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under § 655.30 in future filings of H–2B temporary labor certification applications.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.23 was removed and reserved, effective Apr. 23, 2012.

§ 655.24 Audits.

(a) *Discretion*. OFLC will conduct audits of H–2B temporary labor certification applications. The applications selected for audit will be chosen within the sole discretion of OFLC.

(b) *Audit letter*. When an application is selected for audit, the CO shall issue an audit letter to the employer. The audit letter will:

(1) State the application has been selected for audit and note documentation that must be submitted by the employer;

(2) Specify a date, no fewer than 14 days and no more than 30 days from the date of the audit letter's issuance, by which the required documentation must be received by the CO; and

(3) Advise that failure to comply with the audit process may result in a finding by the CO to:

(i) Require the employer to conduct supervised recruitment under § 655.30 in future filings of H–2B temporary labor certification applications for a period of up to 2 years, or

(ii) Debar the employer from future filings of H–2B temporary labor certification applications as provided in § 655.31.

(c) *Supplemental information*. During the course of the audit examination, the CO may request supplemental information and/or documentation from the employer to complete the audit.

(d) *Audit violations*. If, as a result of the audit, the CO determines the employer failed to produce all required documentation, or determines that the employer made a material misrepresentation with respect to the application, the employer may be required to conduct supervised recruitment under § 655.30 in future filings of H–2B temporary labor certification applications for up to 2 years, or may be subject to debarment pursuant to § 655.31 or other sanctions. The CO may provide the audit findings and underlying documentation to DHS, WHD, or another appropriate enforcement agency. The CO may refer any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.24 was removed and reserved, effective Apr. 23, 2012.

§§ 655.25–655.29 [Reserved]

PROCESSING OF AN APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, an undesignated center heading was added before § 655.30, effective Apr. 23, 2012.

§ 655.30 Supervised recruitment.

(a) *Supervised recruitment*. Where an employer is found to have violated program requirements, to have made a material misrepresentation to the Department, or to have failed to adequately conduct recruitment activities or failed in any obligation of this part, the CO may require pre-filing supervised recruitment.

(b) *Requirements*. Supervised recruitment shall consist of advertising for the job opportunity or opportunities in accordance with the required recruitment steps outlined under § 655.15, except as otherwise provided below.

(1) The CO will direct where the advertisements are to be placed.

(2) The employer must supply a draft advertisement and job order to the CO for review and approval no fewer than 150 days before the date on which the foreign worker(s) will commence work unless notified by the CO of the need for Supervised Recruitment less than 150 days before the date of need, in which case the employer must supply the drafts within 30 days of receipt of such notification.

(3) Each advertisement must comply with the requirements of § 655.17(a).

(4) The advertisement shall be placed in accordance with guidance provided by the CO.

(5) The employer will notify the CO when the advertisements are placed.

(c) *Recruitment report.* No fewer than 2 days after the last day of the posting of the job order and no fewer than 5 calendar days after the date on which the last newspaper or journal advertisement appeared, the employer must prepare a detailed written report of the employer's supervised recruitment, signed by the employer as outlined in § 655.15(i). The employer must submit the recruitment report to the CO within 30 days of the date of the first advertisement and must retain a copy for a period of no less than 3 years. The recruitment report must contain a copy of all advertisements and a copy of the SWA job order, including the dates so placed.

(d) The CO may refer any findings that an employer or its representative discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.30 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.30 Processing of an application and job order.

(a) *NPC review.* The CO will review the *Application for Temporary Employment Certification* and job order for compliance with all applicable program requirements.

(b) *Mailing and postmark requirements.* Any notice or request sent by the CO to an employer requiring a response will be mailed to the address provided in the *Application for Temporary Employment Certification* using methods to assure next day delivery, including electronic mail. The employer's response to such a notice or request must be mailed using methods to assure next day delivery, including electronic mail, and be sent by the due date or the next business day if the due date falls on a Saturday, Sunday or Federal holiday.

(c) *Information dissemination.* OFLC may forward information received in the course of processing an *Application for Temporary Employment Certification* and program integrity measures to WHD, or any other Federal agency, as appropriate, for investigation and/or enforcement purposes.

§ 655.31 Debarment.

