



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Wednesday, May 15, 2024

Time: 1:00 p.m. – 3:00 p.m.

Location: Virtual meeting via Zoom

Physical address: Employment Security Department, 212 Maple Park Ave SE, Olympia, WA 98501 | Maple Leaf Conference Room

Committee members present

- Jon DeVaney
- Michael Gempler
- Delia Peña
- Elizabeth Strater (Proxy for Victoria Ruddy)
- Michele Besso
- Edgar Franks
- Brenda Rivera (Proxy for Jeff Perrault)

Non-voting agency representatives present

- Uriel Iñiguez (LNI)
- Gerald Caird (DOH) (Proxy for Juan Gamez)

Committee members/Non-voting agency representatives absent

- Rosalinda Guillen
- Ignacio Marquez (WSDA)

ESD staff/Guest presenters

- Joy Adams
- Bertha J. Clayton
- Vickie Carlson
- Petra Meraz
- Carlos Sandoval-Larios
- Olga Kondratjeva
- Tom Silva (USDOL WHD)
- Stephen Yim (USDOL WHD)

Summary

Meeting Recorded

This meeting was recorded and is available on <https://esd.wa.gov/newsroom/Ag-committee>

Welcome, Housekeeping and Introductions

Employment Security Department (ESD) Policy Director, Joy Adams, welcomed everyone, addressed housekeeping items.

Committee Business, Agenda Review (See Addendum II.)

Recording timestamp **00:2:20**

Joy Adams reviewed the agenda for the meeting and asked if anyone had any questions. (See Addendum I.)

Employment Security Department (ESD) Policy Director, Joy Adams, asked Vickie Carlson to take roll.

Seven voting members were present. (Quorum)

ASWS Office Update – Bertha J. Clayton, ASWS Director (See Addendum II.) Recording timestamp [00:06:40](#)

Inter-agency coordination: ASWS Compliance + LNI Community Relations Recording timestamp [00:27:84](#)
Committee requested data from ASWS Office at the April meeting, ASWS Office provided it here. (relating to the proportion of total site visits that have been coordinated)

Transportation Safety Initiative (See Addendum III.) Recording timestamp [01:03:42](#)
Tom Silva, District Director, United States Department of Labor, Wage and Hour Division USDOL, WHD
Stephen Yim, Community Outreach & Resource Planning Specialist, USDOL, WHD

Weather Related Update – Bertha J. Clayton (See Addendum IV.) Recording timestamp [01:34:13](#)

Customer Experience Study Update – Bertha J. Clayton (See Addendum V.) Recording timestamp [01:37:39](#)
Olga Kondratjeva, Program Evaluation, Research and Analysis Manager, ESD

Good of the Order – Joy Adams Recording timestamp [01:39:41](#)
Future Agenda Items

- Standard Occupation Classification (SOC) orientation & filing challenges (moved to May 15th 2024)
- FLC Grant allocation calculations
- Update on new H-2A rules
- Inter-agency coordination: ASWS Compliance + LNI Community Relations update
- Heat Safety
- Customer Experience Study
- Review draft 2024 ASWS Report

Public Comments Recording timestamp [01:43:11](#)
None

Adjourned

Joy Adams thanked everyone for their continued active participation and for their commitment to this work. Meeting adjourned: 3:00 PM.


2024 Meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **June 20, 2024 – 1:00 p.m. to 5:00 p.m.** – *In person*, Union Gap WorkSource: 1205 Ahtanum Ridge Drive, Union Gap, WA 98903

Addendums

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee
 Wednesday, May 15, 2024 | 1:00 pm – 3:00 pm | Zoom | 212 Maple Park Ave SE Olympia, WA 98501

