

how the employer will engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location(s)) no less than that of non-H-2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H-2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall describe how it will make the same level of effort as non-H-2A agricultural employers and provide an override which is no less than that being provided by non-H-2A agricultural employers.

**§ 655.103 Assurances.**

As part of the temporary alien agricultural labor certification application, the employer shall include in the job offer a statement agreeing to abide by the conditions of this subpart. By so doing, the employer makes each of the following assurances:

(a) *Labor disputes.* The specific job opportunity for which the employer is requesting H-2A certification is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(b) *Employment-related laws.* During the period for which the temporary alien agricultural labor certification is granted, the employer shall comply with applicable federal, State, and local employment-related laws and regulations, including employment-related health and safety laws.

(c) *Rejections and terminations of U.S. workers.* No U.S. worker will be rejected for or terminated from employment for other than a lawful job-related reason, and notification of all rejections or terminations shall be made to the local office.

(d) *Recruitment of U.S. workers.* The employer shall independently engage in positive recruitment until the foreign workers have departed for the employer's place of employment and shall cooperate with the ES System in the active recruitment of U.S. workers by:

(1) Assisting the ES System to prepare local, intrastate, and interstate

job orders using the information supplied on the employer's job offer;

(2) Placing advertisements (in a language other than English, where the RA determines appropriate) for the job opportunities in newspapers of general circulation and/or on the radio, as required by the RA:

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the ¾ guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid by the employer upon completion of 50% of the work contract, or earlier, if appropriate; and

(ii) Each such advertisement shall direct interested workers to apply for the job opportunity at a local employment service office in their area;

(3) Cooperating with the ES System and independently contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone; and

(4) Cooperating with the ES System in contacting schools, business and labor organizations, fraternal and veterans' organizations, and nonprofit organizations and public agencies such as sponsors of programs under the Job Training Partnership Act throughout the area of intended employment and in other potential labor supply areas in order to enlist them in helping to find U.S. workers.

(e) *Fifty-percent rule.* From the time the foreign workers depart for the employer's place of employment, the employer, except as provided for by §655.106(e)(1) of this part, shall provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer shall offer to provide housing and the other benefits, wages, and working conditions required by §655.102 of this part to any such U.S. worker and shall not treat less favorably than H-2A workers

any U.S. worker referred or transferred pursuant to this assurance.

(f) *Other recruitment.* The employer shall perform the other specific recruitment and reporting activities specified in the notice from the RA required by § 655.105(a) of this part, and shall engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location) no less than that of non-H-2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H-2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall make the same level of effort as non-H-2A agricultural employers and shall provide an override which is no less than that being provided by non-H-2A agricultural employers. Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall not be required to provide meals through an override. The employer shall not be required to provide for housing through an override.

(g) *Retaliation prohibited.* The employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and shall not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has with just cause:

(1) Filed a complaint under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(2) Instituted or caused to be instituted any proceeding under or related to § 216 of the INA, or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA (8 U.S.C. 1186);

(3) Testified or is about to testify in any proceeding under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to § 216 of the

INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA.

(h) *Fees.* The application shall include the assurance that fees will be paid in a timely manner, as follows:

(1) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than \$1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, the fee for each employer-member receiving a temporary alien agricultural labor certification shall be \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than \$1,000. The joint employer association will not be charged a separate fee. Fees shall be paid by a check or money order made payable to "Department of Labor", and are nonrefundable. In the case of employers of H-2A workers which are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H-2A workers under the application may be paid by one check or money order.

(2) *Timeliness.* Fees received by the RA within 30 calendar days after the date of the temporary alien agricultural labor certification determination are timely.

[52 FR 20507, June 1, 1987, as amended by 55 FR 29358, July 19, 1990]

**§ 655.104 Determinations based on acceptability of H-2A applications.**

(a) *Local office activities.* The local office, using the job offer portion of the H-2A application, shall promptly prepare a local job order and shall begin to