

prior to completion of the H-2A contract, absent an extension or change of such worker's status under the DHS regulations. See 8 CFR 214.2(h)(5)(viii)(B).

(j) *Comply with the prohibition against employees paying fees.* The employer and its agents have not sought or received payment of any kind from any employee subject to 8 U.S.C. 1188 for any activity related to obtaining H-2A labor certification, including payment of the employer's attorney fees, application fees, or recruitment costs. For purposes of this paragraph (j), payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor. The provision in this paragraph (j) does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

(k) *Contracts with third parties to comply with prohibitions.* The employer must contractually prohibit in writing 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. The contract must include the following statement: "Under this agreement, [name of foreign labor contractor or recruiter] and any agent or employee of [name of foreign labor contractor or recruiter] are prohibited from seeking or receiving payments from any prospective employee of [employer name] at any time, including before or after the worker obtains employment. Payments include but are not limited to any direct or indirect fees paid by such employees for recruitment, job placement, processing, maintenance, attorney fees, agent fees, application fees, or any fees related to obtaining H-2A labor certification." 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.

§ 655.136 Withdrawal of an Application for Temporary Employment Certification and job order.

(a) The employer may withdraw an *Application for Temporary Employment Certification* and the related job order at any time before the CO makes a determination under § 655.160. However, the employer is still obligated to comply with the terms and conditions of employment contained in the *Application for Temporary Employment Certification* and job order with respect to all workers recruited in connection with that application and job order.

(b) To request withdrawal, the employer must submit a request in writing to the NPC identifying the *Application for Temporary Employment Certification* and job order and stating the reason(s) for the withdrawal.

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, and make a decision to issue a NOD under § 655.141, a Notice of Acceptance (NOA) under § 655.143, or a Final Determination under § 655.160.

(b) *Mailing and postmark requirements.* Any notice or request sent by the CO(s) to an employer requiring a response will be sent electronically or via traditional methods to assure next day delivery using the address, including electronic mail address, provided on the *Application for Temporary Employment Certification*. The employer's response to such a notice or request must be filed electronically or via traditional methods to assure next day delivery. The employer's response must

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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 is incomplete, contains errors or inaccuracies, or does 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) 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 NOA;

(3) State that the CO's determination on whether to grant or deny the *Application for Temporary Employment Certification* will be made not later than 30 calendar days before the first date of need, provided that the employer submits the requested modification to the *Application for Temporary Employment Certification* or job order within 5 business days and in a manner specified by the CO; and

(4) State that if the employer does not comply with the requirements of § 655.142, the CO will deny the *Application for Temporary Employment Certification*.

§ 655.142 Submission of modified applications.

(a) *Submission requirements and certification delays.* If in response to a NOD the employer chooses to submit a modified *Application for Temporary Employment Certification* or job order, 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* or job

order, up to a maximum of 5 calendar days. The CO may issue one or more additional NODs before issuing a Final Determination. The *Application for Temporary Employment Certification* will be deemed abandoned if the employer does not submit a modified *Application for Temporary Employment Certification* or job order within 12 calendar days after the NOD was issued.

(b) *Provisions for denial of modified Application for Temporary Employment Certification.* If the modified *Application for Temporary Employment Certification* or job order does not cure the deficiencies cited in the NOD(s) or otherwise fails to satisfy the criteria required for certification, 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 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 the notice 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 each SWA receiving a copy of the job order to commence recruitment of U.S. workers as specified in § 655.150;

(2) Direct the employer to engage in positive recruitment of U.S. workers under §§ 655.153 and 655.154 and to submit a report of its positive recruitment efforts meeting the requirements of § 655.156. If the OFLC Administrator's