

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

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

Subpart A–D [Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

Sec.

658.400 Purpose and scope of subpart.

COMPLAINTS FILED AT THE LOCAL AND STATE LEVEL

658.410 Establishment of local and State complaint systems.

658.411 Action on complaints.

658.417 State hearings.

658.418 Decision of the State hearing official.

658.419 Apparent violations.

WHEN A COMPLAINT RISES TO THE FEDERAL LEVEL

658.420 Responsibilities of the Employment and Training Administration regional office.

658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.

658.422 Handling of employment-related law complaints by the Regional Administrator.

658.424 Proceedings before the Office of Administrative Law Judges.

658.425 Decision of Department of Labor Administrative Law Judge.

658.426 Complaints against the United States Employment Service.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

658.500 Scope and purpose of subpart.

658.501 Basis for discontinuation of services.

658.502 Notification to employers.

658.503 Discontinuation of services.

658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

658.600 Scope and purpose of subpart.

658.601 State Workforce Agency responsibility.

658.602 Employment and Training Administration National Office responsibility.

658.603 Employment and Training Administration regional office responsibility.

658.604 Assessment and evaluation of program performance data.

658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

658.700 Scope and purpose of subpart.

658.701 Statements of policy.

658.702 Initial action by the Regional Administrator.

658.703 Emergency corrective action.

658.704 Remedial actions.

658.705 Decision to decertify.

658.706 Notice of decertification.

658.707 Requests for hearings.

658.708 Hearings.

658.709 Conduct of hearings.

658.710 Decision of the Administrative Law Judge.

658.711 Decision of the Administrative Review Board.

AUTHORITY: Secs. 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

SOURCE: 81 FR 56352, Aug. 19, 2016, unless otherwise noted.

Subpart A–D [Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

§ 658.400 Purpose and scope of subpart.

(a) This subpart sets forth the regulations governing the Complaint System for the Wagner-Peyser Act Employment Service (ES) at the State and Federal levels. Specifically, the Complaint System handles complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, and 654 of this chapter and this part. As noted in § 658.411(d)(6), this subpart only covers ES-related complaints made within 2 years of the alleged violation.

§ 658.410

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

(b) Any complaints alleging violations under the Unemployment Insurance program, under Workforce Innovation and Opportunity Act (WIOA) title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 are not covered by this subpart and must be referred to the appropriate administering agency which would follow the procedures set forth in the respective regulations.

(c) The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in § 651.10 of this chapter.

(d) A complainant may designate an individual to act as his/her representative.

COMPLAINTS FILED AT THE LOCAL AND STATE LEVEL

§ 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System; this includes responsibility for the informal resolution of complaints. In the ES office, the ES Office Manager is responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The ES Office Manager and the SWA Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES office or the SWA, and specifying for each complaint:

- (1) The name of the complainant;
- (2) The name of the respondent (employer or State agency);
- (3) The date the complaint is filed;
- (4) Whether the complaint is by or on behalf of a migrant and seasonal farmworker (MSFW);
- (5) Whether the complaint concerns an employment-related law or the ES regulations; and
- (6) The action taken, and whether the complaint has been resolved, including informally. The complaint log also

must include action taken on apparent violations.

(d) State agencies must ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an Employment and Training Administration (ETA)-approved Complaint System poster in each one-stop center.

(e) Each one-stop center must ensure there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any one-stop center, or by a SWA, or elsewhere by outreach staff.

(g) All complaints filed through the local ES office must be handled by a trained Complaint System Representative.

(h) All complaints received by a SWA must be assigned to a trained Complaint System Representative designated by the State Administrator, provided that the Complaint System Representative designated to handle MSFW complaints must be the State Monitor Advocate (SMA).

(i) State agencies must ensure any action taken by the Complaint System Representative, including referral on a complaint from an MSFW, is fully documented and contains all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls, and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the ES office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate ES staff handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different ES office.

(m) Follow-up on unresolved complaints. When an MSFW submits a complaint, the SMA must follow-up monthly on the handling of the complaint, and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

(n) When a complainant is an English Language Learner (ELL), all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

(o) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 628, Jan. 6, 2020]

§ 658.411 Action on complaints.

(a) Filing complaints.

(1) Whenever an individual indicates an interest in filing a complaint under this subpart with an ES office, the SWA, or outreach staff, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

(2) During the initial discussion with the complainant, the staff taking the complaint must:

(i) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email, and telephone numbers through which he/she might be contacted during the investigation of the complaint; and

(iii) Request that the complainant contact the Complaint System Representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

(3) The staff must ensure the complainant (or his/her representative) submits the complaint on the Complaint/Referral Form or another complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except

as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form and submitting all necessary information, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named. The complainant, or his/her representative, must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed complaint submission must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System Representative described in § 658.410(g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant, or his/her representative, and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. A letter (via hard copy or email) confirming the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System Representative. The Complaint System Representative must request additional information from the complainant if the complainant has not provided sufficient information to investigate the matter expeditiously.

(b) Complaints regarding an employment-related law. (1) When a complaint is filed regarding an employment-related law with a ES office or a SWA the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral the local or State representative is not required to follow-up with the complainant.

(ii) If the complainant is a MSFW, the ES office or SWA Complaint System Representative must:

(A) Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s); and

(B) Attempt to resolve the issue informally at the local level, except in cases where the complaint was submitted to the SWA and the SMA determines that he/she must take immediate action and except in cases where informal resolution at the local level would be detrimental to the complainant(s). In cases where informal resolution at the local level would be detrimental to the complainant(s), the Complaint System Representative or SMA (depending on where the complaint was filed) must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the Complaint System Representative must offer to refer the MSFW to other employment services should the MSFW be interested.

