

§ 656.41

20 CFR Ch. V (4-1-05 Edition)

(h) *Submittal of supplemental information by employer.* (1) If the employer disagrees with the skill level assigned to its job opportunity, or if the SWA 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 SWA.

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

(i) *Wage can not be lower than required by any other law.* No prevailing wage determination for labor certification purposes made under this section permits an employer to pay a wage 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.

§ 656.41 Certifying Officer review of prevailing wage determinations.

(a) *Review of SWA prevailing wage determinations.* Any employer desiring review of a SWA PWD must make a request for such review within 30 days of the date from when the PWD was issued by the SWA. The request for review must be sent to the SWA 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 SWA up to the date of the PWD received from the SWA.

(b) *Transmission of request to processing center.* (1) Upon the receipt of a request for review, the SWA must re-

view the employer's request and accompanying documentation, and add any material that may have been omitted by the employer, including any material sent to the employer by the SWA up to the date of the PWD.

(2) The SWA must send a copy of the employer's appeal, including any material added under paragraph (b)(1) of this section, to the appropriate ETA application processing center.

(3) The SWA must send a copy of any material added by the SWA under paragraph (b)(1) of this section to the employer.

(c) *Designations.* The director(s) of the ETA application processing center(s) will determine which CO will review the employer's appeal.

(d) *Review on the record.* The CO reviews the SWA PWD solely on the basis upon which the PWD was made and, upon the request for review, may:

(1) Affirm the prevailing wage determination issued by the SWA;

(2) Modify the prevailing wage determination; or

(3) Remand the matter to the SWA for further action.

(e) *Request for review by BALCA.* Any employer desiring review of a CO prevailing wage determination must make a request for review of the determination by the Board of Alien Labor Certification Appeals within 30 days of the date of the decision of the CO.

(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 affirmation of the PWD by the SWA was based.

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

(3) The CO must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, Suite 400-N, Washington, DC 20001-8002.

(4) The BALCA handles the appeals in accordance with § 656.26 and § 656.27 of this part.

Employment and Training Administration, Labor

§ 658.401

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 terms and conditions of the job order or employment-related law (employer-related complaint) and (ii) complaints about Job Service actions or omissions under JS regulations (agency-related complaints). These complaint procedures are not applicable to UI, WIN or CETA complaints. Complaints alleging