DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB23

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Delegation of Authority to Adjudicate Petitions

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the Employment and Training Administration (ETA) regulations to implement the delegation of authority to adjudicate petitions for temporary nonimmigrant agricultural workers (H–2A's) from the Department of Justice/Immigration and Naturalization Service (INS) to the United States Department of Labor (DOL or Department). Among the implementation measures is a new Form ETA 9079, *Application for Temporary Agricultural Labor Certification and H–2A Petition,* which consolidates two current forms, ETA 750 (Application for Alien Employment Certification) and INS I–129 (Petition for Nonimmigrant Workers) for use in the H–2A program. This form is set forth as an appendix to a proposed rule published simultaneously with this final rule to implement a new fee schedule. The proposed rule requests comments on the form in accordance with the Paperwork Reduction Act. This rulemaking further implements the delegation of authority, from INS to DOL, to hear appeals on determinations and to revoke petition approvals. The INS delegation is also published simultaneously in the **Federal Register**, together with a proposed rule regarding collection of the INS fee by DOL. The rule does not affect INS authority to make determinations at the port-of-entry of an alien's admissibility to the United States, to make determinations of an alien's eligibility for change of nonimmigrant status, or to make determinations of an alien's eligibility for extension of stay. This rule streamlines existing H–2A processes to make it more efficient for petitioners seeking the admission of temporary agricultural workers without diminishing the workplace rights of U.S. workers or foreign workers admitted under the program.

DATES: *Effective Date:* This final rule is effective November 13, 2000. Affected parties do not have to comply with the information and recordkeeping requirements in §§ 655.101(a)(1), 655.101(a)(2) and 655.101(h), until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210. Telephone: (202) 219–4369 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Changes

ETA published a proposed a rule on October 2, 1998, which included a proposal to delegate from INS to DOL authority to adjudicate certain temporary agricultural worker (H–2A) petitions. 63 FR 53244. As proposed, INS would delegate authority to ETA to adjudicate H–2A petitions for alien beneficiaries located outside of the United States. Under that proposal, INS would have continued to adjudicate petitions in those relatively few instances when the alien beneficiaries are located within the United States. The INS published a proposed rule to delegate this authority to DOL on December 7, 1998 (63 FR 6743).

INS is concurrently publishing a final rule implementing its delegation of petition and revocation authority to ETA. The INS rule addresses changes in its regulations necessary to effectuate this delegation and guide ETA in the exercise of its delegated authority to grant and revoke petitions. This final rule implements the delegation from INS. The process is being modified to require all H–2A petitions to be filed with ETA, hereafter the sole recipient of H–2A petitions. Requests for change of status and extension of stay for individual aliens already present in the United States made on the Form ETA 9079 at the time the H–2A petition is filed will be forwarded to INS by ETA so that INS can adjudicate the requests for extension of stay or change of status.

H–2A petition revocation authority also is being delegated to ETA as a natural extension of the adjudication process. INS currently confers that authority upon the person who was responsible for the initial determination. Granting to ETA INS revocation authority allows ETA to reexamine its original decision based on evidence sufficient to consider petition revocation using INS criteria found in 8 CFR 214.2.

Administrative appeals of petition denials and determinations to revoke petitions are also being delegated to DOL. Appeals of determinations made by ETA on petitions and revocations of H–2A petitions based on existing INS criteria will be decided by the Department's Office of Administrative Law Judges (OALJ). The OALJ is separate from the agency (ETA) making determinations on temporary agricultural labor certification applications, petitions, and revocation of petitions. The OALJ has the necessary separation of function and authority to allow for independent, impartial determinations from ETA. This administrative review process is similar to INS' separation of field office determinations and its Administrative Appeals Unit (AAU).

To implement the delegation of authority and to further streamline the H–2A process, ETA is developing a form that will allow the employer to submit a consolidated application that includes all the information concerning the application for certification and the petition. This new Form ETA 9079 will replace the current Form ETA 750 (Application for Alien Employment Certification), and Form I–129 (Petition for a Nonimmigrant Worker) for those employers seeking temporary agricultural workers under the H–2A program. This consolidated form will eliminate the need to submit multiple forms to multiple agencies and greatly reduce the paperwork burden associated with the H–2A program. Form ETA 9079 is incorporated as an appendix to a proposed rule separately published in the **Federal Register** as discussed below, and is available for public comment in accordance with the Paperwork Reduction Act.

