

to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

\* \* \* \* \*

(15) \* \* \*

(ii) \* \* \*

(C) *H-2A extension of stay.* An extension of stay for the beneficiary of an H-2A petition may be authorized for a period of up to one year, but not beyond the validity of the temporary labor certification, except as provided for in 8 CFR 214.2(h)(5)(x).

(D) *H-2B extension of stay.* For employment on Guam and for other groups requiring labor certification, an extension of stay for the beneficiary of an H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year. For all other H-2B petitions, an extension of stay may be authorized for the petition validity period or for a period of up to one year. In all cases, the alien's total period of stay as an H-2B worker may not exceed 3 years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

\* \* \* \* \*

(20) *Debarments.* Upon notification to USCIS that the Secretary of Labor has made a finding that the petitioning employer has violated the H-2B attestation requirements, the USCIS will not approve immigrant petitions under section 204 of the Act or nonimmigrant petitions under section 214(c) of the Act for at least the minimum period of time recommended by the Secretary of Labor.

\* \* \* \* \*

Dated: January 13, 2005.

**Tom Ridge,**

*Secretary of Homeland Security.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Part 655

RIN 1205-AB36

#### Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States

**AGENCIES:** Employment and Training Administration, Labor.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** An H-2B nonimmigrant is admitted temporarily to the United States to perform temporary nonagricultural labor or services. The Department of Labor's Employment and Training Administration (DOL or ETA) and the Department of Homeland Security (DHS) simultaneously are proposing changes to the procedures for the issuance of H-2B visas. Under this proposed rule, H-2B petitions filed with DHS, with the exception of workers in logging, the entertainment industry, or professional athletics, will require employers to satisfy specific attestations concerning labor market issues. These attestations have been developed by the DOL and are included in this rule and are incorporated in the DHS regulation. In addition, the DOL will receive information on petitions that have been approved and received final adjudication from the DHS. The DOL will be conducting post-adjudication audits of attestations submitted in support of selected approved H-2B petitions received from the DHS.

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before February 28, 2005.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB36, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

- E-mail: Comments may be submitted by e-mail to [H2B.Comments@dol.gov](mailto:H2B.Comments@dol.gov). Include RIN 1205-AB36 in the subject line of the message.

- U.S. Mail: Submit written comments to the Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

*Instructions:* All submissions received must include the RIN 1205-AB36 for this rulemaking. Receipt of submissions will not be acknowledged. Because DOL continues to experience occasional delays in receiving postal mail in the Washington, DC area, commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (e.g., large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693-3010 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210, telephone: (202) 693-3010 (this is not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Currently, 20 CFR part 655, subpart A, provides that a petitioner seeking to employ an H-2B nonimmigrant must establish that employment of the alien will not adversely affect United States workers who are capable of performing such services or labor and the employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. A petitioner may not file a petition with the DHS for an H-2B temporary worker unless the employer has applied for and received a labor certification from DOL or the Governor of Guam, as appropriate. In order to obtain a labor certification, a prospective employer must test the United States labor market and, in addition, agree to pay the alien a salary that will not adversely affect the wages of United States workers similarly employed. A petitioner must demonstrate that the need for the temporary services or labor is a one-time occurrence, a seasonal need, a peak load need, or an intermittent need. The period of the petitioner's need must be less than one year.

##### II. Proposal

###### 1. Process

Under the redesigned H-2B program, the DHS will continue to administer the petition adjudication process. However, the employer now will be required to conduct recruitment before filing its petition. The employer also will be required to submit, as part of its petition, attestations concerning labor

market tests and related issues. The required attestation elements are set forth in this proposed regulation. The intent of this proposal is to ensure there will not be an adverse affect on the wages and working conditions of U.S. workers similarly employed. An employer is expected to have assembled supporting documentation specified in the regulation and will be required to provide the documentation in the event the attestations included in the Form I-129 petition are audited by the DOL. Although the required attestations are included in this proposed regulation, they are part of the required evidence to be submitted in support of a Form I-129 petition, which will be adjudicated by the DHS.

