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(7) Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d).

§ 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Wage records, for purposes of the Wagner-Peyser Act, are records that contain ''wage information'' as defined in § 603.2(k) of this chapter. In this part, ''State wage records'' refers to wage records produced or maintained by a State.

§ 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

(a) A significant portion of the workforce and labor market information—defined in § 651.10 of this chapter—are developed using State wage records.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and § 652.300, the Secretary of Labor will, in consultation with Federal agencies, and States, and considering recommendations from the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), develop:

(1) Standardized definitions for the data elements comprising ''wage records'' as defined in § 652.301; and

(2) Improved processes and systems for the collection and reporting of wage records.

(c) In carrying out these activities, the Secretary also may consult with other stakeholders, such as employers.

§ 652.303 How do the requirements of part 603 of this chapter apply to wage records?

All information collected by the State in wage records referred to in § 652.302 is subject to the confidentiality regulations at part 603 of this chapter.

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

Subpart A [Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.

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653.500 Purpose and scope of subpart.
653.501 Requirements for processing clearance orders.
653.502 Conditional access to the Agricultural Recruitment System.
653.503 Field checks.
653.504 Severability.

AUTHORITY: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

SOURCE: 81 FR 56341, Aug. 19, 2016, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the Wagner-Peyser Act Employment Service (ES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable and nondiscriminatory fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive

services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

(b) This subpart contains requirements that State Workforce Agencies (SWAs) establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

(c) Established under this subpart are special services to ensure MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2).

[81 FR 56341, Aug. 19, 2016, as amended at 88 FR 82726, Nov. 24, 2023]

§ 653.101 Provision of services to migrant and seasonal farmworkers.

SWAs must ensure that ES staff at one-stop centers offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. SWAs must ensure ES staff at the one-stop centers tailor such ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities, so that MSFWs are reasonably able to participate in the ES.

[88 FR 82726, Nov. 24, 2023]

§ 653.102 Job information.

All SWAs must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. SWAs must ensure ES staff at one-stop centers provide assistance to MSFWs to access job order information easily and efficiently.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 626, Jan. 6, 2020; 88 FR 82726, Nov. 24, 2023]

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each ES office must determine whether participants and reportable individuals are MSFWs as defined at § 651.10 of this chapter.

(b) SWAs must comply with the language access and assistance requirements at 29 CFR 38.9 with regard to all individuals with limited English proficiency (LEP), including MSFWs who are limited English proficient individuals, as defined at 29 CFR 38.4(hh). This includes ensuring ES staff comply with these language access and assistance requirements.

(c) One-stop centers must provide MSFWs a list of available career and supportive services.

(d) One-stop centers must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 626, Jan. 6, 2020; 88 FR 82726, Nov. 24, 2023]

§§ 653.104–653.106 [Reserved]

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) *State Workforce Agency (SWA) outreach responsibilities.* (1) Each SWA must ensure outreach staff conduct outreach as described in paragraph (b) of this section on an ongoing basis. State Administrators must ensure State Monitor Advocates (SMAs) and outreach staff coordinate activities with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups. WIOA title I sec. 167 grantees' activities involving MSFWs does not substitute for SWA outreach responsibilities.

(2) As part of their outreach, SWAs must ensure outreach staff:

(i) Communicate the full range of workforce development services to MSFWs; and

(ii) Conduct thorough outreach efforts with extensive follow-up activities identified at paragraph (b)(5) of this section.

(3) When hiring or assigning outreach staff, SWAs must ensure hiring officials:

(i) Seek and put a strong emphasis on hiring and assigning qualified candidates who speak the language of a significant proportion of the State MSFW population; and

(A) Who are from MSFW backgrounds; or

(B) Who have substantial work experience in farmworker activities.

(ii) Inform farmworker organizations and other organizations with expertise concerning MSFWs of job openings and

encourage them to refer qualified applicants to apply.