The delegation of authority to the Department from INS also includes the authority to process applications from employers involving changes in the Consulate designated on a petition, to process requests for changes in the designation of the port of entry for aliens entering without visas, and requests for duplicate notices after a decision notice has been sent. Such applications must be filed with the Department on the ETA 9079M, Visa Issuance Change Addendum. The ETA 9079M is functionally equivalent to the I–824 that has been used by INS to

process changes in the Consulates and ports of entry designated on approved petitions.

ETA also publishes today a notice of proposed rulemaking to address issues concerning fees associated with both H–2A labor certification and H–2A petitions.

The changes made by this rule are a logical outgrowth of ETA's October 2, 1998, proposed rule (63 FR at 53244 and 53248), as well as INS' December 7, 1998, proposed rule (63 FR 67431). In any event, the changes from the ETA notice of proposed rulemaking are rules of agency procedure exempt from the requirements of the Administrative Procedure Act requiring notice of proposed rulemaking. See U.S.C. 553(b)(A). These changes merely affect the administration of the H–2A program without making material changes to or modifying any substantive requirements of the petition process.

The effect of this and the INS rule will be to greatly simplify the process H–2A users must use when seeking H–2A certification and petition adjudication. Instead of seeking a determination from two agencies on virtually the identical factual criteria, only one agency will be involved in the determinations. Instead of submitting two forms with redundant information, only one will be required: a combined H–2A certification application and H–2A petition. Finally, the time necessary to make determinations on labor certification and petitions will be greatly reduced, potentially eliminating weeks from the process.

Discussion of Comments

ETA received thirty-six comments on the proposed rule. Seventeen comments addressed the proposed delegation of petition authority from INS to ETA. The comments were from agricultural employer associations, farmworker advocacy organizations, State agencies, the American Immigration Lawyers Association (AILA), two private attorneys and one ETA regional office. Most commenters were generally supportive of the delegation. Some commenters raised concerns about the revised petition process and questioned whether or not the process, in fact, would result in less paperwork and a more efficient certification and petition process. AILA was opposed to the delegation. The specific comments are addressed below.

1. Comments on the Delegation of H–2A Petition Determination From INS to ETA

Four agricultural employer organizations commented on the proposal to delegate adjudication of the H–2A petition from INS to ETA. The Florida Fruit and Vegetable Association (FFVA) stated that it believed the delegation would ''greatly expedite the grower's ability to receive the H–2A workers in a timely manner.'' The National Council of Agricultural Employers (NCAE) strongly supported the intent of the delegation but emphasized the need for combining the H–2A labor certification and petition into a single document and indicated that DOL and INS should issue a proposal in the **Federal Register** setting forth the precise regulation and procedures for public comment. In a similar vein the American Farm Bureau Federation urged the Department to withdraw the delegation proposal until the Department and INS have worked out the procedures and developed the forms so that an employer can file one form which will serve as a certification application and petition, ensuring that the certification also constitutes the visa approval decision. The New England Apple Council, a major user of the H–2A program, stated that the proposed delegation could make good common sense but also indicated that a more detailed proposal should be published so that it could comment intelligently, and emphasized the need for combining the H–2A labor certification and H–2A petition. This rule and the proposed rule published in this edition of the **Federal Register** have incorporated a combined form concept.

The Farmworker Justice Fund (FJF) opposed the delegation on the basis that the Department should institute a wide-ranging review and comprehensive approach to improving the administration of the H–2A program. FJF further stated that the delegation should be accomplished only after the Department addresses worker needs identified by FJF and the informational and data collection failings identified by the General Accounting Office.

