

(12) If the labor supply SWA accepts a clearance order, the SWA must actively recruit workers for referral. In the event a potential labor supply SWA rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the SWA. The Regional Administrator will examine the reasons for rejection, and, if the Regional Administrator agrees, will inform the Regional Administrator with jurisdiction over the order-holding SWA of the rejection and the reasons. If the Regional Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will inform the National Monitor Advocate, who, in consultation with the appropriate ETA higher authority, will make a final determination on the acceptance or rejection of the order.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 628, Jan. 6, 2020; 87 FR 61791, Oct. 12, 2022]

§ 653.502 Conditional access to the Agricultural Recruitment System.

(a) *Filing requests for conditional access*—(1) “*Noncriteria*” employers. Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the ES office serving the area in which its housing is located, a written request for its clearance orders to be conditionally allowed into the intrastate or interstate clearance system, provided that the employer’s request assures its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) “*Criteria*” employers. If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a clearance order pursuant to an application for temporary alien agricultural labor certification for H-2A workers under subpart B of part 655 of this chapter, the request must be filed with the Certifying Officer (CO) at the processing center designated by ETA in guidance to make determinations on applications

for temporary employment certification under the H-2A program.

(3) *Assurance*. The employer’s request pursuant to paragraph (a)(1) or (2) of this section must contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days (stating the specific date) before the housing is to be occupied.

(b) *Processing requests*—(1) *SWA processing*. Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the ES office must send the request to the SWA, which, in turn, must forward it to the Regional Administrator.

(2) *Regional office processing and determination*. Upon receipt of a request for conditional access pursuant to paragraph (b)(1) of this section, the Regional Administrator must review the matter and, as appropriate, must either grant or deny the request.

(c) *Authorization*. The authorization for conditional access to the intrastate or interstate clearance system must be in writing, and must state that although the housing does not comply with the applicable standards, the employer’s job order may be placed into intrastate or interstate clearance until a specified date. The Regional Administrator must send the authorization to the employer and must send copies (hard copy or electronic) to the appropriate SWA and ES office. The employer must submit and the ES office must attach copies of the authorization to each of the employer’s clearance orders which is placed into intrastate or interstate clearance.

(d) *Notice of denial*. If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system he/she must provide written notice to the employer, the appropriate SWA, and the ES office, stating the reasons for the denial.

(e) *Inspection*. The ES office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system must assure that the housing is inspected no later than the date by which the employer has promised to

have its housing in compliance with the applicable housing standards. An employer however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must afford the employer 5 calendar days to bring the housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must immediately:

(1) Notify the RA or the NPC designated by the Regional Administrator;

(2) With the approval of an appropriate SWA official, remove the employer's clearance orders from intrastate and interstate clearance; and

(3) If workers have been recruited against these orders, in cooperation with the ES agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 628, Jan. 6, 2020]

§ 653.503 Field checks.

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(b) Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to this subpart) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. This requirement must be met on a quarterly basis.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field

checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If the individual conducting the field check observes or receives information, or otherwise has reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the individual must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as E.O.-related issues and others identified by the Department through guidance). If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) SWA officials may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of the SWA. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment-related laws. An enforcement agency field check must satisfy the requirement for SWA field checks where all aspects of wages, hours, and working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(f) ES staff must keep records of all field checks.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 628, Jan. 6, 2020]