

Wage and Hour Division, Labor

§ 501.16

workers to perform temporary agricultural work in the United States.

(o) *Job offer* means the offer made by an employer or potential employer of H-2A workers to both U.S. and H-2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

(p) *Secretary* means the Secretary of Labor or the Secretary's designee.

(q) *State agency* means the State employment service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the ES System.

(r) *Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes employees of the Office of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this subpart.

(s) *Temporary alien agricultural labor certification* means the certification made by the Secretary of Labor with respect to an employer seeking to file with INS a visa petition to import an alien as an H-2A worker, pursuant to sections 101(a)(15)(H)(ii)(a), 214 (a) and (c), and 216 of the INA that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services involved in the petition, and (2) the employment of the alien in such agricultural labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 (a) and (c), and 1186).

(t) *United States Employment Service (USES)* means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices and carrying out certain functions of the Secretary under the INA.

(u) *United States (U.S.) worker* means any worker who, whether a U.S. national, a U.S. citizen, or an alien, is legally permitted to work in the job opportunity within the United States (as defined at section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38))).

(v) *Wages* means all forms of cash remuneration to a worker by an em-

ployer in payment for personal services.

Subpart B—Enforcement of Work Contracts

§ 501.15 Enforcement.

The investigations, inspections and law enforcement functions to carry out the provisions of section 216 of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to the employment of any H-2A worker and any other worker employed in corresponding employment by an H-2A employer. Such enforcement includes those work contract provisions as defined in § 501.10(d). The work contract enforced includes the employment benefits which must be stated in the job offer, as prescribed in 20 CFR 655.102.

§ 501.16 General.

Whenever the Secretary believes that the H-2A provisions of the INA or these regulations have been violated such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a) Impose denial of labor certification against any person for a violation of the H-2A obligations of the INA or the regulations. ETA shall make all determinations regarding the issuance or denial of labor certification. ESA shall make all determinations regarding the enforcement functions listed in paragraphs (b) through (d) of this section.

(b) Institute appropriate administrative proceedings, including the recovery of unpaid wages, the enforcement of any other contractual obligations and the assessment of a civil money penalty against any person for a violation of the H-2A work contract obligations of the Act or these regulations.

(c) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief, including the withholding of unpaid wages, to restrain violation of the H-2A provisions the Act or these regulations by any person;

(d) Petition any appropriate District Court of the United States for specific

§ 501.17

performance of contractual obligations.

§ 501.17 Concurrent actions.

The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by the H-2A provisions of the Act and these regulations, or the regulations of 20 CFR part 655.

§ 501.18 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act.

(b) The Solicitor of Labor, through the authorized representatives shall represent the Administrator and the Secretary in all administrative hearings under the H-2A provisions of the Act and these regulations.

§ 501.19 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator for each violation of the work contract or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the work contract as provided in the H-2A provisions of the Act or these regulations the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the H-2A provisions of the Act and these regulations;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the H-2A provisions of the Act and these regulations;

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether

29 CFR Ch. V (7-1-04 Edition)

the person has previously violated the H-2A provisions of the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for violation of the work contract will not exceed \$1,000 for each violation committed against each worker. A civil money penalty for discrimination or interference with Wage and Hour investigative authority will not exceed \$1,000 for each such act of discrimination or interference.

§ 501.20 Enforcement of Wage and Hour investigative authority.

Sections 501.5 through 501.7 of this part prescribe the investigation authority conferred upon the Wage and Hour Division for the purpose of enforcing the contractual obligations. These sections indicate the actions which may be taken upon failure to permit or interference with an investigation. No person shall interfere with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority. As stated in §§ 501.5, 501.6 and in 501.19 of this part, a civil money penalty may be assessed for each failure to permit an investigation or interference therewith, and other appropriate relief may be sought. In addition Wage and Hour shall report each such occurrence to ETA and may recommend to ETA denial of future labor certifications. The taking of any one action shall not bar the taking of any additional action.

§ 501.21 Referral of findings to ETA.

Where Wage-Hour finds violations Wage and Hour shall so notify the appropriate representative of ETA and shall forward appropriate information, including investigative information to such representative for review and consideration.

§ 501.22 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the