

identify areas of labor supply within a State, and the NOA issued under § 655.143 will describe the precise nature of the additional positive recruitment required of the employer, if any. The employer will not be required to conduct positive recruitment in more than three States for each area of intended employment listed on the employer's *Application for Temporary Employment Certification* and job order.

(d) *Determination of labor supply States.* (1) The OFLC Administrator will make an annual determination with respect to each State whether there are other traditional or expected labor supply States and, within a traditional or expected labor supply State, areas in which there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work in that State. The OFLC Administrator will publish the determination annually on OFLC's website.

(2) The determination will become effective on the date of publication on OFLC's website for employers who have not commenced positive recruitment under this subpart and will remain valid until the OFLC Administrator publishes a new determination.

(3) The determination as to whether any State is a source of traditional or expected labor supply to another State will be based primarily upon information provided by the SWAs to the OFLC Administrator within 120 calendar days preceding the determination.

§ 655.155 Referrals of U.S. workers.

SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that they are qualified, able, willing, and available for employment.

§ 655.156 Recruitment report.

(a) *Requirements of a recruitment report.* The employer must prepare, sign, and date a written recruitment report. The recruitment report must be submitted on a date specified by the CO in the NOA set forth in § 655.143 and contain the following information:

(1) Identify the name of each recruitment source and date(s) of advertisement;

(2) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker;

(3) Confirm that former U.S. workers were contacted, with a description by what means they were contacted and the date(s) of such contact, or state there are no former U.S. workers to contact; and

(4) If applicable, for each U.S. worker who applied for the position but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker.

(b) *Duty to update recruitment report.* The employer must continue to update the recruitment report until the end of the recruitment period, as set forth in § 655.135(d). The updated report must be made available in the event of a post-certification audit or upon request by the Department. The Department may share recruitment report information with any other Federal agency, as set forth in § 655.130(f).

§ 655.157 Withholding of U.S. workers prohibited.

(a) *Filing a complaint.* Any employer who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the place of employment of H-2A workers in order to force the hiring of U.S. workers during the recruitment period, as set forth in § 655.135(d), may submit a written complaint to the CO. The complaint must clearly identify the person or entity who the employer believes has withheld the U.S. workers, and must specify sufficient facts to support the allegation (e.g., dates, places, numbers and names of U.S. workers) which will permit an investigation to be conducted by the CO.

(b) *Duty to investigate.* Upon receipt, the CO must immediately investigate the complaint. The investigation must include interviews with the employer who has submitted the complaint, the person or entity named as responsible for withholding the U.S. workers, and the individual U.S. workers whose