The majority of the items on the attestation form will require the employer to check "yes" or "no" as a response. These questions and other information required by the attestation form elicit information similar to that required by the current labor certification process. For example, the wage offered on the attestation form must be equal to or greater than the prevailing wage for the occupation in the area of intended employment.

Upon final adjudication from the DHS, the DOL will conduct audits of attestations contained in certain approved H-2B petitions. Specifically, the DOL will audit a sample of approved attestations. Audited attestations will be identified through a process of pre-selection and/or randomly drawn samples. In such audits, the DOL will limit its examination to whether the employer has complied with all required attestations. Employers will be expected to have documentation available supporting their attestations and will be required to provide this supporting documentation to the DOL within 30 days from notice of audit. In the event the DOL determines an employer (1) has misrepresented a material fact or has made a fraudulent statement in its attestation, or (2) has failed to comply with the terms of the attestations contained in its petition, the DOL, after notice to the employer and providing an opportunity for a hearing, may make a finding that the employer be debarred for a period of up to three years. Once such a finding has been issued, the DOL will notify the DHS of this determination. The DHS, in accordance with 8 CFR 214.2(h)(20), will not approve immigrant petitions under section 204 of the Immigration and Nationality Act (Act) or nonimmigrant petitions under section 214(c) of the Act for at least the minimum period of time recommended by the DOL.

## 2. *Excepted Occupations Subject to Special Procedures*

Historically, employers seeking H-2B workers in logging, the entertainment industry, or professional athletics have followed special procedures. Those procedures will remain intact under the new H-2B process.

## 3. *Nature of the Attestation*

An employer must attest that:

(1) The employer is offering, and will offer during the period of authorized employment, to pay H-2B workers no less than the prevailing wage as determined by the Occupational Employment Statistics (OES) survey for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions that are normal to workers similarly employed in the area of intended employment;

(3) There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the place of employment;

(4) The employer has placed a job order with America's Job Bank (AJB), has placed a Sunday advertisement in a newspaper of general circulation, or an advertisement in an appropriate trade journal, and has notified the appropriate union(s), if applicable, and the employer was unsuccessful in locating qualified United States applicants for the job opportunity and has rejected United States workers only for lawful job-related reasons;

(5) The employer has agreed to comply with all Federal, state or local laws applicable to the job opportunity; and

(6) The employer will notify the DHS within 30 days when the employment of an H-2B worker has terminated.

## 4. *Prevailing Wage*

Employers filing petitions will be required to utilize the prevailing wage information available on the DOL's Online Wage Library (OWL), which is accessible via the DOL's Web site at <http://www.flcdatacenter.com/owl.asp>.

Section 212(p)(3) and (4) of the Immigration and Nationality Act (8 U.S.C. 1182(p)(3) and (4)) as added by the Consolidated Appropriations Act, 2005, provides that for prevailing wage surveys in the permanent alien labor certification program (and the H-1B and H-1B1 programs) the survey shall provide at least four levels of wages commensurate with experience, education, and the level of supervision. Although this statutory provision does not necessarily apply to H-2B labor

certifications, it has been DOL's practice to treat prevailing wage determinations the same under the H-2B program as under the permanent labor certification program. This is consistent with the proposed rule below and we request public comment on this issue.

## III. **Executive Order 12866**

Although this proposed rule is not economically significant, the Office of Management and Budget has reviewed the proposed rule. The proposed program will not have an economic impact of \$100 million or more because it does not require the initial filing of documents with the DOL.

