

Chapter 46

ENFORCEMENT OF H-2B

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46a GENERAL

46a00 Purpose.

The H-2B provisions of the Immigration and Nationality Act (INA) provide for the admission of nonimmigrants to the United States (U.S.) to perform temporary non-agricultural labor or services. *See* 8 USC 1101(a)(15)(H)(ii)(b). This chapter provides information on regulations and interpretations with respect to the Wage and Hour Division's (WHD) enforcement authority under the H-2B nonimmigrant program.

46a01 H-2B petition process.

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(a) ETA

The H-2B petition process begins when the Employment and Training Administration (ETA) certifies that the prospective H-2B employer performed the required recruitment and was unable to obtain sufficient numbers of qualified U.S. workers to meet its temporary employment need. The ETA certifying officer reviews the complete Application for Temporary Employment Certification (TEC Application or ETA Form 9142) and Appendix B.1 and makes a determination to certify or deny the TEC Application. ETA may issue a Request for Further Information (RFI) to, or at its discretion conduct an audit of, the employer if ETA believes the employer has not established its need or met its domestic recruitment obligations. Included within ETA jurisdiction are determinations related to such issues as justification and appropriate classification of the temporary need, availability of U.S. workers, positive recruitment, prevailing wage determinations, methodology for establishing the prevailing wage, and similar matters.

(b) DHS / USCIS

After obtaining a certified Application from ETA, the employer then submits a petition to the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS). USCIS reviews the petition which includes the certified Application for Temporary Employment Certification and the DHS Form I-129, Petition for a Nonimmigrant Worker. USCIS either approves or denies the petition.

(c) DOS

After the employer has an adjudicated petition from the USCIS, the Department of State (DOS) issues the visa to the H-2B workers.

46a02 Enforcement authority.

Effective 01/18/2009, WHD was delegated enforcement authority from DHS under INA section 214(c)(14)(A). This includes authority to impose administrative remedies on an employer who substantially fails to meet any of the conditions of the petition to admit or provide status to an H-2B worker or who willfully misrepresents a material fact on such petition. The regulations for this program are in 20 CFR 655 subpart A. Questions or complaints concerning the H-2B program should be directed to the nearest WHD district office. See <http://www.dol.gov/whd/america2.htm>.

On 02/21/2012, the Department of Labor (DOL) issued new Final Rule for the H-2B program. See 77 FR 10038. On 04/26/2012, the Final Rule was preliminarily enjoined by the court in *Bayou Lawn & Landscape Servs. v. Solis*, No. 3:12-cv-00183-MC-CJK, slip op. (N.D. Fla. 04/26/2012), *appeal docketed*, No. 12-12462 (11th Cir. 05/15/2012). The 2008 H-2B regulations were not at issue and are not affected by the district court's preliminary decision in *Bayou Lawn*. Rather, as the district court explained, its preliminary injunction had the effect of "preserving the status quo" of the 2008 rules. *Bayou Lawn*, Slip. Op. at 7. This FOH chapter relates to the 2008 rules only.

46a03 Coverage.

- (a)** Employers who have an approved ETA Form 9142 are covered by the H-2B provisions.

- (1) The H-2B employer identified on the TEC Application is the employer responsible for compliance with H-2B requirements and is the subject of the H-2B investigation.
 - (2) A “successor-in-interest” to the employer listed on the TEC Application may be held responsible for the actions of its predecessor if the successor has explicitly accepted the predecessor’s H-2B obligations. *See* 20 CFR 655.4.
- (b) H-2B workers are also entitled to all of same protections as U.S. workers under all other applicable programs enforced by the WHD, such as the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Davis-Bacon Act (DBA), the McNamara-O’Hara Service Contract Act (SCA), and any other program enforced by the WHD.

46a04 **Territory of Guam.**

DOL does not certify to USCIS the temporary employment of H-2B workers, or enforce compliance with the provisions of the H-2B visa program, in the Territory of Guam. The administration of the H-2B temporary labor certification program is performed by the Governor of Guam, or the Governor’s designated representative. *See* 20 CFR 655.2 and 8 CFR 214.2(h)(6)(iii-v).

