

LEGISLATIVE REPORT

2024 Agricultural Seasonal Workforce Services

OCTOBER 2024



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Executive summary

The office of Agricultural and Seasonal Workforce Services (ASWS) was established within the Employment Security Department (Employment Security) in 2019 and must submit to the governor and the Legislature a biennial report by Oct. 31 in even years.

Highlights

- From 2023 – 2024, Washington growers requested a record number of foreign agricultural workers to perform seasonal and temporary agricultural work in Washington state. As of March 30, 2024, Washington ranks fourth in the nation in the number of H-2A workers requested.
- Employment Security partnered with the U.S. Department of Labor (USDOL) to hold an Employer Roundtable Forum in Pasco, WA, in April 2023. The event was attended by approximately 150 agricultural employer growers and human resources staff. Presentations included information regarding H-2-A program regulations, program compliance, and important updates from federal and state agencies.
- The ASWS Committee recommends several changes to improve service delivery, to include tracking of referral outcomes, improving communication tools, and increasing language access.
- A 2022 performance audit conducted by the Joint Legislative Audit and Review Committee (JLARC) found Employment Security to be in compliance with federal H-2A requirements and practices are consistent with other states.
- The USDOL Office of Foreign Labor Certification (OFLC) conducted a compliance review of the Foreign Labor Certification grants in August 2023. This review resulted in three findings and two areas of concern. Employment Security implemented corrective actions to address all findings and concerns.
- Federal and state funding for the ASWS program and federal funding for Employment Services has remained relatively flat while demands and costs continue to increase. Employment Security has submitted a decision package to seek adequate funding for ASWS activities and more effective domestic farmworker recruitment.

ASWS and Advisory Committee background

The H-2A foreign labor program allows U.S. employers or agents who are experiencing a shortage of domestic workers and who meet federal regulatory requirements to bring foreign nationals to the United States to perform temporary agricultural jobs. As the State Workforce Agency (SWA) for Washington state, Employment Security is responsible for:

1. Processing employer H-2A applications.
2. Recruiting domestic workers.
3. Providing oversight of the H-2A program in coordination with other governmental entities.

[Read the law that applies on the Code of Federal Regulations website.](#)

As of March 31, 2024, Washington had the fourth most¹ H-2A positions certified by USDOL. The program has experienced continued growth in Washington² as more growers utilize the program to obtain agricultural labor.

State law established ASWS within Employment Security. [Read the law on the state Legislature's website.](#) In establishing ASWS, the Legislature declared it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide:

1. Adequate protections for foreign and domestic workers; and
2. Education and outreach opportunities to help the agricultural industry maintain the stable workforce it needs.

The Employment Security commissioner appoints an advisory committee (hereafter “committee”) to review issues and topics of interest related to the H-2A temporary agricultural visa program. The committee is comprised of eight voting members: four representing agricultural workers’ interests, one of whom is a farmworker, and four representing agricultural employers, one of whom is an agricultural employer. One ex-officio member without a vote represents Employment Security as chair, and non-voting ex-officio members representing the Departments of Labor & Industries (LNI), Health (DOH), and Agriculture (WSDA) also serve on the committee.

¹ https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2024_Q2.pdf

² <https://esd.wa.gov/labormarketinfo/ag-employment-and-wages>

The committee is charged with providing comments on department rulemaking, policies, implementation of the H-2A temporary agriculture program and initiatives and studying issues it determines require consideration. In even years, the committee is required to submit a report to the governor and the Legislature by Oct. 31 that:

- (a) Identifies and recommends approaches to increase the effectiveness of Employment Security's recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington; and
- (b) Analyzes the costs incurred by ASWS to administer the H-2A program, the funds to administer other department programs for farmworkers, and the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department.

In addition to this work, the committee engages in discussion of agricultural workforce issues as they arise. In some instances, such as weather disaster preparedness, the committee forms sub-committees to discuss and plan particular action. The committee's work is ongoing and will be guided by the recommendations and perspectives, as set forth in this report.

For the period covered in this report, the following individuals served on this committee:

Chair – Employment Security

- Joy Adams, Director, Employment System Policy & Integrity Division (ESPI), (June 2023-Present)
- Dan Zeitlin, Director (former), Employment System Policy & Integrity Division (ESPI), (November 2019 – May 2023 as Director (former), ESPI).

Agricultural worker representatives

- Michele Besso, Attorney Northwest Justice Project
- Rosalinda Guillen, Executive Director, Community to Community
- Victoria Ruddy, Pacific Northwest Regional Director, United Farm Workers (UFW)

Agricultural farmworker

- Edgar Franks, Political Director, Familias Unidas por la Justicia

Agricultural employer representatives

- Jon DeVaney, President, Washington State Tree Fruit Association
- Mike Gempler, Executive Director, Washington Growers League
- Delia Peña, Director of Orchard HR and H-2A, Zirkle Fruit Company

Agricultural employer

- Jeff Perrault, Owner-operator, Perrault Farms

Agency members

- Uriel Iniguez, Director, Community Relations, LNI
- Juan Gamez, Director, Environmental Health & Safety, DOH (May 2023-Present)
 - Todd Phillips, Director (former), Environmental Health & Safety (2019-2023)
- Ignacio Marquez, Regional Assistant to the Director – Eastern/Central WA, WSDA

Committee meetings occur monthly (except in December) and are subject to the Washington Open Public Meetings Act (OPMA); all committee meetings were open to the public. The work of the committee, including the charter, committee procedures, approved minutes, and recordings, can be found on Employment Security's website³.

ASWS responsibilities

In establishing ASWS, the Legislature declared it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide adequate protections for foreign and domestic workers and education and outreach opportunities to help the agricultural industry maintain the stable workforce it needs.

ASWS responsibilities include:

- Processing and adjudicating foreign labor certification applications from employers.
- Processing complaints consistent with federal law. [Read the law on the Code of Federal Regulations website.](#)
- Conducting field checks and site visits (aka field visits). When conducting a field check, ASWS shall coordinate, to the extent possible, with LNI, DOH, and WSDA to limit disruption to agricultural employers and efficiently use government resources. [Read about field checks on the Code of Federal Regulations website.](#)
- Administering the discontinuation and reinstatement of services process consistent with federal law. [Read about the law on the Code of Federal Regulations website.](#)
- Conducting training and outreach activities to employers who are using agricultural and seasonal workforce services and programs within Employment Security.

³ [ASWS Program site at esd.wa.gov/newsroom/Ag-committee](https://esd.wa.gov/newsroom/Ag-committee)

Figure 1. During this reporting period; ASWS staffing
Source: Employment Security, ASWS

ASWS staffing	FTE	Role	Funding source
WMS 3 - ASWS Director	1	Provide efficient, compliant, and customer-centric administration of the H-2A program in WA State in coordination with federal and state partners and in accordance with the federal and state statutes and regulations governing the program. Develop, manage and oversee operating budget, supervise employees, maintain performance measures, and oversee office operations.	State-CPP
Management Analyst 3	1	Provides primary administrative support to ASWS operations and ASWS advisory committee. Provide technical support, assistance and guidance regarding department policy, processes and procedures, and process improvements.	State-CPP
Program Specialist 3 (Compliance Specialist)	7	Conducts in person site visits to H-2A employers and workers and provides education regarding program requirements and assurances. Informs workers of their rights and receives and helps farmworkers resolve complaints informally with employers. Conducts field checks to job orders where Employment Security has referred a worker and that worker started working. (placement).	State-CPP
Program Specialist 5 (Compliance Supervisor)	1	Manages, provides guidance and training, and provides quality assurance and support to compliance team which conducts in person site visits to H-2A employers and workers and provides education regarding program requirements and assurances. Informs workers of their rights and receives and helps farmworkers resolve complaints informally with employers. Conducts field checks to job orders where Employment Security has referred a worker and that worker started working. (placement).	State-CPP
Program Coordinator 3 (Foreign Labor Certification Supervisor)	1	Manages, provides guidance and training, and provides quality assurance support to FLC (foreign labor certification) team staff receiving, reviewing and processing agricultural job orders (Form ETA-790/790A). Provides technical assistance to filers.	FLC Grant
Program Coordinator 2 (Foreign Labor Certification Team)	2	Receives, reviews and processes agricultural job orders (Form ETA-790/790A) from Washington employers requesting foreign agricultural labor, certifies temporary worker housing (TWH) compliance to USDOL and initiates recruitment of U.S. workers. Provides technical assistance to filers.	FLC Grant
State Monitor Advocate	1 (vacant)	Monitors Employment Security's delivery of employment services to Migrant Seasonal Farmworker (MSFW) customers on an ongoing basis.	Wagner-Peyser Grant (10%)

Note: ASWS does not administer Employment Security's agricultural prevailing wage survey. The survey is administered by Employment Security's Data Architecture, Transformation and Analytics (DATA) Division with partial funding from the Foreign Labor Certification Grant. An analysis of the survey's funding and costs is found in the Budget and costs incurred section of this report.

The following diagram demonstrates the composition of ASWS, its staffing by program, and the state and federal funding sources received per program:

Figure 2. ASWS Organization
 Source: Employment Security, ASWS



ASWS functions and performance

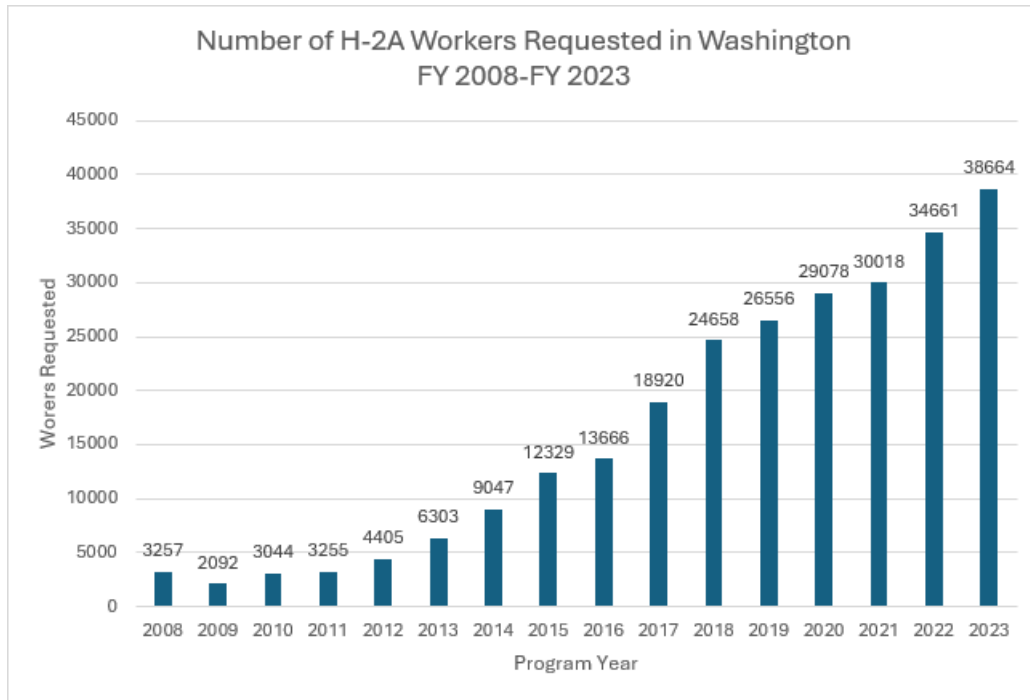
Processing and adjudicating foreign labor certification applications

Increased use of H-2A program in WA

From 2023-2024, Washington growers requested a record number of foreign agricultural workers to perform seasonal and temporary agricultural work in Washington state. Because the function of the SWA is to process applications requesting foreign workers, it receives data from USDOL’s Office of Foreign Labor Certification (OFLC) regarding the number of workers certified by USDOL but does not receive or maintain data regarding the number of H-2A visas issued by U.S. Citizenship and Immigration Services (USCIS) or the number of H-2A workers who enter the United States under the visa certification. The passage of HB 2226 in 2024 directs Employment Security to gather additional data during all site visits and field checks regarding the number of H-2A workers present, their job site location, and their housing address.

The graph below illustrates the growth of the program from 2008-2023. As of Q3 ending March 30, 2024, Washington ranks fourth nationally in the number of H-2A workers requested. The work of the Foreign Labor Certification team is funded by the USDOL Foreign Labor Certification Grant, which is discussed in further detail in the Budget and costs incurred section of this report.

Figure 3. Number of H-2A Workers Requested in Washington, FY2008-FY2023



Source: Employment Security, ASWS

Note: The number of H-2A workers requested does not reflect the actual number of H-2A workers in Washington. The Department of State does not provide state workforce agencies with the number of visas issued.

OFLC Foreign Labor Certification Grant monitoring (August 2023)

USDOL OFLC's Grant Monitoring Team conducted an onsite program and fiscal audit of Washington Foreign Labor Certification on Aug. 21-26, 2023, in Kennewick and Olympia, WA. USDOL issued three programmatic findings and two areas of concern. There were no fiscal monitoring findings. The final audit report and Employment Security's response are included in this report in Appendix A and Appendix B, respectively.

Employment Security has resolved both areas of concern and all but one finding (finding #1) concerning housing inspections. Regarding finding #1, Employment Security, DOH and LNI are actively engaged in the process of modifying the existing cross-agency memorandum of understanding (MOU) to explore inclusion of an agreement that DOH and LNI will include the applicable federal standards set forth by the Employment and Training Administration (ETA) and Occupational Safety and Health Administration (OSHA) during its pre-occupancy inspection and communicate this data to Employment Security for analysis and determination of housing compliance.

Employment Security, DOH and LNI estimate a modified MOU will be finalized in 6-12 months and will likely include a change in DOH policy to license those units currently under LNI

jurisdiction, thereby providing LNI with an exit strategy from temporary worker housing (TWH) inspection work. DOH is better positioned to assume this subcategory of inspections. An updated MOU tasking only one state agency with temporary worker housing is in development and any new processes will be discussed with stakeholders prior to finalization.

Changes to TWH inspections

On Sept. 11, 2023, the committee sent a letter to Washington State Secretary of Health Umair Shah, MD, MPH (Appendix C) regarding housing standards applicable to H-2A temporary agricultural workers housed in motels. In its letter, the committee communicated its concern that a gap in DOH inspection and licensing regulations resulted in a “failure of effective health and safety oversight in the case of motels used to house H-2A workers putting employers who are following H-2A program health and safety requirements at a competitive disadvantage and exposing affected farmworkers to overcrowding and other health and safety concerns.” The committee requested that DOH return to its pre-2018 practice of overseeing hotel/motel “transient accommodations” (TA) used to house temporary workers under the TWH program. This request was rooted in the committee’s position that under federal law, hotels and motels used to house H-2A workers must meet state TWH standards.

In November 2023, DOH announced a change to its licensing policy for TA facilities housing temporary workers in 2024. In summary, these facilities now must be licensed as “temporary worker housing” (TWH) and meet the same standards as non-hotel/motel temporary worker housing (Appendix D).

Increased communication and coordination with OFLC

ASWS continues to proactively seek training and communication opportunities with OFLC. During this reporting period, ASWS and OFLC’s west coast analyst team met bi-weekly in a standing one-hour meeting. These meetings provide a committed space to discuss specific case processing issues, application trends, and potential pre-certification non-compliance by applicants. These meetings are expected to continue indefinitely. ASWS has proactively established strong working relationships with other SWAs in our region to discuss best practices, sample agreement language and templates, and employers with work sites and/or housing locations in more than one state.

Employer outreach and education

ASWS’s Foreign Labor Certification team regularly provides foreign labor application filing education, orientation, guidance, and best practices to new and repeat growers utilizing the H-2A program. FLC staff provide guidance to employers, employer associations, and

stakeholders. FLC staff also act as a liaison for communicating case information from OFLC to employers and flagging specific issues that require OFLC’s response.

Education has been provided to growers, grower representatives, supervisors, grower organizations and workers throughout Washington state. In November 2023, ASWS was invited to a small group meeting with USDOL Wage and Hour Division (WHD) Administrator Jessica Looman to advise the Secretary of Washington-state-specific trends and issues necessitating USDOL WHD visibility.

Processing complaints

When ASWS receives an employment-related law complaint filed by an H-2A worker against their employer, the ASWS compliance unit acts as a liaison between the complainant and the employer to informally resolve the issue(s) at the local level. If complaints are ineligible for informal resolution, informal resolution fails, or the complainant does not want to seek informal resolution, the ASWS compliance unit will facilitate the referral of complaints to the appropriate enforcement agency with jurisdiction over the alleged non-compliance. These agencies include the USDOL WHD, LNI, DOH, the U.S. Equal Employment Opportunity Commission (EEOC) or the Washington State Human Rights Commission (HRC). [Read the procedures for SWA processing on the Code of Federal Regulations website.](#)

For informal resolutions of complaints, the ASWS compliance unit contacts the employer via email, a conference call and/or letter to inform them of the complaint received and that they are allowed five business days to resolve the issue(s). The ASWS compliance unit conducts complaint fact finding and provides the employer with the necessary technical assistance related to the complaint as per local, state and federal law. Federal law details when a complaint is considered “resolved.” The ASWS compliance unit does not engage in informal resolution with complaints received alleging unlawful discrimination or reprisal for a protected activity. These complaint types are referred by Employment Security to the appropriate agency (i.e., EEOC and/or HRC). [Read the law that applies to complaint resolution on the Code of Federal Regulations website.](#)

Figure 4. Employment Service (ES) complaints/apparent violations received by ASWS

Employment services complaints/apparent violations received by ASWS October 1, 2023-September 30, 2024 (FY 2024)	Amount
Complaints and apparent violations received	138
Resolved through informal resolution	109
Complaints and apparent violations referred to enforcement agencies	29

Source: Employment Security, ASWS

Inter-agency coordination in complaint intake and processing

When informal resolution fails or at any time the complainant desires, Employment Security will facilitate the referral of complaints to the appropriate enforcement agencies. Additionally, Employment Security ASWS collaborates with other agencies in conducting inter-agency complaint investigations, communicating with the worker(s) about additional services, and providing technical support and compliance information to the employer.