(C) If the issue is not resolved within 5 business days, the Complaint System Representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

(D) If the ES office or SWA Complaint System Representative determines that the complaint must be referred to a State or Federal agency, he/she must refer the complaint to the SMA who must immediately refer the complaint to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred to the SMA under paragraph (b)(1)(ii)(D) of this section, the representative must provide the SMA's contact information to the complainant. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

(2) If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with sub-

part F of this part. If this occurs, the SWA must notify the complainant and the employer of this action.

(c) *Complaints alleging a violation of rights under the Equal Employment Opportunity Commission (EEOC) regulations or enforced by the Department of Labor's Civil Rights Center (CRC).* (1) All complaints received by a ES office or a SWA alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, must be logged and immediately referred to either a local Equal Opportunity (EO) representative, the State EO representative, or the EEOC. The Complaint System Representative must notify the complainant of the referral in writing.

(2) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(d) *Complaints regarding the ES regulations (ES complaints).* (1) When an ES complaint is filed with a ES office or a SWA the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to handle the complaint is the ES office serving the area in which the employer is located.

(ii) When a complaint is against an employer in another State or against another SWA:

(A) The ES office or SWA receiving the complaint must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must handle the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is handled in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state. Additionally, the complaints must be processed as separate complaints and must be handled according to procedures in this paragraph (d).

(iii) When an ES complaint is filed against a ES office, the proper office to handle the complaint is the ES office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one ES offices and is in regard to an alleged agency-wide violation the SWA representative or his/her designee must process the complaint.

(v) When a complaint is filed alleging a violation that occurred in the same State but through a different ES office, the ES office where the complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local ES office for tracking, further referral if necessary, and follow-up. A copy of the referral letter must be sent to the complainant via hard copy or electronic mail.

(2)(i) If a complaint regarding an alleged violation of the ES regulations is filed in a ES office by either a non-MSFW or MSFW, or their representative(s) (or if all necessary information has been submitted to the office pursuant to paragraph (a)(4) of this section), the appropriate ES office Complaint System Representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, (or after all necessary information has been submitted to the ES office pursuant to paragraph (a)(4) of this section), the Complaint System Representative

must send the complaint to the SWA for resolution or further action.

(iii) The ES office must notify the complainant and the respondent, in writing (via hard copy or electronic mail), of the determination (pursuant to paragraph (d)(5) of this section) of its investigation under paragraph (d)(2)(i) of this section, or of the referral to the SWA (if referred).

(3) When a non-MSFW or his/her representative files a complaint regarding the ES regulations with a SWA, or when a non-MSFW complaint is referred from a ES office the following procedures apply:

(i) If the complaint is not transferred to an enforcement agency under paragraph (b)(1)(i) of this section the Complaint System Representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), whether the complaint was received directly or from an ES office pursuant to paragraph (d)(2)(ii) of this section, the SWA official must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(4)(i) When a MSFW or his/her representative files a complaint regarding the ES regulations directly with a SWA, or when a MSFW complaint is referred from a ES office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination

§ 658.417

20 CFR Ch. V (4–1–20 Edition)

must follow the procedures set forth in paragraph (d)(5) of this section.

(5)(i) All written determinations by ES or SWA officials on complaints under the ES regulations must be sent by certified mail (or another legally viable method) and a copy of the determination may be sent via electronic mail. The determination must include all of the following:

(A) The results of any SWA investigation;

(B) The conclusions reached on the allegations of the complaint;

(C) If a resolution was not reached, an explanation of why the complaint was not resolved; and

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the notification.

(ii) If SWA officials determine that the employer has not violated the ES regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) If the SWA, within 20 business days from the certified date of receipt of the notification provided for in paragraph (d)(5) of this section, receives a written request (via hard copy or electronic mail) for a hearing, the SWA must refer the complaint to a State hearing official for hearing. The SWA must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

(A) The parties will be notified of the date, time, and place of the hearing;

(B) The parties may be represented at the hearing by an attorney or other representative;

(C) The parties may bring witnesses and/or documentary evidence to the hearing;

(D) The parties may cross-examine opposing witnesses at the hearing;

(E) The decision on the complaint will be based on the evidence presented at the hearing;

(F) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(G) With the consent of the SWA official and of the State hearing official, the party who requested the hearing may withdraw the request for the hearing in writing before the hearing.

(iv) If the State agency makes a final determination that the employer who has or is currently using the ES has violated the ES regulations, the determination, pursuant to paragraph (d)(5) of this section, must state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F of this part.

(6) A complaint regarding the ES regulations must be handled to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

(e) *Resolution of complaints.* A complaint is considered resolved when:

(1) The complainant indicates satisfaction with the outcome via written correspondence;

(2) The complainant chooses not to elevate the complaint to the next level of review;

(3) The complainant or the complainant's authorized representative fails to respond to a request for information under paragraph (a)(4) of this section within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate ES office or State agency;

(4) The complainant exhausts all available options for review; or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

(f) *Reopening of case after resolution.* If the complainant or the complainant's authorized representative fails to respond pursuant to paragraph (e)(3) of this section, the complainant or the complainant's authorized representative may reopen the case within 1 year after the SWA has closed the case.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

§ 658.417 State hearings.

(a) The hearing described in § 658.411(d)(5) must be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law.

Examples of hearing officials are referees in State unemployment compensation hearings and officials of the State agency authorized to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously if conducted together.

(c) The State hearing official, upon the referral of a case for a hearing, must:

(1) Notify all involved parties of the date, time, and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(d) In conducting a hearing, the State hearing official must:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary, provided the official has the authority to do so under State law;

(3) Ensure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take all actions necessary to ensure an orderly proceeding.

(e) All testimony at the hearing must be recorded and may be transcribed when appropriate.

(f) The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The State hearing official must receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.

(i) Federal and State rules of evidence do not apply to hearings conducted pursuant to this section; however rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied where reasonably necessary by the State hearing official.

The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

(m) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official, the hearing official must:

(1) Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official under paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the State agency is not able, for any reason, to conduct a telephonic hearing under paragraph (m)(2) of this section, the State agencies in the States where the parties are located must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent

§ 658.418

that such procedures are consistent with this section.