Several State agencies commented on the delegation. Four States—Texas, Arizona, New Jersey, and Nevada—asserted that additional funding was needed for the regional offices performing the new function. A transfer of funds from INS to ETA to perform the new petition functions will address this concern. Three States—Washington, Idaho, and Kentucky—supported the delegation and stated it would result in reduced time needed for employers to obtain foreign workers. One State—Ohio—''guardedly'' agreed with the change but expressed reservation because the proposed delegation may result in more work for State agencies, which are underfunded. AILA and two private attorneys expressed the greatest opposition to the proposal. They questioned the Department's capability to adjudicate visa petitions for a variety of reasons.

2. Combined Form

As indicated above the development of a combined labor certification and H–2A petition form discussed in the October 1998, Notice of Proposed Rulemaking (63 FR at 53246) were extremely important to some of the commenters. They were concerned in view of delays that employers have experienced in obtaining labor certifications, that sequential processing of two forms by DOL would lead to lengthening the time to complete the process necessary to obtain nonimmigrant H–2A workers. Extensive discussions have taken place between ETA and INS on the development of a combined H–2A labor certification and petition, which would enable the DOL to make a determination on both the labor certification and H–2A petition based on submission of a properly completed form and supporting documentation. Since most petitions are filed on behalf of unnamed aliens and most job opportunities involving named aliens require little or no skill, it would be an extremely rare occurrence that a certification would be issued and the H–2A petition would be denied. Further, it should also be recognized, as pointed out in the NPRM published today concerning fees for the H–2A labor certification and petition, that historically the denial rate for labor certifications has been low. The new Form ETA 9079, Application for Temporary Agricultural Labor Certification and H–2A Petition, will replace Form ETA 750 and INS Form I–129 for all H–2A filings. Whenever the employer is petitioning for named aliens the 9079W, an addendum to Form ETA 9079, must be completed and the Department will determine whether the aliens qualify for the proposed employment. Further, as explained in the proposed rule, requests to change nonimmigrant status or for extension of stay for named beneficiaries will be made on the form 9079W and will be sent to INS, which will continue to make determinations about the named beneficiaries' eligibility to change nonimmigrant status or eligibility for extension of stay. The new Form ETA 9079 is incorporated as an appendix to the proposed rule being published today and is available for public comment in accordance with the Paperwork Reduction Act.

3. Countervailing Evidence

As pointed out in the concurrently published INS final rule, INS' role in H–2A petition processing is limited. Most H–2A petitions are filed before the petitioner has identified or named the H–2A workers (beneficiaries) to be admitted. INS reviews the certification determinations made by ETA, and determines that the petitioner is making a valid job offer and that any INS assessed liquidated damages have been paid. Liquidated damages are assessed to an employer who fails to notify INS of the departure of H–2A workers from the United States or when the employer cannot establish that H–2A workers who have left employment have obtained other legal status. See 8 CFR 214.2(h)(5)(vi). The overwhelming majority of applications for temporary agricultural labor certifications and H–2A petitions are for unnamed aliens. In the rare cases with named beneficiaries, INS reviews the ability of the beneficiary to perform the needed temporary services. Also in rare cases, INS reviews countervailing evidence on the availability of U.S. workers to perform needed services under 8 U.S.C. 1101(a)(15)(H)(ii).

Three commenters indicated that the provision in the INS regulations which permits the filing of a petition with countervailing evidence with INS should be retained. In delegating adjudication of petition authority to the Secretary, INS has determined that a separate review concerning the availability of U.S. workers is unwarranted. ETA will make the labor certification and petition determination concurrently and administrative-judicial review of these determinations will be available through the existing appeal process before the Department of Labor Office of Administrative Law Judges. An additional review by INS would be redundant.

DOL and INS are establishing a mechanism to notify ETA of any unpaid liquidated damage claims, in order for ETA to consider this factor in its adjudication of the petition.

