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20 CFR Ch. V (4–1–23)

(c) This section expires on October 1, 2025.

[87 FR 30377, May 18, 2022]

EFFECTIVE DATE NOTE: At 87 FR 30378, May 18, 2022, § 655.66 was added, effective May 18, 2022, through Sept. 30, 2025.

§ 655.67 Special document retention provisions for Fiscal Years 2023 through 2026 under the Consolidated Appropriations Act, 2022, as extended by Public Law 117–180.

(a) An employer that files a petition with USCIS to employ H–2B workers in fiscal year 2023 under authority of the temporary increase in the numerical limitation under section 204 of Division O, Public Law 117–103 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following: (1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I–129 petition, that the employer's business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xiii), including a detailed written statement describing the irreparable harm and how such evidence shows irreparable harm;

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xiii), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2020, 2021, or 2022), unless the H–2B worker(s) is a national of El Salvador, Guatemala, Honduras, or Haiti and is counted towards the 20,000 cap described in 8 CFR 214.2(h)(6)(xiii)(A)(2). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, Honduras, or Haiti as defined in 8 CFR 214.2(h)(6)(xiii)(A)(2); and

(4) If applicable, proof of recruitment efforts set forth in § 655.65(a)(5)(i) through (viii) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.65(a)(5)(ix).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2026.

[87 FR 76878, Dec. 15, 2022]

EFFECTIVE DATE NOTE: At 87 FR 76878, Dec. 15, 2022, § 655.67 was added, effective Dec. 15, 2022, to Sept. 30, 2026.

§ 655.68 Special document retention provisions for Fiscal Years 2021 through 2024 under the Consolidated Appropriations Act, 2021.

(a) An employer who files a petition with USCIS to employ H–2B workers in fiscal year 2021 under authority of the temporary increase in the numerical limitation under section 105 of Division O, Public Law 116–260 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I–129 petition, that employer's business is likely to suffer irreparable harm (that is, permanent and severe financial loss), if it cannot employ H–2B nonimmigrant workers in fiscal year 2021;

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(x), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2018, 2019, or 2020), unless the H–2B worker(s) is a national of El Salvador, Guatemala, or Honduras and is counted towards the 6,000 cap described in 8 CFR 214.2(h)(6)(x)(A)(2). Alternatively, if applicable, employers must maintain documentary evidence that the workers

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the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, or Honduras, as defined in 8 CFR 214.2(h)(6)(x)(A)(2); and

(4) If applicable, proof of recruitment efforts set forth in § 655.64(a)(5)(i) through (iv) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.64(a)(5)(v).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2024.

[86 FR 28233, May 25, 2021]

EFFECTIVE DATE NOTE: At 86 FR 28233, May 25, 2021, § 655.68 was added, effective May 25, 2021, until Sept. 30, 2024.

§ 655.69 Special document retention provisions for Fiscal Years 2022 through 2026 under Public Laws 116-260, 117-43, and 117-70.

(a) An employer that files a petition with USCIS to employ H-2B workers in fiscal year 2022 under authority for the temporary increase in the numerical limitation provided by Public Law 117-43 and Public Law 117-70 on the same terms as section 105 of Division O, of Public Law 116-260, must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I-129 petition, that the employer's business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xi);

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xi), have been issued an H-2B visa or otherwise granted H-2B status during one of the last

three (3) fiscal years (fiscal year 2019, 2020, or 2021), unless the H-2B worker(s) is a national of El Salvador, Guatemala, Honduras, or Haiti and is counted towards the 6,500 cap described in 8 CFR 214.2(h)(6)(xi)(A)(2). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, Honduras, or Haiti as defined in 8 CFR 214.2(h)(6)(xi)(A)(2); and

(4) If applicable, proof of recruitment efforts set forth in § 655.64(a)(5)(i) through (iv) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.64(a)(5)(v).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2025.

[87 FR 4762, Jan. 28, 2022]

EFFECTIVE DATE NOTE: At 87 FR 4762, Jan. 28, 2022, § 655.69 was added, effective Jan. 28, 2022, until Sept. 30, 2025.

INTEGRITY MEASURES

§ 655.70 Audits.

The CO may conduct audits of adjudicated temporary employment certification applications.

(a) *Discretion.* The CO has the sole discretion to choose the applications selected for audit.

(b) *Audit letter.* Where an application is selected for audit, the CO will send an audit letter to the employer and a copy, if appropriate, to the employer's attorney or agent. The audit letter will:

(1) Specify the documentation that must be submitted by the employer;

(2) Specify a date, no more than 30 calendar days from the date the audit letter is issued, by which the required documentation must be sent to the CO; and

(3) Advise that failure to fully comply with the audit process may result:

(i) In the requirement that the employer undergo the assisted recruitment procedures in § 655.71 in future filings of H-2B temporary employment