

**§ 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 a local office of a State employment service 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 Regional Administrator (RA) as to the availability of U.S. workers 20 days before the date of need. Shortly after the application has been filed, the RA 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 RA shall deny the temporary labor certification application and offer the employer an administrative-judicial review of the denial by a Department of Labor Hearing Officer. If the application is not timely, the RA 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 INS regulations. Where the application is timely and meets the regulatory standards, the State employment service agency, the employer, and the Department of Labor recruit U.S. workers for 60 days. At the end of the 60 days, the RA grants the temporary labor certification if the RA 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 a Department of Labor Hearing Officer as provided in these regulations. The Department of Labor thereafter advises the Immigration and Naturalization Service (INS) of approvals and denials of temporary labor certifications. The INS may accept or reject this advice. 8 CFR 214.2(h)(3). The INS 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.* *Administrator* means the chief official of the United States Employment Service or the Administrator's designee.

*Adverse effect rate* means the wage rate which the 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 Administrator may determine that the prevailing wage rate in the area