4. ETA Capabilities

Several commenters opposed the proposal due to concerns about ETA's ability to perform its current function in a timely manner. The INS and ETA believe that the new, consolidated process is not complex. Only rarely will ETA be required to make additional findings or consider additional evidence. The additional determinations to be made by ETA will encompass whether INS has notified ETA of a failure to pay liquidated damages. If a named beneficiary(ies) is included with the petition, ETA will determine whether the worker has the qualifications to perform the stated services. Knowledge of all areas of immigration law alluded to by AILA and some individual attorneys is not necessary to address the limited issues normally arising in the adjudication of H–2A petitions. Further, DOL and INS will be providing training to ETA personnel on the issues considered by INS under its current role in the H–2A process.

Finally, the processing time for the overwhelming majority of cases should be reduced substantially. Currently, three to six days are normally consumed by mail notification from ETA to the employer and the employer's subsequent H–2A petition filing with INS. INS then takes two to three weeks to process the petition. The additional work presented by the combined form and adjudication process should not adversely impact the H–2A process for ETA. The new process should result in a reduction from the current process of at least two to three weeks in the time taken from initial filing with ETA to completion of the certification and petition process. This is a very substantial time saving in a process that now commonly commences only 45 days before the ''date of need.'' ETA is continuing to explore additional means for streamlining the H–2A nonagricultural labor certification program.

Some commenters expressed concern about the resources available to DOL to take on the additional responsibilities associated with processing visa petitions. The Department as explained in the NPRM concerning the fee issues published concurrently with this rule, will be collecting the petition fee on behalf of INS and will be reimbursed by INS for the costs it incurs in processing H–2A petitions.

5. Changes in Consulate or Port of Entry and Requests for Duplicate Approval Notices

In the interests of further simplifying the petition process INS has also delegated to ETA the responsibility of processing the small number of requests involving changes in the Consulate or port of entry (for aliens entering without visas) designated on the petition when it was approved, and to respond to requests for duplicates of approval notices. To make such requests the employer shall file the ETA Form 9079M, Visa Issuance Change Addendum, with the $120.00 fee currently required by INS to process an I–824, Application for Action on an Approved Application or Petition. The ETA 9079M is functionally equivalent to the I–824. The Department would, as explained in the above mentioned NPRM, collect the fee on behalf of INS and be reimbursed by INS for its costs in processing requests to make changes in the Consulates or port of entry that were designated on the approved H–2A petition.

6. Notification of State Department

Two attorneys raised concerns about notifying the Department of State (DOS) about approvals of H–2A petitions. This issue is fully addressed in the final rule transferring authority to adjudicate visa petitions concurrently published in the **Federal Register** by INS. As explained in INS' final rule, currently, the INS mails the duplicate copy of the H–2A petition to the consulate selected by the petitioner. Occasionally, when warranted, the INS notifies the consulate by telephone or telefax. The three agencies have now agreed that routine telefax notification from DOL to DOS will assist in streamlining the H–2A process and are finalizing the internal details to ensure that such notifications are secure. Telefax notification should result in an additional 2 to 3 days reduction in obtaining workers.

7. Certification 30 Days Before Date of Need

The regulations are amended to conform to Public Law 106–78, sec. 748, effective October 22, 1999, which amended section 218(c)(3)(A) of the Immigration and Nationality Act (Act) (8 U.S.C. 1188(c)(3)((A)) to enlarge the time that certifications must be issued before the employer's date of need from 20 days to 30 days. The Department points out that its regulation at 20 CFR 656.403, effective, July 29, 1999, requires that the employer's housing be in full compliance with the requirements of the housing standards at least 20 days before the date the housing is to be occupied, which in cases involving foreign agricultural workers is the employer's date of need. (See 64 FR 34958). The Act, however, also requires that employers furnish housing that meets the applicable standards before certification can be issued. (See section 218(c)(4) of the Act, 8 U.S.C. 1188(c)(4).) The amendment to the Act that certifications be issued 20 days before the employer's date of need does not negate the statutory requirement regarding housing in the Act. Consequently, certifications cannot be issued if housing does not meet applicable standards. ETA provided this guidance to its regional offices regarding

the administration of the H–2A program in light of amendments to the Act by section 748 of Public Law 107–78 in Field Memorandum No. 16–00, issued February 10, 2000, which is published as Appendix A to the preamble of this rule.

