DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB55

Temporary Agricultural Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Interim final rule; request for further comments.

SUMMARY: The Department of Labor (Department or DOL) is further amending its regulations to extend the transition period of the application filing procedures currently in effect for all H–2A employers with a date of need before January 1, 2010, as established in the H–2A Interim Final Rule (IFR) published on April 16, 2009. The transition period is hereby extended to include all employers with a date of need before June 1, 2010.

DATES: This IFR is effective on November 17, 2009. The grounds for making the rule effective upon publication in the **Federal Register** are set forth in the **SUPPLEMENTARY INFORMATION** section below. Interested persons are invited to submit written comments on the IFR on or before December 17, 2009.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Mail: Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Hand Delivery/Courier: Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Comments that are received by the Department through means beyond those listed in this IFR or that are received after the comment period has closed will not be reviewed in consideration of the Final Rule. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-Rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on a computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The H–2A temporary labor certification program has been operating for over two decades, first under the Department's regulations promulgated in the wake of Immigration Reform and Control Act of 1986 (IRCA), primarily published at 52 FR 20507, Jun. 1, 1987 (''the 1987 Rule''), and now under new H–2A regulations published on December 18, 2008, 73 FR 77110 (the ''2008 Final Rule''). The 2008 Final Rule reflected several significant policy shifts. Among other things, the 2008 Final Rule provided for a transition period to enable employers to gradually change their process from recruitment and solicitation of workers, both foreign and domestic, and to become accustomed to the filing procedures delineated in the new regulations.

After the 2008 Final Rule was promulgated, a group of plaintiffs comprised primarily of workers' rights organizations filed suit in the United States (U.S.) District Court for the District of Columbia challenging the 2008 Final Rule. *United Farm Workers, et al.* v. *Chao, et al.,* Civil No. 09–00062 RMU (D.DC). The plaintiffs requested that the court issue a temporary restraining order and preliminary injunction, along with a permanent injunction to prohibit the Department from implementing the 2008 Final Rule. The plaintiffs' requests for a temporary restraining order and preliminary injunction were denied and the 2008 Final Rule went into effect as scheduled on January 17, 2009.

As the Department began accepting applications under the transition period procedures of the 2008 Final Rule, it became evident that the Department and the State Workforce Agencies (SWAs) found it challenging to effectively and efficiently implement the new regulations, resulting in processing delays and confusion among staff and user communities. Consequently, the new Administration undertook review of the prior Administration's policy decisions on which the 2008 Final Rule was based and in support of this review proposed to suspend the 2008 Final Rule in a Notice of Proposed Suspension on March 17, 2009 at 74 FR 11408 for a period of 9 months during which it could fully reconsider the 2008 Final Rule. In order to ensure a continuing and stable regulatory process for workers, employers and other affected stakeholders, the Department

published an IFR on April 16, 2009 to extend the 2008 Final Rule transition period until January 1, 2010. 74 FR 17597, Apr. 16, 2009. On May 29, 2009, the Department proceeded with the suspension and issued a final rule to suspend the 2008 Final Rule and to reinstate the former regulations for a 9-month period, after which time it would revert to the 2008 Final Rule, unless a new rulemaking was in place. *See,* 74 FR 25972, May 29, 2009.

After the publication of the Final Suspension and Notice, the North Carolina Growers Association and others (''NCGA'') filed a complaint in the U.S. District Court for the Middle District of North Carolina. NCGA requested the court to enjoin the Department from suspending the 2008 Final Rule. *North Carolina Growers' Association* v. *Solis,* 1:09-cv-00411 (June 9, 2009). On June 29, the court granted NCGA's motion for a preliminary injunction (*North Carolina Growers' Association* v. *Solis,* 1:09-cv-00411 (June 29, 2009)) thereby preventing implementation of the Suspension. Therefore, the Final 2008 Rule remains in effect at this time.

During this period, the Department undertook its review of the 2008 Final Rule and determined that a number of elements of that rule are not in keeping with the philosophy of the new Administration, particularly with respect to avoiding adverse effect on the wages of domestic workers. For those reasons, the Department determined that a new rulemaking effort was required in the H–2A program, and on September 4, 2009 published new proposed regulations revising title 20 of the Code of Federal Regulations (20 CFR), part 655, and title 29 of the Code of Federal Regulations (29 CFR), part 501 (2009 H–2A NPRM). 74 FR 45906, Sept. 4, 2009.

II. The Need for Extending H–2A Transition Procedures

While the Department undertakes a full review of the comments it receives in response to the publication of the 2009 H–2A NPRM, it has concluded that it is necessary to again extend the transition procedures of the 2008 Final Rule.

