

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

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AUTHORITY: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

SOURCE: 44 FR 1689, Jan. 5, 1979, unless otherwise noted.

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AUTHORITY: 41 U.S.C. 10a *et seq.*; 29 U.S.C. 49 *et seq.*; 15 U.S.C. 644(n); E.O. 12073; 10582, as amended by E.O. 11051 and 12148.

§ 654.1 Purpose of subpart.

This subpart implements the responsibilities of the Secretary of Labor in classifying labor surplus areas in accordance with Executive Order 12073 (Federal Procurement in Labor Surplus Areas). The Secretary of Labor has delegated responsibilities to the Assistant Secretary, Employment and Training Administration.

[44 FR 1689, Jan. 5, 1979, as amended at 48 FR 15616, Apr. 12, 1983]

§ 654.3 Description of Executive Order 12073.

Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under this order for classifying and designating labor surplus areas.

[44 FR 1689, Jan. 5, 1979, as amended at 48 FR 15616, Apr. 12, 1983]

§ 654.4 Definitions.

(a) *Assistant Secretary* shall mean Assistant Secretary for Employment and Training, U.S. Department of Labor.

(b) *Civil jurisdiction* shall mean:

(1) Cities of 25,000 or more population on the basis of the most recently available Bureau of the Census estimates; or

(2) Towns and townships in the States of New Jersey, New York, Michigan, and Pennsylvania of 25,000 or more population and which possess powers and functions similar to cities; or

(3) All counties, except those counties which contain any of the types of political jurisdictions defined in paragraphs (b) (1) and (2) of this section; or

(4) All other counties are defined as “balance of county” (*i.e.*, total county less component cities and townships identified in paragraphs (b) (1) and (2) of this section); or

(5) County equivalents which are towns in the States of Massachusetts, Rhode Island and Connecticut.

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(c) *Labor surplus area* shall mean a civil jurisdiction that, in accordance with the criteria specified in § 654.5, has been classified as a labor surplus area.

(d) *Reference period* shall mean the two year period ending December 31 of the year prior to the October 1 annual date of eligibility determination.

[44 FR 1689, Jan. 5, 1979, as amended at 44 FR 26071, May 5, 1979; 48 FR 15616, Apr. 12, 1983; 53 FR 23347, June 21, 1988]

§ 654.5 Classification of labor surplus areas.

(a) *Basic criteria.* The Assistant Secretary shall classify a civil jurisdiction as a labor surplus area whenever, as determined by the Bureau of Labor Statistics, the average unemployment rate for all civilian workers in the civil jurisdiction for the reference period is (1) 120 percent of the national average unemployment rate for civilian workers or higher for the reference period as determined by the Bureau of Labor Statistics, or (2) 10 percent or higher. No civil jurisdiction shall be classified as a labor surplus area if the average unemployment rate for all civilian workers for the reference period is less than 6.0 percent.

(b) *Criteria for exceptional circumstances.* The Assistant Secretary, upon petition submitted by the appropriate State Workforce Agency, may classify a civil jurisdiction, a Metropolitan Statistical Area, or a Primary Metropolitan Statistical Area as a labor surplus area whenever such an area meets or is expected to meet the unemployment tests established under § 654.5(a) as a result of exceptional circumstances. For purposes of this paragraph “exceptional circumstances” shall mean catastrophic events, such as natural disasters, plant closings, and contract cancellations expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors. For purposes of this paragraph, “Metropolitan Statistical Area” and “Primary Metropolitan Statistical Area” shall mean the areas officially defined and des-

ignated as such by the Office of Management and Budget.

(Approved by OMB under control number 1205-0207)

[48 FR 15616, Apr. 12, 1983, as amended at 53 FR 23347, June 21, 1988; 71 FR 35518, June 21, 2006]

§ 654.6 Termination of classification.

(a) *Basic procedure.* The Assistant Secretary shall terminate the classification of a civil jurisdiction as a labor surplus area after any year in which the Assistant Secretary determines that the criteria established under § 654.5 (a) are no longer met.

(b) *Procedure for exceptional circumstances.* The Assistant Secretary shall terminate the classification of a civil jurisdiction classified as a labor surplus area pursuant to the provisions of § 654.5(b) after any year in which the Assistant Secretary determines that the exceptional circumstances criteria of that paragraph are no longer met.

[44 FR 1689, Jan. 5, 1979, as amended at 48 FR 15616, Apr. 12, 1983]

§ 654.7 Publication of area classifications.

The Assistant Secretary shall publish annually a list of labor surplus areas together with geographic descriptions thereof. The Assistant Secretary periodically may cause these lists to be published in the FEDERAL REGISTER.

[44 FR 1689, Jan. 5, 1979, as amended at 48 FR 15616, Apr. 12, 1983]

§ 654.8 Services to firms and individuals in labor surplus areas.