46b **APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION**

46b00 **General.**

- (a) Starting on 01/18/2009, an employer seeking to hire H-2B workers must file a completed TEC Application along with a copy of the recruitment report with ETA. *See* 20 CFR 655.20.
- (b) Certification of more than one H-2B position may be requested on a single TEC Application so long as all H-2B workers being sought will perform the same services or labor on the same terms and conditions, in the same occupation, in the same area of intended employment, and during the same period of employment.
- (c) The TEC Application is valid only for the period of time between the beginning and ending dates of employment certified by ETA. The certification expires on the last day of authorized employment.
- (d) The TEC Application is valid only for the number of H-2B positions, the area of intended employment, the specific services or labor to be performed, and the employer specified on the certified TEC Application and may not be transferred from one employer to another. Employers may amend applications pursuant to 20 CFR 655.34.

46b01 **Temporary need.**

- (a) The employer must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary. *See* 20 CFR 655.6. The employer must provide a detailed statement regarding its temporary need as directed in 20 CFR 655.21.
- (b) The employer’s need is considered temporary if it is a one-time occurrence or a seasonal, peakload, or intermittent need as defined by DHS. *See* 8 CFR 214.2(h)(6)(ii)(B).

- (c) Where a one-time occurrence lasts longer than 1 year, the employer must reapply for certification on an annual basis after performing good-faith recruitment, except that an employer with an approved need for more than 1 year, but less than 18 months will not be required to conduct another labor market test for the portion of time beyond 12 months. *See* 20 CFR 655.20(f).
- (d) Documentation and all supporting evidence justifying the need for temporary employment must be retained by the employer for a period of no less than 3 years from the date of the certification. *See* 20 CFR 655.21(c).

46b02 Pre-filing obligations: recruitment.

(a) General recruitment obligations

Prior to filing the TEC Application, an employer must perform all necessary steps of the recruitment process as specified in 20 CFR 655.15. The employer's signature on the TEC Application attests that:

- (1) it has completed recruitment and found no or insufficient qualified U.S. workers to meet its temporary need; and
- (2) that any eligible U.S. workers who applied for temporary or seasonal employment were either hired or rejected for lawful, job-related reasons.

(b) Prevailing wage

The H-2B employer first must obtain a prevailing wage determination (PWD) from ETA by submitting an ETA Form 9141, Application for Prevailing Wage Determination (PWD Application). Prevailing wage requests are handled by the ETA National Processing Center (NPC). Information concerning PWDs may be found at <http://www.foreignlaborcert.doleta.gov/contacts.cfm>. *See* 20 CFR 655.10.

- (1) The NPC will enter the prevailing wage on the form, indicate the source and validity period, and return the certified prevailing wage (electronically or by mail) to the employer. The employer must offer this wage (or higher) to both its H-2B workers and any similarly employed U.S. workers hired in response to the recruitment required as part of the TEC Application. *See* 20 CFR 655.10(b)(6). "Similarly employed" means having substantially comparable jobs in the occupational category in the area of intended employment. *See* 20 CFR 655.10(c).
- (2) No PWD issued for use on a TEC Application permits an employer to pay a wage lower than the highest wage required by any applicable federal, state, or local law. *See* 20 CFR 655.10(h).

(c) Job order

The employer must submit a job order to the state workforce agency (SWA) serving the area of intended employment no more than 120 calendar days before the employer's date of need for H-2B workers, identifying it as a job order to be placed in connection with a future TEC. *See* 20 CFR 655.15(e).

(d) Advertisements

The employer must publish two print advertisements for the job, which must contain terms and conditions of employment which are not less favorable than those to be offered to the H-2B workers and must satisfy all of the following requirements:

- (1) During the period of time that the job order is being circulated for clearance by the SWA, the advertisement must appear on 2 separate days (may be consecutive) in a newspaper of general circulation serving the area of intended employment. The newspaper must have a reasonable distribution and be appropriate to the occupation and the workers likely to apply for the job opportunity.
- (2) One of the advertisements must be a Sunday advertisement unless the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition; in such a case the H-2B employer must, in place of a Sunday edition advertisement, advertise in the regularly published daily edition with the widest circulation in the area of intended employment.
- (3) If a professional, trade, or ethnic publication is more appropriate than a general circulation newspaper for the occupation or the type of workers likely to apply for the job, and it is the source most likely to bring responses from able, available, and qualified U.S. workers, the H-2B employer may use a professional, trade, or ethnic publication in place of one of the newspaper advertisements, but may not to replace the Sunday advertisement.

