These commenters pointed that the program as designed results in a less skilled workforce than is needed to address the needs of the labor market in these areas.
One believed the proposal to be at odds with years of precedent and immigration and workforce policy, as well as current law. The commenter asserted that extending the definition conflicts with DHS regulations, runs counter to the purpose of the H-2A program, and undermines the Congressional mandate to protect U.S. workers. Another labor organization commented that if an employer needs to hire for a short period of time, the temporary need would be too vague and ill-defined. This commenter opposed the inclusion of the provision and urged the Department to withdraw this proposed change. Another union proposed temporary employment be limited to six months and “certainly no longer than 1 year.” Another labor organization opposing the proposed provision did not believe that the requirement that employers retain the labor market each year represented a meaningful safeguard for domestic workers, particularly if the Department were to adopt an attention-based system where recruitment of U.S. workers is actively supervised by the SWAs. It recommended the H-2A program be made consistent with the H-2A program concerning the definition of temporary.

Several worker advocacy organizations also opposed this provision, indicating their belief it was not in keeping with the objectives of the program and would open most work opportunities to individuals in the country to be potentially part of the program. An individual employer commented that the seasonal need should mean 8 months or less along with a cap with local permanent jobs.

A few firms commented that the proposed changes went beyond what the department believed Congress intended and commented that it would directly and proportionally affect the definition of the category for which the program was designed. It believed that the provisions with the program are more associated with the delays and uncertainties related to the inadequate number of visas as well as inadequate budget and staffing at all levels of the agency. An employer commented that the Department’s legal opinion would be best addressed by Congress and by increased fees at any stage. It also believed that the proposed definition would encourage additional industries, most notably the information technology industry, to participate and to apply for temporary workers on an already pressured program.

Conversely, several employer and trade associations supported the expanded provision. One employer association welcomed the change as long as it was clear. Another supported it as a means to provide greater flexibility across industries and regions. Still another recommended that the 3-year provision be expanded beyond “certain time need” to the other two categories of temporary need.

The legal profession supported the proposal to expand temporary need but suggested that the Department rethinking the requirement that employers retain the labor market each year. According to the Department, requiring employers to get a new prevailing wage and perform additional recruitment and filling each year would increase workload for the Department, increase costs to employers, and fail to recognize the advantages for the employer of having the availability of trained, experienced workers. It recommended that an alternative would be for employers to check the prevailing wage determination annually to ensure that the worker is being paid the appropriate wage but not to have to undertake further recruitment efforts.

Many SWAs commented on the proposed rule. On the issue of the definition of temporary, SWA stated its support for retaining the labor market each year. An employer association supported retaining the labor market each year only in situations where there was a significant time period beyond the ordinary 10-month period left on the labor certification. It believed that this limitation would be inconsistent with the requirement for employers to apply to jobs lasting only 8 months, for example.

Finally, a worker advocacy group recommended the addition of a process either through the Department or the SWA under which employers would work to be determined that the workers are temporary. The Department refers to the Department of Homeland Security and will use its discretion to determine temporary need as published in their Final Rule on H-2A. Currently, the definition, including the four categories of need, appears at 8 CFR 214.30(h)(1)(i), and requires the employer to show extraordinary circumstances in order to establish a need for less than 1 year. The H-2A Final Rule amends 8 CFR 214.30(h)(1)(ii) to eliminate the requirement for extraordinary circumstances and clarify that a temporary need is one that is in the labor force, which is the case of one-time occurrence could last longer than 1 year and up to 3 years. Accordingly, we have deleted the definitions we had in our regulatory text in the NPRM and instead provided a reference to the DHS regulations.

E. Section 655.10—Determination of Prevailing Wage for Labor Certification Purposes

1. Determining Prevailing Wage Determinations

The Department proposed a new methodology to determine the prevailing wage for the job opportunity directly from the NPC. As proposed, the new methodology would allow employers to file prevailing wage requests with the appropriate NPC designated, as the Special NPC for prevailing wage requests—no more than 90 days before the start of recruitment. The proposed rule also clarified the validity period for wage determinations. Based on recent updates to the Occupational Employment Survey (OES) database, and depending on the date of the most recent update, the wage determination provided could be valid between two and three years.

The Department received numerous comments on this new process. After review of all comments, we have decided to implement the PWD process as proposed in the NPRM. However, to reflect the transition from the current system to the new, the Final Rule now clarifies that the NPRM sought comments from employers who had utilized the program in the past or the efficacy of this proposed action.

The Department received no comment on this new process. After review of all comments, we have decided to implement the PWD process as proposed in the NPRM. However, to reflect the transition from the current system to the new, the Final Rule now clarifies that the NPRM sought comments from employers who had utilized the program in the past or the efficacy of this proposed action.

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activity at the NPCs to prevent processing delays. They urged the Department to institute mechanisms to ensure consistency between NPCs and across the job titles, descriptions, and requirements; and to offer compensation to employers, attorneys, and agents prior to implementation.

Many commenters, including labor unions, advocacy organizations, academic institutions, and SWAs expressed concern that the NPC staff would not possess the same level of expertise, particularly locally-oriented expertise, required to provide accurate, context-appropriate prevailing wage determinations as the SWA staff. They believed this could lead to reduced scrutiny, accuracy, and delays, and adversely affect U.S. worker wages and job opportunities. The SWAs that commented on this issue were concerned that transferring the determination responsibilities to the NPCs would also degrade customer service, and some questioned whether CES really wanted to pursue change in local standards. One state had been successful with its own system and recommended the Department replicate that system on a national scale.

One advocacy organization expressed the view that centralization would be particularly harmful to workforce industry workers, which currently use a weekly rate rather than an hourly rate. One employer was concerned that NPCs would be unable to provide timely wage determinations and be biased in favor of higher wages, mistreating program costs. Several commenters opposed PWD internalization in its entirety and proposed full funding of SWAs for these activities. In the alternative, they recommended that, if the approach is moved forward, it hire staff with strong PWD backgrounds and create a separate PWD unit within the NPC.

For the potential delays, some commenters requested that a timeline for the process be established, as recommended adjustments to the process as proposed.

A small business association recommended the Department permit employers to request a predetermination first getting the PWD from the NPC, so long as the employer submits its formal application with a printout of a current and appropriate wage from O*NET, which is the Internal Revenue Service. The Department takes an annual basis.

A large construction association made a similar recommendation, with a proviso that if the employer has not used the correct wage from the database, it would be required to restyle the application process after obtaining a PWD from the NPC. The Department also received a suggestion that employees should be allowed to get the CWS rate themselves unless they want a safe harbor which would be provided by getting the wage rate from the NPC or SWA. Another comment was concerned that employees should not provide the same safe harbor as SWA determinations and another commenter was concerned that eliminating the SWA from the process meant that the safe harbor would also be eliminated.

This Final Rule establishes rules under which employers may provide their own information. Apart from these instances, the Department believes there is greater value and potential for greater consistency and efficiency in having the NPC provide the wage. The Department believes that continuing oversight of the Federal level is essential to ensuring that the job opportunities are advertised and paid at the required wage and therefore does not adversely affect U.S. worker wages.

A number of commenters urged that within this new process, the Department provide a vehicle for communication between program users and NPC staff to resolve disagreements on the job opportunity or wage level and escalate program issues on the Department’s methodology. One trade association recommended the Department disclose its methodology for a PWD upon request from an employer with sufficient time to avoid delaying the application. Other organizations conditioned their support of the new process specifically on the creation of a mechanism for communicating or interacting with the public. Some commenters observed that the appeal process for wage determinations can be quite lengthy, and suggested a viable option in the context of H-2A or H-1B, where timing is critical. These commenters were particularly concerned that without such communication, the timeframe for resolving any prevailing wage determination issues would be lengthened.

The Department recognizes its responsibilities to provide an efficient process for prevailing wage determinations. New that the backlogging in the permanent labor program has been eliminated, resources are being redirected to other O*NET priorities, including offsetting some costs associated with the re-instatement of the temporary labor certification programs. As the new process is designed, comments will be allocated available resources to key activities, including the PWD function. As part of this process, the Department will focus on identifying areas where improvements could be made, including developing and providing new training. The Department will also look to its stakeholder community for input and suggestions for improvements.

The Department will provide stakeholders briefings on H-2A Final Rule, updating its Prevailing Wage Guidance for agricultural and nonagricultural programs, and will provide additional training and educational material as appropriate.

The Department will, to the extent feasible and consistent with resources, seek to hire qualified staff, train staff already on board, and if appropriate, will consider establishing a separate PWD staff at the Chicago NPC. In addition, the Department will strive to provide timely, appropriate guidance to program users and SWAs to ensure a successful transition and implementation. We remain confident that federalizing the prevailing wage application component will instill a high level of efficiency and consistency in the process which has been a past problem. This increased efficiency and consistency will help ensure more accurate wage determinations which result in improved protections for U.S. workers.

As stated in the NPRM, the Department strongly believes that shifting wage determination activities to NPC staff will reduce the risk of job misclassification because of restricted staff experience, strengthen program integrity, but also ensuring consistent classification across States, resulting in improved protections for U.S. workers.

As discussed in the NPRM, the Department has received numerous comments in cases where job descriptions are complex and contain more than one different and defined job opportunity, some SWAs have made inconsistent classifications that resulted in inconsistent PWDs. Furthermore, when H-2A workers are required to work in several different geographic areas that may be in the jurisdiction of several SWAs (example include the New York, New Jersey, Connecticut, and Maryland-Virginia metropolitan areas), questions have arisen about where to file a prevailing wage request and how that wage should be determined. Utilizing a federalized system will alleviate such confusion. Moreover, the Department’s current prevailing wage guidance requires SWAs refer-with certain exceptions—to federally provided OES data to determine the appropriate prevailing wage by jobs. Therefore, the NPC can provide the data.
and there is no requirement for any local input.

The Department understands the desire for a fixed timeframe within which an employer will receive a prevailing wage determination. The timeframe depends on a number of factors, including the volume and number of requests received, the complexity of the request, and the resources available. Nevertheless, the Department has committed as part of the Final Rule to processing employer requests for prevailing wage determinations within 60 days of receipt. However, the Department acknowledges that the process of obtaining a prevailing wage may endure a period of processing time fluctuation as a result of the transition. We therefore recommend that, as an initial matter, employers filing H-2B applications should file a Prevailing Wage Determination Request, Form I-914, with the NFC at least 60 days in advance of their initial request for certification efforts. The Department will make every effort to process these requests within the 60 days. The Department will analyze its experience with application patterns and workload, as the NFC takes on the prevailing wage determinations in the first program implemented by OFLC. During that time, the Department will review not only the level of requests it receives, but the information contained in the requests and whether the information received is typically sufficient to be able to generate accurate prevailing wages, or whether employers are providing deficient information. The Department understands that it is important to substantially reduce the time required for prevailing wage determinations and design procedures to minimize the results of its analyses to provide employers with greater certainty in their expectation of response times from the NFC.

One commenter thought the prevailing wages would be based on a method of calculation, as a result of the centralization of the NFC. Another commenter misunderstood the proposal: the wages will continue to be based on applicable data for the area of intended employment. The Department did not propose any change to the methodology used to determine the wage rates under the H-2B program and confirms the use of CES data as the basis for the prevailing wage determinations. The CES program produces occupational estimates by geographic area and by industry. Estimates based on geographic areas are available at the national, State, and metropolitan area levels. Industry estimates are available for over 450 industry classifications at the national level. The industry classifications correspond to the sector, 2, 3, and 3-digit North American Industry Classification System (NAICS) level. The CES program also provides data at the substate level in addition to the State level. Data is compiled for each metropolitan area statistical area and the additional areas that completely cover the balance of each state. It also allows the ability to establish four wage level benchmarks commonly associated with the concepts of experience, skills, responsibility, and difficulty variations within each occupation.

In the Final Rule, the Department has revised §655.10(d) to clarify the period of time that a job opportunity is less than one year or less, the prevailing wage determined will be valid for the duration of the job opportunity.

2. Automating the PWD Process

Initially, the PWD process will be a manual process. It is the Department's goal to allow the PWD activity to be conducted electronically between the NFC and the employer. The Department sought comments from potential program users on all aspects of its PWD proposal, but in particular regarding the required use of an online prevailing wage system and the corresponding form for interaction with the NFC.

The Department received several comments in support of an electronic process. One commenter suggested the centralization of prevailing wage determinations be delayed until the electronic process was available. Another commenter suggested the electronic process should not be mandatory for all employers, since not all employers have access to the internet. One commenter expressed concerns that employers would use an electronic system to "shop" for an employer with the lowest wage to use in describing their job opportunities. The Department receives this suggestion that the implementation of the prevailing wage function until an electronic version is available. If and when the Department implements an electronic application system, it only allows the submission of the necessary information. The Department proposes the input on an electronic system and will take the comments into consideration as a new system is proposed.

3. Extending the PWD Model to PERM, H-1B, H-1B-1, H-1B-2, and H-1C Programs

The Department received comments on proposals to extend the federalized wage determination process to other permanent and temporary worker programs. Some believed that the Department should not include other programs in an H-2B rulemaking. One commenter suggested that the process should not be extended until the new system proves to be workable. Another commenter was concerned that extending the process to other programs would result in the total frustration of the States when enforcement capacity is not kept up at the State level. One commenter who supported the federalization mentioned that the assignment of occupational codes from the Standard Occupational Classification (SOC) system is also key and should be reviewed. The SOC system is used by many federal agencies to classify workers into occupational categories.

a. H-1B and PERM Programs

As proposed in the NFRM, for consistency and greater efficiency across non-agricultural programs, this Final Rule extends the automated wage request processing model to the permanent labor certification program, as well as to the H-1B, H-1B, H-1C, and H-1C specialty occupation non-agricultural programs. As stated in the NFRM, the new process will not affect the substantive requirements of foreign labor certification programs, and we anticipate that, at least in the foreseeable future, the methodology for determining appropriate wage rates will remain the same as it is today. Our intent is to modernize, centralize, and make the mechanism and analysis behind wage determination more consistent. Much as we do now, the NFC will evaluate the particular employer's job offer, such as the job duties and requirements for the position and the geographic area in which the job is located, to arrive at the correct PWD based on CES data, CBSA rates, employer-provided surveys, or other appropriate information. The Department's current prevailing wage guidance for notes on foreign labor certification programs has been a valid process since 2006 and is posted in the form of a memorandum on the OFLC Web site. In the near term, the Department will update and formalize its guidance for making prevailing wage determinations to maintain some existing procedures and revise others such as to conform to these regulations. As program experiences administering
the PWD process grows, the Department may revise its guidance to explain and assist employers in navigating the process.

To implement and standardize the new process, ETA has developed a new prevailing wage determination Request (PWD-R) form for employers to use in requesting the applicable wage regardless of program or job classification. As stated in the NPRM, the Department is considering means by which eventually such requests could be submitted, and a prevailing wage provided, electronically.

For purposes of the permanent labor certification (PERM) program, this rule amends the regulations at 20 CFR part 655 to reflect the transfer of prevailing wage determination functions from the SWAs to the NPCs and makes final the technical changes described in the proposed rule.

For purposes of the H-1B program, this rule amends the regulations at 20 CFR part 655 to reflect the transfer of PERM functions from the SWAs to the NPCs and makes final the technical changes described in the proposed rule.

Department regulations covering the H-1B program also govern the H-1B and E-3 programs, which both require the filing and approval of a Labor Certification Application, or LCA, rather than a labor certification application. The Final Rule also amends §655.1172 governing the PERM program, to provide for the federalization of prevailing wage determinations.

As described in the NPRM and included in the Final Rule, under the new process, for purposes of H-2B job classifications, NPCs will follow the requirements outlined under new §§655.120 and 665.11 when reviewing each position and determining the appropriate wage rate. These new regulations went into effect with existing provisions at 20 CFR 655.120 and 655.11.

Prevailing Wage Determination Policy Guidance. Non-agricultural Immigration Programs, such as the PERM Program, would include current regulations and guidance for the H-1B program to the extent that the PERM Program provides.

These new regulatory sections supersede current regulations and guidance for all prevailing wage requests in the H-1B, H-1B1, E-3 and PERM programs made on or after January 1, 2015, for H-1B prevailing wage requests made on or after the effective date of this Final Rule. The Department appreciates that employers may require some time to become accustomed to the new method of ensuring a prevailing wage determination. The SWAs will also need a time of transition to complete pending prevailing wage determination requests, just as the NPC will require a corresponding time to fully implement the new form and process. The Department believes keeping PERM activities with the SWAs for PERM, H-1B and related programs until January 1, 2010, will facilitate the transition of Federal staff and programs users to complete federalization of prevailing wage determinations in programs other than H-2B and H-1C on January 1, 2010. Given the limited size of the H-1C program, and the possibility it may cease in 2009, the Department believes it can begin processing prevailing wage determinations requests shortly after this Final Rule takes effect.

Prevailing wage requests under the H-1C program made prior to the effective date of this Final Rule will be governed by the Department's current procedures and its 2009 guidance. Any prevailing wage requests for other non-H-2B programs governed by this regulation made prior to January 1, 2010, must be submitted to the SWAs having jurisdiction over the area of intended employment and will be valid for the period listed on the determination issued by the SWA. Prevailing wage determinations issued prior to January 1, 2010, by a SWA will be valid after October 1, 2009, if determined by the SWA leaving them, and fully enforceable as determined by the applicable regulation (H-1B, H-1B1, E-3, H-1C or PERM).

b. H-1C Program

In the same way that the Department is in this Final Rule establishing national processing for the obtaining of prevailing wages through its National Processing Center for both H-1B and E-3, it is likely that the H-1C program will also be nationalized and incorporated into the same changes. This program, whose prevailing wage processing amendments are inadvertently removed from the NPRM, is currently pending, but was reauthorized in December 2009. The Department has determined that it is administratively prudent to move the prevailing wage determination function to the Chicago NPC on the H-1C program as in the other programs. This affects a very small number of employers (only 14 hospitals are eligible to participate) that are consistent with the reminging for federalizing prevailing wage determinations that applies to the other programs. As stated in the preamble to the NPRM, the conversion to a federal PERM program has no effect on the substantive employment of foreign labor certification programs or on the methodology by which the NPC will determine the prevailing wage for workers to be admitted under any of the other visas. This applies equally to H-1C. In fact, the majority of prevailing wage determinations in the H-1C program are based on the wages contained in collective bargaining agreements, making the need to obtain a wage determination by the NPC frequently unnecessary. Facilities may begin submitting H-1C prevailing wage requests to the Chicago NPC on the date this Final Rule takes effect.

4. Section 655.103(b)—Prevailing Wage Calculation

As proposed in the NPRM, this Final Rule requires that, when a job opportunity involves multiple worksites in areas of intended employment and cross multiple Metropolitan Statistical Areas (MSAs) in multiple counties or states with different prevailing wage rates, an employer must pay the highest applicable wage rate of the applicable MSAs throughout the term of employment. The U.S. worker responding to recruitment and the foreign H-2B worker are entitled to know and rely on the wage to be paid for the entire period of temporary employment.

The Department received comments on this requirement, which provide in support and in opposition to the proposal, concluding that it would strengthen competition for U.S. workers while not adding burdens to its members, whom it said already paid the highest prevailing wage rate in every MSA. A number of employer associations opposed this proposal, stating it was arbitrary, unfair, would artificially increase labor costs for U.S. workers, and would undermine the basic decision-making of businesses to locate in areas with lower labor costs in order to save money.

The Department has decided to retain the requirement that employers advertise and pay the highest prevailing wage when the job opportunity involves multiple worksites across multiple MSAs with varying prevailing wage rates for that occupation and at those worksites. This provision is retained because it provides greater consistency and predictability.
for both employers and the workers and ensure that U.S. workers who are interested in the job opportunity would not be deterred due to varying wage rates. It also assures greater protection for workers against possible wage manipulation by unscrupulous employers.

5. General Process or Data Integrity Concerns

Some commenters raised concerns about the integrity of the data currently being used for prevailing wage determinations and recommended changes to the OES survey itself. Others commented on different aspects of the methodology and procedures. One commenter suggested that the Department set the minimum wage rate for H-2B workers at or above the wage (presumably the adverse effect wage rate) for H-2A workers in that State. Another commenter suggested that the Department require employees in the construction industry to use, first, the Davis-Bacon Act (DBA) survey wage rate; second, if no DBA wage existed, the collective bargaining agreement rate; and as a last resort, the OES rate, if neither of the other rates was available. Another commenter suggested that the provisions regarding when an employer may utilize a wage determination under the Davis-Bacon Act also cover when an employer can choose not to utilize that wage rate. One commenter believed that the proposed rule did not correct what they considered to be an inconsistency with the Department’s Bureau of Labor Statistics (BLS) wage rates being 2 years out of date and also expressed concerns that piece rate policies have led to depressed wages and suggested that the Department should require advance written disclosures of piece rates on the job orders.

The Department appreciates these suggestions and concerns. However, the Department did not propose changes to the sources of data to be used for prevailing wage determinations and, therefore, these commenters are beyond the scope of the current rulemaking. The Department notes that the proposed procedures that were retained in the Final Rule already contain any use of wages specified in a collective bargaining agreement. Similarly, these procedures provide that an employer may use the Davis-Bacon Act wage rate but such use is at the employer’s option unless the employer is a Federal construction contractor. There is a similar provision that applies to Service Contract Act wage rates.

