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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 OFLC Administrator 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 SWA shall mail the duplicate application directly to the appropriate OFLC Administrator.

(b) The SWA, 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 OFLC Administrator, upon receipt of the duplicate temporary labor certification application, shall

promptly review the application to determine whether it meets the requirements of §§ 655.201-655.203 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 OFLC Administrator determines that the temporary labor certification application is not timely in accordance with § 655.201 of this subpart, the OFLC Administrator 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 OFLC Administrator 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 OFLC Administrator 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 OFLC Administrator shall notify the employer in writing of the determination, with a copy to the SWA. 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 an Administrative Law Judge. 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 OFLC 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 OFLC Administrator's denial of certification; and

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

(i) The OFLC Administrator will advise the DHS 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 DHS review, the entire temporary labor certification application file; and

(ii) The employer has the opportunity to submit evidence to the DHS to rebut the bases of the OFLC Administrator's determination in accordance with the DHS 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; 71 FR 35519, 35521, June 21, 2006]

§ 655.205 Recruitment period.

(a) If the OFLC Administrator determines that the temporary labor certification application meets the requirements of §§ 655.201 through 655.203, the OFLC Administrator shall promptly notify the employer in writing, with copies to the SWA. The notice shall inform the employer and the SWA 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 OFLC Administrator shall determine to be potential sources of U.S. workers.

(b) Thereafter, OFLC Administrator, shall provide overall direction to the employer and the SWA 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 OFLC Administrator, when making a determination of the availability of U.S. workers, shall also make a determination as to whether the employer has satisfied the recruitment assurances in § 655.203. If the OFLC Administrator concludes that the employer has not satisfied the requirement for recruitment of U.S. workers, the OFLC Administrator shall deny the temporary labor certification, and shall immediately notify the employer in writing with a copy to the State agency. The notice shall contain the statements specified in § 655.204(d).

(d) If the employer timely requests an expedited administrative-judicial review before an Administrative Law Judge, the procedures in § 655.212 shall be followed.

[43 FR 10313, Mar. 10, 1978, as amended at 71 FR 35519, June 21, 2006]

§ 655.206 Determinations of U.S. worker availability and adverse effect on U.S. workers.

(a) If the OFLC Administrator, in accordance with § 655.205 has determined that the employer has complied with the recruitment assurances, the OFLC Administrator, by 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, shall grant the temporary labor certification for enough aliens to fill the employer's job opportunities for which U.S. workers are not available. In making this determination the OFLC Administrator shall consider as available for a job opportunity any U.S. worker who has made a firm commitment to work for the employer, including those workers committed by other authorized persons such as farm labor contractors and family heads; such a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the OFLC Administrator determines are very likely to sign such a work contract. The OFLC Administrator shall also count as available any U.S. worker who has applied to the employer (or on whose behalf an application has been made), but who was rejected by the employer for other than lawful job-related related