When a complaint is received by ASWS from another agency pertaining to an H-2A program rule, ASWS receives the complaint referral and processes the complaint and/or apparent violation as required by federal law. [Read the law that applies on the Code of Federal Regulations website](#). Protocols for inter-agency complaint communication and coordination regarding farmworker complaints are detailed in the inter-agency agreements described in this report.

Conducting field checks and site visits (aka field visits)

State law requires that when conducting a field check as required by USDOL, ASWS shall coordinate, to the extent possible, with LNI, DOH, and WSDA to limit disruption to agricultural employers and efficiently use government resources. [Read the law on conducting field checks on the state Legislature's website](#).

Field Visits (aka Site Visits)

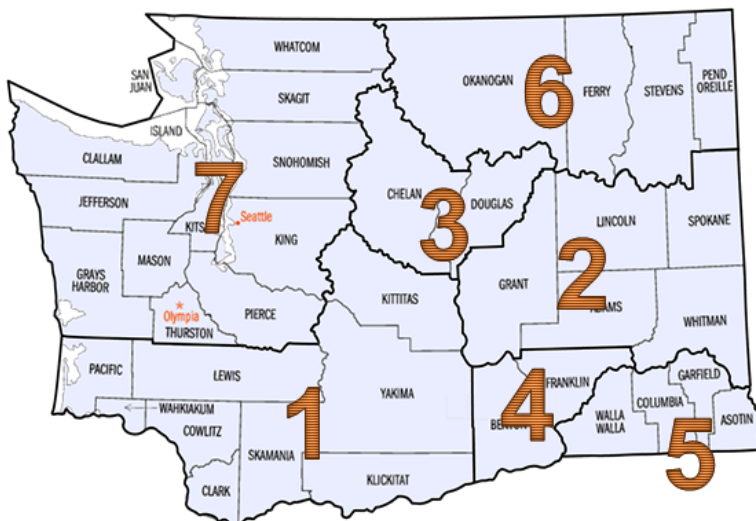
Employers receiving a certification for foreign labor must ensure Employment Service (ES) outreach workers will have reasonable access to the workers in the conduct of outreach activities as required by federal law. [Read about field visits on the Code of Federal Regulations website](#). This assurance is listed in Part I, Conditions of Employment and Assurances of H-2A Agricultural Clearance Orders.

The ASWS compliance staff conduct field visits scheduled in advance with the employer to inform foreign and domestic workers of their rights under the H-2A regulations and provide the employer with education regarding H-2A program legal requirements. Employers are given the opportunity to ask questions and receive knowledgeable guidance and technical support, as well as provided with resources to aid in managing their participation in the foreign labor program. In January 2022, ASWS renamed field visits “site visits” to avoid confusion with field checks, as defined in federal law. [Read about field checks on the Code of Federal Regulations website](#).

The ASWS internal target is at least one site visit for every H-2A job order commenced within the federal fiscal year (Oct. 1 through Sept. 30). This target was achieved in FY 2023 and FY

2024. Job orders are assigned to compliance staff according to the compliance region that contains the WorkSource order holding office.

Figure 5, ASWS Compliance Regions
Source: Employment Security, ASWS



Prior to the site visit, ASWS compliance staff thoroughly review the job order and send a scheduling request letter to the employer, as listed on the job order. Once a mutually agreeable time is set for the site visit, ASWS compliance staff travel to the employer-provided housing, training facilities, or job site to present a 30-minute orientation to H-2A workers and domestic workers in corresponding employment (U.S. based workers performing the same work as H-2A workers). [Read about corresponding employment on the Code of Federal Regulations website](#). These presentations are typically delivered in Spanish and according to a standardized outline developed by ASWS in 2023.

Presentations are interactive and often coordinated with other state agency outreach visits (see Appendix E – Site Visit Presentation Outline). All workers and employer representatives are provided with the ASWS compliance specialist’s business card and encouraged to follow up with additional questions. Most employment-law related complaints received by ASWS are from workers who attended an ASWS site visit presentation. Apparent violations are often observed and/or received by ASWS compliance staff during the pre-visit review and/or the site visit.

Figure 6. ASWS site visits and number of workers contacted from Oct. 1, 2023, through Sept. 30, 2024
 Source: Employment Security, ASWS

ASWS site visits and number of workers contacted from Oct. 1, 2023 – Sept. 30, 2024	Amount
Number of site visits performed by ASWS compliance staff	502
Approximate number of workers who attended site visits and received information (includes U.S. domestic workers in corresponding employment)	51,828

Inter-agency coordination: LNI community relations

In April 2023, Employment Security ASWS and LNI community relations entered into an inter-agency agreement to conduct coordinated outreach to H-2A employers and workers. The objective of the agreement was to: (1) coordinate joint educational outreach to migrant seasonal farm workers to maximize the informational benefit to workers; and (2) promote employer compliance with laws of common concern among the regulated community in the state of Washington. This agreement was for coordination during Employment Security site visits, only, which is not required by state law but encouraged by the ASWS Advisory Committee.

From Oct. 1, 2023, to May 1, 2024, 39% of ASWS site visits were coordinated with the LNI Community Relations Team, meaning both teams presented during the same visit to the same group of workers.

Although feedback was generally positive, there were reported difficulties experienced between teams including: difficulties in expanding the coordination model from its pilot region to regions with a greater number of workers per job order, scheduling and logistical problems, employees and growers being time burdened by longer presentations and employer reluctance and/or resistance to having LNI accompany ASWS for educational visits. As a result of these ongoing challenges, ASWS and LNI Community Relations mutually agreed to terminate the inter-agency agreement as of June 2024 and continue coordination efforts only in regions where coordination had been successful, including Okanogan, Grant, Douglas, Chelan, Skagit and Whatcom counties.

Implementation of HB 2226 – Sections 1 and 2

In March 2024, the Washington State Legislature passed House Bill 2226. The intent of the legislation is to better inform Employment Security’s oversight of the H-2A program. [Read the bill on the state Legislature’s website.](#)

Section 1 of the law requires ASWS to collect specific data during all site visits and field checks. Specifically, whenever Employment Security conducts field checks or field visits of an employer, the Employment Security compliance specialist must collect the following information:

1. the number of H-2A workers the employer has at each work site; and
2. the actual geographic location where the H-2A workers are living during their employment with the employer.

Employment Security compliance specialists must then compile the information and compare the number of workers sought by an employer on the employer's H-2A application with the number of H-2A workers actually working for the employer. Employment Security must make the information available to the committee on a quarterly basis.

Employment Security began collecting the required data on June 6, 2024, which was the implementation deadline stated in the bill. Employment Security created a standard form and instructions page to collect the data from employers as of the date of the site visit or field check. ASWS will report compiled data at the October 2024 ASWS Advisory Committee meeting to allow for a full quarter's collection of data.

Section 2 of the bill requires Employment Security to conduct comprehensive wage surveys of non-H-2A workers hand harvesting apples, cherries, pears, and blueberries. At a minimum the survey must:

1. Gather information on wage rates received for harvesting activities and whether the respondent earned the reported wages while working on a farm that employed H-2A workers to do the same kind of work.
2. Gather information on the respondent's age, gender, and whether the respondent was born in the United States or the number of years the respondent has been living in the United States.
3. Include a question concerning whether the respondent made an unemployment insurance claim.

The bill requires Employment Security to receive minimum responses from farmworkers based on crop type and provides for \$25.00 participation incentive payments for survey respondents. Employment Security is required to submit a survey report to the Legislature every year by May 1, including specific information.

The survey will be designed, contracted and administered by Employment Security's Data Architecture, Transformation and Analytics (DATA) Division. As of the date of this report, survey planning is initiated.

Field checks

A field check is a random, unannounced appearance by Employment Security or federal staff at agricultural worksites to which domestic farmworker placements have been made through the intrastate or interstate clearance system (WorkSource referral) to ensure conditions are as stated on the job order and the employer is not violating an employment-related law.

Where Employment Security has made placements on 10 or more agricultural clearance orders during the quarter, the department must conduct field checks on at least 25% of the total of such orders. Where Employment Security has made placements on nine or fewer job orders during the quarter (but at least one job order), the department must conduct field checks on 100% of all such orders. This requirement must be met on a quarterly basis and reported to USDOL ETA through quarterly Labor Exchange Agricultural Reporting System (LEARS) reporting performed by the State Monitor Advocate. [Read about this requirement on the Code of Federal Regulations website.](#)

Field checks are internally scheduled by ASWS upon referral and placement confirmation from Employment Security's Workforce Services Division (WSD, formally the Employment Connections Division), ASWS proceeds to confirm the placement with the employer and prepares for the field check. Field checks are performed in teams of four compliance specialists and when possible, in coordination with other state agencies. Field check teams perform a pre-field check planning protocol and schedule the unannounced visit. Field checks are performed according to a standardized guide (Appendix F) developed by ASWS and including USDOL ETA guidance materials. All elements of the field check are performed by the ASWS teams including, but not limited to, interviews with workers, payroll and domestic recruitment records review, and a housing compliance check. Employers are notified of potential findings and allowed five business days to demonstrate to ASWS that they have come into compliance. [Read about compliance on the Code of Federal Regulations website.](#)

Once the findings are determined resolved, ASWS issues a closing letter to employers. All unresolved issues are referred to enforcement agencies as outlined in the compliance requirements and/or evaluated for potential initiation of Discontinuation of Services. [Read about discontinuation of services on the Code of Federal Regulations website.](#)

Time-sensitive issues discovered during the field check including, but not limited to pesticide drift, health and safety violations, and suspected human trafficking are immediately reported to appropriate state and federal enforcement agencies.

Housing compliance and field sanitation compliance checks photos



Temporary worker housing inspection
Source: ASWS



Field sanitation inspection
Source: ASWS

Figure 7. Placements and field checks performed by ASWS from Oct. 1, 2024, through Sep. 30, 2024 Washington state, FY 2024
Source: Employment Security, ASWS

Placements and field checks performed by ASWS:	Count
Number of field checks performed by ASWS compliance staff	30
Number of placements	16*

*Multiple job orders had more than one placement during this reporting period. Federal regulations require that only one Field Check be performed on a job order with multiple placements during the same quarter.

Inter-agency coordination: JLARC study/MOU

The 2022 Washington State Supplemental Budget directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of Employment Security’s administration of the H-2A program. The study evaluated whether Employment Security administers H-2A program activities in compliance with federal and state laws.

Study findings: The study commenced in 2022, and a final report was published in April 2024. [Read the final report on the JLARC website.](#) The study made the following findings:

- Employment Security complies with federal H-2A requirements. Its practices are consistent with those in other states.
- Few U.S. farmworkers are hired for these H-2A jobs in Washington. There are many reasons, including federal rules, that can pose barriers to Employment Security's recruitment efforts.
- Employment Security dramatically increased its outreach to farmworkers in 2022. This likely contributed to the rise in complaints and apparent violations.
- Employment Security has taken steps to coordinate program compliance with the DOH, WSDA and LNI. More work remains.

Study recommendation: Additionally, the Legislative Auditor made one recommendation to Employment Security in the study report:

- Employment Security should work with DOH, LNI, and WSDA to provide a plan for determining interagency coordination for field checks.

The implementation date for this recommendation is Nov. 30, 2024.

Employment Security, LNI, DOH and WSDA are currently engaged in co-drafting an inter-agency agreement detailing how Employment Security and each agency will coordinate when ASWS is conducting a field check. This coordination is required by state law with the intent of limiting disruption to agricultural employers and efficiently using government resources. All agencies agree that implementation of this inter-agency agreement is likely to occur on or before Nov. 30, 2024.

Administering the discontinuation and reinstatement of services

Federal law requires SWAs to discontinue employment services to employers based on certain factors in federal law. [Read about these factors on the Code of Federal Regulations website.](#) For H-2A employers, discontinuation of employment services by the SWA disqualifies employers from posting a job order with the SWA, which is a necessary step in the H-2A foreign labor certification process.

During this report period, Employment Security initiated discontinuation of services to three employers as follows:

Figure 8.

Employment Security Discontinuation of Services (DOS) activity, 2022-2024

Employer	Year DOS initiated	Basis as per 20 CFR 658.501	Outcome
Employer A	2022	20 CFR 658.501(3) – Found by Employment Security to have failed to comply fully with assurances in the job order	Settlement agreement
Employer B	2023	20 CFR 658.501(4) – Final determination by enforcement agency of employment-related law violation	Services discontinued
Employer C	2024	20 CFR 658.501(4) – Final determination by enforcement agency of employment-related law violation	Services discontinued

Source: ASWS

Conducting training and outreach activities to employers

Support for new and repeat H-2A employers

ASWS regularly creates H-2A program management and compliance tools for employers new to the H-2A program. These tools include site visits, human resources staff orientations, sample templates, sample audit materials, and tools from USDOL. ASWS compliance staff regularly check in with new H-2A employers to offer support and answer specific program-based questions.

For growers experienced with using the H-2A program, ASWS provides technical assistance, supervisor training, domestic recruitment protocol reviews, ETA issue spotting and new rule training when new regulations are published by USDOL.

Industry conferences & education

ASWS continues its proactive approach in partnering with state agencies, grower organizations and farmworker outreach groups to provide H-2A program compliance training specifically emphasizing the recruitment of domestic workers and H-2A program management best practices. ASWS has presented in numerous bilingual events including grower organization annual conferences, tree fruit trade shows and events, supervisor trainings, employer onboarding of new employees, the Agricultural Leadership Program (jointly delivered by the WSDA and the Washington State Tree Fruit Association), the Washington Workforce Association annual conference, state agency and USDOL agricultural calls and conferences, and internal Employment Security training regarding H-2A program compliance.

USDOL H-2A Employer Roundtable Forum

On April 13, 2023, USDOL WHD held a hybrid H-2A Employer Roundtable Forum in Pasco, WA, that was attended by over 150 in-person and virtual attendees. The event was co-organized by USDOL WHD and ASWS. Presenting agencies included WSDA, DOH, ASWS, USDOL OFLC, USDOL WHD, United States Citizenship and Immigration Services (USCIS) and U.S. Consulate Mission Posts Tijuana, Monterrey, and Guadalajara. The event received overwhelmingly positive feedback from attendees and working connections were fortified between Employment Security and other presenting agencies. This event was recommended in the 2020 and 2022 ASWS legislative reports. Future event and educational opportunity coordination is planned with USDOL WHD.

Other programs serving farmworkers

Through WSD, Employment Security conducts outreach to farmworkers that are not accessing services through the WorkSource offices. As a Significant Migrant Seasonal Farmworker (MSFW) State, Washington is required to have a full-time staff person in each Significant MSFW Office dedicated 100% to performing outreach activities. There are nine Significant MSFW Offices in Washington, accounting for nine full time outreach staff.

Outreach staff provide services and information to farmworkers on their rights, provide information on the Wagner-Peyser complaint system, assist with taking complaints and apparent violations, provide information on jobs including clearance order opportunities, and information on the full menu of services available through WorkSource including workshops to improve skills and employability, unemployment insurance assistance, reemployment services, and referrals to training, among others. This outreach is conducted in places where MSFWs live, work and gather.

As of July 2023, WSD expanded MSFW outreach efforts into every area of the state. While only the Significant MSFW Offices are federally required to maintain full time outreach staff, Employment Security has allocated Wagner Peyser funds to every region in the state to provide some level of outreach.

Improving effectiveness for recruitment of domestic farmworkers

Employment Security has made improvements in systems to recruit U.S. workers for clearance orders. As noted above, increasing outreach to farmworkers across the state has resulted in more farmworkers being informed about these job opportunities. During this reporting period, Employment Security also removed reference to “H-2A” in clearance orders. This appears to have increased interest in these job opportunities as referrals have resulted in increased

placements. Compliance unit staff have increased outreach to H-2A employers informing them of their responsibilities regarding hiring U.S. workers which may be contributing to the increase in placements as well.

Employment Security improved clearance order referral tracking, which has increased placement verifications. The Workforce Services Division and ASWS recently held a LEAN process improvement event that will result in a standardized process across the state and include defined timeframes for communicating between the two units, as well as for following up on referrals.

Employment Security held a three-day MSFW Summit conference in April 2024 that was attended by over 60 outreach workers, supervisors, administrators and Employment Security senior level leaders. This conference reinforced Employment Security's commitment to serving farmworkers and educating outreach staff and their managers on the requirements of the Wagner Peyser Act. The National Monitor Advocate's office presented for nearly two hours on the new requirements of the Wagner Peyser Act Staffing Final Rule (2023). This rule is aimed at "strengthening Employment Service programs and improving services for all job seekers and employers including migrant seasonal farmworkers . . . to ensure these workers have access to services they need to find and keep good jobs." [Read this rule in full on the Department of Labor website.](#)

Upcoming changes

New H-2A rule (2024)

On April 26, 2024, USDOL published the final rule, "[Federal Register: Improving Protections for Workers in Temporary Agricultural Employment in the United States.](#)" According to USDOL, the final rule, "strengthens protections for temporary agricultural workers by making several changes to H-2A program regulations to bolster the department's efforts to prevent adverse effect on workers in the U.S. and ensure that H-2A workers are employed only when there are not sufficient able, willing, and qualified U.S. workers available to perform the work."

