

all time. Such facilities shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals shall not be stored in the housing area.

## **PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES**

Sec.

655.0 Purpose and scope of part.

655.00 Authority of the Office of Foreign Labor Certification (OFLC) Administrator under subparts A, B, and C.

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655.2 Territory of Guam.

655.3 Special procedures.

655.4 Definitions of terms used in this subpart.

655.5 Purpose and scope of subpart A.

655.6 Temporary need.

655.7 Persons and entities authorized to file.

655.8 Requirements for agents.

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655.11 Certifying officer review of prevailing wage determinations.

655.12 Use of registration of H-2B employers.

655.13 Review of PWDs.

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655.22 Obligations of H-2B employers.

655.23 Receipt and processing of applications.

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655.25-655.29 [Reserved]

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655.30 Supervised recruitment.

655.31 Debarment.

655.32 Labor certification determinations.

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655.41 Advertising requirements.

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655.51 Criteria for certification.

655.52 Approved certification.

655.53 Denied certification.

655.54 Partial certification.

655.55 Validity of temporary labor certification.

655.56 Document retention requirements of H-2B employers.

655.57 Request for determination based on nonavailability of U.S. workers.

655.58-655.59 [Reserved]

655.60 Violations.

655.61 Administrative review.

655.62 Withdrawal of an Application for Temporary Employment Certification.

655.63 Public disclosure.

655.64 [Reserved]

655.65 Remedies for violations.

655.66-655.69 [Reserved]

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655.71 Request for hearing.

655.72 Hearing rules of practice.

655.73 Service of pleadings.

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- 655.75 Decision and order of administrative law judge.
- 655.76 Appeal of administrative law judge decision.
- 655.80 Notice to OFLC and DHS.
- 655.81 Application filing transition.
- 655.82–655.99 [Reserved]

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- 655.100 Scope and purpose of subpart B.
- 655.101 Authority of the Office of Foreign Labor Certification (OFLC) administrator.
- 655.102 Special procedures.
- 655.103 Overview of this subpart and definition of terms.

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- 655.121 Job orders.
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- 655.133 Requirements for agents.
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- 655.161 Criteria for certification.
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- 655.201 Temporary labor certification applications.
- 655.202 Contents of job offers.
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- 655.302 Definitions.
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- 655.415 Written notice and service of Administrator's determination.
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- 655.430 Service and computation of time.
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- 655.501 Overview of responsibilities.
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- 655.531 Who may submit attestations for locations in Alaska?
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- 655.534 The first attestation element for locations in Alaska: Bona fide request for dispatch of United States longshore workers.
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- 655.700 What statutory provisions govern the employment of H–1B, H–1B1, and E–3 nonimmigrants and how do employers apply for H–1B, H–1B1, and E–3 visas?
- 655.705 What Federal agencies are involved in the H–1B and H–1B1 programs, and what are the responsibilities of those agencies and of employers?

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- 655.710 What is the procedure for filing a complaint?
- 655.715 Definitions
- 655.720 Where are labor condition applications (LCAs) to be filed and processed?
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- 655.730 What is the process for filing a labor condition application?
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- 655.735 What are the special provisions for short-term placement of H-1B non-immigrants at place(s) of employment outside the area(s) of intended employment listed on the LCA?
- 655.736 What are H-1B-dependent employers and willful violators?
- 655.737 What are "exempt" H-1B non-immigrants, and how does their employment affect the additional attestation obligations of H-1B-dependent employers and willful violator employers?
- 655.738 What are the "non-displacement of U.S. workers" obligations that apply to H-1B-dependent employers and willful violators, and how do they operate?
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- 655.740 What actions are taken on labor condition applications?
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- 655.801 What protection do employees have from retaliation?
- 655.805 What violations may the Administrator investigate?
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- 655.808 Under what circumstances may random investigations be conducted?
- 655.810 What remedies may be ordered if violations are found?
- 655.815 What are the requirements for the Administrator's determination?
- 655.820 How is a hearing requested?

- 655.825 What rules of practice apply to the hearing?
- 655.830 What rules apply to service of pleadings?
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- 655.840 What are the requirements for a decision and order of the administrative law judge?
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- 655.1050 Administrative record.
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655.1060 Non-applicability of the Equal Access to Justice Act.

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- 655.1102 What are the definitions of terms that are used in these regulations?
- 655.1110 What requirements are imposed in the filing of an attestation?
- 655.1111 Element I—What hospitals are eligible to participate in the H-1C program?
- 655.1112 Element II—What does “no adverse effect on wages and working conditions” mean?
- 655.1113 Element III—What does “facility wage rate” mean?
- 655.1114 Element IV—What are the timely and significant steps an H-1C employer must take to recruit and retain U.S. nurses?
- 655.1115 Element V—What does “no strike/lockout or layoff” mean?
- 655.1116 Element VI—What notification must facilities provide to registered nurses?
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- 655.1316 Job Service Complaint System; enforcement of work contracts.
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- 655.1318 Debarment.
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### § 655.0 Scope and purpose of part.

(a) *Subparts A, B, and C*—(1) *General*. Subparts A, B, and C of this part set out the procedures adopted by the Secretary to secure information sufficient to make factual determinations of: (i) Whether U.S. workers are available to perform temporary employment in the United States, for which an employer desires to employ nonimmigrant foreign workers, and (ii) whether the employment of aliens for such temporary work will adversely affect the wages or working conditions of similarly employed U.S. workers. These factual determinations (or a determination that there are not sufficient facts to make one or both of these determinations) are required to carry out the policies of the Immigration and Nationality Act (INA), that a nonimmigrant alien worker not be admitted to fill a particular temporary job opportunity unless no qualified U.S. worker is available to fill the job opportunity, and unless the employment of the foreign worker in the job opportunity will not adversely affect the wages or working

conditions of similarly employed U.S. workers.

(2) *The Secretary's determinations*. Before any factual determination can be made concerning the availability of U.S. workers to perform particular job opportunities, two steps must be taken. First, the minimum level of wages, terms, benefits, and conditions for the particular job opportunities, below which similarly employed U.S. workers would be adversely affected, must be established. (The regulations in this part establish such minimum levels for wages, terms, benefits, and conditions of employment.) Second, the wages, terms, benefits, and conditions offered and afforded to the aliens must be compared to the established minimum levels. If it is concluded that adverse effect would result, the ultimate determination of availability within the meaning of the INA cannot be made since U.S. workers cannot be expected to accept employment under conditions below the established minimum levels. *Florida Sugar Cane League, Inc. v. Usery*, 531 F. 2d 299 (5th Cir. 1976).

Once a determination of no adverse effect has been made, the availability of U.S. workers can be tested only if U.S. workers are actively recruited through the offer of wages, terms, benefits, and conditions at least at the minimum level or the level offered to the aliens, whichever is higher. The regulations in this part set forth requirements for recruiting U.S. workers in accordance with this principle.

(3) *Construction*. This part and its subparts shall be construed to effectuate the purpose of the INA that U.S. workers rather than aliens be employed wherever possible. *Elton Orchards, Inc. v. Brennan*, 508 F. 2d 493, 500 (1st Cir. 1974), *Flecha v. Quiros*, 567 F. 2d 1154 (1st Cir. 1977). Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the terms and conditions of domestic workers similarly employed, *Williams v. Usery*, 531 F. 2d 305 (5th Cir. 1976); *Florida Sugar Cane League, Inc. v. Usery*, 531 F. 2d 299 (5th Cir. 1976), and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.