20 CFR 655.15 and 20 CFR 655.17

(e) Union

If the employer is party to a collective bargaining agreement (CBA) governing the job classification, the employer must formally contact the local union as a recruitment source for able, willing, qualified, and available U.S. workers. This contact may be made by U.S. mail or other effective means during the period of time that the job order is being circulated for clearance by the SWA. *See* 20 CFR 655.15(g).

(f) Layoffs

If the H-2B employer has laid off U.S. workers in the occupation and area of intended employment within 120 days of the first date an H-2B worker is needed as indicated on the TEC Application, the employer must document that it has notified or will notify each laid-off worker of the job opportunity and that it has considered or will consider each laid off worker who expressed interest in the job opportunity, and the result of the notification and consideration. *See* 20 CFR 655.15(h).

(g) Recruitment report

Per guidelines specified in 20 CFR 655.15(j), the H-2B employer must prepare, sign, and date a written recruitment report. The recruitment report must be submitted to the NPC with the TEC Application.

(h) Recruitment records

The employer filing the TEC Application must maintain documentation of its advertising and recruitment efforts for a period of no less than 3 years from the date of the certification or from the date of determination if the TEC Application is denied or withdrawn.

Documentation includes:

- (1) A copy of the recruitment report
- (2) Prevailing wage documentation
- (3) Resumes of and evidence of contact with each U.S. worker who applied or was referred to the job opportunity
- (4) Dated logs demonstrating that the labor union was contacted and notified of the position openings and whether it referred qualified U.S. workers, the number of referrals (if any) or whether the union was non-responsive to the notification
- (5) Copies of newspaper pages, tear sheets of the publication pages, or other proof containing the full text and dates of the advertisements

46b03 Employer obligations: Application for Temporary Employment Certification information.

- (a) The employer and, where applicable, the employer's attorney/agent attest by signature that they will abide by the terms, assurances, and obligations in accordance with the regulations as a condition of TEC Application approval.
- (b) The employer attests by its signature in Appendix B.1 that it has reviewed the TEC Application and that the information contained is true and accurate.
- (c) The following information is included on the ETA Form 9142 and must be accurately stated by the employer:
 - (1) Temporary need information including job title, standard occupational classification (SOC) job code/title, full time indication, begin/end dates of intended employment, total positions requested, basis for visa classification, nature of temporary need, and statement of need
 - (2) Employer information including legal name, trade name, address, phone, employer identification number (EIN), North American Industry Classification System (NAICS) code, and type of application
 - (3) Employer point of contact information
 - (4) Attorney or agent information
 - (5) Job offer information including job title, work hours and schedule, supervisory responsibilities and job duties
 - (6) Job offer information including job requirements such as education, training, experience, and special requirements
 - (7) Place of employment information including addresses and specific geographic area

- (8) Rate of pay including basic and overtime rate, pay schedule, piece rate information, and additional wage information
- (9) Recruitment information including SWA identity, SWA job order number and dates, advertisement information, and additional recruitment information

46b04 Employer obligations: Application for Temporary Employment Certification Appendix B.1.

An employer seeking to employ H-2B workers declares by its signature on the TEC that it will meet the conditions of employment in Appendix B.1.

(a) The job opportunity must:

- (1) Be a bona fide, full-time, temporary position with qualifications that are consistent with normal and accepted qualifications required by non-H-2B employers in the same or comparable occupations. *See* 20 CFR 655.22(h).
- (2) Not be vacant due to a strike, lockout, or work stoppage in the course of a labor dispute. *See* 20 CFR 655.22(b).
- (3) Be open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted the required recruitment, contacted the union and retained records of any U.S. applicant(s) and the disposition of the application(s). *See* 20 CFR 655.22(c) and Appendix B: conditions 1-3.