(a) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer and any successor in interest to the debarred employer, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The Administrator, OFLC finds that the employer substantially violated a material term or condition of its temporary labor certification with respect to the employment of domestic or nonimmigrant workers; and

(2) The Administrator, OFLC issues a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(b) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer represented by an agent or attorney, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The agent or attorney participated in, had knowledge of, or had reason to know of, the employer's substantial violation; and

(2) The Administrator issues the agent or attorney a *Notice of Intent to Debar* no later than 2 years after the occurrence of the violation.

(c) No employer, attorney, or agent may be debarred under this subpart for more than 3 years.

(d) For the purposes of this section, a substantial violation includes:

(1) A pattern or practice of acts of commission or omission on the part of the employer or the employer's agent that:

(i) Are significantly injurious to the wages or benefits offered under the H–2B program or working conditions of a significant number of the employer's U.S. or H–2B workers;

(ii) Reflect a significant failure to offer employment to each qualified domestic worker who applied for the job opportunity for which certification was being sought, except for lawful job-related reasons;

(iii) Reflect a significant failure to comply with the employer's obligations to recruit U.S. workers as set forth in this subpart;

(iv) Reflect a significant failure to comply with the RFI or audit process pursuant to §§ 655.23 or 655.24;

(v) Reflect the employment of an H–2B worker outside the area of intended employment, or in an activity/activities, not listed in the job order (other than an activity minor and incidental to the activity/activities listed in the job order), or after the period of employment specified in the job order and any approved extension; or

(vi) Reflect a significant failure to comply with the supervised recruitment process pursuant to § 655.30.

(2) Fraud involving the *Application for Temporary Employment Certification* or a response to an audit;

(3) A significant failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under this subpart;

(4) A significant failure to comply with one or more sanctions or remedies imposed by the ESA for violation(s) of obligations under this subpart found by that agency (if applicable), or with one or more decisions or orders of the Secretary or a court order secured by the Secretary; or

(5) A single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected.

(e) DOL procedures for debarment under this section will be as follows:

(1) The Administrator, OFLC will send to the employer, attorney, or agent a *Notice of Intent to Debar* by means normally ensuring next-day delivery, which will contain a detailed statement of the grounds for the proposed debarment. The employer, attorney, or agent may submit evidence in rebuttal within 14 calendar days of the date the notice is issued. The Administrator, OFLC must consider all relevant evidence presented in deciding whether to debar the employer, attorney, or agent.

(2) If rebuttal evidence is not timely filed by the employer, attorney, or agent, the *Notice of Intent to Debar* will become the final decision of the Secretary and take effect immediately at the end of the 14-day period.

(3) If, after reviewing the employer's timely filed rebuttal evidence, the Administrator, OFLC determines that the employer, attorney, or agent more likely than not meets one or more of the bases for debarment under § 655.31(d), the Administrator, OFLC will notify the employer, by means normally ensuring next-day delivery, within 14 calendar days after receiving such timely filed rebuttal evidence, of his/her final determination of debarment and of the employer, attorney, or agent's right to appeal.

(4) The *Notice of Debarment* must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and must offer the employer, attorney, or agent an opportunity to request a hearing. The notice must state that to obtain such a review or hearing, the debarred party must, within 30 calendar days of the date of the notice file a written request to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy to the Administrator, OFLC. The debarment will take effect 30 days from the date the *Notice of Debarment* is issued, unless a request for a hearing is properly filed within 30 days from the date the *Notice of Debarment* is issued. The timely filing of a request for a hearing stays the debarment pending the outcome of the appeal.

(5)(i) *Hearing*. Within 10 days of receipt of the request for a hearing, the Administrator, OFLC will send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

(ii) *Decision*. After the hearing, the ALJ must affirm, reverse, or modify the Administrator, OFLC 's determination. The ALJ's decision must be provided immediately to the employer, Administrator, OFLC, DHS, and DOS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary, unless either party, within 30 calendar days of the ALJ's decision, seeks review of the

decision with the Administrative Review Board (ARB).

(iii) Review by the ARB.

(A) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB must decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding in person or by certified mail.

(B) Upon receipt of the ARB's notice to accept the petition, the Office of Administrative Law Judges shall promptly forward a copy of the complete hearing record to the ARB.

(C) Where the ARB has determined to review such decision and order, the ARB shall notify each party of:

(*1*) The issue or issues raised;

(*2*) The form in which submissions shall be made (*i.e.*, briefs, oral argument, etc.); and

(*3*) The time within which such presentation shall be submitted.

