further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

(b) *De novo hearing*—(1) *Request for hearing; conduct of hearing.* Whenever an employer has requested a *de novo* hearing before an administrative law judge of a decision not to accept for consideration a temporary alien agricultural labor certification application, of the denial of a temporary alien agricultural labor certification, or of a penalty under § 655.110 of this part, the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge shall immediately assign an administrative law judge (which may be a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide the appeal as set forth in this section) to conduct the *de novo* hearing. The procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required,

(ii) The administrative law judge shall ensure that, at the request of the employer, the hearing is scheduled to take place within five working days after the administrative law judge's receipt of the case file, and

(iii) The administrative law judge's decision shall be rendered within ten working days after the hearing.

(2) *Decision.* After a *de novo* hearing, the administrative law judge shall either affirm, reverse, or modify the OFLC Administrator's determination, and the administrative law judge's decision shall be provided immediately to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The administrative law judge's decision shall be the final decision of the Secretary, and no further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

[52 FR 20507, June 1, 1987, as amended at 59 FR 41876, Aug. 15, 1994; 71 FR 35519, June 21, 2006]

§ 655.113 Job Service Complaint System; enforcement of work contracts.

Complaints arising under this subpart may be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints which involve worker contracts shall be referred by the local office to the Employment Standards Administration for appropriate handling and resolution. See 29 CFR part 501. As part of this process, the Employment Standards Administration may report the results of its investigation to ETA for consideration of employer penalties under § 655.110 of this part or such other action as may be appropriate.

Subpart C—Labor Certification Process for Logging Employment and Non-H–2A Agricultural Employment

SOURCE: 43 FR 10313, Mar. 10, 1978, unless otherwise noted.

§ 655.200 General description of this subpart and definition of terms.

(a) This subpart applies to applications for temporary alien agricultural labor certification filed before June 1, 1987, and to applications for temporary alien labor certification for logging employment.

(b) An employer who desires to use foreign workers for temporary employment must file a temporary labor certification application including a job offer for U.S. workers with an appropriate State Workforce Agency. The employer should file an application a minimum of 80 days before the estimated date of need for the workers. If filed 80 days before need, sufficient time is allowed for the 60-day recruitment period required by the regulations and a determination by the OFLC Administrator as to the availability of U.S. workers 20 days before the date of need. Shortly after the application has been filed, the OFLC Administrator makes a determination as to whether

or not the application has been filed in enough time to recruit U.S. workers and whether or not the job offer for U.S. workers offers wages and working conditions which will not adversely affect the wages and working conditions of similarly employed U.S. workers, as prescribed in the regulations in this subpart. If the application does not meet the regulatory wage and working condition standards, the OFLC Administrator shall deny the temporary labor certification application and offer the employer an administrative-judicial review of the denial by an Administrative Law Judge. If the application is not timely, the OFLC Administrator has discretion, as set forth in these regulations, to either deny the application or permit the process to proceed reasonably with the employer recruiting U.S. workers upon such terms as will accomplish the purposes of the INA and the DHS regulations. Where the application is timely and meets the regulatory standards, the State Workforce Agency, the employer, and the Department of Labor recruit U.S. workers for 60 days. At the end of the 60 days, the OFLC Administrator grants the temporary labor certification if the OFLC Administrator finds that (1) the employer has not offered foreign workers higher wages or better working conditions (or less restrictions) than that offered to U.S. workers, and (2) U.S. workers are not available for the employer's job opportunities. If the temporary labor certification is denied, the employer may seek an administrative-judicial review of the denial by an Administrative Law Judge as provided in these regulations. The Department of Labor thereafter advises the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) of approvals and denials of temporary labor certifications. The DHS may accept or reject this advice. 8 CFR 214.2(h)(3). The DHS makes the final decision as to whether or not to grant visas to the foreign workers. 8 U.S.C. 1184(a).

(c) *Definitions for terms used in this subpart.*

Administrative Law Judge means an official who is authorized to conduct administrative hearings.

Administrator, Office of Foreign Labor Certification (OFLC Administrator) means the primary official of the Office of Foreign Labor Certification or the OFLC Administrator's designee.

Adverse effect rate means the wage rate which the OFLC Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The OFLC Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, if the use (or non-use) of aliens has not depressed the wages of similarly employed U.S. workers. The OFLC Administrator may determine that a wage rate higher than the prevailing wage rate is the adverse effect rate if the OFLC Administrator determines that the use of aliens has depressed the wages of similarly employed U.S. workers.

Agent means a legal person, such as an association of employers, which (1) is authorized to act as an agent of the employer for temporary labor certification purposes, and (2) which is not itself an employer, or a joint employer, as defined in this section.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

Department of Homeland Security (DHS) through the United States Citizenship and Immigration Services (USCIS) makes the determination under the INA on whether or not to grant visa petitions to an alien seeking to perform temporary agricultural or logging work in the United States.

Employer means a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated

by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employees. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if it shares with the employer member one or more of the definitional indicia.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Office of Foreign Labor (OFLC).

Job opportunity means a job opening for temporary, full-time employment at a place in the United States to which U.S. workers can be referred.

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning alien workers seeking admission to the United States in order to work under the Immigration and Nationality Act, as amended.

Secretary means the Secretary of Labor or the Secretary's designee.

State Workforce Agency (SWA) means the State employment service agency.

Temporary labor certification means the advice given by the Secretary of Labor to the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), pursuant to the regulations of that agency at 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

United States workers means any worker who, whether U.S. national, citizen or alien, is legally permitted to work permanently within the United States.

(Approved by the Office of Management and Budget under control number 1205–0015)

[43 FR 10313, Mar. 10, 1978, as amended at 49 FR 18295, Apr. 30, 1984; 52 FR 20524, June 1, 1987; 71 FR 35519, 35521, June 21, 2006]

§ 655.201 Temporary labor certification applications.

(a) (1) An employer who anticipates a labor shortage of workers for agricultural or logging employment may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, in duplicate, a temporary labor certification application, signed by the employer, with a SWA in the area of intended employment.

(2) If the temporary labor certification application is filed by an agent, however, the agent may sign the application if the application is accompanied by a letter from each employer the agent represents, signed by the employer, which authorizes the agent to act on the employer's behalf and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising under this subpart.

(3) If an association of employers files the application, the association shall identify and submit documents to verify whether, in accordance with the definitions at § 655.200, it is: (i) The employer, (ii) a joint employer with its member employers, or (iii) the agent of its employer members.

(b) Every temporary labor certification application shall include:

(1) A copy of the job offer which will be used by the employer (or each employer) for the recruitment of both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of §§ 655.202 and 653.108 of this chapter;

(2) The assurances required by § 655.203; and

(3) The specific estimated date of need of workers.

(c) The entire temporary labor certification application shall be filed with the SWA in duplicate and in sufficient time to allow the State agency to attempt to recruit U.S. workers locally and through the Employment Service intrastate and interstate clearance system for 60 calendar days prior to the