Fully implementing the 2008 Final Rule for dates of need on or after January 1, 2010 would create significant confusion among program users and create potentially serious operational challenges for both the Department and the SWA staff, likely resulting in processing delays. Under the 2008 Final Rule's current transition procedures at 20 CFR 655.100(b), employers who are filing applications for H–2A workers with a date of need prior to January 1, 2010 are required to engage in recruitment after filing the labor certification application. By contrast, for applications with a date of need on or after January 1, 2010, the current 2008 Final Rule requires employers to commence recruitment before the application is filed and no earlier than 75 days prior to that date of need. Under the current 2008 Final Rule, the earliest such date on which employers with a date of need on or after January 1, 2010 could have begun their pre-filing recruitment was October 18, 2009.

It is inevitable that there will eventually be a switch from the transition procedure to either the fully implemented 2008 Final Rule or a Final Rule arising from the 2009 H–2A NPRM. Unless the transition provision is extended, there is a significant possibility that the SWAs and the Department could be forced to operate simultaneously under three different case processing regimes. Extending the transition procedures to June 1 makes it more likely that there will be only one switch rather than two. Furthermore, undertaking the full implementation of the 2008 Final Rule would divert limited Department resources and staff away from the imperative of processing applications and providing employers with needed guidance.

For these reasons, it is necessary to again extend the transition period procedures in 20 CFR 655.100(b)(2) for all employers with a date of need prior to June 1, 2010. The Department expects to have either issued a Final Rule arising from the 2009 H–2A NPRM or to have decided not to engage in further rulemaking on the H–2A program by early 2010. By extending the transition procedures, employers will be clearly informed about which recruitment procedures they must use, either the full final regulatory procedures of the 2008 Final Rule or the procedures from a Final Rule arising from the 2009 H–2A NPRM.

III. Discussion of Comments Received in Connection With the April 16, 2009 Interim Final Rule Extending the Transition Period

After publishing an IFR on April 16, 2009, the Department received five comments in response to the extension of the transition period. Some of the comments in whole or in part addressed issues unrelated to the extension of the transition period and/or related generally to the then-proposed Suspension of the 2008 Final Rule or the substance of the 2008 Final Rule. The Department has classified one comment and portions of other comments as outside the scope and did not consider them for the purpose of the discussion below.

The Department received four comments expressing support for the prior extension of the transition period. One commenter, a law firm representing H–2A employers, expressed support for the decision to continue the transition period procedures until ''at least January 1, 2010'' and longer. This commenter also addressed substantive aspects of the 2008 Final Rule which the Department has determined to be out of scope of this IFR. In addition, the commenter provided specific suggestions for a deliberative process, beyond the notice and comment rulemaking in which the Department is required to engage, which it urged the Department to undertake before undertaking further changes to the H–2A program. Although the Department appreciates the suggestions, this discussion was also determined to be out of scope for the purpose of the decision to extend the transition period.

Another commenter, representing an association of individual ranchers engaged in the range production of livestock and sheepshearing contractors, expressed support for the transition with one caveat; it strongly opposed the requirement of multi-state advertising being applied to its clients during the extended transition period.

There is no basis for exempting one group of employers from any of the substantive requirements of the 2008 Final Rule. The INA specifically requires the Department to protect the employment opportunities of U.S. workers across the occupations encompassed by the H–2A labor certification program, in particular by ensuring that the employer makes positive recruitment efforts in a multi-state region in accordance with the INA. The Department finds it necessary and appropriate to extend the transition period procedures in their entirety so that it may provide for a timely and orderly certification process of H–2A applications during the period when it is considering comments on the 2009 H–2A NPRM. Exempting a single subgroup from the regulatory implementation of a statutory requirement would produce substantial legal and operational difficulties. Therefore, the Department has determined that it must maintain all the requirements of the 2008 Final Rule as put into operation through the transition procedures. The Department intends to continue the current practice discussed in the 2008 Final Rule of having the Chicago National Processing Center (NPC) advise employers of their

recruitment obligations and provide each with states of traditional or expected labor supply for purposes of advertising. 73 FR 77113, Dec. 18, 2008.

Another commenter responding to the extension of transition period procedures was a SWA. The SWA expressed guarded support for the Department's action, and indicated that ''although extending the transition period minimizes uncertainty in the near future, it does not alleviate our concerns [with respect to the 2008 Final Rule].''

The Department, although concerned about creating interim stability for program users and workers, is also concerned with alleviating long-term issues in the H–2A program and has thus begun a new rulemaking by promulgating an NPRM. The Department expects that this SWA and other interested entities will express their concerns by providing the Department with substantive comments on the proposed changes to the H–2A program.