Some commenters suggested that employers should not be allowed to submit their own wage surveys. The Department, however, believes that employers should continue to have the flexibility to submit pertinent wage information and therefore, the Final Rule reiterates the Department’s policy of permitting employers to provide independent wage surveys under certain guidelines. It also continues to provide for an appeal process in the event of a dispute over the applicable prevailing wage.

F. Section 808.15—Employer Conducted Pre-Filing Recruitment

Under the Final Rule, employers will continue to be required to test the labor market for qualified U.S. workers at prevailing wages no more than 120 days before the date the work must begin ("date of need"). This will ensure that the jobs are made available to U.S. workers most likely to qualify for the positions in question. As described in the Final and Finalized rule, U.S. worker recruitment will continue to consist of prescribed steps designed to reflect what the Department has determined, based on program experience, are most appropriate to test the labor market. These steps are similar to those required under the current H-2B program. However, application processing and consistency will be improved by having employers conduct the recruitment process through the recruitment report and application to the Department for review.

Additionally, we will continue the Department’s current requirement that recruitment take place no more than 120 days before the date of need to ensure that the jobs are advertised to U.S. workers with adequate notice. This Final Rule retains the requirement in the proposed that employer recruitment efforts be documented and retained for production to the Department or other Federal agencies. As stated in the NPRM, the recruitment documentation requirements will be satisfied by copies of the pages containing the advertisement from the newspapers in which the job opportunity appeared and, if appropriate, correspondence signed by the employer demonstrating that labor or trade organizations were contacted. Documentation of a SWA job order will be satisfied by copies of the job order downloaded from the Internet showing the beginning date and the ending date of the posting or copy of the job order provided by the SWA with the dates of posting faced, or other proof of publication from the SWA containing the text of the job order. However, in response to public comments, the Final Rule requires record retention for 3 years, which is 2 years less than the Department originally proposed.

As proposed, the Final Rule permits employers to place their own newspaper advertisements. The Department has revised the proposed requirement of three advertisements and will in this Final Rule revert to the current requirement of two advertisements. The Department, however, has maintained in this Final Rule the proposed that one of the advertisements must be placed in a Sunday edition of a newspaper closest to the area of intended employment. The Department has also added a clarification that the newspaper chosen needs to have a reasonable distribution.

The Department received several comments that supported the shift to a pre-filing recruitment model. One of these commenters recommended that the job order process should also be centralized so that the time spent by job order applicants for recruitment is reduced and SWA should be able to Electronically to pre-job orders.

The Department received a number of comments about the proposed for pre-filing recruitment some opposing the proposal and others suggesting the time frame be lengthened. The Department believes that the proposal is necessary to ensure that U.S. workers would not be able or willing to commit to temporary jobs for so long that the actual start date or would indicate they would accept the jobs but then fail to report on the actual start date. These commenters believed this would result in delays, additional costs to employers and the Department, and the late arrival of H-2B workers. Other commenters believed that the new process would work well. One commenter opposed the early pre-filing recruitment and believed the result would be a false indicator that no U.S. workers were available. Another commenter opposed that the proposal be shortened because 120 days in advance is not suitable when serious job seekers are not looking for
temporary employment and stating their view that those U.S. workers who apply are rarely offered employment because the employer knows foreign workers are available. The commenter was further concerned that the U.S. workers who are hired for an advance of the date of need are not reliable and will not report for work. Another commenter suggested a longer recruitment period—

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one recommended 180 days in advance of the date of need—to provide employers with greater flexibility. The Department understands that there are trade-offs when designing a new system. In this case, in order to provide the employer more flexibility and eliminate an extra layer of government bureaucracy, the process must begin earlier.

Another commenter was concerned about the validity of the pre-filing recruitment period. In the current process, the recruitment and submitting the application, the employer’s needs change and it requires a modification to a term or condition on the application. This commenter questioned whether the recruitment would be considered a valid test of the labor market at the current process, the underlying application and job order will not have been approved prior to the recruitment effort. The commenter recommended that the Department provide in the regulation that as long as the recruitment was conducted based on the job description and offered wage as determinedler, in the application and job order will not have been approved prior to the recruitment effort. The commenter recommended that the Department provide in the regulation that as long as the recruitment was conducted based on the job description and offered wage as determined by the CGA, the recruitment would be considered valid irrespective of any required modifications. It is unclear what kind of modifications would be warranted and, therefore, the Department cannot respond directly to this commenter. For example, in a technically filed application requires a technical modification, but the modification does not change the job order and allows the employer to resume processing, then the recruitment will continue to be valid for as long as

the application is pending at the NPC and valid for purposes of a final determination. However, if an employer’s needs change in a way that requires a substantive change in the case or meet key terms and conditions of employment—for example, wages or occupation—the NPC will require that the position be deleted or replaced. Changes in terms of employment contained in the underlying job offer will trigger a requirement for a new labor market test. The Department’s requirement that the employer submit an acceptable job order to the appropriate SWA for posting mandates that the employer complete and submit information regarding all of the job duties and terms and conditions of the job offer. The job orders, the minimum qualifications required for the position (if any), any special requirements, and the rate of pay. This information is normally submitted to the SWA for acceptance print in the employer’s recruitment; as long as the employer’s advertisements do not depart from the descriptions contained in the accepted job order, they will be deemed acceptable by the Department. At the same time, the SWA will be the arbiter of the job’s acceptability for the job order, and as the job order must be accepted prior to the commencement of recruitment in this Final Rule, all recruitment must reflect the job as accepted by the SWA as well.

The Department has decided to eliminate the document retention requirement in its entirety with respect to applications not certified; therefore, any employer whose application has been denied can discard the records relevant to the denied application immediately upon receiving the denial notice or whenever the decision becomes final if the employer appeals the decision. If the denial is overturned, the application becomes subject to the document retention requirements for approved cases. The Department determined that a document retention requirement in such cases serve no governmental purpose and is unnecessarily burdensome on employees. The Department would, in virtually all such cases, already have copies of the employer’s supporting documentation relating to such a retention requirement unnecessary.

1. Section 655.1(d)—Unions as a Source of Labor

As proposed, the rule would have required that if the job opportunity were in an industry, region and occupation in which union recruitment is customary, the appropriate union organization must be contacted. A number of commenters were concerned that the proposed provision placed too great reliance on the employer’s ability to determine what the Department will later decide is a “appropriate for the occupation and customary in the industry and area of intended employment.” One of these commenters suggested that even if contacting a union may be appropriate in some industries, it would be entirely inappropriate in the construction industry and, at a minimum, the construction industry should be expressly excluded from this requirement under a Final Rule.

Another commenter suggested that the requirement was unnecessary, as the required newspaper advertising would reach the same pool of applicants. Another commenter balanced the requirement was not authorized by statute and the Department has no basis to impose it. Additionally, the commenter expressed concern that the requirement also has the potential to subject non-unionized employers to “setting” campaigns, during which union organizers recruit employees in union shops for the sole purpose of organizing the workforce. According to this commenter, the requirement could unfairly and unnecessarily injure the Department into an area in which it should not be involved.

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2. Section 655.15(b)—Referral of U.S. Workers under the SWA Employment Verification

To strengthen the integrity of the Secretary's determination of the availability of U.S. workers, and to help boost employers' confidence in their local SWAs and the H-2B program, the Department proposed that SWAs verify the employment eligibility of U.S. workers they refer for nonagricultural employment services with the SWA. The Department received a significant number of comments on the practicality of this provision.

Comments on this subject were received from national associations, numerous SWAs, several labor advocacy organizations, and members of Congress. Commenters generally opposed the proposal for a variety of legal, programmatic, resource-related, and policy-based reasons. Most of the commenters were SWAs that noted the burden that new provision would create. Many saw it as an unfunded Mandate mandate in violation of the Unfunded Mandates Reform Act. More than one commenter to the Department's recent inclusion of the requirement as a condition for receiving further labor certification grant funding.

As stated in the preamble to the NPRM, the Department is not imposing any new requirement on states or the employers in their administration of the H-2B program. However, according to the NPRM, we do not believe that the requirement will result in a significant increase in workload or administrative burden not covered by Department-provided resources.

In addition, notwithstanding funding limitations, there is a strong, longstanding need for a consistent verification requirement at the state government level. The Department is not imposing this requirement to its own devices. Precisely to ensure that available Federal funding supports verification activities, the Department has added the verification requirement as an allowable cost under the local labor certification grant agreement. The Department also funded its own verification services under the Wagner-Peyser Act, and for many years States have made Wagner-Peyser grant funding a part of their annual financial plan. To the extent that State functions related to labor certification depend extensively on activities that are already part and parcel of the employment service system, State labor agencies can continue to rely on Wagner-Peyser to support that portion of activity. Ultimately, while cognizant of the challenge posed by funding limitations, we expect States to comply as they do with other regulatory requirements and other terms and conditions of their design labor certification grants.

SWAs also expressed concern about possible discrimination risks. The requirement to verify employment eligibility does not appear to violate constitutional prohibitions against disparate impact. The eligibility requirement is similar to verification requirements that exist for other similar public benefits.

The SWA said it would be impossible to implement verification of work eligibility because there is a virtual one-stop system that is self-service for both employers and job seekers. The SWA would be unable to verify that applicants referred to those job orders are employment-eligible. While we do not disagree that in-person verification requirement may impact the decisions of a limited number of otherwise eligible workers, such impact does not outweigh the significant value of verification. Moreover, SWAs are reimbursed by any possible inconvenience to workers by designing or creating additional in-person locations where eligibility can be verified. This is not a problem unique to SWAs—workers may be required to travel great distances to reach a prospective employer, who then (absent a SWA certification) will be required to verify work eligibility. In the end, although employment eligibility verification does require some amount of extra time and effort, the Department has determined that simple convenience must give way to the overarching goal of legal workforce and has drafted its regulations accordingly.

Several SWAs also pointed out that under the new regulations it will be impossible to identify H-2B job orders, especially now that the SWA will no longer receive a copy of the application or determine prevailing wages and be only responsible for placing the job order. The Final Rule now requires the job order carry a notation directing it as a job order to be placed in connection with a future application for H-2B workers.

Several other commenters suggested the confusion (in the SWA's at the SWA's) that this requirement will cause SWAs. A few commenters seem to have disregarded the importance of minimizing the use of the "E-Verify" electronic system. However, although both the NPRM and the Final Rule require the use of the I-9 process, which requires the completion of I-9 forms and process, the use of the electronic E-Verify system is optional. The Department's explanation is that SWAs will not exceed public resources to refer undocumented workers to H-2B job orders. Employment verification provisions included in this regulation are part of a concerted effort—one that includes regulations, written guidance, and outreach and education efforts aimed at addressing weaknesses and to strengthen the integrity of the program.

3. Section 655.15(b)—Employment Employment

Under the NPRM, an employer seeking to employ H-2B workers would have been required to attest that it is not displacing any similarly employed permanent U.S. worker in the occupation in the area of intended employment. The Department received a number of comments from various groups on this provision. We have addressed those below, in conjunction with comments on the layoff provisions at §655.122(k).

G. Section 655.17—Advertising Requirements

As proposed in the NPRM, the Final Rule require employers to advertise for available U.S. workers, as the advertisement must: (1) Identify the employer with sufficient clarity to notify the potential pool of U.S. workers (by legal and trade name, for example); (2) provide a specific job location or geographic area of employment with enough specificity to enable the employer to determine if there are U.S. workers available; (3) provide a description of the job with sufficient particularity to apprise U.S. workers of the duties or services to be performed and whether any overtime will be available; (4) list minimum education and experience requirements for the position, if any; (5) state that no experience is required; (6) list the benefits, if any, and the wage for the position, which must equal or exceed the prevailing wage as provided by the NPCA; (7) contain the word "permanent" to clearly identify the permanent nature of the position; (7) list the total number of positions that are available, which must be no less than the number of openings the employer lists on the application (I-141); and (8) provide clear contact information to enable U.S. workers to apply for the job opportunity. The advertisement cannot contain a job description or duties that are in addition to or exceed the duties listed on the OWI Determination Request or on the application, and must not contain terms and conditions of
employment which are less favorable than those that would be offered to an H-2B worker. The Department received multiple comments on the newspaper advertising requirements. Several commenters believed that the newspaper requirement, especially the requirement for three ads that it was required to place in newspapers in the same manner as the two required under the current program, would increase employer costs and time devoted to the application process but not yield additional U.S. workers. The requirement for advertising in a Sunday edition of a newspaper was seen as particularly objectionable due to the higher costs for Sunday ads and the belief that many nonprofessional workers do not read Sunday newspaper editions. Some commenters suggested employers should have the flexibility to use other recruitment methods, such as Web sites that have proved successful in locating seasonal workers. Others were concerned that without SWA guidance, employers would have no assurance as to the correctness of their ads, risking that if the OJ subsequently determined there were errors in the advertisements, it would be too late to get the workers needed. One commenter was concerned that no process was provided for correcting an employer to revise its ad if the OJ determined that it was unreasonably restrictive.

As previously discussed, this Final Rule requires two newspaper advertisements for each SWA to include one Sunday edition. Sunday editions have traditionally provided the most comprehensive job advertisements and many U.S. workers turned to newspapers when seeking employment would normally choose the Sunday paper to review. Employers can, however, always continue to recruit through other methods. As such, the commenters opposed this provision.

Many commenters remarked that the elimination of the SWA's role in the process only shifted the burden of providing advertising to large and comprehensive publication in lieu of one of the newspaper ads. Other commenters commented about the choice of the specific newspaper in which to advertise and believed that the SWA should not be able to determine which newspaper was more appropriate newspaper in all cases. The commenters suggested that the SWA should be involved in the program and provide guidance to recruiting newspaper choices. Another commenter asked whether there would be specific guidance regarding advertisements for live-in jobs, such as those for housekeepers, child monitors, and similar positions. The Department believes that employers at the SWA will be able to handle such issues.

The Department declines in the Final Rule to specify the requirements in a high level of detail, as appropriate publication may vary, for example by industry or industry practice, and as the Department normally issues such guidance in the form of Proposed Operating Procedures or other policy guidance.

H. Section 655.20—Direct Filing With the NPC and Elimination of SWA Rule

Consistent with the proposed rule, the Final Rule eliminates the role of the SWAs in accepting and reviewing H-2B applications. Once the Final Rule is effective, employers will file H-2B applications directly with the NPC, consistent with the transition provisions of the regulation and with the Department’s specialization of its two processing centers effective June 1, 2008. Employers with dates of need prior to October 1, 2009, will submit prevailing wage determination requests to SWAs, which will process them under the PWG procedures established under §655.13 of this Final Rule. In the long term, under those regulations, each employer will continue to be required to place a job order with the appropriate SWA or to submit the request to another SWA. SWAs will continue to place H-2B associated job orders in their respective Employment Service systems. This proposal received comments from a broad range of stakeholders, including employers, employer associations, advocacy organizations, labor unions, State agencies, and related officials.

Most of the commenters opposed this provision. Many commenters remarked that the elimination of the SWA’s role in the process only shifted the burden of providing advertising to large and comprehensive publication in lieu of one of the newspaper ads. Other commenters commented about the choice of the specific newspaper in which to advertise and believed that the SWA should not be able to determine which newspaper was more appropriate newspaper in all cases. The commenters suggested that the SWA should be involved in the program and provide guidance to recruiting newspaper choices. Another commenter asked whether there would be specific guidance regarding advertisements for live-in jobs, such as those for housekeepers, child monitors, and similar positions. The Department believes that employers at the SWA will be able to handle such issues.

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minimum requirements, and other application options. Some SWAs, as well as part of their duties, review the job offer, its terms and conditions, any special requirements, and the justification as part of the SWA’s duties to ensure and post requirements are in place.

I. Section 655.20—Form Submission and Electronic Filing

The Final Rule requires employers to submit applications on paper, through an information collection (form) modified significantly from the current form to reflect an attestation-based filing process. As stated in the NPRM, the Department will consider in the future an electronic submission system similar to that employed in other programs administered by OPLC should resources be made available.

The Department received a number of comments from SWAs, a specialty labor association, large trade associations, small-business coalitions, and several industry groups largely supportive of the potential conversion to electronic applications. One commenter encouraged general adoption to electronic filing, as the commenter felt this would make program data easier to gather, more accurate, and more shareable across federal agencies. A few comments expressed concern that electronic filing would be mandatory for the entire Department (the Department is considering this). If not adopted, the commenter was concerned that electronic submission is more secure than online systems, making electronic filing more secure. A few comments also expressed concern that electronic filing system would not be available for those not electronically filing, such as those without Internet access, do not have access to computerized systems, or do not have access to computer systems.

The Department, in response to this concern, recommended the Department not require electronic filing until the system was error-free, that any electronic filing system not be system-generated by the Department, and that any defects notified as an RFI. The Department took into account these recommendations. We will determine appropriate timing for the development and implementation of an electronic system based on program need and available resources. We have learned—have progressed with—our experience with the electronic filing process used in the permanent program, and will apply those lessons to any system we institute for the H-2B program.

J. Section 655.21—Supporting Evidence of Temporary Need

As proposed, this Final Rule provides the employer a variety of options for documenting the basis of its temporary need, to be retained by the employer and submitted in the event of a Request for Further Information (RFI), a post-certification audit, a H-2B investigation, or another agency investigation. As explained in the NPRM, for employers participating in the H-2B program, demonstrating a seasonal or peak-period temporary need can best be evidenced by summarized monthly payroll records for a minimum of one previous calendar quarter that identify, for each month, and separately for full-time permanent and temporary employment in the requested occupation, the number of workers employed, the total hours worked, as well as hours worked by workers employed, the total hours worked, as well as hours worked by workers.

The proposed regulation accordingly leaves it to the employer to retain other types of documentation, including but not limited to work contracts, invoices, client letters of intent, and other evidence that demonstrates that the job opportunity is the subject of the application exists and is temporary in nature. Contracts and other documents used to demonstrate temporary need would be required to clearly show the nature of the need by clearly indicating an end date to the activity requested.

The Department's new H-2B labor certification forms are designed to request both a short narrative on the nature of the temporary need and responses to questions. A few comments were concerned that such a narrative would create unnecessary compliance costs for employers. The Department takes this into account in its design of the forms. We have learned that any defects notified as an RFI. The Department took into account these recommendations. We will determine appropriate timing for the development and implementation of an electronic system based on program need and available resources. We have learned—have progressed with—our experience with the electronic filing process used in the permanent program, and will apply those lessons to any system we institute for the H-2B program.

K. Section 655.22—Obligations of H-2B Employers and Attestation-Based Application

The Department prepared and this Final Rule contains the shift to an attestation-based filing system. The new application form contains a series of attestations to confirm employers’ adherence to its obligations under the H-2B program. The information and attestation on the form will provide the necessary assurances for the Department to initially verify program compliance.

As described in the NPRM, the Department anticipates that the shift to an attestation-based application will have a number of benefits, including a reduction in processing times while maintaining program integrity.

The Department received numerous comments, many of them negative, on the move to an attestation-based application. Some commenters believed that an attestation-based application would reduce the role of the SWA and lead to increased employer compliance; increase enforcement resources needed; increase the likelihood that the Department will simply "rubber stamp" the certifications and weaken U.S. worker protections. The Department disagrees with these assumptions and interpretations. The Department believes that an attestation-based application, backed by audits, is within the Secretary’s statutory discretion to implement and is an effective means to ensure that all statutory and regulatory criteria are met and all program requirements are satisfied. Similar approaches have been used successfully by other departments in other contexts, such as the current permanent labor certification process.

One commenter suggested the Department require that the employer always be the applicant, even if an agent is used, because neither an agent nor the employee would have to stress to all of the required obligations. This commenter also suggested that the employee could shield itself from responsibility by using an agent for such prohibited acts as engaging in recruitment fees to be paid by the foreign worker. The Department disagrees with this commenter. The H-2B program, the agent simply represents the employer in the labor certification process. The employer is ultimately responsible for its obligations under the program and it
is the employer who signs the application form and attests to the veracity of the information provided and that it will meet all of its obligations. One commenter appeared to confuse the H-2A and H-2B programs. This commenter referred to the 50 percent rule, an H-2A program feature, and requested that the Department include a good-faith effort for a worker to find another employer if dismissed under the 10 percent rule. In the current H-2A temporary agricultural program, employers must hire a qualified U.S. worker if a position certified under a temporary labor certification, if that worker applies during the first half of the certified period of employment. The H-2B program has no such provision and the Department declines to impose one, especially as this was not proposed in the NPRM. The Department received a number of comments on the specific obligations of H-2B employers outlined in the proposed rule. One commenter pointed out a semantic error in proposed §552.22(i), which stated the employer must attest that "no U.S. workers" are available. The commenter correctly pointed out that an employer cannot possibly have such broad knowledge and that the statute does not require such knowledge. The Department has deleted that provision. There were other comments about word choice and sentence structure, where appropriate, the Department has changed the wording to make the regulations easier to understand.