TIME	TOPIC
1:00 pm	Joy Adams, Policy Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> Agenda Review – Joy Adams Roll call – Vickie Carlson, Management Analyst, ASWS Office, ESD Approval of the April 2024 Meeting Minutes
1:05 pm	ASWS Office Update <ul style="list-style-type: none"> Bertha J. Clayton, Director, ASWS Office, ESD Petra Meraz, Supervisor, Foreign Labor Certification Program, ASWS, ESD Carlos Sandoval-Larios, Temporary Supervisor, Compliance Team, ASWS, ESD
1:30 pm	Committee Education – Petra Meraz <ul style="list-style-type: none"> Standard Occupation Classification (“SOC Codes”) Orientation Common filing issues in March and April
1:50 pm	Transportation Safety Initiative: United States Department of Labor, Wage and Hour Division <ul style="list-style-type: none"> Tom Silva, District Director, USDOL, WHD Stephen Yim, Community Outreach & Resource Planning Specialist, USDOL, WHD
2:10 pm	Break
2:20 pm	Weather Related Update <ul style="list-style-type: none"> Drought, production impacts Winter freeze Contract impossibilities filed
2:40 pm	Customer Experience Study Update <ul style="list-style-type: none"> Olga Kondratjeva, Program Evaluation, Research and Analysis Manager, ESD
2:50 pm	Good of the Order
2:55 pm	Public Comment
3:00 pm	Adjourn <ul style="list-style-type: none"> Next meeting: Wednesday, June 20, 2024, 1-5 pm, <i>In-Person</i>, Union Gap WorkSource: 1205 Ahtanum Ridge Drive, Union Gap, WA 98903

GROUND RULES
 No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need |

ADDENDUM II.

ASWS Office Update - May 2024



Bertha J. Clayton, ASWS Director, ESD

ESD's FLC Grant planning for FY 2024



TEGL No. 12-21, Change 2 (4/26/2024)

- Provides guidance to ESD re: FLC activities
- Announces allotments for FY 2024 FLC grants
 - Expenditure period for FY 2024 → 10/1/2023-9/30/2026

ESD working on annual grant application/plan to ETA due by May 24

- Annual plan reflects planned FLC activities to be performed over the next year
- USDOL encourages states to spend all grant funds within FY the funds are received but allows states up to 2 years to expend all funds allocated for a fiscal year.

Washington Total Grant Allocation: \$692,094.00 (Base allocation + ongoing work allocation)



WA's 2023 grant allocation: \$664,713.00

- 2024 is 4% YoY increase
- USDOL has communicated that additional funding was allowed for FLC staff travel and training, otherwise funding is generally flat.

Formula for allocating funds is explained in the TEGL

- Generally, allocations are based on state's proportion of estimated national H-2A housing, state's share of national H2A and H2B processing workload, state's share of total H2A job orders, and state's share of total H2B job orders.

Conducting Field Checks: Inter-agency Coordination



Final JLARC hearing was 4/24/2024

- Coordination required by RCW 50.75.020(2)(c)

Status of Field Check Coordination Inter-agency agreement

- ESD & L&I Working on 2nd draft.
- Draft will be shared with DOH and WSDA for review and feedback.

As reported at April 2024 ASWS Meeting

Inter-agency coordination: ASWS Compliance + LNI Community Relations



Coordinated employer outreach with LNI Community Relations team (Site Visits)

- Agreement Date: 4/26/23
- Objective of agreement:
 - 1) Coordinate joint educational outreach to Migrant Seasonal Farmworkers (MSFWs) 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.
- How it's going:
 - Challenges – Employer reluctance/resistance to LNI, negative impact on relationship between ESD and employers, scheduling logistics, employee attention span.

Data Request: Proportion of site visits ASWS coordinated with LNI Community Relations



39%

(66 coordinated site visits/171 total site visits performed by ASWS)

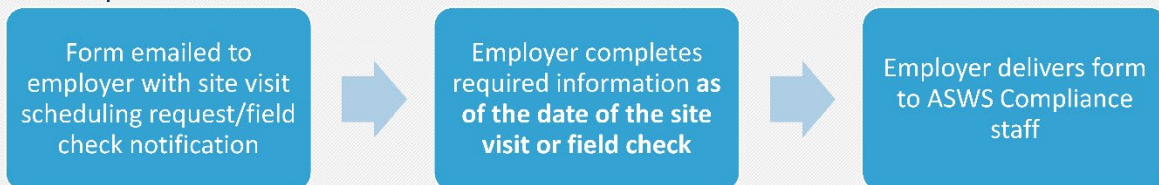
(Performance Period: 10/1/2023-5/1/2024)

Implementation of HB 2226, Sec. 1 *Collecting data re: H2A workers during site visits and field checks*



- Bill requires ESD to implement law by 6/6/2024
- ASWS is working with ESD Communications to develop standard reporting form.

