who was rejected by the employer for other than lawful job-related related reasons unless the OFLC Administrator determines that:

(1) Enough qualified U.S. workers have been found to fill all the employer’s job opportunities; or

(2) The employer, since the time of the initial determination under §655.204, has adversely affected U.S. workers by offering to, or agreeing to provide to, alien workers better wages, working conditions, or benefits (or by offering or agreeing to impose on alien workers less obligations and restrictions) than that offered to U.S. workers.

(b)(1) Temporary labor certifications shall be considered subject to the conditions and assurances made during the application process. Temporary labor certifications shall be for a limited duration such as for “the 1978 apple harvest season” or “until November 1, 1978”, and they shall never be for more than eleven months. They shall be limited to the employer’s specific job opportunities; therefore, they may not be transferred from one employer to another.

(2) If an association of employers is itself the employer, as defined in §655.200, certifications shall be made to the association and may be used for any of the job opportunities of its employer members and workers may be transferred among employer members.

(3) If an association of employers is a joint employer with its employer members, as defined in §655.200, the certification shall be made jointly to the association and the employer members. In such cases workers may be transferred among the employer members provided the employer members and the association agree in writing to be jointly and severally liable for compliance with the temporary labor certification obligations set forth in this subpart.

(c) If the OFLC Administrator denies the temporary labor certification in whole or part, the OFLC Administrator shall notify the employer in writing by means normally assuring next-day delivery. The notice shall contain all of the statements required in §655.204(d). If a timely request is made for an administrative-judicial review by an Administrative Law Judge, the procedures of §655.212 shall be followed.

(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 for 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 State Workforce Agency (SWA) system shall continue to actively recruit and refer U.S. workers as long as there is an active job order on file.

§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 sheepherding) 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 OFLC 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 sugar cane 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 sheepherding) 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)
by the percentage change between 1980 and 1985 in the U.S. Department of A-
griculture annual average hourly wage
rates for field and livestock workers
(combined) based on the USDA Quar-
terly survey: The States listed at 20
(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.

§ 655.208 Temporary labor certifi-
cation applications involving fraud
or willful misrepresentation.
(a) If possible fraud or willful mis-
representation involving a temporary
labor certification application is dis-
covered 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
OFLC Administrator shall refer the
matter to the DHS for investigation
and shall notify the employer or agent
in writing of this referral. The OFLC
Administrator shall continue to pro-
cess the application and may issue a
qualified temporary labor certification.
(b) If a court finds an employer or
agent innocent of fraud or willful mis-
representation, or if the Department of
Justice decides not to prosecute an em-
ployer or agent, the OFLC Adminis-
trator shall not deny the temporary
labor certification application on the
grounds of fraud or willful misrepresen-
tation. The application, of course, may
be denied for other reasons pursuant to
this subpart.
(c) If a court or the DHS determines
that there was fraud or willful mis-
representation involving a temporary
labor certification application, the ap-
lication 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 cer-
fications are subject to invalidation
by the DHS 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 cer-
tification application. If evidence of
such fraud or willful misrepresentation
becomes known to the OFLC Adminis-
trator, the OFLC Administrator shall
notify the DHS in writing.

§ 655.210 Failure of employers to com-
ply with the terms of a temporary
labor certification.
(a) If, after the granting of a tem-
porary labor certification, the OFLC
Administrator has probable cause to
believe that an employer has not lived
up to the terms of the temporary labor
certification, the OFLC Administrator
shall investigate the matter. If the
OFLC Administrator concludes that
the employer has not complied with
the terms of the labor certification, the
OFLC Administrator may notify the
employer that it will not be eligible to
apply for a temporary labor certifi-
cation in the coming year. The notice
shall be in writing, shall state the rea-
sons 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 re-
quests a hearing within the 30-day pe-
riod, the OFLC Administrator shall fol-
low 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 pursu-
ant to this paragraph (a), the OFLC
Administrator may permit an em-
ployer 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 OFLC Ad-
ministrator the documentary evidence
required by paragraph (b) of this sec-
tion. Each year the maximum
charge allowed by this paragraph (a)