(4) Each SWA must ensure that there are an adequate number of outreach staff employed in the State to conduct MSFW outreach in each service area of the State and to contact a majority of MSFWs in the State annually. In the 20 States with the highest estimated year-round MSFW activity, as identified by the Department, there must be full-time, year-round outreach staff to conduct outreach duties. Full-time means each individual outreach staff person must spend 100 percent of their time on the outreach responsibilities described in paragraph (b) of this section. For the remainder of the States, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. These staffing levels must align with and be supported by information about the estimated number of farmworkers in the State and the farmworker activity in the State as demonstrated in the State's Agricultural Outreach Plan (AOP) pursuant to paragraph (d) of this section. All outreach staff must be multilingual, if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The SWA must publicize the availability of ES services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.

(6) SWAs must ensure each outreach staff member is provided with an identification card or other materials identifying them as representatives of the State.

(b) *Outreach staff responsibilities.* Outreach staff must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach staff responsibilities include the activities identified in paragraphs (b)(1) through (11) of this section.

(1) Outreach staff must explain to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, the following:

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the Employment Service and Employment-related Law Complaint System;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.

(2) Outreach staff must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach staff must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, outreach staff must offer to provide onsite the following:

(i) Assistance in the preparation of applications for ES services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either ES or employment-related law complaints;

(iv) Referral of complaints to the ES office Complaint System Representative or ES Office Manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of their family to and from local one-stop centers or other appropriate agencies.

(5) Outreach staff must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (4) of this section.

(6) Outreach staff must be alert to observe the working and living conditions of MSFWs and if an outreach staff member observes or receives information about apparent violations, the outreach staff member must document and refer the information to the appropriate ES Office Manager (as described in § 658.419 of this chapter).

(7) Outreach staff must be trained in one-stop center procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment, sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. Outreach staff also must be trained in the Complaint System procedures at part 658, subpart E, of this chapter and be aware of the local, State, regional, and national enforcement agencies that would be appropriate to receive referrals. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA. The SMA must be given an opportunity to review and comment on the State's program.

(8) Outreach staff must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the ES Office Manager and maintained on file for at least 3 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (e.g., whether a complaint was received and if the complaint or apparent violation was resolved informally or referred to the appropriate enforcement agency, and whether a request for career services was received). Outreach staff also must maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach staff access to MSFWs pursuant to paragraph (b)(2) of this section.

(9) Outreach staff must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

(10) Outreach staff must be provided with, carry, and display, upon request, identification cards or other material identifying them as representatives of the State.

(11) Outreach staff in significant MSFW one-stop centers must conduct especially vigorous outreach in their service areas. Outreach activities must align with and be supported by information provided in the State's AOP pursuant to paragraph (d) of this section.

(c) *ES office outreach responsibilities.* Each ES Office Manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES Office Manager and/or other appropriate staff must assess the performance of outreach staff by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach staff. The monthly reports and daily outreach logs must be made available to the SMA and Federal onsite review teams.

(d) *State Agricultural Outreach Plan (AOP).* (1) Each SWA must develop an AOP every 4 years as part of the Unified or Combined State Plans required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Explain the materials, tools, and resources the State will use for outreach;

(iii) Describe the SWA's proposed outreach activities to contact MSFWs

who are not being reached by the normal intake activities conducted by the one-stop centers. The description must identify the number of full-time and part-time outreach staff positions in the State and must demonstrate that there are sufficient outreach staff to conduct MSFW outreach in each service area of the State to contact a majority of MSFWs in the State annually;

(iv) Describe the activities planned for providing the full range of ES services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers; and

(v) Include a description of how the SWA intends to provide ES staff in significant MSFW one-stop centers in accordance with § 653.111.

(3) In developing the AOP, the SWA must solicit information and suggestions from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the Department, the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment. The SWA must:

(i) Consider any comments received in formulating its final proposed AOP.

(ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

(4) The AOP must be submitted in accordance with paragraph (d)(1) of this section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(u) must update the Department on the SWA's progress toward meeting the objectives set forth in the AOP.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 626, Jan. 6, 2020; 88 FR 82726, Nov. 24, 2023]

§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

(a) State Administrators must ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA self-monitoring. The State Administrator and ES staff must not retaliate against staff, including the SMA, for self-monitoring or raising any issues or concerns regarding noncompliance with the ES regulations.

(b) The State Administrator must appoint an SMA who must be a SWA official. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply. Among qualified candidates, the SWAs must seek and put a strong emphasis on hiring persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak the language of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must be an individual who:

(1) Is a senior-level ES staff employee;

(2) Reports directly to the State Administrator or State Administrator's designee, such as a director or other appropriately titled official in the State Administrator's office, who has the authority to act on behalf of the State Administrator, except that if a designee is selected, they must not be the individual who has direct program oversight of the ES; and

(3) Has the knowledge, skills, and abilities necessary to fulfill the responsibilities as described in this subpart.

(d) The SMA must have sufficient authority, staff, resources, and access to top management to monitor compliance with the ES regulations. Staff assigned to the SMA are intended to help the SMA carry out the duties set forth

in this section and must not perform work that conflicts with any of the SMA's duties, such as outreach responsibilities required by §653.107, ARS processing under subpart F of this part, and complaint processing under subpart E of part 658. The number of ES staff positions assigned to the SMA must be determined by reference to the number of MSFWs in the State, (as measured at the time of the peak MSFW population), and the need for monitoring activity in the State.

(e) The SMA must devote full-time staffing to the SMA functions described in this section. No State may dedicate less than full-time staffing for the SMA position, unless the Regional Administrator, with input from the Regional Monitor Advocate, provides written approval. Any State that proposes less than full-time dedication must demonstrate to the Regional Administrator and Regional Monitor Advocate that all SMA functions can be effectively performed with part-time staffing. The SMA must not perform work that conflicts with any of the SMA's duties, such as outreach responsibilities required by §653.107, ARS processing under subpart F of this part, and complaint processing under subpart E of part 658.

(f) All SMAs and their staff must attend training session(s) offered by the Regional Monitor Advocate(s) and National Monitor Advocate and their staff and those necessary to maintain competency and enhance the SMA's understanding of the unique needs of farmworkers. Such trainings must include those identified by the SMA's Regional Monitor Advocate and may include those offered by the Occupational Safety and Health Administration, the Department's Wage and Hour Division, U.S. Equal Employment Opportunity Commission, the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division, the Department's Civil Rights Center, and other organizations offering farmworker-related information.

(g) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(h) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices. This includes:

(i) Monitoring compliance with §653.111;

(ii) Monitoring the ES services that the SWA and one-stop centers provide to MSFWs to assess whether they are qualitatively equivalent and quantitatively proportionate to the services that the SWA and one-stop centers provide to non-MSFWs; and

(iii) Reviewing the appropriateness of informal resolution of complaints and apparent violations as documented in the complaint logs.

(2) Without delay, must advise the SWA and ES offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and, if warranted, specify the corrective action(s) necessary to address these deficiencies. When the SMA finds corrective action(s) necessary, the ES Office Manager or other appropriate ES staff must develop a corrective action plan in accordance with the requirements identified at paragraph (h)(3)(v) of this section. The SMA also must advise the SWA on means to improve the delivery of services.

(3) Participate in on-site reviews of one-stop centers on a regular basis (regardless of whether or not they are designated significant MSFW one-stop centers) using the procedures set forth in paragraphs (h)(3)(i) through (vii) of this section.

(i) Before beginning an onsite review, the SMA or review staff must study:

(A) Program performance data;

(B) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D) Complaint logs, as required by the regulations under part 658 of this chapter, including logs documenting the informal resolution of complaints and apparent violations; and

(E) Complaints elevated from the office or concerning the office.