(D) The ARB's final decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ, in person or by certified mail. If the ARB fails to provide a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final decision of the Secretary.

(f) *Inter-agency reporting*. After completion of the appeal process, DOL will inform DHS and other appropriate enforcement agencies of the findings and provide a copy of the *Notice of Debarment*.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.31 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.31 Notice of deficiency.

(a) *Notification timeline*. If the CO determines the *Application for Temporary Employment Certification* and/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 business days from the CO's receipt of the *Application for Temporary Employment Certification*. If applicable, the Notice of Deficiency will include job order deficiencies identified by the SWA under § 655.16. The CO will send a copy of the Notice of Deficiency to the SWA serving the area of intended employment identified by the employer on its job order, and if applicable, to the employer's attorney or agent.

(b) *Notice content*. The Notice of Deficiency will:

(1) State the reason(s) why the *Application for Temporary Employment Certification* or job order fails to meet the criteria for acceptance and state the modification needed for the CO to issue a Notice of Acceptance;

(2) Offer the employer an opportunity to submit a modified *Application for Temporary Employment Certification* or job order within 10 business days from the date of the Notice of Deficiency. The Notice will state the modification needed for the CO to issue a Notice of Acceptance;

(3) Offer the employer an opportunity to request administrative review of the Notice of Deficiency before an ALJ under provisions set forth in § 655.61. The notice will inform the employer that it must submit a written request for review to the Chief ALJ of DOL within 10 business days from the date the Notice of Deficiency is issued by facsimile or other means normally assuring next day delivery, and that the employer must 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

(4) State that if the employer does not comply with the requirements of this section by either submitting a modified application within 10 business days or requesting administrative review before an ALJ under § 655.61, the CO will deny the *Application for Temporary Employment Certification*. The notice will inform the employer that the denial of the *Application for Temporary Employment Certification* is final, and cannot be appealed. The Department will not further consider that *Application for Temporary Employment Certification*.

§ 655.32 Labor certification determinations.

(a) *COs*. The Administrator, OFLC, is the Department's National CO. The Administrator, and the CO(s) in the NPC

(by virtue of delegation from the Administrator), have the authority to certify or deny applications for temporary employment certification under the H–2B nonimmigrant classification. If the Administrator directs that certain types of temporary labor certification applications or specific applications under the H–2B nonimmigrant classification be handled by the National OFLC, the Director of the Chicago NPC will refer such applications to the Administrator.

(b) *Determination*. The CO will make a determination either to grant or deny the *Application for Temporary Employment Certification*. The CO will grant the application if and only if the employer has met all the requirements of this subpart, including the criteria for certification defined in § 655.23(b), thus demonstrating that an insufficient number of qualified U.S. workers are available for the job opportunity for which certification is sought and the employment of the H–2B workers will not adversely affect the benefits, wages, and working conditions of similarly employed U.S. workers.

(c) *Notice*. The CO will notify the employer in writing (either electronically or by U.S. Mail) of the labor certification determination.

(d) *Approved certification*. If temporary labor certification is granted, the CO must send the certified *Application for Temporary Employment Certification* and a Final Determination letter to the employer, or, if appropriate, to the employer's agent or attorney with a copy to the employer. The Final Determination letter will notify the employer to file the certified application and any other documentation required by USCIS with the appropriate USCIS office.

(e) *Denied certification*. If temporary labor certification is denied, the Final Determination letter will:

(1) State the reason(s) certification is denied, citing the relevant regulatory standards and/or special procedures;

(2) If applicable, address the availability of U.S. workers in the occupation as well as the prevailing benefits, wages, and working conditions of similarly employed U.S. workers in the occupation and/or any applicable special procedures;

(3) Offer the employer an opportunity to request administrative review of the denial available under § 655.33, or to file a new application in accordance with specific instructions provided by the CO; and

(4) State that if the employer does not request administrative review in accordance with § 655.33, the denial is final and the Department will not further consider that application for temporary alien nonagricultural labor certification.

