

imposed will be cited in a single debarment proceeding. Copies of final debarment decisions will be forwarded to DHS and DOS promptly.

(i) *Debarment from other foreign labor programs.* Upon debarment under this subpart or 29 CFR 503.24, the debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

§§ 655.74–655.99 [Reserved]

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

SOURCE: 87 FR 61791, Oct. 12, 2022, unless otherwise noted.

§ 655.100 Purpose and scope of this subpart.

(a) *Purpose.* (1) A temporary agricultural labor certification issued under this subpart reflects a determination by the Secretary of Labor (Secretary), pursuant to 8 U.S.C. 1188(a), that:

(i) There are not sufficient able, willing, and qualified United States (U.S.) workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire temporary foreign workers (H–2A workers); and

(ii) The employment of the H–2A worker(s) will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) This subpart describes the process by which the Department of Labor (Department or DOL) makes such a determination and certifies its determination to the Department of Homeland Security (DHS).

(b) *Scope.* This subpart sets forth the procedures governing the labor certification process for the temporary employment of foreign workers in the H–2A nonimmigrant classification, as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). It also establishes standards and obligations with respect to the terms and conditions of the temporary agricul-

tural labor certification with which H–2A employers must comply, as well as the rights and obligations of H–2A workers and workers in corresponding employment. Additionally, this subpart sets forth integrity measures for ensuring employers' continued compliance with the terms and conditions of the temporary agricultural labor certification.

§ 655.101 Authority of the agencies, offices, and divisions in the Department of Labor.

(a) *Authority and role of the Office of Foreign Labor Certification.* The Secretary has delegated authority to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC), to issue certifications and carry out other statutory responsibilities as required by 8 U.S.C. 1188. Determinations on an *Application for Temporary Employment Certification* are made by the OFLC Administrator who, in turn, may delegate this responsibility to designated staff, e.g., a Certifying Officer (CO).

(b) *Authority of the Wage and Hour Division.* The Secretary has delegated authority to the Wage and Hour Division (WHD) to conduct certain investigatory and enforcement functions with respect to terms and conditions of employment under 8 U.S.C. 1188, 29 CFR part 501, and this subpart (“the H–2A program”), and to carry out other statutory responsibilities required by 8 U.S.C. 1188. The regulations governing WHD’s investigatory and enforcement functions, including those related to the enforcement of temporary agricultural labor certifications issued under this subpart, are in 29 CFR part 501.

(c) *Concurrent authority.* OFLC and WHD have concurrent authority to impose a debarment remedy pursuant to § 655.182 and 29 CFR 501.20.

§ 655.102 Transition procedures.

(a) The National Processing Center (NPC) shall continue to process an *Application for Temporary Employment Certification* submitted prior to November 14, 2022, in accordance with 20 CFR part 655, subpart B, in effect as of November 13, 2022.

(b) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after November 14, 2022, and that has a first date of need no later than February 12, 2023, in accordance with 20 CFR part 655, subpart B, in effect as of November 13, 2022.

(c) The NPC shall process an *Application for Temporary Employment Certification* submitted on or after November 14, 2022, and that has a first date of need later than February 12, 2023, in accordance with all job order and application filing requirements under this subpart.

§ 655.103 Overview of this subpart and definition of terms.

(a) *Overview.* In order to bring non-immigrant workers to the United States to perform agricultural work, an employer must first demonstrate to the Secretary that there are not sufficient U.S. workers able, willing, and qualified to perform the work in the area of intended employment at the time needed and that the employment of foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. This subpart describes a process by which the DOL makes such a determination and certifies its determination to the DHS.

(b) *Definitions.* For the purposes of this subpart:

Act. The Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1101 *et seq.*

Administrative Law Judge (ALJ). A person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

Administrator. See definitions of OFLC Administrator and WHD Administrator in this paragraph (b).

Adverse effect wage rate (AEWR). The wage rate published by the OFLC Administrator in the FEDERAL REGISTER for non-range occupations as set forth in § 655.120(b) and range occupations as set forth in § 655.211(c).

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Agent. A legal entity or person, such as an association of agricultural employers, or an attorney for an association, that:

(i) Is authorized to act on behalf of the employer for temporary agricultural labor certification purposes;

(ii) Is not itself an employer, or a joint employer, as defined in this subpart with respect to a specific application; and

(iii) Is not under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, or the Executive Office for Immigration Review or DHS under 8 CFR 292.3 or 1003.101.

Agricultural association. Any non-profit or cooperative association of farmers, growers, or ranchers (including, but not limited to, processing establishments, canneries, gins, packing sheds, nurseries, or other similar fixed-site agricultural employers), incorporated or qualified under applicable State law, that recruits, solicits, hires, employs, furnishes, houses, or transports any worker that is subject to 8 U.S.C. 1188. An agricultural association may act as the agent of an employer, or may act as the sole or joint employer of any worker subject to 8 U.S.C. 1188.

Applicant. A U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* and job order.

Application for Temporary Employment Certification. The Office of Management and Budget (OMB)-approved Form ETA-9142A and appropriate appendices submitted by an employer to secure a temporary agricultural labor certification determination from DOL.

Area of intended employment (AIE). The geographic area within normal commuting distance of the place of employment for which temporary agricultural labor certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the place of employment, or quality of the regional transportation network). If a place of