

§ 654.14 Filing of complaints.

Complaints arising under subpart B of this part alleging that the Department of Labor has violated the labor surplus area regulations shall be made pursuant to the procedures set forth at § 654.9 of this part.

[48 FR 15616, Apr. 12, 1983]

Subparts C–D [Reserved]**Subpart E—Housing for Farmworkers**

SOURCE: 81 FR 56349, Aug. 19, 2016, unless otherwise noted.

PURPOSE AND APPLICABILITY**§ 654.400 Scope and purpose.**

(a) This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances. Local Wagner-Peyser Act Employment Service (ES) offices, as part of the State ES agencies and in cooperation with the ES program, assist employers in recruiting farmworkers from places outside the area of intended employment. The experiences of the ES agencies indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State ES system to deny its intrastate and interstate recruitment services to employers until the State ES agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted, and the ES staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or this subpart, except that mobile range housing for sheepherders or goat herders must meet existing Departmental guidelines and/or applicable regulations.

§ 654.401 Applicability.

(a) Employers whose housing was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980, may continue to follow the full set of the Department's ETA standards set forth in this subpart.

(b) The Department will consider agricultural housing which complies with ETA transitional standards set forth in this subpart also to comply with the Occupational Safety and Health Administration (OSHA) temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local ES office serving the area in which the housing is located. This application must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Adequately justify that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local ES office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.

(c) The variance granted by the RA must be in writing, must state the particular standard(s) involved, and must state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the

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Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State Workforce Agency (SWA) and the local ES office. The employer must submit and the local ES office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate SWA, and the local ES office. The notice also must offer the employer an opportunity to request a hearing before a Department of Labor Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§ 658.424 and 658.425 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404 through 654.417.

§ 654.403 [Reserved]

HOUSING STANDARDS

§ 654.404 Housing site.

(a) Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing must not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

20 CFR Ch. V (4-1-23)

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority must be provided.

(b) A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.

(c) Common drinking cups are not permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

§ 654.407 Housing.

(a) Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.

(b) Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements must be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant; and

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of