§ 658.418 Decision of the State hearing official.

- (a) The State hearing official may:
 - (1) Rule that it lacks jurisdiction over the case;
 - (2) Rule that the complaint has been withdrawn properly in writing;
 - (3) Rule that reasonable cause exists to believe that the request has been abandoned; or
 - (4) Render such other rulings as are appropriate to resolve the issues in question.

However, the State hearing official does not have authority or jurisdiction to consider the validity or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the ES offices and State agencies and any evidence provided at the hearing, the State hearing official must prepare a written decision. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue NW., Washington, DC 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(c) All decisions of a State hearing official must be accompanied by a written notice informing the parties (not including the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity) that they may appeal the judge's decision within 20 working days of the certified date of receipt of the decision, and they may file an appeal in writing with the Regional Administrator. The notice must give the address of the Regional Administrator.

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

§ 658.419 Apparent violations.

(a) If a SWA, an ES office employee, or outreach staff observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the ES Office Manager.

(b) If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the ES office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

**WHEN A COMPLAINT RISES TO THE
FEDERAL LEVEL**

§ 658.420 Responsibilities of the Employment and Training Administration regional office.

(a) Each Regional Administrator must establish and maintain a Complaint System within each ETA regional office.

(b) The Regional Administrator must designate Department of Labor officials to handle ES regulation-related complaints as follows:

(1) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under Title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(2) All complaints alleging discrimination on the basis of genetic information must be assigned to a Regional Director for Equal Opportunity and Special Review and, where appropriate, handled in accordance with procedures

Employment and Training Administration, Labor

§ 658.421

Coordinated Enforcement at 29 CFR part 31.

(3) All complaints other than those described in paragraphs (b)(1) and (2) of this section, must be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to handle MSFW complaints must be the Regional Monitor Advocate (RMA).

(c) Except for those complaints under paragraphs (b)(1) and (2) of this section, the Regional Administrator must designate Department of Labor officials to handle employment-related law complaints in accordance with § 658.411, provided that the regional official designated to handle MSFW employment-related law complaints must be the RMA. The RMA must follow up monthly on all complaints filed by MSFWs including complaints under paragraphs (b)(1) and (2) of this section.

(d) The Regional Administrator must ensure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

§ 658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.

(a)(1) Except as provided below in paragraph (a)(2) of this section, no complaint alleging a violation of the ES regulations may be handled at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. If the Regional Administrator determines that a complaint has been prematurely filed with an ETA regional office, the Regional Administrator must inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter and a copy of the complaint also must be sent to the State Administrator.

(2) If a complaint is submitted directly to the Regional Administrator and if he/she determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a signifi-

cant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. A hearing must be offered to the parties once the Regional Administrator makes a determination on the complaint.

(ii) If the complaint is filed against a SWA, the regional office must follow procedures established at § 658.411(d).

(b) The ETA regional office is responsible for handling appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint.

(c)(1) Once the Regional Administrator receives a timely appeal, he/she must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however if the Regional Administrator determines that he/she needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator is allowed 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator will send his/her determination in writing to the appellant within 5 days of the determination, with a notification that the appellant may request a hearing before a Department of Labor Administrative Law Judge (ALJ) by filing a hearing request in writing with the Regional Administrator within 20 working days of the appellant's receipt of the notification.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator must undertake such an investigation or other action necessary to resolve the complaint.

(f) After taking the actions described in paragraph (e) of this section, the Regional Administrator must either affirm, reverse, or modify the decision of the State hearing official, and must notify each party to the State hearing official's hearing or to whom the State office determination was sent, notice of the determination and notify the parties that they may appeal the determination to the Department of Labor's Office of Administrative Law Judges within 20 business days of the party's receipt of the notice.

(g) If the Regional Administrator finds reason to believe that a SWA or one of its ES offices has violated ES regulations, the Regional Administrator must follow the procedures set forth at subpart H of this part.

§ 658.422 Handling of employment-related law complaints by the Regional Administrator.

(a) This section applies to all complaints submitted directly to the Regional Administrator or his/her representative.

(b) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action.

(c) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be logged and referred to the appropriate enforcement agency for prompt action.

(d) Upon referring the complaint in accordance with paragraphs (b) and (c) of this section, the regional official must inform the complainant of the enforcement agency (and individual, if known) to which the complaint was referred.

§ 658.424 Proceedings before the Office of Administrative Law Judges.

(a) If a party requests a hearing pursuant to § 658.421 or § 658.707, the Regional Administrator must:

(1) Send the party requesting the hearing, and all other parties to the prior State level hearing, a written notice (hard copy or electronic) that the matter will be referred to the Office of Administrative Law Judges for a hearing;

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically; and

(3) Send simultaneously one hearing file to the Department of Labor Chief Administrative Law Judge, 800 K Street NW., Suite 400N, Washington, DC 20001-8002, one hearing file to the OWI Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Proceedings under this section are governed by the rules of practice and procedure at subpart A of 29 CFR part 18, Rule of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, except where otherwise specified in this section or at § 658.425.

(c) Upon receipt of a hearing file, the ALJ designated to the case must notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor of Labor of the receipt of the case. After conferring all the parties, the ALJ may decide to make a determination on the record in lieu of scheduling a hearing.

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously.

(e) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the ALJ, the ALJ must:

(1) Whenever possible, hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the ALJ at a location pursuant to paragraph (e)(1) of this section, the ALJ may conduct, with the consent of the parties, the hearing by a

Employment and Training Administration, Labor

§ 658.426

telephone conference call. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the ALJ is unable, for any reason, to conduct a telephonic hearing under paragraph (e)(2) of this section, the ALJ must confer with the parties on how to proceed.

(f) Upon deciding to hold a hearing, the ALJ must notify all involved parties of the date, time, and place of the hearing.

(g) The parties to the hearing must be afforded the opportunity to present, examine, and cross-examine witnesses. The ALJ may elicit testimony from witnesses, but may not act as advocate for any party. The ALJ has the authority to issue subpoenas.

(h) The ALJ must receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing, provided that copies of such evidence is provided to the other parties to the proceeding prior to the hearing at the time required by the ALJ.

(i) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination must be applied where reasonably necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(k) The ALJ must, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.425 Decision of Department of Labor Administrative Law Judge.

(a) The ALJ may:

(1) Rule that he/she lacks jurisdiction over the case;

(2) Rule that the appeal has been withdrawn, with the written consent of all parties;

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned; or

(4) Render such other rulings as are appropriate to the issues in question. However, the ALJ does not have jurisdiction to consider the validity or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the ALJ must prepare a written decision. The ALJ must send a copy of the decision stating the findings of fact and conclusions of law to the parties to the hearing, including the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the ALJ serves as the final decision of the Secretary.

§ 658.426 Complaints against the United States Employment Service.

(a) Complaints alleging that an ETA regional office or the National Office has violated ES regulations must be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints must include:

(1) A specific allegation of the violation;

(2) The date of the incident;

(3) Location of the incident;

(4) The individual alleged to have committed the violation; and

(5) Any other relevant information available to the complainant.

(b) The Assistant Secretary or the Regional Administrator as designated must make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant part 653 of this chapter to employers by the ETA, including SWAs.

§ 658.501 Basis for discontinuation of services.

(a) SWA officials must initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System for U.S. Workers at part 653, subpart F, of this chapter, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the Department or the SWA by that enforcement agency;

(5) Are found to have violated ES regulations pursuant to § 658.411;

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503 of this chapter; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) SWA officials may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart in para-

graphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 and 658.504 must be followed.

(c) If it comes to the attention of an ES office or a SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H-2A and H-2B visa programs, SWA officials must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to § 655.184 or § 655.73 of this chapter respectively for subsequent temporary labor certification.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

§ 658.502 Notification to employers.

(a) The SWA must notify the employer in writing that it intends to discontinue the provision of employment services pursuant to this part and parts 652, 653, and 654 of this chapter, and the reason therefore.

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws; or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws; or

(iii) If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and

refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved, and the assurances involved. The employer must be notified that all employment services will be terminated within 20 working days unless the employer within that time:

- (i) Resubmits the order with the appropriate assurances; or
- (ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws; or
- (iii) Requests a hearing from the SWA pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the SWA must specify the basis for that determination. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or
- (ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or
- (iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and
- (iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or
- (v) Requests a hearing from the SWA pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the enforcement agency has reversed

its ruling and that the employer did not violate employment-related laws; or

- (ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the employer did not violate ES regulations; or
- (ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and
- (iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the workers were accepted; or
- (ii) Provides adequate evidence that the workers were not available to accept the job; or
- (iii) Provides adequate evidence that the workers were not qualified; and
- (iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer

§ 658.503

must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he/she did cooperate; or

(ii) Cooperates immediately in the conduct of field checks; and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.411.

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

§ 658.504 Reinstatement of services.

(a) Services may be reinstated to an employer after discontinuation under § 658.503(a) and (b), if:

(1) The State is ordered to do so by a Federal ALJ Judge or Regional Administrator; or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or

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

similar circumstances are not likely to occur in the future; and

(ii) The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, SWA, or ETA, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The SWA must notify the employer requesting reinstatement within 20 working days whether his/her request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to paragraph (c) of this section.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State Workforce Agency (SWA) compliance with the ES regulations at this part and parts 651, 652, 653, and 654 of this chapter. All recordkeeping and reporting requirements contained in this part and part 653 of this chapter have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980.

§ 658.601 State Workforce Agency responsibility.

(a) Each SWA must establish and maintain a self-appraisal system for ES operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the ES office level must be conducted as follows:

(i) Performance must be measured on a quarterly-basis against planned service levels as stated in the Unified or Combined State Plan ("State Plan"). The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA Form 9172, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant differences from planned levels, additional analysis must be conducted to isolate possible contributing factors. This data analysis must include, as appropriate, comparisons to past performance, attainment of State Plan goals and consideration of pertinent non-numerical factors.

(iv) Results of ES office numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) of this section must be developed to address these deficiencies.

(v) The result of ES office appraisal, including corrective action plans, must be communicated in writing to the next higher level of authority for review. This review must cover adequacy of analysis, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district office, a report describing ES office performance within the area or district jurisdiction must be communicated to the SWA on a quarterly basis.

(2) Numerical appraisal at the SWA level must be conducted as follows:

(i) Performance must be measured on a quarterly basis against planned service levels as stated in the State Plan. The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on ETA Form 9172, or any successor report required by the Department must be compared to planned lev-

els. Differences between achievement and plan levels must be identified.

(iii) The SWA must review statewide data and performance against planned service levels as stated in the State Plan on at least a quarterly basis to identify significant statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of State Plan goals.

(iv) Results of numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section must be developed to address these deficiencies. These plans must be submitted to the ETA Regional Office as part of the periodic performance process described at § 658.603(d)(2).

(3) Non-numerical (qualitative) appraisal of ES office activities must be conducted at least annually as follows:

(i) Each ES office must assess the quality of its services to applicants, employers, and the community and its compliance with Federal regulations.

(ii) At a minimum, non-numerical review must include an assessment of the following factors:

(A) Appropriateness of services provided to participants and employers;

(B) Timely delivery of services to participants and employers;

(C) Staff responsiveness to individual participants and employer needs;

(D) Thoroughness and accuracy of documents prepared in the course of service delivery; and

(E) Effectiveness of ES interface with external organizations, such as other ETA-funded programs, community groups, etc.

(iii) Non-numerical review methods must include:

(A) Observation of processes;

(B) Review of documents used in service provisions; and

(C) Solicitation of input from applicants, employers, and the community.

(iv) The result of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies as described in paragraph (a)(6) of this section must be developed.

§ 658.602

20 CFR Ch. V (4–1–20 Edition)

(v) The result of ES office non-numerical appraisal, including corrective actions, must be communicated in writing to the next higher level of authority for review. This review must cover thoroughness and adequacy of ES office appraisal, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district level, a report summarizing local ES office performance within that jurisdiction must be communicated to the SWA on an annual basis.

(4) As part of its oversight responsibilities, the SWA must conduct on-site reviews in those ES offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, non-numerical appraisal, or other sources of information.

(5) Non-numerical (qualitative) review of SWA ES activities must be conducted as follows:

(i) SWA operations must be assessed annually to determine compliance with Federal regulations.

(ii) Results of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies must be developed.

(6) Corrective action plans developed to address deficiencies uncovered at any administrative level within the State as a result of the self-appraisal process must include:

(i) Specific descriptions of the type of action to be taken, the time frame involved, and the assignment of responsibility.

(ii) Provision for the delivery of technical assistance as needed.

(iii) A plan to conduct follow-up on a timely basis to determine if action taken to correct the deficiencies has been effective.

(7)(i) The provisions of the ES regulations which require numerical and non-numerical assessment of service to special applicant groups (*e.g.*, services to veterans at 20 CFR part 1001—Services for Veterans and services to MSFWs at this part and part 653 of this chapter), are supplementary to the provisions of this section.

(ii) Each State Administrator and ES office manager must ensure their staff

know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the SWA or by the Department.

(iii) Each State Administrator must ensure the SWA complies with its approved State Plan.

(iv) Each State Administrator must ensure to the maximum extent feasible the accuracy of data entered by the SWA into Department-required management information systems. Each SWA must establish and maintain a data validation system pursuant to Department instructions. The system must review every local ES office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

(b) [Reserved]

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

§ 658.602 Employment and Training Administration National Office responsibility.

The ETA National Office must:

(a) Monitor ETA Regional Offices' operations under ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and SWA compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and SWAs in carrying out ES regulations and programs;

(d) Have report validation surveys conducted in support of resource allocations; and

(e) Develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations.

(f) ETA must appoint a National Monitor Advocate (NMA), who must devote full time to the duties set forth in this subpart. The NMA must:

(1) Review the effective functioning of the Regional Monitor Advocates (RMAs) and SMAs;

(2) Review the performance of SWAs in providing the full range of employment services to MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;

Employment and Training Administration, Labor

§ 658.602

(4) Take steps to refer non ES-related problems of MSFWs which come to his/her attention;

(5) Recommend to the Administrator changes in policy toward MSFWs; and

(6) Serve as an advocate to improve services for MSFWs within the ES system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and other Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD) task forces, and other committees as appropriate.

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in SWA self-monitoring requirements at § 653.108(b) of this chapter.

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit the Annual Report to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee covering the matters set forth in this subpart.

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. His/her assessment must consider:

(1) Information from RMAs and SMAs;

(2) Program performance data, including the service indicators;

(3) Periodic reports from regional offices;

(4) All Federal on-site reviews;

(5) Selected State on-site reviews;

(6) Other relevant reports prepared by the ES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to SWAs, ES offices, agri-

cultural work sites, and migrant camps. In the Annual Report, the NMA must include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

(k) The NMA must review the activities of the State/Federal monitoring system as it applies to services to MSFWs and the Complaint System including the effectiveness of the regional monitoring function in each region and must recommend any appropriate changes in the operation of the system. The NMA's findings and recommendations must be fully set forth in the Annual Report.

(l) If the NMA finds the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other regional office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator, a State or Federal ES official, or other ES staff, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. He/she also must recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 through 658.711. As part of such participation, the NMA, or if he/she is unable

to participate, a RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities in the course of each State on-site review:

(1) He/she must accompany selected outreach workers on their field visits.

(2) He/she must participate in a random field check(s) of migrant camps or work site(s) where MSFWs have been placed on inter or intrastate clearance orders.

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and, discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) He/she must meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f)(8) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must:

(1) Meet with the SMA and other ES staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 through 765.711. As part of this function, he/she must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. He/she must attend conferences or meetings of these groups wherever possible and must report to the Administrator and

the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the Annual Report recommendations about how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency, or MSFW group refers a matter to the NMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of employment services and protections afforded by these regulations to MSFWs. The NMA must:

(1) Use the regular reports on complaints submitted by SWAs and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(2) Provide technical assistance to ETA regional office and ES staff for administering the Complaint System, and any other employment services as appropriate.

(3) Recommend to the Regional Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning employment services to MSFWs, the NMA must provide to the Regional Administrator a brief summary of ES-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Regional Administrator and ETA reviewing organization deem appropriate.

(4) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by WHD and OSHA regional office staff to correct any non-ES-related systemic deficiencies of which he/she is aware.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 629, Jan. 6, 2020]

§ 658.603 Employment and Training Administration regional office responsibility.

(a) The Regional Administrator must have responsibility for the regular review and assessment of SWA performance and compliance with ES regulations.

(b) The Regional Administrator must participate with the National Office staff in reviewing and approving the State Plan for the SWAs within the region. In reviewing the State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

- (1) State Workforce Agency compliance with ES regulations;
- (2) State Workforce Agency performance against the goals and objectives established in the previous State Plan;
- (3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on the SWA's performance;
- (4) SWA adherence to national program emphasis; and
- (5) The adequacy and appropriateness of the State Plan for carrying out ES programs.

(c) The Regional Administrator must assess the overall performance of SWAs on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators must conduct or have conducted:

- (1) Comprehensive on-site reviews of SWAs and their offices to review SWA organization, management, and program operations;
- (2) Periodic performance reviews of SWA operation of ES programs to measure actual performance against the State Plan, past performance, the performance of other SWAs, etc.;
- (3) Audits of SWA programs to review their program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators also may conduct audits through other agencies or organizations or may

require the SWA to have audits conducted;

(4) Validations of data entered into management information systems to assess:

- (i) The accuracy of data entered by the SWAs into the management information system;
- (ii) Whether the SWAs' data validating and reviewing procedures conform to Department instructions; and
- (iii) Whether SWAs have implemented any corrective action plans required by the Department to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist SWAs in carrying out ES regulations and programs;

(6) Reviews to assess whether the SWA has complied with corrective action plans imposed by the Department or by the SWA itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings must be documented on the Complaint/Apparent Violation Referral Form and provided to the State Workforce Agency to be handled as an apparent violation under § 658.419.

(e) The Regional Administrator must provide technical assistance to SWAs to assist them in carrying out ES regulations and programs.

(f) The Regional Administrator must appoint a RMA who must carry out the duties set forth in this subpart. The RMA must:

- (1) Review the effective functioning of the SMAs in his/her region;
- (2) Review the performance of SWAs in providing the full range of employment services to MSFWs;
- (3) Take steps to resolve ES-related problems of MSFWs which come to his/her attention;
- (4) Recommend to the Regional Administrator changes in policy towards MSFWs;
- (5) Review the operation of the Complaint System; and

(6) Serve as an advocate to improve service for MSFWs within the ES. The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in § 653.108(b) of this chapter.

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this section are assigned.

(i) The RMA within the first 3 months of his/her tenure must participate in a training session(s) approved by the National Office.

(j) At the regional level, the RMA must have primary responsibility for:

(1) Monitoring the effectiveness of the Complaint System set forth at subpart E of this part;

(2) Apprising appropriate State and ETA officials of deficiencies in the Complaint System; and

(3) Providing technical assistance to SMAs in the region.

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring SWA compliance with ES regulations as it pertains to services to MSFWs is monitored by the regional office. He/she must independently assess on a continuing basis the provision of employment services to MSFWs, seeking out and using:

(1) Information from SMAs, including all reports and other documents;

(2) Program performance data;

(3) The periodic and other required reports from SWAs;

(4) Federal on-site reviews;

(5) Other reports prepared by the National Office;

(6) Information received from farmworker organizations and employers; and

(7) Any other pertinent information which comes to his/her attention from any possible source.

(8) In addition, the RMA must consider his/her personal observations from visits to ES offices, agricultural work sites, and migrant camps.

(1) The RMA must assist the Regional Administrator and other line officials in applying appropriate corrective and remedial actions to State agencies.

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an annual summary from the region. The summary also must include both a quantitative and a qualitative analysis of his/her reviews and must address all the matters with respect to which he/she has responsibilities under these regulations.

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

(1) Does not have adequate access to information;

(2) Is being impeded in fulfilling his/her duties; or

(3) Is making recommendations that are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, any Federal officials, or other ES staff, he/she must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o)(1) The RMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may

Employment and Training Administration, Labor

§ 658.603

substantially improve the delivery of services to MSFWs.

(2) The RMA also may recommend changes in ES policy or regulations, as well as changes in the funding of State Workforce Agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(p) The RMA must participate in the review and assessment activities required in this section and §§658.700 through 658.711. He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of employment services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) Accompany selected outreach workers on their field visits;

(2) Participate in a random field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) Contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) Meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State Workforce Agency's capability for providing the full range of services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(r) As appropriate, each year during the peak harvest season, the RMA must visit each State in the region not scheduled for an onsite review during that fiscal year and must:

(1) Meet with the SMA and other ES staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations to obtain information concerning ES delivery and coordination with other agencies and interested employer organizations.

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMAs in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA also must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she also must make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region, as appropriate. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope. Further, he/she must recommend policies, offer technical assistance, or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than State-by-State basis, to promote region-wide improvement in the delivery of employment services to MSFWs. He/she must facilitate region-wide coordination and communication regarding provision of employment services to MSFWs among SMAs, State

Administrators, and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as he/she deems necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live, or travel through the region. He/she must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(w) The RMA must establish regular contacts with the regional agricultural coordinators from WHD and OSHA and any other regional staff from other Federal enforcement agencies and must establish contacts with the staff of other Department agencies represented on the Regional Farm Labor Coordinated Enforcement Committee and to the extent necessary, on other pertinent task forces or committees.

(x) The RMA must participate in the regional reviews of the State Plans, and must comment to the Regional Administrator as to the SWA compliance with the ES regulations as they pertain to services to MSFWs, including the staffing of ES offices.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 630, Jan. 6, 2020]

§ 658.604 Assessment and evaluation of program performance data.

(a) State Workforce Agencies must compile program performance data required by the Department, including statistical information on program operations.

(b) The Department must use the program performance data in assessing and evaluating whether each SWA has complied with ES regulations and its State Plan.

(c) In assessing and evaluating program performance data, the Depart-

ment must act in accordance with the following general principles:

(1) The fact that the program performance data from a SWA, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of ES regulations or of the State Workforce Agency's responsibilities under its State Plan;

(2) Program performance data, however, may so strongly indicate that a SWA's performance is so poor that the data may raise a presumption (*prima facie* case) that a SWA is violating ES regulations or the State Plan. A SWA's failure to meet the operational objectives set forth in the State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its State Plan. In such cases, the Department must afford the SWA an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The Department must take into account that certain program performance data may measure items over which SWAs have direct or substantial control while other data may measure items over which the SWA has indirect or minimal control.

(i) Generally, for example, a SWA has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services, and the conduct of field checks.

(ii) State Workforce Agencies, however, have only indirect control over the outcome of services. For example, SWAs cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, such as a sudden heavy increase in unemployment rates, a strike by SWA employees, or a severe drought or flood, may skew the results measured by program performance data.

(4) The Department must consider a SWA's failure to keep accurate and complete program performance data required by ES regulations as a violation of the ES regulations.

Employment and Training Administration, Labor

§ 658.702

§ 658.605 Communication of findings to State agencies.

(a) The Regional Administrator must inform SWAs in writing of the results of review and assessment activities and, as appropriate, must discuss with the State Administrator the impact or action required by the Department as a result of review and assessment activities.

(b) The ETA National Office must transmit the results of any review and assessment activities it conducted to the Regional Administrator who must send the information to the SWA.

(c) Whenever the review and assessment indicates a SWA violation of ES regulations or its State Plan, the Regional Administrator must follow the procedures set forth at subpart H of this part.

(d) Regional Administrators must follow-up any corrective action plan imposed on a SWA under subpart H of this part by further review and assessment of the State Workforce Agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which the Department must follow upon either discovering independently or receiving from other(s) information indicating that SWAs may not be adhering to ES regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Department to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure State Workforce Agencies comply with all requirements established by ES regulations.

(b) It is the policy of the Department to initiate decertification procedures against SWAs in instances of serious or continual violations of ES regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the Department to act on information concerning al-

leged violations by SWAs of the ES regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in his/her region are in compliance with ES regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible SWA violations of ES regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations, or employers which are elevated to the Department after the exhaustion of SWA administrative remedies, the Regional Administrator must conduct an investigation. Within 10 business days after receipt of the report or other information, the Regional Administrator must make a determination whether there is probable cause to believe that a SWA has violated ES regulations.

(c) The Regional Administrator must accept complaints regarding possible SWA violations of ES regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E of this part, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator must investigate the matter within 10 business days, may provide the SWA 10 business days for comment, and must make a determination within an additional 10 business days whether there is probable cause to believe that the SWA has violated ES regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, he/she must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination,

he/she must so notify the Administrator in writing and the time for the investigation must be extended 20 additional business days.

(e) If the Regional Administrator determines there is probable cause to believe a SWA has violated ES regulations, he/she must issue a Notice of Initial Findings of Non-compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f)(1) The SWA may have 20 business days to comment on the findings, or up to 20 additional days, if the Regional Administrator determines a longer period is appropriate. The SWA's comments must include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator must prepare within 20 business days, written final findings which specify whether the SWA has violated ES regulations. If in the final findings the Regional Administrator determines the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator also must notify the NMA. If the Regional Administrator determines a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the NMA.

(g) If the violation involves the misspending of grant funds, the Regional Administrator may order in the

Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator must give the reasons for the disallowance, inform the SWA that the disallowance is effective immediately and that no more funds may be spent in the disallowed manner, and offer the SWA the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, does not stay the effectiveness of the disallowance. The Regional Administrator must keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that the circumstances warrant other action:

(1) The Final Notice of Noncompliance must direct the SWA to implement a specific corrective action plan to correct all violations. If the SWA's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violation(s) and accept the SWA's resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(2) The Final Notice of Noncompliance must specify the time by which each corrective action must be taken. This period may not exceed 40 business days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the Complaint System, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify the additional

time period. The specified time must commence with the date of signature on the registered mail receipt.

(3) When the time provided for in paragraph (h)(2) of this section elapses, Department staff must review the SWA's efforts as documented by the SWA to determine if the corrective action(s) has been taken and if the SWA has achieved compliance with ES regulations. If necessary, Department staff must conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines the SWA has corrected the violation(s), the Regional Administrator must record the basis for this determination, notify the SWA, send a copy to the Administrator, and retain a copy in Department files.

(5) If, as a result of this review, the Regional Administrator determines the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of his/her findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines the SWA has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears the violation will be fully corrected within a reasonable amount of time, the SWA must be advised by registered mail or other legally viable means (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected

within a specified time period. This period may not exceed 40 business days unless the Regional Administrator determines exceptional circumstances necessitate corrective action requiring more time. In such cases, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify that time period. The specified time commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given additional time pursuant to paragraph (h)(7) of this section, Department staff must review the SWA's efforts as documented by the SWA at the end of the time period. If necessary, the Department must conduct a follow-up visit as part of this review.

(ii) If the SWA has corrected the violation(s), the Regional Administrator must document that finding, notify in writing the SWA and the Administrator, and retain supporting documents in Department files. If the SWA has not corrected the violation(s), the Regional Administrator must apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or ensure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator must notify the SWA of the reason for imposing the emergency corrective action prior to providing the SWA an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

- (1) Imposition of special reporting requirements for a specified time;
- (2) Restrictions of obligational authority within one or more expense classifications;

§ 658.704

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

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for ES staff;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the imposition of Federal staff in key SWA positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the SWA on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the SWA's deficiencies;

(9) Disallowance of funds pursuant to § 658.702(g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification procedures against the State Workforce Agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator must send, by registered mail, a Notice of Remedial Action to the SWA. The Notice of Remedial Action must set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (§§ 653.100 through 653.113 of this chapter) or the Complaint System (§§ 658.400 through 658.426), a copy of said notice must be sent to the Administrator, who must publish the notice promptly in the FEDERAL REGISTER.

(c) If the remedial action is other than decertification, the notice must state the remedial action must take effect immediately. The notice also must state the SWA may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 business days of the SWA's receipt of

the notice. The offer of hearing, or the acceptance thereof, however, does not stay or otherwise delay the implementation of remedial action.