To carry out the purposes and policy objectives of Executive Order 12073 and Executive Order 10582, the Assistant Secretary shall cooperate with and assist the State Workforce Agencies and the Secretary of Commerce, as appropriate, to:

(a) Provide relevant labor market data and related economic information to assist in the initiation of industrial expansion programs in labor surplus areas;

(b) Identify upon request the skills and numbers of unemployed persons available for work in labor surplus areas, providing such information to firms interested in establishing new

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plants and facilities or expanding existing plants and facilities in such areas;

(c) Identify the occupational composition and skill requirements of industries contemplating locating in labor surplus areas and make such information available to training and apprenticeship agencies and resources in the community for purposes of appropriate training and skill development;

(d) Identify unemployed individuals in need of, and having the potential for, training in occupations and skills required by new or expanding industries and refer such individuals to appropriate training opportunities;

(e) Receive job openings on a voluntary basis and/or under the mandatory listing program provided by 38 U.S.C. 2012 and Executive Order 11701 and refer qualified unemployed workers to such openings, making appropriate efforts to refer to such openings qualified individuals who reside in the labor surplus area.

[44 FR 1689, Jan. 5, 1979, as amended at 48 FR 15616, Apr. 12, 1983; 71 FR 35518, June 21, 2006]

§ 654.9 Filing of complaints.

Complaints alleging that the Department of Labor has violated the labor surplus area regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints should include: (a) The allegations of wrongdoing; (b) the date of the incident; and (c) any other relevant information available to the complainant. The Assistant Secretary shall make a determination and respond to the complainant after investigation of the incident. If the complaint is not resolved following this investigation, the Assistant Secretary, at his discretion, may offer, in writing by certified mail, the complainant a hearing before a Department of Labor Administrative Law Judge, provided that the complainant requests such a hearing from the Assistant Secretary within 20 working days of the certified date of receipt of the Assistant Secretary's offer of a hearing.

[48 FR 15616, Apr. 12, 1983]

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§ 654.10 Transition provisions.

The annual list of labor surplus areas for the period June 1, 1982, through May 31, 1983, shall be extended through September 30, 1983.

[48 FR 15616, Apr. 12, 1983]

Subpart B—Responsibilities Under Executive Order 10582

AUTHORITY: 41 U.S.C. 10a *et seq.*; 29 U.S.C. 49 *et seq.*; 15 U.S.C. 644(n); E.O. 12073, E.O. 10582 as amended by E.O. 11051 and 12148.

§ 654.11 Purpose of subpart.

This subpart implements the responsibilities of the Secretary of Labor in determining areas of substantial unemployment in accordance with Executive Order 10582 issued pursuant to the Buy American Act, 41 U.S.C. 10a *et seq.*

§ 654.12 Description of Executive Order 10582.

(a) Under the Buy American Act, heads of executive agencies are required to determine, as a condition precedent to the purchase by their agencies of materials of foreign origin for public use within the United States, (1) that the price of like materials of domestic origin is unreasonable, or (2) that the purchase of like materials of domestic origin is inconsistent with the public interest.

(b) Section 3(c) of Executive Order 10582 issued pursuant to the Buy American Act permits executive agencies to reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier, offering the lowest price for furnishing the desired materials, undertakes to produce substantially all of the materials in areas of substantial unemployment, as determined by the Secretary of Labor.

§ 654.13 Determination of areas of substantial unemployment.

An area of substantial unemployment, for purposes of Executive Order 10582, shall be any area classified as a labor surplus area at § 654.5 of this part pursuant to the procedures set forth at subpart A of this part.

§ 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 goatherders 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.

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§ 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

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age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations must be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.

(g) At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings must be protected with screening of not less than 16 mesh.

(b) All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (°F) if during the period of normal occupancy the temperature in such quarters falls below 68 °F.

(b) Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete

slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor, or roof.

(d) When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

(a) All housing sites must be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.

(c) Adequate lighting must be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures must be installed and maintained in a safe condition.

§ 654.411 Toilets.

(a) Toilets must be constructed, located, and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of non-absorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are

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in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked “men” and “women” in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.

(f) Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.

(g) Toilet facilities must be located within 200 feet of each living unit.

(h) Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits must be fly-tight. Privy pits must have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and hand washing.

(a) Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.

(b) There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated “men” or “women” in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure,

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must be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

(1) A cookstove or hot plate with a minimum of two burners;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;

(4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and

(5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

(1) Stoves or hot plates, with a minimum equivalent of 2 burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Mechanical refrigeration for food at a temperature of not more than 45 °F;

(4) Tables and chairs or equivalent seating adequate for the intended use of the facility;

(5) Adequate sinks with hot and cold water under pressure;

(6) Adequate lighting and ventilation; and

(7) Floors must be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall

must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment, and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions must be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities must be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a) Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator must be clean and sanitary.

(c) Triple deck bunks may not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 × 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.