(ii) The SMA must ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the SMA must hold one or more wrap-up sessions with the ES Office Manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review, the SMA must conduct an in-depth analysis of the review data. The conclusions, including findings and areas of concern and recommendations of the SMA, must be put in writing and must be sent directly to the State Administrator, to the official of the SWA with authority over the ES office, and other appropriate SWA officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the SMA's report must include the necessary corrective action(s). To resolve the findings, the ES Office Manager or other appropriate ES staff must develop and propose a written corrective action plan. The plan must be approved or revised by SWA officials and the SMA. The plan must include the actions required to correct any compliance issues within 30 business days or, if the plan allows for more than 30 business days for full compliance, the length of and the reasons for the extended period and the major interim steps to correct the compliance issues must be specifically stated. SWAs are responsible for assuring and documenting that the ES office is in compliance within the time period designated in the plan.

(vi) SWAs must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for ES offices.

(vii) The SMA may delegate the review described in paragraph (h)(3) of this section to the SMA's staff, if the SMA finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(4) Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by the SMA or their staff, and that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

(5) Review and approve the SWA's AOP.

(6) On a regular basis, review outreach staff's daily logs and other reports including those showing or reflecting the outreach staff's activities.

(7) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator and the National Monitor Advocate.

(i) The SMA must participate in Federal reviews conducted pursuant to part 658, subpart G, of this chapter, as requested by the Regional or National Monitor Advocate.

(j) The SMA must monitor the performance of the Complaint System, as set forth at §§ 658.400 and 658.401 of this chapter. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES Office Manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA.

(k) The SMA must serve as an advocate to improve services for MSFWs.

(l) The SMA must establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(m) The SMA must establish an ongoing liaison with the State-level Equal Opportunity (E.O.) Officer.

(n) The SMA must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraphs (l) and (m) of this section, to receive input on improving coordination with ES offices or improving the coordination of services to MSFWs. To foster such collaboration, the SMAs must communicate freely with these organizations. The SMA must also establish Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farmworkers as appropriate.

(o) The SMA must conduct frequent field visits to the working, living, and gathering areas of MSFWs, and must

discuss the SWA's provision of ES services and other employment-related programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(p) The SMA must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(q) The SMA must ensure that outreach efforts in all significant MSFW one-stop centers are reviewed at least yearly. This review will include accompanying at least one outreach staff from each significant MSFW one-stop center on field visits to MSFWs' working, living, and/or gathering areas. The SMA must review findings from these reviews with the ES Office Managers.

(r) The SMA must review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order:

(1) To determine the extent to which the SWA has complied with the ES regulations; and

(2) To identify the areas of non-compliance.

(s) The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices and may interview ES staff with respect to reporting methods. After each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.

(t) The SMA must review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations; and

(2) That they are clear and workable. The SMA also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(u) The SMA must prepare for the State Administrator, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided ES services to MSFWs within the State based on statistical data, reviews, and other activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the SMA pertaining to their responsibilities set forth in this section and other applicable regulations in this chapter.

(2) An assurance that the SMA is a senior-level official who reports directly to the State Administrator or the State Administrator's designee as described at paragraph (c) of this section.

(3) An evaluation of SMA staffing levels, including:

(i) An assurance the SMA devotes all of their time to Monitor Advocate functions or, if the SMA conducts their functions on a part-time basis, an assessment of whether all SMA functions are able to be effectively performed on a part-time basis; and

(ii) An assessment of whether the performance of SMA functions requires increased time by the SMA (if part-time) or an increase in the number of ES staff assigned to assist the SMA in the performance of SMA functions, or both.

(4) A summary of the monitoring reviews conducted by the SMA, including:

(i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;

(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and

(iii) A summary of any technical assistance the SMA provided for the SWA, ES offices, and outreach staff.

(5) A summary and analysis of the outreach efforts undertaken by all significant and non-significant MSFW one-stop centers, as well as the results of those efforts, and an analysis of whether the outreach levels and results were adequate.

(6) A summary of the State's actions taken under the Complaint System described in part 658, subpart E, of this chapter, identifying any challenges, complaint trends, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the Complaint System.

(7) A summary of how the SMA is working with WIOA sec. 167 NFJP grantees, the State-level E.O. Officer, and other organizations serving farmworkers, employers, and employer organizations in the State, and an assurance that the SMA is meeting at least quarterly with these individuals and representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.

(9) A summary of the training conducted for ES staff on techniques for accurately reporting data.

(10) A summary of activities related to the AOP and an explanation of whether those activities helped the State reach the objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the objectives set forth in the AOP, and a description of the objectives which were not achieved and the steps the SWA will take to address those deficiencies.

(11) For significant MSFW one-stop centers, a summary of the State's efforts to comply with § 653.111.

[88 FR 82727, Nov. 24, 2023]

§ 653.109 Data collection and performance accountability measures.

SWAs must:

(a) Collect career service indicator data for the career services specified in WIOA sec. 134(c)(2)(A)(xii).

(b) Collect data, in accordance with applicable ETA Reports and Guidance, on:

(1) The number of MSFWs contacted through outreach activities;

(2) The number of MSFWs and non-MSFWs registered for career services;

(3) The number of MSFWs referred to and placed in agricultural jobs;

(4) The number of MSFWs referred to and placed in non-agricultural jobs;

(5) The percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(6) The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(7) The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(8) The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;

(9) Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities;

(10) The number of reportable individuals and participants who are MSFWs; and

(11) Any other data required by the Department.

(c) Provide necessary training to ES staff on techniques for accurately reporting data.

(d) Collect and submit data on MSFWs required by the Unified or Combined State Plan, as directed by the Department.

(e) Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, and submit the data for verification to the Department, as directed by the Department.

(f) Submit additional reports to the Department as directed.

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW States will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job,

individuals placed long-term (150 days or more) in a non-agricultural job, a review of significant MSFW one-stop centers, field checks conducted, outreach contacts per quarter, and processing of complaints. The determination of the minimum service levels required of significant MSFW States must be based on the following:

(1) Past SWA performance in serving MSFWs, as reflected in on-site reviews and data collected under paragraph (b) of this section.

(2) The need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 628, Jan. 6, 2020; 88 FR 82729, Nov. 24, 2023]

§ 653.110 Disclosure of data.

(a) SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109, if possible within 10 business days after receipt of the request.

(b) If a request for data held by a SWA is made to the ETA national or regional office, ETA must forward the request to the SWA for response.

(c) If the SWA cannot supply the requested data within 10 business days after receipt of the request, the SWA must respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) SWA intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, also may be withheld provided the reason is given to the requestor in writing.

[81 FR 56341, Aug. 19, 2016, as amended at 88 FR 82730, Nov. 24, 2023]

§ 653.111 State Workforce Agency staffing requirements for significant MSFW one-stop centers.

(a) The SWA must staff significant MSFW one-stop centers in a manner facilitating the delivery of ES services tailored to the unique needs of MSFWs. This includes recruiting qualified candidates who meet the criteria in § 653.107(a)(3).

(b) The SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of their regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its obligations under paragraph (a) of this section.

(c) SWAs remain subject to all applicable Federal laws prohibiting discrimination and protecting equal employment opportunity.

[85 FR 628, Jan. 6, 2020, as amended at 88 FR 82730, Nov. 24, 2023]

Subparts C–E [Reserved]

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

§ 653.500 Purpose and scope of subpart.

This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This subpart affects all job orders for workers who are recruited through the ES intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

§ 653.501 Requirements for processing clearance orders.

(a) *Assessment of need.* No ES staff may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The ES office and employer have attempted and have not been able to

obtain sufficient workers within the local labor market area; or

(2) The ES office anticipates a shortage of local workers.

(b) *ES office responsibilities.* (1) Each ES office must ensure the agricultural clearance form prescribed by the Department (ETA Form 790 or its subsequently issued form), and its attachments are complete when placing intrastate or interstate clearance orders seeking workers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the ES office incorporates offices beyond the local office commuting area, the ES office must suppress the employer information in order to facilitate the orderly movement of workers within the ES.

(3) ES staff must determine, through a preoccupancy housing inspection performed by ES staff or an appropriate public agency, that the housing assured by the employer is either available and meets the applicable housing standards or has been approved for conditional access to the clearance system as set forth in § 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(4) Prior to placing a job order into intrastate or interstate clearance, ES staff must consult the Department's Office of Foreign Labor Certification and Wage and Hour Division debarment lists, and the Department's Office of Workforce Investment discontinuation of services list.

(i) If the employer requesting access to the clearance system is currently debarred from participating in the H–2A or H–2B foreign labor certification programs, the SWA must initiate discontinuation of services pursuant to part 658, subpart F, of this chapter.

(ii) If the employer requesting access to the clearance system is currently discontinued from receiving ES services under § 658.503 of this chapter by any State, the SWA must not approve the clearance order for placement into intrastate or interstate clearance. Employers may submit written requests to the OWI Administrator to determine whether they are on the OWI discontinuation of services list. If the OWI Administrator indicates that the employer is not on the discontinuation of services list then the SWA must approve the clearance order, as long as all other requirements have been met.

(iii) For purposes of this paragraph (b)(4), ''employer'' has the meaning given in § 658.500(b) of this chapter.

(c) *SWA responsibilities.* (1) SWAs must ensure intrastate and interstate clearance orders:

(i) Include the following language: ''In view of the statutorily established basic function of the ES as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the SWAs are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a SWA is in any way a party;''

(ii) Do not contain an unlawful discriminatory specification including, for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status;

(iii) Are signed by the employer; and

(iv) State all the material terms and conditions of the employment, including:

(A) The crop;

(B) The nature of the work;

(C) The anticipated period and hours of employment;

(D) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(E) The hourly wage rate, if applicable, and any non-hourly wage rate offered, including a piece rate or base rate and bonuses and, for any non-hourly wage rate, an estimate of its hourly wage rate equivalent for each activity and unit size;

(F) Any deductions to be made from wages;

(G) A specification of any non-monetary benefits to be provided by the employer;

(H) Any hours, days, or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) of this section, the exclusive manner in which

the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

(I) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.

(2) SWAs must ensure:

(i) The wages offered are not less than the applicable prevailing wages, as defined in § 655.103(b) of this chapter, or the applicable Federal or State minimum wage, whichever is higher. The working conditions offered are not less than the prevailing working conditions among similarly employed farmworkers in the area of intended employment. If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to ES staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher; and

(ii) The employer has agreed to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.

(3) SWAs must ensure that the employer makes the following assurances in the clearance order:

(i) The employer will provide to workers placed through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the 14 calendar days beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section).

(ii) No extension of employment beyond the period of employment specified in the clearance order may relieve the employer from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

(iii) The working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

(iv) The employer will notify the order-holding office or SWA immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. If there is a change to the date of need, the employer will notify the order-holding office or SWA, and each worker who has been placed on the clearance order using the contact information the worker provided to the employer, in writing (email and other forms of electronic written notification are acceptable) at least 10 business days prior to the original date of need. Notification to workers must be made in accordance with the language access requirements of 29 CFR 38.9 for workers with limited English proficiency. If a worker provides electronic contact information, such as an email address or telephone number, the employer will send notice using one of the electronic contact methods provided. If the employer provides non-written telephonic notice, such as a phone call, voice message, or an equivalent, the employer will also send written notice using the email or postal address provided by the worker at least 10 business days prior to the original date of need. The employer will maintain records of the notification and the date notification was sent to the order-holding office or SWA and workers for 3 years. Consistent with paragraph (c)(5) of this section, if the employer does not properly send notification to the order-holding office

or SWA and workers at least 10 business days prior to the original date of need, the employer will provide the housing described on the clearance order to all migrant workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences. The employer will pay all placed workers for the hours listed on the clearance order and will provide or pay all other benefits and expenses described on the clearance order for each day work is delayed up to 14 calendar days or provide alternative work.

(v) The employer, if acting as a farm labor contractor (''FLC'') or farm labor contractor employee (''FLCE'') on the order, has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State farm labor contractor certificate.

(vi) The availability of no cost or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance system. This assurance must cover the availability of housing for only those workers, and when applicable, family members who are not reasonably able to return to their residence in the same day.

(vii) Outreach staff must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(viii) The job order contains all the material terms and conditions of the job. The employer must assure this by signing the following statement in the clearance order: ''This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.''

(4) If a SWA discovers that an employer's clearance order contains a material misrepresentation, the SWA may initiate the Discontinuation of Services as set forth in part 658, subpart F of this chapter.

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office or SWA and all workers placed on the clearance order at least 10 business days prior to the original date of need, as assured in paragraph (c)(3)(iv) of this section, the employer must provide housing to all migrant workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences, and must pay all placed workers the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage, or an applicable prevailing wage, or for criteria orders the rate of pay required under part 655, subpart B, of this chapter, and must provide or pay all other benefits and expenses described on the clearance order for each day work is delayed up to 14 calendar days starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the approved clearance order. If an employer fails to comply under this paragraph (c)(5) the order-holding office must process the information as an apparent violation pursuant to § 658.419 of this chapter and may refer an apparent violation of the employer's payment obligation under this paragraph (c)(5) to the Department's Wage and Hour Division.

(d) *Processing clearance orders.* (1) The order-holding ES office must transmit an electronic copy of the approved clearance order to its SWA. The SWA must distribute additional electronic copies of the form with all attachments (except that the SWA may, at its discretion, delegate this distribution to the local office) as follows:

(i) At least one copy of the clearance order must be sent to each of the SWAs selected for recruitment (areas of supply);

(ii) At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;

(iii) At least one copy of the clearance order must be sent to the order-holding ETA regional office; and

(iv) At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

(2) The ES office may place an intrastate or interstate order seeking workers to perform farmwork for a specific farm labor contractor or for a worker preferred by an employer provided the order meets ES nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a ''white male crew leader'' or ''any white male crew leader.''

(3) The approval process described in this paragraph (d)(3) does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter; such clearance orders must be sent to the processing center as directed by ETA in guidance. For noncriteria clearance orders (orders that are not attached to applications under part 655, subpart B, of this chapter), the ETA regional office must review and approve the order within 10 business days of its receipt of the order, and the Regional Administrator or their designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or their designee must be in writing and state the reasons for the denial.

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The SWA must make a record of this notification.

(5) If the worker referred through the clearance system contacts an ES office (in any State) other than the order holding office, that ES office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.

(6) ES staff must assist all farmworkers to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order.

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels have changed since the date the clearance order was accepted, the SWA must contact immediately the applicant holding office which must inform immediately crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, SWAs must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

(9) If weather conditions, over-recruitment, or other conditions have eliminated the scheduled job opportunities, the SWAs involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/are already en route or at the job site. ES staff must keep records of actions under this section.

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request.

(11) The applicant-holding office must give each referred worker a copy of the list of worker's rights described in Departmental guidance.

(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; 88 FR 82730, Nov. 24, 2023; 89 FR 35048, Apr. 29, 2024]

§ 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 they 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; 88 FR 82730, Nov. 24, 2023]

§ 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 unannounced field checks to determine and document whether wages, hours, transportation, 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; 88 FR 82730, Nov. 24, 2023]

§ 653.504 Severability.

Should a court hold any portion of any provision of this part to be invalid, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision or subprovision will be severable from this part and will not affect the remainder thereof.

[88 FR 82730, Nov. 24, 2023]