The Farmworker Protection Rule became effective June 28, 2024. USDOL will process clearance orders and associated H-2A applications before Aug. 28, 2024, in accordance with federal law in effect as of June 27, 2024. On Aug. 24, 2024, the U.S. District Court for the Southern District of Georgia issued a preliminary injunction order ("order") in the case of *Kansas, et al. vs. U.S. Department of Labor* No. 2:24-cv-00076-LGW-BWC (S.D. Ga., Aug. 26, 2024) ("*Kansas*") prohibiting USDOL from enforcing the Farmworker Protection Rule in 17 states and with

respect to certain entities; Washington is not a party to the order. USDOL will continue processing H-2A job orders in accordance with the new Farmworker Protection Rule.

ASWS Foreign Labor Certification staff participated in a two-day, in person regional USDOL training aimed at introducing and explaining the rule changes in September 2024, and will continue to receive training, as available, from the USDOL WHD.

2025 legislative session – 2025-2027 biennium budget

Federal and state funding for ASWS remains relatively flat while the cost of doing business increases. (Please see the *Budget and costs incurred* section of this report for historical funding and cost information.)

The number of H-2A guest workers in Washington has more than tripled over the past decade. Changes in USDOL compliance requirements drive the need for additional staff. Increased outreach to domestic workers, their families and businesses is vital and expensive. These factors, in addition to cost-of-living increases and the need for staff to travel regularly within their areas of responsibility, have outpaced funding.

Employment Security has submitted a series of proposed decision packages for consideration during the 2025 legislative session, including a comprehensive decision package to address the needs of ASWS and WSD farmworker outreach. A summary of the decision package request includes:

ASWS (state funds)

Increase staffing and operational funding for ASWS

- Add one compliance specialist
- Reclass compliance specialists from PS3 to PS4
- Increase travel budget for day-to-day operations

Workforce Services (CPP funds)

Increase staffing in WSD for farmworker outreach

- Add one MA3 to coordinate job order creation and management
- Add three state-funded MSFW outreach specialists in Central Washington
- Add a half-FTE bilingual communications consultant to improve communication opportunities

The expected performance outcomes are:

1. More timely service to the agriculture community (both farmworkers and growers)
2. Improved employer compliance with federal regulations regarding farm labor
3. Improved and expanded job services to domestic farmworkers

Funding this decision package would provide Employment Security resources critical to meet many of the committee recommendations detailed below. Accordingly, this decision package request has the support of the committee.

ASWS Advisory Committee recommendations

State law requires the committee to include in this report a section that “Identifies and recommends approaches to increase the effectiveness of Employment Security’s recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington.” [Read about this requirement on the Legislature’s website.](#)

Recommendations in prior reports

In the first legislative report (2020), the committee thoroughly analyzed recruitment and referral processes, identified gaps and considered improvement ideas to recommend to Employment Security. That analysis resulted in six recommendations aimed at improving domestic worker recruitment outcomes and enhancing education and resources to employers to increase employer compliance with H-2A laws and rules. The six recommendations were as follows:

1. Employment Security should facilitate a faster connection between workers and employers through process changes.
2. Employment Security should directly inform employers of applicants for H-2A job openings. Further, Employment Security should request a waiver from USDOL to allow H-2A employers to manage and access their own recruitments through the agency’s recruitment system. Finally, the committee recommends establishing measures to determine the impact and success of the change.

3. Employment Security should track referral outcomes more consistently.
4. Employment Security should develop a Request for Information and conduct focus group sessions to design a customer experience study.
5. Employment Security should create enhanced resources and best practices for employers to access.
6. Employment Security should provide enhanced employer training [regarding H-2A rule compliance].

An update on each of the recommendations was provided in the 2022 ASWS Advisory Committee Legislative Report. In this report, the committee provides updates on Recommendations 3, 4, and 6.

Updates regarding prior recommendations

Recommendation #3: Referral tracking and follow-up

The 2022 ASWS Report detailed the specific training and operational improvements that WSD had implemented since the recommendation was first made in the 2020 report.

Since 2022, the WSD Wagner-Peyser program and ASWS have participated in regular cross-divisional collaboration to better identify the roles and responsibilities of each division as it pertains to creating job orders, managing recruitment, screening and referring applicants, confirming referral outcomes and conducting field checks. ASWS and WSD have regularly engaged in staff training designed to raise awareness about agricultural job orders and meaningfully market these jobs to farmworkers in the WorkSource offices, and in places where they work, live and gather.

On May 22-24, 2024, a cohort of WSD and ASWS staff and leaders directly engaged with the creation and referral process of agricultural job orders participated in a facilitated LEAN project aimed at improving inter-divisional communication, identifying performance gaps, and creating a clear and efficient process to implement in all order holding offices. The cohort will reconvene in the fall of 2024 to finalize the new process and discuss statewide implementation strategies.

Recommendation #4: Customer experience study

In the 2020 ASWS Report, the committee recommended that Employment Security complete a customer experience study to better understand the experience of farmworkers and agricultural employers in the application and referral process. [Read the 2020 ASWS Report on the Employment Security website.](#)

Employment Security's DATA Division developed a request for proposal for the study in June 2022. Through a competitive solicitation process, human-centered design research firm Anthro-Tech was identified to conduct the first phase of the study, which was funded by vacancy savings from ASWS accrued during the COVID-19 pandemic.

Anthro-Tech began Phase I of the study in fall 2022. Phase I included multiple sub-phases of research including an initial discovery phase, deep-dive phase (including individual interviews and focus groups) and journey mapping. Researchers worked closely with Employment Security and other stakeholders in the initial design and deep-dive phases.

The study included interviews with 22 subject-matter experts, 42 U.S.-based agricultural farmworkers who lived and worked in Washington and 14 agricultural employers. Crops included apples, pears, grapes, cherries and berries. Anthro-Tech staff also interviewed WorkSource frontline and outreach staff. The regional areas included in the study were Skagit, Chelan and Yakima counties.

In Anthro Tech's Employment Security Agricultural Recruitment Customer Experience Study Final Report (June 2023), Anthro-Tech communicated the following findings and recommendations:

Phase 1 findings

The four Phase 1 findings from Anthro-Tech are:

1. Farmworkers' community culture plays a significant role in influencing work culture on farms and the hiring practices of employers.
2. The current online agricultural recruitment system in Washington poses communication channel mismatches and barriers, particularly for farmworkers.
3. Problematic potential biases could complicate employer perceptions of farmworker reliability. These biases can stem more from inequalities or unfair comparisons than from accurately calibrated assessments of individual or group characteristic differences. These perceptions seem to contribute to cyclical negativity in terms of devaluation, minimal consideration, and underutilization of Employment Security and WorkSource and domestic farm worker resources.
4. Farmworkers and employers had misunderstandings as to who Employment Security and WorkSource represented.

Phase I recommendations

The four recommendations from Anthro-Tech from Phase I are:

1. Employment Security should explore additional opportunities to clarify who Employment Security and WorkSource are, who they aim to serve, and how.
2. Employment Security should also expand existing resources and outreach to the farmworker community in addition to other WorkSource services.
3. Employment Security should evaluate and increase language support, as needed, in standardized and scalable ways to ensure farmworker community needs are met.
4. Employment Security should also develop tools and resources to support the current ways in which employers and farmworkers connect for recruitment and job-seeking needs, rather than require them to adapt to the system.

Anthro-Tech and Employment Security's DATA team briefed the committee on Phase I. The committee was given an opportunity to respond and provide feedback to inform the design of Phase II of the study. Employment Security leadership was also briefed on the findings and preliminary discussions of proposed changes based on study recommendations.

A 2022 Specialty Block Grant from the WSDA funds Phase II of the study, which started in July 2023. Phase II included specific research in Fall 2023 and Spring 2024 harvest seasons for specialty crops and understanding Employment Security's role. The Fall 2023 research focused on apples, grapes and pear harvests in Yakima and Benton Counties. The Spring 2024 research focused on berry and cherry harvesting in Whatcom, Skagit and Yakima counties.

The 18 findings from Anthro-Tech Phase II are organized by theme:

WorkSource processes

- WorkSource offices that participated [in the study] reported challenges with collecting and managing customer information.
- There is a lack of translation support for participating WorkSource offices.
- WorkSource offices that participated [in the study] reported unclear expectations about the division of outreach work and office work.

Employer and farm labor contractor operations and interactions with WorkSource

- Employer recruitment processes are often separate and siloed for domestic workers in non-H-2A jobs and foreign workers in H-2A jobs.
- Employers have varying recruitment models.
- Goals of providing services to employers vary among WorkSource offices that participated [in the study].

- WorkSource offices that participated [in the study] reported that digital tools and communication do not match employer needs.

Role of farm labor contractors

- Importance of farm labor contractors in agricultural recruitment is increasing.
- Farm labor contractors play important role in specialty crop recruitment.

Timeline and process of job search and recruitment during harvest season

- In-person outreach and connections are critical to finding jobs and recruiting during harvest season.
- Hiring timelines during harvest season is unpredictable and often immediate.
- Simple and straightforward job application process is most effective during harvest.

Retention of domestic workers during harvest

- Recruitment during harvest is a challenge for employees due to the increase in seasonal demand for labor, emphasizing the need for flexibility in employment arrangements.
- Retention of domestic workers can be improved by providing a better working environment.

Communication channels, barriers, and misconceptions

- Domestic farmworkers face a lack of communication and transparency about job expectation, contracts, and future opportunities.
- Generally, domestic farmworkers lack awareness of the H-2A program, Employment Security, or WorkSource;
- The role of outreach specialist(s) and employers is important in addressing communication barriers;
- Impact of economic pressures and market dynamics in agricultural recruitment.

Because the final Anthro-Tech Phase II report was delivered to the committee after this report was drafted, the committee has not yet had the opportunity to review and provide feedback on the recommendations made by Anthro-Tech. The committee will continue its work in reviewing study findings and recommendations to continue to advise Employment Security policy and operations.

Recommendation #6: Employer training

The committee recommended enhanced training for agricultural employers. Specific examples provided included formal training sessions, communicating employer resources, and building relationships for ongoing conversations and education.

USDOL WHD Employer H-2A Employer Roundtable Forum

On April 13, 2023, a USDOL WHD H-2A Employer Roundtable Forum was held in Pasco, WA. The forum was a hybrid event (in-person and via Zoom) attended by approximately 150 agricultural employer growers and human resources staff. The planning and management of this event was co-coordinated by USDOL WHD and Employment Security, including event location, sponsor coordination, participant and presenter registration and miscellaneous event logistics. Additionally, ASWS managed a committee of sponsor employers and industry stakeholders to receive feedback and guidance in planning the event.

Presenting agencies at the event included Employment Security (ASWS), USDOL OFLC, USDOL WHD, USCIS, U.S. Consulates in Mexico, state agencies, and agricultural industry stakeholders. Comprehensive information was communicated regarding H-2A program regulations, program compliance and important updates from federal and state agencies with a role in the H-2A program. Attendees were able to ask questions regarding specific issues and receive technical assistance. The roundtable event was the first in 20 years in Washington and a post-event attendee survey overwhelmingly indicated the event was well-received and a desire to have future events.

This forum was specifically noted in the 2022 ASWS report under Recommendation #6. Employment Security maintains a strong working relationship with USDOL and plans to assist in coordinating future employer and worker training forums and events. [Read the 2022 ASWS report on Employment Security's website.](#)

ASWS employer resources

ASWS continues to seek and deliver mechanisms for providing training and technical assistance to agricultural employers utilizing or interested in learning more about utilizing the H-2A program. Both the ASWS foreign labor certification and compliance teams have developed written materials addressing federal and state rule changes, TWH requirements, little-known or complex concepts, compliance information and customized assistance based on an employer's specific question and/or issue.

ASWS staff are frequent presenters/educators at state and federal annual conferences and events, agricultural industry events, employer on-boarding sessions, agricultural supervisor trainings, and inter-agency workgroups. This frequent presence has positioned ASWS's employer resources and assistance to be known and utilized. ASWS staff have built trusting relationships with growers and human resources staff so that contact is helpful and resourceful. ASWS is currently working on developing tools for agricultural employers who are new in utilizing the H-2A program. The objective is to provide the help and support employers need to train staff, build human resources infrastructure for domestic recruitment obligations, and make them aware of the compliance assistance available from ASWS.

2024 Recommendations

At the March 20, 2024, in-person ASWS Advisory Committee meeting in Olympia, WA, members engaged in a facilitated exercise with the objective of evaluating the progress made by Employment Security in improving its agricultural recruitment system and identifying potential new recommendations to Employment Security. Some of these recommendations were discussed in the ASWS Advisory Committee on July 25, 2024.

Improvement is needed in the agricultural recruitment system

The committee identified areas of improvement for Employment Security regarding recruitment of domestic workers to H-2A agricultural clearances orders as follows:

Need for increased language access and resource standardization

While the majority of U.S.-based and H-2A farmworkers speak Spanish, there is a growing number of farmworkers present in Washington who primarily speak indigenous Mesoamerican languages including Mixteco, Trique and Cuicatec. This is most common in Northwest Washington. Indigenous languages are specific to regions in Mexico and unrelated to Spanish – therefore a Spanish speaker will not be understood by some indigenous language speakers (and vice versa). The committee recommends Employment Security address this service delivery gap by focusing recruitment of WorkSource staff with multi-lingual and indigenous language capability.

Additionally, Employment Security should take care to ensure that farmworker resources and informational materials are consistent across all WorkSource centers.

Need to target domestic recruitment resources and outreach

H-2A job orders are concentrated in the North Central, Central, South Central, and the Columbia Basin areas of Washington. This density pattern is because the hand harvest, labor-intensive crops are grown in these regions. Consequently, these regions are where employers request the most H-2A positions.

Employment Security should leverage this data to target its agricultural recruitment and outreach resources within these areas. Furthermore, Employment Security should consider adding additional staff resources in these areas to best reach able, willing and qualified domestic farmworkers. Regarding the ASWS compliance team, Employment Security should analyze whether additional compliance staff are needed in these areas to maintain the quantity and quality of outreach to H-2A employers, foreign workers, and domestic workers in corresponding employment.

Lack of visibility about employer domestic recruitment processes and outcomes

H-2A regulations require H-2A employers to conduct recruitment of domestic farmworkers by filing a job order with Employment Security and engaging in active recruitment up to the mid-point (50%) of the job order timeframe. Employers must provide detailed “domestic recruitment reports” and submit them regularly to USDOL to determine the number of workers to certify and corroborate referral information submitted by Employment Security. The federal regulations do not currently require H-2A employers to send copies of domestic recruitment reports to the SWAs. Consequently, Employment Security experiences a barrier analyzing an employer’s “need” for foreign labor and whether an employer is complying with its domestic recruitment obligations.

Employment Security should advocate for a change in this rule, whether by communicating with its OFLC staff contacts regarding the barriers experienced or the National Monitor Advocate’s office. Employment Security should engage in public comment supporting a change in the rule if there is a future opportunity.

Note: Employment Security’s FLC team is actively communicating with employer filing agents and H-2A coordination staff to emphasize the importance of these reports and urge filing agents and employers to include Employment Security in its email correspondence to OFLC when domestic recruitment reports are sent. Domestic recruitment reports are uploaded by OFLC to the USDOL OFLC’s online filing platform “FLAG”, however the platform does not generate an “alert” or “notification” for Employment Security FLC staff. It is not operationally feasible for FLC staff to open each case in FLAG daily to check for recruitment reports.

Need for more state oversight and regulation

Farm labor contractors recruit, solicit, employ, supply, transport and hire workers for farms and other agricultural work. This work is defined in the Washington Farm Labor Contractor Act (Chapter 19.30 RCW and Chapter 296-310 WAC). State and federal law provides protections for these workers such as: requiring a contract; safe worker transportation; ensuring meal and rest breaks; and getting paid. Farm labor contractors must have valid, current farm labor contracting licenses from USDOL and LNI (Labor Standards Division) to perform one or more of the activities listed above.

Farm labor contractors as a supplier of farm labor continue to grow in Washington. Farm labor contractors may apply for a H-2A foreign labor certification from OFLC. Unfortunately, H-2A program non-compliance among farm labor contractors is high in Washington. ASWS has received, investigated, and referred numerous complaints and/or apparent violations to the

appropriate enforcement agencies from 2022-2024.⁴ Non-compliance issues have included unlicensed farm labor contractors, application fraud, non-payment of wages, non-compliance with H-2A assurances, and human trafficking. ASWS coordinates with LNI, USDOL WHD, OFLC and the Office of Inspector General (OIG) in referring issues of non-compliance. ASWS works closely with these agencies in identifying unlicensed and/or violating farm labor contractors by participating in regular and ad hoc meetings, as needed to share information. In addition to sharing information, internal communication structure and process needs to be developed to ensure state agencies can coordinate and respond where needed.

Unlicensed or otherwise non-compliant farm labor contracting harms workers, employers and the agricultural industry. Employment Security should continue to engage with state and federal agency cohorts to strategize and implement solutions for identifying and stopping unscrupulous farm labor contractors from doing business in Washington. Additionally, state agencies should be active in educating and informing growers about conducting due diligence to ensure that their contractors are licensed and compliant.

Need to improve tracking of referral outcomes

An Employment Security referral to an agricultural clearance order occurs when an applicant who has applied online or in a WorkSource office is determined to be “able, willing, and qualified” after a WorkSource staff screening procedure. For H-2A job orders, referrals are oriented to the job duties, requirements and employer assurances. Furthermore, they are provided with instructions, as indicated on the job order for applying to the employer. Because applicant experience and eligibility screening has occurred at WorkSource, employers are required to hire these referrals absent an ineligibility unknown to WorkSource. Once a referral is hired and begins work for the employer, Employment Security is then given federal regulatory authority to conduct a field check on that job order. Field checks are critical to maintaining integrity and compliance of the H-2A program in Washington because they allow Employment Security to review payroll, interview workers at job sites, and inspect TWH.

