

## Employment and Training Administration, Labor

## § 655.53

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:

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

(b) Offer the employer an opportunity to request administrative review of the denial under § 655.61; and

(c) State that if the employer does not request administrative review in accordance with § 655.61, the denial is final and the Department will not accept any appeal on that *Application for Temporary Employment Certification*.

[77 FR 10164, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10164, Feb. 21, 2012, § 655.53 was added, effective Apr. 23, 2012.

## § 655.54 Partial certification.

The CO may issue a partial certification, reducing either the period of need or the number of H-2B workers or both for certification, based upon information the CO receives during the course of processing the *Application for Temporary Employment Certification*. The number of workers certified will be reduced by one for each referred U.S. worker who is qualified and who will be available at the time and place needed to perform the services or labor and who has not been rejected for lawful job-related reasons. If a partial labor certification is issued, the CO will amend the *Application for Temporary Employment Certification* and then return it to the employer with a Final Determination letter, with a copy to the employer's attorney or agent, if applicable. The Final Determination letter will:

(a) State the reason(s) why either the period of need and/or the number of H-2B workers requested has been reduced, citing the relevant regulatory standards and/or special procedures;

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

(c) Offer the employer an opportunity to request administrative review of the partial certification under § 655.61; and

(d) State that if the employer does not request administrative review in accordance with § 655.61, the partial certification is final and the Department will not accept any appeal on

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that *Application for Temporary Employment Certification*.

[77 FR 10164, Feb. 21, 2012]

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## § 655.55 Validity of temporary labor certification.

(a) *Validity period.* A temporary labor certification is valid only for the period as approved 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 job classification and specific services or labor to be performed, and the employer specified on the approved *Application for Temporary Employment Certification*, including any approved modifications. The temporary labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

[77 FR 10164, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10164, Feb. 21, 2012, § 655.55 was added, effective Apr. 23, 2012.

## § 655.56 Document retention requirements of H-2B employers.

(a) *Entities required to retain documents.* All employers filing an *Application for Temporary Employment Certification* requesting H-2B workers are required to retain the documents and records proving compliance with 29 CFR part 503 and this subpart, including but not limited to those specified in paragraph (c) of this section.

(b) *Period of required retention.* The employer must retain records and documents for 3 years from the date of certification of the *Application for Temporary Employment Certification*, or from the date of adjudication if the *Application for Temporary Employment Certification* is denied, or 3 years from the day the Department receives the letter of withdrawal provided in accordance with § 655.62. For the purposes of this