The Department also has added language in the provision, in §552.22(i), that requires the employer to notify the Department and DHS within 48 hours if an H-2B worker separated from employment prior to the end date of employment in the labor certification. This notification requirement would have also applied if the H-2B worker was abruptly terminated or abandoned their employment prior to the end date of employment. This requirement was included to ensure that if the basis for the worker's status ended before the end date on the application, both DHS and the Department would be able to take appropriate action to terminate the program. The Department received a number of comments in opposition to this requirement, primarily from employers and employer/trade associations. Several employer associations shared the concern that, in their view, the requirement represented a new and overly burdensome liability for employers, opening them up to potential legal action from H-2B employees if the employees left to pursue other legal employment before the end of the contract period. One association found it problematic, given the perception that this worker population is so transient that the workforce large. It was also concerned about the administrative burden on employers to comply with the requirements. It asserted that employers were unlikely to know the real circumstances of the worker's departure, if it was a legal or illegal departure, if it was for work or family reasons, or if it was due to something else. Consistent with a number of other comments either seeking or recommending clarification to the notice requirement, this association stated that such status determinations are complex legal issues and employers should not be required to make them. It also believed that the reporting requirement was unlikely to accomplish anything without imposing additional significant burdens on employers and that it was unlikely that DHS would pursue individuals who are the subject of these reports. A small business association agreed about the unworkability of the potential burden on employers and was concerned that the requirement would ask small businesses to become quasi-Imigration Service agents responsible for enforcing immigration laws.

A trade association found the required 48 hours for notification to be an extremely limited period of time for notification, and a burdensome employer. It recommended that, if the requirement were continued, it should be extended to 30 days. Further, this trade association recommended that DHS create a simple method to allow employers to provide the information directly through the Internet or by telephone. The requirement was described as too vague and not providing enough specifics as to when the employee would be required to do such notification.

An individual employer found significant problems with the proposal, as there was no indication of actions that the Department or DHS would take based on the information. The employer wanted the two departments to be more specific as to how the information was to be used. An employer was also concerned that the requirement was inappropriate in these regulations, as it was inserted into the Department's role regarding the availability of U.S. workers and preventing adverse affects on U.S. workers, and believed that it creates additional conditions and potential liability for employers. Similarly, an employer association thought the requirement inappropriate and did not clearly outline the process by which employers would make such notifications. Additionally, the employer association asked for...
additional guidance as to what information should be required for employers to document separation or job abandonment and was concerned that violations of this provision could lead to dismissal of future participation in the program. 

The Department reviewed the comments related to the reporting requirement and the concerns raised regarding the regulatory language and its implementation. The Department acknowledges that many of these concerns have merit, and has therefore sought to provide clarification and limitations in the Final Rule to address these concerns. The Department did not, however, deem sufficient justification for these comments to eliminate the requirement in its entirety. The notification is necessary under all circumstances because the early separation of workers impacts not only the rights and responsibilities of the employer and worker but also the enforcement responsibilities of the Department. Although the Department is committed to ensuring that the 48-hour requirement begins to run only when the abandonment or termination is discovered, the Department has already added language in the Final Rule clarifying that the employer must notify the Department in a timely manner after abandonment or termination occurs. This provision also includes a provision that if the employer does not notify the Department in a timely manner, the Department may impose civil or criminal penalties if the employer fails to provide the notification. 

The Department has added further clarification to ensure that employers remain aware of the requirements to notify the Department if they have reason to believe that an abandonment has occurred. The Department is concerned that employers who are not aware of these requirements may not be able to respond promptly when abandonment occurs. The Department has also added clarification that if the employer is not aware of the abandonment or termination, the employer may not be able to provide a timely response. The Department has added a provision that clarifies that employers may not be held liable for delays in responding to the Department if the employer is not aware of the abandonment or termination. 

The Final Rule makes clear that recruiters may not use processes to H-2B workers. Examples of exploitation of foreign workers, who in some instances have been required to give recruiters thousands of dollars to secure a job, have been widely reported. The Department is concerned that employers who have knowledge of these activities should be held accountable for these violations. The Department has added a provision that states that employers who have knowledge of these activities will be held accountable for these violations.

The Department recognizes that its power to enforce regulations across international borders is constrained. However, it can and should be as possible in the U.S. to protect workers from exploitation. Consequently, the Department is requiring that the employer make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. The employer will make all deductions from the worker's paycheck that are required by law. 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A commenter further recommended that this provision should clarify that costs paid directly by workers are de facto deductions for the purpose of calculating compliance with the allowed wage, even if employers do not directly deduct them and assert that OECs should clarify its position on which costs are considered paid by employers and thus require reimbursement and include specific examples of such costs. This commenter also believed that similar language in the FLSA was confusing. The Department appreciates the detailed analysis provided by this commenter, but we believe the statutory requirements, which are based on decades of administration of the Federal wage and hour laws, are clear and that it is not necessary to make the recommended changes.

5. Section 655.223(i)(b) in Final Rule—Prohibition is Temporary and Full-Time

The Department proposed that an employer seeking to employ H-2B workers be required to attest that the job opportunity is for a full-time, temporary position. One commenter suggested the proposed regulation could harm U.S. workers by guaranteeing full-time work for the period of temporary foreign workers, while there is no such guarantee provided to U.S. workers in any permanent position. The commenter also stated that while employers can state their intention to hire temporary workers full-time, if the weather does not cooperate, the employer may not be able to do this, causing uncertainty for the business and the U.S. workers whose hours would need to be reduced even further in order to ensure that foreign workers were paid a full-time wage. The commenter raised the following concern about this requirement, stating: “The job opportunity is a bona fide, temporary position and hours worked will be compensable in the full time hours worked by workers in the same position at the employment site.”

As stated in the preamble to the NPRM, the H-2B program has always required that the position being offered be temporary and full-time in nature, and the Department recognizes that some industries, occupations, and States have differing definitions of what constitutes full-time employment. For example, certain landscaping positions are often classified as full-time for a 30-hour work week. To provide additional clarity, the Department, in §655.4 has provided a definition of full-time employment that reflects our experience in the administration of this program. We will continue to make determinations of whether work is full-time for foreign labor certification purposes based on the facts, program experience, customary practice in the industry, and any investigation of the situation. The Department has therefore decided to retain the proposed language in the Final Rule.

6. Section 655.223(i) in Final Rule—Layoff Provisions

Under the NPRM, an employer seeking to employ H-2B workers would be required to attest that it is not displacing any similarly employed U.S. workers in the occupation in the area of intended employment within the period beginning 120 days before the date of need and throughout the entire employment period. The Department received a number of comments from various groups on this provision.

A number of commenters favored this requirement, noting that it ensured efforts to ensure that employers cannot lay off U.S. workers after seeking to hire H-2B workers to perform the same services. Other commenters, however, had concerns regarding the implementation of the provision and the potential liability.

Several commenters were concerned that the requirement to contact former employers who had been laid off would be onerous, given the difficulties in reaching out to properly identify and contact such U.S. workers. The Department finds this argument unpersuasive. The commenters did not support the summary statement that all temporary or seasonal help is transient and mobile in the communities in which the work is performed. Even assuming that such workers do not have lasting ties to the employer, employers generally maintain contact with former employees for many purposes, including, but not limited to, the provision of payroll tax information and the transfer or disposition of benefits (including unemployment benefits). Moreover, by limiting the requirement for contact to the 120 days before the employer’s date of need for the H-2B workers, the employer’s last contact information would likely be current, making such contact generally speaking, relatively simple.

One commenter asserted that the layoff provision conflicts with the definition of seasonality, noting that by definition a seasonal employee will always be hired within the period set forth in an annual cycle. An employer association also objected to the provision on the ground that requiring the consideration of U.S. workers would force employers who laid off U.S. workers in the last three years to hire them again at the beginning of the next season because the timing would put the next season within the 120-day window.

In response to these comments, the Department has limited the applicability of the provision to within 150 days of the date of need as well as the actual occupation and the area of intended employment of the worker. After H-2B certification, this provision applies to laid-off workers a reasonable opportunity to apply for vacancies for which they qualify, striking an appropriate balance between worker protection and employer needs.

Some commenters noted the infeasibility of the layoff provision, citing the need for additional safeguards against massive layoffs of U.S. workers by strengthening requirements for employers to demonstrate they have made efforts to contact former employees. The Department declines to do so at this time. Employers will be allowed to document their contact of former employees using any objective means that are deemed to be reasonable to ensure that good faith efforts have been made. The Department does not have evidence at this time that employers will change their behavior in light of this requirement. The Department will monitor this situation, and all other employer attestations, through post-certification audits and should be used for program modifications through that process.

7. Section 655.223(i) in Final Rule—Prohibition Against Payments

As in the proposal, the Final Rule requires that an employer attest that it has not and will not shift the costs of preparing or filing the H-2B temporary labor certification application to the temporary worker, including the costs of domestic recruitment or attorneys’ and agent fees. The domestic recruitment, legal, and other costs associated with
obtaining the labor certification are expenses necessary for us in the case of legal fees, desired by the employer to complete the labor certification application and labor market test. The employer's responsibility to pay these costs exists separate and apart from any benefit that may accrue to the foreign worker. Prohibiting the employer from passing these costs on to foreign workers allows the Department to maintain the integrity of the process and protect the wages of the foreign worker from exploitation by unwarranted deduction. The Department will continue to permit employers, consistent with the Fair Labor Standards Act (FLSA), to make deductions from a worker's pay for the reasonable cost of furnishing housing and transportation, as well as legal expenses such as passport and visa fees (see fuller discussion below concerning transportation costs under the FLSA).

This section pertains to the receipt of payments by the employer from the employee or a third party, received various comments. Some of the comments differed in their opinion concerning the provision; some were concerned that the provision would allow companies to avoid paying the increased wages and to pass the costs on to the workers. Other comments supported the provision, stating it would protect workers and improve the overall working conditions. However, it should be noted that the Department is not changing the basic requirements set forth in the FLSA, and the provision itself has not been altered.

In addition, comments received, the Department has revised the provision on cost-shifting for greater clarity. As mentioned above, the Department has eliminated the qualifying language regarding the incentive and enforcement to follow. The Department expects that this will make the provision more clear and enforceable.

With regard to the application of the FLSA to H-2B workers' inbound subsistence and transportation costs, we note that the majority of this provision applies to the recruitment and transportation of workers arriving in the United States. The Department is still considering a comment about whether the provision applies to the costs incurred in the hiring of workers in or outside the United States.

With respect to the application of the FLSA to H-2B workers' inbound subsistence and transportation costs, we note that a number of factors exist that make the provision particularly applicable to these workers. First, the H-2B program is designed to provide for the temporary and seasonal labor needs of U.S. employers and the transportation and subsistence costs incurred by workers are generally incurred in connection with the employers' needs. Second, the costs of transportation and subsistence are a significant portion of the total cost of recruitment and are therefore important factors in determining the overall cost of recruitment. The Department is considering whether to modify the provision to apply to these costs.

The Department believes that the H-2B regulations require employers to comply with applicable federal laws, and in accepting the contract offers in this case, the ETA Regional Administrator informed the growers in writing that their obligation to pay the full FLSA minimum wage is not overridden by the H-2B regulations. The Department believes that the FLSA requirements are not necessarily the same as the requirements of the H-2B regulations. The Department may consider the FLSA regulations in determining the minimum wage to be paid to H-2B workers but does not necessarily require that the FLSA regulations be the sole basis for determining the minimum wage to be paid to H-2B workers. The ETA Regional Administrator informed the growers in writing that their obligation to pay the full FLSA minimum wage is not overridden by the H-2B regulations. The Department believes that the FLSA requirements are not necessarily the same as the requirements of the H-2B regulations. The Department may consider the FLSA regulations in determining the minimum wage to be paid to H-2B workers but does not necessarily require that the FLSA regulations be the sole basis for determining the minimum wage to be paid to H-2B workers.
various items that the Department has
decided generally not to be qualifying
costs and expenses incurred by
the employee. The regulations specify
that wages, whether paid in cash or in
card, cannot be considered to have
been paid by the employer and received
by the employee unless they are paid
finally and unconditionally, or “for
and for the regular employment.” 29 CFR
133.45. Thus, if the wage requirements of the Act will not be met where the employee “kick-back” is made in cash or
in other than cash. For example, if
the employer requires that the employee
provide tools of trade that will be
used in and are specifically required
for the performance of the employer’s
particular work, there would be a
violation of the Act if any workweek
when the cost of such tools purchased
by the employee is included in the
minimum or overtime wages required to
be paid under the Act. Id. The regulations
provide that the employer may not
be liable for the wages of the employee
in any workweek below the minimum required by the Act. 29 CFR 133.45.

In short, where an employer has paid
for a particular item of personal service, the
costs of such articles as tools,
lamps, dynamos, and other items which
do not constitute “tools, clothing, lodging,
or other facilities” are “for and for
the regular employment.” Id. Thus, if an employee has paid for
any of these items or services, the
employer is not required to pay
the employee for such items or services as an
additional cost of the
regular employment. 29 CFR 133.45.

The question at issue here is whether payments made by the
United States, whether paid to a third
cost of relocating to the United
States, whether paid to a third
to the employer, constitutes a “kick-back
of wages within the meaning of
the Act. If the payment does
going to great lengths to raise the necessary funds and make such substantial sacrifices to obtain work, it is true that the travel greatly benefits those employees.

Most significantly, however, the Department’s regulations explicitly state that “transportation furnished employees between their homes and work where the travel time does not constitute hours worked compensable under the Act and the transportation is not an incident of and necessary to the employment” is qualifying “facilities” under 29 U.S.C. 531.32(c). As qualifying facilities, such expenses cannot be defined by reference to the benefits of the employer, 29 CFR 531.32(f). The wording of the regulations does not distinguish between commuting and relocation costs, and in the context of the H-2B program, in-kind relocation costs fit within the definition as they are between the employee’s home community and a place of work. The Attorney Court ruled that H-2B relocation expenses were primarily for the benefit of the employer in part because it believed that under 29 CFR 531.32 (c), “a consistent line is drawn between those costs arising from the employment itself and those that would arise in the ordinary course of life from employment, id. Many costs of commuting and moving expenses shall be distinguished on those grounds. However, both kinds of expenses are received by employers for the purpose of getting to a work site to hire employees. Moreover, employees would not reasonably incur either kind of expense but for the existence of the job. But what is required is that the employee receive benefits from the employment relationship and, in almost all circumstances, an employee’s relocation costs cannot be paid to be primarily for the benefit of the employer.

That is not to say that travel and relocation costs are never properly considered to be primarily for the benefit of the employer. The regulations state that travel costs will be considered to be primarily for the benefit of the employer where they are “incidental to and necessary to the employment.” 29 CFR 531.32(c). This might include, for example, a business trip, or an employer-approved requirement that an employee relocate in order to retain his or her job. Relocation costs to start a new job will rarely satisfy this test.

In a literal sense it may be necessary to travel to a new job opportunity in order to perform the work, but that fact, without more, does not render the travel an “incident” of the employment—labour relocation expenses are not, almost unusual circumstances, any more an “incident of * * * employment” than is commuting to a job each day. Indeed, in-kind relocation costs are quite similar to commuting costs in many respects, which generally are not considered compensable. C.J. Dill, Opinion Letter WH-338 (Aug. 5, 1994) (stating that travel time from home to work is “ordinary home-to-work travel and is not compensable” under the FLSA); Virginia v. Cooper, 39 F.3d 417 (5th Cir. 1994) (finding travel to and from work and home not compensable activity under Portal-to-Portal Act). In fact, there is no reason to believe that the drafters of 29 U.S.C. 203(n) and 205(a) ever intended for those provisions to indirectly require employers to pay for their employees’ relocation and commuting expenses. To qualify as an “incident of * * * employment” under the Department’s regulations, transportation costs must have a more direct and palpable connection to the job in question than merely serving to bring the employee to the work site.

Taking the Attorney Court’s logic to its ultimate conclusion would potentially subject employers across the U.S. to a requirement to pay relocation expenses for all newly hired employees to at least pay relocation expenses for all newly hired foreign employees, since an international relocation is perhaps less “ordinary” than interstate relocation. That simply cannot be correct. The language of 29 U.S.C. 203(n) and 205(a) and the implementing regulations provide a very thin reed on which to hang such a seismic shift in hiring practices, particularly since many years after those provisions have gone into effect. Nor does the fact that H-2B workers are temporary guest workers change the equation. Even assuming that H-2B workers derive somewhat less benefit from their jobs because they are only temporary, that fact alone would not render the worker’s relocation expenses an “incident” of the temporary job. If it did, ski areas, campgrounds, shore businesses, and hotels would all be legally required to pay relocation costs for their employees at the beginning of each season—again, a result that is very difficult to square with the language and purpose of 29 U.S.C. 203(n) and 29 CFR 531.32.

A stronger argument could be made, perhaps, that employers derive greater-than-usual benefits from relocation costs when they hire foreign guest workers such as H-2B workers, because employers generally are not allowed in hire guest workers unless they have first attempted but failed to recruit U.S. workers. Thus, such employers have specifically stated a H-2B worker to benefit from the substantially greater benefit that foreign guest workers generally derive from work opportunities in the United States than they do from employment opportunities in their home countries. However, the Department believes that this fact does not make the balance of benefits between the employer and the worker into equipoise. Moreover, the employer’s need for non-local workers does nothing to transform the relocation costs into an “incident” of the job opportunity in a way that would render the employee’s payment of the relocation expenses a “kick-back” to the employer. If it did, courts would soon be called upon every time an employer hired an out-of-state worker to assess how great the employer’s need for the out-of-state employee was in light of local labor market conditions.

Conversely, the courts would also have to inquire into the employee’s circumstances, and whether the employee had reasonably comparable job prospects in the area from which the employee relocated. Again, the Department does not believe such a result is consistent with the text or the intent of the FLSA or the Department’s implementing regulations.

It is true, of course, that H-2B employees derive some benefit from an H-2B worker’s relocation expenditure is compensable under the FLSA, however, the question is not whether an employer incurs some benefit from an employee’s paid-for cost, but rather whether they receive the benefits in their home countries. Significantly, despite the fact that employers derive an obvious benefit from the hiring of state-side workers as well, the language of 29 U.S.C. 203(n) and 205(a) and the implementing regulations provide a very thin reed on which to hang such a seismic shift in hiring practices, particularly since many years after those provisions have gone into effect.

In sum, the Department believes that the costs of relocation to the site of the job opportunity generally is not an “incident” of an H-2B worker’s employment within the meaning of 29 CFR 531.32, and is not primarily for the benefit of the H-2B employer.
8. Section 655.22(b)(1)(ii) in Final Rule—Non-Hire Inquiry

As proposed in the NPRM, the Final Rule at § 655.22(b) requires an employer that is a job contractor to attest that if it places its employees at the job sites of other employers, it has made a written bona fide inquiry into whether the other employer has displaced or is about to displace a similarly employed U.S. worker within the same area of intended employment within the 120 days of the date of need. To comply with this attestation, the Department is requiring the employer to inquire in writing to and receive a written response from the employer where the relevant H-2B worker will be placed. This can be done by exchange of correspondence or attested to by the secondary employer in the contract for labor services with the employer permitting to bring in H-2B workers. This proposed attestation at § 655.22(b) also requires the employer to attest that all workplaces where the H-2B employee will work are listed on the Application for Temporary Employment Certification.

The Department received several comments on this secondary placement attestation provision. While some were in favor of the requirement, some employer associations expressed concern that such an inquiry of their clients was unfair and unduly burdensome. The Department acknowledges that this attestation imposes an additional level of inquiry beyond the existing § 655.24(g) requirement and the clients where the contractor will be providing H-2B workers at a client site. The INA’s mandate of the unavailability of persons capable of performing the job duties for which the H-2B workers are sought is at the heart of this requirement.

It is the H-2B worker’s job activity, rather than the identity of the H-2B worker’s employer, which is required to be measured against the availability of U.S. workers. The H-2B worker cannot be admitted only upon assurances of the unavailability of unemployed persons able to take the H-2B job opportunity. As a result, an H-2B worker performing duties at company X, for which company Y has hired him and pays him, may have an adverse affect not only on employees at the participating job contractor company employing him but also the company benefiting from his or her services. The limitations imposed by the Department—size of intended employment, occupation, and timing—provide parameters to measure employers while at the same time enabling them to ensure full compliance with the mandates of the H-2B program.

One commenter agreed with this provision but did not believe a labor contractor should be held liable for the statements provided by those entities. The Department believes that this commenter misinterpreted this section. The job contractor should make a bona fide inquiry and document the inquiry and responses. If it later turns out that the employer who received the H-2B worker from the job contractor placed a U.S. worker during the stated timeframe, proof of the employer’s negative response to the job contractor’s bona fide inquiry will relieve the job contractor of liability for that violation.

Another commenter requested that we strike this provision in its entirety because it does not allow for change in circumstances that would warrant displacing U.S. workers. The Department notes that changes in the labor market could be used as a reason why the U.S. worker would have to be displaced over the foreign worker and therefore, decline to eliminate this provision.