Effective Date of Final Rule

The 120 day effective date of this rule will allow INS and ETA to establish the automated systems needed to electronically capture and share data between the Department of Labor, INS, and the Department of State; seek comments and obtain OMB approval of the consolidated Form ETA 9079 to be used for the application for H–2A labor certification and petition; and complete the proposed rulemaking on the fee provisions.

Executive Order 12866

The Department has determined that this proposed rule should be treated as a ''significant regulatory action,'' within the meaning of Executive Order 12866, because of the inter-agency coordination with INS. However, this rule is not an ''economically significant regulatory action.'' because it would not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities. The amendments will enhance the administrative efficiency and convenience to employers by having them file a combined *Application for Temporary Agricultural Labor Certification and H–2A Petition* with one agency, as opposed to successively filing two forms to two agencies as at present.

The regulation is administrative in nature and merely transfers authority to make certain determinations from INS to ETA. It does not expand the existing procedural requirements and should reduce the administrative and paperwork burden on users, including small businesses. The total number of employers utilizing H–2A workers is only approximately 4,400.

Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Paperwork Reduction Act

The combined Form ETA 9079 is being published for comment as an appendix with the proposed rule being published today, in accordance with the Paperwork Reduction Act of 1995.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as Number 17.202, ''Certification of Foreign Workers for Agricultural and Logging Employment.''

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and record keeping requirements, Specialty occupation, Students, Wages.

Appendix A Field Memorandum No. 16–00, Changes to H–2A Program

Note: Appendix A will not be codified in the Code of Federal Regulations.

U.S. Department of Labor

Employment and Training Administration, Washington, DC 20210

Classification: ES.
Correspondence Symbol: TEES.
Date: February 10, 2000.

DIRECTIVE: FIELD MEMORANDUM NO. 16–00
TO: ALL REGIONAL ADMINISTRATORS
FROM: LENITA JACOBS-SIMMONS, Deputy Assistant Secretary.
SUBJECT: CHANGES TO H–2A PROGRAM

1. *Purpose.* To provide policy and guidance regarding the effect on the H–2A program of recent amendments to the Immigration and Nationality Act by Pub. L. 106–78 sec. 748 (McConnell Amendment).

2. *References.* 20 CFR Part 655, Subpart B (H–2A Regulations); 29 CFR Part 501 (H–2A Enforcement); 20 CFR Part 653, Subpart F (Agricultural Clearance Orders); 20 CFR Part 654, Subpart E, and 29 CFR 1910.142 (Migrant Housing Standards); 8 U.S.C. 1188(c)(1) and (c)(3)(A), as amended by Pub. L. 106–78 sec. 748 (McConnell Amendment); 64 FR 34957–34966 (June 29, 1999).

3. *Background.* The McConnell Amendment became effective on June 29, 1999. The McConnell Amendment shortens the lead time for filing the certification before the date of need from 60 days to 45 days and requires that certifications be issued 30 days before the date of need. The reduction in the lead time for filing labor certification applications is consistent with the amendments to the labor certification regulations for temporary agricultural employment that were effective on July 29, 1999. (See 64 FR 34957–34966, June 29, 99). The new statutory requirement that certification be issued 30 days prior to date of need differs considerably from the current statutory and regulatory requirement that certification be issued 20 days before the date of need. While the requirement that the certification be issued 30 days prior to the date of need reduced the recruitment period prior to certification to 15 days, the employer continues to have an obligation to actively recruit U.S. workers up until the date on which the H–2A workers leave their home country of origin.

RESCISSIONS
EXPIRATION DATE: September 30, 2002.

The requirement that certification be issued 30 days before the date of need is inconsistent with the recent amendment to the regulations that the employer's housing be in full compliance with the requirements of the applicable housing standards at least 20 days before the date the housing is to be occupied, which in cases involving certification of foreign agricultural workers is 20 days before the date of need. However, the statute requires that employers furnish housing that meets the applicable standards before certification can be issued. (See section 218(c)(4) of the Immigration and Nationality Act of 1952 as amended.) The McConnell amendment does not negate this statutory requirement. Consequently, certifications cannot be issued if housing does not meet applicable standards.

