Employment and Training Administration, Labor § 655.166

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, must file by facsimile 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 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, 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. workers).