Finally, industry associations commented that H-2B workers employed by contractors and sub-contractors are constantly being placed on job sites of other employers as they travel the circuit and that this requirement is too difficult to comply with. It is difficult for the Department to assess, from the manner in which this comment was written, whether the H-2B workers are being paid by one performing employer throughout the itinerary or whether they are placed on the payroll of the fixed-site employer at each location. The Department has not made any changes to this section, as all compliance issues are clearly communicated.

9. Section 655.22(b)(1)(iii) in Final Rule—Notice to Workers of Required Departures

Under the Final Rule, employers have a responsibility to inform foreign workers of their duty to leave the United States at the end of the authorized period of stay, and to pay for the return transportation of the H-2B worker if that worker is dismissed early. As stated in the NPRM, DHS will establish a new labor contractor pilot program for certain H-2B and other foreign workers to help ensure that departures comply with the end of work authorization, regardless of whether it flows from a prematurity end or from the end of the authorized labor certification. The Department received one comment on the duty to inform the worker of the obligation to depart from the country. This commenter opined that it is not the responsibility of employers to become unpaid immigration officers. The Department is not suggesting that it is placing any burden on employers to act as immigration officers. The Department has retained the requirement, while clarifying it to be consistent with DHS’s regulations on this issue.

10. Section 655.22(b)(1)(iv) in Final Rule—Representation of Need

The Final Rule requires the employer to attest that it truly and accurately stated the number of workers needed, the dates of need, and the reasons underlying the temporary need in its labor certification request. The Department received two comments on this provision. One requested that we change the words “truly and accurately” to “reasonably and good faith” based on estimates from information available at the time of filing the certification. The Department has considered this change but declines to amend the regulatory language. The concern of the commenter of the need for flexibility is found in the provision in both the NPRM and this Final Rule regarding amendments (§655.34(c)(2)) of the start date of the certification. Any need for additional flexibility on the part of the Department must be balanced against the Department’s need to ensure integrity in an attestations based program, giving freedom to change its dates of need allows unscrupulous employers to submit applications not based on an actual need, thus circumventing the entire process in an attempt to get an easy visa.

The second commenter expressed concern with the date of need requirement and requested the Department change several sections on which this attestation is predicated. One of the major concerns of this commenter was the potential need to amend start dates after certification if an employer must wait for visa numbers to become available. The Department, however, retained the underlying provisions for this reason in the NPRM and the Department permits amendment of the start date of the certification by the employer both prior to certification (§655.34(c)(2)) and after certification to certify a later adjustment (§655.34(c)(4)). The reconsideration of the start date becomes impossible after certification adjudication. The Department notes that a regulatory provision allowing movement of the date of need after certification would be inconsistent with the DHS proposed rule, which would not permit the filing of a petition whose start date was inconsistent with the start date of the labor certification.

This commenter also proposed, in the alternative, that employers be allowed
to submit their H-2A labor certification application to the Department and that they have submitted their request for an amendment to the Department and that the Department has received their request for amendment within five days. The Department considered the comment and has decided not to establish a deadline for the processing of amendment requests.

We refer to DFSA to determine what is appropriate for the adjudication of H-1B petitions which falls exclusively under its jurisdiction.

1. Retention of Supporting Documentation

The Final Rule contains a modified requirement that employers retain specified documentation, outlined in the proposed regulations, to demonstrate compliance with program requirements. The proposed retention period was for 3 years. This documentation must be provided in the event of an H-2B post-adjudication audit, WIRI investigation or other similar activity. The Department received a few comments in response to this proposed requirement. One small business coalition expressed its support, while another organization expressed concern that a 3-year document retention requirement was too long, especially for small employers. Employers also raised the concern that the retention of evidence and records was not economically feasible.

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2. Post-Adjudication Audits

The Department proposed to use various selection criteria for identifying applications for audit review after the application has been adjudicated to an effort to maintain and enhance program integrity. The audits are meant to permit the Department to ensure compliance with the terms and conditions of the program and to fulfill the Secretary's statutory mandate to certify applications only where employers are capable of performing such services cannot be found. Failure by an employer to respond to the audit could lead to disqualification of the program as a whole. The Department has amended the program, and an employer who has been found inadmissible to the program. The Department received many comments on this provision. They were divided between those that opposed the post-adjudication audits and those that believed audits are an effective tool to maintain program integrity. Those who opposed the post-adjudication audits did not make any alternative suggestions on how the Department could determine compliance with the program. Therefore, with no alternatives available, the Department believes its initial analysis is correct and, therefore, has not made any substantive changes to this provision. For more information, see the section "Request for Further Information" below.

3. Request for Further Information

The Department prepared a Request for Further Information (RFI) within 14 days of receiving the application, if needed, for the purpose of adjudicating the application for labor certification. All of those who commented on this provision requested that the timeframes be changed, but most also recommended an additional provision that would obligate the Department to process and respond to the information received through the RFI within a certain period of time. The Department agrees and shortens both the response and response time to 7 days. The Department also has added a provision that obligates the CO to issue a Final Determination within 7 business days of receiving the employer’s response, or by 60 days before the date of need, whichever is greater.

N. Section 655.24—Post-Adjudication Audits

The Department proposed to use various selection criteria for identifying applications for audit review after the application has been adjudicated to an effort to maintain and enhance program integrity. The audits are meant to permit the Department to ensure compliance with the terms and conditions of the program and to fulfill the Secretary’s statutory mandate to certify applications only where employers are capable of performing such services cannot be found. Failure by an employer to respond to the audit could lead to disqualification of the program as a whole. The Department has amended the program, and an employer who has been found inadmissible to the program. The Department received many comments on this provision. They were divided between those that opposed the post-adjudication audits and those that believed audits are an effective tool to maintain program integrity. Those who opposed the post-adjudication audits did not make any alternative suggestions on how the Department could determine compliance with the program. Therefore, with no alternatives available, the Department believes its initial analysis is correct and, therefore, has not made any substantive changes to this provision. For more information, see the section "Request for Further Information" below.

O. Section 655.20—Supervised Recruitment

The Department proposed to require certain employers to engage in supervised pre-filing recruitment to ensure compliance with recruitment requirements. One comment was received on this provision. The commenter believes that the NPRC will be unable to handle such a large volume of requests effectively and as efficiently as did the local SWAs and that it will result in unnecessary delay in the application process. The Department respectfully disagrees with this commenter and has retained the provision as proposed. We believe that centralizing the processing will provide a more efficient and effective program that will enhance program integrity. Further, the permanent labor certification program, supervised recruitment is conducted under Federal guidance and is not a SWA review.
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attorneys and agents with respect to a National Program. The commenter stressed that since attorneys and agents may themselves be subject to a Notice of Determination, they ought to have recourse to correct a consciously incurred or unfair decision. The commenter also noted that there may be certain instances where the interests of an employer and attorney or agent may diverge with respect to pursuing an appeal and the latter would be harmed due to the lack of appeal rights. The commenter also noted that the Department’s permanent labor certification regulations provide not only the employer but any debarred person or entity the right to appeal the debarment decision. We agree with commenter’s concerns and have included references to attorneys and agents’ rebuttal and appeal rights, in addition to that of employees.

4. Use of Labor Contractors

An advocacy organization expressed a concern that employees would manipulate their legal identities resulting in abuses that would not be cured by debarment. In particular, the comments noted a scenario in which a company would retain a labor contractor or temporary agency to serve as the “employee” for a group of foreign workers at the company’s worksite. The commenter stated that the comment would not be sufficient to protect against such an abuse. We have noted the commenter’s concern and revised the regulations to prohibit the use of labor contractors in the recertification process. We have also included a requirement that any individual filing a labor certification application must be the actual employer of record or the entity responsible for employing the workers.

5. Review of Determination

The Department did not receive comments about the procedures for the review of the Administrator’s, OFLC’s, or the Department's determinations. However, to ensure consistency across programs, the Department has included in the Final Rule procedures, identical to those set forth in the Department’s H-2A Final Rule, for hearings before an administrative law judge and review of the administrative law judge’s decision by the Administrative Review Board. Under the Final Rule, a debarred party may request a hearing which would be governed by the procedures in 29 CFR part 8, and administrative law judge reviews would not be required to be issued within a set period of time. The Department believes that this process provides a period of time that is both sufficient for thorough consideration of the grounds for debarment and expedient enough so as to allow the Department to address bad actors before they can cause any additional harm while also minimizing the period of uncertainty for employers in the case of a successful appeal.

Q. Section 655.22—Labor Certification Determinations

The proposed language described the process by which the Administrator of OFLC will certify or deny applications. The commenter, though noting this particular section of the NPRM, actually commented on the automation-based process, in general. Their comments were incorporated into that discussion above.

R. Section 655.33—Appeals to the BALCA

The Department’s and DHS’s NPRMs proposed a new model for the adjudication of H-2B applications. Under current procedures, the Department does not provide for any administrative review of decisions whether denying an H-2B labor certification applications or rendering a non-certification. Currently, the Department’s decisions are advisory to DHS and employers whose applications are denied may be non-renewals by the Department. It has been noted by a number of commenters that the appeals process is ineffective, and the appeals process is not provided in the existing regulations. The commenter’s concerns are noted and the Department is considering expanding the appeals process to provide for a more robust appeals process.

Several comments expressed concern that the appeal process before the BALCA was not sufficient. One commenter noted specifically that no time limit was established for the BALCA to issue its decision statement and a hearing schedule. It was also pointed out that if the BALCA’s decision were appealed to the court, the commenter would be required to file their appeal within 30 days of the BALCA’s decision. It was also stated that there would be no further opportunity to submit additional information. In addition, providing such an opportunity would likely delay the issuance of final decisions from the BALCA. Concerns about delays at the BALCA were expressed by a number of commenters even in the absence of any authorization for the submission of new evidence.

Several comments expressed concern that the appeal process before the BALCA would be lengthy. The commenter noted that if the BALCA issued its decision the same day as the filing of the appeal, it would be delayed. In response to comments reflecting concerns about the timeliness of the appeal process, the Final Rule reflects significantly shorter time frames, with the BALCA decision due no later than 15 business days after the request for review is filed.

One commenter suggested the possibility of allowing worker representatives to participate in the administrative appeal process. We have rejected that suggestion. Generally, the
Department's labor certification procedures do not involve participation by third parties and we do not believe that their involvement would enhance the process given the nature of the labor certification determination.

5. Section 655.5(c)—Assessments of Penalties As previously discussed, the INA provides the Department no direct authority to impose any sanctions concerning the employment of H-2B workers, including the prevailing wage requirement. DHS possesses that authority pursuant to sect. 103 and 214(a) and (c) of the INA. 8 U.S.C. 1103 and 8 U.S.C. 1184(c)(14)(A). DHS may also delegate its authority to the Department under sect. 106(a)(6) and 214(c)(14)(B) of the INA. 8 U.S.C. 1106(a)(6) and 8 U.S.C. 1184(c)(14)(B). DHS has chosen to delegate its enforcement authority to DOL, which provides the basis for the new enforcement provisions of this subpart. The delegation will not take effect until this rule becomes effective.

V. Section 655.50(c)—Availability of Records in the Enforcement Process

Language has been added to §655.50(c) to describe the employer’s responsibility to make records available when those records are maintained in a central office.

V. Section 655.60—Compliance With Application Attestations

The NPRM proposed a WSH enforcement program addressing H-2B employers’ compliance with attestations made as a condition of securing authorization to employ H-2B workers. The proposed enforcement program also covered statements made to DHS as part of the petition for an H-2B worker on the I-129C, Petition for a Nonimmigrant Worker. Compliance with attestations and the DHS petition are designed to protect U.S. workers and would be reviewed in WSH enforcement actions. This Final Rule adopts this proposal.

A trade union and U.S. Senator commented that the petition did not include a mechanism for accepting complaints of potential violations. The Department intends to require complaints, as it does under other administrative mechanisms such as the Fair Labor Standards Act (FLSA), 29 U.S.C. 215, et seq., which does not have a specific regulatory mechanism for the acceptance of complaints. Thus, the Department has added a specific regulatory procedure here. Another trade union commented that the Department should adopt a definition of “employ” found in the FLSA, which defines the term to include “suffer or permit to work.” In fact, the proposed regulation included such a definition. However, the terms “employer” and “employee” were defined in terms of the common law test of employment which does not include “suffer or permit to work.” Since the two concepts are different and the use “suffer” was not prohibited by the U.S. Supreme Court opinion in Nationwide Mutual Ins. v. Garth, 533 U.S. 348 (2001), the reference to “suffer or permit to work” has been removed.

X. Section 655.63—Remedies for Violations of H-2B Attestations

1. Section 655.63(a) and (b)—Assessment of Civil Money Penalties

Under the proposed rule, the WSH would assess civil money penalties in an amount not to exceed $10,000 per violation for a substantial failure to meet the conditions of the H-2B labor condition application or the DHS Form I-129C. Petitions for a Nonimmigrant Worker for an H-2B worker, or for a willful misrepresentation of a material fact on the I-129C, DHS Form I-129C, Petition for a Nonimmigrant Worker. A penalty for a Nonimmigrant Worker for a violation of a material fact on the I-129C, DHS Form I-129C, Petition for a Nonimmigrant Worker. A penalty for a Nonimmigrant Worker. A penalty for a Nonimmigrant Worker. A penalty for a Nonimmigrant Worker. A penalty for a Nonimmigrant Worker.

An agency is authorized by law to impose civil money penalties when appropriate.

1. Section 655.63(b)—Restatement of Illegally Displaced U.S. Workers

Under the proposed rule, the WSH would seek reinstatement of similarly employed U.S. workers who were illegally laid off by these employers in the area of intended employment, such unlawful terminations are prohibited if they occur less than 120 days before the date of the request for the H-2B worker or during the entire period of employment of the H-2B worker. No comment addressed this provision, and it is adopted in the Final Rule.

X. Section 655.63(c)—Other Appropriate Remedies

WSH may seek remedies under other laws that may be applicable to the work situations including, but not limited to: remedies available under the FLSA (29 U.S.C. 201 et seq.), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1901 et seq.), and the McNamar-O'Hara Service Contract Act (41 U.S.C. 351 et seq.). WSH also may seek other administrative remedies for violations as it determines to be appropriate.
The Department sought public comment on whether back wages can be assessed under the H-2B program when an employer fails to pay the prevailing wage rate. The most extensive comments received were from a U.S. Senator asserting that the lack of back pay as a remedy is a “weakness of the Department’s enforcement approach” and that back pay is “an essential make-whole remedy for both H-2B program participants and American workers.” The Senator also stated that “there is ample evidence that such back wages are necessary to ensure that remedial authority is sufficient to address this problem.”

The Department has carefully considered whether Congress has provided authority to assess back wages under the H-2B program. The Department concludes that the H-2B statutory provisions provide the Secretary with the authority to seek back wages for failure to pay the required wage even though the statute does not specifically list this remedy. The initiative authorizes the Secretary to “receive any other remedy authorized by law.” Moreover, such administrative remedies are expressly authorized under the act.

As noted above, that authority has been delegated to the Department of Labor. Awarding back pay is unquestionably the most appropriate remedy for failure to pay the required wage. It is also consistent with the statutory grant of authority and will further the purposes of the H-2B program because it will reduce employers’ incentives to bypass U.S. workers in order to hire and exploit H-2B foreign workers, and guard against depressing U.S. workers’ wages.

The Department considered whether back pay as an appropriate remedy even in the absence of explicit statutory authority. See, e.g., Commonwealth of Kentucky Dept. of Human Resources v. Devereaux, 774 F.2d 288, 294-96 (6th Cir. 1985) (fulling that the Secretary of Labor has authority to award back pay under Comprehensive Employment and Training Act (CETA) benefits). The Department has not reviewed the legislative history to determine whether the H-2B program was intended to be self-executing.

In addition to the comments discussed above, the Department received numerous comments from those beyond the scope of or not directly relevant to the proposed regulations. We did not respond to these comments, but found that inappropriate comments are not relevant. The Department has not received comments from the Department to work with Congress to extend the Small Business Act, or those employers’ requests for supplemental pay or benefits. The Department has not received comments on whether the government should permit H-2B visa numbers that expire the same year they are issued, such as for different contracts with the government or to purchase back payroll for any Federal agencies administering the H-2B visa program, and the INA’s, either through appropriations, or applications for fraud prevention fees. Requests that DHS establish a special fraud investigation unit for certain visa related crimes and offenses, were outside the authority of the Department, and there is no evidence that the Department has received any such requests.

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arising out of legal mandates, the President’s priority, or the principle set forth in the E.O.

The Department determined that this regulation is a “significant regulatory action” under sec. 30(4)(A). This Final Rule implements a significant new policy related to the President’s policies on procurement. However, the Department determined that this rule is not an “economically significant” rule under E.O. 12866 because it will not have an annual effect on the economy of $100 million or more.

Analysis Considerations

The direct incremental costs employers will incur because of this Final Rule, above and beyond the current costs required by the program as it is currently implemented, are not economically significant. The total annual cost associated with this Final Rule is approximately $1.972.769 per year or $105 per employer. The only additional costs employers resulting from this Final Rule are the same as those involved in the placement of a Sunday advertisement, because advertising replaces one of the former daily advertisements and the additional paperwork costs; the new advertisement and retention requirements; and (3) contacting laid-off workers to notify them of a job opportunity. Cost of the Sunday Advertisement

The cost range for advertising and recruiting is taken from a recent (October 2006) sample of newspapers in various urban and rural U.S. cities, and reflects approximate costs for placing one additional advertisement in those newspapers. The cost of advertising in a Sunday paper instead of during the week is approximately $1,972,769 per year or $105 per employer. The additional total cost for the 13,287 employers utilizing this program in 2006 would average approximately $351,086 assuming that such ads would not have been placed by the business as part of its normal practices to recruit U.S. workers.

Cost of Paperwork and Record Retention Requirements

The paperwork and record retention costs are minimal, as records will require a burden of approximately 1.35 hours per application. Based on the median hourly wage rate for professional, Human Resources Managers ($45,471, as published by the Department's Occupational Information Network, O*Net OnLine, and increased by a factor of 1.82 to account for employee benefits and other compensation, a total cumulative burden of 51,219 hours will result in a total cost of $875,116, or $67.50 per employer.

Cost to Notify Laid-Off Workers of Job Opportunity

Cost to notify laid-off workers of job opportunities

A final cost to employers for implementing the requirements of this Final Rule is the cost associated with notifying laid-off workers of a job opportunity. The Department estimates that the total cost to meet this requirement is $57,571 or $57.48 per employer. To make this cost determination, the Department estimated it would take an employer’s Human Resource Manager approximately 1 minute to notify each laid-off worker. The Department does not have data to determine how many laid-off workers an employer would be required to notify. Therefore, the Department multiplied this number based on the total number of employees requested on the applications. Based on the 2006 data, employers requested a total of 247,247 foreign workers for an average of 22 employees per employer. We then multiplied this number by 3 minutes (the time estimate to notify each laid-off worker to determine) to see how many employees each employer would need to meet this requirement. Thus, the cost per employer is the hourly salary for the Human Resource Manager to make the calls at $57.47.

Costs

We also project that employers will experience significant time-savings as a result of the streamlined process. The Department estimates the average time-savings to employers will be at least 28 days from the current process, based on the current average H-2B application processing time of 73 days in the fiscal year (FY) 2007 (October 1, 2006—September 30, 2007). Although the Department cannot estimate the cost savings as a result of this time saved, it believes that employers will experience a variety of economic benefits, some week, or for purchasing a Saturday and weekday ad.

Benefits

including benefits from predictability of workforce, an increase in the productivity of the workforce regardless of geographic area, as a result of streamlining the application process. The Department notes seven comments related to the cost of this Final Rule because they are considered transfer costs under OMB Circular A-4. Therefore, the Department has addressed those comments in Section C of this section of the preamble. The Department notes, however, that based on the comments, it reduced the number of required advertisements from three in the preamble to two in this Final Rule, which is reflected in the cost analysis above.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a rule will have a significant economic impact on a substantial number of small entities. Section 603 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. If a significant economic impact is defined as eliminating more than 10 percent of the businesses' profits; exceeding 1 percent of the gross revenue of the average firm in a particular sector; or exceeding 5 percent of the labor costs of the entities in the sector. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 806 (SBREFA), an agency is required to provide compliance guidance for small entities if the rule has a significant economic impact. Although the RFA and the SBREFA analyses were included as separate preamble sections in the proposed rule, the Department has included them in one preamble section in this Final Rule to avoid unnecessary duplication. The Department has certified that this Final Rule does not have a significant economic impact on a substantial number of small entities.

1. Definition of a Small Entity

A small entity is one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to
industry to the extent necessary to properly reflect industry size differences. An agency must either use the SBA definition for a small entity, or establish an alternative definition. Given that this rulemaking crosses industries, the Department has adopted the SBA size standards defined in its regulations, which are based on annual receipts and/or employment. Therefore, it is not feasible to uniformly apply the SBA size standards to the leather and allied products industry, which is a diverse industry that includes firms of different sizes.

The Department determined that this Final Rule will not have a significant economic impact on small businesses, because the Department estimates that it will not displace a significant number of small businesses. The Department determined that this Final Rule will not have a significant economic impact on small businesses, because the Department estimates that it will not displace a significant number of small businesses.
excluded from any reporting requirement under the Act.

