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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB58

Changes to the Labor Certification Process for the Temporary Non-Agricultural Employment of H-2B Aliens in the United States; Transition Period

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Guidance.

SUMMARY: On February 21, 2012, the Department of Labor (the Department or DOL) published a Final Rule amending H-2B regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal non-agricultural employment. The Department's H-2B Final Rule also created new regulations to provide for enhanced enforcement under the H-2B program requirements when employers fail to meet their obligations under the H-2B program. The Department also made changes to the Application for Temporary Employment Certification, ETA Form 9142.

The H-2B Final Rule becomes effective on April 23, 2012. All applications filed on or after that date will need to comply with all applicable program requirements. The purpose of this guidance is to provide transition procedures to ensure that employers filing H-2B applications on or after April 23, 2012, have sufficient information to file appropriately.

DATES: This guidance is effective March 20, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue NW., Room C-4312, Washington, DC 20210; Telephone: (202) 693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 21, 2012, the Department published a Final Rule amending the H-2B regulations at 20 CFR part 655, Subpart A. 76 FR 10038, Feb. 21, 2012. The rule becomes effective

April 23, 2012 and applies to all applications filed on or after that date. Among other things, the H-2B Final Rule provides for a return to the compliance-based certification model, by which employers file before conducting recruitment. The

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H-2B Final Rule also includes a new registration process, to precede the filing of applications.

Applications filed under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes, 73 FR 78020, Dec. 19, 2008 (the current regulation), must be sent to the Office of Foreign Labor Certification's (OFLC's) Chicago National Processing Center (CNPC) and postmarked no later than midnight April 22, 2012, the last day before the effective date of the H-2B Final Rule. An application filed up to the effective date of the H-2B Final Rule must still comply in full with the requirements of the current regulations. Applications postmarked on or after April 23, 2012 will be adjudicated in accordance with the requirements described in the H-2B Final Rule.

Any application filed under the current regulation that is postmarked on or after April 23, 2012 or later will be rejected, and the employer (and its agent or attorney) will be informed of the need to file a new application in accordance with the provisions of the new H-2B Final Rule.

To ensure a smooth transition from the current regulation and allow the OFLC to make the necessary changes to its program operations to accommodate the new planned registration process, the Department noted in the H-2B Final Rule, at 20 CFR 655.11(j), that it would announce in the Federal Register a separate transition period for the registration process. Employers who file H-2B applications with a start date of need before October 1, 2013 will not be required to obtain the pre-approved H-2B registration under 20 CFR 655.15, and the Department will continue to adjudicate temporary need during the processing of applications by reviewing the employer's statement of temporary need in Section B of the ETA Form 9142. Employers filing H-2B applications on or after April 23, 2012 with a start date of need on or after October 1, 2013, must comply with all the requirements contained in the registration process unless the OFLC publishes additional guidance in the Federal Register.

Employers with questions are encouraged to submit such questions to H-2B.Regulation@dol.gov. The Department will provide responses in the form of Frequently Asked Questions (FAQs) on its Web site.

Signed in Washington, this 14th day of March, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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