## IV. **Regulatory Flexibility Act**

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is as follows: The proposed rule would affect only those employers seeking nonimmigrant H-2B workers for employment in the United States. Based on past filing data, the DOL estimates in the upcoming year approximately 5,000 employers will file approximately 7,000 attestations for nonimmigrant H-2B workers. Several employers will file multiple attestations in a year. We do not inquire about the size of the employer; however, the number of small entities that file attestations in the upcoming year will be less than the total number of 5,000 employer-applicants and significantly below the potential universe of small businesses to which the program is open. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies*, there were 22,400,000 small businesses in the United States in 2001. If the universe consists of all small businesses, the 5,000 businesses that file for attestations would represent less than 0.01 percent of all small businesses. The DOL asserts that 0.01 percent is not a substantial number of small entities.

Moreover, the DOL does not believe this rule will have a significant economic impact. The DOL estimates that under the current regulation, a business spends approximately one hour to prepare the necessary ETA 750,

Part A. This equates to approximately 7,000 hours under the current regulation. Under the proposed rule the employer will spend substantially less time completing the attestation form. Therefore, the proposed rule establishes no additional economic burden on small entities, since the recruitment activities and required wage and benefit levels are no different from those required under the existing program, other than to require that the activities be attested to rather than be part of a process of applying for certification. The DOL does not believe small businesses will have to incur additional costs to perform this additional requirement. See General Administration Letter No. 1-95, 60 FR 7216 (February 7, 1995). Further, the filing burden is lessened by this rulemaking, since applicants no longer would have to file applications with State Workforce Agencies (SWAs) or have their applications adjudicated by DOL. The DOL welcomes comments on this RFA certification. The DOL is particularly interested in comments concerning the universe of small businesses and the assumption that small businesses will not incur any additional economic burden as a result of this proposal.

#### V. 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.

#### VI. 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.

#### VII. Executive Order 13132

This proposed rule will not have a substantial direct effect 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, we have determined this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

#### VIII. Assessment of Federal Regulations and Policies on Families

The proposed regulation does not affect family well-being.

#### IX. Paperwork Reduction Act

The information collection requirements necessary to administer the program are contained in the DHS regulations. The redesigned H-2B program will result in a significant reduction in the paperwork burden on employers that use the program. Only the electronic form required by the DHS will have to be submitted by employers, unless they are applying for the excepted occupations. For non-excepted occupations employers will no longer have to submit an application form (ETA 750, *Application for Permanent Employment Certification*) to the DOL; nor will these employers have to submit any recruitment information to the DOL before their petition can be adjudicated by DHS. Employers, however, will be required to maintain and make available for review all documentation supporting their attestations.

#### X. Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, "Certification for Alien Workers."

#### List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Forest and forest products, Health professions, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Unemployment, Students, Wages and working conditions.

Accordingly, we propose that part 655 of Chapter V of title 20 of the Code of Federal Regulations be amended as follows:

#### PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 continues to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 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, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Title IV, Pub. L. 105-277, 112 Stat. 2681; and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

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)(5)(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.*

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 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t) and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105-277, 112 Stat. 2681.

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).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(1)(c), 1182(m), and 1184, 29 U.S.C. 49 *et seq.*, Pub. L. 106-95, 113 Stat. 1312.

2. Part 655, subpart A, is revised to read as follows:

#### Subpart A—Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States

Sec.

- 655.1 What is the purpose and scope of subpart A?
- 655.2 Which Federal agencies are involved in the H-2B program?
- 655.3 What are the excepted occupations?
- 655.4 What is the requirement regarding record retention?
- 655.5 What is the attestation regarding wages?
- 655.6 What is the attestation regarding working conditions?
- 655.7 What is the attestation regarding strikes and lockouts?
- 655.8 What is the attestation regarding the recruitment of U.S. workers?
- 655.9 What is the attestation regarding compliance with Federal, state and local laws?
- 655.10 What is the attestation regarding notification to the DHS on termination of employment of H-2B workers?
- 655.11 What may the DOL audit?
- 655.12 What are employer responsibilities during the audit?
- 655.13 What actions may the DOL take as a result of the audit?