Planned process:



- ESD Compliance Staff will input data and report to ASWS Committee quarterly.

ESD DATA Division is working on implementation of Sec. 2 (worker wage surveys)

ASWS Office Duties: RCW 50.75.020



- **Processing and adjudicating foreign labor certification applications** from employers;
- **Processing complaints** consistent with 20 CFR 658, Subpart E;
- Conducting **Field Visits** (AKA “Site Visits”)
- Conducting **Field Checks**
 - When conducting a field check, the official **shall coordinate**, to the extent possible, with the **LNI, DOH, and WSDA** in order to limit disruption to agricultural employers and efficiently use government resources;
- Administering **Discontinuation of Services** per 20 CFR 658, Subpart F
- Conducting **training and outreach** to employers H2A employers

Administering Discontinuation of Services per 20 CFR 658, Subpart F *Reporting period: 10/1/2023-5/1/2024*



Initiated by ESD	0
Pending Initiation by ESD	1*

*Final debarment determination made by USDOL WHD. ESD must initiate per 20 CFR 658.501(a)(4).

Processing and Adjudicating Foreign Labor Certification Applications



Petra Meraz, Foreign Labor Certification Program Supervisor, ASWS, ESD

Year to Date Comparison



	2024	2023	% YoY Increase or Decrease
■ # Applications	351	338	+4 %
■ # Workers Requested	29968	32273	-7 %
■ # Withdrawn Applications	14	22	-36 %
■ # Withdrawn Workers	378	2451	-85 %
■ # DOL Denied Applications	2	6	-66 %
■ # DOL Denied Workers	20	132	-85 %
■ # Commenced Applications	224	210	+7 %
■ # Commenced Workers	14900	18048	-17 %
■ # Impossibilities Applications	1	0	--
■ # Impossibilities Workers	150	0	--
■ # Active Applications	223	170	+31 %
■ # Active Workers	14640	18072	-19 %

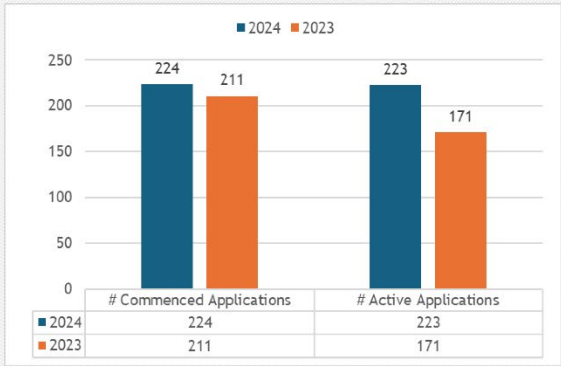
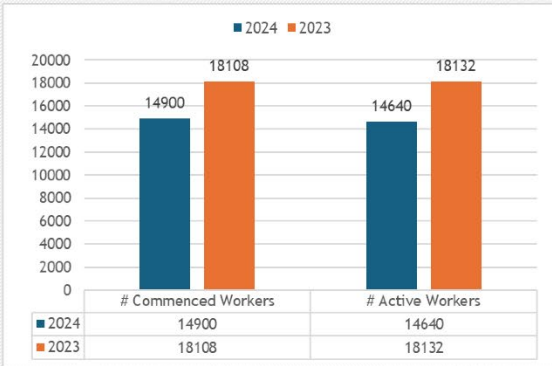
Monthly Comparison



PY 2024 Month to Month Comparison

	Mar	Apr
# Applications	82	34
# Workers Requested	10214	3883
# Withdrawn Applications	4	2
# Withdrawn Workers	85	4
# DOL Denied Applications	0	0
# DOL Denied Workers	0	0
# Commenced Applications	77	41
# Commenced Workers	2345	3105
# Impossibilities Applications	0	1
# Impossibilities Workers	0	150
# Active Applications	76	41
# Active Workers	2285	2905