(b) The job offer must:

- (1) Include terms and working conditions normal to U.S. workers similarly employed in the area of intended employment and no less favorable than those offered to H-2B workers and not less than the minimum required terms and conditions. *See* 20 CFR 655.22(a).
- (2) Include an offered wage that equals or exceeds the highest of the prevailing wage, the applicable federal, state, or local minimum wage, *and* the employer must pay the offered wage during the entire period of the approved TEC Application. *See* 20 CFR 655.22(e).
- (3) Not be based on commissions, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage or the legal federal, state, or local minimum wage, whichever is highest. *See* 20 CFR 655.22(g)(1).
- (4) Specify all deductions not required by law. *See* 20 CFR 655.22(g)(1) and Appendix B.1: conditions 4-6.

(c) Compliance with other laws

The employer must comply with applicable federal, state, and local employment-related laws and regulations, including employment-related health and safety laws. *See* 20 CFR 655.22(d) and Appendix B.1: condition 7.

(d) Layoffs

The employer is prohibited, with certain exceptions, from laying off any similarly employed U.S. workers in the occupation that is the subject of the TEC Application in the area of intended employment beginning 120 calendar days before the date of requested need of the first H-2B workers through 120 calendar days after the date of need. Layoffs are permitted where the H-2B employer has offered the job to the laid-off U.S. workers and the U.S. workers refused the job or the U.S. worker was rejected for the job for lawful, job-related reasons. *See* 20 CFR 655.22(i) and Appendix B.1: condition 8.

(e) Fee recovery

(1) The H-2B employer and its attorney or agents are prohibited from receiving payment of any kind from an employee for any activity related to obtaining the TEC Application, including payment of the H-2B employer's attorney or agent fees, any fees related to the TEC Application, or recruitment costs. Payments include, but are not limited to, monetary payments; deductions from wages, salary, or benefits; kickbacks; bribes; and free labor. *See* 20 CFR 655.22(j) and Appendix B.1: condition 9.

(2) FLSA covered employer with H-2B workers who are not exempt from the FLSA are also responsible for paying these H-2B workers' visa fees to the extent that the fees would bring the worker below the minimum wage. *See* FOH 46c02.

(f) Separation from employment notifications

(1) Upon the separation from employment of any H-2B workers employed under the TEC Application prior to the end date of the employment specified in the TEC Application, the H-2B employer must notify ETA and USCIS in writing of the separation from employment not later than 2 work days after separation is discovered. *See* 20 CFR 655.22(f).

(2) If an H-2B worker is dismissed by the H-2B employer prior to the end of the period, the H-2B employer is liable for return transportation. If the H-2B employer is required, as a part of the pilot program referenced in 20 CFR 655.35, it must inform the H-2B worker of the requirement to leave the U.S. at the end of the authorized period of stay or separation from the employer, whichever is earlier, unless the H-2B worker will be sponsored by another subsequent employer. *See* 8 USC 1184(c)(5), 8 CFR 214.2(h)(6)(vi)(E), 20 CFR 655.22(m), and Appendix B.1: conditions 10-11.

(g) Area of intended employment

(1) The employer will not place any H-2B workers employed pursuant to the TEC Application outside the area of intended employment listed on the TEC Application unless the employer has obtained a new TEC Application from ETA. *See* 20 CFR 655.22(l) and Appendix B.1: condition 12.

(2) “Area of intended employment” means the geographic area within normal commuting distance of the place (worksite address) of intended employment of the job opportunity for which the certification is sought. *See* 20 CFR 655.4.

a. An H-2B worker may have more than one worksite during a certified period of employment.

1. Multiple worksites

Employers may not include more than one area of intended employment on a single ETA Form 9142, with the exception of itinerant reforestation and entertainment employers, which are covered by ETA special procedures that are explained below. If the employer has multiple worksites within a single area of intended employment, the workers may be employed at any of the worksites provided the job duties are identical and the employer has listed all of the worksites on the ETA Form 9142 in section F *Job Offer Information*, subsection c *Place of Employment*. The employer must provide enough geographic detail to cover all the intended worksites.