**Subpart A—Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States**

**§ 655.1 What is the purpose and scope of subpart A?**

This subpart contains the attestations that will be required for employers to file H-2B petitions with the Department of Homeland Security (DHS). This subpart also sets forth the procedures governing the Department of Labor's (DOL or ETA) post-adjudication audit process for H-2B attestations in occupations other than logging, entertainment, or professional athletics. In addition, it describes the process by which the DOL, after notice to the employer and providing an opportunity for a hearing, may make a finding that an employer be debarred for a period of up to three years if the employer fails to comply with the terms of attestations contained in its H-2B petition or misrepresented a material fact. Once such a finding has been issued, the DOL will notify the DHS of this determination.

**§ 655.2 Which Federal agencies are involved in the H-2B program?**

Three Federal agencies (Department of Labor, Department of Homeland Security, and Department of State) are involved in the process relating to H-2B employment in the United States. Employers seeking to import H-2B workers, with the exception of workers in logging, the entertainment industry, or professional athletics, will only file a petition with the DHS. That petition will require, among other evidence, attestations concerning the employer's labor market tests and related issues.

**§ 655.3 What are the excepted occupations?**

Certain occupations are not subject to the attestation requirements in §§ 655.5 through 655.10:

(a) Employers seeking to employ workers in logging shall follow the procedures set forth in subpart C of this part.

(b) Employers seeking to employ professional athletes as defined in section 212(a)(5)(A)(iii)(II) of the Immigration and Nationality Act shall continue to file directly with the Chief, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, and pursuant to policy guidelines.

(c) Employers seeking to employ workers in the entertainment industry shall continue to file pursuant to ETA policy guidelines.

**§ 655.4 What is the requirement regarding record retention?**

The employer shall maintain all supporting documentation for its attestations for a period of three years from the date of filing. This documentation shall include resumes received and the written results of all recruitment efforts undertaken, as well as any other information noted in this regulation required to support the attestations.

**§ 655.5 What is the attestation regarding wages?**

An employer seeking to employ H-2B workers shall attest that, for the entire period of authorized employment, H-2B workers will be paid at least the prevailing wage for the occupation in the area of intended employment.

(a) *Determining the prevailing wage.* The prevailing wage shall be determined by the Occupational Employment Statistics (OES) survey (if any) for the occupation in the area of intended employment. An employer shall obtain the prevailing wage through the DOL's On-Line Wage Library (OWL), a web-based service which can be accessed via the DOL's Web site at <http://www.flcdatacenter.com/owl.asp>. The data on this site are drawn from the wage component of the OES survey, conducted by the Bureau of Labor Statistics.

(b) *Minimum wage laws.* A prevailing wage determination for H-2B purposes made under this section shall not permit an employer to pay a wage lower than that required under any other applicable Federal, state or local law.

(c) *Wage ranges.* Where the employer pays a range of wages to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

**§ 655.6 What is the attestation regarding working conditions?**

An employer seeking to employ H-2B workers shall attest that it is offering working conditions normal to workers similarly employed in the area of intended employment.

**§ 655.7 What is the attestation regarding strikes and lockouts?**

An employer seeking to employ H-2B workers shall attest that there is not, at the time the attestation is filed, a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the place of employment.

**§ 655.8 What is the attestation regarding the recruitment of U.S. workers?**

(a) *Recruitment attestation.* An employer seeking to employ H-2B workers shall attest that it conducted the required recruitment prior to filing the attestation and was unsuccessful in locating qualified U.S. applicants for the job opportunity for which certification is sought and has rejected U.S. workers only for lawful job-related reasons.

(b) *Required recruiting efforts.* Within 60 days, but no less than 20 days, prior to filing the attestation the employer must:

(1) Place a job order with America's Job Bank (AJB),

(2) Contact the appropriate union(s), if unions are customarily used as a recruitment source in the area or industry, and

(3) Place a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal and in the area of intended employment.