(f) *Partial certification*. The CO may, in his/her discretion, and to ensure compliance with all statutory and regulatory requirements, issue a partial certification, reducing either the period of need, the number of H–2B positions being requested, or both, based upon information the CO receives in the course of processing the temporary labor certification application, an RFI, or otherwise. If a partial labor certification is issued, the Final Determination letter will:

(1) State the reason(s) for which either the period of need and/or the number of H–2B positions requested has been reduced, citing the relevant regulatory standards and/or special procedures;

(2) If applicable, address the availability of U.S. workers in the occupation;

(3) Offer the employer an opportunity to request administrative review of the partial labor certification available under § 655.33; and

(4) State that if the employer does not request administrative review in accordance with § 655.33, the partial labor certification is final and the Department will not further consider that application for temporary nonagricultural labor certification.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.32 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.32 Submission of a modified application or job order.

(a) *Review of a modified Application for Temporary Employment Certification or job order*. Upon receipt of a response to a Notice of Deficiency, including any modifications, the CO will review the response. The CO may issue one or more additional Notices of Deficiency before issuing a Notice of Decision. The employer's failure to comply with a Notice of

Deficiency, including not responding in a timely manner or not providing all required documentation, will result in a denial of the *Application for Temporary Employment Certification*.

(b) *Acceptance of a modified Application for Temporary Employment Certification or job order*. If the CO accepts the modification(s) to the *Application for Temporary Employment Certification* and/or job order, the CO will issue a Notice of Acceptance to the employer. The CO will send a copy of the Notice of Acceptance to the SWA instructing it to make any necessary modifications to the not yet posted job order and, if applicable, to the employer's attorney or agent, and follow the procedure set forth in § 655.33.

(c) *Denial of a modified Application for Temporary Employment Certification or job order*. If the CO finds the response to Notice of Deficiency unacceptable, the CO will deny the *Application for Temporary Employment Certification* in accordance with the labor certification determination provisions in § 655.51.

(d) *Appeal from denial of a modified Application for Temporary Employment Certification or job order*. The procedures for appealing a denial of a modified *Application for Temporary Employment Certification* and/or job order are the same as for appealing the denial of a non-modified *Application for Temporary Employment Certification* outlined in § 655.61.

(e) *Post acceptance modifications*. Irrespective of the decision to accept the *Application for Temporary Employment Certification*, the CO may require modifications to the job order at any time before the final determination to grant or deny the *Application for Temporary Employment Certification* if the CO determines that the offer of employment does not contain all the minimum benefits, wages, and working condition provisions as set forth in § 655.18. The employer must make such modification, or certification will be denied under § 655.53. The employer must provide all workers recruited in connection with the job opportunity in the *Application for Temporary Employment Certification* with a copy of the modified job order no later than the date work commences, as approved by the CO.

§ 655.33 Administrative review.

(a) *Request for review*. If a temporary labor certification is denied, in whole or in part, under § 655.32, the employer may request review of the denial by the BALCA. The request for review:

(1) Must be sent to the BALCA, with a copy simultaneously sent to the CO who denied the application, within 10 calendar days of the date of determination;

(2) Must clearly identify the particular temporary labor certification determination for which review is sought;

(3) Must set forth the particular grounds for the request;

(4) Must include a copy of the Final Determination; and

(5) May contain only legal argument and such evidence as was actually submitted to the CO in support of the application.

(b) Upon the receipt of a request for review, the CO shall, within 5 business days assemble and submit the Appeal File using means to ensure same day or overnight delivery, to the BALCA, the employer, and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

(c) Within 5 business days of receipt of the Appeal File, the counsel for the CO may submit, using means to ensure same day or overnight delivery, a brief in support of the CO's decision.

(d) The Chief Administrative Law Judge may designate a single member or a three member panel of the BALCA to consider a particular case.

(e) The BALCA must review a denial of temporary labor certification only on the basis of the Appeal File, the request for review, and any legal briefs submitted and must:

(1) Affirm the denial of the temporary labor certification; or

(2) Direct the CO to grant the certification; or

(3) Remand to the CO for further action.

(f) The BALCA should notify the employer, the CO, and counsel for the CO of its decision within 5 business days of the submission of the CO's brief or 10 days after receipt of the Appeal File, whichever is earlier, using means to ensure same day or overnight delivery.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.33 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.33 Notice of acceptance.

(a) *Notification timeline*. If the CO determines the *Application for Temporary Employment Certification* and job order are complete and meet the requirements of this subpart, the CO will notify the employer in writing within 7 business days from the date the CO

received the *Application for Temporary Employment Certification* and job order or modification thereof. A copy of the Notice of Acceptance will be sent to the SWA serving the area of intended employment identified by the employer on its job order and, if applicable, to the employer's attorney or agent.