The Department received six comments on this section from SWAs related to the increased cost and workload and/or the lack of funding to implement the new H-2B processing requirements. One commenter generally opposed the provision as either financially or functionally prepared to do so. A number of small businesses that have relied on the H-2B program before are concerned about the potential for increased costs and additional burdens.

The Department disagrees with this position. The H-2B program will allow small businesses to continue to access the foreign labor market, even if they do not have the necessary financial resources. The Department has also taken steps to ensure that SWAs are not required to bear the full cost of implementing these new requirements, such as providing additional guidance and training.

3. Executive Order 13112—Federalism

Executive Order 13112 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13112, Federal agencies are required to consult with States prior to issuing regulations that may have a significant impact on the States. The Department has reviewed the impact of this Final Rule on States and has determined that it will not have a significant impact.

The Department notes that the new H-2B program will provide States with additional opportunities to address the labor needs of their communities. The Department has also taken steps to ensure that States are aware of the new requirements and are prepared to implement them.

4. Executive Order 13157—Indian Tribal Governments

Executive Order 13157 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This Final Rule regulates the H-2B visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking. The Department did not receive any comments related to this section.
F. Assessment of Federal Regulations and Policies on Families

Section 904 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 651 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or weakens the stability, integrity, autonomy, or safety of the family.

The Final Rule does not have an impact on the autonomy or integrity of the family as an institution, as it is described under this provision. The Department did not receive any comments related to this section.

G. Executive Order 12696—Proteced Property Rights

Executive Order 12696, Governmental Actions and the Interference with Constituency-Wide Protected Property Rights, prevents the Federal government from taking private property for public use without compensation. It further institutes an affirmative obligation that agencies evaluate all policies and regulations to ensure that there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other conditions or limitations on private property use, or that require dedications or reservations of private property.

The Department did not receive any comments related to this section. The Department certifies that this Final Rule does not infringe on protected property rights.

H. Executive Order 12698—Civil Justice Reform

Section 3 of E.O. 12698, Civil Justice Reform, requires Federal agencies to draft regulations in a manner that will reduce needless litigation and will not unduly burden the Federal court system. Therefore, agencies are required to review regulations for drafting errors and ambiguity; to minimize litigation; and to provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction.

The rule has been drafted in clear language and with detailed provisions that aim to minimize litigation. The purpose of this Final Rule is to restructure the H-2B program and simplify the application process.

Therefore, the Department has determined that the regulation meets the applicable standards set forth in sec. 3 of E.O. 12698. The Department received no comments regarding this section.

I. Plain Language

Every Federal agency is required to draft regulations that are written in plain language to better inform the public about policies. The Department has assessed this Final Rule under the plain language requirements and determined that it follows the Government's standards for accessibility and understandability to the public. The Department did not receive any comments related to this section.

J. Executive Order 12111—Energy Supply

This Final Rule is not subject to E.O. 12111, which assesses whether a regulation is likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Department has determined that this rule does not represent a significant energy action and does not warrant a Statement of Energy Effects. The Department did not receive any comments related to this section.

K. Paperwork Reduction Act

Summary

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a pre clearance consultation process to provide the general public and Federal agencies an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This helps to ensure that reported data can be provided in a format that is least burdensome and will not include unnecessary costs to the Federal government. The Department of Labor estimates that this Final Rule will impose no reporting burden on small entities. No certified statements are required, nor are any forms required.

The Department certifies that this Final Rule does not impose a significant collection of information by small agencies. The Department did not receive any comments related to this section.

For an additional explanation of how the Department calculated the burden hours and related costs, the Paperwork Reduction Act package for this information collection may be obtained from the OFR at Washington, DC 20210 or by contacting the OFR at 202-691-6100.

The Department received six comments on this section, all related to the H-2B program. One commenter stated that the final rule is unnecessarily long and complex and should be simplified. The Department has attempted to reduce the length and make it easier to use. It has been reduced from seven pages to four pages.

Program under the regulations in effect prior to the effective date of this rule were approved under OMB control number 1205-0015 (Form ETA 740).

This Final Rule implements the use of the new information collection, which is approved under OMB control number 1205-0466.

The Final Rule is subject to OMB and ETA 9142, and ETA 9143, which have a public reporting burden estimated to average 25 minutes for Form ETA 9143 and 2.75 hours for Form ETA 9141 per response or application filed.

This paper work package applies as does this Final Rule to the H-2A, H-1B, H-1B, H-1C, H-2, and PERM programs. The burden hours associated with the additional programs are the result of the wage determination and retention of document requirements. Under this Final Rule, the Department has implemented a schedule of changes, employers applying to any of these programs may use the ETA Form 9141, a single, Federal form that replaces the State-specific forms previously used to obtain prevailing wage determinations. There are no additional costs to the employer associated with the implementation of this final form, as costs are defined by the Paperwork Reduction Act. The Department certifies in this preamble that the H-2C program was inadvertently removed. Consistent with the proposed rule at 73 FR 20947, May 28, 2008, the Department is standardizing all forms for better automated processing, efficiency and effectiveness in its non-agricultural programs, which necessarily affects also the H-2C program.
Three of the comments related to the burden for the paperwork requirements. Two final commenters stated that they did not have the funding or staff to manage the record retention requirements or to process and store the paperwork. None of the commenters specifically addressed the issue of our methodology or assumptions, or the other programs to which the ETA 9141 now applies.

The paperwork burden estimate for the form used for the II-2 program under the regulations in effect prior to the effective date of this Final Rule, (Form ETA 750-CMB control number 1205-00251) was approximately 1.4 hours. Under this new collection of information, the Department estimates that the burden will be approximately 2.75 hours for Form ETA 9142. We based this calculation on a burden estimate of 1.4 hours for these program requirements that remained the same and allocated approximately 3.25 hours for the additional information requirements.

Although the Department did not receive any comments related to the remaining programs (H-1B, H-1C, and PERM), it notes that only the Form ETA 9141 applies to these programs. This form will be used in lieu of the State form for submitting a prevailing wage request. Although the burden hours for each State application vary, the Department estimated the burden hours to complete the State forms to be approximately 1.4 hours. As a result, based on the reasons discussed elsewhere in this preamble, the Department does not expect the paperwork burden hours to increase for these programs.

In sum, without more persuasive analysis rebutting the analyses used by the Department, our calculations are representative of the actual burden burden for the new collection, which represents no increase for most programs and a minimal increase for the 312-28 program.

L. Catalog of Federal Domestic Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance at Number 17-273, "Temporary Labor Certification for Foreign Workers." List of Subparts

20 CFR Part 655


20 CFR Part 656


20 CFR Part 657


20 CFR Part 658


20 CFR Part 659


20 CFR Part 660


20 CFR Part 661

nongovernmental employment in the United States. The U.S. Department of Homeland Security is required to consult with appropriate agencies regarding the availability of U.S. workers. Immigration and Nationality Act of 1952 (INA), as amended, secs. 101(a)(15)(B)(i)(I) and 214(h)(1), 8 U.S.C. 1101(a)(15)(B)(i)(I) and 1144(3)(X). The regulations of the Department of Homeland Security (DHS) for the U.S. Citizenship and Immigration Services (USCIS) at 8 C.F.R. 214.2(h)(1)(i)(I) require that, except for Guam, the petitioning H-2B employer attach to its petition a determination from the Secretary of Labor (Secretary) that:

(1) There are not sufficient U.S. workers available who are capable of performing the temporary services or labor at the time of filing of the petition for H-2B classification and at the place where the foreign worker is to perform the work and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the U.S. in occupations other than agriculture and registered nursing.

(1) This subpart sets forth the procedures through which employers apply for H-2B labor certifications, as well as the procedures by which such applications are considered and how they are advanced or denied.

(2) This subpart sets forth the procedures governing the Department’s investigation, inspection, and law enforcement functions to ensure compliance with the terms and conditions of employment under the H-2B program. The authority for such functions has been delegated by the Secretary of Homeland Security to the Office of Foreign Labor Certification (OFLC) within the Department of Homeland Security, Employment Standards Administration (ESA.) This subpart sets forth the OFLC’s investigation and enforcement actions.

§653.2 Territory of Guam

Subject to this part, it does not apply to temporary employment in the Territory of Guam, and the Department of Labor (Department or DOL) does not certify to the USCIS of DHS the temporary employment of nonimmigrant foreign workers under H-2B visas, or enforce compliance with the provisions of the H-2B visa program provisions in the Territory of Guam. Pursuant to DHS regulations, 8 C.F.R. 214.2(h)(1)(i)(I) administration of the H-2B temporary labor certification program is performed by the Governor of Guam, or the Governor’s designated representative.

§653.3 Special procedures.

(a) Systematic process. This subpart provides guidance for the processing of H-2B applications from employers for the certification of employment of nonimmigrants in nongovernmental employment.

(b) Establishment of special procedures. The Office of Foreign Labor Certification (OFLC) Administrator has the authority to establish or to modify, continue, revise, or revoke special procedures in the form of variances for the processing of certain H-2B applications when employers can demonstrate, upon written application to the OFLC Administrator, that special procedures are necessary. These include special procedures currently in effect for the handling of applications for tree planters and related agriculture workers, professional athletes, boatbuilders coming to the U.S. on an emergency basis, and professional athletes.

§653.4 Definitions of terms used in this subpart.

For the purposes of this subpart:

Administrative Law Judge means a person within the Department’s Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 554, or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 655 of this title, which will hear and decide appeals as set forth in §655.115.

Administrative Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification, ESA, or the Administrator’s designee.

Administrator, Wage and Hour Division (WHD) Employment Standards Administration means the primary official of the Wage and Hour Division, ESA, or the Administrator’s designee.

Agent means a legal entity or person authorized to act on behalf of the employer for temporary non-agricultural labor certification purposes that is not itself an employer as defined in this subpart. The term “agent” specifically excludes associations or other organizations of employers.

Applicant means a lawful U.S. worker who is applying for a job opportunity for which an employer has filed an Application for Temporary Employment Certification (ETCA).

Application for Temporary Employment Certification (ETCA) means the application filed by the employer with the Office of Management and Budget (OMB) approved form submitted by an employer to secure a temporary non-agricultural labor certification determination from OFLC. A complete submission of the Application for Temporary Employment Certification includes the form, all valid wage determinations as required by §653.101(e)(3) and the U.S. worker recruitment report.

Area of intended employment means the geographic area within normal commuting distance of the place (worksite address) of intended employment of the job opportunity for which the certification is sought. There is no rigid measure of distance which constitutes a normal commuting distance of normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the workplace, quality of regional transportation network, etc.).

If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multicity MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The boundaries of MSAs are not controlling in the identification of the normal commuting area.

In any event, the place of intended employment is to be within normal commuting distance of a location that is inside (e.g., near the border of the MSA).

Attorney means any person who is currently a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the United States, or the District of Columbia, and who is not under suspension, debarment, or disbarment from practice before any court or the Department, the Board of Immigration Appeals, the Immigration Judge, or DHS under 8 C.F.R. 292.3, 203.38, or 303.101. Such a person is permitted to act as an agent or attorney for an employer under this subpart.

Board of Alien Labor Certification Appeals (BALCA) or Board means the permanent Board established by part 655 of this chapter, chaired by the Chief Administrative Law Judge, and consisting of administrative law judges assigned to the Department and designated by the Chief Administrative Law Judge to be members of BALCA.
considered, on behalf of the employer, applicants for job opportunities such as that offered in the application, but which do not involve labor certifications.

Secretary means the Secretary of Labor or the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of Homeland Security means the chief official of the Department of Homeland Security or the Secretary of Homeland Security's designee.

Secretary of State means the chief official of the U.S. Department of State or the Secretary of State's designee.

State Workforce Agency (SWA), formerly known as State Employment Security Agency, means the State government agency that receives funds pursuant to the Wagner-Peyser Act to administer public labor exchange services through the State's one-stop delivery system in accordance with the Wagner-Peyser Act (29 U.S.C. 94 et seq.).

Strike means a labor dispute wherein employees engage in concerted stoppage of work (excluding stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations. Whether a job opportunity is vacant by reason of a strike or lockout will be determined by evaluating each position identified as vacant in the Application for Temporary Employment Certification, whether the specific vacancy has been existed for a certain period of time or not.

Successor in interest means that, in determining whether an employer is a successor in interest, the factors cited under Title VII of the Civil Rights Act and Title IV of the Rehabilitation Act of 1973, respectively, will be considered. When considering whether an employer is a successor, the primary consideration will be the personal involvement of the ownership, management, supervision, and other persons associated with the firm in the violations resulting in discharge.

Temporarily, wholly owned management or ownership of the same business operations by the former management or owner does not retain a direct or indirect interest, will not be deemed to be a successor in interest for purposes of discharge. A determination of whether or not a successor in interest exists is based on the entire circumstances viewed in their totality. The factors to be considered include:

1. Substantial continuity of the same business operations;
2. Use of the same facilities;
3. Continuity of the work force;
4. Similarity of jobs and working conditions;
5. Similarity of supervisory personnel;
6. Similarity in machinery, equipment, and production methods;
7. Similarity of products and services; and
8. The ability of the predecessor to provide relief.

United States (U.S.), when used in a geographic sense, means the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the Virgin Islands, and, as of the transition program effective date, as defined in the Consolidated Natural Resources Act of 2000, Public Law 106–222, Title VII, the Commonwealth of the Northern Mariana Islands.

United States Citizenship and Immigration Services (USCIS) means the Federal agency within DHS making the determination under the INA whether to grant petitions filed by employer seeking H-2A worker to perform temporary agricultural work in the U.S.

United States Worker (U.S. Worker) means a worker who is either:
1. A citizen or national of the U.S.; or
2. An alien who is lawfully admitted for permanent residence in the U.S. as an immigrant under any section of the INA, or an immigrant otherwise authorized to be in the U.S. (by the INA or by DHS) to be employed in the U.S. within (number and type) days of the filing date, and, for purposes of determining an employer's compliance with the requirements with respect to appeals and requests for review, begins to run on the first business day after the Department sends a notice to the employer by means normally ensuring next-day delivery, and will end on the day that the employer sends whatever communication is required by the rules back to the Department, as evidenced by a postal mark or other similar receipt.


(a) Compliance with these regulations. Except as provided in paragraphs (b) and (c) of this section, employers filing applications for H-2A workers on or after the effective date of these regulations where the date of need for the services of labor to be performed is on or after October 1, 2009, must comply with all of the obligations and assurances in this subpart. SWAs will no longer accept for processing applications filed by employers for H-2A workers for temporary or seasonal nonagricultural services on or after January 16, 2009.

(b) Applications filed under former regulations. (1) For applications filed with the SWA prior to the effective date of these regulations, the SWA shall continue to process all active applications under the former regulations and transmit all completed applications to the appropriate NPC for review and labor certification determination.

(2) For applications filed with the SWA prior to the effective date of these regulations where the date of need for H-2B workers is on or after October 1, 2009, must receive a prevailing wage determination from the SWA serving the area of intended employment. The SWA shall process such requests in accordance with the provisions of § 1955.10. Once the employer receives a prevailing wage determination from the SWA, it must conduct all of the pre-filing recruitment steps set forth under this subpart prior to filing an Application for Temporary Employment Certification with the NPC.

§ 1955.10 Temporarily.

(a) To use the H-2B program, the employer must establish that its need for nonagricultural services is temporary, regardless of whether the underlying job is temporary or permanent. & CFR 214.2(b)(3)(i).

(b) The employer's need is considered temporary if justified to the Secretary as either a one-time occurrence, a seasonal need, a peak load need, or an intermittent need, as defined by the Department of Homeland Security. & CFR 214.2(b)(3)(ii).

(c) Except where the employer's need is based on a one-time occurrence, the Secretary will, where circumstances so warrant, deny an Application for Temporary Employment Certification when the employer has a recurring, seasonal need, or peak load need lasting more than 30 days.

(d) The temporary nature of the work to be performed in applications filed by job contractors will be determined by examining the job contract's terms, the qualifications of theegers, and the need for the services of labor to be performed in addition to the needs of each individual employer with...
§505.10 Determination of prevailing wage for temporary labor certification purposes.

(a) Application process. (1) The employer must request a prevailing wage determination from the NPC in accordance with the procedures established by this regulation.

(2) The employer must obtain a prevailing wage determination that is valid either on the date recruitment begins or the date of filing a complete Application for Temporary Employment Certification with the Department.

(3) The employer must offer and advertise the position to all qualified workers at a wage at least equal to the prevailing wage obtained from the NPC.

(b) Determination. Prevailing wages shall be determined as follows:

(1) Except as provided in paragraph (e) of this section, if the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (f) of this section, of the wages of workers similarly employed at the skill level in the area of intended employment. The wage component of the Bureau of Labor Statistics Survey of Occupational Wages (SOW) shall be used to determine the arithmetic mean, unless the employer provides a survey acceptable to the Department.

(2) If the job opportunity involves multiple occupations within an area of intended employment and different prevailing wage rates exist for the same occupation and skill level within the area of intended employment, the prevailing wage shall be based on the highest applicable wage among all relevant occupations.

(3) If the employer provides a survey acceptable under paragraph (f) of this section that provides a median but not an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the employment of the wages of U.S. workers similarly employed in the area of intended employment.

(4) The employer may use a current wage determination in the area determined under the Davis-Bacon Act, 40 U.S.C. 2766 et seq., 29 C.F.R. part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq.

(5) The NPC will review the wage determination on the form it uses for these purposes, indicate the source, and return the form with its endorsement to the employer within 10 days of receipt of the request for a prevailing wage determination.

(c) Simultaneously employed. For purposes of this section, "simultaneously employed," means having substantially comparable jobs in the occupational category in the area of intended employment, except that, if a representative sample of workers in the occupational category cannot be obtained in the area of intended employment, similarly employed means:

(1) Having jobs requiring substantially similar level of comparable skills within the area of intended employment;

(2) If there are no substantially comparable jobs with employers outside of the area of intended employment;

(3) If the wage component of the Bureau of Labor Statistics Survey of Occupational Wages is used, unless the employer provides a survey acceptable to the Department.

(4) Prevailing wage rates established for professional athletes under paragraph (f) of this section.

(5) Professional athletes. In computing the prevailing wage for a professional athlete when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in these rules or regulations is considered the prevailing wage (see sec. 212(p)(2) of the NMI).

(6) Employer-provided wage information. (1) The job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPC will consider wage information provided by the employer in making a Prevailing Wage Determination. The employer's survey can be submitted either initially or after NPC issuance of a PWD derived from the employer's survey.

(2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the BLR.

(3) The survey must be based upon recently collected data.

(4) Any published survey must have been published within 24 months of the date of submission, must be the most current edition of the survey, and must be based on data collected not more than 24 months before the publication date.

(5) A survey conducted by the employer must not have been published within 24 months of the date of submission, must be the most recent edition of the survey, and must be based on data collected not more than 24 months before the publication date.

(6) The employer must include in the survey the reasons the survey was not accepted.

(7) The employer must include in the survey the information in the survey that was not accepted, and any other information in the survey that was accepted.

(8) Supplemental information. If the employer provides a survey acceptable under §505.11, or if the initial PWD was requested to submit additional information to the employer, the employer shall submit additional information as provided in paragraph (g) of this section.

(g) Submission of supplemental information by employer. (1) If the employer disagrees with the wage level assigned to the job opportunity, or if the NPC finds the employer's survey is not acceptable, or if there is another legitimate basis for such a review, the employer may submit supplemental information to the NPC.

(2) The NPC will consider one supplemental submission relating to the employer's survey, the skill level assigned to the job opportunity, or any other legitimate basis for the employer to request such a review. If the NPC does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, the NPC must...
inform the employer, in writing, of the
result of the determination, including
the basis for the decision.

(3) The employer may then apply for
a new wage determination, appeal
under §555.11, or rescind the
initial PWD.

(4) The resulting wage cannot be
lower than required by any other law.

(5) The Federal Wage and Hour
Division may make additional
investigation or make a new wage
determination if the prevailing wage
rate claimed or the requirements
of the wage determination are not
fulfilled.

§555.11 Review of determination
(a) Request for review of determination. Any
employer desiring a review of a PWD must submit
a written request for review within 30
days of the date on which the determination
was made. The request must be filed with
the Wage and Hour Division and contain:
(1) The name, address, and phone
number of the employer;
(2) The facts and circumstances
that the employer believes led to
the determination of the PWD;
(3) The date on which the determination
was made;
(4) The basis for the employer's claim
that the wage determination is not
accurate or is not in accordance with
applicable law; and
(5) A copy of the PWD.

(b) Notice of determination. After
receipt of a request for review, the
Wage and Hour Division shall:
(1) Investigate the facts and
circumstances as provided for in
the request for review;
(2) Meet with the employer and
any interested parties;
(3) Make a new determination
of the prevailing wage;
(4) Provide the employer
with a written decision
and the basis for the
determination;
(5) Notify the employer of
the right to appeal the
determination;
(6) Notify any
interested parties
of the determination;
(7) Include a description
of the procedures
for appealing a
wage determination;
and
(8) Include a statement
that the Wage and
Hour Division
will not
 disclose

(c) Time for appeal. An employer
who is dissatisfied with a wage
determination may appeal the
determination by filing a written
Notice of Appeal with the
Wage and Hour Division
within 30 days of the
receipt of the
determination.

