

§ 655.207

(d) (1) After a temporary labor certification has been granted, the employer shall continue its efforts to actively recruit U.S. workers until the foreign workers have departed from the employer's place of employment. The employer, however, must keep an active job order on file until the assurance at § 655.203(e) is met.

(2) The ES system shall continue to actively recruit and refer U.S. workers as long as there is an active job order on file.

[43 FR 10313, Mar. 10, 1978, as amended at 59 FR 41876, Aug. 15, 1995]

§ 655.207 Adverse effect rates.

(a) Except as otherwise provided in this section, the adverse effect rates for all agricultural and logging employment shall be the prevailing wage rates in the area of intended employment.

(b)(1) For agricultural employment (except shepherding) in the States listed in paragraph (b)(2) of this section, and for Florida sugarcane work, the adverse effect rate for each year shall be computed by adjusting the prior year's adverse effect rate by the percentage change (from the second year previous to the prior year) in the U.S. Department of Agriculture's (USDA's) average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly Wage Survey. The Administrator shall publish, at least once in each calendar year, on a date or dates he shall determine, adverse effect rates calculated pursuant to this paragraph (b) as a notice or notices in the FEDERAL REGISTER.

(2) *List of States.* Arizona, Colorado, Connecticut, Florida (other than sugarcane work), Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

(3) *Transition.* Notwithstanding paragraphs (b) (1) and (2) of this section, the 1986 adverse effect rate for agricultural employment (except shepherding) in the following States, and for Florida sugarcane work, shall be computed by adjusting the 1981 adverse effect rate (computed pursuant to 20 CFR 655.207(b)(1), 43 FR 10317; March 10, 1978)

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by the percentage change between 1980 and 1985 in the U.S. Department of Agriculture annual average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly survey: The States listed at 20 CFR 655.207(b)(2) (1985).

(c) In no event shall an adverse effect rate for any year be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

[43 FR 10313, Mar. 10, 1978, as amended at 44 FR 32212, June 5, 1979; 48 FR 40175, Sept. 2, 1983; 50 FR 25708, June 21, 1985; 51 FR 24141, July 2, 1986; 52 FR 11466, Apr. 9, 1987]

§ 655.208 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the RA shall refer the matter to the INS for investigation and shall notify the employer or agent in writing of this referral. The RA shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a court finds an employer or agent innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the RA shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a court or the INS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the employer or agent with the reasons therefor stated in writing.

§ 655.209 Invalidation of temporary labor certifications.

After issuance, temporary labor certifications are subject to invalidation by the INS upon a determination, made

in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator as appropriate, shall notify the INS in writing.

§ 655.210 Failure of employers to comply with the terms of a temporary labor certification.

(a) If, after the granting of a temporary labor certification, the RA has probable cause to believe that an employer has not lived up to the terms of the temporary labor certification, the RA shall investigate the matter. If the RA concludes that the employer has not complied with the terms of the labor certification, the RA may notify the employer that it will not be eligible to apply for a temporary labor certification in the coming year. The notice shall be in writing, shall state the reasons for the determination, and shall offer the employer an opportunity to request a hearing within 30 days of the date of the notice. If the employer requests a hearing within the 30-day period, the RA shall follow the procedures set forth at § 658.421(i) (1), (2) and (3) of this chapter. The procedures contained in §§ 658.421(j), 658.422 and 658.423 of this chapter shall apply to such hearings.

(b) No other penalty shall be imposed by the employment service on such an employer other than as set forth in paragraph (a) of this section.

§ 655.211 Petition for higher meal charges.

(a) Until a new amount is set pursuant to this paragraph (a), the RA may permit an employer to charge workers up to \$6.17 for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentary evidence required by paragraph (b) of this section. A denial in whole or in part shall be reviewable as provided in § 655.212 of this part. Each year the maximum charge allowed by this paragraph (a) will be

changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the Administrator in the FEDERAL REGISTER.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the Secretary's representatives for a period of one year.

(Approved by the Office of Management and Budget under control number 1205-0015)

[43 FR 10313, Mar. 10, 1978, as amended at 49 FR 18295, Apr. 30, 1984; 51 FR 30351, Aug. 26, 1986]

§ 655.212 Administrative-judicial reviews.

(a) Whenever an employer has requested an administrative-judicial review of a denial of an application or a petition in accordance with §§ 655.204(d), 655.205(d), 655.206(c), or 655.211, the Chief Administrative Law Judge shall immediately assign a Hearing Officer to review the record for legal sufficiency, and the Regional Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next day delivery. The Hearing Officer shall not have authority to remand the case and shall not receive additional evidence. Any countervailing evidence advanced after decision by the Regional Administrator