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

(1) Direct the employer to engage in recruitment of U.S. workers as provided in §§ 655.40–655.46, including any additional recruitment ordered by the CO under § 655.46;

(2) State that such employer-conducted recruitment is in addition to the job order being circulated by the SWA(s) and that the employer must conduct recruitment within 14 calendar days from the date the Notice of Acceptance is issued, consistent with § 655.40;

(3) Direct the SWA to place the job order into intra- and interstate clearance as set forth in § 655.16 and to commence such clearance by:

(i) Sending a copy of the job order to other States listed as anticipated worksites in the *Application for Temporary Employment Certification* and job order, if applicable; and

(ii) Sending a copy of the job order to the SWAs for all States designated by the CO for interstate clearance;

(4) Instruct the SWA to keep the approved job order on its active file until the end of the recruitment period as defined in § 655.40(c), and to transmit the same instruction to other SWAs to which it circulates the job order in the course of interstate clearance;

(5) Where the occupation or industry is traditionally or customarily unionized, direct the SWA to circulate a copy of the job order to the following labor organizations:

(i) The central office of the State Federation of Labor in the State(s) in which work will be performed; and

(ii) The office(s) of local union(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed;

(6) Advise the employer, as appropriate, that it must contact the appropriate designated community-based organization(s) with notice of the job opportunity; and

(7) Require the employer to submit a report of its recruitment efforts as specified in § 655.48.

§ 655.34 Validity of temporary labor certifications.

(a) *Validity period*. A temporary labor certification is valid only for the period of time between the beginning and ending dates of employment, as certified by the OFLC Administrator on the *Application for Temporary Employment Certification*. The certification expires on the last day of authorized employment.

(b) *Scope of validity*. A temporary labor certification is valid only for the number of H–2B positions, the area of intended employment, the specific services or labor to be performed, and the employer specified on the certified *Application for Temporary Employment Certification* and may not be transferred from one employer to another.

(c) *Amendments to applications*. (1) Applications may be amended at any time, before the CO's certification determination, to increase the number of positions requested in the initial application by not more than 20 percent (50 percent for employers requesting less than 10 positions) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved by the CO only when the request is submitted in writing, the need for additional workers could not have been reasonably foreseen, and the employer's services or products will be in jeopardy prior to the time that new H–2B workers could be secured.

(2) Applications may be amended to make minor changes in the period of employment, only when a written request is submitted to the CO and written approval obtained in advance. 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(s) of a decision to approve on the adequacy of the underlying test of the domestic labor market for the job opportunity.

(3) Other amendments to the application, including elements of the job offer and the place of work, may be requested, in writing, and will be granted if the CO determines the proposed amendment(s) are justified and will have no significant effect upon the CO's ability to make the labor certification determination required under § 655.32.

(4) The CO may change the date of need to reflect an amended date when delays occur in the adjudication of the *Application for Temporary Employment Certification*, through no fault of the employer, and the certification would

otherwise become valid after the initial date of need.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.34 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.34 Electronic job registry.

(a) *Location of and placement in the electronic job registry*. Upon acceptance of the *Application for Temporary Employment Certification* under § 655.33, the CO will place for public examination a copy of the job order posted by the SWA on the Department's electronic job registry, including any amendments or required modifications approved by the CO.

(b) *Length of posting on electronic job registry*. The Department will keep the job order posted on the electronic job registry until the end of the recruitment period, as set forth in § 655.40(c).

(c) *Conclusion of active posting*. Once the recruitment period has concluded the job order will be placed in inactive status on the electronic job registry.

§ 655.35 Required departure.

(a) *Limit to worker's stay*. As defined further in DHS regulations, a temporary labor certification shall limit the authorized period of stay for any H–2B worker whose admission is based upon it. 8 CFR 214.2(h)(13). A foreign worker may not remain in the U.S. beyond the validity period of admission by DHS in H–2B status nor beyond separation from employment, whichever occurs first, absent any extension or change of such worker's status or grace period pursuant to DHS regulations.