2. Itineraries

Employers in the reforestation and entertainment industries have been granted special procedures by ETA per 20 CFR 655.3 permitting them to place H-2B workers in multiple areas of intended employment, based on a multi-state itinerary. *See* Training and Employment Guidance Letters No. 31-05 (issued 05/31/ 2006) and No. 27-06 (issued 06/12/2007). Employers who will work H-2B workers on an itinerary must attach the itinerary to the ETA Form 9142. The employer must list all of the work locations and the duration of work at each location. ETA requires the employer to recruit only in one area of intended employment, typically the area where the work begins. The employer is required to pay the appropriate prevailing wage at each work location as identified on the ETA 9141, PWD Application.

b. An employer cannot apply for H-2B workers for a job opportunity at a worksite and in an occupation in which U.S. workers are on strike or locked out. *See* 20 CFR 655.22(b) and Appendix B: condition 2.

(h) Temporary need

The H-2B employer must accurately state the dates of temporary need, reasons for temporary need, and number of positions being requested for labor certification. *See* 20 CFR 655.22(n) and Appendix B.1: condition 13.

(i) Secondary displacement

An H-2B employer that is a job contractor is prohibited from placing an H-2B worker at a worksite of a secondary/other employer unless:

- (1) the H-2B employer makes a written, bona fide inquiry as to whether the secondary/other employer has displaced or intends to displace any similarly employed U.S. workers within the area of intended employment beginning 120 days before through 120 calendar days after the date of need. The H-2B job contractor employer must secure a written confirmation from such secondary/other employer that the employer has not displaced and does not intend to displace any similarly employed U.S. workers within the area of intended employment, and
- (2) all worksites where H-2B workers will be placed are listed on the TEC Application. *See* 20 CFR 655.22(k) and Appendix B.1: condition 14.

46c WAGES

46c00 Required/offered wage rate.

- (a) The H-2B employer is required to pay at least the highest of the prevailing wage, federal, state, or local minimum wages. *See* 20 CFR 655.22(e). The offered wage listed on the TEC Application must meet this requirement, and the offered wage (including any offered overtime wage rate) must be paid to H-2B workers and similarly employed U.S. workers who were hired during the 10 day recruitment period. *See* FOH 46b04(b). Additionally, if an employer does not comply with 20 CFR 655.22(n) and willfully places workers outside the area of intended employment or in occupations not certified on the TEC Application, the employer is still obligated to pay the higher of the rate listed on the TEC Application or the prevailing wage in the location or occupation where the employee is actually working.

(b) Satisfaction of wage obligation

Except as discussed below, the H-2B worker must be paid his/her wages, free and clear, when due at the end of the pay period in which the hours of work are performed.

(c) Facilities furnished to H-2B workers

- (1) Deductions must be specified in the H-2B job offer, and all deductions must be reasonable.
- (2) An employer may take a “wage credit” (*i.e.*, may reduce or make a deduction from the cash payment of the required/offered wage) for facilities that are primarily for the benefit of the H-2B worker.
- (3) Housing and food allowances are generally considered to be for the primary benefit of the worker.
- (4) The wage credit (deduction) for facilities cannot exceed the fair market value or the actual cost to the employer of the facility (whichever is lower) and must be documented by the H-2B employer. *See* 29 CFR 531.

46c01 Deductions.

- (a) “Deduction” means any amount by which the H-2B worker’s cash wages are decreased. A deduction may be shown on the payroll records, marked as a deduction or a wage credit (*e.g.*, FICA, housing). However, a deduction will also be considered to exist where the H-2B

worker's cash wages have been decreased through out-of-pocket expenditures made by the H-2B worker for business expenses of the H-2B employer incurred in obtaining the worker's H-2B status. Such expenses include:

