

(b) Offer the applicant an opportunity to request an expedited administrative review, or a de novo administrative hearing before an ALJ, of the denial. The notice must state that in order to obtain such a review or hearing, the employer, within 7 calendar days of the date of the notice, must file by facsimile (fax), or other means normally assuring next day delivery, a written request to the Chief ALJ of DOL (giving the address) and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the CO's action; and

(c) State that if the employer does not request an expedited administrative judicial review or a de novo hearing before an ALJ within the 7 calendar days, the denial is final and the Department will not further consider that *Application for Temporary Employment Certification*.

§ 655.165 Partial certification.

The CO may issue a partial certification, reducing either the period of need or the number of H-2A workers being requested or both for certification, based upon information the CO receives during the course of processing the *Application for Temporary Employment Certification*, an audit, or otherwise. The number of workers certified will be reduced by one for each referred U.S. worker who is able, willing, and qualified, and who will be available at the time and place needed and has not been rejected for lawful job-related reasons, to perform the services or labor. If a partial labor certification is issued, the Final Determination letter will:

(a) State the reason(s) why either the period of need and/or the number of H-2A workers requested has been reduced;

(b) Offer the applicant an opportunity to request an expedited administrative review, or a de novo administrative hearing before an ALJ, of the decision. The notice will state that in order to obtain such a review or hearing, the employer, within 7 calendar days of the date of the notice, will file by facsimile or other means normally assuring next day delivery a written request to the Chief ALJ of DOL (giv-

ing the address) and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the CO's action; and

(c) State that if the employer does not request an expedited administrative judicial review or a de novo hearing before an ALJ within the 7 calendar days, the partial certification is final and the Department will not further consider that *Application for Temporary Employment Certification*.

§ 655.166 Requests for determinations based on nonavailability of U.S. workers.

(a) *Standards for requests.* If a temporary labor certification has been partially granted or denied based on the CO's determination that able, willing, available, eligible, and qualified U.S. workers are available, and, on or after 30 calendar days before the date of need, some or all of those U.S. workers are, in fact, no longer able, willing, eligible, qualified, or available, the employer may request a new temporary labor certification determination from the CO. Prior to making a new determination the CO will promptly ascertain (which may be through the SWA or other sources of information on U.S. worker availability) whether specific able, willing, eligible and qualified replacement U.S. workers are available or can be reasonably expected to be present at the employer's establishment within 72 hours from the date the employer's request was received. The CO will expeditiously, but in no case later than 72 hours after the time a complete request (including the signed statement included in paragraph (b) of this section) is received, make a determination on the request. An employer may appeal a denial of such a determination in accordance with the procedures contained in § 655.171.

(b) *Unavailability of U.S. workers.* The employer's request for a new determination must be made directly to the CO by telephone or electronic mail, and must be confirmed by the employer in writing as required by this paragraph. If the employer telephonically or via electronic mail requests the new determination by asserting solely that