Commenced & Active YTD Comparison



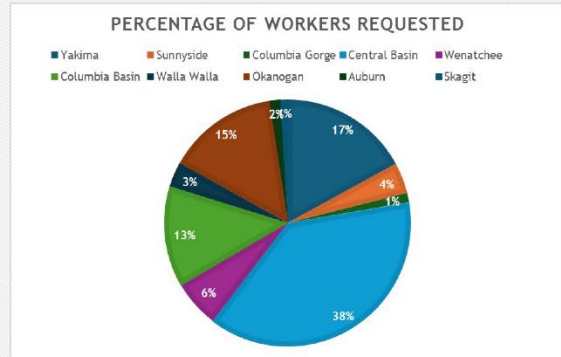
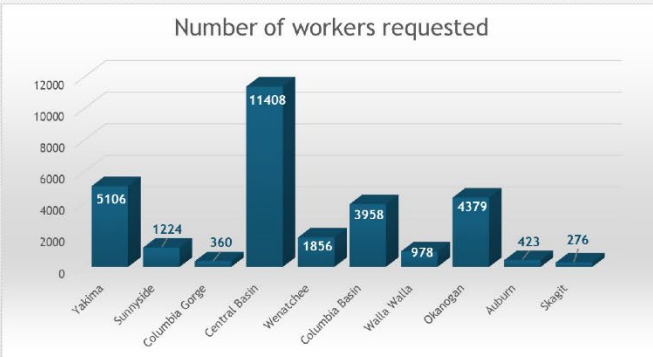
Current Active Contracts/Workers



Includes ALL active contracts from previous PY to Current Date

As of 4/30/2024	
Current Active Contracts	223
Current Workers requested on those contracts	14640

Number & Percentage of workers requested by AHO to date

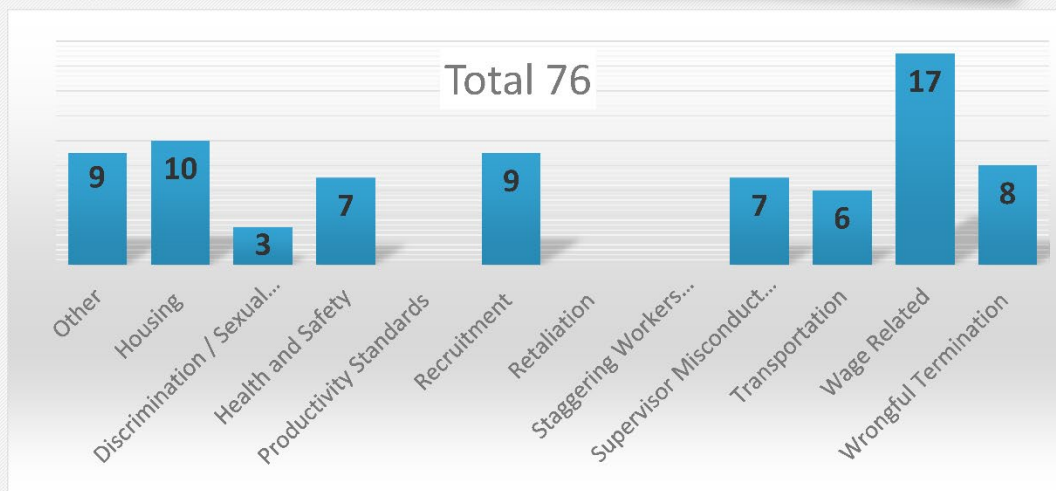


Completing Site Visits (field visits) and Field Checks



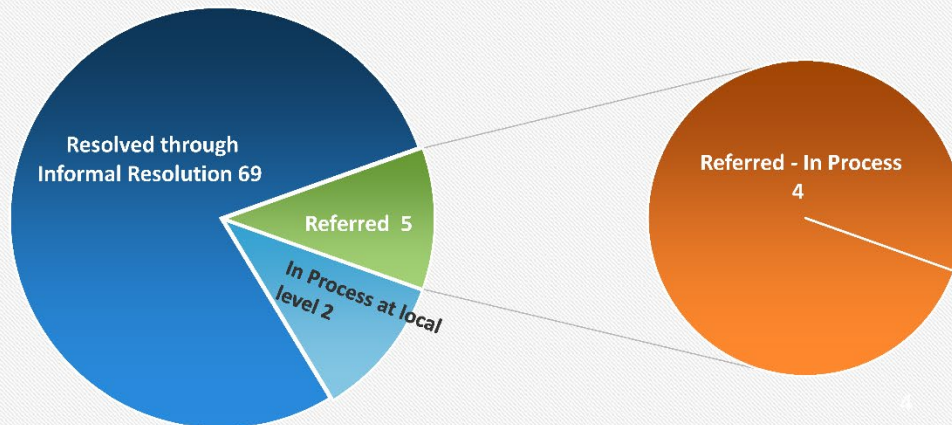
Carlos Sandoval-Larios, Temporary Compliance Team Supervisor, ASWS, ESD