Employment Security should create a clearly defined process for tracking the outcome of referrals to H-2A job orders with the objective of confirming field check eligible job orders and providing compliance oversight. Inter-divisional coordination within Employment Security should be emphasized and roles and responsibilities should be identified.

Please see above discussion of Recommendation #3: Referral tracking and follow-up for further details about Employment Security's work on this recommendation.

⁴ Please note that per Washington state law, growers who transport workers to job sites not owned or leased by the employer constitutes farm labor contracting, requiring growers to obtain a WA FLC license. This subset of farm labor contractors is not the focus of farm labor contractor compliance concerns.

Agriculturally significant offices

Employment Security should consider adding additional MSFW outreach staff resources in agriculturally significant areas to effectively reach able, willing and qualified domestic farmworkers for job order information and referrals and provide Wagner-Peyser employment services in places that farmworkers live, work, and gather. Employment Security should provide agricultural outreach staff with access to training, education and support to best position staff to provide quality service. Wagner-Peyser funded outreach efforts should focus on meaningful services and impact driven engagement while still maintaining the quarterly minimum number of outreach contacts required by USDOL.

Specific requests to improve the agricultural recruitment system

The committee made the following specific requests and recommendations to Employment Security:

MSFW outreach program organization

Employment Security's MSFW Outreach Program organizational model is that each of the nine Significant MSFW significant WorkSource offices have one full time MSFW Outreach Specialist. The 2023 Wagner-Peyser staffing rule requires all MSFW outreach specialists perform only work that is outreach in places where MSFWs "live, work, and gather" and follow up work where the origin of the contact was the specialist's outreach. Each MSFW specialist is supervised by the WorkSource's administration including the WorkSource Supervisor or Administrator. This model is in place to help MSFW outreach staff remain connected to local workforce partners and community resources that are extended to MSFWs via outreach in alignment with USDOL's intent. Guidance and training regarding outreach and services is provided by Employment Security's Wagner-Peyser operations team, although the operations team does not direct, supervise, or evaluate the outreach specialists' work.

Historically, the MSFW Outreach Specialist positions at Employment Security have experienced higher turnover, however, there has been none in the past year.

The committee believes the MSFW Outreach Program at Employment Security could be improved by re-organizing the program to have MSFW Outreach staff led, trained, supervised, and evaluated by a central point of leadership. This "centralization" of the program could produce stronger execution of standardized work. As discussed in the July 25, 2024, ASWS Advisory Committee meeting, Employment Security should consider the impact of the 2023 Wagner-Peyser staffing rules when evaluating organizational re-configurations.

Adopt communication tools

Employment Security staff, including ASWS compliance staff, MSFW outreach staff, and WorkSource staff often must contact MSFW customers. Common situations necessitating communication include confirming interest in a job to which an applicant has applied online, confirming the outcome of a job referral, and receiving information regarding a potential violation of employment related law (complaint and/or apparent violation). MSFW Outreach staff rely on follow-up communication with MSFW customers served outside of the WorkSource office to communicate employment services and/or job opportunities. MSFW staff members' primary methods of contact include phone calls and email messages. Unfortunately, these primary methods are not the preferred method of contact with MSFW customers.

It is well known in the agricultural industry that farmworkers, particularly foreign workers, use a popular "WhatsApp" service that allows users to make and receive voice calls, send and receive text, video, and voice messages, and share images and documents. The application is popular because it can be utilized via wi-fi and does not require the user to have an active cell phone plan. Additionally, users can log into WhatsApp from multiple devices. While other web-based communication platforms are used by MSFW customers, Employment Security staff have observed WhatsApp to be the most common, and arguably preferred method of communication among MSFW customers. WhatsApp is free for personal use and there is no charge for international communication.

As of June 2024, Employment Security does not currently permit agency staff to download or use WhatsApp on state-issued devices due to data security concerns. Furthermore, Employment Security policy does not permit MSFW staff to communicate via text message for any communication that is not "transitory". It is probable that two-way texting will be available through the agency's new database replacement project, "WIT replacement" targeted for implementation in late 2025

Other state and federal agencies, including LNI and USDOL WHD do use the application as a communication tool, within the established restrictions for data security, particularly with MSFWs. In instances where WhatsApp is the only method by which to reach an MSFW customer regarding a complaint and/or witness statement, Employment Security staff have coordinated initial communication with the customer through LNI's WhatsApp account. Employment Security's communication via WhatsApp must be transitory in nature and intended to arrange for another method of communication, if available.

The use of WhatsApp is a priority for FY 2024 Employment Security product adoption. The committee urges Employment Security to approve and implement use of WhatsApp as a communication tool for MSFWs as soon as possible.

Make employer names visible to job seekers

Federal law requires information identifying the employer in the agricultural clearance order be suppressed. The federal regulations regarding the agricultural recruitment system (ARS) were published in the early 1980s, prior to SWAs utilizing web-based recruitment platforms. These rules are aimed at ensuring the orderly movement of workers. [Read the law that applies on the Code of Federal Regulations website.](#)

SWAs are required to exempt or “suppress” the employer’s name on agricultural clearance orders posted online or in the WorkSource centers. Applicants are provided with the employer’s name and referral information upon screening by labor exchange staff. The suppression of the employer’s name could arguably create a barrier for domestic farmworker applicants to apply, because it could discourage interest if a potential applicant does not have all the information they need to make an informed decision about the job they want.

On May 16, 2022, Employment Security submitted to USDOL Washington’s request of the Secretary to waive the Wagner-Peyser regulation requiring employer information to be suppressed on clearance orders in the ARS. USDOL denied the request on June 30, 2022. Notably, USDOL made this decision even as it posts job orders with the employer’s name and location unsuppressed on its own public recruitment website⁵. In the absence of a waiver from USDOL, the committee and Employment Security may recommend operational modifications to better reflect current agricultural recruitment practices and facilitate Employment Security’s referral of domestic workers and tracking of those referrals.

Currently, Employment Security continues to comply with federal law. In August 2023, a change in titling agricultural job orders was made following a finding by OFLC’s monitoring of Employment Security’s FLC Grant. OFLC found that adding “H-2A” in the title of job orders was both unnecessary and created a potential barrier to applicants who could mistakenly assume they are not eligible for a job because it is titled “H-2A”. After the monitoring exit conference, Employment Security discontinued this naming convention and are training staff to refer to H-2A job orders only as “agricultural clearance orders”. The committee recommends Employment Security continue to seek mechanisms that could potentially reduce barriers to domestic applicants applying to agricultural clearance orders, including “un-suppressing” employer information in alignment with current USDOL practices.

⁵ <https://seasonaljobs.dol.gov>

Budget and costs incurred

This section of the report provides analysis of: (1) the costs incurred by ASWS to administer the H-2A program; (2) the funds to administer other department programs for farmworkers, and (3) the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department.

Budget overview

Figure 9 provides a breakdown of activities and the current funding sources used by Employment Security to support the execution of each activity. While some of the funding sources shown, such as the FLC Grant, may *permit* additional activities to be funded (for example, outreach, training, field checks and field visits), those activities are not accounted for in the base funding table below.

Figure 9. H-2A activities and supporting federal and state funding sources Washington state, 2024
Source: Employment Security

Required activity	Federal Foreign Labor Certification Grant	Federal Wagner-Peyser Grant	State RCW 50.75.040 funding	Other state funding**
Review and process of H-2A employer applications	✓		*	
Coordinate housing inspections***	✓	*	✓	*
Agricultural prevailing wage and employment practice	✓	✓	✓	✓
Outreach and training	*	✓	✓	*
Field visits and field checks	*	*	✓	*
Domestic recruitment and employment verification		✓		*
Employment service complaint process		✓	✓	*
Discontinuation of services		*	✓	*

*Allowed but not currently used.
 **Other state funding consists of the Employment Services Administrative Account: Claimant Placement Program (CPP) and the Administrative Contingency Account: Penalties and Interest. RCW 50.75.040 is also CPP funded.
 ***In 2024, ASWS compliance staff conducted visits to TWH to confirm the accuracy of housing descriptions, as indicated on Form ETA-790. These visits did not constitute housing inspections. Rather, these visits were to gather data necessary to adequately inform the SWA prior to the SWA certifying the housing as compliant to USDOL.

Figure 10. provides a break-down of each major federal funding source, its purpose and the amount allocated to Employment Security or by Employment Security in FY 2024.

Funding source	Purpose	FY 2024 allocation
Federal Foreign Labor Certification Grant	To fund services provided by state agencies that support the administration of the H-2A and H-2B foreign labor certification programs. Employment Security charges this grant in alignment with this scope and does not track funding spent on H-2A and H-2B separately.	\$692,094
Federal Wagner-Peyser Grant	To improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking qualified workers. Of these funds, 10 percent, roughly \$1.573 million in FY 2024, is allocated for employment services specifically targeted to support agricultural workers and employers.	\$15,729,530

Figure 11. Overview of major Employment Security state funding sources supporting H-2A activities
Source: Employment Security

Funding source	Purpose	FY 2024 allocation
State <u>RCW 50.75.040</u> funding	Provides funding for ASWS. The funding is from the Employment Services Administrative Account (CPP). All funding supports H-2A Program-related activities.	\$1,632,000
Other state funding	The Employment Services Administrative Account (CPP) and the Administrative Contingency Account (P&I) support employment services for which federal funding is not available and/or insufficient. Both accounts help pay for a portion of the Prevailing Wage and Employment Practice Survey that supports H-2A Program administration.	\$438,532

Foreign Labor Certification (FLC) Grant

The FLC Grant is intended to fund services provided by state agencies that support the administration of the H-2A and H-2B foreign labor certification programs. The 2022 ASWS Report (page 31) details allowable activities under the FLC Grant. [Read the 2022 ASWS Report on Employment Security's website.](#)

USDOL publishes an annual Training Employment Guidance Letter (TEGL) that provides grant planning instructions to all state workforce agencies. TEGL No. 12-21, Change 2⁶, issued on April 26, 2024, provided Employment Security the most recent instructions. Attachment II⁷ to TEGL No. 12-21, Change 2 provides a comparison FLC Grant funding by state for FY 2024.

Figure 12 provides a summary of FLC Grant funding awards to Employment Security over the last eight years.

Figure 12. FLC Grant funding awarded to Employment Security for FY 2017 to 2024

Source: Employment Security

Fiscal year	Amount awarded to Employment Security
2017	\$562,354*
2018	\$450,000
2019	\$400,000
2020	\$400,000
2021	\$572,579
2022	\$602,678
2023	\$664,713
2024	\$692,094

Wagner-Peyser Grant

Originally passed in 1933, the Wagner-Peyser Act established a nationwide system of public employment offices known as the Employment Service (ES) to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking qualified workers. The act was amended in the late 1990s and became a key part of the state's one-stop system, called WorkSource.

WorkSource centers provide universal access to an array of employment and training services, which are available to any job seeker, regardless of employment status.

⁶ [TEGL No. 12-21, Change 2](#)

⁷ [TEGL No. 12-21, Change 2 – Attachment II](#)

Veterans (particularly disabled veterans) receive the highest service priority. States can provide specialized assistance to other targeted populations such as individuals with disabilities, justice involved individuals, youth, minorities, older workers, and migrant and seasonal farmworkers. Any employer seeking workers is eligible for WorkSource’s employer services. Funded activities are provided free of charge to both job seekers and employers through self-service, facilitated self-help services, or staff-assisted services. The 2022 ASWS Report (page 34) details allowable activities under the Wagner-Peyser Grant. [Read the 2022 ASWS Report on Employment Security’s website.](#)

State allocations are based on federal formula provisions in the Wagner Peyser Act. TEGL No. 15-22, Attachment B⁸ outlines the formula in detail.

For Program Year (PY) 2024 (July 1, 2024-June 30, 2025), Washington state was allotted \$15,729,530 - a \$130,698 increase from the \$15,860,228 allotted in PY 2023.

Figure 13. Washington state and U.S. Wagner-Peyser allotments for PY 2017 through 2024
Washington state, 2024

Source: Employment Security

Program year	Washington	U.S.	Percent of U.S. allocation
2017	\$14,769,360	\$671,413,000	2.20%
2018	\$14,707,432	\$666,413,000	2.21%
2019	\$15,040,605	\$663,052,000	2.27%
2020	\$15,891,995	\$668,052,000	2.38%
2021	\$15,710,820	\$668,253,000	2.35%
2022	\$15,464,004	\$672,277,000	2.30%
2023	\$15,860,228	\$675,052,000	2.29%
2024	\$15,729,530	\$677,531,500	2.34%

Wagner-Peyser 10 percent funds

Section 7 of the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014, require the Wagner-Peyser Grant funding to be split 90/10 with 90% designated to fund services and activities in the one-stop system and 10% reserved for discretionary use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of SWA staff, and services for groups with special needs (Section 7(b) and 20 CFR 652.204). The 2022 ASWS report (page 36) details allowable activities under the Wagner-Peyser 10 percent funds. [Read the 2022 ASWS Report on Employment Security’s website.](#)

⁸ [TEGL No. 15-22, Attachment B](#)

Wagner-Peyser 10 percent funds are allocated for positions and services aimed at supporting the agricultural sector largely funding MSFW Outreach FTEs (including the Monitor Advocate) required by Wagner-Peyser regulations and additional staff in agricultural areas serving farmworker customers and agricultural employers. A small percentage has also been allocated to paying for administrative staff (supervisors and administrative assistants).

Employment Security's allocation of Wagner-Peyser 10 percent funds in FY 2024 are shown in Figure 13. While most of the Wagner-Peyser 10 percent funds are focused on positions providing direct customer support and outreach, additional funds are used for support services. As shown in Figure 14, most of the Wagner-Peyser 10 percent FTEs are allocated to areas with significant agricultural industry.

Figure 14. Wagner-Peyser 10 percent Employment Security field operations allocation for FY 2024.

Source: Employment Security

Office	FTE budget	Budget allocated
Monitor Advocate position	1.3	\$161,002
Workforce Services Central Office	1.6	\$198,922
Skagit (Mt. Vernon) WorkSource	1.1	\$159,498
Central Basin (Moses Lake) WorkSource	1.8	\$212,868
Okanogan County (Omak) WorkSource	1.2	\$176,057
Wenatchee WorkSource Affiliate	1.5	\$179,570
Yakima County (Union Gap) Work	1.4	\$198,301
White Salmon WorkSource Affiliate	1.0	\$135,215
Sunnyside WorkSource Affiliate	1.4	\$194,992
Columbia Basin (Kennewick) WorkSource	1.4	\$194,457
Walla Walla WorkSource	1.2	\$134,630
Operating FTE total	14.74	\$1,945,510

Other state funding

Employment Security's budget consists primarily of federal funding. However, federal funding is insufficient to support specialized employment service needs and Employment Security has relied on state funding sources to fill the gap.

Employment Security has historically relied on two state resources:

1. The Administrative Contingency Account – Fund 120, also known as Penalties and Interest (P&I). P&I receives revenues from penalties and interest from employers for late or incorrect unemployment taxes and interest from UI recipients who must repay benefits to which they were not entitled.
2. The Employment Service Administrative Account – Fund 134, also known as the Claimant Placement Program (CPP). CPP was established in 1985 and receives its

revenues from an employer tax of 0.02% of taxable wages (based on rate class) for most employers. This funding source was established to augment federal funds in support of employment programs.

These state accounts provide funding to support ongoing reemployment efforts, maintain systems and technology that support Employment Security programs, compliance, data collection and analysis, and other mandatory programming. As federal funding for Employment Security programs has remained flat, demand on these state funding sources has increased placing strain on these accounts. That demand includes state funding for ASWS activities, some prevailing wage and employment practice survey costs (detailed below), and costs associated with implementing data collection and survey requirements in recently enacted House Bill 2226 (detailed above).

Current costs and funding to administer the H-2A program

The 2023-2025 Operating budget, passed by the state Legislature during the 2023 regular session, included funding for ASWS to continue the program. The positions and other costs were refined to reflect how the program is staffed, although the level of CPP funding remained the same, as shown in Figure 16.⁹

Figure 15. Annual budget request by job classification (2023 to 2025 biennium)

Source: Employment security

ASWS staffing	FTE	Salaries	Benefits
WMS 3 – ASWS Director	1.0	\$117,000	\$47,000
Management Analyst 3	1.0	\$42,000	\$17,000
Program Specialist 2	1.0	\$48,000	\$19,000
Program Specialist 3	7.0	\$408,000	\$163,000
Program Specialist 5	1.0	\$69,000	\$28,000
Agricultural wage survey staffing	FTEs	Salaries	Benefits
WMS 2 – Econometrics and Actuarial Analysis Manager	0.2	\$14,000	\$6,000
Operations Research Specialist – Surveys and Agricultural Analysis Supervisor	0.6	\$52,000	\$21,000
Economic Analyst 3 – Research Economist	0.9	\$76,000	\$30,000
Agency Services and Technology	1.8	\$222,633	\$89,000
Total	14.5	\$1,048,633	\$420,000

⁹ Costs for staff salaries and benefits are not constant and do increase as Washington state government staff receive cost of living and other adjustments. During the biennium captured in this report, adjustments to other objects or purposes offset those costs so the total budget equates to the budget approved by the Legislature.

Figure 16 provides a breakdown of the ASWS budget by object or purpose for FY 2021 to FY 2027. Funding is allocated to cover two years (biennium). This budget does not account for FTEs and services related to H-2A already covered by other funding sources, namely the FLC and Wagner-Peyser Grants.