The following guidance should be followed in processing H–2A applications to ensure the timeliness of certifications:

4. *Guidance:*

a. *Acceptance of Applications:* Regional offices should accept H–2A applications for consideration that are filed 45 days prior to the date of need.

b. *Housing:* Documentation that the employer's housing meets applicable standards must be received by Certifying Officers prior to certification being granted. State Employment Security Agencies (SESAs) should encourage employers who expect to obtain their certification 30 days before the date of need to have housing ready for inspection at the time of filing their application or earlier. SESAs should be prepared to conduct housing inspections prior to the filing of applications, as appropriate; and should even plan to schedule housing inspections prior to filing for those employers who regularly use the H–2A program.

c. *Recruitment:* The employer must show that an advertisement and job order have been placed prior to the issuance of the labor certification, however, recruitment results do not have to be finalized. The employer should provide a report on the recruitment results 24 hours prior to certification. If workers have been referred, the employer must also provide the disposition of those workers referred prior to the 30th day before the date of need. We anticipate that there will be some instances where the required advertising will not be completed prior to the certification date. Therefore, the employer must provide documentation to show that the job order has been placed and that advertising has been contracted for the job openings, by submitting the text of the contracted advertising. As soon as tear sheets are received they should be submitted to the Regional Office.

Moreover, the McConnell Amendment did not make any changes to the current recruitment requirements. 20 CFR 655.103(d)(1)(2)(i)(ii). All of the recruitment measures are still intact and employers should be instructed to place advertisements in order to attract potentially qualified and available U.S. workers. Even if advertising occurs after certification is granted, the employer remains obligated to hire workers until fifty percent of the period of the work contract has elapsed.

d. *Workers Compensation.* The employer must provide documentation to support the fact that workers compensation insurance coverage is in effect prior to the 30th day before the date of need.

5. *Action Required:* Regional Administrators are requested to provide the above guidance to appropriate staff in the Regional Offices and State Agencies.

6. *Inquiries.* Inquiries should be directed to Charlene G. Giles on (202) 219–5263 x113.

Final Rule

Accordingly, Part 655 of Chapter V of Title 20 of the Code of Federal Regulations is amended as follows:

PART 655—[AMENDED]

1. The authority citations for Part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Pub. L. 103–206, 107 Stat 2419; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(5),(11), and (12).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(5), (11), and (12).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*; 8 CFR 103.1(f)(3)(iii)(J) and (W); 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(5), (11), and (12).

Subparts D and E issued under 8 U.S.C. 1101(a)(15) (H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c) and (d); and 29 U.S.C. 49 *et seq.*; and Pub. L. 103–206, 107 Stat. 2419.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.0 [Amended]

2. Section 655.0 is amended by adding a new paragraph (a)(4), to read as follows:

§ 655.0 Scope and purpose of part.

(a) * * *

(4) *Subpart B; Delegation From Immigration and Naturalization Service.* Subpart B also contains the authority from the Commissioner of Immigration and Naturalization for the Secretary to consider H–2A petitions and revocations under criteria set out in 8 CFR 214.2(h) of the Immigration and Naturalization Service's regulations.

* * * * *

§ 655.00 [Amended]

3. Section 655.00 is amended by revising the second sentence to read as follows:

* * * The Director, however, may direct that certain applications, types of applications, H–2A petitions, or H–2A petition revocations shall be handled by, and the determinations made by, the United States Employment Service (USES) in Washington, DC. * * *

Subpart B—Labor Certification and Petition Process for Temporary Agricultural Employment in the United States (H–2A Workers)

3a. Subpart B is amended by revising the heading to read as set forth above.

