

§ 655.107

and no further review shall be given to an employer's request for a new H-2A determination by any DOL official. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

[52 FR 20507, June 1, 1987, as amended at 55 FR 29358, July 19, 1990; 64 FR 34966, June 29, 1999]

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The Director shall publish, at least once in each calendar year, on a date or dates to be determined by the Director, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the FEDERAL REGISTER.

(b) *Higher prevailing wage rates.* If, as the result of a State agency prevailing wage survey determination, the prevailing wage rate in an area and agricultural activity (as determined by the State agency survey and verified by the Director) is found to be higher than the AEWR computed pursuant to paragraph (a) of this section, the higher prevailing wage rate shall be offered and paid to all workers by employers seeking temporary alien agricultural labor certification for that agricultural activity and area.

(c) *Federal minimum wage rate.* In no event shall an AEWR computed pursuant to this section be lower than the

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hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

[52 FR 20507, June 1, 1987, as amended at 54 FR 28046, July 5, 1989]

§ 655.108 H-2A applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If possible fraud or willful misrepresentation involving a temporary alien agricultural labor certification application is discovered prior to a final temporary alien agricultural labor certification determination or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the RA shall refer the matter to the INS and DOL Office of the Inspector General for investigation. The RA shall continue to process the application and may issue a temporary alien agricultural labor certification.

(b) *Continued processing.* If a court finds an employer or agent not guilty of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the RA shall not deny the temporary alien agricultural labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) *Terminated processing.* If a court or the INS determines that there was fraud or willful misrepresentation involving a temporary alien agricultural labor certification application, the application is thereafter invalid, consideration of the application shall be terminated and the RA shall return the application to the employer or agent with the reasons therefor stated in writing.

§ 655.110 Employer penalties for non-compliance with terms and conditions of temporary alien agricultural labor certifications.

(a) *Investigation of violations.* If, during the period of two years after a temporary alien agricultural labor certification has been granted (in whole or in part), the RA has reason to believe that an employer violated a material term or condition of the temporary alien agricultural labor certification,