Figure 16. Budget request by object or purpose for FY 2021 to FY 2027

Source: Employment Security

Description	FY 2021-2023	FY 2023-2025	FY 2025-2027
FTE staff	14.4	14.4	14.4
A – Salaries and wages	\$1,652,000	\$1,652,000	\$1,652,000
B – Employee benefits	\$662,000	\$662,000	\$662,000
E – Goods and other services	\$384,000	\$384,000	\$384,000
G – Travel	\$122,000	\$122,000	\$122,000
T – Intra-agency reimbursements	\$444,000	\$444,000	\$444,000
Total	\$3,264,000	\$3,264,000	\$3,264,000

Prevailing wage and employment practice survey costs

The agricultural wage survey is intended to protect the wages of domestic farmworkers by ensuring they are not adversely impacted by an employer’s use of the H-2A program and is required by federal law. [Read the law that applies on the Code of Federal Regulations website.](#)

To meet this requirement, Employment Security conducts voluntary employer and worker surveys to establish prevailing hourly wage or piece rates that are posted by USDOL on its Agricultural Online Wage Library. Employment Security has contracted with the University of Washington (UW) to conduct these surveys for several years, beginning in 2024, the surveys will be conducted by Washington State University (WSU).

Figures 16a and 16b below list the actual costs of the 2022 and 2023 agricultural surveys by funding source. Figure 17 lists the projected costs of the 2024 surveys.

Figure 16a. Actual 2022 agricultural survey costs by funding source.

Source: Employment Security

SFY 2022 actual costs by funding source	Employer survey (UW contract)	Work survey (UW contract)	Staff costs	Sum
Foreign Labor Certification	\$113,593	\$0	\$0	\$113,593
Wagner-Peyser 90 percent	\$136,321	\$51,276	\$9,193	\$196,790
Administrative Contingency Account (P&I)	\$26,071	\$89,059	\$202,153	\$317,284

Employment Services Administrative Account (CPP)	\$0	\$0	\$53,873	\$53,873
Total	\$275,985	\$140,335	\$265,220	\$681,540

Figure 16b. Actual 2023 agricultural survey costs by funding source.

Source: Employment Security

SFY 2023 actual costs by funding source	Employer survey (UW contract)	Work survey (UW contract)	Staff costs	Sum
Foreign Labor Certification	\$115,394	\$0	\$0	\$115,394
Wagner-Peyser 90 percent	\$162,302	\$37,010	\$3,149	\$202,461
Administrative Contingency Account (P&I)	\$27,758	\$94,123	\$240,777	\$362,659
Employment Services Administrative Account (CPP)	\$0	\$0	\$58,992	\$58,992
Total	\$305,455	\$131,133	\$302,918	\$739,506

Figure 17. Projected 2024 agricultural survey costs by funding source.

Source: Employment Security

SFY 2024 by projected costs by funding source	Employer survey (WSU contract)	Worker survey (WSU contract)	Staff costs	Sum
Foreign Labor Certification	\$0	\$16,416	\$0	\$16,416
Wagner-Peyser 90 percent	\$120,151	\$27,293	\$0	\$147,443
Administrative Contingency Account (P&I)	\$0	\$137,867	\$218,514	\$356,381
Employment Services Administrative Account (CPP)	\$0	\$0	\$82,151	\$82,151
Total	\$120,151	\$181,575	\$300,666	\$602,392

Appendix A – FLC Grant Monitoring Review Report

U.S. Department of Labor

Employment and Training Administration
200 Constitution Ave., N.W.
Washington, D.C. 20210



November 15, 2023

Danielle Cruver
Funds Manager
Washington State Employment Security Department
212 Maple Park Avenue SE.
P.O. Box 9046
Olympia, Washington 98501

Dear Ms. Cruver:

During the period of August 21 - 25, 2023, the U.S. Department of Labor (DOL), Employment and Training Administration (ETA) Office of Foreign Labor Certification (OFLC) conducted a compliance review for the following grants:

- FL-34406-20-55-A-53
- FL-36029-21-55-A-53

Our report from this review is enclosed. Please respond to the **Three** findings and **Two** areas of concern identified in the report within **30 days** from the date of the report. Your response should be submitted to your Federal Project Officer (FPO), Domonique Bell, at bell.domonique.i@dol.gov and FLC.grant@dol.gov

We hope that our review and this report are helpful in improving the effectiveness of state foreign labor certification program activities. We thank you for your time and assistance and that of your team during our visit. If you have any questions, please contact Domonique Bell at 312-596-5430.

Sincerely,

A handwritten signature in blue ink that reads "Brian Pasternak". The signature is fluid and cursive.

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor

EXECUTIVE SUMMARY

The review resulted in 3 Findings and 2 Areas of Concern.

Findings:

Finding 1: Performance Management

Finding 2: Performance Management

Finding 3: Modernizing the Collection of H-2B Job Order Information

Area of Concern:

AOC 1: Personnel

AOC 2: Performance Management

Please note that the review did not cover any areas outside the defined scope. Although no material issues came to the reviewer's attention other than those contained in this report, there is no assurance that other issues may not exist.

SCOPE OF REVIEW

Dates of Review:

August 21 – August 25, 2023

Exit Date:

September 29, 2023

Reviewer(s):

Brian Pasternak, Administrator

Eric Hernandez, Supervisory Immigration Program Analyst

Domonique Bell, Federal Project Officer

Mike Jackson, Federal Project Officer

Myra Flynn, Federal Project Officer

Munzir Naqvi, Program Analyst

Purpose:

The purpose of ETA's review was to measure progress, identify areas of compliance, and to offer opportunities for technical assistance to help resolve non-compliance issues, and ensure that Federal funds are used responsibly. In particular, the review assessed whether the grant is operating in accordance with Training and Employment Guidance Letter NO. 14-19, TEGL 21-20 and [2 CFR Part 200](#) - Uniform Administrative Requirements, and [2 CFR Part 2900](#) - DOL Exceptions to 2 CFR Part 200.

Grant/Program Reviewed:

FL-34406-20-55-A-53

FL-36029-21-55-A-53

Core Activity 2: Grant Operations**Objective 1.b. Implementation**

Indicator 1.b.1: Designating Personnel, Staff and Hiring

Objective 2.B: Budget

Indicator 2.b.1: Budget Controls

Objective 2.e: Performance Management

Indicator 2.e: Progress Monitoring

Objective 2.d: Procurement and Contractual Administration

Indicator 2.d.5: Contract Administration

Objective 2.h: Personnel

Indicator 2.h. Personnel Policy and Procedures

Core Activity 3: Financial Management**Objective 3.A: Internal Controls**

Indicator 3.a.1: Effectiveness and Efficiency of Operations

Indicator 3.a.3: Compliance with Applicable Laws and Regulations

Objective 3.B: Accounting Systems and Financial Reporting

Indicator 3.b.2: Financial Reporting

Objective 3.F: Allowable Costs and Cost Classifications

Indicator 3.f.1: Cost Principles

Indicator 3.f.2: Financial Management Systems

Objective 3.G: Costs allocation/Indirect Costs

Indicator 3.g.1: Cost Allocation Principles

Tool(s) Used for Review:

ETA Core Monitoring Guide

TEGL 21-20

TEGL 12-21

BACKGROUND

Service Delivery Area(s) of Grant(s):

State of Washington

Grant Period of Performance:

October 1, 2019, thru June 30, 2023

Award amount:

- \$400,000.00- U70
- \$572,579.00- C10

Program Abstract:

The mission of ETA's OFLC is to determine, on a case-by-case basis, whether there are able, willing, and qualified U.S. workers available for a job, and whether there will be any adverse impact on the wages and working conditions of similarly employed U.S. workers should a labor certification be granted. The Immigration and Nationality Act (INA) assigns certain responsibilities to the Secretary of Labor (Secretary) for employment-based immigration programs. The Secretary has delegated the non-enforcement responsibilities of these labor certification programs to the OFLC. Accordingly, statutory and regulatory provisions of the labor certification programs administered by' OFLC require many employers seeking to hire either permanent or temporary foreign labor to apply to the Secretary for a labor certification.

The U.S. Department of Labor provides annual grants to State Workforce Agencies to support state-level foreign labor certification activities. These activities include, but are not limited to, reviewing and placing job orders to recruit U.S. workers; assisting employers in the effective recruitment of U.S. workers; conducting safety inspections of employer-provided housing for H-2A agricultural workers; performing prevailing practice and wage surveys used to set the wages and working standards for occupations within the state; and conducting post-certification site visits to support employer compliance with H-2A and H-2B program requirements. OFLC distributes this grant funding annually in accordance with approved state plans.

FINDINGS

Finding 1: Performance Management
Indicator 2.e.1: Performance Reporting

Based on a non-financial Memorandum of Understanding (MOU) with the WA State Department

of Health (DOH) and with WA State Department of Labor and Industries (LNI) (for facilities with less than 10 occupants) to perform housing inspections for Washington State Employment Security Department (ESD) relating to Temporary Worker Housing (TWH), DOH and LNI carry out inspections of housing for temporary agricultural workers. Upon review, the OFLC Grant Review Team observed that the DOH housing inspectors utilized a combination of the standards for temporary labor camps from the Occupational Safety and Health Administration (OSHA) and state standards. However, in accordance with Federal regulations at 20 CFR 654 and 655, ETA housing standards for units seeking to house temporary agricultural workers under the H-2A program, including any domestic workers, may also apply. Specifically, for housing that was built prior to April 3rd, 1980, the ESD through DOH and LNI must use the ETA housing regulations unless the housing has undergone a major renovation which would allow the housing inspector to use the OSHA 1910 housing standards.

The Code of Federal regulations 645.417 states:

- (a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.
- (b) In family housing and housing units for less than 10 persons of one-story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24×24 inches.
- (c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated to provide alternate means of escape to the outside or to an interior hall.
- (d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.
- (e) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.
- (f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a 2½-gallon stored pressure or 5-gallon pump-type water extinguisher.
- (g) First aid facilities must be provided and readily accessible for use at all times. Such facilities must be equivalent to the 16-unit first aid kit recommended by the American Red Cross and provided in a ratio of 1 per 50 persons.
- (h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.
- (i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

The Code of Federal regulations 655.122 (1) states:

Housing:

- (1) Obligation to provide housing. The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. Housing must be provided through one of the following means:

- (i) Employer-provided housing. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404 through 654.417 of this chapter, whichever are applicable under § 654.401 of this chapter. Requests by employers whose housing does not meet the applicable standards for conditional access to the interstate clearance system, will be processed under the procedures set forth at § 654.403 of this chapter; or
- (ii) Rental and/or public accommodations. Rental or public accommodations or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards will apply. In the absence of applicable local or State standards, DOL OSHA standards at 29 CFR 1910.142 will apply. Any charges for rental housing must be paid directly by the employer to the owner or operator of the housing. The employer must document to the satisfaction of the CO that the housing complies with the local, State, or Federal housing standards.

Corrective Actions:

The WA ESD must modify the MOU with DOH and LNI to ensure implementation of the ETA regulations when applicable and when not, continue to use the OSHA standards. The housing inspection will follow the specific regulation per the housing construction date. Any housing constructed on April 3rd, 1980, or later, will be inspected utilizing the OSHA 1910 housing standards. Any housing constructed prior to the date of April 3rd, 1980, will be inspected utilizing the ETA regulations unless the housing has undergone a major renovation which would allow the housing inspector to use the OSHA 1910 housing standards. To resolve this finding, WA ESD must provide evidence that all forms reflect both the ETA and OSHA housing regulations.

Finding 2: Performance Management Indicator 3.e.1: Performance Reporting

Under the Revised Code of Washington (RCW 70.114A, RCW 43.70, and RCW 49.17), WA ESD in collaboration with DOH and LNI enforces minimum safety and health standards for all industries, including migrant and seasonal farmworker housing, based on guiding housing standards. The DOH and LNI provide oversight of the H-2A program which includes housing registration inspection, and compliance program to ensure the safety and healthful condition of migrant housing. An employer who owns or operates a housing unit for any number of migrant workers must register the housing with the State of Washington. After registration, WA DOH and LNI must inspect the housing before the migrants can occupy the unit. Under the authority of state law and after the housing is approved and occupied, WA DOH and LNI is responsible for any subsequent pre-occupancy inspections where migrant workers will arrive on a new temporary labor certification. Currently, housing inspections are not occurring at the time that the ETA Form 790/790A (Job Order) is submitted. The state of Washington uses an annual license for all housing inspections.

In some instances, one or more employers may seek approval to use the same housing unit (e.g., large temporary labor camp) to bring in temporary agricultural workers throughout the growing season under separate H-2A temporary labor certifications. Based on a review of documentation

and discussions with WA DOH staff, the OFLC Grant Review Team understands that, in these situations, DOH will, at a minimum, conduct a pre-occupancy housing inspection one-time and use the single authorization provided by DOH covering the maximum occupancy for the housing unit. Under certain circumstances, employers and/ or agents have refused to allow a reinspection insisting an annual approval is sufficient. Under Federal regulations at 20 CFR 655.122(d), each employer is required to obtain preoccupancy inspections of their housing for every H-2A temporary agricultural labor certification without exception. Therefore, as a condition of granting temporary labor certification, the OFLC Certifying Officer (CO) must receive documentation or an official assurance from WA ESD that the housing to be occupied by prospective H-2A or domestic workers in corresponding employment continues to meet the applicable housing standards.

Corrective Actions:

In collaboration with WA DOH and LNI, WA ESD must develop an internal written policy that articulates the conditions (e.g., history of housing compliance or age of the housing) and timeliness (e.g., 90 or 120 days since most recent inspection) under which multiple pre-occupancy inspections should be conducted where one or more employers seeking to use the same housing unit to bring in temporary agricultural workers throughout the growing season under separate H-2A temporary labor certifications. The ESD should also ensure that housing inspections are being conducted within a reasonable timeframe of ETA Form 790/790A being submitted. Housing inspections must be completed and reported in the OFLC Foreign Labor Application Gateway (FLAG) 30 days prior to the start date of need.

The WA ESD must make any appropriate modifications to its MOU with DOH and LNI, including any standard operating procedures, to ensure that the policy is implemented consistently and effectively. To resolve this finding, WA ESD must provide evidence of a plan of implementation of this internal policy.

Finding 3: Modernizing the Collection of H-2B Job Order Information Indicator 2.a.1: Specific Award Conditions

The WA ESD has internally developed and implemented a unique staff-assisted job order form that is a required information collection for employers seeking to employ foreign workers under the H-2B visa classification. This job order form is titled “H-2B Job Order Form” and is different than the job order form normally used by non-H-2B employers seeking labor exchange services through WorkSourceWA. The H-2B Job Order Form does not have any identifying information and associated public burden disclosure, which is necessary to authorize the collection of data or other information from respondents under Federal law. Additionally, the only method for employers to place the H-2B Program Job Order Form is by completing a fillable version of the job order form, attaching it to an email, and submitting it to a dedicated email account entitled wcdh2a@esd.wa.gov; a relatively labor-intensive approach to receiving and processing time-sensitive H-2B job orders.

Upon review by the OFLC Grant Monitoring Team, the H-2B Job Order Form mandates the collection of certain information and assurances that are not required by the 2015 H-2B Interim

Final Rule (IFR) for an employer to submit a job order. In promulgating the 2015 H-2B IFR, the Department noted that SWA program activities under the H-2B visa program are currently funded through grants provided under the Wagner-Peyser Act. 29 U.S.C. 49 et seq., and directly through appropriated funds for administration of foreign labor certification program. Although the 2015 H-2B IFR mandated a number of disclosures related to the content of an employer's H-2B job opportunity under 20 CFR 655.18, the Department noted that to minimize the burden on employers and SWAs the regulations rely on leveraging the SWA's existing forms and systems to place job orders into its job clearance system, as well as provide employers with referrals received in connection with the job opportunity. Thus, the 2015 H-2B IFR does not impose unfunded Federal mandates, as defined in 2 U.S.C. 658(6), and does not require a SWA to create new information collection forms or standards for employers to prepare and submit H-2B job orders for review and processing.

Corrective Actions:

The WA ESD must eliminate the H-2B Job Order Form and discontinue the labor-intensive email submission and review process by expanding the existing job order form and functions available in the WorkSourceWA system (including any successor labor exchange system) such that an employer or an employer's authorized agent or attorney can prepare and submit self-service H-2B job orders online and provide an online mechanism for those job orders to be routed to ESD staff for review and processing. To resolve this finding, WA ESD must provide the plan to discontinue the H-2B Job Order Form.

AREAS OF CONCERN

Concern 1: Personnel

Indicator: 2.h.1: Personnel Policies and Procedures

During the monitoring review, the OFLC Grant Review Team noted that the WA ESD staff are not cross-trained to conduct housing inspections and do not periodically accompany the WA DOH inspectors during their H-2A housing inspections. Although an MOU exists with WA ESD and partner agencies of WA DOH and LNI to conduct initial housing inspections, all WA ESD staff must be prepared to conduct a complete housing inspection in circumstances where either the MOU is not renewed or does not have adequate resources to meet the increasing demand for housing inspections associated with H-2A job orders. Scheduling and conducting housing inspections is a high priority for OFLC. It is prudent that WA ESD have an effective contingency plan, otherwise, this could lead to unnecessary and preventable processing delays for Washington employers seeking to employ H-2A workers.

Suggested Actions:

In collaboration with WA DOH and LNI, WA ESD should create a Staff Development and Contingency Plan. The plan should include appropriate measures and milestones that facilitate the training and development of appropriate WA ESD staff to conduct complete H-2A housing inspections either alongside WA DOH and LNI staff or independently where WA DOH and LNI

staff do not have adequate resources to inspect in a timely manner. WA ESD is also encouraged to have appropriate staff periodically “shadow” WA ESD and LNI housing inspectors to better understand and assist with the inspection process. Appropriate travel funds and the latest technologies should be provided to the WA ESD staff to perform H-2A housing inspections and communicate results to OFLC electronically using the FLAG System, as required by the grant plan. To resolve this concern, the WA ESD should provide acknowledgement.

Concern 2: Performance Management
Indicator 3.e.1: Performance Reporting

The Job Orders are listed as H-2A job opportunities in the WorkSource Washington system indicating “H-2A” as part of the job title. This may discourage U.S. workers from applying to these job opportunities.

Suggested Actions:

The ESD should remove “H-2A” and references to H-2A in these job orders as this may discourage U.S. workers to apply for these job opportunities. To resolve this concern, the WA ESD should provide acknowledgement.

-- END OF REPORT --

Appendix B – Employment Security Monitoring Report Response



STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT

PO Box 9046 • Olympia WA 98507-9046

December 15, 2023

VIA: EMAIL (bell.domonique.i@dol.gov) and (FLC.grant@dol.gov)

Domonique Bell
Federal Project Officer (FPO)
Employment and Training Administration
U.S. Department of Labor

RESPONSE TO 11/15/2023 OFLC MONITORING FINDINGS

Dear Ms. Bell:

We appreciated the opportunity to learn from and assist the monitoring team from the Department of Labor's Office of Foreign Labor Certification (OFLC) on August 21-26, 2023 in Kennewick, WA and Olympia, WA. Reviewing our processes gave us a chance to ask questions which was extremely helpful in our understanding of the grant requirements and has better informed our administration of the Foreign Labor Certification (FLC) grant.

Please know that we understand the importance of these findings and have taken appropriate steps to outline a plan for improvement. Below is the response you requested in your 11/15/2023 letter outlining Washington State's compliance findings under the FLC grant.

Finding #1: Performance Management

(Summary)

DOH housing inspectors utilized a combination of the standards for temporary labor camps from the Occupational Safety and Health Administration (OSHA) and state standards. However, in accordance with the Federal regulations at 20 CFR 654 and 655, ETA housing standards for units seeking to house temporary agricultural workers under the H-2A program, including any domestic workers, may also apply.¹ Specifically, for housing that was built prior to April 3, 1980, the

¹ Please note that Washington State is not an OSHA jurisdiction, rather a "state plan state". The Washington State Department of Health has state standards that in most circumstances exceed those of applicable federal regulations. All employers who house agricultural workers in Washington are subject to the state standard (Washington Administrative Code).

ESD through DOH and LNI must use the ETA housing regulations unless the housing has undergone a major renovation which would allow the housing inspector to use the OSHA 1910 housing standards.

Corrective Action:

Shortly after the OFLC on-site monitoring concluded, ESD Foreign Labor Certification Staff briefed the Washington State Department of Health (DOH) and the Washington State Department of Labor and Industries (LNI) regarding the findings communicated by OFLC to ESD during the on-site programmatic soft exit conference. Both DOH and LNI confirmed that their respective inspections of temporary worker housing are conducted according to the Washington Administrative Code (WAC) (state regulations).

Since OFLC's monitoring visit, ESD, DOH and LNI have partnered to identify which federal OSHA and ETA standards are either:

- (1) not addressed by the state standards; or
- (2) are more restrictive than the state standards.

ESD must review H-2A job orders to confirm compliance with federal, state, and local law.

ESD, DOH and LNI are moving forward with modifying the existing cross-agency Memorandum Of Understanding (MOU) to explore inclusion of an agreement that DOH and LNI will include the applicable federal standards (ETA or OSHA) during its pre-occupancy inspection and communicate this data to ESD for ESD's analysis and determination of housing compliance. The ESD, DOH and LNI estimate that a modified MOU will be finalized in 6-12 months. This timeframe considers the internal processing time within each agency's contracting office protocols and provides time to engage stakeholders and collect feedback. As requested in the monitoring report, ESD will provide a copy of this agreement to OFLC and copies of documents or "inspection checklists" used by DOH and LNI upon implementation of this agreement.

Finding #2: Performance Management

(Summary)

Currently, housing inspections are not occurring at the time that the ETA Form 790/790A (Job Order) is submitted. An employer who owns or operates a housing unit for any number of migrant workers must register the housing with the State of Washington. After registration, WA DOH and LNI must inspect the housing before the migrants can occupy the unit. Under the authority of state law and after the housing is approved and occupied, WA DOH and LNI is responsible for any subsequent pre-occupancy inspections where migrant workers will arrive on a new temporary labor certification.

Under Federal regulations at 20 CFR 655.122(d), each employer is required to obtain preoccupancy inspections of their housing for every H-2A temporary agricultural labor certification without exception. Therefore, as a condition of granting temporary labor certification, the OFLC Certifying Officer (CO) must receive documentation or an official assurance from WA ESD that the housing to be occupied by prospective H-2A or domestic workers in corresponding employment continues to meet the applicable housing standards.

Corrective Action:

Since OFLC monitoring, ESD, DOH and LNI have engaged in preliminary discussions regarding potential approaches for repeat inspections of previously inspected temporary worker housing included in subsequent ETAs. Specifically, the agencies plan to work together to decide which entity is best positioned to conduct repeat inspections and provide data to ESD. A potential approach could include ESD performing housing “verification” visits shortly after the filing of an ETA that lists previously certified temporary worker housing to confirm that it continues to meet applicable housing standards. These plans are still in development. ESD plans to engage stakeholders and gather feedback to mitigate potential implementation challenges.

A copy of the policy and/or agreement documenting the finalized process will be provided to OFLC within 6-12 months of this response letter.

Additionally, ESD plans to develop criteria for circumstances in which repeat inspections would *not* be required by ESD to make an assurance to OFLC that housing meets applicable housing standards (i.e. state agency housing inspection occurred within 90 days before ETA-790 filing and there were no violations found, etc.). This topic was discussed in detail with OFLC monitors during the on-site monitoring sessions. ESD will seek further OFLC feedback as it develops this criterion.

Finding #3: Modernizing the collection of H-2B job order information

(Summary): The WA ESD has internally developed and implemented a unique staff-assisted job order form that is a required information collection for employers seeking to employ foreign workers under the H-2B visa classification. This job order form is titled “H-2B Job Order Form” and is different than the job order form normally used by non-H-2B employers seeking labor exchange services through WorkSourceWA..... Upon review by the OFLC Grant Monitoring Team, the H-2B Job Order Form mandates the collection of certain information and assurances that are not required by the 2015 H-2B Interim Final Rule (IFR) for an employer to submit a job order.the 2015 H-2B IFR does not impose unfunded Federal mandates, as defined in 2 U.S.C. 658(6), and does not require a SWA to create new information collection forms or standards for employers to prepare and submit H-2B job orders for review and processing.

Corrective Action:

As of 10/1/2023 WA ESD stopped utilizing its “H-2B job order form” and stopped creating and managing H-2B job orders in ESD’s labor exchange system. On 10/1/2023, a memo from ESD was sent to all H-2B employers, associations, and employer representatives notifying employers of ESD’s transition to an employer self-service model for the creation and management of H2B job orders within ESD’s labor exchange system. As of this date, Wagner-Peyser funded labor exchange staff have received notification of this change and have been advised to provide technical assistance to employers in navigating ESD’s online labor exchange system, only.

Exhibit 1: 10/1/2023 Notice to H-2B Employer Regarding Job Order Creation

Area of Concern #1: Personnel

(Summary) During the monitoring review, the OFLC Grant Review Team noted that the WA ESD staff are not cross-trained to conduct housing inspections and do not periodically accompany the WA DOH inspectors during their H-2A housing inspections.

It is prudent that WA ESD have an effective contingency plan, otherwise, this could lead to unnecessary and preventable processing delays for Washington employers seeking to employ H-2A workers.

Corrective Action:

ESD acknowledges Area of Concern #1, and plans as follows:

Within 60 days of OFLC’s on-site monitoring each of ESD Foreign Labor Certification team’s three staff members and the ASWS Director participated in individual day-long “shadows” with WA State Department of Health’s Temporary Worker Housing inspectors. The objective of these “shadows” was to provide FLC staff with field observation experience at multiple Temporary Worker Housing (TWH) locations. ESD will coordinate further shadow opportunities with DOH and LNI as schedules permit and can accommodate. Additionally, ESD continues to participate in monthly technical assistance calls with DOH and LNI inspectors in which inspection processes and outcomes are discussed.

ESD is currently developing a contingency model to conduct temporary worker housing inspections in circumstances where there may be a potential service gap by DOH or LNI and a timely inspection is necessary for case certification. These inspections would be conducted using applicable federal housing standards to certify housing to OFLC. ESD anticipates that service gaps by LNI and DOH will be rare. Even so, ESD will develop staff training and work with its fiscal unit to evaluate ordering equipment necessary for TWH inspections. This equipment may

include laser measuring devices, thermometers, and tablets to collect, record and transmit data to the FLC staff.

The FLC team will move forward with developing a TWH housing inspection checklist and has already obtained sample checklists from the Arizona, Oregon and California SWAs. Additionally, since monitoring, FLC staff have participated in virtual meetings with SWA FLC staff in Oregon, California and Idaho to learn more about the housing processes of our neighboring SWAs.

Area of Concern #2: Performance Management

(Summary) The Job Orders are listed as H-2A job opportunities in the WorkSource Washington system indicating "H-2A" as part of the job title. This may discourage U.S. workers from applying to these job opportunities.

Corrective Action:

ESD acknowledges Area of Concern #2, and has taken the following actions:

As of 10/19/2023, ESD has notified all Wagner-Peyser Labor Exchange staff to remove the "H-2A" designation from job order titles. ESD plans to collect system data to analyze whether this change impacts the number of applicants to these job orders. Additionally, Wagner-Peyser staff were instructed to remove "H-2A" from the content of the job order and have received education and training to refer to these job orders as "clearance orders" as opposed to "H-2A job orders".

In closing, I want to reiterate that we greatly appreciate the opportunity this onsite review has afforded us in learning about the program.

If you need additional information, please do not hesitate to contact me at 360-810-0901 or danielle.cruver@esd.wa.gov.

Sincerely,

DocuSigned by:

82FD1908F9A447E
Danielle Cruver

Chief Financial Officer

Washington State Employment Security Department

Attachment: 10/1/2023 Notice to H-2B Employer Regarding Job Order Creation

Cc: Daniel Zeitlin, Chief of Staff, ESD
Joy Adams, Director, Employment System Policy Integrity, ESD
Bertha Clayton, Director, Office of Agricultural and Seasonal Workforce Services (ASWS), ESD
Petra Meraz, Supervisor, Foreign Labor Certification, ASWS, ESD
Alberto Isiordia, Assistant Director of Operations, Employment Connections (EC), ESD
Craig Carroll, Business Operations Manager, EC, ESD

10/01/2023

NOTICE TO H-2B EMPLOYERS REGARDING JOB ORDER CREATION

Dear H-2B Employers,

As of October 1, 2023, the ESD's H-2B job order creation will transition to a "self-service" model. Historically ESD has created and posted H-2B job orders on ESD's labor exchange system "WorkSourceWA" (www.worksourcewa.com). Recent foreign labor certification grant monitoring by the USDOL Office of Foreign Labor Certification directed ESD to transition to employer self-service. As such, all employers filing a H-2B job order will need to create and post their job order themselves on ESD's workforce website: WorkSourceWA.com.

Effective immediately, **please discontinue using the H2B Job Order Template that was previously provided by ESD as USDOL will not permit continued use of this template.** Please remember to submit your H-2B Job order Draft concurrently to both the SWA at wcdh2a@esd.wa.gov and your H-2B application package to the Chicago NPC via the Foreign Labor Application Gateway System (FLAG) at tlc.chicago@dol.gov.

Here are useful tools to get you started:

1. For more information regarding the H-2B Program, please visit the USDOL website: <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b>
2. H2B Job Order Checklist (attached below)
3. WorkSourceWA.com to sign-in or create an account.

If you need technical assistance in creating or navigating your WorkSourceWA account, please contact the WorkSource Office in the area of the job order's intended employment. If you need assistance locating a WorkSource office, please use the [WorkSource locator](#) tool.

If you have any questions about this change, please feel free to contact the ESD Foreign Labor Certification Unit.

Respectfully,

Foreign Labor Certification Unit
Petra Meraz, Supervisor
Olivia Gutierrez, Program Coordinator
Tamara Johnson, Program Coordinator
wcdh2a@esd.wa.gov

Sample H-2B Job Order Checklist

9142B Section	Material Term/Condition	SWA Responsibilities	Regulatory Citation(s) 20 CFR	Job Order Standard of Review	Yes	No
A	Nature of H-2B Application	Ensure that the case is or isn't under emergency procedures	655.17	<ul style="list-style-type: none"> ✓ The SWA serving the area of intended employment identified by the employer in the job order is correct. 		
B	Temporary Need Information	Ensure that the required information is included in the job order and is sufficient to apprise U.S. workers of the services or labor to be performed	655.18(b)(3)	<ul style="list-style-type: none"> ✓ Provide a description of the job opportunity, including <ul style="list-style-type: none"> - duties to be performed, - Job Title and SOC code, - work hours and days, and - the anticipated start and end dates of employment 		
			655.18(b)(2)	<ul style="list-style-type: none"> ✓ State the nature of temporary need <ul style="list-style-type: none"> - Peakload - Seasonal - One-Time Occurrence - Intermittent 		
			655.18(b)(7)	<ul style="list-style-type: none"> ✓ If applicable, state "on-the-job training will be provided" 		
C, D & E	Employer Information, Point of Contact & Agent/Attorney	Ensure that the required information is included in the job order	655.18(b)(1) 655.19(e)(2)	<ul style="list-style-type: none"> ✓ State the employer's name ✓ State the employer's contact information <p><i>Important Reminder: Job orders filed by (or on behalf of) joint employers or job contractors, must clearly identify both employer names and contact information.</i></p>		
F	Employment and Wage Information	Ensure that the required information is included in the job order and inform CNPC of specific State or local requirements regarding wages, if any	<i>655.18(b)(5)</i>	<ul style="list-style-type: none"> ✓ State the actual wage or range of wage offers (in the event there are multiple) that will be provided to workers <p><i>Important Reminder: The wage offer must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage.</i></p>		
			<i>655.18(b)(6)</i>	<ul style="list-style-type: none"> ✓ State whether overtime will be available and, if so, state the actual wage that will be provided to workers working any overtime hours 		
			<i>655.18(b)(9)</i>	<ul style="list-style-type: none"> ✓ State the frequency with which workers will be paid <p><i>Important Reminder(s): For frequency of pay, workers must be paid at least every 2 weeks or according to the prevailing practice in the area of employment, whichever is more frequent.</i></p>		

Sample H-2B Job Order Checklist

F.c and Appendix B		Ensure DOL Prevailing Wage Determination (PWD) Information is available (non-emergency applications)		✓ Ensure DOL Prevailing Wage Determination (PWD) Information is available (non-emergency applications)		
	Additional Place of Employment and Wage Information	Ensure all Additional Place of Employment and Wage Information is listed	<i>655.18(b)(10)-(13)</i>	✓ Employer signs Appendix B attesting to listed provisions.		

The Department of Homeland Security (DHS) and the Department of Labor’s (DOL) joint Interim Final Rule for the H-2B Program published in the Federal Register on April 29, 2015 and codified at 20 Code of Federal Regulations, Part 655, Subpart A requires that each non-agricultural job order placed in connection with an H-2B *Application for Temporary Employment Certification* (H-2B application/ ETA Form 9142B) comply with specific content requirements in order to assure that U.S. workers who apply for the job opportunity through the State Workforce Agency (SWA) are fully apprised of the material terms and conditions of employment.

Important Reminder: As required by 20 CFR 655.16(b), the SWA must notify the Chicago National Processing Center through the [FLAG](#) system in the SWA notes section and change the statue of the job order, if the SWA identifies one or more deficiencies related to the employer’s job order within **six (6) business days** from the date the SWA receives the job order. All deficiencies identified by the SWA must be described in detail and based in Federal, state or local law and/or accompanied by documentation or other evidence.

(1) Go to <https://www.dol.gov/agencies/eta/foreign-labor/wages/meals-travel-subsistence> for most accurate wage rates

Appendix C – Letter to Secretary Shah



STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT

PO Box 9046 • Olympia WA 98507-9046

September 11, 2023

Umair A. Shah, MD, MPH
Secretary of Health
Washington State Department of Health
101 Israel Rd SE
Tumwater, WA 98504-7890

Re: Letter from the Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee regarding housing standards applicable to H-2A temporary agricultural workers housed in motels

Dear Secretary Shah:

The Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee is made up of four employer representatives and four worker representatives appointed by the Employment Security Department's Commissioner. The ASWS Advisory Committee was established by RCW 50.75 to review issues and topics of interest related to the H-2A program, which is the program that allows U.S. employers who meet certain regulatory requirements to bring foreign nationals to the United States to perform temporary agricultural jobs. As the Chairperson of the Advisory Committee, I am sending this letter on our [representatives'](#) behalf.

The ASWS Advisory Committee members have discussed a shared concern that a subset of temporary worker housing: motels, hotels, and other "public accommodations" have been used to house H-2A workers without being held to the health and safety standards required for Temporary Worker Housing (TWH). These motels/hotels have also been exempted from post-occupancy inspection by Department of Health (DOH) inspectors, leading to a gap in effective health and safety oversight of these facilities. This discrepancy has put employers who are following H-2A program health and safety requirements at a competitive disadvantage and exposes affected farmworkers to overcrowding and other health and safety concerns.

Last month, the ASWS Advisory Committee received a report from DOH personnel of significant progress being made in addressing the lack of needed oversight of these facilities. DOH shared plans to begin requiring TWH licensing for the Transient Accommodations (TA) facilities used to house temporary workers, including H-2A workers. The ASWS Advisory Committee wants to express our appreciation for the work that DOH staff have been doing to bridge the gap in oversight and the responsiveness of the agency to our concerns.