(b) *Notice to worker*. Upon establishment of a pilot program by DHS for registration of departure, the employer must notify any H–2B worker starting work at a job opportunity for which the employer has obtained labor certification that the H–2B worker, when departing the U.S. by land at the conclusion of employment as described in paragraph (a) of this section, must register such departure at the place and in the manner prescribed by DHS. This requirement will apply only to H–2B foreign workers entering from ports of entry participating in the DHS pilot program.

EFFECTIVE DATE NOTE: At 77 FR 10160, Feb. 21, 2012, § 655.35 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.35 Amendments to an application or job order.

(a) *Increases in number of workers*. The employer may request to increase the number of workers noted in the *H–2B Registration* by no more than 20 percent (50 percent for employers requesting fewer than 10 workers). All requests for increasing the number of workers must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry. The employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order.

(b) *Minor changes to the period of employment*. The employer may request minor changes to the total period of employment listed on its *Application for Temporary Employment Certification* and job order, for a period of up to 14 days, but the period of employment may not exceed a total of 9 months, except in the event of a one-time occurrence. All requests for minor changes to the total period of employment must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry. The employer must promptly provide copies of any approved amendments to all U.S. workers hired under the original job order.

(c) *Other amendments to the Application for Temporary Employment Certification and job order*. The employer may request other amendments to the *Application for Temporary Employment Certification* and job order. All such requests must be made in writing and will not be effective until approved by the CO. In considering whether to approve the request, the CO will determine whether the proposed amendment(s) are sufficiently justified and must take into account the effect of the changes on the underlying labor market test for the job opportunity. Upon acceptance of an amendment, the CO will submit to the SWA any necessary changes to the job order and update the electronic job registry.

(d) Amendments after certification are not permitted. The employer must promptly provide copies of any approved amendments to

all U.S. workers hired under the original job order.

§§ 655.36–655.39 [Reserved]

EFFECTIVE DATE NOTE: At 77 FR 10162, Feb. 21, 2012, §§ 655.36–655.39 were added and reserved, effective Apr. 23, 2012.

POST-ACCEPTANCE REQUIREMENTS

EFFECTIVE DATE NOTE: At 77 FR 10162, Feb. 21, 2012, an undesignated center heading was added before § 655.40, effective Apr. 23, 2012.

§ 655.40 Employer-conducted recruitment.

(a) *Employer obligations.* Employers must conduct recruitment of U.S. workers to ensure that there are not qualified U.S. workers who will be available for the positions listed in the *Application for Temporary Employment Certification*. U.S. Applicants can be rejected only for lawful job-related reasons.

(b) *Employer-conducted recruitment period.* Unless otherwise instructed by the CO, the employer must conduct the recruitment described in §§ 655.42–655.46 within 14 calendar days from the date the Notice of Acceptance is issued. All employer-conducted recruitment must be completed before the employer submits the recruitment report as required in § 655.48.

(c) *U.S. worker referrals.* Employers must continue to accept referrals of all U.S. applicants interested in the position until 21 days before the date of need.

(d) *Interviewing U.S. workers.* Employers that wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Employers cannot provide potential H–2B workers with more favorable treatment with respect to the requirement for, and conduct of, interviews.

(e) *Qualified and available U.S. workers.* The employer must consider all U.S. applicants for the job opportunity. The employer must accept and hire any applicants who are qualified and who will be available.

(f) *Recruitment report.* The employer must prepare a recruitment report meeting the requirements of § 655.48.

[77 FR 10162, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10162, Feb. 21, 2012, § 655.40 was added, effective Apr. 23, 2012.

§ 655.41 Advertising requirements.

(a) All recruitment conducted under §§ 655.42–655.46 must contain terms and conditions of employment that are not less favorable than those offered to the H–2B workers and, at a minimum, must comply with the assurances applicable to job orders as set forth in § 655.18(a).

(b) All advertising must contain the following information:

(1) The employer's name and contact information;

(2) The geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(3) A description of the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

(4) A statement that the job opportunity is a temporary, full-time position including the total number of job openings the employer intends to fill;

(5) If applicable, a statement that overtime will be available to the worker and the wage offer(s) for working any overtime hours;

(6) If applicable, a statement indicating that on-the-job training will be provided to the worker;

(7) The wage that the employer is offering, intends to offer or will provide to the H–2B workers, or in the event that there are multiple wage offers (such as where an itinerary is authorized through special procedures for an employer), the range of applicable wage offers, each of which must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage;

(8) If applicable, any board, lodging, or other facilities the employer will