

§ 655.48

20 CFR Ch. V (4-1-12 Edition)

§ 655.48 Recruitment report.

(a) *Requirements of the recruitment report.* The employer must prepare, sign, and date a recruitment report. The recruitment report must be submitted by a date specified by the CO in the Notice of Acceptance and contain the following information:

(1) The name of each recruitment activity or source (e.g., job order and the name of the newspaper);

(2) 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's application. The employer must clearly indicate whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined;

(3) Confirmation that former U.S. employees were contacted, if applicable, and by what means;

(4) Confirmation that the bargaining representative was contacted, if applicable, and by what means, or that the employer posted the availability of the job opportunity to all employees in the job classification and area in which the work will be performed by the H-2B workers;

(5) Confirmation that the community-based organization designated by the CO was contacted, if applicable;

(6) If applicable, confirmation that additional recruitment was conducted as directed by the CO; and

(7) If applicable, for each U.S. worker who applied for the position but was not hired, 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 throughout the recruitment period. The updated report need not be submitted to the Department, but must be made available in the event of a post-certification audit or upon request by DOL.

[77 FR 10162, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10162, Feb. 21, 2012, § 655.48 was added, effective Apr. 23, 2012.

§ 655.49 [Reserved]

EFFECTIVE DATE NOTE: At 77 FR 10162, Feb. 21, 2012, § 655.49 was added and reserved, effective Apr. 23, 2012.

LABOR CERTIFICATION DETERMINATIONS

EFFECTIVE DATE NOTE: At 77 FR 10163, Feb. 21, 2012, an undesignated center heading was added before § 655.50, effective Apr. 23, 2012.

§ 655.50 Enforcement process.

(a) *Authority of the WHD Administrator.* The WHD Administrator shall perform all the Secretary's investigative and enforcement functions under secs. 1101(a)(15)(H)(ii)(b), 103(a)(6), and 214(c) of the INA, pursuant to the delegation of authority from the Secretary of Homeland Security to the Secretary of Labor.

(b) *Conduct of investigations.* The Administrator, WHD, shall, either pursuant to a complaint or otherwise, conduct such investigations as may, in the judgment of the Administrator, be appropriate, and in connection therewith, may enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons, and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of investigation.

(c) *Employer cooperation/availability of records.* An employer shall at all times cooperate in administrative and enforcement proceedings. An employer being investigated shall make available to the WHD Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Secretary, or a duly authorized and designated representative. No employer or representative or agent of an employer subject to the provisions of secs. 1101(a)(15)(H)(ii)(b) and 214(c) of the INA and/or of this subpart shall interfere with any official of the

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Department who is performing an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(b) or 1184(c). Any such interference shall be a violation of the labor certification application and of this subpart, and the Administrator may take such further actions as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Confidentiality*. The WHD Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under this subpart.

EFFECTIVE DATE NOTE: At 77 FR 10163, Feb. 21, 2012, §655.50 was revised, effective Apr. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 655.50 Determinations.

(a) *Certifying Officers (COs)*. The Administrator, OFLC is the Department's National CO. The Administrator, OFLC and the CO(s), by virtue of delegation from the Administrator, OFLC, have the authority to certify or deny *Applications for Temporary Employment Certification* under the H-2B non-immigrant classification. If the Administrator, OFLC directs that certain types of temporary labor certification applications or a specific *Application for Temporary Employment Certification* under the H-2B non-immigrant classification be handled by the OFLC's National Office, the Director of the NPC will refer such applications to the Administrator, OFLC.

(b) *Determination*. Except as otherwise provided in this paragraph, the CO will make a determination either to certify or deny the *Application for Temporary Employment Certification*. The CO will certify the application only if the employer has met all the requirements of this subpart, including the criteria for certification in §655.51, thus demonstrating that there is an insufficient number of U.S. workers who are qualified and who will be available for the job opportunity for which certification is sought and that the employment of the H-2B workers will not adversely affect the benefits, wages, and working conditions of similarly employed U.S. workers.

§ 655.51 Criteria for certification.

(a) The criteria for certification include whether the employer has a valid *H-2B Registration* to participate in the

H-2B program and has complied with all of the requirements necessary to grant the labor certification.

(b) In making a determination whether there are insufficient U.S. workers to fill the employer's job opportunity, the CO will count as available any U.S. worker referred by the SWA or any U.S. worker who applied (or on whose behalf an application is made) directly to the employer, but who was rejected by the employer for other than a lawful job-related reason.

(c) A certification will not be granted to an employer that has failed to comply with one or more sanctions or remedies imposed by final agency actions under the H-2B program.

[77 FR 10164, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10164, Feb. 21, 2012, §655.51 was added, effective Apr. 23, 2012.

§ 655.52 Approved certification.

If a temporary labor certification is granted, the CO will send the approved *Application for Temporary Employment Certification* and a Final Determination letter to the employer by means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. If and when the *Application for Temporary Employment Certification* will be permitted to be electronically filed, the employer must sign the certified *Application for Temporary Employment Certification* as directed by the CO. The employer must retain a signed copy of the *Application for Temporary Employment Certification*, as required by §655.56.

[77 FR 10164, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10164, Feb. 21, 2012, §655.52 was added, effective Apr. 23, 2012.

§ 655.53 Denied certification.

If a temporary labor certification is denied, the CO will send the Final Determination letter to the employer by means normally assuring next day delivery, including electronic mail, and a copy, if applicable, to the employer's attorney or agent. The Final Determination letter will: