

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 785

Prime Farmlands Grandfather Provisions; Extension of Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Extension of public comment period on proposed rules for the interim and permanent regulatory programs.

SUMMARY: The public comment period on the proposed regulations to revise the prime farmlands grandfather provisions (See 45 FR 25992, April 16, 1980) is extended for an additional 15 days from June 10, 1980.

DATES: Comments are due on or before June 25, 1980 at 5:00 p.m.

ADDRESS: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 153, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Edward Johnson, Staff Member, Technical Services Division, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; (202) 343-5261.

SUPPLEMENTARY INFORMATION: On April 16, 1980, the Office of Surface Mining published proposed regulations to revise the grandfather exemption to the prime farmlands provisions of Section 510(d)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for both the interim and permanent regulatory programs. The comment period on those proposed regulations, which ended May 30, 1980, is being reopened and extended to June 25, 1980 to solicit additional public comment in light of the May 2, 1980 decision of the U.S. Court of Appeals for the District of Columbia Circuit, *In re Surface Mining Regulation Litigation*,—F. 2d—. The Court of Appeals invalidated the prime farmland grandfather clause of the interim regulations (30 CFR Section 716.7(a)(2)) to the extent that it improperly reduced the prime farmland grandfather rights established by Section 510(d)(2) of the Act. A further judicial action is currently pending as a result of National Wildlife Federation's request that the Court of Appeals reconsider its decision. The public is invited to submit additional comments

related to the Court of Appeal's decision. A copy of the decision is in the administrative record.

The public is also specifically advised that the Department has received a broad range of comments on the proposed regulations and may adopt final regulations that differ from the proposal. The full range of alternatives being considered includes:

1. Limiting the grandfathering authority to pre-August 3, 1977 permit areas (this is the position suggested by the petition for reconsideration).

2. Allowing grandfathering outside of the pre-August 3, 1977 permit area so long as the mining occurs continuously at a related site.

3. Allowing grandfathering outside of the pre-August 3, 1977 permit area but limiting the length of the exemption based upon consideration of a variety of factors including time, amount of investment, type of equipment, contracts, mine plans, and judgment of the State Regulatory Authority.

Comments are specifically requested on this full-range of alternatives. Any combination of these and similar alternatives may be adopted. The Department's final decision will be based on full consideration of all comments received and after careful analysis of the decision of the Court of Appeals for the District of Columbia.

Dated: June 3, 1980.

Walter N. Heine,
Director, Office of Surface Mining.

[FR Doc. 80-17502 Filed 6-9-80; 8:45 am]

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Environmental Protection Agency

Tuesday
June 10, 1980

Part VII

Environmental Protection Agency

Premanufacture Notification and Review;
Economic Impact

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-50010; FRL-1510-5]

Premanufacture Notification and Review; Economic Impact

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has awarded a contract to ICF, Inc., to perform the economic impact analysis on the section 5 Premanufacture Notification Rules of the Toxic Substances Control Act (TSCA). This notice describes the methodology that ICF will use in assessing the economic impact of the section 5 notice requirements.

DATE: Written comments should be submitted on or before July 10, 1980.

MEETINGS: During the 30-day comment period EPA personnel will be available to meet with interested persons who wish to discuss and comment on this methodology. Beginning on the date of publication persons who wish to meet with EPA representatives should contact the Industry Assistance Office at 800-424-9065; in Washington, D.C. please call 554-1404. This office will arrange times and places for the meeting, and provide such information to the public.

ADDRESS: All written comments should bear the identifying notation (OPTS-50010) and be addressed to: Document Control Officer (OPTS-793), Office of Pesticides and Toxic Substances, Room E-447, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

All comments will be available for public inspection in Rm. 410, East Tower, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (OPTS-799), Environmental Protection Agency, 401 M Street SW., Washington, D.C., Toll Free: 800-424-9065, In Washington: 202-554-1404.

SUPPLEMENTAL INFORMATION:

Background and Purpose

EPA proposed initial premanufacture notification rules, published in the *Federal Register* of January 10, 1979 (44 FR 2242), under section 5 of the Toxic Substances Control Act (TSCA). As a result of public comments on the proposed section 5 regulations, EPA repropoed a portion of these regulations in a document published in

the *Federal Register* of October 16, 1979 (44 FR 59764).

A preliminary economic impact analysis, prepared by Arthur D. Little, Inc., for EPA, was published concurrently with the January proposed rules. This analysis estimated the costs of preparing section 5 notices and briefly examined their potential impact on new chemical development. In addition, a unit cost analysis for the October 16, 1979 reproposal form was completed by Arthur D. Little, Inc. These documents, "Impact of TSCA Proposed Premanufacture Notification Requirements", December 1978, and "Estimated Costs of Preparation and Submission of Reproposed Premanufacture Notice Form", October 1979 are available from the EPA Industry Assistance Office.

The Agency is soliciting comments on this notice and the contractor's proposed methodology entitled "A Methodology for Analyzing the Economic Impacts of Regulations Implementing section 5 of TSCA". This document, prepared by ICF, is available from the EPA Industry Assistance Office. Persons will also be allowed time to comment on the drafts of the Economic Analysis and the Regulatory Analysis when they are proposed later this year. The Agency is particularly interested in specific suggestions or alternatives to (1) the chemical industry segmentation scheme developed by the contractor; (2) the contractor's data-gathering approach; (3) the ways the contractor has suggested obtaining historical chemical specific financial data not available in the public file; and (4) the methodology proposed for the economic impact analysis.

ICF, Inc., was contracted by EPA to conduct an economic analysis of the regulatory alternatives available to EPA in implementing section 5 and the impacts of this program on the chemical industry. Specifically, ICF is to extend the Arthur D. Little, Inc., preliminary analysis to address impacts on industry performance and structure and impacts on the economy. The impacts of the section 5 requirements in their entirety are being analyzed.

ICF, Inc., has performed or is performing the following five tasks using the methods stated to augment this initial effort:

1. Develop project workplan.
2. Gather data.
3. Assess feasibility of formal approaches to economic impact analysis.
4. Perform economic impact analysis (based on previous tasks).
5. Analyze regulatory provisions.

The first three tasks were necessary to provide the framework for the economic analysis under Task 4. The output of these tasks to a considerable extent determines the appropriate approach to Task 4.

Task 1.—Develop Project Workplan

The contractor has developed a general workplan for the project in its entirety, covering all subtasks needed to gather data, analyze data, perform impact analyses, and prepare reports in accordance with the agreed upon schedule.

Included in the workplan for each task identified are the objective of the tasks, a brief discussion of the technical approaches to be utilized, a proposed staffing plan for the task, a discussion of anticipated constraints or potential problems of which the EPA Project Officer should be aware.

Task 2.—Gather Data

The contractor intends to collect information to complete an analysis of the impacts of section 5 requirements on the chemical industry. The general concept of the data gathering task is to develop profiles of chemical industry segments, including, but not limited to, financial characteristics, product introductions, and R&D practices. These profiles shall be used to conduct the economic impact analysis on a segment-specific basis under Task 4.

(a) *Segmentation scheme.* The contractor has developed a segmentation scheme based on chemical and economic characteristics to perform this task. This segmentation scheme includes seven groups of chemicals as follows: (1) inorganic chemicals; (2) high polymers; (3) soaps, detergents, and fatty acids; (4) elementary organic chemicals; (5) organic chemicals N.E.C.; (6) catalysts; and (7) other chemical products. Table 1 shows the component products of each segment and the roughly corresponding Standard Industrial Classification Codes.

Table 1—Tentative Segmentation Scheme

Segment	Component products	Approximate corresponding SIC codes
(1) Inorganic Chemicals.	Alkalies and chlorine .	2812
	Industrial gases	2813
	Inorganic pigments.....	2816
	Inorganic acids	28193, 28194
	Potassium and sodium compounds.	28197
	Fertilizers	2873, 2874
	Other inorganic chemicals.	28195, 28196, 28199
(2) High Polymers.....	Thermoplastic resins .	28213
	Thermosetting resins .	28214
	Synthetic rubber	2822
	Organic Fibers	2824

Table 1—Tentative Segmentation Scheme—Continued

Segment	Component products	Approximate corresponding SIC codes
(3) Soaps/Detergents/Fatty Acids.	Soaps and detergents	2841
	Surfactants	2843
	Fatty acids	2892
(4) Elementary Organic Chemicals.	Gum and wood chemicals.	2861
	Cyclic crudes	2865
	Primary petrochemicals.	2911
(5) Organic Chemicals, NEC.	Cyclic intermediates.	2865
	Organic dyes and pigments.	2865, 2863
	Miscellaneous cyclic chemical products.	2869
	Miscellaneous acyclic chemical products.	2869
	Rubber-processing chemicals.	2869
	Plasticizers	2869
	Synthetic organic chemicals, NEC.	2869
(6) Catalysts	Organic explosives	2892
(7) Other Chemical Products.	Catalytic preparations	2819
	Cellulosic man-made fibers.	2823
	Polishes and sanitary goods.	2842
	Paints and allied products.	2851
	Adhesives and sealants.	2891
	Explosives	2892
	Printing ink	2893
	Carbon black	2895
	Gelatin, except ready-to-eat desserts.	2894
	Salts, essential oils, and chemical preparations, NEC.	2899, 2895

In concept, the segmentation scheme does not differ much from one proposed earlier by Arthur D. Little, Inc. ICF has grouped the 41 Arthur D. Little, Inc., segments according to chemical characteristics. In the case of elementary organic chemicals, the contractor has aggregated the Arthur D. Little, Inc., six segments into three. To the extent that different sizes of business enterprises create similar types of chemicals, the contractor will further subdivide the chemical segment for purposes of economic projections to the extent possible. In this way, the impact on small business will be explored.

The advantage of this scheme is that the segments should provide an effective approach to analyze new product development. Some classes of chemicals are not going to be the source of large numbers of new products, e.g., inorganic chemicals, and elementary organic chemicals. Others will result in many new products, e.g., high polymers, and organic chemicals. The disadvantage may be that the economic structures do not match neatly with these segments.

As mentioned above, EPA requests comments on this segmentation scheme. If this scheme is not acceptable, EPA

expects commentators to suggest alternatives. Commentors should provide data to support the alternatives and to demonstrate their advantages.

(b) *Specific approach.* The contractor intends to perform the following activities in order to obtain the data needed to assess the impact of section 5 notice provisions on each chemical industry segment:

(1) Consult previous economic studies, industry experts, and government reports in order to identify potential chemical industry/product market segments for analysis.

(2) Identify potential sources of data to develop profiles of those segments. Potential sources include:

(i) Contact with CMA, SOCMA, CSMA, NAM, Chamber of Commerce, and other industry associations.

(ii) Company interviews, if needed, for specific data.

(iii) Independent industry experts and consultants.

(iv) Chemical industry literature, including government statistics from National Science Foundation, Department of Commerce, International Trade Commission, etc., trade publications and chemical marketing literature, and previous studies bearing on chemical innovation.

(3) Assess the feasibility, in particular, of using industry interviews. This will include assessing how the interviews could be most effectively used and in developing a sampling plan.

(4) Prepare a briefing and summary memo which outlines the data gathering plan to be implemented. The plan should discuss which segments have been chosen and why, which sources of data will be used to provide which aspects of the segment profiles, and the conclusions regarding the use of industry interviews.

(5) Develop chemical industry segment profiles. The contractor intends to use previous economic studies, industry experts, and government reports as initial sources of data to develop preliminary chemical market segment profiles. Having completed this analysis, the contractor will identify data not available from public sources and yet necessary to measure the impact of section 5 notice provisions. The gaps will probably be primarily related to historical data on new product introductions and sales, required returns on investment for new products, investments required on new products, and product line specific profit margins. EPA is very interested in obtaining recommendations and data from commentators on how to fill in those data gaps.

Task 3.—Assess Feasibility of Formal Approaches to Economic Impact Analysis

ICF, Inc. has completed a small-scale study to assess the technical feasibility of developing a formal economic approach to analyze the impacts of section 5 notice requirements on the chemical industry. The purpose of the study was twofold:

(1) To determine whether the relationships of new product development to company/industry performance, growth, and structure could be captured and used to develop a model capable of predicting changes in industry variables due to imposition of regulation.

(2) To determine if and how formal approaches, e.g., single and multiple equation behavioral models, constrained optimization techniques, and modified input-output analysis, could be used in conducting the economic impact analysis under Task 4.

Specifically, the contractor performed the following subtasks:

(1) Reviewed a preliminary Arthur D. Little, Inc., paper on formal analytical approaches.

(2) Reviewed other relevant economic studies, e.g., those of 1962 FDA Amendments and FIFRA laws.

(3) Assessed the feasibility of using the approaches in these literature sources for the purpose of studying the impacts of section 5 requirements.

(4) Developed the most promising approaches to incorporate into the economic impact analysis task under Task 4.

(5) Prepared a short paper for EPA which discussed the long-range feasibility of formal technical approaches and any conclusions that could be made at this time from the work. This paper discussed several alternative approaches from the standpoints of:

(i) Data requirements.

(ii) Analytical benefits and shortcomings.

(iii) Resources to implement.

The most significant finding of this task was that even if a comprehensive quantitative, i.e., computer and economic modelling, analytical approach could be developed, which is highly unlikely, the approach could not be implemented in time to analyze section 5 notice impacts. This analysis may be feasible if a contractor were provided with the data needed and nine months to a year per industry segment, and substantial resources with which to explore one segment. If this proved successful, then it might be possible to

expand the work over several years to encompass the entire industry.

Task 4.—Analyze Regulatory Provisions

This section discusses the main focus of this project, which is the economic impact analysis. A methodology for performing this analysis is briefly discussed here. A more in-depth paper about the methodology can be obtained from the EPA Industry Assistance Office. EPA suggests that commentators carefully review the following paragraphs.

The contractor will conduct limited financial and economic analyses of the impacts of section 5 requirements on the chemical industry on the basis of the data collected and analyses performed in Task 1, Task 2, and Task 3. To the extent possible, these analyses will be segment specific and quantitative.

The contractor believes the best approach to measuring the impact of section 5 derives from analysis of the costs imposed by section 5 notice information requirements on new product return on investment. Thus, the contractor intends to employ a discounted cash flow approach using historical chemical-specific data to simulate product development decisions without the imposition of section 5. The costs of section 5 notices will then be imposed upon the base case cash flows to determine the impact of section 5 notices on these sample historical chemicals' returns. This will allow a tentative assessment of the number of new chemicals that would not have been introduced in commerce had section 5 existed. The contractor intends to collect a multitude of case histories of new chemicals introduced after 1960. The sample will not simply be limited to chemicals that succeeded, but will also include those that failed. In this way, the contractor should be able to obtain a distribution of chemicals reflecting success rates.

Section 5 notice costs occur before the chemical is introduced into commerce; however, the key factor in assessing section 5 impacts is the relationship between expectations about profitability and section 5 costs. Thus we will be analyzing expected returns as well as actual returns. We will compare these to try to understand (1) how the decision to introduce the chemical would have been affected; and (2) the actual impact section 5 would have had on profitability.

Having performed an initial analysis of the base case and the section 5 impact historically, the contractor will then perform sensitivity analysis of crucial impact variables to place section 5 notice costs into a broader perspective

on new product introduction including (a) assumed elasticities of demand and supply, (b) growth patterns for new chemicals, (c) success rates for new chemicals, and (d) investment decision rules, etc. Additionally, the contractor will qualitatively discuss the impacts of section 5 notice requirements, using similarities and dissimilarities between FDA/FIFRA laws and TSCA, citing type of impact and anticipated direction of change.

Finally, the contractor intends to have a panel of independent industry experts especially knowledgeable in new chemical development review its findings. The industry experts are independent consultants highly experienced in the chemical industry. These consultants will be used to independently evaluate the analysis. Using the delphic approach, we intend to have these experts exchange their comments in a meeting. Their analysis and comments may be incorporated into the final report. On the basis of these findings, the contractor will assess potential impacts on an industry segment basis. These will include:

- (1) Changes in the number and types of chemicals introduced after implementation of section 5 requirements.
- (2) Changes in the size and focus of R&D expenditures.
- (3) Changes in segment profitability and growth.
- (4) Changes in production and growth.
- (5) Changes in prices in chemical market segments.
- (6) Changes in imports and exports of chemical substances.
- (7) Changes in market structure in chemical market segments.

Task 5.—Analysis of Regulatory Provisions

The contractor is conducting the following two major subtasks:

(1) The contractor is analyzing several major provisions of the proposed section 5 rules to determine to what extent each represents an economic burden due to additional costs, delays in bringing a product to the market, business risk, or uncertainty. The provisions being analyzed include:

- (i) Confidentiality.
- (ii) Customer contact.
- (iii) Supplemental reporting.
- (iv) Importer/exporter reporting.
- (v) Processor reporting.
- (vi) Incomplete submissions.
- (vii) The scope of the definition of possession and control.

The purpose of these analyses is to put each provision "into perspective" by providing information about industry practices and by attempting to isolate

the effect of the regulation from other concurrent trends in industry practices. The output for each analysis shall be quantitative to the extent possible, e.g., all direct costs shall be quantified, and there shall be at least a qualitative assessment of the degree of burden imposed using "high, medium, low, negligible" criteria. The contractor will assess the consequences of alternative regulatory approaches for these provisions. The alternatives for analysis were identified by the EPA Project Officer and program office personnel. They included the January and October proposals and alternatives which had been developed as a result of analysis of the comments received.

(2) The contractor is analyzing several comprehensive program options for their corresponding level of impact, i.e., to determine to what extent each represents an economic burden due to additional costs, delays, business risk, and/or uncertainty. These comprehensive program options are combinations of individual rule provisions and notice information options and they have been identified for analysis by the EPA Project Office.

For subtask 1, the contractor has provided draft documents and working papers for EPA review and is working with the program office to ensure agreement on analytical assumptions and understanding of the provisions for subtask 1. For most information the contractor has relied on public sources used in the analysis. However, the contractor does intend to augment this information using industry interviews and/or trade association-provided data. The completed economic analysis will be made available later this year. An announcement will be made in the *Federal Register* of its availability.

Interested persons may on or before July 10, 1980 submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice and the contractor's paper. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number (OPTS-50010) in the heading of this document. Received comments may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: May 30, 1980.

Steven D. Jellinek,
Assistant Administrator for Pesticides and
Toxic Substances.

[FR Doc. 80-17495 Filed 6-9-80; 8:45 am]

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Federal Register

Tuesday
June 10, 1980

Part VIII

Department of Labor

Employment and Training Administration

Services to Migrant and Seasonal
Farmworkers; Job Service Complaint
System; Monitoring and Enforcement

DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR Parts 651, 653, and 658

Services to Migrant and Seasonal
Farmworkers; Job Service Complaint
System; Monitoring and Enforcement;
Final RegulationsAGENCY: Employment and Training
Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations for the Job Service complaint system, the monitoring of Job Service (JS) activities, and the provision of employment services to migrant and seasonal farmworkers. In some areas, these regulations establish entirely new responsibilities and procedures; in other areas, the regulations clarify and update requirements already established. Many of the changes focus directly on special requirements governing employment services provided to migrant and seasonal farmworkers. The regulations make important changes to the following components of the JS system: The delivery of outreach services, the meeting of affirmative action obligations, the use of agricultural job clearance orders, and the Federal enforcement of State agency compliance with all Job Service regulations.

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Paslawski, Regulations Coordinator, Office of Policies and Program Design, Room 8018, 601 D Street NW., Washington, D.C. 20213, 202-376-7601.

SUPPLEMENTARY INFORMATION: The Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49, established the Job Service system. The Act authorized a national system of public employment offices to assist men, women and youth in obtaining employment.

The Job Service performs essentially a labor exchange function. That is, the system provides no-fee employment services to applicants seeking employment and to employers seeking applicants. Among the services provided applicants are job information, referral to job openings listed with the Job Service, employment counseling, employment testing, job development and referral to training. Among the services provided employers are referral of qualified applicants to job openings listed with the Job Service system; labor market information; and assistance in meeting affirmative action obligations

under legislation, court order, consent decree, government contract, or other fair employment practice authority rulings.

On January 25, 1977, at 42 FR 4722, the Employment and Training Administration (ETA) of the Department of Labor published final regulations (20 CFR Parts 651, 653, and 658) under the Wagner-Peyser Act ("the 1977 regulations"), governing employment services provided to migrant and seasonal farmworkers by the federal-state public Job Service System. The regulations established procedures for the administrative handling of complaints alleging violations of Job Service regulations, the monitoring of all Job Service activities, and the ensuring of State agency compliance with Employment Service regulations. The 1977 regulations paralleled the court order in the case of *NAACP v. Marshall*, Civil Action No. 2010-72, 8 Empl. Prac. Dec. 9634 (D.D.C. Aug. 13, 1974), pursuant to 5 Empl. Prac. Dec. 8637 (D.D.C. May 31, 1973). See 360 F. Supp. 1006 (D.D.C. 1973).

Since the 1977 regulations were implemented, the Department through monitoring reports, field checks and public comment has become aware of the need for clarification or supplementation in many areas in order to ensure the adequate provision of services to migrant and seasonal farmworkers and the proper operation of the various administrative programs and procedures established by the regulations for migrant and seasonal farmworkers and other applicants. Many of the clarifications have been suggested by State Job Service agencies and the State and federal migrant and seasonal farmworker Monitor Advocates during training sessions and conferences conducted by the Department of Labor. Most of the supplementary provisions have been requested by advocate groups on behalf of migrant and seasonal farmworkers. These provisions represent significant improvements in the various JS systems and include new responsibilities for both ETA and State JS officials. At the same time, an attempt has been made to focus all new requirements on the areas where comprehensive services to MSFWs are most needed and to give States some flexibility to adjust their programs to varying circumstances.

The Department has given these regulations careful consideration based upon its many years of experience in serving the needs of workers and employers engaged in agricultural activities. While the publication of this final rule represents part of a settlement

agreement concluding litigation in *NAACP v. Marshall*, Civil Action No. 2010-72, U.S.D.C., it also represents the determination of the Department as to how best to meet the needs of agricultural workers and agricultural employers. Additional regulations concerning farm labor coordinated enforcement activities of the Department of Labor are published today under the lead of the Assistant Secretary for the Employment Standards Administration, and should be read in conjunction with these regulations.

Discussion of Major Changes and
Comments

The development of the regulations has included significant input from different segments of the Job Service community. Meetings were held in January and February with representatives of public interest groups, migrant and seasonal farmworkers, agricultural growers, and State agencies. These meetings were held to involve these groups in the regulation development process, and to review the proposed regulations published on January 11, 1980.

By including these groups in the process from the beginning, the Department sought to ensure a final product which would improve the Job Service system and be responsive to the needs of migrant and seasonal farmworkers.

The proposed regulations were published for a 60 day review and comment period. The Department received approximately 170 written comments on the proposed regulations. This provided the Department an opportunity to receive and reconcile comments from a nationwide audience prior to publishing these final regulations.

The most significant issues raised by the commenters were as follows:

Definitions (§ 651.7)

Comment: Many commenters were concerned about the omission of a definition for agricultural worker and farmworker.

Response: The previous regulations at § 651.7 included a definition of agricultural worker. The proposed regulations inadvertently included only those definitions from the January 1977 regulations for which changes were proposed. The final regulations include all definitions related to these regulations.

Subpart B—Services to MSFWs**Agricultural day-hauls (§ 653.106)**

Comment: Many commenters including State Job Service agencies and migrant farmworker organizations expressed concern regarding the restrictions on the involvement of the Job Service in referring workers to day-hauls. Their concern was that these restrictions prevented both employers and workers from receiving the benefit of available employment and available labor through the Job Service.

Response: The Department considered these comments very carefully in order to ensure that its regulations would provide maximum protection and opportunity for employment to workers. The final regulations allow the Regional Administrator, rather than the USES Administrator to approve the operation of day-hauls by Job Service where exceptional circumstances warrant such activity. In addition, the final regulations allow the Job Service to refer applicants to non-Job Service operated day-haul facilities when the following two conditions are met: (1) The applicant is referred on a specific job order, and (2) the Job Service provides the applicant a checklist summarizing the wages and working conditions cited on the job order.

Outreach (§ 653.107)

Comment: Many commenters expressed concern about this section of the regulations. The commenters questioned: (1) The reliability of estimates of the MSFW population and the need for Job Service to establish numerical goals in contacting MSFWs; (2) the need to maintain daily logs of outreach contacts; (3) the benefit of providing the outreach plan for review and comment to MSFW organizations and employer groups, and the need for Job Service agencies to respond in writing to commentators; (4) the right of outreach workers to enter an employer's property without permission; (5) whether outreach workers would be enticing workers from their current employment; (6) whether outreach workers would be participating in unionization and political activities; (7) whether the hiring requirements cited for outreach workers were in conflict with existing civil service laws.

Response: (1) While the Department acknowledges that there are limited reliable statistics on the number of MSFWs in any state at any particular time, useful estimates of MSFWs can be obtained from various sources. Utilizing these estimates in light of the resources available for the State Job service, numerical goals become tools

appropriate to the planning process in order to guide service delivery and assess performance. Therefore, the Department has rejected the suggestion to eliminate the requirement to set goals.

(2) Since outreach workers spend considerable working time away from the office, the Department considers that daily outreach logs rather than weekly logs are necessary to accurately reflect the outreach workers' activities. It would be too difficult to accurately recall after a week of activity the number of contacts, services provided, and names of MSFWs, where required. The requirement for a daily log of outreach activities is retained.

(3) The Department agrees that the provision of the Outreach Plan section of the Program Budget Plan to interested parties for review and comment is a major change in the planning process. However, the Department believes that this provision is beneficial to all interested parties, especially the Job Service agency and the MSFWs in the service area by providing improved information for planning purposes and facilitating cooperative outreach efforts between the Job Service and other agencies. The Department agrees that employer organizations as well as MSFW organizations which express interest in the plan should be provided the opportunity for review and comment. The final regulations reflect this addition of employer groups.

The Department believes that, in conjunction with the review and comment process afforded interested parties, the State Job Service agencies have the responsibility to be responsive to those individuals who submitted comments. Therefore, the Department rejected those comments suggesting that written responses be eliminated.

(4) The Department agrees with the numerous commenters who stated outreach workers must obey State trespass laws and must obtain permission from the employer prior to entering the employer's property, unless otherwise authorized by law, and from workers prior to entering the workers' living areas. The final regulations reflect this agreement as well as the concomitant obligation of the employer utilizing the services of the JS to assure reasonable access of the outreach worker to the employees. At the same time, the Job Service has a responsibility for conducting unannounced field checks on agricultural orders filled through the clearance system. To ensure that Job Service staff can adequately fulfill this responsibility, an assurance of reasonable access to the employees has been added to § 653.501(d). Accordingly, an employer's refusal to cooperate in the

conduct of field checks on clearance orders or to permit outreach workers reasonable access to the employees is an additional basis for discontinuation of services at § 658.501(a)(7).

(5) The description in the proposed regulations of outreach workers' activities was never intended to suggest that they attempt to discourage workers from completing their current jobs. The intent was that outreach workers would supply job information to unemployed workers about available jobs, and supply job information about subsequent employment opportunities to those workers currently employed on a short term basis. Because this was not clearly stated in the regulations, the final regulations provide such clarification.

(6) The provision in the January 25, 1977 regulations, prohibiting outreach workers from participating in political and unionization or antiunionization activities was inadvertently left out of the proposed regulations and has been returned to the final regulations.

(7) The Department has concluded that the hiring requirements for outreach workers are not in conflict with existing civil service laws properly applied. They are retained.

Subpart F—§ 653.500—Agricultural Clearance Order Activity

Comment: Most of the comments received by the Department related to this section of the regulations. The comments centered in four major areas. These are: (1) Limitation of this subpart to seasonal agricultural or food processing employment; (2) provision of housing; (3) provision for guaranteeing the first week's wages and required notification process for employers and workers; and (4) unannounced field checks on agricultural clearance order.

Response: (1) After weighing the comments, the Department accepts the comments that this subpart should cover only those agricultural or food processing clearance orders which request workers for less than year round employment. This is based on the Department's longstanding policy for requiring specific assurances by agricultural employers and specificity on the agricultural clearance orders which is to provide protection to workers who are not seeking permanent relocation but rather temporary agricultural employment. The final regulations reflect this change.

(2) Numerous comments were received questioning the Department's authority to require free or nominal cost housing on agricultural or food processing clearance orders. The

Department has required housing as a term and condition of employment on interstate clearance orders for many years. The final regulations require the provision of housing on both intrastate and interstate orders because the Department's position is that housing should be provided to those workers who cannot return daily to their permanent residence, whether or not the person has to cross a State boundary. Many commenters objected to the term nominal cost housing. The Department agrees that the term nominal cost housing was confusing and would allow wide ranging interpretations. The intent is to permit the use of public housing which, in some States, requires migrants to pay small charges. Therefore, in the final regulations, the Department has replaced the term "nominal" with "public" which is defined in the final regulations at § 651.7.

(3) In response to the many comments on the requirement that employers guarantee workers the first week's wages in the event that the employer fails to notify the Job Service ten days prior to the date of employment, the Department has made several changes in the final regulations. The Department has rejected outright those suggestions to eliminate the first week guarantee. This is for the reason that asking employers to share the burden of uncertainty posed by nature with migrant workers who dutifully travel great distances for employment as requested by the employer is a reasonable and even-handed approach. The Department has clarified the notification process so that while employers must amend the date of need at least 10 working days prior to the date entered on the order, the referred workers must contact the order-holding Job Service office 5 to 9 days prior to the original date of need to bind the guarantee. Since the timing of this process is crucial, the final regulations specify that the term "working days" for this subsection means those days on which the order-holding Job Service office is open.

For the guarantee to be binding, the workers must contact the proper Job Service office. To assist workers to contact the proper office, the final regulations require any Job Service office to provide this assistance by telephone or other timely means. This requirement for the worker to contact the Job Service will be stated on the checklist summary of the clearance order which will be provided to all workers referred.

Because the Department recognizes that the accurate scheduling of

agricultural work may vary by several days from year to year, the Department included in the final regulations a provision whereby employers may require workers to perform alternative work if the first week wage guarantee is used and if the alternative work is so stated on the job order.

(4) The Department made few changes in response to the comments received regarding the requirement for Job Service staff to conduct and document unannounced field checks on agricultural clearance orders because this requirement was promulgated in the January, 1977 regulations. The final regulations do include a provision wherein State Job Service agencies have five days to attempt to resolve informally any problems discovered during the conduct of the field checks.

Subpart E—20 CFR 658—Job Service Complaint System

Comment: Numerous comments were received about the Job Service Complaint System. They focused on: (1) Requirement for taking non-Job Service complaints in writing, (2) involvement of Job Service in handling complaints dealing with alleged violations of employment related laws, (3) Job Service responsibility for follow-up with enforcement agencies, (4) role of State Job Service staff as complainants, and (5) role of the local veterans employment representative (LVER) as a complaint handler.

Response: (1) The Department reviewed carefully the comments concerning this subpart in an attempt to set forth in the final regulations a complaint system that provides assistance to complainants within the limited staff resources available to provide all labor exchange services. Within this framework, the Department accepted comments which requested limiting the requirement for taking complaints in writing to only those complaints that are Job Service related or those non-JS related complaints that are filed by MSFWs alleging violations of laws enforced by ESA or OSHA. It is intended that this limitation will enable Job Service agencies to focus their resources in those areas over which they have greatest control; in the cases of complaints filed by MSFWs alleging violations of laws enforced by ESA or OSHA, it enables the Department to focus its energies on coordinating the enforcement activities of its sub-agencies.

(2) The Department recognizes the limited enforcement power of the Job Service and the primary need for the Job Service to function as a basic labor

exchange service. The Department believes that the Job Service can satisfy both responsibilities and further the Department's employment goals by referral of enforcement related problems to those agencies which have the expertise and statutory enforcement power. Therefore, the Department rejected the suggestion to eliminate taking complaints alleging violations of law by employers from workers referred to those employers by the Job Service. In those cases, the Department agrees that the most effective service to both the complainant and the employer is for the Job Service to accept the complaint and refer it to the proper enforcement agency for action.

(3) In conjunction with the requirement to refer complaints to appropriate enforcement agencies, the Department rejected those comments suggesting that follow-up requirements were too burdensome. The final regulations continue to require monthly follow-up with enforcement agencies on complaints filed by MSFWs and require quarterly follow-up for those filed by non-MSFWs. The required follow-up is limited to Job Service related complaints only.

In response to comments on the coverage of the Job Service complaint system, final regulations provide clarification that the Job Service complaint system procedures are not applicable to UI, WIN, or CETA complaints. Complaints alleging violations of UI, WIN, or CETA regulations should be handled within the procedures set forth in the applicable regulations.

(4) Based on numerous comments received on the role of the Job Service staff themselves filing complaints, the Department deleted that section of the regulation. However, in recognition of the responsibility of public servants to report apparent violations of law of which they are aware, the final regulations include a section at 20 CFR 653.113 which establishes the responsibility for Job Service staff to report apparent violations of employment related laws. This is not part of the complaint system, however, and continues the requirements for referral of apparent violations contained in the January, 1977 regulations.

(5) The Department accepted comments suggesting that categories of possible discrimination include "age" and do not include "citizenship" or "veteran status." The final regulations reflect these changes. In addition, the Department accepted the comment that State agencies should have the flexibility to designate available Job Service staff to handle complaints. The

only specific exceptions retained are for discrimination complaints which must be handled by the State MSFW Monitor Advocate at the State level. The final regulations also clarify the procedures for handling EEO complaints and for following up on them. The Department accepted comments which requested this clarification.

In response to comments on the need for the Job Service to obtain adequate information to attempt resolution of a complaint, the final regulations include a requirement that the Job Service attempt to obtain all necessary information during the initial contact with the complainant; should additional information be necessary, the final regulations allow the agency the opportunity to request such information of the complainant. Required time frames for handling complaints are suspended until the necessary information is received.

Subpart F—Discontinuation of Services to Employers

Comment: There were numerous comments that the proposed regulations did not provide employers with due process prior to discontinuing services to them.

Response: The Department accepted these comments. The final regulations provide that services to an employer will not be discontinued prior to the offer and, if accepted, the conduct of a hearing unless in the judgment of the State Administrator exhaustion of the hearing procedures would cause substantial harm to a significant number of workers.

Accordingly, Title 20 of the CFR, Parts 651, 653, and 658, is amended by:

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

1. Revising portions of § 651.6 of Part 651 to read as follows:

§ 651.6 Consolidated Table of Contents for Parts 651-658.

The table of contents for Parts 651-658 is as follows:

* * * * *

PART 653—SERVICES OF THE JOB SERVICE SYSTEM

Subpart A—Basic Services of the Job Service System [Reserved]

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

Sec.

- 653.100 Purpose and scope of subpart.
- 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

- 653.102 Job information.
- 653.103 MSFW job applications.
- 653.104 Services to MSFW family members, farm labor contractors, and crew members.
- 653.105 Job applications at day-haul facilities.
- 653.106 JS day-haul responsibilities.
- 653.107 Outreach.
- 653.108 State agency self-monitoring.
- 653.109 Data collection.
- 653.110 Disclosure of data.
- 653.111 State agency staffing requirements.
- 653.112 State agency program budget plans.
- 653.113 Processing apparent violations.
- * * * * *

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Agricultural Clearance Order Activity

- 653.500 Purpose and scope of subpart.
- 653.501 Requirements for accepting and processing clearance orders.
- 653.502 Changes in crop and recruitment situations.
- 653.503 Field checks.
- * * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Job Service Complaint system

- 658.400 Purpose and scope of subpart.
- 658.401 Types of complaints handled by JS complaint system.

State Agency JS Complaint System

- 658.410 Establishment of State agency JS complaint system.
- 658.411 Filing and assignment of JS-related complaints.
- 658.412 Complaint resolution.
- 658.413 Initial handling of complaints by the State or local office.
- 658.414 Referral of non-JS-related complaints.
- 658.415 Transferring complaints to proper JS office.
- 658.416 Action on JS-related complaints.
- 658.417 Hearings.
- 658.418 Decision of the State hearing official.

Federal JS Complaint System

- 658.420 Establishment of the JS complaint system at the ETA regional office.
- 658.421 Handling of JS-related complaints.
- 658.422 Handling of non-JS-related complaints by the Regional Administrator.
- 658.423 Handling of other complaints by the Regional Administrator.
- 658.424 Federal hearings.
- 658.425 Decision of the DOL Administrative Law Judge.
- 658.426 Complaints against USES.

Subpart F—Discontinuation of Services to Employers by the Job Service System

- 658.500 Scope and Purpose of subpart.
- 658.501 Basis for discontinuation of services.
- 658.502 Notification to employers.
- 658.503 Discontinuation of services.
- 658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Agency Compliance with Job Service Regulations

- 658.600 Scope and Purpose of subpart.
- 658.601 State agency responsibility.
- 658.602 ETA national office responsibility.
- 658.603 ETA regional office responsibility.
- 658.604 Assessment and evaluation of program performance data.
- 658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Agencies

- 658.700 Scope and Purpose of subpart.
- 658.701 Statements of policy.
- 658.702 Initial action by the Regional Administrator.
- 658.703 Emergency corrective action.
- 658.704 Remedial actions.
- 658.705 Decision to decertify.
- 658.706 Notice of decertification.
- 658.707 Requests for hearings.
- 658.708 Hearings.
- 658.709 Conduct of hearings.
- 658.710 Decision of the Administrative Law Judge.
- 658.711 Decision of the Secretary.

2. Revising § 651.7 of Part 651 to read as follows:

§ 651.7 Definitions of terms used in Parts 651-658.

"Administrator, United States Employment Service (Administrator)" shall mean the chief official of the United States Employment Service (USES) or the Administrator's designee.

"Agricultural worker" shall mean a worker, whose primary work experience has been in farmwork in industries with a Standard Industrial Classification (SIC) of 01-07, except 027, 074, 0752, and 078, whether alien or citizen, who is legally allowed to work in the United States.

"Applicant" shall mean a person who files an application for services with a local office of a State agency, with outstationed staff or with an outreach worker.

"Application Card" shall mean the basic local office record for an applicant.

"Complaint" shall mean a representation made or referred to a State or local JS office of a violation of the JS regulations and/or other federal, State or local employment related law.

"Complainant" shall mean the individual, employer, organization, association, or other entity filing a complaint.

"Day-haul" shall mean the assembly of workers at a pick-up point waiting to be employed, transportation of them to farm employment, and the return of the workers to the pick-up point on the same day. For the purposes of this definition "day-haul" shall exclude transportation and return of workers employed under regularly scheduled job orders such as corn detasseling jobs for youth.

"DOL" shall mean the Department of Labor.

"D.O.T." shall mean the Dictionary of Occupational Titles, the reference work published by the USES which contains brief, non-technical definitions of U.S. job titles, distinguishing number codes, and worker trait data.

"Employment and Training Administration (ETA)" shall mean the component of the Department of Labor containing the United States Employment Service (USES).

"Employer" shall mean a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

"Farmwork" shall mean work performed for wages in agricultural production or agricultural services in establishments included in industries 01—Agricultural Production-Crops; 02—Agricultural Production-Livestock excluding 027—Animal Specialties; 07—Agricultural Services excluding 074—Veterinary Services, 0752—Animal Speciality Services, and 078—Landscape and Horticultural Services, as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions.

"Farmworker", see "Agricultural worker."

"Hearing Officer" shall mean a Department of Labor Administrative Law Judge, designated to preside at DOL administrative hearings.

"Intrastate job order" shall mean a job order describing one or more hard-to-fill job openings, which a local office

uses to request recruitment assistance from other local offices within the State.

"JS regulations" shall mean the Federal regulations at 20 CFR Parts 601-604, 620, 621, and 651-658, and at 29 CFR Parts 8, 26, and 75.

"Job Bank" shall mean a computer assisted system which provides listings of current job openings in the area, on a regular basis, for distribution to JS and WIN offices and to cooperating agencies.

"Job Information Service (JIS)" shall mean a unit or an area within a JS local office where applicants primarily, on a self-service basis or with minimum professional help, can obtain specific and general information on where and how to get a job.

"Job Service (JS)" shall mean the nationwide system of public employment offices, funded through the United States Employment Service (USES) as grantee State agencies, and the various offices of the State agencies.

"Local office" shall mean a full-time office of a State agency maintained for the purpose of providing placement and other services of the public service system.

"Local office manager" shall mean the JS official in charge of all JS activities in a local office of a State agency.

"LMI" shall mean labor market information.

"Migrant Farmworker" is a Seasonal Farmworker who had to travel to do the farmwork so that he/she was unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

"Migrant Food Processing Worker" shall mean a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing (as classified in the 1972 Standard Industrial Classification (SIC) definitions 201, 2033, 2035, and 2037 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.

"MSFW" shall mean a migrant farmworker, a migrant food processing worker, or a seasonal farmworker.

"Program Budget Plan (PBP)" shall mean the annual planning document for the SESA required by Sec. 8 of the

Wagner-Peyser Act containing the SESA's detailed planning, programming and budget for carrying out employment security activities. For the purpose of JS regulations, this definition shall be restricted to the employment service portion of the PBP.

"Public Housing" shall mean housing operated by or on behalf of any public agency.

"RA"; see "Regional Administrator".

"Regional Administrator, Employment and Training Administration (RA)" shall mean the chief DOL Employment and Training Administration (ETA) official in each DOL regional office.

"Respondent" shall mean the employer or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

"Seasonal Farmworker" shall mean a person who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farmwork, earned at least half of his/her earned income from farmwork, and was not employed in farmwork year round by the same employer. For the purposes of this definition only, a farm labor contractor is not considered an employer. Non-migrant individuals who are full-time students are excluded.

"Secretary" shall mean the Secretary of Labor or the Secretary's designee.

"SESA"; see "State Employment Service Agency".

"Significant MSFW States" shall be those States designated annually by ETA and shall include the twenty (20) States with the highest number of MSFW applicants.

"Significant MSFW Local Offices" shall be those designated annually by ETA and include those local offices where MSFWs account for 10% or more of annual applicants and those local offices which the Administrator determines should be included due to special circumstances such as an estimated large number of MSFWs in the local office service area. In no event shall the number of significant MSFW local offices be less than 100 offices on a nationwide basis.

"Significant Bilingual MSFW Local Offices" shall be those designated annually by ETA and include those significant MSFW offices where 10% or more of MSFW applicants are estimated to require service provisions in Spanish unless the Administrator determines other local offices also should be included due to special circumstances.

"Solicitor" shall mean the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

"State" shall include the fifty States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"State Administrator" shall mean the chief official of the State Employment Security Agency (SESA).

"State agency" shall mean the State job service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the job service system.

"State Employment Security Agency (SESA)" shall mean the State agency which, under the State Administrator, contains both the State Employment service agency (State agency) and the State unemployment compensation agency.

"State hearing official" shall mean a State official designated to preside at State administrative hearings convened to resolve JS-related complaints pursuant to Subpart E of Part 658 of this chapter.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Administration of DOL which was established under the Wagner-Peyser Act of 1933 to promote and develop a national system of public job service offices.

PART 653 SERVICES OF THE JOB SERVICE SYSTEM

3. Part 653 is amended by revising sections 653.100-653.113, by adding and reserving subparts D and E, and by adding subpart F to read as follows:

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

Sec.

- 653.100 Purpose and scope of subpart.
- 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).
- 653.102 Job information.
- 653.103 MSFW job applications.
- 653.104 Services to MSFW family members, farm labor contractors, and crew members.
- 653.105 Job applications at day-haul facilities.
- 653.106 JS day-haul responsibilities.
- 653.107 Outreach.
- 653.108 State agency self-monitoring.
- 653.109 Data collection.
- 653.110 Disclosure of data.
- 653.111 State agency staffing requirements.
- 653.112 State agency program budget plans.
- 653.113 Processing apparent violations.

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Agricultural Clearance Order Activity

- 653.500 Purpose and scope of subpart.

653.501 Requirements for accepting and processing clearance orders.

653.502 Changes in crop and recruitment situations.

653.503 Field checks.

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

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 653.100 Purpose and scope of subpart.

This subpart sets forth the principal regulations of the United States Employment Service (USES) for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart. Special services to ensure that MSFWs receive the full range of employment related services are established under this subpart.

§ 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations, offer services to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographical area offers other JS services to other applicants, are prohibited so that all applicants receive employment services on the same basis.

§ 653.102 Job information.

All State agencies shall make job order information conspicuous and available to MSFWs in all local offices. This information shall include Job Bank information in local offices where it is available. Such information shall be made available either by computer terminal, microfiche, hard copy, or other

equally effective means. Each significant MSFW local office shall provide adequate staff assistance to each MSFW to use the job order information effectively. In those offices designated as significant MSFW bilingual offices, such assistance shall be provided to MSFWs in Spanish and English, wherever requested or necessary, during any period of substantial MSFW activity.

§ 653.103 MSFW job applications.

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.7 of this chapter.

(b) Except as provided in § 653.105, when an MSFW applies for JS services at a local office or is contacted by an Outreach worker, the services available through the JS shall be explained to the MSFW. In local offices which have been designated as significant MSFW bilingual offices by ETA, this explanation shall be made in Spanish, if necessary or requested during any period of substantial MSFW activity. Other local offices shall provide bilingual explanations wherever feasible.

(c) The local office staff member shall provide the MSFW a list of those services. The list shall be written in English and Spanish and shall specify those services which are available after completion of a full application and those services which are available after completion of a partial application. The JS staff member shall explain to each MSFW the advantages of completing a full application.

Applications shall be reviewed periodically by the local office manager or a member of his/her staff to ensure their accuracy and quality. Applications and the application-taking process shall also be reviewed during State and Federal onsite reviews by the State and Regional MSFW Monitor Advocates and/or review staff, who shall check overall accuracy and quality, and offer technical advice on corrections or improvements.

(d) If the MSFW wishes to complete a full application, the staff shall provide all assistance necessary to complete the application and shall ensure that the form includes complete information. It shall include, to the extent possible, the significant history of the MSFW's prior employment, training and educational background and a statement of any desired employment and any training needs in order to permit a thorough assessment of the applicant's skills, abilities and preferences. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES-511).

Additional Dictionary of Occupational Titles codes or keywords shall be assigned, where appropriate, based on the MSFW's work history, training, and skills, knowledges, and abilities. Secondary cards shall be completed and separately filed when keywords are not used. In extremely small local offices where the limited applicant load and file size does not require completion of secondary cards, additional D.O.T. codes shall be noted on the primary application card.

(e) If an MSFW wishes any JS service, and does not wish or is unable to file a full application, the interviewer shall try to obtain as much information as possible for a partial application. The interviewer shall enter the information on the partial application. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and any JS services permitted by the limited information available. He/she shall advise the MSFW that he/she may file a full application at any time.

(f) Partial applications shall be completed according to ETA instructions.

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) To minimize the need for additional applications in other offices, States shall issue JS cards to MSFWs at the initial visit under the following conditions:

(1) When automated data retrieval systems are available in the State. In this instance, JS staff shall advise the MSFW that the JS card may be presented at any other JS office in the State and that services will be provided without completion of an additional application unless the services requested require additional information for adequate service delivery.

(2) When an MSFW is referred on an interstate or intrastate order. In this instance, when it is known to the order-holding local office (through the presentation of an JS card or otherwise) that the MSFW has completed a full application or partial application in the applicant holding office or elsewhere, an additional application shall not be taken by the order-holding office unless the MSFW requests JS services in addition to referral on the clearance order.

§ 653.104 Services to MSFW family members, farm labor contractors, and crew members.

(a) In addition to other requirements in this subpart, the following special requirements are established for services to MSFW family members, farm

labor contractors and crew members. Except as provided at §§ 653.103(e) and 653.105, no local office shall refer an MSFW family or crew unless each working member of the family or crew being referred, has filed either a full or partial application pursuant to § 653.103(b) at a local office or has been issued a JS card in instances set forth in § 653.103(h). Local offices may, upon request, provide general information, e.g., the types of crops in other areas, to farm labor contractors and family heads prior to the registration of all working members.

(b) No local office shall accept an application from an individual for employment as a farm labor contractor or fill an agricultural job order submitted by a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") unless the FLC or FLCE shows or obtains a valid FLC certificate, or FLCE identification card where required by Federal law, and a valid State certification where required by State law. If a FLC or FLCE is temporarily without his or her valid FLC certificate or FLCE identification card the local office shall try to verify the existence of the valid certificate or identification card by telephoning the State central office and/or the Department of Labor's Employment Standards Administration regional office. The local office, however, shall not serve the FLC or FLCE until the existence of the valid certificate or identification card is verified.

(c) Local offices may refer workers to registered farm labor contractors who are employers provided that a valid job order has been placed with the local office which clearly specifies all the terms and conditions of employment with the farm labor contractor shown as employer of record. Before a local office may refer workers to a farm labor contractor offering employment in another area of the State or in another State, one of two requirements must be met: Either a valid interstate clearance order from another State agency is on file in the office, or an intrastate order has been received from an office in another area of the State which is not within commuting distance of the office where the farm labor contractor is recruiting workers. Unless one of these conditions exists, the local office may only refer workers to a registered farm labor contractor who is an employer placing a local job order. Whenever the job order includes the provision of transportation, a FLC certificate authorizing transportation must be shown before workers are referred on the order.

§ 653.105 Job applications at day-haul facilities.

If the State agency is operating a day-haul facility under the exceptional circumstances provisions described in § 653.106(a), a list of JS services shall be distributed and a full application shall be completed whenever an MSFW requests the opportunity to file a full application unless this is impractical at that time. In such cases, a full application shall be taken at the earliest practical time. In all other cases, a list of JS services shall be distributed.

§ 653.106 JS day-haul responsibilities.

(a) State agencies shall not establish, operate, or supervise any agricultural day-haul facilities unless exceptional circumstances warrant such action and prior approval of the Regional Administrator is obtained.

(b) No JS applicants shall be referred to non-JS operated day-haul facilities, unless the applicant is referred on a specific job order and is provided with a checklist summarizing wages, working conditions, and other material specifications on the job order. Such checklists, where necessary, shall be in English and Spanish. State agencies shall use a standard checklist format provided by ETA unless a variance has been approved by the Regional Administrator. However, general labor market information on the availability of jobs, the level of activity of agricultural and nonagricultural employment, and crop conditions shall be provided, upon request, to applicants where specific referrals to employment cannot be made.

(c) JS outreach workers shall visit all JS and non-JS operated day-haul facilities with substantial activity during their operation for purposes of providing MSFWs with information and assistance pursuant to § 653.107(j). Monitoring of such activity shall be conducted pursuant to § 653.108(p).

§ 653.107 Outreach.

(a) Each State agency shall operate an outreach program in order to locate and to contact MSFWs who are not being reached by the normal intake activities conducted by the local offices. Upon receipt of planning instructions and resource guidance from ETA, each State agency shall develop an annual outreach plan, setting forth numerical goals, policies and objectives. This plan shall be subject to the approval of the Regional Administrator as part of the program budget plan (PBP) process. Wherever feasible, State agencies shall coordinate their outreach efforts with those of public and private community service agencies and MSFW groups.

(b) In determining the extent of their outreach program, States shall be guided by the following statement of ETA policy:

(1) State agencies should make sufficient penetration in the farmworker community so that a large number of MSFWs are aware of the full range of JS services.

(2) Significant MSFW Local offices should conduct especially vigorous outreach in their service areas.

(3) State agencies in supply States should conduct particularly thorough outreach efforts with extensive follow-up activities which capitalize on the relatively long duration of MSFW residence in the State.

(c) The plan shall be based on the actual conditions which exist in the particular State, taking into account the State agency's history of providing outreach services, the estimated number of MSFWs in the State, and the need for outreach services in that State. The approval of the Regional Administrator shall be based upon his/her consideration of the following features of the outreach plan:

(1) *Assessment of need.* This assessment of need shall include:

(i) A review of the previous year's agricultural activity in the State.

(ii) A review of the previous year's MSFW activity in the State.

(iii) A projected level of agricultural activity in the State for the coming year.

(iv) A projected number of MSFWs in the State for the coming year, which shall take into account data supplied by CETA 303 grantees, other MSFW organizations, employer organizations and federal and/or State agency data sources such as the Department of Agriculture and the United States Employment Service.

(v) A statement of the consideration given to the State Monitor Advocate's recommendation as set forth in the annual summary developed under § 653.108(t).

(2) *Assessment of available resources.* This assessment of the resources available for outreach shall include:

(i) The level of funds available from all sources, including the funds specifically made available to the State agency for outreach.

(ii) Resources made available through existing cooperative agreements with public and private community service agencies and MSFW groups.

(iii) Where fewer resources are available for outreach than in a prior year, a statement of why fewer resources are available.

(3) *Proposed outreach activities.* The proposed outreach activities shall be designed to meet the needs determined

under paragraph (c)(1) of this section with the available resources determined under paragraph (c)(2) of this section. The plan for the proposed outreach activities shall include:

(i) Numerical goals for the number of MSFWs to be contacted during the fiscal year by JS staff. The number of MSFWs planned to be contacted by other agencies under cooperative arrangements during the fiscal year also should be included in the plan. These numerical goals shall be based on the number of MSFWs estimated to be in the State in the coming year, taking into account the varying concentration of MSFWs during the seasons in each geographic area, the range of services needed in each area and the number of JS and/or cooperating agency staff who will conduct outreach.

(ii) Numerical goals for the staff years to be utilized for outreach during the fiscal year.

(iii) The level of funding to be utilized for outreach during the fiscal year.

(iv) The tools which will be used to conduct outreach contacts, including personal contact, printed matter, videotapes, slides, and/or cassette recordings.

(v) The records to be maintained by the JS outreach staff—logs of daily contacts to include the number of MSFWs contacted and assistance provided. The name of the individual contacted should be recorded when:

(A) An application for work is taken by an outreach worker, (B) a referral to a job is made by an outreach worker, and/or (C) a complaint is taken by an outreach worker.

(d) In developing the outreach plan, the State agency shall solicit information and suggestions from CETA 303 grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 days before submitting its final outreach plan to the Regional Administrator, the State agency shall provide a proposed plan to CETA 303 grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 days for review and comment. The State agency shall:

(1) Consider any comments received in formulating its final proposed plan.

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

(3) Transmit the comments and recommendations received and its responses to the Regional Administrator with the submission of the plan. (If the comments are received after the

submission of the plan, they may be sent separately to the Regional Administrator.)

(e) The outreach plan shall be submitted as an essential part of the State's annual PBP. The resource requirement of the plan shall be reflected in the PBP budget request. The plan, including the resource requirement, shall be reviewed by the Regional Administrator during the annual PBP approval process. The State agency shall be required to implement the approved outreach plan as part of its compliance with the PBP.

(f) The Regional Administrator shall review and evaluate the outreach plan, including the assessments of needs and resources, in light of the history of the State's outreach efforts and the statements of policy set forth in § 653.107(b). He/she shall approve the plan only if it demonstrates that adequate outreach will be conducted. The approved outreach plan shall be available for review by interested parties.

(g) As part of the annual PBP process, funding of State agencies shall be contingent upon the substantial and timely compliance of the State agency with its prior year outreach plan. However, if the Regional Administrator makes a finding of good faith efforts, he/she may fund a State agency even though it did not achieve substantial and timely compliance.

(h) For purposes of hiring and assigning staff to outreach duties, State agencies shall seek, through merit system procedures, qualified candidates:

(1) Who are from MSFW backgrounds, and/or

(2) Who speak Spanish, and/or

(3) Who are racially or ethnically representative of the MSFWs in the service area.

(i) The five States with the highest estimated year round MSFW activity shall assign, in accordance with State merit staff requirements, full-time, year round staff to outreach duties. The remainder of the significant MSFW states shall make maximum efforts to hire outreach staff with MSFW experience for year round positions and shall assign outreach staff to work full-time during the period of the highest MSFW activity. Such outreach staff shall be bilingual if warranted by the characteristics of the MSFW population in the State, and shall spend a majority of their time in the field. The Regional Administrator may grant approval for a deviation from the requirements of this section if the State agency provides adequate evidence that outreach activities and service delivery to

MSFWs would be improved through other staffing arrangements.

(j) For purposes of this subpart, an outreach "contact" shall include either the presentation of information and offer of assistance specified in paragraphs (j)(1) and (j)(2) of this section, or the followup activity specified in paragraph (j)(3) of this section.

(1) Outreach workers shall 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, in a language readily understood by them, the following:

(i) The services available from the local office, including the availability of referrals to agricultural and nonagricultural employment, to training, to supportive services, as well as the availability of testing, counseling and other job development services;

(ii) Types of specific employment opportunities which are currently available in the JS system;

(iii) Information on the JS complaint system and other organizations serving MSFWs;

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

(v) *Provided, however,* That outreach workers shall 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, shall not enter workers' living areas without the permission of the workers, and shall comply with appropriate State laws regarding access.

(2) After making the presentation, outreach workers shall urge the MSFWs to go to the local office to obtain the full range of JS services. If an MSFW cannot or does not wish to visit the local JS office, the outreach workers shall offer to provide on-site the following:

(i) Assistance in the preparation of applications;

(ii) If an unemployed MSFW, assistance in obtaining referral to specific employment opportunities currently available; if an employed MSFW, information regarding the types of employment opportunities which will become available upon the date on which the MSFW indicates that he/she will be available following his/her current employment.

(iii) Assistance in the preparation of either JS or non-JS related complaints;

(iv) Receipt and subsequent referral of complaints to the local office complaint specialist or local officer manager;

(v) Referral to supportive services for which the individual or a family member may be eligible;

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFWs or members of their family to and from local offices or other appropriate agencies.

(3) Outreach workers shall make follow-up contacts as are necessary and appropriate to provide to the maximum extent possible the assistance specified in paragraphs (j)(1) and (j)(2) of this section.

(4) In addition to the foregoing outreach contacts, the State agency shall publicize the availability of JS 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 shall be utilized to facilitate the widest possible distribution of information concerning JS services.

(k) Outreach workers shall be alert to observe the working and living conditions of MSFWs and, upon observation, or upon receipt of information regarding a suspected violation of federal or State employment-related law, document and refer information to the local office manager for processing in accordance with § 653.113.

(l) Outreach workers shall be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the JS. They shall also be trained in the procedure for informal resolution of complaints. The program for such training shall be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA, and each State's program shall be reviewed and commented upon in advance by the State MSFW Monitor Advocate.

(m) During months when outreach activities are conducted, outreach workers shall maintain complete records of their contacts with MSFWs and the services they perform in accordance with a format developed by ETA. These records shall include a daily log, a copy of which shall be sent monthly to the local office manager and maintained on file for at least two years. These records shall include the number of contacts and names of contacts (where applicable), the services provided (e.g., whether a complaint was received, whether an application was taken, and whether a referral was made). Outreach workers also shall 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 shall include a description of the

circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to § 653.107(l).

(n) During months when outreach activities are conducted, each local office manager shall file with the State MSFW Monitor Advocate a monthly summary report of outreach efforts. These reports shall summarize information collected, pursuant to paragraph (m) of this section. The local office manager and/or other appropriate State office staff members shall assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance shall not be judged solely by the number of contacts made by the worker. The monthly reports and daily outreach logs shall be made available to the State MSFW Monitor Advocate and federal On-Site Review Teams. In addition, the distribution of any special funds for outreach, should funds become available, shall be based on the effectiveness and need of the State's outreach program as monitored by ETA.

(o) Outreach workers shall not engage in political, unionization or antiunionization activities during the performance of their duties.

(p) Outreach workers shall be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency.

§ 653.108 State agency self-monitoring.

(a) State Administrators shall assure that their State agencies monitor their own compliance with JS regulations in serving MSFWs on an ongoing basis. The State Administrator shall have overall responsibility for State agency self-monitoring.

(b) The State Administrator shall appoint a State MSFW Monitor Advocate. The State Administrator shall inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State MSFW Monitor Advocate. Among qualified candidates determined through State merit system procedures, the State agencies shall seek persons (1) who are from MSFW backgrounds, or (2) who speak Spanish or other languages of a significant proportion of the State MSFW population, or (3) who are racially or ethnically similar to the MSFWs in the State, or (4) who have substantial work experience in farmworker activities.

(c) The State MSFW Monitor Advocate shall have direct, personal access, whenever he/she finds it necessary, to the State Administrator and shall work in the State central office. The State MSFW Monitor Advocate shall have status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity and responsibility.

(d) The State MSFW Monitor Advocates shall be assigned staff necessary to fulfill effectively all of his/her duties as set forth in this subpart. The number of staff positions shall be determined by reference to (1) the number of MSFWs in the State, as measured at the time of the peak MSFW population (MSFW activity), and (2) the need for monitoring activity in the State. The MSFW Monitor Advocates shall devote full time to Monitor Advocate functions, except that the USES Administrator may reallocate positions from States of low MSFW activity to States of higher MSFW activity and may approve a plan for less than full-time work in States of low MSFW activity. Any such plan must demonstrate that the State MSFW Monitor Advocate function can be effectively performed with part-time staffing.

(e) All State MSFW Monitor Advocates and Assistant MSFW Monitor Advocates shall attend within the first three months of their tenure a training session conducted by the Regional MSFW Monitor Advocate. They shall also attend whatever additional training sessions are required by the Regional or National MSFW Monitor Advocate.

(f) The State MSFW Monitor Advocate shall provide any relevant documentation requested from the State agency by the Regional MSFW Monitor Advocate.

(g) The State MSFW Monitor Advocate shall:

(1) Conduct an ongoing review of the delivery of services and protections afforded by JS regulations to MSFWs by the State agency and local offices. The State MSFW Monitor Advocate, without delay, shall advise the State agency and local offices of (i) problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations (including progress made in achieving affirmative action goals and timetables), and (ii) means to improve such delivery.

(2) Participate in onsite local office MSFW formal monitoring reviews on a regular basis.

(3) Assure that all significant MSFW local offices not reviewed onsite by

Federal staff, are reviewed at least once a year by State staff, and that, if necessary, those local offices in which significant problems are revealed by required reports, management information, the JS complaint system or otherwise are reviewed as soon as possible.

(4) Assure that the monitoring review format, developed by ETA, is used as a guideline in the conduct of local office MSFW onsite formal monitoring reviews. This format will ensure that applications and the application-taking process are reviewed during State onsite reviews by State MSFW Monitor Advocates and/or review staff, who shall check overall accuracy and quality, and offer technical advice on corrections or improvements.

(5) Review the State agency's outreach plan, and on a random basis, the outreach workers' daily logs and other reports including those showing or reflecting the workers' activities, to ensure that they comply with the outreach plan.

(h) Formal onsite MSFW monitoring reviews of local offices shall be conducted using the following procedures:

(1) Before beginning such a review, the State MSFW Monitor Advocate and/or review staff shall study:

- (i) Program performance data,
- (ii) Reports of previous reviews,
- (iii) Corrective action plans developed as a result of previous reviews,
- (iv) Complaint logs, and
- (v) Complaints elevated from the office or concerning the office.

(2) Upon completion of a local office onsite formal monitoring review, the State MSFW Monitor Advocate shall hold one or more wrap-up sessions with the local office manager and staff to discuss any obvious findings and offer initial recommendations and appropriate technical assistance.

(3) After each review the State MSFW Monitor Advocate shall conduct an indepth analysis of the review data. The conclusions and recommendations of the State MSFW Monitor Advocate shall be put in writing, shall be sent to the State Administrator, to the official of the State agency with line authority over the local office, and other appropriate State agency officials.

(4) The State MSFW Monitor Advocate may recommend that the review responsibility set forth in this subsection be delegated to a responsible professional member of the administrative staff of the State agency, if and when the State Administrator finds such delegation necessary. In such event, the State MSFW Monitor Advocate shall be responsible for and

shall approve the written report of the review.

(5) The local office manager shall develop and propose a written corrective action plan. The plan shall be approved, or appropriately revised, by appropriate superior officials and the State MSFW Monitor Advocate. The plan shall include actions required to correct or to take major steps to correct any problems within 30 days or if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period shall be specifically stated.

(6) State agencies, through line supervisory staff, shall be responsible for assuring, and documenting that the local office is in compliance within the time period designated in the plan. State agencies shall submit to the appropriate ETA regional offices copies of the onsite local office formal monitoring review reports and corrective action plans for significant local offices.

(i) The State MSFW Monitor Advocate shall participate in federal reviews conducted pursuant to Subpart G.

(j) At the discretion of the State Administrator, the State MSFW Monitor Advocate may be assigned the responsibility as the complaint specialist. The State MSFW Monitor Advocate shall participate in and monitor the performance of the complaint system, as set forth at 20 CFR 658.400 *et seq.* The State MSFW Monitor Advocate shall review the local office managers' informal resolution of complaints relating to MSFWs and shall ensure that the State agency transmits copies of the logs of MSFW complaints to the regional office quarterly.

(k) The State MSFW Monitor Advocate also shall serve as an advocate to improve services for MSFWs within JS. The State MSFW Monitor Advocate shall establish ongoing liaison with CETA 303 and other organizations serving farmworkers, and employers and/or employer organizations, in the State. The State MSFW Monitor Advocate shall meet frequently with representatives of these organizations to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with JS or improving JS services to MSFWs.

(l) The State MSFW Monitor Advocate shall conduct frequent field visits to the working and living areas of MSFWs, and shall discuss JS services and other employment-related programs with MSFWs, crew leaders, and employers. Records shall be kept of each such visit.

(m) The State MSFW Monitor Advocate shall participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee.

(n) The State MSFW Monitor Advocate shall ensure that outreach efforts in all significant MSFW local offices are reviewed at least yearly to ensure that there is continuing compliance with 20 CFR 653.107. This review will include accompanying at least one outreach worker from each significant MSFW local office on his/her visits to MSFWs' working and living areas. The State MSFW Monitor Advocate shall review findings from these reviews.

(o) The State MSFW Monitor Advocate shall review and assess the adequacy of the annual State affirmative action plan for MSFWs, and shall report such findings to the State Administrator.

(p) The State MSFW Monitor Advocate shall ensure that JS outreach activities are reviewed periodically at day-haul sites at which these activities are conducted. Complete records of such visits shall be kept. The State MSFW Monitor Advocate shall ensure that local offices and the State Administrator are advised of any deficiencies.

(q) The State MSFW Monitor Advocate shall review on at least a quarterly basis all statistical and other MSFW-related data reported by significant MSFW local offices in order (1) to determine the extent to which the State agency has complied with regulations at §§ 653.100 *et seq.*, and (2) to identify the areas of inadequate compliance.

(r) The State MSFW Monitor Advocate shall have full access to all statistical and other MSFW-related information gathered by State agencies and local offices and may interview State and local office staffs with respect to reporting methods. Subsequent to each review, the State MSFW Monitor Advocate shall consult, as necessary, with State and local offices and provide technical assistance to ensure accurate reporting.

(s) The State MSFW Monitor Advocate shall review and comment on proposed State JS directives, manuals, and operating instructions relating to MSFWs and shall ensure (1) that they accurately reflect the requirements of the regulations, and (2) that they are clear and workable. The State MSFW Monitor Advocate also shall 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.

(t) The State MSFW Monitor Advocate shall prepare for the State Administrator an annual summary of JS services to MSFWs within his/her State based on statistical data and his/her reviews and activities set forth in these regulations. The summary shall include an assessment of the State agency's activities related to MSFWs such as those covered in the State agency's PBP, outreach plan, and affirmative action plan, and the other matters with respect to which the State MSFW Monitor Advocate has responsibilities under these regulations. A copy of this summary shall be forwarded to the Regional Administrator by the State Administrator.

§ 653.109 Data collection.

State agencies shall: (a) Collect data on MSFWs, including data on the number (1) contacted through outreach activities, (2) registering for service, (3) referred to agricultural jobs, (4) referred to non-agricultural jobs, (5) placed in agricultural jobs, (6) placed in non-agricultural jobs, (7) referred to training, (8) receiving counseling, (9) receiving job development, (10) receiving testing, (11) referred to supportive service, (12) receiving some service, (13) placed according to wage rates, and (14) placed according to duration. The State agencies also shall collect data on agricultural clearance orders (including field checks), MSFW complaints, and monitoring activities, as directed by ETA. These data shall be collected in accordance with the ESARS Handbook and applicable ETA Reports and Analysis Letters.

(b) Collect data on the number of MSFWs who were served as to whether they were male, female, black, Hispanic, American Indian, Asian, or Pacific Islander.

(c) Provide necessary training to State agency, including local office personnel, to assure accurate reporting of data;

(d) Collect and submit to ETA as directed by ETA, data on MSFWs required by the PBP, and

(e) Periodically collect and verify data required under this subsection, take necessary steps to ensure its validity, and collect and submit data for verification to ETA, as directed by ETA; and

(f) Submit additional reports to the ETA at such times and containing such items as ETA directs.

§ 653.110 Disclosure of data.

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

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

(c) If the requested data cannot be supplied within 10 working days of receipt by the State agency of the request, the State agency shall 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) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, however, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided this 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, may also be withheld provided the reason is given to the requestor in writing.

§ 653.111 State agency staffing requirements.

(a) On a statewide basis, staff representative of the racial and ethnic characteristics in the work force shall be distributed in substantially the same proportion among (1) all "job groups" (as that term is defined by the Office of Federal Contract Compliance Programs), and (2) all offices in the plan(s).

(b)(1) As part of the PBP, each State agency shall develop and submit to the Regional Administrator affirmative action plans for all significant local offices within its jurisdiction (which, for the purposes of this provision, means those local offices representing the top 20% of MSFW activity nationally). These affirmative action plans shall include goals and timetables and shall ensure that sufficient numbers of qualified, permanent minority staff are hired. Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff shall be hired in accordance with State merit system procedures, where applicable. These affirmative action plans shall be prepared on an individual office basis.

(2) The affirmative action plans shall include an analysis of the racial and

ethnic characteristics of the work force in the local office service area. To determine the "work force" for the purpose of this paragraph, the State agency shall include the racial and ethnic characteristics of any MSFW population which is not a part of the permanent work force by computing an estimate of the total work years MSFWs collectively spend in the area and including a number of workers equivalent to this estimate as part of the permanent work force. This computation shall be made by calculating the average length of time, as a fractional part of a year, MSFWs stay in the area and then multiplying this figure by the total estimated MSFW population in the area during the previous year.

(3) The affirmative action plan also shall include an analysis of the local office staffing characteristics. The plan shall provide a comparison between the characteristics of the staff and the work force and determine if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the work force in the local office service area(s).

(4) If the staff under-represents any of these characteristics, the State agency shall establish a staffing goal at a level equivalent to the percentage of the characteristics in the work force in the local office service areas. The State agency also shall establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the State agency shall consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds, and all affirmative action plans shall establish timetables that are designed to achieve the staffing goal no later than December 31, 1983.

(c) In addition, each State agency which has significant local offices, shall undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff, shall document achievements, and shall include in the affirmative action plan(s) a complete description of specific actions which the agency will take and time frames within which these actions will be taken.

(d) In developing the affirmative action plan for significant local offices, the State agency shall solicit from CETA 303 and other appropriate MSFW groups, employer organizations and other interested organizations, estimates of the total MSFW population in each local office service area, and the average length of time the MSFWs stay in the area. In addition, State agencies shall solicit, consider, incorporate as

appropriate, respond to and include copies of comments from CETA 303, other appropriate MSFW groups, employer organizations, and other interested organizations, following procedures set forth for the annual outreach plan at § 653.107(d).

(e) As part of the annual Program and Budget Plan (PBP) process, the funding of State agencies which are required to develop and implement affirmative action plans for significant local offices shall be contingent upon the timely submittal of adequate affirmative action plans and the substantial and timely attainment of the goals and timetables contained in those plans. However, if the Regional Administrator makes a finding of good faith efforts, he/she may fund a State agency even though it did not achieve substantial and timely compliance.

(f) All State Employment Security Agencies (SESAs) required to develop affirmative action plans for significant local offices shall keep accurate records of their employment practices for those offices, including information on all applications. These records shall be maintained in accordance with the recordkeeping requirements concerning affirmative action which are established by ETA and distributed to the SESAs. All records shall be made available to the State MSFW Monitor Advocate, EEO staff and Federal On-Site Review Teams.

(g) Affirmative action plans shall contain a description of specific steps to be taken for the adequate recruitment of MSFWs for all vacant positions in significant local offices and the central office. These steps shall include advertisements in newspapers, radio or other media, in a manner calculated to best reach the MSFW population, and contacts by outreach workers and the State MSFW Monitor Advocate with groups serving the MSFW population.

(h) State EEO staff shall have the responsibility for developing affirmative action plans. The State MSFW Monitor Advocate(s) shall comment on the plan to the State Administrator. Upon submission of the affirmative action plan as part of the State agency's PBP submittal, the Regional MSFW Monitor Advocate shall review the affirmative action plan(s) as it pertains to MSFWs and comment to the Regional Administrator. As part of his/her regular reviews of State agency compliance, the Regional MSFW Monitor Advocate shall monitor the extent to which the State has complied with its affirmative action plan(s) as it pertains to MSFWs. The Regional MSFW Monitor Advocate's finding as to the adequacy of the plan(s) and as to the State's compliance with

the plan(s) shall be considered in PBP decisions involving future funding of the State agency.

§ 653.112 State agency program budget plans.

(a) Each State agency, in its annual program budget plan, shall describe its plan to carry out the requirements of this subpart in the following year. The plan shall include, where applicable, the outreach and affirmative action plans required by §§ 653.107 and 653.111, respectively. For significant MSFW States, ETA shall establish program performance indicators reflecting equity indicators and indicators measuring minimum levels of service to MSFWs which the significant MSFW State agencies will be required to meet. These program performance indicator requirements shall be contained in the PBP Guidelines which ETA promulgates on an annual basis.

(b) Equity indicators shall address JS controllable services and shall include, at a minimum, individuals referred to a job; receiving counselling; receiving job development; receiving some service; and referred to supportive service.

(c) Minimum level of service indicators shall address other services to MSFWs and shall include, at a minimum, individuals placed in a job; placed in a job with a wage exceeding the Federal minimum wage by at least 50 cents/hour; placed long-term (150 days or more) in a non-agricultural job; review of significant MSFW local offices; field checks on agricultural clearance orders; outreach contacts per staff day; and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year shall be based on the following:

(1) Past State agency performance in serving MSFWs, as reflected in on-site reviews and data collected under § 653.109;

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

(3) The ETA program priorities for the following year; and

(4) Special circumstances and external factors existing in the particular State.

(d) The Regional Administrator shall review this portion of the PBP, and approve it upon making a written determination that it is acceptable in light of the requirements of this subpart. The Regional Administrator's written determination shall be available to the public upon request.

§ 653.113 Processing apparent violations.

(a) If a State agency employee observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment related laws or JS regulations by an employer, except as provided at § 653.503 (field checks) or § 658.400 of this chapter (complaints), the employee shall document the suspected violation and refer this information to the local office manager.

(b) If the employer has filed a job order with the JS office within the past 12 months, the local office shall attempt informal resolution. If the employer does not remedy the suspected violation within 5 working days, procedures at Part 658, Subpart F of this chapter shall be initiated and, if a violation of an employment related law is involved, the violation shall be referred to the appropriate enforcement agency in writing.

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

Subpart D—[Reserved]**Subpart E—[Reserved]****Subpart F—Agricultural Clearance Order Activity****§ 653.500 Purpose and scope of subpart.**

This section contains the requirements for acceptance and handling of intrastate and interstate job clearance orders seeking workers to perform agricultural or food processing work on a less than year round basis. Orders seeking workers to perform agricultural or food processing work on a year round basis which involves permanent relocation are not subject to the requirements of this subpart. This section, therefore, contains requirements which affect not only applicants who are categorized as MSFWs based on their past employment, but all workers who are recruited through the JS intrastate and interstate clearance systems for less than year round agricultural or food processing work.

§ 653.501 Requirements for accepting and processing clearance orders.

(a) In view of the statutorily established basic function of the job service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies 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 JS constitute a contractual job offer to which the ETA or a State agency is in any way a party. Nevertheless, if the ETA or a State agency discovers that an employer's job order contains a material misrepresentation, the procedures of Subpart F of Part 658 of this chapter shall be followed.

(b) Intrastate and interstate job orders shall include the language of the first two sentences of paragraph (a) of this section.

(c) No local office or State agency shall place into intrastate or interstate clearance any job order seeking workers to perform agricultural or food processing work before reviewing it pursuant to paragraphs (d) or (e) of this section, as applicable.

(d) No local office shall place a job order seeking workers to perform agricultural or food processing work into intrastate clearance unless:

(1) The job order does not contain an unlawful discriminatory specification by race, color, religion, national origin, age, sex, or mental or physical status unrelated to job performance (handicap);

(2) The employer has signed the job order and the job order states all the material terms and conditions of the employment, including:

- (i) The crop;
- (ii) The nature of the work;
- (iii) The anticipated period and hours of employment;
- (iv) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(v) An assurance that:

(A) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (d)(2)(iv) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need (pursuant to paragraph (d)(2)(xiii) of this section) by so notifying the order-holding office. The State agency shall make a record of this notification and shall attempt to inform referred migrant workers of the change in accordance with the following procedure:

(B) All workers referred through the clearance system, farm labor contractors on behalf of migrant workers or family heads on behalf of migrant family members referred through the clearance system shall be notified to contact a local job service

office, preferably the order-holding office, to verify the date of need cited no sooner than 9 working days and no later than 5 working days prior to the original date of need cited on the job order; and that failure to do so will disqualify the referred migrant worker from the assurance provided in paragraphs (a) and (d) of this section.

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

(D) If the employer fails to notify the order-holding office at least 10 working days prior to the original date of need the employer shall pay eligible (pursuant to paragraph (b) of this section) workers referred through the clearance system the specified hourly rate of pay, or in the absence of a specified hourly rate of pay, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need.

(E) Employers may require workers to perform alternative work if the guarantee in this section is invoked and if such alternative work is stated on the job order.

(F) For the purposes of this assurance, "working days" shall mean those days that the order-holding local office is open for public business.

(vi) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

(vii) Any deductions to be made from wages;

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

(ix) Any hours, days or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (d)(2)(v) 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;

(x) 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. No such payments, however, shall be made contingent upon the worker continuing employment beyond the period of employment specified in the job order or, in the case of any worker with

children, beyond the time needed to return home for the beginning of the school year;

(xi) An assurance that no extension of employment beyond the period of employment specified in the job order shall relieve the employer from paying the wages already earned, or if specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home;

(xii) Assurances that 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;

(xiii) An assurance that the employer will expeditiously notify the order-holding local office or State agency by telephone 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. For orders submitted in conjunction with requests for foreign workers, an assurance that the employer will follow-up the telephone notification in writing.

(xiv) An assurance that the employer, if acting as a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") on the order, has a valid FLC certificate or FLCE identification card; and

(xv) An assurance of 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 shall cover the availability of housing for only those workers, and, when applicable, family members who are unable to return to their residence in the same day.

(xvi) An assurance that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(3) The job order contains all the material terms and conditions of the job, and the employer assures that all items therein are actual conditions of the job by signing the following statement: "This job 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) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If the wages

offered are expressed as piece rates or as base rates and bonuses, the employer shall make the method of calculating the wage and supporting materials available to JS staff who shall 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;

(5) The employer has agreed to provide or pay for the transportation of the workers and their families on at least the same terms as transportation is commonly provided by employers in the area of intended employment to agricultural workers and their families recruited from the same area of supply;

(6) JS staff have determined, through a preoccupancy housing inspection performed by JS staff or other appropriate public agencies, that the housing assured by the employer is in fact available, and meets the full set of standards set forth at 20 CFR Part 654, Subpart E which details applicable housing standards and contains provisions for conditional access to the clearance system; except that mobile range housing for sheepherders shall meet existing Departmental guidelines; and

(7) The local office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area, or the local office anticipates a shortage of local workers.

(e) No state agency shall place a job order seeking workers to perform agricultural or food processing work with interstate clearance unless:

(1) The job order meets the requirements set forth at paragraphs (d)(1) through (d)(6) of this section;

(2) The State agency and the employer have attempted and have not been able to locate sufficient workers within the state, or the State agency anticipates a shortage of workers within the State; and

(3) The order has been reviewed and approved by the ETA regional office within 10 working days after receipt from the State agency, and the Regional Administrator has approved the areas of supply to which the order shall be extended. Any denial by the Regional Administrator shall be in writing and set forth the reasons for the denial.

(f)(1) The local office shall use the agricultural clearance form prescribed by ETA, and shall see that all necessary items on the form are completed, including items on attachments to the form prescribed by ETA.

(2)(i) The original of an interstate agricultural clearance form shall be retained for the order-holding local

office files. If the clearance order is submitted in conjunction with a request for certification of temporary alien agricultural workers, the procedures at 20 CFR 655.204(a) shall be followed. For other clearance orders, the order-holding local office shall transmit a complete copy to the State office. The State office shall distribute additional copies of the form with all attachments except that the State agency may, at its discretion, delegate this distribution to the local office, as follows:

(A) At least one clear copy to each of the State agencies selected for recruitment (areas of supply);

(B) One copy to each applicant-holding ETA regional office;

(C) One copy to the order-holding ETA regional office; and

(D) One copy to the Regional Farm Labor Coordinated Enforcement Committee in the area of employment, Attn: ESA Regional Administrator.

(ii) Applicant-holding offices shall provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications on the job order. Such checklists, where necessary, shall be in English and Spanish. The checklist shall include language notifying the worker that a copy of the complete order is available for inspection. One copy of the form with all attachments shall be available for inspection in the applicant-holding office and the order-holding office. State agencies shall use a standard checklist format provided by ETA unless a variance has been approved by the Regional Administrator.

(iii) The applicant-holding office shall give each referred worker a copy of a description of worker's rights developed by the National Farm Labor Coordinated Enforcement Committee.

(g) The local office may place an intrastate or interstate order seeking workers to perform agricultural or food processing work for a specific farm labor contractor or worker preferred by the employer provided the order meets JS 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."

(h) In local offices which have been designated significant MSFW bilingual offices by ETA, and in any other local office with bilingual staff, bilingual (English-Spanish) staff shall assist all agricultural workers, upon request, to understand the terms and conditions of employment set forth in intrastate and interstate job orders and shall provide such workers with checklists in Spanish showing wage payment schedules,

working conditions and other material specifications of the job order.

(i) No agricultural or food processing order shall be included in job bank listings available outside the local office commuting area unless the order has been processed according to requirements for intrastate or interstate clearance contained in this subpart. If the job bank for the local office area incorporates offices beyond the local office commuting area, the order may be included in the listing but must be clearly designated as prohibiting referral from outside the community area, unless the requirements of this subpart are met.

(j) If the labor supply State agency accepts a clearance order, the State agency shall actively recruit workers for referral. In the event a potential labor supply State agency rejects a clearance order, the reasons for rejection shall be documented and submitted to the Regional Administrator having jurisdiction over the State agency. 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 State agency of the rejection and the justifiable reasons. If the Regional Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will so inform the USES Administrator, who will make a final determination on the acceptance or rejection of the order.

§ 653.502 Changes in crop and recruitment situations.

(a) If a labor demand State agency learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels, have changed, the agency shall immediately contact the labor supply State agency, who shall in turn immediately inform crews and families scheduled through the JS clearance system of the changed circumstances and adjust arrangements on behalf of such crews of families.

(b) When there is a delay in the date of need, procedures required of employers and workers at § 653.501(d)(2)(v) shall be followed. State agencies shall document notifications by employers and contacts by individual migrant workers or crew leaders on behalf of migrant workers or family heads on behalf of migrant family members to verify the date of need.

(c) In addition, if weather conditions, overrecruitment or other conditions have eliminated the scheduled job opportunities, the State agencies involved shall make every effort to

place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is already enroute or at the job site. JS staff shall keep records of actions under this section.

§ 653.503 Field checks.

(a) The State agency, through its local offices or otherwise, shall conduct random, unannounced field checks at a significant number of agricultural worksites to which JS placements have been made through the intrastate or interstate clearance system. These field checks shall include visit(s) to the worksite at a time when workers are there. Both the employees and the employer shall be consulted, and JS shall determine and document whether wages, hours, working and housing conditions are as specified in job orders. JS staff shall keep records of all field checks. If State agency personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated on the job order or that an employer is violating an employment related law, the State agency shall document the finding and attempt informal resolution. If the matter has not been resolved within 5 working days, the State agency shall follow the procedures set forth at Subpart F of Part 658 of this chapter. Violations of employment related laws shall be referred to appropriate enforcement agencies in writing.

(b) State agencies, to the maximum extent possible, shall make formal or informal arrangements with appropriate State and Federal enforcement agencies pursuant to which such agencies will agree to conduct compliance reviews in their areas of enforcement responsibility at agricultural worksites where the State agency has placed workers through the agricultural clearance system and to inform the State agency if violations are found. An enforcement agency compliance review shall satisfy the requirement for State agency field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency reviews. The State agency shall supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies. State agencies shall report difficulties in making such formal or informal arrangements with State enforcement agencies as well as deficiencies in State enforcement agency activities to the Regional Farm Labor Coordinated Enforcement Committee.

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM

4. Revising Part 658 to read as follows:

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Job Service Complaint System

Sec.

658.400 Purpose and scope of subpart.

658.401 Types of complaints handled by the JS complaint system.

State Agency JS Complaint System

658.410 Establishment of State agency JS complaint system.

658.411 Filing and assignment of JS-related complaints.

658.412 Complaint resolution.

658.413 Initial handling of complaints by the State or local office.

658.414 Referral of non-JS-related complaints.

658.415 Transferring complaints to proper JS office.

658.416 Action on JS-related complaints.

658.417 Hearings.

658.418 Decision of the State hearing official.

Federal JS Complaint System

658.420 Establishment of the JS complaint system at the ETA regional office.

658.421 Handling of JS-related complaints.

658.422 Handling of non-JS-related complaints by the Regional Administrator.

658.423 Handling of other complaints by the Regional Administrator.

658.424 Federal hearings.

658.425 Decision of the DOL Administrative Law Judge.

658.426 Complaints against USES.

Subpart F—Discontinuance of Services to Employers by the Job Service System

658.500 Scope and purpose of subpart.

658.501 Basis for discontinuation of services.

658.502 Notification to employers.

658.503 Discontinuation of services.

658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Agency Compliance with Job Service Regulations

658.600 Scope and purpose of subpart.

658.601 State agency responsibility.

658.602 ETA national office responsibility.

658.603 ETA regional office responsibility.

658.604 Assessment and evaluation of program performance data.

658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Agencies

658.700 Scope and purpose of subpart.

658.701 Statements of policy.

658.702 Initial action by the Regional Administrator.

- 658.703 Emergency corrective action.
- 658.704 Remedial actions.
- 658.705 Decision to decertify.
- 658.706 Notice of decertification.
- 658.707 Requests for hearings.
- 658.708 Hearings.
- 658.709 Conduct of hearings.
- 658.710 Decision of the Administrative Law Judge.
- 658.711 Decision of the Secretary.

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 38 U.S.C. Chapters 41 and 42; unless otherwise noted.

Subparts A-D—[Reserved]

Subpart E—Job Service Complaint System

§ 658.400 Purpose and scope of subpart.

This subpart sets forth the regulations governing the Job Service complaint system at both the State and Federal levels.

§ 658.401 Types of complaints handled by the JS complaint system.

(a)(1) The types of complaints (JS related complaints) which shall be handled to resolution by the JS complaint system are as follows: (i) Complaints against an employer about the specific job to which the applicant was referred by the JS involving violations of the terms and conditions of the job order or employment-related law (employer-related complaint) and (ii) complaints about Job Service actions or omissions under JS regulations (agency-related complaints). These complaint procedures are not applicable to UI, WIN or CETA complaints. Complaints alleging violations of UI, WIN or CETA regulations should be handled within the procedures set forth in the respective regulations.

(2) A complaint shall be handled to resolution by these regulations only if it is made within one year of the alleged occurrence.

(b) Complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 2012 shall not be handled under this subpart. The State agency shall handle such complaints under the Department's regulations at 41 CFR Part 60-250.

(c) Complaints from MSFWs alleging violations of employment-related laws enforced by ESA or OSHA shall be taken in writing by the State agency and the ETA regional office and referred to ESA or OSHA pursuant to the procedures set forth in §§ 658.414 and 658.422. All other complaints alleging violations of employment-related Federal, State or local laws other than JS regulations by employers, their agents, or DOL subagencies other than JS (non-JS related complaints) shall be

logged by the State agency and the ETA regional office and the complainant shall be referred to the appropriate agency pursuant to procedures set forth in §§ 658.414 and 658.422.

(d) Certain types of complaints, such as, but not limited to, complaints by MSFWs, and complaints alleging unlawful discrimination, shall, as set forth in this subpart, be handled by specified officials of the State agency or of ETA.

State Agency JS Complaint System

§ 658.410 Establishment of State agency JS complaint system.

(a) Each State agency shall establish and maintain a Job Service complaint system pursuant to this subpart.

(b) The State Administrator shall have overall responsibility for the operation of the State agency JS complaint system. At the local office level, the local office manager shall be responsible for the management of the JS complaint system.

(c)(1) State agencies shall ensure that centralized control procedures are established for the handling of complaints and files relating to the handling of complaints. The Manager or Administrator of the local or State office taking the complaint shall ensure that a central complaint log is maintained, listing all complaints received, and specifying for each complaint: (i) The name of the complainant, (ii) the name of the respondent (employer or State agency), (iii) the date the complaint is filed, (iv) whether the complaint is by or on behalf of an MSFW, (v) whether the complaint is JS-related, (vi) if the complaint is JS-related, whether it is employer-related or agency-related, (vii) if the complaint is non-JS-related, the information required by § 658.414(c), and (viii) the action taken, including for JS-related complaints, whether the complaint has been resolved.

(2) Within one month after the end of the calendar quarter during which a local office receives an MSFW complaint (JS or non-JS related), the local office manager shall transmit a copy of that portion of the log containing the information on the MSFW complaint(s) or a separate listing of the relevant information from the log for each MSFW complaint to the State Administrator. Within two months after the end of each calendar quarter the State Administrator shall transmit copies of all local and State office complaint logs received for that quarter to the Regional Administrator.

(3) State agencies shall ensure that any action taken by the responsible official, including referral, on a JS-related or non-JS related complaint from

an MSFW alleging a violation of employment related laws enforced by ESA or OSHA is fully documented in a file containing all relevant information, including a copy of the original complaint form, a copy of any JS reports, any related correspondence, a list of actions taken, and a record of related telephone calls.

(4) At the State office level, the State Administrator shall ensure that all JS-related complaints referred from local offices, and all correspondence relating thereto are logged with a notation of the nature of each item.

(d) State agencies shall ensure that information pertaining to the use of the JS complaint system is publicized. This shall include the prominent display of an ETA-approved JS complaint system poster in each local office, satellite or district office, and at each State agency operated day-haul facility.

§ 658.411 Filing and assignment of JS-related complaints.

(a) JS-related complaints may be filed in any office of the State job service agency.

(b) Assignment of complaints to local office personnel shall be as follows:

(1) All JS-related complaints filed with a local office, and alleging unlawful discrimination by race, color, religion, national origin, sex, age, or physical or mental status unrelated to job performance (handicap) shall be assigned to a local office Equal Opportunity (EO) representative if the local office has a trained and designated EO representative, or, if the local office does not have such a representative, shall be sent immediately to the State agency for logging and assignment to the EO representative or, where appropriate, handled in accordance with the procedures set forth at 29 CFR Part 31. The EO representative shall refer complaints alleging discrimination by employers to the Equal Employment Opportunity Commission or other appropriate enforcement agency. Complaints retained by an EO representative shall be subject to the hearing and appeal rights as are normally provided in accordance with this subpart. The State agency complaint specialist shall follow-up with the EO representative or with other responsible enforcement agency monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and shall inform the complainants of the status of the complaint periodically.

(2) All JS-related and non-JS related complaints other than those described in paragraph (b)(1) of this section shall be handled by the local office manager or assigned by the local office manager to

a local office employee trained in JS complaint procedures.

(c) Assignment of complaints to State office personnel shall be as follows:

(1) The handling of all JS-related complaints received by the State office alleging unlawful discrimination by race, color, religion, national origin, sex, age, physical or mental status unrelated to job performance (handicap) status shall be assigned to a State EO representative and, where appropriate, handled in accordance with procedures set forth at 29 CFR Part 31.

(2) The handling of all other JS-related complaints and all non-JS-related complaints received by the State office shall be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints shall be the State MSFW Monitor Advocate.

§ 658.412 Complaint resolution.

(a) A JS-related complaint is resolved when:

(1) The complainant indicates satisfaction with the outcome, or

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

(3) The complainant or the complainant's authorized representative fails to respond within 20 working days or in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate local or State office, or

(4) The complainant exhausts the final level of review, or

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

§ 658.413 Initial handling of complaints by the State or local office.

(a) There shall be an appropriate official available during regular office hours to take complaints in each local office.

(b) Whenever an individual indicates an interest in making any complaint to a State agency office, the appropriate JS official shall offer to explain the operation of the JS complaint system. The appropriate JS official shall offer to take the complaint in writing if it is JS related, or if non-JS related, it alleges violations of employment related laws enforced by ESA or OSHA and is filed by or on behalf of an MSFW. The official shall require that the complainant put the complaint on the JS Complaint/Referral Form prescribed or approved by the ETA. The JS Complaint/Referral Form shall be used for all complaints taken by a State agency, including complaints about

unlawful discrimination, except as provided in § 658.413(c). The State agency official shall offer to assist the complainant in filling out the form and shall do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants shall be named on the JS Complaint/Referral Form. The complainant shall sign the completed form. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed JS Complaint/Referral Form shall be given to the complainant(s), and the complaint form shall be given to the appropriate JS official.

(c) If a JS official receives a complaint in any form (e.g., a letter) which is signed by the complainant and includes sufficient information for the JS official to initiate an investigation, the document shall be treated as if it were a properly completed JS Complaint/Referral Form filed in person by the complainant. The JS official shall send a confirming letter to this effect to the complainant and shall give the document to the appropriate JS official. If the complainant has not provided sufficient information to investigate the matter expeditiously, the JS official shall request additional information from the complainant.

(d) If the appropriate JS official determines that the complaint is not JS-related, the official shall follow the procedures set forth in § 658.414.

(e) If the appropriate JS official determines that the complaint is JS-related, the official shall ensure that the complaint is handled in accordance with this Subpart E.

(f) During the initial discussion with the complainant, the JS official receiving the complaint shall: (1) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint; (2) request that the complainant indicate all of the addresses through which he or she might be contacted during the investigation of the complaint; (3) request that the complainant contact the JS before leaving the area if possible, and explain the need to maintain contact during the complaint investigation.

§ 658.414 Referral of non-JS-related complaints.

(a) To facilitate the operation of the coordinated enforcement procedures established at 29 CFR Part 42, the State agency shall take from MSFWs in

writing non-JS related complaints which allege violations of employment related laws enforced by ESA or OSHA. The official shall immediately refer the complaint to ESA or OSHA for prompt action. The JS official shall inform the MSFW of the enforcement agency (and the individual if known) to which the complaint will be referred and refer the complainant to other agencies, attorney, consumer advocate and/or other assistance where appropriate.

(b) Upon receipt of all other non-JS related complaints, the JS official shall refer the complainant to the appropriate enforcement agency, another public agency, an attorney, a consumer advocate and/or other appropriate assistance.

(c) For all non-JS-related complaints received pursuant to paragraphs (a) and (b) of this section, the appropriate JS official shall record the referral of the complainant and the complaint where § 658.414(a) is applicable, and the agency or agencies (and individual(s), if known) to which the complainant and the complaint where § 658.414(a) is applicable, were referred on the complaint log specified in § 658.410(c)(1). The JS official shall also prepare and keep the file specified in § 658.410(c)(3) for the complaints filed pursuant to § 658.414(a).

§ 658.415 Transferring complaints to proper JS office.

(a) Where a JS-related complaint deals with an employer, the proper office to handle the complaint initially is ordinarily the local office serving the area in which the employer is located. Where a JS-related complaint deals with an office of a State agency, the proper office to handle the complaint initially is the local office serving the area in which the alleged violation of the JS regulations occurred. Where an agency-related complaint deals with more than one office of a State agency, with an alleged agency-wide violation, or with the State office, the appropriate State agency official may direct that the State office of that agency handle the complaint initially.

(b) The State Administrator shall establish a system whereby the office in which an JS-related complaint is filed, alleging a violation in that same State, ensures that the JS Complaint/Referral Form is adequately completed and then sent to the proper State or local office of that agency. A copy of the referral letter shall be sent to the complainant.

(c) Whenever a JS-related complaint deals with an employer in another State or another State agency, the State JS agency shall send, after ensuring that the JS Complaint/Referral Form is

adequately completed, a copy of the JS Complaint/Referral Form and copies of any relevant documents to the State agency in the other State. Copies of the referral letter shall be sent to the complainant, and copies of the complaint and referral letter shall be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies.

(d) The State agency receiving the complaint after an interstate transferral under paragraph (c) of this section shall handle the complaint as if it had been initially filed with that office.

(e) The ETA regional office with jurisdiction over the receiving State shall follow-up with the receiving State agency to ensure the complaint is handled in accordance with these regulations.

(f) If the JS complaint is against more than one State JS agency, the complaint shall so clearly state. The complaint shall be handled as separate complaints and shall be handled according to procedures at §§ 658.416(c) and 658.415(c).

§ 658.416 Action on JS-related complaints.

(a) The appropriate State agency official handling an JS-related complaint shall offer to assist the complainant through the provision of appropriate JS services. For complaints against employers, this may include such services as referring a worker-complainant to another job.

(b)(1) If the JS-related complaint concerns violations of an employment-related law, the local or State office official shall refer the complaint to the appropriate enforcement agency and notify the complainant in writing of the referral. The agency shall follow-up with the enforcement agency monthly regarding MSFW complaints and quarterly regarding non-MSFW complaints, and shall inform the complainant of the status of the complaint periodically.

(2) If the enforcement agency makes a final determination that the employer violated an employment related law, the State JS agency shall initiate procedures for discontinuation of services immediately in accordance with Subpart F. The State agency shall notify the complainant and the employer of this action.

(c) If the complaint is filed initially in a local office, and is not referred under § 658.416(b), the appropriate local office official shall investigate and attempt to resolve the complaint immediately upon receipt. If resolution has not been achieved to the satisfaction of the complainant within 15 working days

after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, the local office official shall send the complaint to the State office for resolution or further action except that if the local office has made a written request for information pursuant to § 658.412(a)(3), these time periods shall not apply until the complainant's response is received in accordance with § 658.412(a)(3). The local office shall notify the complainant and the respondent, in writing, of the results of its investigation pursuant to this paragraph, and of the referral to the State office.

(d) If the complaint is filed initially with the State office, and is not transferred to a local office under § 658.415(a), or not referred to an enforcement agency under § 658.416(b), the appropriate State office official shall investigate and attempt to resolve the complaint immediately upon receipt. If the State office receives the complaint on referral from a local office, the State official shall attempt to resolve the complaint immediately and may, if necessary, conduct a further investigation. If resolution at the State office level has not been accomplished within 30 working days (20 working days with respect to complaints by MSFWs) after the complaint was received by the State office (whether the complaint was received directly or from a local office pursuant to paragraph (c) of this section), the State office shall make a written determination regarding the complaint and shall send copies to the complainant and the respondent except that if the State office has made a written request for information pursuant to § 658.412(a)(3) these time periods shall not apply until the complainant's response is received in accordance with § 658.412(a)(3). The determination must be sent by certified mail. The determination shall include all of the following:

(1) The results of any State office investigation pursuant to this paragraph.

(2) Conclusions reached on the allegations of the complaint.

(3) An explanation of why the complaint was not resolved.

(4) If the complaint is against an employer, and the State office has found that the employer has violated JS regulations, the determination shall state that the State will initiate procedures for discontinuation of services to the employer in accordance with Subpart F.

(5) If the complaint is against an employer and has not been referred to an enforcement agency pursuant to paragraph (b)(1) of this section, and the

State office has found that the employer has not violated JS regulations, an offer to the complainant of the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

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

(e) If the State office, within 20 working days from the certified date of receipt of the notification provided for in paragraph (d) of this section, receives a written request for a hearing in response thereto, the State office shall refer the complaint to a State hearing official for hearing. The parties to whom the determination was sent (the State agency may also be a party) shall then be notified in writing by the State office that:

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

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

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

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

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

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

(7) With the consent of the State agency's representative and of the State hearing official, the party who requested the hearing may withdraw the request for hearing in writing before the hearing.

§ 658.417 Hearings.

(a) Hearings shall be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. They may be, for example, the same referees who hold hearings under the State unemployment compensation law and/or the Work Incentive Program or any official of the State agency, authorized by State law to preside at State administrative hearings.

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

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

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

(2) Re-schedule the hearing, as appropriate.

(d) In conducting a hearing the State hearing official shall:

(1) Regulate the course of the hearing;

(2) Issue subpoenas, if empowered to do so under State law, if necessary;

(3) Assure that all relevant issues are considered;

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

(5) Take any other action which is necessary to insure an orderly hearing.

(e) The testimony at the hearing shall be recorded and may be transcribed when appropriate.

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

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

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

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

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

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

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

(m) The following standards shall apply to the location of hearings involving parties in more than one State or in locations within a State but which are separated geographically so that

access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official.

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

(2) If a hearing location cannot be established by the State hearing official pursuant to paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office with all parties and their representatives not choosing to be present at that location permitted to participate in the hearing from their distant locations.

(3) Where the State agency does not have the facilities to conduct hearings by telephone pursuant to paragraphs (m)(1) or (m)(2) of this section, the State agencies in the States where the parties are located shall take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with § 658.416.

§ 658.418 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that the case is improperly before it, that is, that there is a lack of jurisdiction over the case;

(2) Rule that the complaint has been withdrawn properly and in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing;

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

(b) Based on the entire record, including the investigations and determinations of the local and State offices and any evidence provided at the hearing, the State hearing official shall prepare a written decision. The State hearing official shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the complainant, the respondent, entities serving as *amicus curiae* (if any), the State office, the Regional Administrator, and the Solicitor of Labor, Attn: Associate

Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue, N.W., Washington, D.C., 20210. The notification to the complainant and respondent must be sent certified mail.

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

Federal JS Complaint System

§ 658.420 Establishment of JS complaint system at the ETA regional office.

(a) Each Regional Administrator shall establish and maintain a JS complaint system at the DOL regional office level.

(b) The Regional Administrator shall designate DOL officials to handle JS-related complaints as follows:

(1) The handling of all JS-related complaints alleging discrimination by race, color, religion, national origin, sex, age, or physical or mental status unrelated to job performance (handicap), shall be assigned to a Regional Director for Equal Opportunity and Special Review (RDEOSR) and, where appropriate, handled in accordance with procedures at 29 CFR Part 31.

(2) The handling of all JS-related complaints other than those described in paragraphs (b)(1) of this section, shall be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to handle MSFW complaints shall be the Regional MSFW Monitor Advocate.

(c) The Regional Administrator shall designate DOL officials to handle non-JS-related complaints in accordance with § 658.422: *Provided*, That the regional official designated to handle MSFW non-JS-related complaints shall be the Regional MSFW Monitor Advocate.

(d) The Regional Administrator shall assure that all JS-related complaints and all correspondence relating thereto are logged, with a notation of the nature of each item.

§ 658.421 Handling of JS-related complaints.

(a) No JS-related complaint shall be handled at the ETA regional office level until the complainant has exhausted the State agency administrative remedies set forth at §§ 658.410-418. Therefore, if

the Regional Administrator determines that any complainant, who has filed a JS-related complaint with the regional office, has not yet exhausted the administrative remedies at the State agency level, the Regional Administrator shall inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter shall be sent to the State Administrator. However, nothing in this provision shall prevent an ETA regional office from accepting and handling to resolution a JS-related complaint pursuant to §§ 658.423 or 658.702(c).

(b) The ETA regional office shall be responsible for handling appeals of determinations made on complaints at the State level. An "appeal" shall include any letter or other writing requesting review if it is received by the regional office and signed by a party to the complaint. Upon receipt of an appeal by the Regional Administrator after the exhaustion of State agency administrative remedies, the Regional Administrator immediately shall send for the complete State agency file, including the original JS Complaint/Referral Form.

(c) The Regional Administrator shall review the file in the case and shall determine within ten (10) days whether any further investigation or action is appropriate, provided however that the Regional Administrator shall have twenty (20) working days to make this determination if legal advice is necessary.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator shall send this determination in writing by certified mail to the appellant within five (5) days of his/her determination and may, in the Regional Administrator's discretion, offer the appellant a hearing before a DOL Administrative Law Judge, provided the appellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator's offer of hearing.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator immediately shall undertake such an investigation, informal resolution or other action.

(f) If the Regional Administrator determines to reverse or modify the decision of the State hearing official or the State Administrator, the Regional Administrator shall offer in writing by certified mail each party to the State hearing official's hearing or to whom the

State office determination was sent, the opportunity for a hearing before a DOL Administrative Law Judge, provided the party requests such a hearing in writing within 20 working days of the certified date of the Regional Administrator's offer of hearing.

(g) If the Regional Administrator finds reason to believe that a State agency or one of its local offices has violated JS regulations, the Regional Administrator shall follow the procedures set forth at Subpart H of this part.

(h) If the appeal is not resolved, pursuant to paragraph (e) of this section, to the appellant's satisfaction, the Regional Administrator may, in the Regional Administrator's discretion, offer the appellant in writing by certified mail a hearing before a DOL Administrative Law Judge provided the appellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator's offer of hearing.

§ 658.422 Handling of non-JS-related complaints by the Regional Administrator.

(a) Each non-JS-related complaint filed by an MSFW alleging violations of employment related laws enforced by ESA or OSHA shall be taken in writing, and referred to ESA or OSHA for prompt action pursuant to 29 CFR Part 42.

(b) Upon referring the complaint in accordance with paragraph (a) of this section, the regional official shall inform the complainant of the enforcement agency (and individual, if known) to which the complaint was referred and shall also refer the complainant to the enforcement agency, another public agency, an attorney, a consumer advocate and/or other appropriate assistance.

(c) All other non-JS related complaints alleging violations of employment related laws shall be logged. The complainant shall be referred to the appropriate agency for assistance.

(d) For all non-JS-related complaints received and/or referred, the appropriate regional official shall record the referral of the complainant (or complaint filed on behalf of an MSFW), and the agency or agencies (and individual(s) if known) to which the complainant (or complaint) was referred on a complaint log, similar to the one described in § 658.410(c)(1). The appropriate regional official shall also prepare and keep the file specified in § 658.410(c)(3).

§ 658.423 Handling of other complaints by the Regional Administrator.

Whenever the regional office receives a JS-related complaint and the appropriate official determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants, he/she shall take the complaint and follow up on the complaint as follows: for a complaint against an employer, the regional office shall handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.413 and 658.416 herein. A hearing shall be offered to the parties once the Regional Administrator makes a determination on the complaint. For a complaint against a State agency, the regional office shall follow procedures established at § 658.702(c).

§ 658.424 Federal hearings.

(a) If a party requests a hearing pursuant to §§ 658.421 (d), (f), or (h) or § 658.423, the Regional Administrator shall:

(1) Send the party requesting the hearing and all other parties to the prior State agency hearing, a written notice containing the statements set forth at § 658.416(e);

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

(3) Send simultaneously one hearing file to the DOL Chief Administrative Law Judge, 1111 20th Street, N.W., Washington, D.C., 20036, one hearing file to the Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Upon the receipt of a hearing file, the DOL Administrative Law Judge designated by the Chief Administrative Law Judge shall notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the Administrator, and the Solicitor of the receipt of the case. The DOL Administrative Law Judge shall afford the non-Federal parties 20 working days to submit legal arguments and supporting documentation, if any, in the case. The DOL Administrative Law Judge shall afford the Solicitor 20 working days to submit legal arguments and supporting documentation, if any, in the case on behalf of the Federal parties. After the 20 working days elapse, the Hearing Officer shall decide whether to schedule a hearing, or make a determination on the record.

(c) The DOL Administrative Law Judge may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously in this fashion.

(d) At the DOL Administrative Law Judge's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as *amicus curiae* with respect to specific legal or factual issues relevant to the complaint. Any documents submitted by the *amicus curiae* shall be included in the record.

(e) The following standards shall apply to the location of hearings involving parties in more than one State or in locations which are within a State but which are separated geographically so that access to the hearing location is extremely inconvenient for one or more parties as determined by the Administrative Law Judge.

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

(2) If a hearing location cannot be established by the Administrative Law Judge at a location pursuant to paragraph (e)(1) of this section, the Administrative Law Judge may conduct, with the consent of the parties, the hearing by a telephone conference call from an office with all parties and their representatives not choosing to be present at that location permitted to participate in the hearing from their distant locations.

(3) Where the Administrative Law Judge is unable to locate facilities to conduct hearings by telephone pursuant to paragraphs (e)(1) or (e)(2) of this section, the Administrative Law Judge shall take evidence in the States where the parties are located and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with § 658.416.

(f) The DOL Administrative Law Judge shall:

(1) Notify all involved parties of the date, time and place of the hearing; and
(2) Re-schedule the hearing, as appropriate.

(g) In conducting a hearing the DOL Administrative Law Judge shall:

(1) Regulate the course of the hearing;
(2) Issue subpoenas if necessary;
(3) Consider all relevant issues which are raised;

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

(5) Take any other action which is necessary to insure an orderly hearing.

(h) The testimony at the hearing shall be recorded, and shall be transcribed if appropriate.

(i) The parties to the hearing shall be afforded the opportunity to present, examine, and cross-examine witnesses. The DOL Administrative Law Judge may elicit testimony from witnesses, but shall not act as advocate for any party.

(j) The DOL Administrative Law Judge shall receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the documentary evidence, to any part to the hearing upon request.

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

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

(m) The DOL Administrative Law Judge shall, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.425 Decision of DOL Administrative Law Judge.

(a) The DOL Administrative Law Judge may:

(1) Rule that there is a lack of jurisdiction over the case;

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

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question. However, the DOL Administrative Law Judge shall not have jurisdiction to consider the validity or constitutionality

of JS regulations or of the Federal statutes under which they are promulgated.

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

(c) The decision of the DOL Administrative Law Judge shall be the final decision of the Secretary.

§ 658.426 Complaints against USES.

Complaints alleging that an ETA regional office or the national office of USES has violated JS regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210. Such complaints should include: (a) The allegations of wrong-doing, (b) the date of the incident, (c) location of the incident, (d) who the complaint is against, and (e) any other relevant information available to the complainant. The Assistant Secretary or the Regional Administrator as designated shall make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Job Service System

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq., unless otherwise noted.

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant to 20 CFR Part 653 to employers by the USES, including State agencies.

§ 658.501 Basis for discontinuation of services.

(a) The State agency shall initiate procedures for discontinuation of services to employers who:

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

(2) Submit job orders and refuse to provide assurances, in accordance with § 653.501(d) above, that the jobs offered are in compliance with employment-

related laws, or to withdraw such job orders;

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

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

(5) Are found to have violated JS regulations pursuant to § 658.416(d)(4);

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

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

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (6) of this section.

(b) The State agency may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart at §§ 658.501 through 658.502 would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 (b) *et seq.* shall be followed.

(c) For employers who are alleged to have not complied with the terms of the temporary labor certification, State agencies shall notify the Regional Administrator of the alleged non-compliance for investigation and pursuant to § 655.210 consideration of ineligibility for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The State agency shall notify the employer in writing that it intends to discontinue the provision of JS services pursuant to 20 CFR Part 653 and the reason therefore:

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

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

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

(iii) If the job is no longer available

makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or

(iv) Requests a hearing from the State agency pursuant to § 658.417

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the State agency shall specify the date the order was submitted, the job order involved and the assurances involved. The employer shall be notified that all JS services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances,

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws, or

(iii) Requests a hearing from the State agency pursuant to § 658.417.

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

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented, or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders, or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the JS, and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances, or

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

(4) Where the decision is based on a final determination by an enforcement agency that the employer-related laws, the State agency shall specify the determination. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws, or

(ii) Provides adequate evidence that the appropriate fines have been paid

and/or appropriate restitution has been made, and

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

(5) Where the decision is based on a finding of a violation of JS regulations under § 658.416(d)(4), the State agency shall specify the finding. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate JS regulations, or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken, and

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

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

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

(i) Provides adequate evidence that the workers were accepted, or

(ii) Provides adequate evidence that the workers were not available to accept the job, or

(iii) Provides adequate evidence that the workers were not qualified, and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

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

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the State agency shall specify the lack of cooperation, the employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he did cooperate, or

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

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

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

(b) If the employer chooses to respond pursuant to § 658.502 by providing

documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the State agency does not accept the documentary evidence or assurances as adequate.

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

(d) If the employer makes a timely request for a hearing, in accordance with § 658.502, the State agency shall follow procedures set forth at § 658.417 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.501(a)(5).

§ 658.503 Discontinuation of services.

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

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

§ 658.504 Reinstatement of services.

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

(1) The State is ordered to do so by a Federal Administrative Law Judge or Regional Administrator, or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar difficulties are not likely to occur in the future, and

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

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

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

(d) The State agency shall reinstate services to an employer if ordered to do so by a State hearing officer, Regional Administrator, or Federal Administrative Law Judge as a result of a hearing offered pursuant to § 658.504(c).

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

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 5 U.S.C. 301 *et seq.*

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State agency compliance with the Job Service regulations at 20 CFR Parts 601, 602, 603, 604, 620, 621, 651–658 and 29 CFR Part 8. All recordkeeping and reporting requirements contained in Parts 653 and 658 have been approved by the Office of Management and Budget as required by the Federal Reports Act of 1942.

§ 658.601 State agency responsibility.

(a) Each State agency shall establish and maintain a self-appraisal system for job service operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system shall include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the local office level shall be conducted as follows:

(i) Performance shall be measured on a quarterly-basis against planned service levels as stated in the State Program and Budget Plan (PBP). The State plan shall be consistent with numerical goals contained in local office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports shall be compared to planned levels. Variances between achievement and plan shall be identified.

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

(iv) Results of local office numerical reviews shall be documented and significant deficiencies identified. A

corrective action plan as described at § 658.601 (a)(6) shall be developed to address these deficiencies.

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

(2) Numerical appraisal at the central office level shall be conducted as follows:

(i) Performance shall be measured on a quarterly basis against planned service levels as stated in the State Program and Budget Plan (PBP). The State plan shall be consistent with numerical goals contained in local office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports shall be compared to planned levels. Variances between achievement and plan shall be identified.

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

(iv) Results of numerical reviews shall be documented and significant deficiencies identified. A corrective action plan as described at § 658.601 (a)(5) shall be developed to address these deficiencies. These plans shall be submitted to the ETA Regional Office as part of the periodic performance process described at 20 CFR 658.603(d)(2).

(3) Nonnumerical (qualitative) appraisal of local office job service Title III activities shall be conducted at least annually as follows:

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

(ii) At a minimum, nonnumerical review shall include an assessment of the following factors:

(A) Appropriateness of services provided to applicants and employers;
(B) Timely delivery of services to applicants and employers;

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

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

(E) Effectiveness of JS interface with external organizations, i.e., other ETA funded programs, community groups, etc.

(iii) Nonnumerical review methods shall include:

(A) Observation of processes;

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

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

(iv) The result of nonnumerical reviews shall be documented and deficiencies identified. A corrective action plan that addresses these deficiencies as described at § 658.601(a)(6) shall be developed.

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

(4) As part of its oversight responsibilities, the central office shall conduct onsite reviews in those local offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, nonnumerical appraisal, or other sources of information.

(5) Nonnumerical (qualitative) review of central office job service activities shall be conducted as follows:

(i) Central office operations shall be assessed annually to determine compliance with Federal regulations and to assess progress made on annually established work plans established for central office staff.

(ii) Results of nonnumerical reviews shall be documented and deficiencies identified. A corrective action plan that addresses these deficiencies shall be developed.

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

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

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

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

(7)(a) The provisions of the JS regulations which require numerical and nonnumerical assessment of service to special applicant groups, e.g., services to veterans at 20 CFR 653.221-230 and services to MSFWs at 20 CFR 653.108, are supplementary to the provisions of this section.

(b) Each State Administrator and local office manager shall assure that their staffs know and carry out JS regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the State agency or by the ETA.

(c) Each State Administrator shall assure that the State agency complies with its approved program budget plan.

(d) Each State Administrator shall assure to the maximum extent feasible the accuracy of data entered by the State agency into ETA required management information systems. Each State agency shall establish and maintain a data validation system pursuant to ETA instructions. The system shall review every local office at least once every four years. The system shall include the validation of time distribution reports and the review of data gathering procedures.

§ 658.602 ETA national office responsibility.

The ETA national office shall:

(a) Monitor ETA regional offices' carrying out of JS regulations;

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

(c) Offer technical assistance to the ETA regional offices and State agencies in carrying out JS regulations and programs;

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

(e) Develop tools and techniques for reviewing and assessing State agency performance and compliance with JS regulations.

(f) ETA shall appoint a National MSFW Monitor Advocate, who shall devote full time to the duties set forth in this subpart. The National MSFW Monitor Advocate shall (i) review the effective functioning of the Regional and State MSFW Monitor Advocates; (ii) review the performance of State agencies in providing the full range of JS services to MSFWs; (iii) take steps to resolve or refer JS-related problems of

MSFWs which come to his/her attention; (iv) take steps to refer non JS-related problems of MSFWs which come to his/her attention; (v) recommend to the Administrator changes in policy toward MSFWs; and (vi) serve as an advocate to improve services for MSFWs within JS. The National MSFW Monitor Advocate shall be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee.

(1) The National MSFW Monitor Advocate shall be appointed by the Administrator after informing farmworker organizations and other organizations with expertise concerning MSFWs of the openings and encouraging them to refer qualified applicants to apply through the federal merit system. Among qualified candidates, determined through merit systems procedures, individuals shall be sought who meet the criteria used in the selection of the State MSFW Monitor Advocates, as provided in § 653.108(b).

(2) The National MSFW Monitor Advocate shall be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(3) The National MSFW Monitor Advocate shall submit an annual report ("Annual Report") to the Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinating Committee covering the matters set forth in this subpart.

(4) The National MSFW Monitor Advocate shall monitor and assess State agency compliance with JS regulations affecting MSFWs on a continuing basis. His/her assessment shall consider (i) information from Regional and State MSFW Monitor Advocates; (ii) program performance data, including the service indicators; (iii) periodic reports from regional offices; (iv) all federal on-site reviews; (v) selected State on-site reviews; (vi) other relevant reports prepared by USES; (vii) information received from farmworker organizations and employers; and (viii) his/her personal observations from visits to State JS offices, agricultural work sites and migrant camps. In the Annual Report, the National MSFW Monitor Advocate shall include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and federal officials, and shall address the information obtained from all of the foregoing sources.

(5) The National MSFW Monitor Advocate shall review the activities of the State/federal monitoring system as it applies to services to MSFWs and the JS complaint system including the effectiveness of the regional monitoring

function in each region and shall recommend any appropriate changes in the operation of the system. The National MSFW Monitor Advocate's findings and recommendations shall be fully set forth in the Annual Report.

(6) If the National MSFW Monitor Advocate finds that the effectiveness of any Regional MSFW Monitor Advocate has been substantially impeded by the Regional Administrator or other Regional Office official, he/she shall, if unable to resolve such problems informally, report and recommend appropriate actions directly to the Administrator. If the National MSFW Monitor Advocate receives information that the effectiveness of any State Monitor Advocate has been substantially impeded by the State Administrator or other State or federal JS official, he/she shall, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the Administrator.

(7) The National MSFW Monitor Advocate shall be informed of all proposed changes in policy and practice within USES, including JS regulations, which may affect the delivery of services to MSFWs. The National MSFW Monitor Advocate shall advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The National MSFW Monitor Advocate shall propose directly to the Administrator changes in JS policy and administration which may substantially improve the delivery of services to MSFWs. He/she shall also recommend changes in the funding of state agencies and/or adjustment or reallocation of the discretionary portions of funding formulae.

(8) The National MSFW Monitor Advocate shall participate in the review and assessment activities required at § 658.602 and 658.700 *et seq.* As part of such participation, the National MSFW Monitor Advocate, or if he/she is unable to participate a Regional MSFW Monitor Advocate, shall accompany the National Office review team on National Office on-site reviews. The National MSFW Monitor Advocate shall engage in the following activities in the course of each State on-site review:

- (i) He/she shall accompany selected outreach workers on their field visits.
- (ii) He/she shall participate in a random field check[s] of migrant camps or work site[s] where MSFWs have been placed on inter or intra state clearance orders.
- (iii) He/she shall contact local CETA 303 groups or other farmworker organizations as part of the on-site

review, and, conduct an interview with representatives of the organizations.

(iv) He/she shall meet with the State MSFW Monitor Advocate and discuss the full range of the JS services to MSFWs, including the monitoring and complaint systems.

(9) In addition to the duties specified in § 658.602(f)(8), the National MSFW Monitor Advocate each year during the harvest season shall visit the four states with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and shall: (i) Meet with the State MSFW Monitor Advocate and other central office staff to discuss MSFW service delivery, and (ii) contact representatives of MSFW organizations and interested employer organizations to obtain information concerning JS service delivery and coordination with other agencies.

(10) The National MSFE Monitor Advocate shall perform the duties specified in § 658.700. As part of this function, he/she shall monitor the performance of regional offices in imposing corrective action. The National MSFW Monitor Advocate shall report any deficiencies in performance to the Administrator.

(11) The National MSFW Monitor Advocate shall establish routine and regular contacts with CETA 303 groups, other farmworker organizations and agricultural employers and/or employer organizations. He/she shall attend conferences or meetings of these groups wherever possible and shall report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The National MSFW Monitor Advocate shall include in the Annual Report recommendations as to how DOL might better coordinate JS and CETA 303 services as they pertain to MSFWs.

(12) In the event that any State or Regional MSFW Monitor Advocate, enforcement agency or MSFW group refers a matter to the National MSFW Monitor Advocate which requires emergency action, he/she shall assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written conformation.

(13) Through all the mechanisms provided in this subpart, the National MSFW Monitor Advocate shall aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of JS services and protections afforded by these regulations to MSFWs. The

National MSFW Monitor Advocate shall:

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

(ii) Provide technical assistance to ETA regional office and State agency staffs for administering the JS complaint system.

(iii) Recommend to the Administrator specific instructions for action by regional office staff to correct any JS-related systemic deficiencies. Prior to any ETA review of regional office operations concerning JS services to MSFWs, the National MSFW Monitor Advocate shall provide to the Administrator a brief summary of JS-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Administrator and ETA reviewing organization deem appropriate.

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

§ 658.603 ETA regional office responsibility.

(a) The Regional Administrator shall have responsibility for the regular review and assessment of State agency performance and compliance with JS regulations.

(b) The Regional Administrator shall review and approve annual program budget plans for the State agencies within the region. In reviewing the program budget plans the Regional Administrator shall consider relevant factors including the following:

- (1) State agency compliance with JS regulations;
 - (2) State agency performance against the goals and objectives established in the previous year's program budget plan;
 - (3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on State agency performance;
 - (4) State agency adherence to national program emphasis; and
 - (5) The adequacy and appropriateness of the program budget plan for carrying out JS programs.
- (c) The Regional Administrator shall assess the overall performance of State agencies on an ongoing basis through desk reviews and the use of required

reporting systems and other available information.

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

(1) Comprehensive on-site reviews of State agencies and their offices to review State agency organization, management, and program operations;

(2) Periodic performance reviews of State agency operation of JS programs to measure actual performance against the program budget plan, past performance, the performance of other State agencies, etc.;

(3) Audits of State agency programs to review State agency program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators may also conduct audits through other agencies or organizations or may require the State agency to have audits conducted;

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

(i) The accuracy of data entered by the State agencies into management information system;

(ii) Whether the State agencies' data validating and reviewing procedures conform to ETA instructions; and

(iii) Whether State agencies have implemented any corrective action plans required by the ETA to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist State agencies in carrying out JS regulations and programs;

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

(7) Random, unannounced field checks of a sample of agricultural work sites to which JS placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings should be documented on the JS Complaint Referral Form and provided to the State agency to be handled as a complaint under § 658.411(b).

(e) The Regional Administrator shall provide technical assistance to State agencies to assist them in carrying out JS regulations and programs.

(f) The Regional Administrator shall appoint a Regional MSFW Monitor Advocate who shall devote full time to the duties set forth in this subpart. The Regional MSFW Monitor Advocate shall (i) review the effective functioning of the

State MSFW Monitor Advocates in his/her region; (ii) review the performance of State agencies in providing the full range of JS services to MSFWs; (iii) take steps to resolve JS-related problems of MSFWs which come to his/her attention; (iv) recommend to the Regional Administrator changes in policy towards MSFWs; (v) review the operation of the JS complaint system; and (vi) serve as an advocate to improve service for MSFWs within JS. The Regional MSFW Monitor Advocate shall be a member of the Regional Farm Labor Coordinated Enforcement Committee.

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

(2) The Regional Administrator shall ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this subsection are assigned. The Regional MSFW Monitor Advocate shall notify the Regional Administrator of any staffing deficiencies and the Regional Administrator shall take appropriate action.

(3) The Regional MSFW Monitor Advocate within the first three months of their tenure shall participate in a training session(s) approved by the National office.

(4) At the regional level, the Regional MSFW Monitor Advocate shall have primary responsibility for (i) monitoring the effectiveness of the JS complaint system set forth at Subpart E of this Part; (ii) apprising appropriate State and ETA officials of deficiencies in the complaint system; and (iii) providing technical assistance to State MSFW Monitor Advocates in the region.

(5) At the ETA regional level, the Regional MSFW Monitor Advocate shall have primary responsibility for ensuring that State agency compliance with JS regulations as they pertain to services to MSFWs is monitored by the regional office. He/she shall independently assess on a continuing basis the provision of JS services to MSFWs, seeking out and using: (i) Information from State MSFW Monitor Advocates, including all reports and other

documents; (ii) program performance data; (iii) the periodic and other required reports from State JS offices; (iv) federal on-site reviews; (v) other reports prepared by the National office; (vi) information received from farmworker organizations and employers; and (vii) any other pertinent information which comes to his/her attention from any possible source. In addition, the Regional MSFW Monitor Advocate shall consider his/her personal observations from visits to JS offices, agricultural work sites and migrant camps. The Regional MSFW Monitor Advocate shall assist the Regional Administrator and other appropriate line officials in applying appropriate corrective and remedial actions to State agencies.

(6) The Regional Administrator's quarterly report to the National office shall include the Regional MSFW Monitor Advocate's summary of his/her independent assessment as required in § 658.603(f)(5). The fourth quarter summary shall include an annual summary from the region. The summary also shall include both a quantitative and a qualitative analysis of his/her reviews and shall address all the matters with respect to which he/she has responsibilities under these regulations.

(7) The Regional MSFW Monitor Advocate shall review the activities and performance of the State MSFW Monitor Advocates and the State monitoring system in the region, and shall recommend any appropriate changes in the operation of the system to the Regional Administrator. The Regional MSFW Monitor Advocate's review shall include a determination whether the State MSFW Monitor Advocate (1) does not have adequate access to information, (2) is being impeded in fulfilling his/her duties, or (3) is making recommendations which are being consistently ignored by State agency officials. If the Regional MSFW Monitor Advocate believes that the effectiveness of any State MSFW Monitor Advocate has been substantially impeded by the State Administrator, other State office officials, or any federal officials, he/she shall report and recommend appropriate actions to the Regional Administrator. Information copies of the recommendations shall be provided the National MSFW Monitor Advocate.

(8) The Regional MSFW Monitor Advocate shall be informed of all proposed changes in policy and practice within USES, including JS regulations, which may affect the delivery of services to MSFWs. He/she shall advise the Regional Administrator on all such

proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs. The Regional MSFW Monitor Advocate may also recommend changes in JS policy or regulations, as well as changes in the funding of State agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(9) The Regional MSFW Monitor Advocate shall participate in the review and assessment activities required at §§ 658.603 and 658.700 *et seq.* He/she, an Assistant, or another Regional MSFW Monitor Advocate, shall participate in national office and regional office on-site statewide reviews of JS services to MSFWs in States in the region. The Regional MSFW Monitor Advocate shall engage in the following activities in the course of participating in an on-site State agency review: (i) He/she shall accompany selected outreach workers on their field visits; (ii) he/she shall participate in a random field check of migrant camps or work sites where MSFWs have been placed on inter or intrastate clearance orders; (iii) he/she shall contact local CETA 303 groups or other farmworker organizations as part of the on-site review, and shall conduct interviews with representatives of the organizations; and (iv) he/she shall meet with the State MSFW Monitor Advocate and discuss the full range of the JS services to MSFWs, including the monitoring and complaint system.

(10) During the calendar quarter preceding the time of peak MSFW activity in each State, the Regional MSFW Monitor Advocate shall meet with the State MSFW Monitor Advocate and shall review in detail the State agency's capability for providing full services to MSFWs as required by JS regulations, during the upcoming harvest season. The Regional MSFW Monitor Advocate shall offer technical assistance and recommend to the State agency and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(11) The Regional MSFW Monitor Advocate each year during the peak harvest season shall visit each state in the region not scheduled for an on-site review during that fiscal year and shall: (1) Meet with the State MSFW Monitor Advocate and other central office staff to discuss MSFW service delivery, and (ii) contact representatives of MSFW organizations to obtain information concerning JS service delivery and

coordination with other agencies and interested employer organizations.

(12) The Regional MSFW Monitor Advocate shall initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with State MSFW Monitor Advocates in the region. In addition, the Regional MSFW Monitor Advocate shall have personal and regular contact with the National MSFW Monitor Advocate. The Regional MSFW Monitor Advocate shall also establish routine and regular contacts with CETA 303 groups, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she shall attend conferences or meetings of these groups wherever possible and shall report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she shall also make recommendations as to how DOL might better coordinate JS and CETA 303 services to MSFWs.

(13) The Regional MSFW Monitor Advocate shall attend MSFW-related public meeting(s) conducted in the region, pursuant to 29 CFR 42.20. Following such meetings or hearings, the Regional MSFW Monitor Advocate shall take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(14) The Regional MSFW Monitor Advocate shall attempt to achieve regional solutions to any problems, deficiencies or improper practices concerning services to MSFWs which are regional in scope. Further, he/she shall recommend policies, offer technical assistance or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than state-by-state basis, to promote region-wide improvement in JS services to MSFWs. He/she shall facilitate region-wide coordination and communication regarding provision of JS services to MSFWs among State MSFW Monitor Advocates, State Administrators and federal ETA officials to the greatest extent possible. In the event that any State or other Regional MSFW Monitor Advocate, enforcement agency, or MSFW group refers a matter to the Regional MSFW Monitor Advocate which requires emergency action, he/she shall assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken,

and, upon request, provide written confirmation.

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

(16) The Regional MSFW Monitor Advocate shall establish regular contacts with the ESA and OSHA farmworker specialists in the region and, to the extent necessary, shall establish contacts with the staff of other DOL agencies represented on the Regional Farm Labor Coordinated Enforcement Committee. The Regional MSFW Monitor Advocate shall coordinate his/her efforts with specialists in the region to ensure that the policy specified in 29 CFR 42.20(c)(3) is followed.

(17) The Regional MSFW Monitor Advocate shall participate in the regional reviews of State agency Program Budget Plans, and shall comment to the Regional Administrator as to the adequacy of the affirmative action plans, the outreach plans, and other specific plans included therein.

§ 658.604 Assessment and evaluation of program performance data.

(a) State agencies shall compile program performance data required by ETA, including statistical information on program operations.

(b) The ETA shall use the program performance data in assessing and evaluating whether the State agencies have complied with JS regulations and their State agency program budget plans.

(c) In assessing and evaluating program performance data, the ETA shall act in accordance with the following general principles:

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

(2) Program performance data, however, may so strongly indicate that a State agency's performance is poor that the data may raise a presumption (*prima facie* case) that a State agency is violating JS regulations or the State

agency program budget plan. A State agency's failure to meet the operational objectives set forth in the PBP shall raise a presumption that the agency is violating JS regulations and/or its PBP. In such cases the ETA shall afford the State agency an opportunity to rebut the presumption of a violation pursuant to the procedures at Subpart H of this part.

(3) The ETA shall take into account that certain program performance data may measure items over which State agencies have direct or substantial control while other data may measure items over which the State agency has indirect or minimal control.

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

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

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

(4) The ETA shall consider a State agency's failure to keep accurate and complete program performance data required by JS regulations as a violation of the JS regulations.

§ 656.605 Communication of findings to State agencies.

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

(b) The ETA national office shall transmit the results of any review and assessment activities conducted by it to the Regional Administrator who shall send the information to the State agency.

(c) Whenever the review and assessment indicates a State agency violation of JS regulations or its State agency program budget plan, the Regional Administrator shall follow the procedures set forth at Subpart H of this part.

(d) Regional Administrators shall follow-up any corrective action plan imposed on a State agency under

Subpart H of this part by further review and assessment of the State agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Agencies

Authority: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; 5 U.S.C. 301 *et seq.*

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which ETA shall follow upon either discovering independently or receiving from other(s) information indicating that State agencies may not be adhering to JS regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Employment and Training Administration (ETA) to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure that State agencies comply with all requirements established by JS regulations.

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

(c) It is the policy of the ETA to act on information concerning alleged violations by State agencies of the JS regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator shall be responsible for ensuring that all State agencies in his/her region are in compliance with JS regulations.

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

(c) The Regional Administrator shall accept complaints regarding possible State agency violations of JS regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at

Subpart E, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator shall investigate the matter within 10 working days, may provide the State agency 10 working days for comment, and shall make a determination within an additional 10 working days whether there is probable cause to believe that the State agency has violated JS regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a State agency has violated JS regulations, he/she shall retain all reports and supporting information in ETA files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she shall so notify the Administrator in writing and the time for the investigation shall be extended 20 additional working days.

(e) If the Regional Administrator determines that there is probable cause to believe that a State agency has violated JS regulations, he/she shall issue a Notice of Initial Findings of Non-compliance by registered mail to the offending State agency. The Notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the JS complaint system, a copy of said notice shall be sent to the National MSFW Monitor Advocate.

(f)(1) The State agency shall have 20 working days to comment on the findings, or a longer period, up to 20 additional days, if the Regional Administrator determines that such a longer period is appropriate. The State agency's comments shall include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator shall prepare within 20 working days, written final findings which specify whether or not the State agency has violated JS regulations. If in the final findings the Regional Administrator determines that the State agency has not violated JS regulations, the Regional Administrator shall notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or

the JS complaint system, the Regional Administrator shall also notify the National Monitor Advocate. If the Regional Administrator determines that a State agency has violated JS regulations, the Regional Administrator shall prepare a Final Notice of Noncompliance which shall specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance shall be sent to the State agency by registered mail. If the noncompliance involves services to MSFWs or the JS complaint system, a copy of the Final Notice shall be sent to the National MSFW Monitor Advocate.

(g) If the violation involves the mispending of grant funds, the Regional Administrator may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator shall give the reasons for the disallowance, inform the State agency that the disallowance is effective immediately and that no more funds may be spent in the unallowed manner, and offer the State agency the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, shall not stay the effectiveness of the disallowance. The Regional Administrator shall keep complete records of the disallowance.

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

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

(2) The Final Notice of Noncompliance shall specify the time by which each corrective action must be taken. This period shall not exceed 40 working days unless the Regional Administrator

determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the JS complaint system, the Regional Administrator shall notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and shall specify that time period. The specified time period shall commence with the date of signature on the registered mail receipt.

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

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

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

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

(7) If, as a result of the review, the Regional Administrator determines that the State agency has made good faith efforts and adequate progress toward the correction of the violation and it appears that the violation will be fully corrected within a reasonable time period, the State agency shall be advised by registered mail (with a copy sent to the Administrator) of this conclusion, of remaining differences, of

further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period shall not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective action requiring a longer time period. In such cases, the Regional Administrator shall notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and shall specify that time period. The specified time period shall commence with the date of signature on the registered mail receipt.

(8)(i) If the State agency has been given an additional time period pursuant to paragraph (b)(7) of this section, ETA staff shall review the State agency's efforts as documented by the State agency at the end of the time period. If necessary, ETA shall conduct a follow-up visit as part of this review.

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

§ 658.703 Emergency corrective action.

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

§ 658.704 Remedial actions.

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

(1) Imposition of special reporting requirements for a specified period of time;

(2) Restrictions of obligational authority within one or more expense classifications;

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

(4) Requirement of special training for State agency personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request

a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

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

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

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

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

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

(b) The Regional Administrator shall send, by registered mail, a Notice of Remedial Action to the State agency. The Notice of Remedial Action shall set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (20 CFR 653.100 *et seq.*) or the JS complaint system (20 CFR 658.400 *et seq.*), a copy of said notice shall be sent to the USES Administrator, who shall publish the notice promptly in the *Federal Register*.

(c) If the remedial action is other than decertification, the notice shall state that the remedial action shall take effect immediately. The notice shall also state that the State agency may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 working days of the State agency's receipt of the notice. The offer of hearing, or the acceptance thereof, however, shall not stay the implementation of remedial action.

(d) Within 60 working days after the initial application of remedial action, the Regional Administrator shall conduct a review of the State agency's compliance with JS regulations unless the Regional Administrator determines that a longer time period is necessary. In such cases, the Regional Administrator shall notify the USES Administrator in writing of the circumstances which necessitate a longer time period, and specify that time period. If necessary, ETA staff shall conduct a follow-up visit as part of this review. If the State agency is in compliance with the JS regulations, the Regional Administrator shall fully

document these facts and shall terminate the remedial actions. The Regional Administrator shall notify the State agency of his/her findings. When the case involves violations of regulations governing services to MSFWs or the JS complaint system, a copy of said notice shall be sent to the USES Administrator, who shall promptly publish the notice in the *Federal Register*. The Regional Administrator shall conduct, within a reasonable time after terminating the remedial actions, a review of the State agency's compliance to determine whether any remedial actions should be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds that the State agency remains in noncompliance, the Regional Administrator shall continue the remedial action and/or impose different additional remedial actions. The Regional Administrator shall fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the JS complaint system, shall send copies to the USES Administrator, who shall promptly publish the notice in the *Federal Register*.

(f)(1) If the State agency has not brought itself into compliance with JS regulations within 120 working days of the initial application of remedial action, the Regional Administrator shall initiate decertification unless the Regional Administrator determines that circumstances necessitate continuing remedial action for a longer period of time. In such cases, the Regional Administrator shall notify the USES Administrator in writing of the circumstances which necessitate the longer time period, and specify the time period.

(2) The Regional Administrator shall notify the State agency by registered mail of the decertification proceedings, and shall state the reasons therefor. Whenever such a notice is sent to a State agency, the Regional Administrator shall prepare five indexed copies containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy shall be retained. Two shall be sent to the ETA national office, one shall be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the complaint system, one copy shall be sent to the National MSFW Monitor Advocate. The notice

sent by the Regional Administrator shall be published promptly in the *Federal Register*.

§ 658.705 Decision to decertify.

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

(b) The Assistant Secretary shall grant the request for decertification unless he/she makes a finding that (1) the violations of JS regulations are neither serious nor continual; (2) the State agency is in compliance; or (3) the Assistant Secretary has reason to believe that the State agency will achieve compliance within 80 working days unless exceptional circumstances necessitate a longer time period, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 working days in order to obtain any available additional information.) In making a determination of whether violations are "serious" or "continual," as required by this subsection, the Assistant Secretary shall consider:

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

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

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

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

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

(e) Within 30 working days after receiving the report of the Assistant Secretary, the Secretary shall determine whether to decertify the State agency. The Secretary shall grant the request for decertification unless he/she makes one of the three findings set forth in § 658.705(b). If the Secretary decides not to decertify, he/she shall then instruct that remedial action be continued or

that alternate actions be applied. The Secretary shall write a report explaining his/her reasons for not decertifying the State agency and copies will be sent to the State agency. Notice of the Secretary's decision shall be published promptly in the **Federal Register**, and the report of the Secretary shall be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and order further remedial action, the Regional Administrator shall continue to monitor the State agency's compliance. If the agency achieves compliance within the time period established pursuant to § 658.705(b), the Regional Administrator shall terminate the remedial actions. If the State agency fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator shall submit a report of his/her findings to the Assistant Secretary who shall reconsider the request for decertification pursuant to the requirements of § 658.705(b).

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a State agency, he/she shall send a Notice of Decertification to the State agency stating the reasons for this action and providing a 10 working day period during which the State agency may request an administrative hearing in writing to the Secretary. The notice shall be published promptly in the **Federal Register**.

§ 658.707 Requests for hearings.

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

(b) When the Secretary receives a request for a hearing from a State agency, he/she shall send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the Chief Administrative Law Judge of the DOL. When the case involves violations of regulations governing services to MSFWs or the ES complaint system, a copy shall be sent to the National MSFW Monitor Advocate.

(c) The Secretary shall publish notice of hearing in the **Federal Register**. This notice shall invite all interested parties

to attend and to present evidence at the hearing. All interested parties who make written request to participate shall thereafter receive copies of all documents filed in said proceedings.

§ 658.708 Hearings.

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

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

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

§ 658.709 Conduct of hearings.

(a) Hearings shall be conducted in accordance with Sections 5-8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*

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

(c) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable to the extent that the Administrative Law Judge concludes that their use would promote the proper advancement of the hearing.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies,

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

§ 658.710 Decision of the Administrative Law Judge.

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

(b) The decision of the Administrative Law Judge shall be based on the hearing record, shall be in writing and shall state the factual and legal basis of the decision. Notice of the decision shall be published in the **Federal Register** and the Administrative Law Judge's decision shall be available for public inspection and copying.

(c) Except when the case involves the decertification of a State agency, the decision of the Administrative Law Judge shall be the final decision of the Secretary.

(d) If the case involves the decertification of the State agency, the decision of the Administrative Law Judge shall contain a notice stating that, within 30 calendar days of the decision, the State agency or the Administrator may appeal to the Secretary by sending by registered mail, return receipt requested, a written appeal to the Secretary, in care of the Administrative Law Judge who made the decision.

§ 658.711 Decision of the Secretary.

(a) Upon the receipt of an appeal to the Secretary, the Administrative Law Judge shall certify the record in the case to the Secretary who shall make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Secretary shall be final, shall be in writing, and shall set forth the factual and legal basis for the decision. Notice of the Secretary's decision shall be published in the **Federal Register**, and copies shall be made available for public inspection and copying.

Signed at Washington, D.C., on this 4th day of June, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

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