We hope and expect that this work will lead to implementation of an effective and consistent inspection and licensing system for all providers of temporary worker housing, including both employers and motel/hotel operators, in time for the 2024 growing season.

Background of Legal Framework:

Under the H-2A program, Employers are required to provide free housing to both foreign workers and some domestic workers who do not live within commuting distance. Before the U.S. Department of Labor (DOL) will approve an application for H-2A workers, the agency must receive assurances that the housing meets applicable safety and health standards. In most cases, that assurance is based on the licensing and inspection carried out by the Washington State DOH. However, as the H-2A program has grown in recent years, an increasing number of employers and farm labor contractors have turned to housing H-2A farm workers in motels and hotels. DOH initially licensed these motels under the temporary worker housing regulations when they were used to house workers. As of 2018, DOH has applied only the transient accommodation rules to these motels and hotels. The transient accommodation standards are intended for the health and safety of short-term travelers, rather than agricultural workers who may be housed there for up to nine or ten months at a time. The transient accommodation regulations fail to address some of the temporary worker housing standards, such as minimum square footage requirements, separate beds for each person and the presence of laundry facilities or personal storage. Also, DOH is legally prohibited from inspecting rooms in transient accommodations once they are occupied, which has prevented DOH from being able to monitor this worker housing.

DOH's practice of not inspecting motels and hotels used to house workers under the TWH standards left a gap in the oversight that caused problems both to growers who need to assure U.S. DOL that their H-2A housing meets the TWH standards and to workers who have been housed in motels that have not been checked for compliance with these health and safety standards. DOH currently has the authority and the responsibility under Chapter RCW 70.114A to inspect and license these facilities (so long as there are 5 or more units or house at least 10 workers) as TWH and apply the temporary worker housing standards.

We appreciate that DOH is taking steps to bring motels and hotels used to house temporary workers under the regulatory umbrella of TWH, providing a consistent regulatory framework to housing safety and health. The ASWS Advisory Committee offers its support in moving implementation of this important process forward.

Sincerely,



Joy Adams, Interim Director, Employment System Policy and Integrity Committee
Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee, Chair

Appendix D – Transient accommodation facilities housing temporary agricultural workers in Washington

Transient Accommodation facilities housing temporary agricultural workers in Washington:

[Chapter 246-358 WAC: Chapter 246-360 WAC:](#)



This communication is intended for TA licensees or owners of hotels and motels in Washington state.

Background:

Washington has always had more farmworkers than farmworker housing. In 1995, to remedy this shortage, the legislature directed the Department of Labor & Industries (L&I) and the Department of Health (DOH) to establish joint rules to encourage the development of housing for farmworkers that is safe and sanitary. Since then, farmworker housing has been regulated in rules adopted by L&I at WAC 296-833 and by DOH at WAC 246-358.

Each year the agricultural workforce in Washington includes large numbers of temporary agricultural workers hired through the federally authorized H2-A visa program. Historically, H2-A employers have been federally authorized to use public accommodations including hotels and motels to meet their housing obligation.

Issue:

Washington agricultural employers currently use transient accommodations, including hotels and motels, to house temporary agricultural workers, including H2-A workers. However, the standards for transient accommodations do not meet the unique safety and hygiene needs of vulnerable temporary agricultural workers. Transient Accommodations can follow the standards under WAC 246-360 but may be out of compliance with Federal requirements for housing H2-A workers.

The United States Department of Labor (USDOL) has clarified that public accommodations used for housing H2-A workers must meet applicable State and Local health and safety standards for temporary worker housing. In Washington, those standards are found at WAC 246-358 and WAC 296-833.

The federal standards are not the complete list of health and safety standards for temporary worker housing in Washington State, which can be found here: [Chapter 246-358 WAC.](#)

Temporary agricultural workers do not meet the definition of “guest” for purposes of the Transient Accommodation rules WAC 246-360. When used to house temporary agricultural workers, transient accommodations, such as motels and hotels, are temporary agricultural worker housing and must comply with Temporary Worker Housing (TWH) WAC 246-358.

Next steps:

Starting in 2024, Transient accommodations used to house temporary agricultural workers must obtain a Temporary Worker Housing license and meet the standards for temporary worker housing at WAC 246-358 and WAC 296-833. Here are a few of the requirements to comply as a temporary worker housing facility:

- Each habitable room occupied by temporary agricultural workers must have their own separate beds, cots, or bunk beds, as well as storage facilities such as lockers or individual wall closets for personal items such as clothing.
- Twelve inches of clearance between each bed, bunk, or cot and the floor.
- Space to separate bunk beds laterally and end to end by at least forty-eight inches.
- The square footage of the floor space in habitable rooms (as described in WAC [246-358-075](#)) is 50 square feet per occupant for sleeping room purposes only, and 100 square feet per temporary agricultural worker must be provided where workers will cook, live, and sleep.
- Sanitary facilities for storing and preparing food at least 1 stove per 10 temporary agricultural workers, sink, dry storage, and refrigeration with adequate storage for each worker.
- Handwashing and bathing facilities in each location for showers, baths, and adequate and convenient water supply for laundry purposes.
- Adequate laundry facilities to accommodate housed workers. 1 washer per 30 workers.
- Each habitable room must have at least one ceiling-type fixture and at least one separate floor- or wall-type convenience outlet.
- Garbage containers with lids.

To obtain a TWH license, you must submit the required documentation to DOH at least **45 days prior to occupying or renting rooms within your facilities to employers, growers, or housing/labor contractors seeking to house temporary agricultural workers.**

Temporary Worker Housing providing five or more dwelling units; or any combination of dwelling units, or spaces that house ten or more occupants must be licensed as required by RCW 70.114A and WAC 246-358.

An operator may request a variance from the requirements of the rule when another means of providing equal protection is provided. Failure to submit a plan or properly implement the requirements of WAC 246-358 may result in administrative action, including license denial, license suspension, or fines.

For further information, visit our DOH Temporary Worker Housing website [Temporary Worker and Migrant Farmworker Housing | Washington State Department of Health](#) or contact our program:

- **E-mail to:** Housing@doh.wa.gov OR

DOH 333-321 May 2023 To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email civil.rights@doh.wa.gov.

- **Mail to:**
Washington State Department of Health
Housing Programs
PO Box 47824
Olympia, WA 98504

Appendix E – Site visit presentation outline

ESQUEMA DE PRESENTACIÓN DE LA VISITA AL SITIO

Intro: El propósito de esta visita es realizar actividades para brindar información para sus empleados, brindarle información y recursos a el empleador, acerca del programa H-2A.

Acerca de nosotros: Somos parte de ESD (Departamento de Seguridad de Empleo) Nuestra oficina de Servicios de Fuerza Laboral Temporal Agrícola (ASWS, por sus siglas en ingles), fue creada para garantizar que el programa H-2A se ejecute correctamente siempre con un enfoque dual, apoyar tanto a los empleadores como a los trabajadores H-2A. Nuestro trabajo es asistir al empleador a cumplir con las garantías a los trabajadores bajo el programa H-2A, y que todas las condiciones sean como deben ser.

Objetivos:

1. **Introducción a ASWS:** establecer una relación con los empleadores y trabajadores para informarlos y familiarizarlos con el trabajo de nuestra oficina.
2. **Información a los trabajadores:** Brindar información y asesoría en general a los trabajadores sobre los términos y condiciones del contrato H-2A y del programa H-2A.
3. **Apoyo al empleador:** brindar educación, asistencia técnica y recursos de cumplimiento a los empleadores.
4. **Acceso al sistema de quejas:** Facilitar el acceso al sistema de quejas del ES (Servicio de Empleo).
5. **Observación:** Observar las condiciones de trabajo y vivienda de los trabajadores.

Presentación a los trabajadores:

Elementos del contrato (Términos y Condiciones del Contrato)

- Divulgación del contrato de trabajo – 20 CFR 655.122(q)
- El AEWR y el comprobante de pago deben incluir la tarifa por hora/pieza, las horas ofrecidas, las horas trabajadas, las deducciones detalladas, las piezas producidas diariamente: 20 CFR 655.122(k)
- Reembolso de viaje – (transporte, hotel, comida, Airbnb, etc.) – 20 CFR 655.122(h)(1)
- Vivienda segura y transporte sin cargo - 20 CFR 655.122(d), 653.501(c)(3)(vi), 20 CFR 655.122(h)(3)
- Cargo por cocina o comida (\$15.46/day o tarifa aprobada) - 20 CFR 655.173. 20 CFR 655.122(g), 20 CFR 655.210(e)
- 75% de garantía de horas - 20 CFR 655.122(i)
- Herramientas y equipos proporcionados por el empleador sin cargo ni depósito - 20 CFR 655.122(f).
- Deducciones (requeridas por ley o divulgadas) - 20 CFR 655.122(p)
- Lugares de empleo, vivienda, cultivos y actividades aprobados

Inquietudes relacionadas con el empleo/Sistema de quejas – 20 CFR 658 Subparte E

- Si se siente cómodo hable con su supervisor, gerente o persona de recursos humanos
- O si prefiere puede contactarnos directamente por teléfono o correo electrónico para cualquier inquietud laboral o pregunta sobre el contrato H-2A
- Tarjeta de presentación entregada al trabajador

Beneficios para empleados:

- Horas de enfermedad
- Horas extras después de 40 horas
- Seguro industrial/daños (¿qué hacer si te lesionas en el trabajo?)

Cosas importantes que debe saber:

- Sin tarifas de contratación - 20 CFR 655.135(j)
- Sin confiscación de pasaporte - Código 18 de EE. UU. § 1592

Conversación con empleador:

- Educar al empleador sobre las obligaciones de contratación de la regla del 50%



SITE VISIT PRESENTATION OUTLINE

Intro: The purpose of this visit is to perform outreach to your employees, provide education and resources about the H-2A program to you, the employer.

About us: We are a part of ESD (Employment Security Department). Our office, the Office of Agricultural & Seasonal Workforce Services (ASWS), was created to make sure that the H-2A program is administered properly with a dual focus, support both H-2A employers and workers. Our job is to assist the employer in meeting the guarantees to workers under the H-2A program, and that all conditions are as required by law.

Objectives:

2. **Introduction to ASWS:** Build rapport with employers and workers to inform and familiarize them with the work of our office.
3. **Information to workers:** Provide general information and counseling to workers about the terms and conditions of the H2A contract and the H2A program.
4. **Employer support:** Provide education, technical assistance, and compliance resources to employers.
5. **Complaint system access:** Provide access to the ES (Employment Service) complaint system.
6. **Observation:** Observe the working and living conditions of workers.

Presentation to workers:

Elements of the contract (Contract Terms and Conditions)

- Disclosure of work contract – 20 CFR 655.122(q)
- AEWR and pay stub must include hour/piece rate, hours offered, hours worked, itemized deductions, pieced produced daily – 20 CFR 655.122(i)
- Travel reimbursement – (transportation, hotel, food, Airbnb, etc.) – 20 CFR 655.122(h)(1)
- Safe housing and transportation without charge - 20 CFR 655.122(d), 653.501(c)(3)(vi), 20 CFR 655.122(h)(3)
- Kitchen or meal charge (\$15.46/day or approved rate) - 20 CFR 655.173, 20 CFR 655.122(g), 20 CFR 655.210(e)
- 75% guarantee of hours - 20 CFR 655.122(i)
- Employer provided tools and equipment without charge or deposit - 20 CFR 655.122(f).
- Deductions (required by law or disclosed) - 20 CFR 655.122(p)
- Approved employment locations, housing, crop and activities

Employment related concerns / Complaint system – 20 CFR 658 Subpart E

- If you feel comfortable talk to you supervisor, manager or HR representative
- Or, if you prefer, you can call or email us directly with any employment concern or H-2A contract question
- Business card provided to the worker

Employee benefits:

- Sick leave
- Overtime over 40 hours per week
- Industrial insurance/injury (what to do if you have been injured?)

Important things to know:

- No recruitment fees - 20 C.F.R. 655.135(j)
- No passport confiscation - 18 U.S. Code § 1592

Employer Conversation:

- Educate employer on the 50% rule hiring obligations



Appendix F – Employment Security field check guide

April 2020

Field Check Guide



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Introduction

Field checks are required by the Employment Training Administration (ETA). If a worker is placed on a intra/interstate agricultural job order, the State Workforce Agency (SWA), the Employment Security Department (ESD) in our state, must notify the employer in writing that it must, through its Office of Agricultural and Seasonal Workforce Services (ASWS), and/or Federal staff, conduct a random, unannounced field check to determine whether wages, hours, and working and housing conditions are being provided as specified in the job order.

Where the ESD has made placements on 10 or more intra or interstate agricultural job orders during the quarter, the ASWS must conduct field checks on at least 25 percent of the total of such orders. Where the ESD has made placements on nine or fewer job orders during the quarter (but at least one job order), the ASWS must conduct field checks on 100 percent of all such orders. A placement occurs when WorkSource staff refer a jobseeker to a job order and the employer hires the referred jobseeker. ESD via its statewide system of WorkSource centers has the responsibility to verify and record placements on job orders by contacting the employer and the referred jobseeker.

The field check is comprised of an interview with the owner/operator of the farm, a documentation review, an inspection of housing, an inspection of the working conditions in the field including sanitation, farm labor contractor registration verification, general safety and health compliance assistance, interviews with individual workers, and a debrief with the owner/operator. These checks are intended to ensure compliance with the terms and conditions of the job order, employment-related laws, and to promote healthy and safe working conditions.

Step One: Pre-Visit Field Check Prep

The field check begins in the office. Before beginning an onsite review, the director of the office of ASWS and review staff must review the terms and conditions in the corresponding ETA 790 job order. Staff must be knowledgeable of the protections provided to MSFWs in the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and H-2A regulations if the job order corresponds with a H-2A petition to hire temporary foreign workers. Prior to visiting any location, staff may review any previous field check reports for the employer, including violations of employment-related law. Staff must review the corresponding ETA 790 interstate job order. A sample 790 form is included in the references section of this document. The job order contains the terms and conditions for work and housing. Staff may also check to see if there are any complaints against the farm by reviewing ES complaint logs and by asking local enforcement agencies (e.g. Wage and Hour Division, Occupational Safety and Health Administration, etc.).

Before going out to perform the field check make sure you bring a copy of this guidance document, a blank copy of documentation checklist, as well as the ETA 790. Having the ETA 790 on hand will allow you to verify the information as you complete the review processes.

Step Two: Owner/Operator Interview

This is an opportunity to build a rapport with owner/operator while setting the tone for the day. SWA staff should explain the purpose of the field check, verify that the working and living conditions comply with agricultural employment law, and assist employers with correcting apparent violations within five days (informal resolution). Field check staff must be clear that after five days, the ASWS will refer any unresolved apparent violations to appropriate enforcement agencies and depending on the case may opt to initiate the Discontinuation of Services Administrative process (DOS). SWA staff can use this portion of the

day to collect information that relates to employer documentation, housing, and working conditions. Information gathered during this interview is verified when ASWS staff review documentation, and the housing and working conditions. Owner/Operators also have the chance to ask questions about regulations. SWA staff discuss compliance findings at the end of the visit and allow the employer to informally resolve findings within five days of the field check.

There are several topics to cover during this discussion. Open with softer questions that do not have direct compliance-related answers. Open-ended questions will create a more conversational tone. Perhaps begin by asking about how long the farm has been operating and transition to questions about the size of the farm, and the primary crops. Be sure to ask questions about where documentation, like time records, is stored, and who has access to the information. Now is an opportunity to confirm the H-2A contract dates. From there begin asking questions about the total number of employees, both Foreign H-2A and domestic. The employer may not be an H-2A employer if he/she placed a non-criteria job order with the local office. In that case, the employer would only have domestic workers. There is a list of required information on the documentation checklist. Use the checklist to capture notes about the conversation that can be used after the visit to complete the documentation of the findings.

Step Three: Documentation Review

Wage and Hour Division has created a *Wage Statement* form that assists agricultural employers in complying with payroll documentation requirements. This document can also assist ASWS staff in determining if the employer maintains adequate payroll records. The employer must record each worker's weekly earnings on the *Wage Statement* form or a similar form that contains enough information to determine the worker's hours and gross pay in the workweek. The *Wage Statement* form can be found at: https://www.dol.gov/whd/forms/form_wh-501.pdf and as an addendum to this guide.

For owner/operators that do not use the *Wage Statement* the documentation must be checked to assure the required pieces of information have been captured and are consistent with the job order. Use the table in the documentation checklist to show which of the required elements are present and consistent with the ETA-790, on each form.

If workers receive a piece rate, SWA staff may use the Piece Rate Calculator Tool to assist in calculating wages. Completing the data for columns A, B, C, D, E, and G. Columns F, H, and I calculate difference in guaranteed wage and actual wage paid to the worker. This tool may be helpful to ensure minimum wage compliance.

In addition to the worker documentation, this is also a chance to ensure any vehicles used to transport of workers are insured and adequate insurance of drivers licensed to operate these vehicles.

Step Four: Housing Check

Ensuring safe and healthy living environments is a required element of the field check. All housing approved for occupancy by MSFWs is listed on the ETA 790. At the time of the field check, the housing has already received a Preoccupancy Inspection to ensure the building meets OSHA or ETA housing standards. This check is to ensure there have not been significant changes to the status of the housing and that workers are only housed at approved locations listed on the ETA 790 job order. There are some common findings that you should be mindful of such as: trash-related issues, pile up or missing lids, missing or damaged fire alarms, and screens missing from windows. It is important that you get a sense of the overall sanitation of the living and cooking facilities. This documentation checklist contains a list of items to be checked.

