

## Employment and Training Administration, Labor

## § 655.204

shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage;

(b) During the period for which the temporary labor certification is granted, the employer will comply with applicable Federal, State and local employment-related laws, including employment related health and safety laws;

(c) The job opportunity is open to all qualified U.S. workers without regard to race, color, national origin, sex, or religion, and is open to U.S. workers with handicaps who are qualified to perform the work. No U.S. worker will be rejected for employment for other than a lawful job related reason;

(d) The employer will cooperate with the employment service system in the active recruitment of U.S. workers until the foreign workers have departed for the employer's place of employment by:

(1) Allowing the employment service system to prepare local, intrastate and interstate job orders using the information supplied on the employer's job offer;

(2) Placing at least two advertisements for the job opportunities in local newspapers of general circulation.

(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  $\frac{3}{4}$  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 for by the employer;

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

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

(4) Cooperating with the employment service system in contacting schools, business and labor organizations, fraternal and veterans organizations, and non-profit organizations and public agencies such as sponsors of programs under the Comprehensive Employment and Training Act, throughout the area of intended employment, in order to enlist them in helping to find U.S. workers; and

(5) If the employer, or an association of employers of which the employer is a member, intends to negotiate and/or contract with the Government of a foreign nation or any foreign association, corporation or organization in order to secure foreign workers, making the same kind and degree of efforts to secure U.S. workers;

(e) From the time the foreign workers depart for the employer's place of employment, the employer will provide employment to any qualified U.S. worker who applies to the employer until fifty percent 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 will offer to provide housing, and the other benefits, wages, and working conditions required by § 655.202, to any such U.S. worker; and

(f) Performing the other specific recruitment activities specified in the notice from the RA required by § 655.205(a).

### **§ 655.204 Determinations based on temporary labor certification applications.**

(a) Within two working days after the temporary labor certification application has been filed with it, the local office shall mail the duplicate application directly to the appropriate RA.

(b) The local office, using the job offer portion of its copy of the temporary labor certification application, shall promptly prepare a local job order and shall begin to recruit U.S. workers in the area of intended employment.

(c) The RA, upon receipt of the duplicate temporary labor certification application, shall promptly review the application to determine whether it meets the requirements of §§ 655.201-

## § 655.205

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655.203 in order to determine whether the employer's application is (1) timely, and (2) contains offers of wages, benefits, and working conditions required to ensure that similarly employed U.S. workers will not be adversely affected. If the RA determines that the temporary labor certification application is not timely in accordance with § 655.201 of this subpart, the RA may promptly deny the temporary labor certification on the grounds that, in accordance with that regulation, there is not sufficient time to adequately test the availability of U.S. workers. If the RA determines that the application does not meet the requirements of §§ 655.202-655.203 because the wages, working conditions, benefits, assurances, job offer, etc. are not as required, the RA shall deny the certification on the grounds that the availability of U.S. workers cannot be adequately tested because the wages or benefits, etc. do not meet the adverse effect criteria.

(d) If the certification is denied, the RA shall notify the employer in writing of the determination, with a copy to the local office and the Administrator. The notice shall:

(1) State the reasons for the denial, citing the relevant regulations; and

(2) Offer the employer an opportunity to request an expedited administrative-judicial review of the denial by a Department of Labor (DOL) Hearing Officer. The notice shall state that in order to obtain such a review, the employer must, within five calendar days of the date of the notice, file by facsimile (fax), telegram, or other means normally assuring next day delivery a written request for such a review to the Chief Administrative Law Judge of the Department of Labor (giving the address) and simultaneously serve a copy on the Regional Administrator. The notice shall also state that the employer's request for review should contain any legal arguments which the employer believes will rebut the basis of the RA's denial of certification; and

(3) State that, if the employer does not request an expedited administrative-judicial review before a DOL Hearing Officer within the five days:

(i) The RA will advise the INS that the certification cannot be granted,

giving the reasons therefor, and that an administrative-judicial review of the denial was offered to the employer but not accepted, and enclosing, for INS review, the entire temporary labor certification application file; and

(ii) The employer has the opportunity to submit evidence to the INS to rebut the bases of the RA's determination in accordance with the INS regulation at 8 CFR 214.2(h)(3)(i) but that no further review of the employer's application for temporary labor certification may be made by any Department of Labor official.

(e) If the employer timely requests an expedited administrative-judicial review pursuant to paragraph (d)(2) of this section, the procedures of § 655.212 shall be followed.

[43 FR 10313, Mar. 10, 1978, as amended at 59 FR 41876, Aug. 15, 1994]

### § 655.205 Recruitment period.

(a) If the RA determines that the temporary labor certification application meets the requirements of §§ 655.201 through 655.203, the RA shall promptly notify the employer in writing, with copies to the State agency and local office. The notice shall inform the employer and the State agency of the specific efforts which will be expected from them during the following weeks to carry out the assurances contained in § 655.203 with respect to the recruitment of U.S. workers. The notice shall require that the job order be placed both into intrastate clearance and into interstate clearance to such States as the RA shall determine to be potential sources of U.S. workers.

(b) Thereafter, the RA, under the direction of the ETA national office and with the assistance of other RAs with respect to areas outside the region, shall provide overall direction to the employer and the State agency with respect to the recruitment of U.S. workers.

(c) By the 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, the RA, when making a determination of the availability