

Employment and Training Administration, Labor

§ 655.22

intended employment, and during the same period of employment.

(e) Except where otherwise permitted under §655.3, only one *Application for Temporary Employment Certification* may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer.

(f) Where a one-time occurrence lasts longer than one year, but less than 18 months, the employer will be issued a labor certification for the entire period of need. Where a one-time occurrence lasts 18 months or longer, the employer will be required to conduct another labor market for the portion of time beyond 12 months.

§ 655.21 Supporting evidence for temporary need.

(a) *Statement of temporary need.* Each *Application for Temporary Employment Certification* must include attestations regarding temporary need in the appropriate sections. The employer must include a detailed statement of temporary need containing the following:

(1) A description of the employer's business history and activities (*i.e.*, primary products or services) and schedule of operations throughout the year;

(2) An explanation regarding why the nature of the employer's job opportunity and number of foreign workers being requested for certification reflect a temporary need;

(3) An explanation regarding how the request for temporary labor certification meets one of the regulatory standards of a one-time occurrence, seasonal, peakload, or intermittent need under §655.6(b) as defined by DHS under 8 CFR 214.2(h)(6)(ii)(B); and

(4) If applicable, a statement justifying any increase or decrease in the number of H-2B positions being requested for certification from the previous year.

(b) *Request for supporting evidence.* In circumstances where the CO requests evidence or documentation substantiating the employer's temporary need through a RFI under §655.23(c) to support a Final Determination, or notifies the employer that its application is being audited under §655.24, the employer must timely furnish the requested supplemental information or evidence or documentation. Failure to

provide the information requested or late submissions may be grounds for the denial of the application. All such documentation or evidence becomes part of the record of the application.

(c) *Retention of documentation.* The documentation required in this section and any other supporting evidence justifying the temporary need by the employer filing the *Application for Temporary Employment Certification* must be retained for a period of no less than 3 years from the date of the certification.

§ 655.22 Obligations of H-2B employers.

An employer seeking H-2B labor certification must attest as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions of this subpart:

(a) The employer is offering terms and working conditions normal to U.S. workers similarly employed in the area of intended employment, meaning that they may not be unusual for workers performing the same activity in the area of intended employment, and which are not less favorable than those offered to the H-2B worker(s) and are not less than the minimum terms and conditions required by this subpart.

(b) The specific job opportunity for which the employer is requesting H-2B certification is not vacant because the former occupant(s) is (are) on strike or locked out in the course of a labor dispute involving a work stoppage.

(c) The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted the required recruitment, in accordance with the regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which labor certification is sought. Any U.S. worker applicants were rejected only for lawful, job-related reasons, and the employer must retain records of all rejections.

(d) During the period of employment that is the subject of the labor certification application, the employer will comply with applicable Federal, State and local employment-related laws and