Processing complaints consistent with 20 CFR 658, Subpart E *Reporting Period: 10/01/23 - 05/01/24*



Status of Complaints / Apparent Violations

Reporting Period: 10/01/23 - 05/01/24



Conducting Field Checks

Review period: 10/01/23 - 5/01/24



20 CFR 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.

(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.

Number of Placements

(seeker referred by ESD to job order and started working)

41

Number of Field Checks Performed by ASWS

12

Conducting Field Visits (Site Visits)

Review period: 10/01/23 - 5/01/24



Site Visits: The ASWS **compliance team** conducts site visits (aka field visits) to H-2A workers to **inform workers** of their **rights** and **contract assurances** under the H-2A regulations. Additionally, **employers** are provided with **education** regarding program requirements and given **compliance resources** and **technical support**.

Site Visit Goal:	100% of job orders
Number of Site Visits Performed by ASWS Compliance Staff	171
Approximate number of workers who attended Site Visits and received information	11,231

Administering Discontinuation of Services per 20 CFR 658, Subpart F

Reporting period: 10/01/2023 - 5/01/2024



Initiated by ESD	0
Pending Initiation by ESD	1*
Pending Investigation by ESD	1**

*Final debarment determination made by USDOL WHD. ESD must initiate per 20 CFR 658.501(a)(4).

** Pending investigation for 20 CFR 658.501(a)(3) (failure to comply with assurances in job order). Requested information received from employer representative on 4/11/24.

ADDENDUM III.

Transportation Safety Initiative



Employment
Security
Department
WASHINGTON STATE

Tom Silva, District Director
United States Department of Labor, Wage and Hour Division
Stephen Yim, Community Outreach & Resource Planning Specialist
United States Department of Labor, Wage and Hour Division



Essential Protections For Agricultural Workers

TRANSPORTATION



Recent Incident

COURT ORDERS HOLIDAY WREATHS PRODUCER TO PAY \$1.8M IN BACK WAGES, DAMAGES TO 700 WORKERS; WAGE INVESTIGATION BEGAN AFTER VAN CRASH INJURED WORKERS

Continental Floral Greens serves Costco, Publix, Target, Trader Joe's, Walmart, Wegmans

SEATTLE – A federal court has ordered a producer of Christmas wreaths and seasonal greens for major retailers – including Costco, Publix, Target, Trader Joe's, Walmart and Wegmans – to pay \$1.85 million in back wages and damages to nearly 700 workers after the U.S. Department of Labor found the employer failed to pay required overtime wages and violated migrant and seasonal workers' rights.

The department's [Wage and Hour Division](#) determined that Continental Floral Greens denied hundreds of workers their required overtime pay for hours over 40 in a workweek, a violation of the Fair Labor Standards Act. Division investigators also found the Shelton company submitted, under penalty of perjury, fraudulent information on job orders about wages, housing and transportation to bring workers to the U.S., a violation of the [H-2B worker program](#). Continental Floral Greens employs temporary workers from El Salvador, Guatemala and Mexico.

The federal H-2B program permits businesses to employ temporary visa workers and provides protections for similarly employed U.S. workers.

The division's investigation also identified violations of the [Migrant and Seasonal Agricultural Worker Protection Act](#) related to wages, housing, transportation, disclosures and recordkeeping. Specifically, Continental Floral Greens failed to inform workers of employment conditions, furnish complete wage statements, pay wages when due, ensure safe and healthy housing, or provide temporary workers with safe transportation.

The investigation was opened after a van transporting 14 migrant workers crashed in November 2022 in Comitz County, and four Salvadoran workers suffered serious injuries and were taken to a Longview hospital. Investigators determined the Continental Floral Greens' employee driving the van lacked required certification to operate the vehicle. After the accident, the Washington State Patrol charged the driver for negligent driving. Investigators also discovered that several workers were not wearing seatbelts at the time of the accident.