§ 655.90 [Amended]

4. Section 655.90(a) is amended by adding before the last sentence a new sentence to read as follows: (a) * * * This subpart also describes the processes and procedures governing consideration of requests for H–2A petition approval and revocation, set out in the Immigration and Naturalization Service regulations at 8 CFR 214.2(h). * * *

§ 655.92 [Amended]

5. Section 655.92 is amended by revising the first sentence to read as follows:

Under this subpart and INS regulations at 8 CFR 214.2(h), the accepting for consideration, the making of temporary alien agricultural labor certification determinations, and H–2A petition determinations ordinarily are performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member. * * *

§ 655.100 [Amended]

6. Section 655.100(a)(1) is amended as follows:

(a) By adding after ''certification'' in the first sentence, the phrase ''and H–2A petition approval''; and

(b) By adding at the end thereof a new sentence to read as follows:

(a) * * * (1) * * * The term 'application' here used in this subpart shall mean an application for temporary alien labor certification and an H–2A petition unless otherwise stated.

7. Section 655.100(a)(4)(i) is amended as follows:

a. In the second sentence the phrase ''20 calendar days'' is removed and the phrase ''30 calendar days'' is added in lieu thereof.

b. In the last sentence the phrase ''for certification'' is removed.

8. Section 655.100(a)(4)(iv) is amended by removing the phrase ''for temporary alien agricultural labor certification''.

9. Section 655.100(b) is amended as follows:

a. In the final sentence of the definition of *Accept for consideration* by removing the phrase ''in a temporary alien agricultural labor certification determination'; and

b. In the definition of ''Immigration and Naturalization Service (INS)'', by removing the phrase ''which makes'' and adding in lieu thereof the phrase ''having the authority to make''.

§ 655.101 [Amended]

10. Section 655.101(a)(1) is amended by removing from the first sentence the final period and by adding in lieu thereof the phrase ''and H–2A petition on Form ETA 9079, Application for Temporary Agricultural Labor Certification and H–2A Petition.''; and by removing from the second sentence the phrase ''for temporary alien agricultural worker certification''.

11. Section 655.101 is amended by revising paragraph (a)(2) and the section heading as follows:

§ 655.101 Temporary alien agricultural labor certification applications and petitions.

(a) * * *

(2) *Applications filed by agents.* If an employer intends to be represented by an agent, the employer shall sign the statement set forth on the Form ETA 9079—*Application for Temporary Agricultural Labor Certification and H–2A Petition* that the agent is representing the employer and that the employer takes full responsibility for the accuracy of any representations made by the agent. The agent may accept for interview workers being referred to the job and make hiring commitments on behalf of the employer.

12. Section 655.101(b)(1) is amended by removing from the first sentence the phrase ''A copy of the'' and adding in lieu thereof the word ''The''.

13. Section 655.101(b)(2) is amended by removing the period at the end of the sentence and adding in lieu thereof the phrase ''; and''.

14. Section 655.101 is amended by adding new paragraphs (b)(3) and (h) to read as follows:

§ 655.101 Temporary alien agricultural labor certification applications and petitions.

* * * * *

(b) * * *

(3) An H–2A petition.

* * * * *

(h) Requests to change Consulates or ports of entry designated on approved petitions or to request a duplicate approval notice, shall be made by filing an ETA Form 9079M, *Visa Issuance Change Addendum,* with the Certifying Officer that approved ETA Form 9079, *Application for Temporary Agricultural Labor Certification and H–2A Petition.*

15. Section 655.101(c), introductory text, is amended as follows:

a. In the first sentence the phrase ''for temporary alien agricultrual labor certification is removed.

b. In the third sentence the phrase ''20 calendar days'' is removed and the phrase ''30 calendar days'' is added in lieu thereof.

16. Section 655.101(c)(2) is amended by removing the phrase ''20 calendar days'' in the four places it appears and the phrase ''30 calendar days'' is added in each place in lieu thereof.

§ 655.103 [Amended]

17. Section 655.103 is amended by removing from the first sentence of the introductory text the phrase ''temporary alien agricultural labor certification''.

§ 655.104 [Amended]

18. Section 655.104 (e) is amended by removing in the two places it appears the phrase ''20 calendar days'' and adding in each place the phrase ''30 calendar days'' in lieu thereof.

§ 655.105 [Amended]

19. Section 655.105 is amended by revising the section heading to read as follows:

§ 655.105 Recruitment of U.S. workers and final determinations on certification and H–2A petition.