Several states have created guides that cover OSHA and ETA housing standards. Some examples of guides for each housing standards are below. The full regulatory language is included in the reference section.

OSHA Temporary Labor Camp Housing Requirements

(For housing constructed on or after April 3, 1980)

- ▶ Washington State Department of Health Temporary Housing Inspection Check List:
<https://www.doh.wa.gov/Portals/1/Documents/2300/TWHInspectionList.pdf>

The Occupational Safety and Health Administration (OSHA)

Title 29 – Subtitle B – Chapter XVII – Part 1910 – Subpart J - §1910.142

Title 29: Labor

Part 1910 – Occupational Safety and Health Standards

Subpart J-General Environmental Controls

Step Five: Field Sanitation Requirements

Owner/Operators are required to provide toilets, potable drinking water, and hand-washing facilities to farmworkers. When a group of workers will be in one location for three or more hours, there must be one toilet and handwashing facility for every 20 employees. Water must be dispensed in single-use cups or by fountains, and readily accessible to all employees. Facilities must be located within a quarter mile walk from work or at the closest point of vehicular access. Please note, premoistened towelettes are no longer an acceptable substitute for handwashing facilities. More information available on WHD factsheet at <https://www.dol.gov/whd/regs/compliance/whdfs51.pdf>.

Step Six: Farm Labor Contractor Registration

The MSPA requires Farm Labor Contractors (FLCs) who transport MSFWs to obtain a certificate of registration from USDOL. Staff conducting field checks should verify that FLCs are registered with USDOL. WHD publishes a list of registered FLCs at this website: <https://www.dol.gov/whd/regs/statutes/FLCList.htm>

Copies of the FLCs' current certificate of registration may be kept alongside worker payroll records and available during the documentation review. Agricultural employers must only utilize the services of registered FLCs. FLCs are required to be in possession of their registration card and show their registration to field check staff upon request. The registration details whether a FLC is authorized to hire, house, and/or transport vehicles. The registration also lists the approved vehicles with their VINs and the approved drivers.

Failure of an FLC to provide a current registration, utilization of unregistered FLCs, expired registrations, performing FLC duties that are not approved (e.g. FLC providing transportation when approval is only to hire workers), and using unapproved vehicles/drivers to transport workers are types of apparent violations that may be identified during this portion of the field check. More information about FLC registration is available at this WHD website: https://www.dol.gov/whd/forms/fts_wh530.htm.

Step Seven: General Safety and Health Compliance Assistance

Farmworkers are exposed to numerous safety, health, environmental, and respiratory hazards. These include vehicle rollovers, heat exposure, falls, musculoskeletal injuries, hazardous equipment, apple bins, unsanitary conditions, and pesticides.

General safety and health compliance assistance is not the primary purpose of the field check, however, ASWS staff should be knowledgeable of common hazards in agricultural occupations. If ASWS staff identify safety and health hazards during the field check, they should alert the owner/operator and provide compliance assistance on how to mitigate these hazards. Each State also has an OSHA Consultation Program which provides onsite compliance assistance to employers to identify and mitigate hazards. A state directory of the OSHA Consultation Program is located here:

https://www.osha.gov/dcsp/smallbusiness/consult_directory.html

Step Eight: Farmworker Interview

Speaking directly with the farmworkers is important to verify compliance with terms and conditions of the job order. It is also a chance to verify information gathered during the previous portions of the field check, including information about wages, working conditions, and living conditions provided by the owner/operator. This guide includes sample questions in the documentation checklist. There is a blank page after the interview questions to record notes from the farmworker interview. Notes should summarize responses, document any compliance findings, assist ASWS staff to debrief the owner/operator, and assist with writing a report for the field check.

Step Nine: Debrief with Owner/Operation

This is a brief discussion about some of the high-level findings. This is an opportunity for the owner/operator to learn what, if any, issues may have come up during the check. It is important that the owner/operator understand that this is a preliminary conversation and after documentation review there may be additional issues that will need to be addressed.

Step 10: Post Visit

The owner/operator has five days to informally resolve apparent violations identified during the field check. If the owner/operator indicates that the violations are resolved within five days, ASWS staff must confirm through a follow up visit. When violations are not resolved within five business days, ASWS staff must refer the apparent violations to the appropriate enforcement agency/ies.

Important: ASWS staff must not attempt informal resolution and must immediately refer certain apparent violations to enforcement agencies. ASWS staff must immediately refer the apparent violations that cause imminent danger to workers, is willful or egregious, or involves civil rights (i.e. unguarded machinery that clearly is an amputation hazard, egregious systemic wage theft, discriminative hiring/labor practices based on national origin or other protected category, sexual harassment, human trafficking, etc.)

ASWS staff must document all findings, actions taken to resolve findings, and referrals to enforcement agency after the field check. A report (or similar facsimile) that creates a record of the field check is required.

The Field Check Documentation Checklist

It is essential that there be evidence of any potential issues that are identified as part of the field check. Using the documentation checklist provides clear objective measurements of what was observed during the field check.

See attached Checklists and Samples:

- ▷ Field Check Documentation Checklist
- ▷ Sample Field Check Documentation Checklist
- ▷ Sample ETA 790 Form

Resources

L&I

Wages

<https://lni.wa.gov/workers-rights/agriculture-policies/wages>

Rest Breaks & Meal Periods

<https://lni.wa.gov/workers-rights/agriculture-policies/rest-breaks-and-meal-periods>

Payroll Records

<https://lni.wa.gov/workers-rights/agriculture-policies/recordkeeping>

Agricultural Jobs for Youth

<https://lni.wa.gov/workers-rights/agriculture-policies/agricultural-jobs-for-youth>

Department of Health

Temporary Worker Housing (Migrant Farmworker)

<https://www.doh.wa.gov/LicensesPermitsandCertificates/FacilitiesNewReneworUpdate/TemporaryWorkerHousing/FrequentlyAskedQuestions>

OSHA

Agricultural Operation Main

<https://www.osha.gov/dsg/topics/agriculturaloperations/index.html>

OSHA Agricultural Standards

<https://www.osha.gov/dsg/topics/agriculturaloperations/standards.html#standards>

Heat Illness

<https://www.osha.gov/heat/>

Workplace safety project brochure

https://www.osha.gov/dte/grant_materials/fy10/sh-20827-10/workplace_safety_brochure.pdf

Field Sanitation Standard

<https://www.osha.gov/laws-regs/standardinterpretations/1991-10-31-0>

Occupational Safety and Health Standard for Agriculture

https://www.osha.gov/pls/oshaweb/owastand.display_standard_group?p_toc_level=1&p_part_number=1928

Link to animal specific safety recommendations

https://www.osha.gov/pls/imis/sic_manual.display?id=2&tab=group

EPA

Agricultural Worker Protection Standard:

<https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>

DOL

Cultivating Compliance – An Agricultural Guide to Federal Labor Law

<https://www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf>

Wage and Hour Division - Fact Sheet #49: The Migrants and Seasonal Agricultural Worker Protection Act

<https://www.dol.gov/whd/regs/compliance/whdfs49.pdf>

Legislation

CFR Title 20 – Chapter V – Part 653 – Subpart F – Agricultural Recruitment Systems for U.S. Workers (ARS)

§653.503 Field checks.

- a. If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.
- b. Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to this subpart) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. This requirement must be met on a quarterly basis.
- c. Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.
- d. If SWA or Federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the SWA must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as E.O. related issues and others identified by the Department through guidance.) If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F, of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.
- e. SWAs may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of SWA personnel. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment-related laws. An enforcement agency field check must satisfy the requirement for SWA field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.
- f. ES staff must keep records of all field checks.

Housing Specific Guidance

§1910.142 Temporary labor camps.

- a. **Site.**
 1. All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.
 2. All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

3. The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

b. Shelter.

1. Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.
2. Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.
3. Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.
4. The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.
5. All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.
6. Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.
7. All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.
8. All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.
9. In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.
10. In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.
11. All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

c. Water supply.

1. An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.
2. A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of $2\frac{1}{2}$ times the average hourly demand.
3. The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.
4. Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

d. Toilet facilities.

1. Toilet facilities adequate for the capacity of the camp shall be provided.
2. Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or

otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

3. A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.
 4. Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.
 5. Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.
 6. Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.
 7. Every water closet installed on or after August 31, 1971, shall be located in a toilet room.
 8. Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.
 9. An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.
 10. Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.
- e. Sewage disposal facilities.** In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.
- f. Laundry, handwashing, and bathing facilities.**
1. Laundry, handwashing, and bathing facilities shall be provided in the following ratio:
 - i. Handwash basin per family shelter or per six persons in shared facilities.
 - ii. Shower head for every 10 persons.
 - iii. Laundry tray or tub for every 30 persons.
 - iv. Slop sink in each building used for laundry, hand washing, and bathing.
 2. Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.
 3. An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.
 4. Every service building shall be provided with equipment capable of maintaining a temperature of at least 70 °F. during cold weather.
 5. Facilities for drying clothes shall be provided.
 6. All service buildings shall be kept clean.
- g. Lighting.** Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and

storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

h. Refuse disposal.

1. Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.
2. Garbage containers shall be kept clean.
3. Garbage containers shall be emptied when full, but not less than twice a week.

i. Construction and operation of kitchens, dining hall, and feeding facilities.

1. In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965), which is incorporated by reference as specified in §1910.6.
2. A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.
3. No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

j. Insect and rodent control. Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

k. First aid.

1. Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.
2. Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

l. Reporting communicable disease.

1. It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.
2. Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram, telephone, electronic mail or any other method that is equally fast.

[39 FR 23502, June 27, 1974, as amended at 47 FR 14696, Apr. 6, 1982; 49 FR 18295, Apr. 30, 1984; 61 FR 9238, Mar. 7, 1996; 63 FR 33466, June 18, 1998; 70 FR 1141, Jan. 5, 2005; 70 FR 53929, Sept. 13, 2005]

Employment and Training Administration (ETA)

Title 20 – Chapter V – Part 654 – Subpart E

§654.400 Scope and purpose.

- a. This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances. Local Wagner-Peyser Act Employment Service (ES) offices, as part of the State ES agencies and in cooperation with the ES program, assist employers in recruiting farmworkers from places outside the area of intended employment. The experiences of the ES agencies indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State ES system to deny its intrastate and interstate recruitment services to employers until the State ES agency has ascertained that the employer's housing meets certain standards.
- b. To implement this policy, §653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted, and the ES staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or this subpart, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

§654.401 Applicability.

- a. Employers whose housing was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980, may continue to follow the full set of the Department's ETA standards set forth in this subpart.
- b. The Department will consider agricultural housing which complies with ETA transitional standards set forth in this subpart also to comply with the Occupational Safety and Health Administration (OSHA) temporary labor camp standards at 29 CFR 1910.142.

§654.402 Variances.

- a. An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local ES office serving the area in which the housing is located. This application must:
 - 1. Clearly specify the standard(s) from which the variance is desired;
 - 2. Adequately justify that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and
 - 3. Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.
- b. Upon receipt of a written request for a variance under paragraph (a) of this section, the local ES office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.
- c. The variance granted by the RA must be in writing, must state the particular standard(s) involved, and must state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State Workforce Agency (SWA) and the local ES office. The employer must submit and the local ES office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

- d. If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate SWA, and the local ES office. The notice also must offer the employer an opportunity to request a hearing before a Department of Labor Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§658.424 and 658.425 of this chapter.
- e. The procedures of paragraphs (a) through (d) of this section only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§654.404 through 654.417.

§654.403 [Reserved]

Housing Standards

§ 654.404 Housing site.

- a. Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.
- b. Housing must not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.
- c. Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.
- d. The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

- a. An adequate and convenient supply of water that meets the standards of the State health authority must be provided.
- b. A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.
- c. Common drinking cups are not permitted.

§ 654.406 Excreta and liquid waste disposal.

- a. Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.
- b. Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.
- c. Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

§ 654.407 Housing.

- a. Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.
- b. Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

- c. The following space requirements must be provided:
 - 1. For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;
 - 2. For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant;
 - 3. For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.
- d. Housing used for families with one or more children over 6 years of age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.
- e. Separate sleeping accommodations must be provided for each sex or each family.
- f. Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.
- g. At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.
- h. Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

- a. All outside openings must be protected with screening of not less than 16 mesh.
- b. All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

- a. All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (°F) if during the period of normal occupancy the temperature in such quarters falls below 68 °F.
- b. Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.
- c. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor, or roof.
- d. When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

- a. All housing sites must be provided with electric service.
- b. Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.
- c. Adequate lighting must be provided for the yard area, and pathways to common use facilities.

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

§ 654.411 Toilets.

- a. Toilets must be constructed, located, and maintained so as to prevent any nuisance or public health hazard.
- b. Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.
- c. Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.
- d. Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.
- e. Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.
- f. Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.
- g. Toilet facilities must be located within 200 feet of each living unit.
- h. Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.
- i. Privy structures and pits must be fly-tight. Privy pits must have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and hand washing.

- a. Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.
- b. There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated "men" or "women" in English and in the native language of the persons expected to occupy the housing.
- c. Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.
- d. Laundry facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

- a. When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:
 1. A cookstove or hot plate with a minimum of two burners;
 2. Adequate food storage shelves and a counter for food preparation;
 3. Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;
 4. A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and
 5. Adequate lighting and ventilation.

- b. When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:
 1. Stoves or hot plates, with a minimum equivalent of 2 burners, in a ratio of 1 stove or hot plate to 10 persons, or 1 stove or hot plate to 2 families;
 2. Adequate food storage shelves and a counter for food preparation;
 3. Mechanical refrigeration for food at a temperature of not more than 45 °F.;
 4. Tables and chairs or equivalent seating adequate for the intended use of the facility;
 5. Adequate sinks with hot and cold water under pressure;
 6. Adequate lighting and ventilation; and
 7. Floors must be of nonabsorbent, easily cleaned materials.
- c. When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment, and operation must be in accordance with provisions of applicable State codes.
- d. Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

§ 654.414 Garbage and other refuse.

- a. Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.
- b. Provisions must be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

§ 654.415 Insect and rodent control.

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

§ 654.416 Sleeping facilities.

- a. Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.
- b. Any bedding provided by the housing operator must be clean and sanitary.
- c. Triple deck bunks may not be provided.
- d. The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.
- e. Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

- a. All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.
- b. In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24×24 inches.

- c. All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.
- d. Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.
- e. Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.
- f. Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a 2 1/2 gallon stored pressure or 5-gallon pump-type water extinguisher.
- g. First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.
- h. No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.
- i. Agricultural pesticides and toxic chemicals may not be stored in the housing area.

CFR Title 29 Chapter XVII Part 1928

1928.110(a) Field Sanitation

Scope. This section shall apply to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.

1928.110(b)

Definitions.

Agricultural employer means any person, corporation, association, or other legal entity that:

- i. Owns or operates an agricultural establishment;
- ii. Contracts with the owner or operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or
- iii. Recruits and supervises employees or is responsible for the management an condition of an agricultural establishment.

Agricultural establishment is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

Hand-labor operations means agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of paragraph (c)(2)(iii) of this section, "hand labor operations" also include other activities or operations performed in conjunction with hand labor in the field. Some examples of "hand labor operations" are the hand-cultivation, hand-weeding, hand-planting and hand-harvesting of vegetables, nuts, fruits, seedlings or other crops, including mushrooms, and the hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field. "Hand-labor" does not include such activities as logging

operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

Handwashing facility means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

Toilet facility means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is applied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

1928.110(c)

Requirements. Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

1928.110(c)(1)

Potable drinking water.

1928.110(c)(1)(i)

Potable water shall be provided and placed in locations readily accessible to all employees.

1928.110(c)(1)(ii)

The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet the needs of all employees.

1928.110(c)(1)(iii)

The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

1928.110(c)(2)

Toilet and handwashing facilities.

1928.110(c)(2)(i)

One toilet facility and one handwashing facility shall be provided for each (20) employees or fraction thereof, except as stated in paragraph (c)(2)(v) of this section.

1928.110(c)(2)(ii)

Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy.

1928.110(c)(2)(iii)

Toilet and handwashing facilities shall be accessibly located an in close proximity to each other. The facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field.

1928.110(c)(2)(iv)

Where due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at the point closest vehicular access.

1928.110(c)(2)(v)

Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

1928.110(c)(3)

Maintenance. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

1928.110(c)(3)(i)

Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

1928.110(c)(3)(ii)

Toilet facilities shall be operational and maintained in clean and sanitary condition.

1928.110(c)(3)(iii)

Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

1928.110(c)(3)(iv)

Disposal of wastes from facilities shall not cause unsanitary conditions.

1928.110(c)(4)

Reasonable use. The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues.

1928.110(c)(4)(i)

Use the water and facilities provided for drinking, handwashing and elimination.

1928.110(c)(4)(ii)

Drink water frequently and especially on hot days;

1928.110(c)(4)(iii)

Urinate as frequently as necessary;

1928.110(c)(4)(iv)

Wash hands both before and after using the toilet; and

1928.110(c)(4)(v)

Wash hands before eating and smoking.

1928.110(d)

Dates –

1928.110(d)(1)

Effective Date. This standard shall take effect on May 30, 1987.

1928.110(d)(2)

Startup Dates. Employers must comply with the requirements of paragraphs:

1928.110(d)(2)(i)

Paragraph (c)(1), to provide potable drinking water, by May 30, 1987;

1928.110(d)(2)(ii)

Paragraph (c)(2), to provide handwashing and toilet facilities, by July 30, 1987;

1928.110(d)(2)(iii)

Paragraph (c)(3), to provide maintenance for toilet and handwashing facilities, by July 30, 1987; and

1928.110(d)(2)(iv)

Paragraph (c)(4), to assure reasonable use, by July 30, 1987.

[52 FR 16095, May 1, 1987; 76 FR 33612, June 8, 2011]