

§ 655.150

20 CFR Ch. V (4-1-23)

number of workers must be made in writing.

(b) *Minor changes to the period of employment.* The *Application for Temporary Employment Certification* may be amended to make minor changes in the total period of employment. Changes will not be effective until submitted in writing and approved by the CO. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect any change(s) would have on the adequacy of the underlying test of the domestic labor market for the job opportunity. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. If the request is for a delay in the first date of need and is made after workers have departed for the employer's place of employment, the CO may only approve the change if the employer includes with the request a written assurance signed and dated by the employer that all workers who are already traveling to the place of employment will be provided housing and subsistence, without cost to the workers, until work commences. Upon acceptance of an amendment, the CO will submit to the SWA any necessary modification to the job order.

POST-ACCEPTANCE REQUIREMENTS

§ 655.150 Interstate clearance of job order.

(a) *CO approves for interstate clearance.* The CO will promptly transmit a copy of the approved job order for interstate clearance, at minimum, to all States listed in the job order as anticipated place(s) of employment and all other States designated by the OFLC Administrator as States of traditional or expected labor supply for the anticipated place(s) of employment under § 655.154(d).

(b) *Duration of posting.* Each of the SWAs to which the CO transmits the job order must keep the job order on its active file until the end of the recruitment period, as set forth in

§ 655.135(d), and must refer each qualified U.S. worker who applies (or on whose behalf an application is made) for the job opportunity.

§§ 655.151-655.152 [Reserved]

§ 655.153 Contact with former U.S. workers.

The employer must contact, by mail or other effective means, U.S. workers employed by the employer in the occupation at the place of employment during the previous year and solicit their return to the job. This contact must occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance under § 655.150 and before the date specified in § 655.158. Documentation sufficient to prove contact must be maintained in the event of an audit or investigation. An employer has no obligation to contact U.S. workers it terminated for cause or who abandoned employment at any time during the previous year if the employer provided timely notice to the NPC of the termination or abandonment in the manner described in § 655.122(n).

§ 655.154 Additional positive recruitment.

(a) *Where to conduct additional positive recruitment.* In addition to the CO's posting of the job opportunity on an electronic job registry in accordance with § 655.144, the employer must conduct positive recruitment as required by the OFLC Administrator's determination of traditional or expected labor supply States, which is published annually in accordance with paragraph (d) of this section.

(b) *Additional requirements should be comparable to non-H-2A employers in the area.* The location(s) and method(s) of the positive recruitment required of the employer must be no less than the normal recruitment efforts of non-H-2A agricultural employers of comparable or smaller size in the area of intended employment, taking into consideration the kind and degree of recruitment efforts which the employer may make to obtain foreign workers.

(c) *Nature of the additional positive recruitment.* The OFLC Administrator's labor supply State determination will