

(k) *Contracts with third parties comply with prohibitions.* The employer has contractually forbidden any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H-2A workers to seek or receive payments or other compensation from prospective employees. This documentation is to be made available upon request by the CO or another Federal party.

(l) *Notice of worker rights.* The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to 8 U.S.C. 1188.

PROCESSING OF APPLICATIONS FOR TEMPORARY EMPLOYMENT CERTIFICATION

§ 655.140 Review of applications.

(a) *NPC review.* The CO will promptly review the *Application for Temporary Employment Certification* and job order for compliance with all applicable program requirements, including compliance with the requirements set forth in this subpart.

(b) *Mailing and postmark requirements.* Any notice or request sent by the CO(s) to an employer requiring a response will be sent using the provided address via traditional methods to assure next day delivery. The employer's response to such a notice or request must be filed using traditional methods to assure next day delivery and be sent by the date due or the next business day if the due date falls on a Sunday or Federal Holiday.

§ 655.141 Notice of deficiency.

(a) *Notification timeline.* If the CO determines the *Application for Temporary Employment Certification* or job order are incomplete, contain errors or inaccuracies, or do not meet the requirements set forth in this subpart, the CO will notify the employer within 7 calendar days of the CO's receipt of the *Application for Temporary Employment*

Certification. A copy of this notification will be sent to the SWA serving the area of intended employment.

(b) *Notice content.* The notice will:

(1) State the reason(s) why the *Application for Temporary Employment Certification* or job order fails to meet the criteria for acceptance;

(2) Offer the employer an opportunity to submit a modified *Application for Temporary Employment Certification* or job order within 5 business days from date of receipt stating the modification that is needed for the CO to issue the Notice of Acceptance;

(3) Except as provided for under the expedited review or de novo administrative hearing provisions of this section, state that the CO's determination on whether to grant or deny the *Application for Temporary Employment Certification* will be made no later than 30 calendar days before the date of need, provided that the employer submits the requested modification to the *Application for Temporary Employment Certification* within 5 business days and in a manner specified by the CO;

(4) Offer the employer an opportunity to request an expedited administrative review or a de novo administrative hearing before an ALJ of the Notice of Deficiency. The notice will state that in order to obtain such a review or hearing, the employer, within 5 business days of the receipt of the notice, must file by facsimile or other means normally assuring next day delivery a written request to the Chief ALJ of DOL and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments that the employer believes will rebut the basis of the CO's action; and

(5) State that if the employer does not comply with the requirements of § 655.142 or request an expedited administrative review or a de novo hearing before an ALJ within 5 business days the CO will deny the *Application for Temporary Employment Certification*. That denial is final cannot be appealed and the Department will not further consider that *Application for Temporary Employment Certification*.

(c) *Appeal from Notice of Deficiency.* The employer may timely request an expedited administrative review or de

novo hearing before an ALJ by following the procedures set forth in § 655.171.

§ 655.142 Submission of modified applications.

(a) *Submission requirements and certification delays.* If the employer chooses to submit a modified *Application for Temporary Employment Certification*, the CO's Final Determination will be postponed by 1 calendar day for each day that passes beyond the 5 business-day period allowed under § 655.141(b) to submit a modified *Application for Temporary Employment Certification*, up to maximum of 5 days. The *Application for Temporary Employment Certification* will be deemed abandoned if the employer does not submit a modified *Application for Temporary Employment Certification* within 12 calendar days after the notice of deficiency was issued.

(b) *Provisions for denial of modified Application for Temporary Employment Certification.* If the modified *Application for Temporary Employment Certification* is not approved, the CO will deny the *Application for Temporary Employment Certification* in accordance with the labor certification determination provisions in § 655.164.

(c) *Appeal from denial of modified Application for Temporary Employment Certification.* The procedures for appealing a denial of a modified *Application for Temporary Employment Certification* are the same as for a non-modified *Application for Temporary Employment Certification* as long as the employer timely requests an expedited administrative review or de novo hearing before an ALJ by following the procedures set forth in § 655.171.

§ 655.143 Notice of acceptance.

(a) *Notification timeline.* When the CO determines the *Application for Temporary Employment Certification* and job order are complete and meet the requirements set forth in this subpart, the CO will notify the employer within 7 calendar days of the CO's receipt of the *Application for Temporary Employment Certification*. A copy will be sent to the SWA serving the area of intended employment.

(b) *Notice content.* The notice must:

(1) Authorize conditional access to the interstate clearance system and direct the SWA to circulate a copy of the job order to other such States the CO determines to be potential sources of U.S. workers;

(2) Direct the employer to engage in positive recruitment of U.S. workers in a manner consistent with § 655.154 and to submit a report of its positive recruitment efforts as specified in § 655.156;

(3) State that positive recruitment is in addition to and will occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance under § 655.150 of this subpart and will terminate on the actual date on which the H-2A workers depart for the place of work, or 3 calendar days prior to the first date the employer requires the services of the H-2A workers, whichever occurs first;

(4) State that the CO will make a determination either to grant or deny the *Application for Temporary Employment Certification* no later than 30 calendar days before the date of need, except as provided for under § 655.144 for modified Applications for Temporary Employment Certification.; and

(5) Where appropriate to the job opportunity and area of intended employment, direct the SWA to provide written notice of the job opportunity to organizations that provide employment and training services to workers likely to apply for the job and/or to place written notice of the job opportunity in other physical locations where such workers are likely to gather.

[75 FR 6959, Feb. 12, 2010, as amended at 84 FR 49456, Sept. 20, 2019]

§ 655.144 Electronic job registry.

(a) *Location of and placement in the electronic job registry.* Upon acceptance of the *Application for Temporary Employment Certification* under § 655.143, the CO will promptly place for public examination a copy of the job order on an electronic job registry maintained by the Department, including any required modifications approved by the CO, as specified in § 655.142. This procedure will be implemented once the Department initiates operation of the registry.