The Department also received a comment from a national advocacy organization for migrant and seasonal farmworkers. This commenter implied support for the extension of the transition period to ''prevent administrative confusion and disruption'' but noted concerns about the effect on the then-proposed Suspension as well as the process for the designation of the labor supply States during the recruitment period. The commenter urged DOL to ensure these designations take place in a transparent and collaborative manner to notify U.S. workers of potential work opportunities. In addition, the commenter urged DOL to work with farmworker unions, community-based organizations and other farmworker advocacy organizations to increase the likelihood that U.S. workers will learn of H–2A job opportunities.

As part of the rulemaking process, the Department has given serious thought to the effect the timing of the new rulemaking will have both on employers using the H–2A program and on U.S. workers being recruited in connection with H–2A applications. The Department has concluded that keeping the transition provision in place will cause the least disruption to program users as well as U.S. and H–2A workers. With respect to the commenter's concern about the transparency of the labor state designation process, the Department believes that the current process followed by the NPC provides both transparency and adequate notice to apprise U.S. workers of job opportunities so that it ought to continue during the additional extension of the transition period.

Under the transition provisions of the 2008 Final Rule, the NPC has a regulatory mandate to designate labor supply States on a case-by-case basis during the transition period. 20 CFR 655.100(b)(2)(iv). To implement this mandate the NPC has sought information from the SWAs or other sources, including, if available, the success of recent efforts by out-of-State employers to recruit in that State. In accordance with its mandate, the NPC developed a matrix of traditional labor supply States in consultation with several SWAs and based on traditional patterns of labor supply from previous experience of the SWAs and the NPC. In developing the matrix, the NPC took into account traditional factors affecting the flow of agricultural labor supply, such as weather patterns, crop distribution, and availability of transportation. To ensure fairness and consistency in adjudication, the matrix will continue to be applied to all H–2A applications through instructions to employers upon the acceptance of the application and the initiation of recruitment.

In terms of the commenter's suggestion that the Department engage with various farmworker advocacy organizations to maximize the flow of information to U.S. workers regarding H–2A job opportunities, the Department recognizes the importance of keeping U.S. workers informed about H–2A job opportunities during the recruitment period. The Department may not impose new or additional requirements on employers recruiting U.S. workers under the transition period procedures. However, the Department expects that this farmworker advocate organization provided comments based on its longstanding experience in the context of the new H–2A rulemaking process.

The Department received no comments opposing the extension of the transition period.

IV. Administrative Information

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is significant and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a significant regulatory action as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. The Department has determined that this IFR is not an economically significant regulatory action under sec. 3(f)(1) of E.O.12866. The procedures for extending the time during which employers seeking H–2A workers will file under the transition procedures will not have an economic impact of $100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. The Department has also determined that this IFR is not a significant regulatory action under sec. 3(f)(4) of the E.O.

Summary of Impacts

The change in this IFR is expected to have little net direct cost impact on employers above and beyond the baseline of the current costs required by the program as it is currently implemented. Employer costs for newspaper advertising for the conduct of positive recruitment in traditional or expected labor supply States will not increase as a result of this IFR.

B. Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared and made available for public comment. The RFA must describe the impact of the rule on small entities. *See* 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have significant economic impact on a substantial number of small entities. The Deputy Assistant Secretary of ETA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and certifies under the RFA at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not substantively change existing obligations for employers who choose to participate in the H–2A

temporary agricultural worker program. The factual basis for such a certification is that even though this rule can and does affect small entities, there are not a substantial number of small entities that will be affected, nor is there a significant economic impact upon those small entities that are affected. Of the total 2,204,792 farms in the U.S., 98 percent have sales of less than $750,000 per year and fall within SBA's definition of small entities. In Fiscal Year (FY) 2008, the last year for which official numbers are available, only 8,096 employers filed requests for only 86,113 workers. That represents less than 1 percent of all farms in the U.S. Even if all of the 8,096 employers who filed applications under H–2A in FY 2008 were small entities, that is still a relatively small number of employers affected, and this rule is expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) directs agencies to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector to determine whether the regulatory action imposes a Federal mandate. A Federal mandate is defined in the Act at 2 U.S.C. 658(5)–(7) to include any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. Further, each agency is required to provide a process where State, local, and tribal governments may comment on the regulation as it develops, which further promotes coordination between the Federal and the State, local, and tribal governments. This IFR imposes no enforceable duty upon State, local or tribal governments, nor does it impose a duty upon the private sector that is not voluntary. In fact, the IFR imposes no duties whatsoever upon State, local or tribal governments. The duties imposed are completely upon the Federal government—the Chicago NPC of the Office of Foreign Labor Certification in the Department that has and will continue to instruct employers on a case by case basis of their obligations to seek and hire U.S. workers and, failing the availability of U.S. workers, H–2A workers.