(d) Within 60 business days after the initial application of remedial action, the Regional Administrator must conduct a review of the SWA's compliance with ES regulations unless the Regional Administrator determines more time is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate more time, and specify that time period. If necessary, Department staff must conduct a follow-up visit as part of this review. If the SWA is in compliance with the ES regulations, the Regional Administrator must fully document these facts and must terminate the remedial actions. The Regional Administrator must notify the SWA of his/her findings. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy of said notice must be sent to the Administrator, who must promptly publish the notice in the FEDERAL REGISTER. The Regional Administrator must conduct, within a reasonable time after terminating the remedial actions, a review of the SWA's compliance to determine whether any remedial actions must be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds the SWA remains in noncompliance, the Regional Administrator must continue the remedial action and/or impose different additional remedial actions. The Regional Administrator must fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the Complaint System, must send copies to the Administrator, who must promptly publish the notice in the FEDERAL REGISTER.

(f)(1) If the SWA has not brought itself into compliance with ES regulations within 120 business days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines the circumstances necessitate continuing remedial action for more time. In such

cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate the extended time, and specify the time period.

(2) The Regional Administrator must notify the SWA by registered mail or by other legally viable means of the decertification proceedings, and must state the reasons therefor. Whenever such a notice is sent to a SWA, the Regional Administrator must prepare five copies (hard copies or electronic copies) containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, one copy must be sent to the NMA. All copies also must be sent electronically to each respective party. The notice sent by the Regional Administrator must be published promptly in the FEDERAL REGISTER.

[81 FR 56352, Aug. 19, 2016, as amended at 85 FR 630, Jan. 6, 2020]

§ 658.705 Decision to decertify.

(a) Within 30 business days of receiving a request for decertification, the ETA Assistant Secretary must review the case and must decide whether to proceed with decertification.

(b) The Assistant Secretary must grant the request for decertification unless he/she makes a finding that:

(1) The violations of ES regulations are neither serious nor continual;

(2) The SWA is in compliance; or

(3) The Assistant Secretary has reason to believe the SWA will achieve compliance within 80 business days unless exceptional circumstances necessitate more time, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 business days in order to obtain any available additional information.) In making a determination of whether violations are

“serious” or “continual,” as required by paragraph (b)(1) of this section, the Assistant Secretary must consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with ES regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she must write a complete report documenting his/her findings and, if appropriate, instructing an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary’s decision must be published promptly in the FEDERAL REGISTER and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 business days after receiving the Assistant Secretary’s report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless he/she makes one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, he/she must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining his/her reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the SWA. Notice of the Secretary’s decision must be published promptly in the FEDERAL REGISTER, and the report of the Secretary must be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and orders further remedial action, the Regional Administrator must continue to monitor the SWA’s compliance. If the SWA achieves compliance within the time

§ 658.706

established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of his/her findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a SWA, he/she must send a Notice of Decertification to the SWA stating the reasons for this action and providing a 10 business day period during which the SWA may request an administrative hearing in writing to the Secretary. The notice must be published promptly in the FEDERAL REGISTER.

§ 658.707 Requests for hearings.

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 business days of receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary receives a request for a hearing from a SWA, he/she must send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the Department of Labor Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

(c) The Secretary must publish notice of hearing in the FEDERAL REGISTER. This notice must invite all interested parties to attend and to present evidence at the hearing. All interested parties who make written request to participate must thereafter receive copies (hard copy and/or electronic) of all documents filed in said proceedings.

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

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case must be docketed and notice sent by electronic mail, other means of electronic service, or registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the Regional Administrator and the State Administrator. The notice must set a time, place, and date for a hearing on the matter and must advise the parties that:

- (1) They may be represented at the hearing;
- (2) They may present oral and documentary evidence at the hearing;
- (3) They may cross-examine opposing witnesses at the hearing; and
- (4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee will represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a) Proceedings under this section are governed by secs. 5 through 8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* and the rules of practice and procedure at subpart A of 29 CFR part 18, except as otherwise specified in this section.

(b) Technical rules of evidence do not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied if necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record must be open to examination by the parties. Opportunity must be given to refute facts and arguments advanced on either side of the issue. A transcript must be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Discovery may be conducted as provided in the rules of practice and procedure at 29 CFR 18.50 through 18.65.

(d) When a public officer is a respondent in a hearing in an official capacity

and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order may not affect the substitution.

§ 658.710 Decision of the Administrative Law Judge.

(a) The ALJ has jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but does not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the ALJ must be based on the hearing record, must be in writing, and must state the factual and legal basis of the decision. The ALJ's decision must be available for public inspection and copying.

(c) Except when the case involves the decertification of a SWA, the decision of the ALJ will be considered the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending a written appeal to the Administrative Review Board.

§ 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the ALJ must certify the record in the case to the Administrative Review Board, which must make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board is the final decision of the Secretary on decertification appeals. It must be in writing, and must set forth the factual and legal basis for the decision. Notice of the Administra-

tive Review Board's decision must be published in the FEDERAL REGISTER, and copies must be made available for public inspection and copying.

EFFECTIVE DATE NOTE: At 85 FR 13030, Mar. 6, 2020, § 658.711 was amended by revising paragraph (b), effective Apr. 20, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 658.711 Decision of the Administrative Review Board.

* * * * *

(b) The decision of the Administrative Review Board must be in writing, and must set forth the factual and legal basis for the decision. After the Board's decision becomes final, notice of the decision must be published in the FEDERAL REGISTER, and copies must be made available for public inspection and copying.

PART 660—INTRODUCTION TO THE REGULATIONS FOR WORKFORCE INVESTMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

Sec.

660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

660.200 What do the regulations for workforce investment systems under title I of the Workforce Investment Act cover?

660.300 What definitions apply to the regulations for workforce investment systems under title I of WIA?

AUTHORITY: Sec. 506(c), Pub. L. 105-220; 20 U.S.C. 9276(c).

SOURCE: 65 FR 49388, Aug. 11, 2000, unless otherwise noted.

§ 660.100 What is the purpose of title I of the Workforce Investment Act of 1998?

The purpose of title I of the Workforce Investment Act of 1998 (WIA) is to provide workforce investment activities that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants, which will improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation's economy. These goals are achieved through the workforce investment system. (WIA sec. 106.)