(d) Review of appeal. Any
appeal shall be reviewed
by the Wage and Hour
Division and is
subject to
the provisions
of this chapter.

§555.12 Appeal to the
Bureaucratic Appellate
Board. Any employer
dissatisfied with a wage
determination by the
Wage and Hour Division
may appeal to the
Bureaucratic Appellate
Board. An employer
may file an appeal
within 30 days of
receipt of the
determination.

§555.13 Final determination.
The Wage and Hour
Division and the
Bureaucratic Appellate
Board shall
issue a final
determination
in accordance
with the
provisions
of this chapter.
employer must, in place of a Sunday edition advertisement, advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(3) The newspaper advertisements must satisfy the requirements contained in § 655.17. The employer must maintain copies of newspaper pages (with date of publication and full copy of advertisement), or tear sheets of the pages in the publication which includes advertisements, or other proof of publication containing the text of the printed advertisements and the date of publication furnished by the newspaper.

(4) If a professional, trade or ethnic publication is more appropriate for the occupation and the workers likely to apply for the job opportunity than a general circulation newspaper, and is the most likely source to bring responses from able, willing, qualified, and available U.S. workers, then the employer may use a professional, trade or ethnic publication in place of one of the newspaper advertisements, but may not replace the Sunday advertisement (or the substitute permitted by paragraph (b) of this section).

(g) Labor Organizations. During the period of time that the job order is being circulated for interstate clearance by the SWA under paragraph (b) of this section, an employer that is already a party to a collective bargaining agreement governing the job classification that is the subject of the H-2B labor certification application must formally notify the U.S. Mail or other service that is party to the collective bargaining agreement. An employer governed by this paragraph must maintain detailed records documenting that such organizations were notified and of any action taken by the parties related to the position openings and whether they referred qualified U.S. workers, including number of referrals, or were non-responsive to the employer's requests.

(h) Layoff. If there has been a layoff of U.S. workers by the applicant employer in the occupation in the area of intended employment within 120 days of the date on which a H-2B worker is needed as indicated on the submitted Application for Temporary Employment Certification, the employer must document it has notified or will notify each laid-off worker of the job opportunity involved in the application and has considered or will consider each laid-off worker who expresses interest in the opportunity, and the result of the notification and consideration.

(2) Referral of U.S. workers. SWAs may only refer for employment individuals for whom they have verified identity and employment authorization through the process for employment verification of all workers that is established by INA sec. 274A(h). SWAs must provide documentation certifying the employment verification that satisfies the standards of INA sec. 274A(a)(5) and its implementing regulations at 8 CFR 274A.

(i) Recruitment Report. (1) No fewer than 3 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare, sign, and date a written recruitment report. The employer may not submit the H-2B application until the recruitment report is completed. The recruitment report must be submitted to the NPC with the application. The employer must retain a copy of the recruitment report for a period of 3 years.

(2) The recruitment report must:

(i) Identify each recruitment source by name.

(ii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity by the date of the preparation of the recruitment report, and the disposition of each worker, including any U.S. workers who applied or were referred to the position.

(3) If applicable, explain the lawful job-related reasons for not hiring any U.S. workers who applied or were referred to the position.

(j) Employment Recruitments. The employer must retain resumes of all applicants who were referred for the position and who were not offered the job.

(k) Layoff. If there has been a layoff of U.S. workers by the applicant employer in the occupation within 120 days of the date on which the H-2B workers are needed, the employer must document it has notified or will notify each laid-off worker of the job opportunity involved in the application and has considered or will consider each laid-off worker who expresses interest in the opportunity, and the result of the notification and consideration.

(l) Referral of U.S. workers. SWAs may only refer for employment individuals for whom they have verified identity and employment authorization through the process for employment verification of all workers that is established by INA sec. 274A(h). SWAs must provide documentation certifying the employment verification that satisfies the standards of INA sec. 274A(a)(5) and its implementing regulations at 8 CFR 274A.

(m) Recruitment Report. (1) No fewer than 3 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare, sign, and date a written recruitment report. The employer may not submit the H-2B application until the recruitment report is completed. The recruitment report must be submitted to the NPC with the application. The employer must retain a copy of the recruitment report for a period of 3 years.

(2) The recruitment report must:

(i) Identify each recruitment source by name.

(ii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity by the date of the preparation of the recruitment report, and the disposition of each worker, including any U.S. workers who applied or were referred to the position.

(iii) If applicable, explain the lawful job-related reasons for not hiring any U.S. workers who applied or were referred to the position.

(n) Employment Recruitments. The employer must retain resumes of all applicants who were referred for the position and who were not offered the job.

(o) Layoff. If there has been a layoff of U.S. workers by the applicant employer in the occupation within 120 days of the date on which the H-2B workers are needed, the employer must document it has notified or will notify each laid-off worker of the job opportunity involved in the application and has considered or will consider each laid-off worker who expresses interest in the opportunity, and the result of the notification and consideration.

(p) Referral of U.S. workers. SWAs may only refer for employment individuals for whom they have verified identity and employment authorization through the process for employment verification of all workers that is established by INA sec. 274A(h). SWAs must provide documentation certifying the employment verification that satisfies the standards of INA sec. 274A(a)(5) and its implementing regulations at 8 CFR 274A.

(q) Recruitment Report. (1) No fewer than 3 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare, sign, and date a written recruitment report. The employer may not submit the H-2B application until the recruitment report is completed. The recruitment report must be submitted to the NPC with the application. The employer must retain a copy of the recruitment report for a period of 3 years.

(2) The recruitment report must:

(i) Identify each recruitment source by name.

(ii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity by the date of the preparation of the recruitment report, and the disposition of each worker, including any U.S. workers who applied or were referred to the position.

(iii) If applicable, explain the lawful job-related reasons for not hiring any U.S. workers who applied or were referred to the position.

(r) Employment Recruitments. The employer must retain resumes of all applicants who were referred for the position and who were not offered the job.

(s) Layoff. If there has been a layoff of U.S. workers by the applicant employer in the occupation within 120 days of the date on which the H-2B workers are needed, the employer must document it has notified or will notify each laid-off worker of the job opportunity involved in the application and has considered or will consider each laid-off worker who expresses interest in the opportunity, and the result of the notification and consideration.

(t) Referral of U.S. workers. SWAs may only refer for employment individuals for whom they have verified identity and employment authorization through the process for employment verification of all workers that is established by INA sec. 274A(h). SWAs must provide documentation certifying the employment verification that satisfies the standards of INA sec. 274A(a)(5) and its implementing regulations at 8 CFR 274A.

(u) Recruitment Report. (1) No fewer than 3 calendar days after the last date on which the job order was posted and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare, sign, and date a written recruitment report. The employer may not submit the H-2B application until the recruitment report is completed. The recruitment report must be submitted to the NPC with the application. The employer must retain a copy of the recruitment report for a period of 3 years.

(2) The recruitment report must:

(i) Identify each recruitment source by name.

(ii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity by the date of the preparation of the recruitment report, and the disposition of each worker, including any U.S. workers who applied or were referred to the position.

(iii) If applicable, explain the lawful job-related reasons for not hiring any U.S. workers who applied or were referred to the position.
§252.21 Supporting evidence for temporary employment.

(a) Statement of Temporary Need. Each Application for Temporary Employment Certification must include an explanation regarding temporary need in the appropriate sections. The employer must include a specific statement of temporary need containing the following:

(1) Description of the employer’s business history and activities (i.e., primary products or services supplied throughout the year);

(2) An explanation regarding why the nature of the employer’s job opportunity is dependent on factors that are seasonal, idiosyncratic, or idiosyncratic rules under §655.6(b) as defined by 20 CFR 214.30(0)(iv)(B), and

(3) A statement justifying any increase or decrease in the number of H-2B positions being requested for certification, from the previous year.

(b) Request for Supporting Evidence. In circumstances where the CO requests evidence or documentation substantiating the employer’s temporary need through a ROA under §658.23(c)(3) to support a Final Determination, or notifies the employer that its application is being audited under §655.24, the employer must timely furnish the requested supplemental information or evidence or documentation. Failure to provide the information, requested, or late submissions may be grounds for the denial of the application. All such documents or evidence become part of the record of the application.

(c) Retention of documentation. The documentation required in this section and any other supporting evidence justifying the temporary need by the employer filing the Application for Temporary Employment Certification must be retained for a period of no less than 3 years from the date of the certification.

§252.32 Obligations of H-2B employers.

An employer seeking H-2B certification must state as part of the Application for Temporary Employment Certification that it will abide by the following conditions of this subpart:

(a) The employer is offering terms and working conditions normal to U.S. workers similarly employed in the area of intended employment, meaning that they may not be unusual for workers performing the same activity in the area of intended employment, and which are not less favorable than those offered to the H-2B worker(s) and are not less than the minimum wage or terms and conditions required by this subpart.

(b) The specific job opportunity for which the employer is requesting H-2B certification is not vacated because the former occupant(s) (in any strike or lockout or other dispute involving a work stoppage).

(c) The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted the required recruitment, in accordance with the regulations, and has been unsuccessful in obtaining sufficient numbers of qualified U.S. applicants for the job opportunity for which labor certification is sought. Any U.S. workers are not subject to unlawful job denial or job refusal for legitimate reasons, and the employer must retain records of all rejections.

(d) During the period of employment, the employer will comply with applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws.

(e) The offered wages equal or exceed the highest of the prevailing wage, the applicable Federal minimum wage, the State minimum wage, and local minimum wage, and the employer will pay the offered wage during the entire period of the approved H-2B labor certification.

(f) Upon separation from employment of H-2B workers affected by the labor certification, the employer will notify the Department of Homeland Security in writing, or any other method specified by the Department of Homeland Security in the Federal Register or the Code of Federal Regulations of the separation from employment not later than 2 workdays after such separation is discovered by the employer. An abandonment or violation shall be deemed to begin after a worker fails to report for work at the regularly scheduled time for 3 consecutive working days without the consent of the employer. Employers may be penalized for the consequences.

(g) The H-2B wage is not based on commissions, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, biweekly, or monthly basis that equals or exceeds the prevailing wage, or the legal Federal, State, or local minimum wage, whichever is higher. The employer must make all deductions from the worker’s paycheck that are required by law. The job opportunity specifically states all deductions not required by law that the employer will make from the worker’s paychecks. All deductions must be reasonable. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(h) The employer has contracts or agreements with any foreign labor contractor or recruiter who the employer engages in international recruitment of H-2B workers to seek or receive payments from prospective employers, except as provided for in 20 CFR 214.22(b)(5)(v). This provision does not prohibit employers or their agents from expecting reimbursement for costs that are the responsibility of the worker, such as government required passport or visa fees.

(i) The job opportunity is bona fide, full-time employment position, the qualifications for which are consistent with the normal and accepted qualifications required by non-H-2B employers in the same or comparable occupations.

(j) The employer has laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for
Temporary Employment Certification in the state to obtain employment within the period beginning 120 calendar days before the date of need through 120 calendar days after the date of need, except where the employer also attests that it offers the job opportunity that is the subject of the application to those aides of U.S. workers and the U.S. workers themselves, or the employer also offers the job opportunity only for on-site, job-related reasons.

(a) The employer and its attorney or agents have not sought or received payment of any kind from the employee for any activity related to obtaining the labor certification, including payment of the employee's attorneys' or agent fees, Application for Temporary Employment Certification, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, rebates, or other benefits.

(b) If the employer is a job contractor, it will not place any H-2B workers employed pursuant to the labor certification application with any other employer at another employer's worksite unless:

(1) The employer applicant first makes a written bona fide inquiry as to whether the job opportunity has been disqualified or is intended to disqualify any similarly employed workers within the state; and the application is submitted within 120 days of the application being placed under the date of need, and the employer provides a written certification that it has not been so disqualified and does not intend to disqualify such U.S. workers, and

(2) All worksites are listed on the certified Application for Temporary Employment Certification, including additional worksites or modifications.

(c) The employer will not place any H-2B workers employed pursuant to the application outside the area of employment listed on the Application for Temporary Employment Certification, unless the employer has obtained a new temporary labor certification from the relevant regulatory agency.

(d) Unless the H-2B worker will be sponsored by another subsequent employer, the employer will inform the H-2B worker of the requirement that they leave the U.S. at the end of the authorized period of stay provided by the U.S. or separation from the employer, whichever is earlier, as required in §655.90 of this part (about any extension or change of work status or period pursuant to DHS regulations), and the employee prior to the end of the period, the employer is liable for return transportation.

(e) The dates of temporary need, reasons for temporary need, and number of positions being requested for labor certification have been truly and accurately stated on the application.

(f) Receipt and processing of applications.

(a) Filing Date: Applications received by U.S. Mail or private courier shall be considered filed when determined by the NRC to be complete. Applications shall not be accepted for processing or assigned a receipt date, but shall be returned by U.S. Mail to the employer or the employer's representative as incomplete.

(b) Processing: The CO will review complete applications for an absence of errors that would prevent certification and for compliance with the criteria for certification. The CO will make a determination to certify, deny, or issue a Request for Further Information prior to making a Final Determination on the application. Criteria for certification as used in this subpart, are whether the employer has established the need for the nonagricultural services or labor to be performed is temporary in nature; established that the number of workers positions being requested for certification is justified and represents bona fide job opportunities; and all the assurances and met all the obligations required by §655.22 and complied with all requirements of the program.

(c) Request for Further Information.

(1) If the CO determines that the employer has made all necessary certifications and assurances, but the application fails to comply with one or more of the criteria for certification in paragraph (a) of this section, the CO will issue a RFI to the employer. The CO will issue the written RFI within 7 calendar days of the receipt of the application, and send it by means normally assuring next-day delivery.

(2) The RFI must:

(i) Specify the reason why the application is not sufficient to grant temporary labor certification, citing the relevant regulatory standard(s) and (or) special procedures.

(ii) Specify a date, no later than 7 calendar days from the date of the written RFI, by which the supplemental information and documentation must be received by the CO to be considered;

(iii) State that, upon receipt of a response to the written RFI, or expiration of the stated deadline for receipt of the response, the CO will review the existing application as well as any supplemental materials submitted by the employer and issue a Final Determination. If unusual circumstances warrant, the CO may issue one or more additional RFIs prior to issuing a Final Determination.

(3) The CO will issue the Final Determination or the additional RFI within 7 business days of receipt of the employer's response, or within 30 days of the employer's date of need, whichever is later.

(iv) Compliance with an RFI does not guarantee that the employer's application will be certified after submitting the information. The employer's documentation must justify its claimed standard of temporary need or otherwise overcome the stated deficiency in the application.

(4) Failure to comply with an RFI, including not providing all documentation or information within the specified time period, may result in a denial of the application. Such failure to comply with an RFI may also result in a finding by the CO requiring supervised recruitment under §655.30 in future filings of H-2B labor certification applications.

$655.144 Audits.

(a) Discretion. OFLC will conduct audits of H-2B labor certification applications. The applications selected for audit will be chosen within the sole discretion of OFLC.

(b) Audit Letter. When an application is selected for audit, the CO shall issue an audit letter to the employer. The audit letter will:

(1) State the application has been selected for audit and contains documentation that must be submitted by the employer;

(2) Specify a date, no fewer than 14 days and no more than 30 days from the date of the audit letter, by which the required documentation must be received by the CO and

(3) Advise that failure to comply with the audit process may result in a finding by the CO that

(i) The employer failed to conduct supervised recruitment under §655.30 in future filings of H-2B temporary labor certification applications for a period of up to 2 years, or

(ii) Deny the employer's future filing of H-2B temporary labor certification applications as provided in §655.35.

The CO may request supplemental information and/or documentation from the employer to complete the audit.
(d) Audit violations. If, as a result of the audit, the CO determines that the employer failed to produce all required documentation, or determines that the employer violated any provision of § 658.35, the CO may issue a substantial violation. If, as a result of the audit, the CO determines that the employer failed to produce all required documentation, or determines that the employer violated any provision of § 658.35, the CO may issue a substantial violation.

(1) A substantial violation may include any of the following:

(i) The employer fails to maintain complete and accurate records of any of the information required under § 658.35.

(ii) The employer fails to provide the CO with the requested documents.

(iii) The employer fails to provide the CO with any other documentation or information requested by the CO.

(2) The CO may refer any findings that an employer or its representative violated any provision of § 658.35 to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration-Related Employment Practices.

§ 658.35 - Delegation

(a) The Administrator, OFLC may delegate to the Director, the Office of Immigration and Naturalization Service, or to any other officer or employee of the Department of Justice, any and all authority granted to the Administrator by this part or any other Federal law, or any other person or organization.

(b) The Administrator, OFLC may delegate to the Director, the Office of Immigration and Naturalization Service, or to any other officer or employee of the Department of Justice, any and all authority granted to the Administrator by this part or any other Federal law, or any other person or organization.

(c) The Administrator, OFLC may delegate to the Director, the Office of Immigration and Naturalization Service, or to any other officer or employee of the Department of Justice, any and all authority granted to the Administrator by this part or any other Federal law, or any other person or organization.

(d) The Administrator, OFLC may delegate to the Director, the Office of Immigration and Naturalization Service, or to any other officer or employee of the Department of Justice, any and all authority granted to the Administrator by this part or any other Federal law, or any other person or organization.

§ 658.36 - Supervised Recruitment

(a) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(b) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(c) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(d) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

§ 658.37 - Debarment

(a) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(b) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(c) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.

(d) The Administrator, OFLC may not issue a decision on a complaint under this section unless all parties to the complaint have been given reasonable notice of the complaint and an opportunity to be heard.
If, after reviewing the employer’s timely filed rebuttal evidence, the Administrator, OFLC determines that the employer, attorney, or agent more likely than not meets one or more of the bases for debarment under §555.310(c), the Administrator, OFLC will notify the employer, by means normally occurring next-day delivery, within 30 calendar days after receipt of such timely filed rebuttal evidence, of his/her final determination of debarment and of the employer, attorney, or agent’s right to appeal.

(4) The Notice of Debarment must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and must offer the employer, attorney, or agent an opportunity to request a hearing. The notice must state that to obtain such a hearing, the debarred party must, within 30 calendar days of the date of the notice, file a written request with the Chief Administrative Law Judge, United States Department of Labor, 400 K Street, NW., Suite 600-N, Washington, DC 20202-0002, and simultaneously serve a copy to the Administrator, OFLC. The debarment will take effect 30 days from the date the Notice of Debarment is issued, unless a request for a hearing is properly filed within 30 calendar days of the date the Notice of Debarment is issued. The timely filing of a request for a hearing stays the debarment pending the outcome of the appeal.

(5) Hearing. Within 10 days of receipt of the request for a hearing, the Administrator, OFLC will send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally occurring next-day delivery. The Chief Administrative Law Judge will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 180 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

(6) Decision. After the hearing, the ALJ must affirm, reverse, or modify the Administrator, OFLC’s determination. The ALJ’s decision must be provided, immediately, to the employer, the Administrator, OFLC, DHS, and OFLC by means normally occurring next-day delivery. The ALJ’s decision is the final decision of the Secretary, unless either party, within 30 calendar days of the ALJ’s decision, seeks review of the decision with the Administrative Review Board (ARB).

Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB must decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition or if the ARB does not accept a notice of acceptance of a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding in person or by certified mail.

(7) Upon receipt of the ARB’s notice to accept or not to accept the petition, the Office of Administrative Law Judges shall promptly forward a copy of the complete hearing record to the ARB.

(8) Where the ARB has determined to review such decision and order, the ARB shall notify each party:

(1) The issue or issues raised;
(2) The form in which submissions shall be made (i.e., briefs, oral argument, etc.) and
(3) The time within which such presentation shall be submitted.

(9) The ARB’s final decision must be issued within 90 days from the date granting the petition and served upon all parties and the ALJ, in person or by certified mail. If the ARB fails to provide a decision within 90 days from the date granting the petition, the Secretary’s decision will be the final decision of the Secretary.

(10) Inter-agency Reporting. After completion of the appeal process, OFLC will inform DHS and other appropriate review or enforcement agencies of the Secretary and provide a copy of the Notice of Debarment.

§555.32 Labor certification determinations.

(1) CCB. The Administrator, OFLC, is the Department’s National OC. The Administrator, and the CCBs in the NPR (by virtue of delegation from the Administrator), have the authority to certify or deny applications for temporary labor certification under the HI-20 nonimmigrant classification. If the Administrator directs that certain types of temporary labor certification applications or specific applications under the HI-20 nonimmigrant classification be handled by the National OFLC, the Director of the Chicago NPR will refer such applications to the Administrator.

(2) Determination. The CCB may make a determination either to grant or deny the Application for Temporary Employment Certification. The CCB will grant the application if and only if the employer has met all the requirements of this part, including the criteria for certification defined in §555.230(b), thus demonstrating that an insufficient number of qualified U.S. workers are available for the job or if the position for which certification is sought and the employment of the HI-20 workers will not adversely affect the wages, working, and working conditions of similarly employed U.S. workers.

