

[20 CFR 655.1301](#)

This document is current through the October 4, 2019 issue of the Federal Register. Title 3 is current through August 2, 2019.

Code of Federal Regulations > TITLE 20 -- EMPLOYEES' BENEFITS > CHAPTER V -- EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR > PART 655-- TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES > SUBPART N -- LABOR CERTIFICATION PROCESS FOR TEMPORARY AGRICULTURAL EMPLOYMENT IN THE UNITED STATES (H-2A WORKERS) [SUBPART N IS SUSPENDED. SEE 74 FR 25972, 25985, MAY 29, 2009.]

§ 655.1301 Applications for temporary employment certification in agriculture. [This section is suspended. See 74 FR 25972, 25985, May 29, 2009.]

[PUBLISHER'S NOTE: [74 FR 25972, 25985](#), May 29, 2009, suspended this section, effective June 29, 2009.]

(a) Application Filing Requirements.

(1) An employer that desires to apply for temporary employment certification of one or more nonimmigrant foreign workers must file a completed DOL Application for Temporary Employment Certification form and, unless a specific exemption applies, the initial recruitment report. If an association of agricultural producers files the application, the association must identify whether it is the sole employer, a joint employer with its employer-member employers, or the agent of its employer-members. The association must retain documentation substantiating the employer or agency status of the association and be prepared to submit such documentation to the CO in the event of an audit.

(2) If an H-2ALC intends to file an application, the H-2ALC must meet all of the requirements of the definition of employer in § 655.100(b), and comply with all the assurances, guarantees, and other requirements contained in this part and in part 653, subpart F, of this chapter. The H-2ALC must have a place of business (physical location) in the U.S. and a means by which it may be contacted for employment. H-2A workers employed by an H-2ALC may not perform services for a fixed-site employer unless the H-2ALC is itself providing the housing and transportation required by § 655.104(d) and (h), or has filed a statement confirming that the fixed-site employer will provide compliant housing and/or transportation, as required by § 655.106, with the OFLC, for each fixed-site employer listed on the application. The H-2ALC must retain a copy of the statement of compliance required by § 655.106(b)(6).

(3) An association of agricultural producers may submit a master application covering a variety of job opportunities available with a number of employers in multiple areas of intended employment, just as though all of the covered employers were in fact a single employer, as long as a single date of need is provided for all workers requested by the application and the combination of job opportunities is supported by an explanation demonstrating a business reason for the combination. The association must identify on the Application for Temporary Employment Certification, by name and address, each employer that will employ H-2A workers. If the association is acting solely as an agent, each employer will receive a separate labor certification.

(b) Filing. The employer may send the Application for Temporary Employment Certification and all supporting documentation by U.S. Mail or private mail courier to the NPC. The Department will publish a Notice in the Federal Register identifying the address(es), and any future address changes, to which applications must be mailed, and will also post these addresses on the DOL Internet Web site at <http://www.foreignlaborcert.doleta.gov/>. The form must bear the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent). An association filing a master application as a joint employer may sign on behalf of its employer members. The Department may also require applications to be filed electronically in addition to or instead of by mail.

(c) Timeliness. A completed Application for Temporary Employment Certification must be filed no less than 45 calendar days before date of need.

(d) Emergency situations.

(1) Waiver of time period and required pre-filing activity. The CO may waive the time period for filing and pre-filing wage and recruitment requirements set forth in § 655.102, along with their associated attestations, for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the CO can timely make the determinations required by § 655.109(b).

(2) Employer requirements. The employer requesting a waiver of the required time period and pre-filing wage and recruitment requirements must submit to the NPC a completed Application for Temporary Employment Certification, a completed job offer on the ETA Form 790 Agricultural and Food Processing Clearance Order, and a statement justifying the request for a waiver of the time period requirement. The statement must indicate whether the waiver request is due to the fact that the employer did not use H-2A workers during the prior agricultural season or whether the request is for other good and substantial cause. If the waiver is requested for good and substantial cause, the employer's statement must also include detailed information describing the good and substantial cause which has necessitated the waiver request. Good and substantial cause may include, but is not limited to, such things as the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions.

(3) Processing of Applications. The CO shall promptly transmit the job order, on behalf of the employer, to the SWA serving the area of intended employment and request an expedited review of the job order in accordance with § 655.102(e) and an inspection of housing in accordance with § 655.104(d)(6)(iii). The CO shall process the application and job order in accordance with § 655.107, issue a wage determination in accordance with § 655.108 and, upon acceptance, require the employer to engage in positive recruitment consistent with § 655.102(d)(2), (3), and (4). The CO shall require the SWA to transmit the job order for interstate clearance consistent with § 655.102(f). The CO shall specify a date on which the employer will be required to submit a recruitment report in accordance with § 655.102(k). The CO will make a determination on the application in accordance with § 655.109.

History

[[52 FR 20507](#), June 1, 1987; [64 FR 34958, 34966](#), June 29, 1999; [65 FR 43538, 43543](#), July 13, 2000, withdrawn at [67 FR 59779](#), Sept. 24, 2002; [65 FR 67628](#), Nov. 13, 2000; [66 FR 49275](#), Sept. 27, 2001; [71 FR 35511, 35519, 35522](#), June 21, 2006; [73 FR 77110, 77207](#), Dec. 18, 2008; redesignated and suspended at [74 FR 25972, 25985](#), May 29, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

[74 FR 25972, 25985](#), May 29, 2009, redesignated Subpart B as Subpart N, and suspended Subpart N, effective June 29, 2009.]

Case Notes

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Case Notes Applicable to Entire Part

[Part Note](#)

Research References & Practice Aids

[CROSS REFERENCE:

This section was formerly § 655.101.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by the Department of Labor appear in 20 CFR chapters IV, V, VI, VII and IX, 29 CFR subtitle A and chapters II, IV, V, XVII and XXV, 30 CFR chapter I, 41 CFR chapters 50, 60, and 61, and 48 CFR chapter 29.

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