

the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the NPC.

(4) If the employer-provided survey is found not to be acceptable, the NPC will inform the employer in writing of the reasons the survey was not accepted.

(5) The employer, after receiving notification that the survey it provided for NPC consideration is not acceptable, may file supplemental information as provided by paragraph (h) of this section, file a new request for a PWD, or appeal under § 656.41.

(h) *Submittal of supplemental information by employer.* (1) If the employer disagrees with the skill level assigned to its job opportunity, or if the NPC informs the employer its survey is not acceptable, or if there are other legitimate bases for such a review, the employer may submit supplemental information to the NPC.

(2) The NPC will consider one supplemental submission about the employer's survey or the skill level the NPC assigned to the job opportunity or any other legitimate basis for the employer to request such a review. If the NPC does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, it will inform the employer of the reasons for its decision.

(3) The employer may then apply for a new wage determination or appeal under § 656.41 of this part.

(i) *Frequent users.* The Secretary will issue guidance regarding the process by which employers may obtain a wage determination to apply to a subsequent application, when the wage is for the same occupation, skill level, and area of intended employment. In no case may the wage rate the employer provides the NPC be lower than the highest wage required by any applicable Federal, State, or local law.

(j) *Fees prohibited.* No SWA or SWA employee may charge a fee in connection with the filing of a request for a

PWD, responding to such a request, or responding to a request for a review of a SWA prevailing wage determination under § 656.41.

[69 FR 77386, Dec. 27, 2004, as amended at 73 FR 78068, Dec. 19, 2008]

§ 656.41 Review of prevailing wage determinations.

(a) *Review of NPC PWD.* Any employer desiring review of a PWD made by a CO must make a request for such review within 30 days of the date from when the PWD was issued. The request for review must be sent to the director of the NPC that issued the PWD within 30 days of the date of the PWD; clearly identify the PWD from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the NPC up to the date of the PWD received from the NPC.

(b) *Processing of request by NPC.* Upon the receipt of a request for review, the NPC will review the employer's request and accompanying documentation, and add any material that may have been omitted by the employer, including any material the NPC sent the employer up to the date of the PWD.

(c) *Review on the record.* The director will review the PWD solely on the basis upon which the PWD was made and, upon the request for review, may either affirm or modify the PWD.

(d) *Request for review by BALCA.* Any employer desiring review of the director's determination must make a request for review by the BALCA within 30 days of the date of the Director's decision.

(1) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence that was within the record upon which the director made his/her affirmation of the PWD.

(2) The request for review must be in writing and addressed to the director of the NPC making the determination. Upon receipt of a request for a review, the director will assemble an indexed appeal file in reverse chronological order, with the index on top followed by the most recent document.

(3) The director will send the Appeal File to the Office of Administrative

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Law Judges, BALCA. The BALCA handles the appeals in accordance with §§ 656.26 and 656.27.

[73 FR 78069, Dec. 19, 2008]

PART 657—PROVISIONS GOVERNING GRANTS TO STATE AGENCIES FOR EMPLOYMENT SERVICES ACTIVITIES [RESERVED]

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM

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AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 38 U.S.C. chapters 41 and 42; 5 U.S.C. 301 *et seq.*; sections 658.410, 658.411 and 658.413 also issued under 44 U.S.C. 3501 *et seq.*

SOURCE: 45 FR 39468, June 10, 1980, unless otherwise noted.

Subparts A–D [Reserved]

Subpart E—Job Service Complaint System

§ 658.400 Purpose and scope of subpart.

This subpart sets forth the regulations governing the Job Service complaint system at both the State and Federal levels.

§ 658.401 Types of complaints handled by the JS complaint system.

(a)(1) The types of complaints (JS related complaints) which shall be handled to resolution by the JS complaint system are as follows: (i) Complaints against an employer about the specific job to which the applicant was referred by the JS involving violations of the