(3) Notice. The CCB will notify the employer in writing either electronically or by U.S. Mail of the labor certification determination.

(4) Approved certification. If temporary labor certification is granted, the CCB must certify the job Application for Temporary Employment Certification and a Final Determination letter to the employer, or, if appropriate, to the employer’s agent or attorney with a copy to the employer. The Final Determination letter will notify the employer to file the certified application and any other documentation required by USCIS with the appropriate USCIS office.

(5) Denied certification. If temporary labor certification is denied, citing the relevant regulatory standards and/or specified procedure.

(6) Applicable, address the availability of U.S. workers in the occupation as well as the prevailing wages, working conditions of similarly employed U.S. workers in the occupation and any applicable special procedures.

(7) Offer the employer an opportunity to request administrative review of the denial under §555.310, to file a new application in accordance with specific instructions provided by the CCB, and

(8) Note that if the employer does not request administrative review in accordance with §555.310, the denial is final and the Department will not further consider that application for temporary labor certification.

(9) Partisanship Certification. The CCB may, in its discretion, and in some cases with respect to compliance with all statutory and regulatory requirements, issue a partial certification, reducing either the period of need, the number of HI-20 positions being requested, or both, based upon information the CCB receives in the course of processing the temporary labor certification application, an RFI, or otherwise. If a partial labor certification
is issued, the Final Determination letter will:

1. State the reasons for which either the period of need and/or the number of H-2B positions requested has been reduced, citing the relevant regulatory standards and/or special procedures.
2. If applicable, address the availability of U.S. workers in the occupation.
3. Offer the employer an opportunity to request administrative review of the partial labor certification at a hearing.
4. State that if the employer does not request an administrative review in accordance with §655.33, the partial labor certification in final and the Department will not further consider that application for temporary nonagricultural labor certification.

§655.33 Administrative review.
(a) Request for review. If a temporary labor certification is denied, in whole or in part, under §655.22, the employer may request review of the denial by the BALCA. The request for review:
(1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who denied the application, within 30 calendar days of the date of the denial.
(2) Must clearly identify the particular temporary labor certification determination on which review is sought.
(3) Must contain the grounds for the request.
(4) Must contain a copy of the Final Determination; and
(5) May contain only legal arguments and may not repeat arguments already submitted to the CO in support of the application.
(b) Upon the receipt of a request for review, the CO shall, within 3 business days after the receipt of the request for review, consider and rule on the request for review, and may, for good cause, extend the time for consideration of the request for review.
(c) Any party may file exceptions to the final determination of the BALCA within 10 calendar days after the date of the final determination, except that an extension shall not be granted if the party’s exception is submitted more than 30 days after the date of the final determination.
(d) Final determinations by the BALCA may be appealed to the Administrative Law Judge of the Department of Labor.
(e) The BALCA must review a decision of the Administrative Law Judge and may affirm, modify, or remand the decision of the Administrative Law Judge.
(f) Final determinations by the BALCA may be appealed to the Administrative Law Judge of the Department of Labor.

§655.34 Validity of temporary labor certifications.
(a) Validity Period. A temporary labor certification is valid only for the period of time between the beginning and ending dates of employment, as certified by the BALCA in the Application for Temporary Employment Certification and may be extended by operation of law.
(b) Scope of Scope. A temporary labor certification is valid only for the number of positions certified, which includes the specific positions and the number of workers to be employed. If the number of positions certified is less than the number of positions requested, the BALCA may extend the temporary labor certification.

5. Notify the employer of the extension of the temporary labor certification and of the extension of the employer’s period of temporary employment.

§655.35 Required departure.
(a) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(b) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(c) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(d) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(e) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(f) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(g) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(h) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(i) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(j) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(k) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(l) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(m) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(n) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(o) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
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(q) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(r) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(s) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(t) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(u) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(v) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(w) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(x) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(y) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.
(z) Limit to worker’s stay. As defined in §655.30, a temporary labor certification shall limit the period of stay of any H-2B worker whose application is based upon the temporary labor certification.

§655.50 Enforcement process.
(a) Authority of the Administrator. The Administrator shall perform all the Secretary’s investigative and enforcement functions under sections 210(d), 215(c) and (d) of the Act, I-539 or (c) of the Act, and 24(c) of the Immigration and Nationality Act, pursuant to the delegation of authority from the Secretary of Homeland Security to the Secretary of Labor.
(b) Conduct of investigations. The Administrator shall, either alone or with the assistance of any other agency, conduct investigations to determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(c) Determination of violation. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(d) Notice of violation. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(e) Return of documents. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(f) Issuance of orders. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(g) Assessment of penalties. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
(h) Referral of cases. The Administrator shall, on the basis of the investigation, determine whether an employer is in violation of any law or regulation administered or enforced by the Administrator.
regarding the matters which are the subject of investigation.

(d) Employee cooperation/availability of records. An employer shall at all times cooperate in administrative and enforcement proceedings. An employer being investigated shall make available to the WHD Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Secretary, or a duly authorized and designated representative. No employer or representative or agent of an employer subject to the provisions of secs. 110(a)(1)(B)(vi), 110(c)(1)(B), and 214(c) of the INA shall make or cause to be made, or allow to be made for the purpose of interfering with any official of the Department who is performing an investigation, inspection, or law enforcement function pursuant to 9 U.S.C. 1101(a)(1)(A)(B)(ii) or (B)(iii). Any such interference shall be a violation of the labor certification application and of this subpart, and the Administrator may take such further action as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties, 18 U.S.C. 1113 and 10 U.S.C. 1114.)

(4) Confidentiality. The WHD Administrator shall, to the extent possible under existing law, protect the confidentiality of information which provides information to the Department in connection with the course of an investigation or otherwise under this subpart.

§655.50 Violations.

(a) The WHD Administrator, through investigation, shall determine whether an employer has—

(1) Filed a petition with ETA that willfully misrepresents a material fact.

(2) Substantially failed to meet any of the conditions of the labor certification application attested to, as listed in §655.48, or any of the conditions of the DHS Form I-129, Petition for a Nonimmigrant Worker for an H-2B worker or succeeding form, or any willful misrepresentation in the application or petition, or a failure to cooperate with a Department audit or investigation.

(3) Substantially failed to meet any of the conditions of the labor certification application and the DHS Form I-129, Petition for a Nonimmigrant Worker for an H-2B worker or succeeding form, or a willful misrepresentation or willful failure to meet any conditions of the application or any of the conditions of the DHS Form I-129, or any willful misrepresentation or a material fact in the application or in the DHS Form I-129, or any other condition. The requirements of §655.31, the Administrator may not consider the facts established that ETA denied the employer for a period of less than 1 year, or more than 3 years.

(b) If the WHD Administrator finds a violation of the provisions specified in this subpart, the Administrator may impose each other administrative remedies as the Administrator determines to be appropriate, including reinstatement of denial of H-2B workers, or other appropriate legal and equitable remedies. If the WHD Administrator finds that an employer has not paid wages at the wage level specified under the application and required by §655.22(e), the Administrator may impose each other administrative remedies as the Administrator determines to be appropriate, including reinstatement of denial of H-2B workers, or other appropriate legal and equitable remedies.
(i) The civil money penalties determined by the WHD Administrator to be appropriate are due for payment within 30 days of the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or upon the decision by the Secretary where review is granted. You or we shall remit the amount of the civil money penalty by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The payment or performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

(ii) The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (29 U.S.C. 2601 note), requires that inflationary adjustments to civil money penalties be made by regulation, at least every 4 years. The adjustments are to be based on changes in the Consumer Price Index for all Urban Consumers (CPI-U) for the U.S. City Average for All Items. The adjusted amounts will be published in the Federal Register. The amount of the penalty in a particular case will be based on the amount of the penalty in effect at the time the violation occurred.

§655.70 WHD Administrator's determination.

(a) The WHD Administrator's determination shall be served on the employer by personal service or by certified mail at the employer's last known address. Where service by certified mail is not acceptable to the employer, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The WHD Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the Administrator's determination.

(c) The WHD Administrator's written determination shall:

(1) Set forth the determination of the Administrator as the reason or reasons therefore; and in the case of a finding of violation, by an employer, prescribe the amount of any back wages and civil money penalties assessed and the reason therefor;

(2) Inform the employee that a hearing may be requested pursuant to §659.71;

(3) Inform the employer that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (to whom copies of the request must be served).

(5) Where appropriate, inform the employer that the Administrator will notify ETA and DOL of the occurrence of a violation by the employer.

§655.71 Request for hearing.

(a) An employer desiring review of a determination issued under §655.70, including judicial review, shall make a request for such an administrative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. In such a proceeding, the Administrator shall be the respondent, and the employer shall be the petitioner. If such a request for an administrative hearing is timely filed, the WHD Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues an order affirming the decision.

(b) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be signed;

(2) Be typewritten or legibly written;

(3) Specify the issue(s) or reasons stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the employee believes such determination is in error;

(5) Be signed by the employer making the request or by an authorized representative of such employer; and

(6) Include the address at which such employer or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Chief Administrative Law Judge at the address stated in the WHD Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

An employer which fails to meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge.

(d) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by certified service. For the requesting employer's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the employer or authorized representative, shall be filed within 15 days.

(e) Copies of the request for a hearing shall be served by the employer or authorized representative to the WHD official who issued the WHD Administrator's determination, and to the representative(s) of the Solicitor of Labor identified in the notice of determination.

§655.72 Hearing rules of practice.

(a) Except as specifically provided in this part, and to the extent they do not conflict with the provisions of this part, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this part.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and part 2 of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principally designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§655.73 Service of pleadings.

(a) Under this part, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings and documents by a method other than regular mail.

(b) Two copies of all pleadings and other documents in an administrative law judge proceeding shall be served on the attorneys for the WHD Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following service and includes the last day of the period.
§355.14 Conduct of proceedings.

(a) No hearing may be held in a case for a period of time in excess of the time periods specified in §§355.13 and §355.14.

(b) The administrative law judge shall serve a copy of the petition for review on the parties in accordance with §355.13.

(c) The administrative law judge shall conduct the hearing in accordance with §355.13.

(d) The administrative law judge shall render a decision in accordance with §355.13.

(e) The decision of the administrative law judge shall be final and conclusive.

(f) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

§355.15 Decision and order of administrative law judge.

(a) The decision of the administrative law judge shall be final and conclusive.

(b) The decision of the administrative law judge shall be served on the parties in accordance with §355.13.

(c) The decision of the administrative law judge shall be served on the parties in accordance with §355.13.

(d) The decision of the administrative law judge shall be served on the parties in accordance with §355.13.

(e) The decision of the administrative law judge shall be served on the parties in accordance with §355.13.

§355.16 Notice to OFLC and CBP.

(a) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

(b) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

(c) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

(d) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

(e) The administrative law judge shall serve a copy of the decision on the parties in accordance with §355.13.

§355.17 Notice of hearing.

(a) Notice of hearing shall be given by the administrative law judge to the parties in accordance with §355.13.

(b) Notice of hearing shall be given by the administrative law judge to the parties in accordance with §355.13.

(c) Notice of hearing shall be given by the administrative law judge to the parties in accordance with §355.13.

(d) Notice of hearing shall be given by the administrative law judge to the parties in accordance with §355.13.

(e) Notice of hearing shall be given by the administrative law judge to the parties in accordance with §355.13.
decision and order finding a violation by an employer, and no timely petition for review is filed with the Department's Administrative Review Board (Board); or

(3) Where a timely petition for review is filed from an administrative law judge's finding a violation and the Board either denies the petition or does not rule upon the petition within 30 days, the Board shall issue an order to appear and show cause as to why the determination should not be enforced or vacated; or

(4) Where the administrative law judge finds that there was no violation by an employer, and the Board, upon review, issues a decision holding that a violation was committed by an employer.

§ 555.715 Definitions.

[aix]

Center Director: means the Director of the Bureau of Labor Statistics Occupational Employment Statistics programs within the Department.

(a) National Processing Center (NPC) determination. Prior to January 1, 2019, the SWA having jurisdiction over an area of intended employment shall make the determination of the prevailing wage rate, and shall in accordance with those regulations, the prevailing wage rate determination shall be made by the SWA in accordance with those regulations with the Board's participation. The prevailing wage rate determination shall determine whether the occupation is covered by the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question. The employer may use an independent source and the prevailing wage rate determination shall be made by the SWA in accordance with those regulations with the Board's participation.

(b) The prevailing wage rate determination shall be made by the SWA in accordance with those regulations with the Board's participation.

(c) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(d) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(e) A copy of the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(f) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(g) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(h) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(i) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(j) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(k) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(l) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(m) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(n) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(o) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(p) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(q) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(r) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(s) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(t) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(u) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(v) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(w) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(x) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(y) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.

(z) If the employer is unable to secure the prevailing wage rate determination which was negotiated at arm's length and, if not, determine the wage of the occupation in question.
the Center Director. If a request for review is timely filed with the BALCA, the determination by the Center Director is suspended until the BALCA issues a determination on the employer’s appeal. In any challenge to the wage determination, neither ETA nor the NPC shall divulge any employer wage data contained under the premise of confidentiality.

(i) Where an employer timely challenges an OFLC PWD obtained by the Administrator, the 30-day investigative period shall be suspended until the employer obtains a final ruling. Upon such a final ruling, the investigation and any subsequent enforcement proceeding shall continue, with the PWD as determined by the BALCA serving as the conclusive determination for all purposes.

(ii) If a determination of prevailing wage is made by ETA, such determination may be challenged if the employer reasonably submits an objection to the determination within 30 days from the date that the determination was issued.

(i) Formal proceedings under this paragraph (d), OFLC may consult with the NPC to arrive at the prevailing wage applicable under the circumstances of the particular complaint.

(ii) The SO Must Consult with ETA to obtain the prevailing wage determination by ETA that will serve as the prevailing wage determination in accordance with these regulations.

§ 655.1101 What are the definitions of terms that are used in these regulations?

(a) Office of Foreign Labor Certification (OFLC) means the organizational component within ETA that provides national leadership and policy guidance on administrative regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning foreign national seeking admission to the United States.

(b) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determinations in accordance with these regulations and with Department guidance in effect prior to January 1, 2009. On or after January 1, 2010, the NPC shall receive and process prevailing wage determinations in accordance with these regulations and Department guidance in effect prior to January 1, 2005. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 2121(b) of the INA. The employer may choose to appeal the center’s PWO under § 655.413(e) of this part. If the employer requests an appeal, the SWA shall determine the wage in accordance with sec. 2121(b) of the INA. The prevailing wage determination (PWO) of the NPC with the SWA (SWA) to be used as follows:

§ 655.4 Definitions, purposes for PWO, and process prevailing wage determination.

(i) Definitions. The NPC with the SWA (SWA) to be used as follows:

§ 655.413 Determination of prevailing wage for labor certification purposes.

(i) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(i) Purpose. The NPC with the SWA (SWA) to be used as follows:

§ 655.1103 Elements—What does “no adverse impact” and “no adverse terms and working conditions” mean?

(a) Determination of prevailing wage for non-AC purposes. In the absence of collectively bargained wage rates, the NPC shall make determinations as follows:

(i) Where an employer timely challenges an OFLC PWD obtained by the Administrator, the 30-day investigative period shall be suspended until the employer obtains a final ruling. Upon such a final ruling, the investigation and any subsequent enforcement proceeding shall continue, with the PWD as determined by the BALCA serving as the conclusive determination for all purposes.

(ii) If a determination of prevailing wage is made by ETA, such determination may be challenged if the employer reasonably submits an objection to the determination within 30 days from the date that the determination was issued.

(iii) Formal proceedings under this paragraph (d), OFLC may consult with the NPC to arrive at the prevailing wage applicable under the circumstances of the particular complaint.

(iv) The SO Must Consult with ETA to obtain the prevailing wage determination by ETA that will serve as the prevailing wage determination in accordance with these regulations.

(v) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determinations in accordance with these regulations and with Department guidance in effect prior to January 1, 2009. On or after January 1, 2010, the NPC shall receive and process prevailing wage determinations in accordance with these regulations and Department guidance in effect prior to January 1, 2005. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 2121(b) of the INA. The employer may choose to appeal the center’s PWO under § 655.413(e) of this part. If the employer requests an appeal, the SWA shall determine the wage in accordance with sec. 2121(b) of the INA. The prevailing wage determination (PWO) of the NPC with the SWA (SWA) to be used as follows:

(vi) (i) Definitions. The NPC with the SWA (SWA) to be used as follows:

(vii) Purpose. The NPC with the SWA (SWA) to be used as follows:

(viii) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(ix) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(x) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xi) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xii) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xiii) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xiv) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xv) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xvi) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xvii) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xviii) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xix) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xx) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xxi) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xxii) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xxiii) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xxiv) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.

(xxv) (i) Purpose. The NPC with the SWA (SWA) to be used as follows:

(xxvi) (a) Application. The employer must request a PWO from the NPC, or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment may continue to receive and process prevailing wage determination requests in accordance with the prevailing wage determination.
determination date. To use a prevailing wage rate provided by the NPC, the employer must file their applications or begin the recruitment period required by §656.17(b) or 686.21 of this part within the validity period specified by the NPC.

(2) Employer-provided wage information. (i) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPC will consider wage information provided by the employer in making a PWD. An employer survey can be submitted either initially or after NPC issuance of a PWD derived from the GED survey. In the latter situation, the new employer survey submission will be deemed a new PWD request.

(ii) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the NPC with enough information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow the NPC to make a determination about the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance with guidance issued by the CFLC national office.

(iii) The survey submitted to the NPC must be based upon recently collected data.

(iv) A published survey must have been published within 24 months of the date of submission to the NPC, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(v) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the NPC.

(vi) If the employer-provided survey is found not to be acceptable, the NPC will inform the employer in writing of the reasons the survey was not accepted.

(vii) The employer, after receiving notification that the survey is provided for NPC consideration is not acceptable, may file supplemental information as provided by paragraph (b)(i) of this section, file a new request for a PWD, or appeal under §656.41.

(b) Submission of supplemental information by employer. (i) If the employer disagrees with the skill level assigned to its job opportunity, or if the NPC refuses the employer's request for supplemental information, the employer may request a consultation with the NPC.

(ii) The NPC will consider the consultation request submitted by the employer.

(iii) In the event the NPC does not accept the employer's request for supplemental information, the employer may request a consultation with the NPC.

(iv) The consultation will be conducted in accordance with guidance issued by the CFLC national office.

(v) The consultation will be conducted in accordance with guidance issued by the CFLC national office.

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LOUISIANA WORKFORCE

MARCH 10, 2015:
**7 MEN
**WORKED 1PM - 6PM
**CLEANED INSIDE OF PLANT (APPROX. 2 HOURS)
**PEELED CRAWFISH (APPROX. 3 HOURS)
**19.8 LBS PEELED = .94 LBS EACH PER HOUR
**CRAWFISH PEELED WERE LARGE IN SIZE
**APPEARS TO BE DIFFICULT FOR WORKER'S TO PEEL CRAWFISH EFFICIENTLY DUE TO THE SIZE OF THEIR HANDS
**LOTS OF SHELLS FOUND IN CRAWFISH MEAT

MARCH 11, 2015:
**7 MEN
**WORKED 3PM - 7PM
**PEELED CRAWFISH (APPROX. 4 HOURS)
**67.7 LBS PEELED = 1.52 LBS EACH PER HOUR
**CRAWFISH PEELED WERE LARGE IN SIZE
**WORKER'S ARE A LITTLE FASTER THAN YESTERDAY, BUT STILL NOT REACHING 3 LBS PER HOUR, WHICH IS NEEDED
**ONE WORKER STATED, "I WOULD RATHER BE IN JAIL THAN PEEL CRAWFISH."
**NOTIFIED WARDEN, BRADY STOUTS, AND WORKER WAS ELIMINATED FROM WORK DETAIL

MARCH 12, 2015:
**6 MEN (1 WORKER WHO STATED HE WOULD RATHER BE IN JAIL WAS ELIMINATED FROM WORK DETAIL)
**WORKED 3PM-6PM
**CONTINUED TRAINING

MARCH 17, 2015:
**5 MEN (1 WORKER REMOVED FROM DETAIL BY PRISON)
**WORKED 3PM-6PM
**GRADED CRAWFISH

MARCH 18, 2015:
**5 MEN
**WORKED 3PM-6PM
**PEELED CRAWFISH
**CRAWFISH WERE SMALL SIZE PEELING CRAWFISH
**14.8 LBS PEELED=.18 LBS EACH PER HOUR

MARCH 19, 2015:
**5 MEN
**WORKED 3PM-6PM
**PEELED CRAWFISH
**CRAWFISH WERE SMALL SIZE PEELING CRAWFISH
**24.2 LBS PEELED=.13 LBS EACH PER HOUR
The Honorable David Vitter
Chairman
Committee on Small Business and Entrepreneurship
United States Senate
Washington, D.C. 20510-6350

JUL 3 O 2015

Dear Mr. Chairman:

Thank you for providing the opportunity for the Food and Drug Administration (FDA or the Agency) to testify at the May 6, 2015, hearing before the Committee on Small Business and Entrepreneurship, entitled “Impact of Federal Labor and Safety Laws on the U.S. Seafood Industry.” This letter provides responses for the record to questions posed by Committee Members, which we received on May 21, 2015.

