

§ 655.167

20 CFR Ch. V (4-1-11 Edition)

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 U.S. workers have become unavailable, the employer must submit to the CO a signed statement confirming such assertion. If such signed statement is not received by the CO within 72 hours of the CO's receipt of the request for a new determination, the CO will deny the request.

(c) *Notification of determination.* If the CO determines that U.S. workers have become unavailable and cannot identify sufficient available U.S. workers who are able, willing, eligible, and qualified or who are likely to become available, the CO will grant the employer's request for a new determination. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

§ 655.167 Document retention requirements.

(a) *Entities required to retain documents.* All employers filing an *Application for Temporary Employment Certification* requesting H-2A agricultural workers under this subpart are required to retain the documents and

records proving compliance with this subpart.

(b) *Period of required retention.* Records and documents must be retained for a period of 3 years from the date of certification of the *Application for Temporary Employment Certification* or from the date of determination if the *Application for Temporary Employment Certification* is denied or withdrawn.

(c) *Documents and records to be retained by all applicants.* (1) Proof of recruitment efforts, including:

(i) Job order placement as specified in § 655.121;

(ii) Advertising as specified in § 655.152, or, if used, professional, trade, or ethnic publications;

(iii) Contact with former U.S. workers as specified in § 655.153; or

(iv) Additional positive recruitment efforts (as specified in § 655.154).

(2) Substantiation of information submitted in the recruitment report prepared in accordance with § 655.156, such as evidence of nonapplicability of contact of former employees as specified in § 655.153.

(3) The final recruitment report and any supporting resumes and contact information as specified in § 655.156(b).

(4) Proof of workers' compensation insurance or State law coverage as specified in § 655.122(e).

(5) Records of each worker's earnings as specified in § 655.122(j).

(6) The work contract or a copy of the *Application for Temporary Employment Certification* as defined in 29 CFR 501.10 and specified in § 655.122(q).

(d) *Additional retention requirement for associations filing Application for Temporary Employment Certification.* In addition to the documents specified in paragraph (c) above, Associations must retain documentation substantiating their status as an employer or agent, as specified in § 655.131.

POST CERTIFICATION

§ 655.170 Extensions.

An employer may apply for extensions of the period of employment in the following circumstances.

(a) *Short-term extension.* Employers seeking extensions of 2 weeks or less of the certified *Application for Temporary*