- (1) Attorney's or agent's fees incurred for any activity related to the TEC Application or petition filing
 - (2) Recruitment costs, including the cost of advertising or payment to a foreign or domestic recruitment service
 - (3) A discussion of the FLSA's impact on visa fees and inbound and outbound transportation for H-2B workers is set forth in FOH 46c01(f) and FOH 46c02
- (b) A wage violation will exist where a deduction causes the cash wage to fall below the required wage, unless the deduction is made in accordance with the H-2B regulations. If the H-2B worker receives the required wage despite the deduction, there is no violation.
- (c) The employer must make all deductions from the worker's wages that are required by law (e.g., income tax and FICA).
- (d) The H-2B employer may make deductions not required by law if such deductions:
- (4) are specified in the job offer;
 - (5) are reasonable (the employer may not profit from the deduction); and
 - (6) do not violate federal, state, or local law.
- (e) Fees paid to USCIS when filing a Petition for Nonimmigrant Worker (Form I-129) may not be deducted to the extent they reduce the worker's wages to below the required wage. Such fees include:
- (1) a basic filing fee of \$320.00,
 - (2) an additional premium processing fee of \$1,000.00 if expedited processing is requested, and
 - (3) a fraud prevention and detection fee of \$150.00 mandated by the Save Our Small and Seasonal Business Act of 2005 to be paid by all H-2B petitioning employers.
- (f) The statute requires that the employer pay the reasonable cost of the H-2B's return transportation to his/her last place of residence abroad if the employer terminates the worker prior to the end of the approved status. See 8 USC 1184(c)(5).

46c02 Effect of the FLSA.

- (a) The H-2B regulations allow employers to receive reimbursement for certain specific costs, including government required passport and visa fees. Under the FLSA, visa fees are an employer business expense. Consequently, H-2B employers that are covered under the FLSA may not make deductions that would bring the employee below the FLSA minimum wage. See 20 CFR 655.22(g) and Field Assistance Bulletin 2009-2 (available at http://www.dol.gov/whd/FieldBulletins/FieldAssistanceBulletin2009_2.htm).

(b) FLSA minimum wage

Under the FLSA, the employer is liable for the inbound transportation of the H-2B worker and the outbound transportation when the worker's H-2B status has ended. If failure to pay such transportation costs results in a failure to pay the FLSA minimum wage in a non-overtime initial or terminal workweek or the regular rate in an overtime workweek, there is an FLSA wage violation for the affected initial or terminal workweek(s). *See* Field Assistance Bulletin 2009-2.

(c) FLSA overtime pay

Where the FLSA overtime requirement is applicable, the 40-hour workweek/time-and-one-half standard will be used to determine whether the worker has been properly paid. Premium pay is based on the H-2B employee's regular rate of pay, which can be no less than the required/offered wage.

46d ENFORCEMENT PROCESS

46d00 Authority of WHD.

Pursuant to the delegation of authority from the Secretary of Homeland Security to the Secretary of Labor, the WHD will, either pursuant to a complaint or otherwise, conduct investigations to determine compliance with the H-2B requirements. In connection with such investigations, WHD may enter any places, inspect any records (and make transcriptions and copies thereof), question persons, and gather any information deemed necessary to determine the status of compliance. *See* 20 CFR 655.50(a) and (b).

46d01 Employer cooperation.

An employer shall, at all times, cooperate in administrative and enforcement proceedings. *See* 20 CFR 655.50(c).

- (a)** An employer being investigated shall make available to the Wage and Hour Investigator (WHI): records, information, persons and places as deemed appropriate to copy, transcribe, question, or inspect.
- (b)** Where the records are maintained at the central recordkeeping office, other than the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the WHI.
- (c)** H-2B employers are required to develop and maintain certain employment records to support their compliance with the attestations made on the TEC Application. These records include those specifically required by the H-2B program as well as those required by the FLSA for covered employers, including the following:
 - (1) Temporary need. *See* 20 CFR 655.6(e).
 - (2) Determination of the prevailing wage. *See* 20 CFR 655.10(i).
 - (3) Pre-filing recruitment, including newspaper advertisements. *See* 20 CFR 655.1.

- (4) Recruitment report and evidence of U.S. worker referrals. *See* 20 CFR 655.16(j).
- (5) Supporting evidence for temporary need. *See* 20 CFR 655.21(c).

These records must be kept for a period of no less than 3 years from the date of certification or from the date of determination if the TEC Application is denied or withdrawn, so they are available in the event they are requested in an ETA RFI or audit, or a WHD investigation.

- (d) No employer or representative or agent of an employer shall interfere with any official of DOL who is performing an investigation, inspection, or law enforcement function. Any such interference shall be a violation of the TEC Application and regulations. *See* 20 CFR 655.50(c).
- (e) The WHD shall, to the extent possible under existing law, protect the confidentiality of any person who provides information in the course of an investigation. *See* 20 CFR 655.50(d).