

Employment and Training Administration, Labor

§ 655.200

paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H-2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year.

§ 655.184 Applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If the CO discovers possible fraud or willful misrepresentation involving an *Application for Temporary Employment Certification*, the CO may refer the matter to DHS and the Department's Office of the Inspector General for investigation.

(b) *Sanctions.* If WHD, a court, or DHS determines that there was fraud or willful misrepresentation involving an *Application for Temporary Employment Certification* and certification has been granted, a finding under this paragraph (b) will be cause to revoke the certification. The finding of fraud or willful misrepresentation may also constitute a debarable violation under § 655.182.

§ 655.185 Job service complaint system; enforcement of work contracts.

(a) *Filing with DOL.* Complaints arising under this subpart must be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints involving allegations of fraud or misrepresentation must be referred by the SWA to the CO for appropriate handling and resolution. Complaints that involve work contracts must be referred by the SWA to WHD for appropriate handling and resolution, as described in 29 CFR part 501. As part of this process, WHD may report the results of its investigation to the OFLC Administrator for consideration of employer penalties or such other action as may be appropriate.

(b) *Filing with the Department of Justice.* Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, will be referred to the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section, in

addition to any activity, investigation, and/or enforcement action taken by ETA or a SWA. Likewise, if the Immigrant and Employee Rights Section becomes aware of a violation of the regulations in this subpart, it may provide such information to the appropriate SWA and the CO.

LABOR CERTIFICATION PROCESS FOR TEMPORARY AGRICULTURAL EMPLOYMENT IN RANGE SHEEP HERDING, GOAT HERDING, AND PRODUCTION OF LIVESTOCK OCCUPATIONS

§ 655.200 Scope and purpose of herding and range livestock regulations in this section and §§ 655.201 through 655.235.

(a) *Purpose.* The purpose of this section and §§ 655.201 through 655.235 is to establish certain procedures for employers who apply to the Department to obtain labor certifications to hire temporary agricultural foreign workers to perform herding or production of livestock on the range, as defined in § 655.201. Unless otherwise specified in this section and §§ 655.201 through 655.235, employers whose job opportunities meet the qualifying criteria under this section and §§ 655.201 through 655.235 must fully comply with all of the requirements of §§ 655.100 through 655.185; part 653, subparts B and F, of this chapter; and part 654 of this chapter.

(b) *Jobs subject to this section and §§ 655.201 through 655.235.* The procedures in this section and §§ 655.201 through 655.235 apply to job opportunities with the following unique characteristics:

(1) The work activities involve the herding or production of livestock (which includes work that is closely and directly related to herding and/or the production of livestock), as defined under § 655.201;

(2) The work is performed on the range for the majority (meaning more than 50 percent) of the workdays in the work contract period. Any additional work performed at a place other than the range must constitute the production of livestock (which includes work that is closely and directly related to herding and/or the production of livestock); and

§ 655.201

20 CFR Ch. V (4-1-23)

(3) The work activities generally require the workers to be on call 24 hours per day, 7 days a week.

§ 655.201 Definition of herding and range livestock terms.

The following are terms that are not defined in §§ 655.100 through 655.185 and are specific to applications for labor certifications involving the herding or production of livestock on the range.

Herding. Activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the range.

Livestock. An animal species or species group such as sheep, cattle, goats, horses, or other domestic hooved animals. In the context of §§ 655.200 through 655.235, livestock refers to those species raised on the range.

Production of livestock. The care or husbandry of livestock throughout one or more seasons during the year, including guarding and protecting livestock from predatory animals and poisonous plants; feeding, fattening, and watering livestock; examining livestock to detect diseases, illnesses, or other injuries; administering medical care to sick or injured livestock; applying vaccinations and spraying insecticides on the range; and assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock. This term also includes duties performed off the range that are closely and directly related to herding and/or the production of livestock. The following are non-exclusive examples of ranch work that is closely and directly related: repairing fences used to contain the herd; assembling lambing jugs; cleaning out lambing jugs; feeding and caring for the dogs that the workers use on the range to assist with herding or guarding the flock; feeding and caring for the horses that the workers use on the range to help with herding or to move the sheep camps and supplies; and loading animals into livestock trucks for movement to the range or to market. The following are examples of ranch work that is not closely and directly related: working at feedlots; planting, irrigating and harvesting crops; operating or repairing heavy equipment; constructing wells or dams; digging irriga-

tion ditches; applying weed control; cutting trees or chopping wood; constructing or repairing the bunkhouse or other ranch buildings; and delivering supplies from the ranch to the herders on the range.

Range. The range is any area located away from the ranch headquarters used by the employer. The following factors are indicative of the range: it involves land that is uncultivated; it involves wide expanses of land, such as thousands of acres; it is located in a remote, isolated area; and typically range housing is required so that the herder can be in constant attendance to the herd. No one factor is controlling, and the totality of the circumstances is considered in determining what should be considered range. The range does not include feedlots, corrals, or any area where the stock involved would be near ranch headquarters. Ranch headquarters, which is a place where the business of the ranch occurs and is often where the owner resides, is limited and does not embrace large acreage; it only includes the ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity. The range also does not include any area where a herder is not required to be available constantly to attend to the livestock and to perform tasks, including but not limited to, ensuring the livestock do not stray, protecting them from predators, and monitoring their health.

Range housing. Range housing is housing located on the range that meets the standards articulated under § 655.235.

§ 655.205 Herding and range livestock job orders.

An employer whose job opportunity has been determined to qualify for the procedures in §§ 655.200 through 655.235 is not required to comply with the job order filing timeframe requirements in § 655.121(a) and (b) or the job order review process in § 655.121(e) and (f). Rather, the employer must submit the job order along with a completed *Application for Temporary Employment Certification*, as required in § 655.215, to the designated NPC for the NPC's review.