D. Executive Order 13132—Federalism

Executive Order 13132 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13132, Federal agencies are required to consult with States prior to and during the implementation of national policies that have a direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Further, an agency is permitted to limit a State's discretion when it has statutory authority and the regulation is a national activity that addresses a problem of national significance. This IFR has no direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The continuation of a procedure by which employers comply with a statutory recruitment requirement imposes no additional duties on the States.

E. Executive Order 13175—Indian Tribal Governments

Executive Order 13175 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This IFR regulates the H–2A visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or erodes the stability, integrity, autonomy, or safety of the family. This IFR 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 has determined that there are no costs associated with the IFR; even if there were, however, they are not of a magnitude to adversely affect family well-being.

G. Executive Order 12630—Protected Property Rights

Executive Order 12630, Governmental Actions and the Interference with Constitutionally 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 there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. The Department has determined this rule does not have takings implications.

H. Executive Order 12988—Civil Justice Reform

Section 3 of E.O. 12988, 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; ensure that it provides a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. This IFR has been drafted in clear language and with detailed provisions that aim to minimize litigation. The purpose of this rule is to continue the transition procedures to enable employers to continue to comply with their statutory recruitment requirements. Therefore, the Department has determined that the regulation meets the applicable standards set forth in sec. 3 of E.O. 12988.

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 IFR under the plain language requirements and determined that it follows the government's standards requiring documents to be accessible and understandable to the public.

J. Executive Order 13211—Energy Supply

This IFR is not subject to E.O. 13211, 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.

K. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that the OMB approve all collections of information by a Federal

agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this IFR have been previously approved under OMB No. 1205–0466. No change in that collection is proposed by this IFR.

L. Good Cause Exception

The Department finds good cause to adopt this IFR, effective immediately, and without prior notice and comment. *See* 5 U.S.C. 553(b)(3) and 553(d)(3). The reasons for extending the transition period, discussed above, lead the Department to believe that action must be taken quickly to ensure that the Department and employers are able to meet their statutory obligations and to prevent confusion, ensure program integrity, and maximize the availability of job opportunities for the U.S. workforce during a time of economic crisis. Absent this extension, on approximately October 18, 2009, employers will be forced to comply with all elements of the 2008 Final Rule. In order to avoid the confusion and disruption that this will cause, it is essential that extension of the transition period be effective before that date. This circumstance precludes the receipt and consideration of comments before this rule becomes effective. In addition, as discussed above, the Department has considered the comments received after the promulgation of the April 16 Rule extending the transition period to January 1, 2010. There was no significant opposition to the extension and the current rule presents no new issues.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

■ For the reasons stated in the preamble, the Department amends 20 CFR part 655 as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS 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)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); 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); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h)(4)(i). Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h). Subparts A and C issued under 8 CFR 214.2(h). Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h). Subparts D and E authority repealed. Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Pub. L. 103–206, 107 Stat. 2428. Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h). Subparts J and K authority repealed. Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Amend § 655.100 by revising paragraph (b)(1) and the introductory text of paragraph (b)(2) to read as follows:

§ 655.100 Overview of subpart B and definition of terms.

* * * * *

(b) * * *

(1) *Compliance with these regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services on or after June 1, 2010 must comply with all of the obligations and assurances required in this subpart.

(2) *Transition from former regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services prior to June 1, 2010 will file applications in the following manner:

* * * * *

Signed in Washington, DC, this 10th day of November 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–27496 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2009–N–0665]

Certain Other Dosage Form New Animal Drugs; Progesterone Intravaginal Inserts

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The NADA provides for use of a progesterone intravaginal insert for induction of estrus in ewes during seasonal anestrus.

DATES: This rule is effective November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, e-mail: *suzanne.sechen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, has filed NADA 141–302 for over-the-counter use of EAZI–BREED CIDR (progesterone) Sheep Inserts for induction of estrus in ewes during seasonal anestrus. The NADA is approved as of October 1, 2009, and the regulations are amended in 21 CFR 529.1940 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 573(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2), this supplemental approval qualifies for 7 years of exclusive marketing rights beginning on the date of approval because the new animal drug has been declared a designated new animal drug by FDA under section 573(a) of the act.

The agency has determined under 21 CFR 25.33 that this action is of a type