(c) *Contents of advertisement.* The text of the advertisement shall:

(1) Name the employer;

(2) Direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

(3) Provide a description of the vacancy specific enough to apprise U.S. workers of the job opportunity for which certification is sought;

(4) Describe the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity;

(5) State the rate of pay which must equal or exceed the prevailing wage for the occupation in the area of intended employment; and

(6) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

(d) *Recruitment results.* The employer shall maintain written results of its recruitment which:

(1) Identify each recruitment source by name;

(2) State the name, address, and telephone number of each U.S. worker who applied for the job;

(3) Include applicant resumes, if submitted to the employer; and

(4) Explain the lawful job-related reasons for not hiring each U.S. worker.

**§ 655.9 What is the attestation regarding compliance with Federal, state and local laws?**

An employer seeking to employ H-2B workers shall attest that, during the period of employment, it will comply with all Federal, state or local laws applicable to the employment opportunity.

**§ 655.10 What is the attestation regarding notification to the DHS on termination of employment of H-2B workers?**

An employer seeking to employ H-2B workers shall attest that, upon the termination of employment of H-2B worker(s) employed under the attestation, the employer will notify the DHS in writing of the termination of employment within 30 days.

**§ 655.11 What may the DOL audit?**

Upon final adjudication from the DHS, the DOL will conduct audits of attestations contained in certain approved H-2B petitions. Specifically, the DOL will audit a sample of approved attestations. Audited attestations will be identified through a process of pre-selection and/or randomly drawn samples. The DOL will limit its examination to whether the employer has complied with labor market tests and other related elements of the attestations.

**§ 655.12 What are employer responsibilities during the audit?**

Employers should retain all documentation supporting their attestations, and are required to provide this supporting documentation to the DOL within 30 days from notice of audit. The DOL may request employers to provide supplemental information as necessary to complete the audit. Failure to cooperate with the audit process, including providing documentation

within the specified time period, may result in a finding that the employer be debarred for a period of up to three years.

**§ 655.13 What actions may the DOL take as a result of the audit?**

(a) The Chief, Division of Foreign Labor Certification or his/her designee, will notify the employer of the finding that the employer is to be debarred for a period of up to three years if the employer:

(1) Has misrepresented a material fact or has made a fraudulent statement in its attestations,

(2) Has failed to comply with the terms of the attestations contained in its petition, or

(3) Failed to cooperate in the audit process pursuant to § 655.12.

(b) The notice in paragraph (a) of this section shall be in writing, shall state the reason for the debarment finding, and shall offer the employer an opportunity to request review before an Administrative Law Judge. The notice shall state that in order to obtain such a review or hearing, the employer, within 30 calendar days of the date of the notice, shall file a written request to the Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001-8002, and simultaneously serve a copy to the Chief, Division of Foreign Labor Certification or his/her designee. If such a review is requested, the hearing shall

be conducted pursuant to the procedures set forth in 29 CFR part 18.

(c) Whenever an employer has requested an administrative review before an Administrative Law Judge of a debarment finding, the Chief, Division of Foreign Labor Certification or his/her designee, shall immediately assemble an indexed Appeal File. The Chief, Division of Foreign Labor Certification or his/her designee, shall send a copy of the Appeal File to the Office of Administrative Law Judges. The Administrative Law Judge shall affirm, reverse, or modify the Chief, Division of Foreign Labor Certification's determination, and the Administrative Law Judge's decision shall be provided to the employer, the Chief, Division of Foreign Labor Certification, and the DHS. The Administrative Law Judge's decision shall be the final decision of the DOL, unless appealed to the Administrative Review Board within 30 days.

(d) After completion of the appeal process, the DOL will inform the DHS of the findings, as appropriate, for debarment.

Signed in Washington, DC, this 18th day of January, 2005.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 05-1222 Filed 1-26-05; 8:45 am]

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