* * * * *

20. Section 655.105(a) is amended by removing from the first sentence the word ''H–2A'.

21. Section 655.105(b) is amended by removing the phrase ''for temporary alien agricultural labor certification''.

22. Section 655.105(c) is amended by removing from the last sentence the phrase ''20 calendar days'' and adding the phrase ''30 calendar days'' in lieu thereof.

23. Section 655.105(d) is amended as follows:

a. In the first sentence the phrase ''20 calendar days'' is removed and the phrase ''30 calendar days'' is added in lieu thereof.

b. Adding after the second sentence the following sentence:

(d) * * * If the RA denies the application for temporary alien agricultural labor certification, the RA shall also deny the petition for lack of a labor certification and any other applicable reason in accordance with the criteria set out in 8 CFR 214.2(h).* * *

§ 655.106 [Amended]

24. Section 655.106(a) is amended by removing the phrase ''for temporary alien agricultural labor certification''.

25. Section 655.106(b)(1) is amended by removing from the first sentence the phrase ''20 calendar days'' and adding the phrase ''30 calendar days'' in lieu thereof.

26. Section 655.106(c), introductory text, is amended by removing from the paragraph heading the phrase ''temporary alien agricultural labor certifications'', and adding in lieu thereof the word ''applications''.

27. Section 655.106(c)(1) is amended as follows:

a. By removing from the first sentence the phrase ''Temporary alien agricultural labor certifications are'' and adding in lieu thereof the phrase ''The application is''; and

b. By removing from the third sentence the phrase ''certification shall be'' and adding in lieu thereof the phrase ''certifications and H–2A petitions shall be''.

28. Section 655.106(c)(2)(i) is amended as follows:

a. By removing from the first sentence the phrase ''certification as a joint employer'' and adding in lieu thereof the phrase ''certification and H–2A petition as a joint employer'' and by removing the phrase ''the temporary alien agricultural labor certification granted'' and adding in lieu thereof the phrase ''the temporary labor certification and petition granted'';

b. By removing from the second sentence the phrase ''certification was'' and adding in lieu thereof the phrase ''certification and H–2A petition were'';

c. By removing from the third sentence the phrase ''certifications to associations'' and adding in lieu thereof the phrase ''certifications and H–2A petitions to associations'; and

d. By removing from the fourth sentence the phrase ''certification as a sole employer'' and adding in lieu thereof the phrase ''certification and H–2A petition as a sole employer''.

29. Section 655.106(d) is amended by removing from the first sentence the phrase ''certification (in whole or in part)'' and adding in lieu thereof the phrase ''certification and H–2A petition (in whole or in part)''.

30. Section 655.106(e)(1) is amended by removing the phrase ''a temporary agricultural labor certification'' and adding in lieu thereof the phrase ''an application''.

31. Section 655.106(h) is amended by removing from the first sentence the phrase ''20 calendar days'' and adding in lieu thereof the phrase ''30 calendar days''.

§ 655.108 [Amended]

32. Section 655.108(a) is amended as follows:

a. By removing from the first sentence the phrase ''temporary alien agricultural labor certification'' and adding in lieu thereof the phrase ''an application''; and

b. By removing from the second sentence the word ''certification'' and adding in lieu thereof the phrase ''certification and the determination on the H–2A petition cannot be made until the investigation has been completed'.

§ 655.112 [Amended]

33. Section 655.112(a)(1) is amended by removing from the first sentence the phrase ''of the denial of the temporary alien agricultural labor certification'' and adding in lieu thereof the phrase ''of the denial of the temporary alien agricultural labor certification, the H–2A petition, or the revocation of an H–2A petition''.

34. A new § 655.114 is added, to read as follows:

§ 655.114 Revocation of H–2A petition approval.

Determinations to revoke an approved H–2A petition shall be made by the RA in accordance with accordance with the criteria established by the Immigration and Naturalization Service at 8 CFR 214.2(h).

Signed at Washington, DC, this 7th day of July, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

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