If you have further questions, please let us know.

Sincerely,

[Signature]

[For]

Thomas A. Krasa
Associate Commissioner
for Legislation

c: The Honorable Jeanne Shaheen
Ranking Member
Committee on Small Business and Entrepreneurship
The Honorable David Vitter

In Dr. Strain’s testimony, he mentioned that some chemicals on imported seafood are banned in the United States. During the hearing the concept of parity between domestic requirements and foreign quality standards was discussed at length.

Dr. Strain brought up several examples of imported crawfish that contain chemicals that would not be allowed in the US. When we know that countries, who have different chemical safety laws and standards for food, are exporting seafood to our shores, why is there no grounds for a presumptive denial of entry based on this knowledge?

As we explain in further detail below, FDA does have the authority to prevent the importation of products that are not in compliance with U.S. standards and requirements. With regard to all imported food, it is the importer’s responsibility to offer for entry into the United States product that is fully compliant with all applicable U.S. laws. Under the seafood Hazard Analysis Critical Control Point (HACCP) regulation, HACCP controls are required for both domestic and foreign processors of fish and shellfish products. Additionally, the regulation requires that U.S. importers take certain steps to verify that their foreign suppliers meet the requirements of the regulation. In recent years, the Agency has significantly increased the number of inspections of foreign food manufacturers.

In addition, the Agency has conducted foreign country assessments to evaluate the country’s laws for, and implementation of, good aquaculture practices. Specifically, FDA evaluates the country’s controls, including licensing and permitting, inspections, and training programs for aquaculture products. FDA uses the information from country assessments to better target surveillance sampling of imported aquaculture products, inform its planning of foreign seafood HACCP inspections, provide additional evidence for potential regulatory actions, and improve collaboration with foreign government and industry contacts to achieve better compliance with FDA’s regulatory requirements. For example, the country assessments for China in 2006, Chile in 2009, and India in 2010 resulted in increased sampling and testing for aquaculture products from these countries (e.g., eel from China, salmon from Chile, and shrimp from India).

FDA screens 100 percent of import entries electronically, and a subset of those are physically inspected at varying rates, depending on the potential risk associated with them. If the product appears to be adulterated or mislabeled, based on examination or other information, such as prior history of the product, manufacturer, or country, FDA will give notice advising the owner or consignee of the appearance of a violation under the Federal Food, Drug, and Cosmetic Act and the right to provide testimony or evidence to rebut the appearance of the violation. For example, if an import entry of seafood is detained due to a detection of a chemical residue such as chloramphenicol, the importer can send a sample of the imported lot to a private laboratory to determine if that residue is present. An FDA scientist then reviews the private laboratory finding to confirm that the analysis is valid. If the product is ultimately refused admission, it must be destroyed, unless it is exported by the owner or consignee within 90 days of the date of...

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1 Dr. Salimon’s written testimony from May 6, 2015, incorrectly stated that the country assessment for Chile was in 2008.
the notice of refusal.

When FDA has sufficient evidence to indicate that future entries of a particular product offered for import into the United States may appear violative, FDA may place the foreign processor or the specific product on an import alert. Import alerts inform FDA field staff that the Agency has sufficient evidence to detain, without physical examination, future shipments of an imported product, and such shipments may be refused admission into United States commerce. To obtain release of such products, the responsible party, the importer, would need to submit or provide sufficient evidence to FDA that the product is in compliance with U.S. requirements. When FDA has evidence of a systemic pattern of violations within a country, FDA may issue a country-wide import alert to address the violations. For example, FDA imposed a country-wide import alert on all farm-raised catfish, bana, shrimp, dace, and sil from China in June 2007, due to the presence of unapproved animal drugs and/or unsafe food additives, such as malachite green. Shipments of products covered by the import alert may be detained, without physical examination, at the time they are offered for import into U.S. commerce. The shipments can be released by FDA after evidence is provided to overcome the appearance that the products are violative. As another example, the Agency has two import alerts related to chloramphenicol in aquaculture products: Import Alert 16-127 relates to crustaceans containing chloramphenicol, and Import Alert 16-124 relates to the use of unapproved new animal drugs in aquaculture seafood products.

The Honorable Jeanne Shaheen

As I mentioned, I am very concerned about the new USDA program being set up to inspect catfish separately from all other seafood.

Once USDA’s catfish inspection program is finalized, that agency estimates it will cost around $14 million a year to operate. Is that comparable to the typical annual cost to the taxpayer of the inspection of catfish under FDA jurisdiction?

In Fiscal Year 2014, FDA estimates that we expended $197 million on the catfish inspection program. This cost includes the following operational activities: domestic inspections, investigations, sample collections, and sample analyses, as well as import investigations, field exams, sample collections, sample analyses, and label reviews. This estimate is not a full Agency cost, as it does not include costs for the Center for Food Safety and Applied Nutrition to conduct various activities such as foreign country assessments, compliance reviews, or participation in international meetings, which are not limited to catfish.

We are aware that the 2011 GAO Report, “Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA,” cites an estimate of “less than $700,000 annually” spent by FDA. It should be noted that this estimate reflected only the inspection of catfish processing facilities and did not include the other operational costs identified in the current calculation.

We are not aware of the specifics of the proposed USDA program cost estimates, which may include activities outside the scope of FDA inspection/sampling activities and associated
The Honorable Mazie Hirono

Regarding data collection for seafood safety guidelines and regulations—As you probably know, seafood is important in Hawaii. It is estimated that in Hawaii, we consume more than twice the national average of seafood per person, which includes the consumption of raw fish. Seafood is deeply ingrained in the way of life and culture of our island state, from fishermen to consumers, we have a supply chain with checks and balances for fresh, safe and quality seafood landed in Hawaii.

I appreciate that seafood regulation is no easy undertaking for the FDA. Can you explain how FDA gathers and collects data as part of promulgating guidelines and regulations on seafood safety? Does FDA work with the domestic fishing industry and state health departments in promulgating seafood safety guidance/regulations particularly as it relates to the consumption of raw domestic seafood?

By way of background, federal regulations are governed by the Administrative Procedure Act. Once an agency decides that a regulatory action is necessary or appropriate, it develops and typically publishes a proposed rule in the Federal Register, soliciting comments from the public (including academia, industry, and state counterparts) on the regulatory proposal. After the agency considers the public feedback and makes changes where appropriate, it then publishes a final rule in the Federal Register with a specific date upon which the rule becomes effective and enforceable. In issuing a final rule, the agency must describe and respond to the public comments it received.

In developing the seafood HACCP regulation, FDA relied on data compiled by the Centers for Disease Control and Prevention (CDC) in its Foodborne Disease Surveillance System as reported from state and local health authorities as well as on research conducted by FDA, the National Oceanic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA), and others. That data was used both to produce information that would provide a better understanding of the toxins, bacteria, chemical contaminants, and other phenomena, and to provide a basis for developing more advanced types of controls for them. FDA also relied on its own risk assessment and on the conclusions of the 1991 National Academy of Sciences’ Institute of Medicine report entitled “Seafood Safety.”

FDA guidance documents are developed and issued in accordance with FDA’s good guidance practices (GGuides). The way the Agency gathers information and collects data depends on the level of the guidance document. With regard to seafood, FDA maintains the Fish and Fishery Products Hazards and Controls Guidance (the Hazard Guide), which is intended to assist processors of fish and fishery products in the development of their HACCP plans, which are required by FDA’s seafood HACCP regulation. The Hazard Guide was designed to address both species (type of fish) and processing (raw, cooked, time-temperature-related hazards using the most up-to-date scientific data and information regarding industry practices. Supporting documentation is referenced at the end of each chapter within the Hazard Guide. Processors of fish and fishery products will find information in the guidance that will help them identify
hazards that are associated with their products and help them formulate control strategies. The
guidance is also intended to serve as a tool to be used by federal and state regulatory officials in
the evaluation of HACCP plans for fish and fishery products.

In developing the fourth edition of the Hazard Guide, the Agency reviewed comments received
on the third edition of the guide and revised it as appropriate, in accordance with GHPs. FDA
also reviewed illness and outbreak data from CDC, inspection data from FDA’s Office of
Regulatory Affairs, and any new scientific literature before modifying the guide. As described
above, FDA also works with seafood industry members to better understand common practices
in order to assist with scientific data reviews that help ensure that the most up-to-date and
scientifically sound controls are used to mitigate hazards reasonably likely to occur.

FDA works closely with state and local officials as well as with industry to ensure the safety of
seafood. As one example, the National Shellfish Sanitation Program (NSSP) is a federal/state
cooperative program recognized by FDA and the Interstate Shellfish Sanitation Conference for
the sanitary control of shellfish produced and sold for human consumption. The purpose of the
NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce
through federal/state cooperation and uniformity of state shellfish programs. Participants in the
NSSP include agencies from shellfish producing and non-producing states, FDA, EPA, NOAA,
and the shellfish industry.
Questions and Answers
Questions from:
Senator David Vitter

During the hearing we discussed in detail the requirements placed on users of the H-2B visa program. Mr. Rendal addressed several concerns about the program, including the requirement to pay workers when a work season is cut short by natural occurrences (hurricanes, droughts, etc.) and the requirement that workers be paid the same, regardless of work output or productivity. These rules do not seem to be workable in the real world:

1. Please elaborate on the statutory basis that the Department of Labor has based these requirements on.

Response: The Immigration and Nationality Act (INA) permits the importation of foreign workers for the H-2B program only “if unemployed persons capable of performing such service or labor cannot be found in this country.” 8 U.S.C. 1101(a)(15)(H)(i)(b). Under Department of Homeland Security (DHS) regulations, a petition for temporary employment filed with DHS must be accompanied by an approved temporary labor certification from the Department of Labor (DOL), which serves as DOL’s advice to DHS regarding whether a qualified U.S. worker is available to fill the employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. See, e.g., 8 CFR 214.2(b)(6)(iii)(A).

2. Further, please elaborate on the statutory basis utilized by the Department of Labor for all changes to the H-2B program, and private wage survey use, with account taken for the recent court decision.


Senator Jeanne Shaheen
I would like to extend a cordial thank you for the comprehensive reform of our temporary worker visa programs, to better suit businesses’ needs and protect both American and foreign workers. I was
disappointed that the House of Representatives failed to take up the Senate passed immigration reform legislation last Congress, which would have implemented many much-needed reforms. Without such a comprehensive strategy, I appreciate the difficult position the Department is in with regards to the specific regulations governing the H-2B program.

1. Can you explain how the H-2B Wage Final Rule issued on April 29th by the Department weighs the legitimate need for temporary foreign workers with the need to protect wages of U.S. workers?

Response: The H-2B Wage Final Rule is intended to ensure both that employers’ legitimate needs for temporary foreign workers are met, and that the requirement to protect the wages of U.S. workers is fulfilled. The Wage Final Rule continues the use of the Occupational Employment Statistics (OES) survey mean wage as the indicator of the prevailing wage, which protects the wages of American and foreign workers. At the same time, the Rule also includes flexibility for employers by permitting use of employer-provided surveys in limited circumstances, including the use of state-conducted surveys, consistent with court rulings on these issues.

2. What measures has the Department taken to ensure that these regulations will survive potential legal challenges to the rules, given the history of legal challenges that H-2B regulations have faced, and ensure that businesses utilizing the H-2B program have certainty in the program?

Response: We have considered and taken into account past decisions in promulgating the rule. Specifically, issuing the rule jointly with DHS addresses legal challenges to DOL’s authority to independently issue regulations. However, as revealed by cases that have already been filed against the 2015 H-2B regulations, the Departments cannot guarantee that challengers will not attempt to have the two regulations struck down.

3. How will the interim rule protect temporary workers in the H-2B program from labor exploitation, including forced labor and human trafficking?

Response: In the 2015 Interim Final Rule (IFR), the Departments implemented some crucial reforms to prevent worker exploitation, unfair treatment and human trafficking, many of which track recommendations by the GAO as well as bi-partisan measures that have been adopted by Congress in other contexts. Specifically, the 2015 IFR includes the following worker protections:

- Strengthened provisions banning the passing of prohibited fees (i.e., those related to obtaining an H-2B labor certification, and related recruitment or other costs) to employees and requires an employer to demonstrate it prohibited third parties engaged in the recruitment of H-2B workers from charging workers prohibited fees by submitting to DOL a copy of any contract with a recruiter or agent engaged in the recruitment of H-2B workers.
Mandatory disclosure of employer contracts with any labor recruiter or agent engaged in recruiting H-2B workers and the identities and locations of all persons and entities hired by or working for the recruiters.

Prohibition of retaliation against workers, including intimidating, threatening, restraining, coercing, blacklisting, or discharging workers or causing another to do so if the worker exercised his/her right under the regulations, complained against the employer, or instituted or participated in a legal proceeding against the employer, or if the worker consulted with others (such as a workers’ center, community organization, labor union, legal assistance program, or an attorney).

Expanded authority to revoke an existing labor certification based on a finding of violations(s), and/or debarment of employers who engage in willful or substantial violations from filing a labor certification application or labor condition application with DOL for an expanded period of up to 5 years.

Senator Mazie Hirono
Questions 1-3: Regarding H-2B Visas Program

1. Tell us how the new 2015 Interim Final Rule helps U.S. workers looking for work.

Response: The 2015 H-2B Interim Final Rule (IFR) strives to improve U.S. worker access to jobs through enhanced U.S. worker recruitment efforts closer to the employer’s start date of need. The IFR enhances the mandatory recruitment of U.S. workers by extending the recruitment period until 21 days before the employer’s start date of work. Under the prior 2008 rule, an employer had no obligation to hire U.S. workers after concluding the 10-day recruitment period and submitting the recruitment report—a period that could be completed nearly four months before the start date of work. U.S. job applicants typically seek jobs that start sooner and may not have the ability to wait for a job that begins several months in the future.

Unlike the 2008 rule, the IFR also requires the holding of interested former U.S. employees who worked for the employer within the last year, unless an employee was terminated for cause or abandoned the worksite. The IFR also requires that notice be given to workers in the area and occupation either through the bargaining representative or through a posting of the job at the work location. Finally, the IFR also gives the Department of Labor discretion to order additional recruitment, particularly where a job is located in an area of substantial unemployment, thereby providing that U.S. workers are afforded access to the job opportunities for which the employer intends to hire H-2B workers.

In addition to enhancing employers’ efforts to recruit U.S. workers, the IFR also provides for the broader circulation of the job order by State Workforce Agencies. The Department will also expand its existing national electronic job registry to include H-2B job orders. The posting of the job orders will not require additional effort on the part of the employer but will substantially improve the visibility of temporary nonagricultural job opportunities to U.S. workers during the extended recruitment period. Job applicants will be able to browse and search job opportunities across multiple data points, such as by location, period of employment, occupation, etc.
2. Tell us about some of the problems with employers exploiting H-2B workers, and how the new 2015 Interim Final Rule helps prevent H-2B workers from being treated unfairly.

Response: The U.S. Government Accountability Office (GAO) reported in March 2015 that 44 percent of employers who use the H-2A and H-2B temporary worker programs are not getting their workers directly, and instead use labor recruiters. GAO found that labor recruiters frequently charge workers fees that reduce their real wages, misrepresent the wages workers will be paid as well as the jobs they will perform, and in some cases subject workers to human trafficking. See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-15-254, at 6, H-2A AND H-2B VISA PROGRAMS: INCREASED PROTECTIONS NEEDED FOR FOREIGN WORKERS (2015) (U.S. Government Accountability Office Report to Congressional Committees).

The 2015 Interim Final Rule (IFR) implemented some crucial reforms to prevent worker exploitation, unfair treatment, and human trafficking, many of which track recommendations by the GAO, as well as bi-partisan measures that have been adopted by Congress in other contexts. For example, the 2015 IFR includes strengthened provisions banning the passing of prohibited fees (i.e., those related to obtaining an H-2B labor certification, and related recruitment or other costs) to employees, and requires an employer to prove it prohibited third parties engaged in the recruitment of H-2B workers from charging workers prohibited fees by submitting a copy of such a contract. In addition, in order to provide that workers are not given misinformation about a job opportunity, employers must provide the worker with a copy of the approved job order no later than when the worker is applying for a visa. The IFR also requires the posting of a workers’ rights poster at each worksite, which includes contact information for the Department for reporting violations.

In order to provide greater transparency in the use of foreign labor recruiters, the 2015 IFR requires the disclosure of employer contracts with any labor recruiter or agent engaged in recruiting H-2B workers and the identities and locations of all persons and entities hired by or working for the recruiters. In the future, DOL will begin posting a list of these agents and recruiters on a publicly available website after updating the routine uses in DOL’s Privacy Act System of Records Notice.

For the first time, the 2015 IFR explicitly prohibits retaliation against workers, including intimidating, threatening, restraining, coercing, blacklisting, or discharging workers or causing another to do so if the worker exercised his/her rights under the regulations, complained against the employer or instituted or participated in a legal proceeding against the employer or if the worker consulted with others (such as a workers’ center, community organization, labor union, legal assistance program, or an attorney).

The new regulation also gives the Department expanded authority to revoke an existing labor certification based on a finding of violations(s) or to debar an employer from filing a labor certification application or labor condition application with DOL for an expanded period of up to 5 years.
3. Tell us how the 2015 Wage Final Rule is fairer to workers.

Response: The 2015 Wage Final Rule sets the threshold wage an employer seeking H-2B workers must offer and pay to both the U.S. and H-2B workers it hires for its temporary positions. A fair prevailing wage requirement is key to preventing adverse effect in the wages and working conditions of U.S. workers when employers seek to hire foreign workers.

Questions 4-5: Regarding the Workforce Innovation and Opportunity Act (WIOA)

Last year, the Senate passed the Workforce Innovation and Opportunity Act (WIOA) by a vote of 93-3. Every member of this Committee who was here last year voted for it.

4. Tell us how DOL is implementing this law, and how it helps the seafood industry train workers.

Response: The Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014, presents an extraordinary opportunity to improve job and career options for America’s job seekers and workers through an integrated, job-driven public workforce system that links diverse talent to businesses. WIOA retains the nationwide system of one-stop centers, currently branded as American Job Centers, which directly provide an array of employment and connect customers to work-related training and education. The new law places greater emphasis on one-stop centers achieving results for jobseekers, workers and businesses, including employers in the seafood industry. WIOA supports the development of strong regional economies through robust public-private partnerships that align investments in workforce, education, and economic development. In addition to providing individuals access to the services they need to get good jobs and stay employed, one-stop centers help business find skilled workers and access other supports, including education and training, for their current workforces. We expect that the seafood industry could benefit from active participation in regional and local workforce bodies that establish priorities and align workforce programs and strategies to meet worker and employer needs, including the use of industry sector partnerships and career pathways to build a pipeline of skilled workers for in-demand industries.

On April 16, 2015, the Departments of Labor and Education published five Notices of Proposed Rule Makings (NPRMs) in the Federal Register to implement WIOA. Before issuing these proposed rules, the Departments of Labor and Education solicited broad input from the public workforce system and its partners and stakeholders through a variety of mechanisms, ranging from in-person town halls, to outreach calls, and to webinars. The public had until June 15, 2015 to submit comments. Individuals were able to review the proposed rules and submit comments on line at www.regulations.gov. The Departments will now analyze the comments and reconcile them through revisions or explanations as needed. We expect to publish Final Rules in early 2016.

At the same time, states are required under WIOA to implement many of its requirements beginning on July 1, 2015. As such, the Department is issuing operating guidance and providing

5. How can seafood and other employers best use DOL’s resources to recruit, hire, and train workers?

**Response:** Employers should work with their workforce development boards and local One-Stop Career Centers to access resources that can be helpful in their efforts to recruit, hire, and retain talent. State and local boards promote industry and sector partnerships and are responsible for activities to meet the workforce needs of local and regional employers. Local areas can use funds for demonstrated effective strategies to meet those needs, including incumbent worker training, Registered Apprenticeship, on-the-job training, and customized training. Employers are incentivized to meet their workforce needs and offer opportunities for workers to learn with increased reimbursement rates for on-the-job training and customized training. To locate one-stop centers across the country, employers may use America’s Service Locator at [www.service_locator.org](http://www.service_locator.org) or call the toll-free number: 1-877-US-2JOBS or 1-877-872-5627.

Employers can find additional resources to recruit, hire, and train workers at the Department of Labor’s on-line Business Center resource: [https://www.careeronestop.org/BusinessCenter/index.aspx](http://https://www.careeronestop.org/BusinessCenter/index.aspx). Recognizing that there may be some interest in reaching multiple states and local areas at the same time, employers may also be interested in reaching out to State Workforce Agencies, which can be found at [https://www.careeronestop.org/BusinessCenter/Stateresource/findstateresources.aspx](http://https://www.careeronestop.org/BusinessCenter/Stateresource/findstateresources.aspx). Finally, employers may contact the Department’s Office of Foreign Labor Certification at [http://www.foreignlaborcert.dol.gov/states.aspx](http://www.foreignlaborcert.dol.gov/states.aspx).