On March 26, 2024, the U.S. District Court for the Western District of Washington in Tacoma entered a [consent judgment and order](#) requiring the employer to pay \$885,000 in back wages and \$885,000 in liquidated damages to hundreds of vulnerable workers due to the FLSA violations. The court also ordered the Continental Floral Greens to pay workers \$74,000 in additional back wages to the workers due to MISRA violations, and \$40,000 in penalties to the department.

"The Wage and Hour Division is committed to holding employers accountable so that vulnerable workers come home safe and

Vehicle Safety & Health

- Safety:
 - DOL Standards-cars, vans, station wagons making intrastate trips less than 75 miles.
 - DOT Standards- all other transportation
- Properly licensed driver
- Insurance
 - The amount of vehicle liability insurance shall not be less than \$100,000 for each seat in the vehicle, but in no event is the total insurance required to be more than \$5,000,000 for any one vehicle.
 - \$50,000 property damage

Which standards apply, DOL or DOT?

<u>Type of vehicle</u>	<u>Total Trip Mileage</u>	<u>Total Trip Mileage</u>
	75 miles or less	More than 75 miles
Car: Passenger auto	DOL	DOL
	Station Wagon	DOL
	OTHER	DOT
Pick-up Truck		
Workers riding in cab	DOL	DOL
Workers in truck bed	DOL	DOT
Day-haul operations		
Passenger auto	DOL	DOL
Station Wagon	DOL	DOL
OTHER	DOT	DOT

MSPA insurance requirements

- **Option A:** \$100,000 per seat (up to \$5,000,000 for any one vehicle)
(Part 500.121)
- **Option B:** State Workers' Comp. Insurance coverage. (Person responsible must also obtain \$50,000 in property damage insurance coverage
For loss or damage in any one accident to the property of others. NOTE: If vehicle use is not covered by state worker's comp. policy, must have Option A above.) (Part 500.122 and 123)
- **Option C:** Liability bond from U.S. Dept. of Treasury approved "surety" assuring payment for any liability up to \$500,000 for damage to persons or property arising out of transportation of workers in connection with the business or operations of the person doing the transporting. (Part 500.124)

MSPA Drivers' License Requirements

- **Current valid motor vehicle operator's license to operate the vehicle (as provided by applicable state law)**
- AND...**
- **Each FLC and FLCE who drives must carry a Doctor's Certificate (WH-Form 515)**

What is a "raitero", and are they subject to MSPA?

A person who, for a fee, provides transportation to farm workers.

(NOTE: If the amount charged each worker transported exceeds the actual cost of providing the transportation, the person probably fits the definition of "farm labor contractor" under MSPA)

Common vehicles violations:



- No fixed seats on vehicles
- Insufficient insurance
- Improper or no license for driver
- Vehicle safety problems-exhaust pipe broken, brake lights out, etc.

(DOL standards are described in Part 500.104; DOT standards are in Part 500.105)

MSPA-covered transportation or bona fide car-pooling arrangement?

Carpooling vs. Transportation

- Time spent driving in non-carpooling situations constitutes hours worked
- Transporting is a named activity. The persons involved should be properly registered as an FLC unless the person is a registered FLCE
- Carpooling does not include transportation arrangements in which a FLC participates or which is specifically directed or requested by a FLC, AGER, or AGAS

Carpooling vs. Transportation

- Carpooling does not exist where:
 - FLC/AGER/AGAS assists by paying for gas, oil, or repairs, or
 - vehicle owner is paid more than other workers for the same work, or
 - FLC/AGER/AGAS provide the vehicle, or
 - FLC has arranged for the purchase of any vehicle used by the workers, or
 - recreational vehicles or buses are used, or
 - the driver's right to work is assured by his willingness to drive

Joint responsibility

- An AGER or AGAS will be held jointly responsible for these items when they specifically direct or request a farm labor contractor to use the contractor's vehicle to perform a task.

Reduce your chance of rollover

Use caution on rural roads!

When a vehicle goes off a rural road, the vehicle can overturn when it strikes a ditch or embankment, or is tripped by soft soil. Nearly 75 % of rollover crashes occur in rural areas, so practice caution when driving on rural roads.

Check your tires!

- Excessively worn or improperly inflated tires can lead to a loss-of-control situation and a rollover.
- At least once a month, check that the van's tires are properly inflated and tread is not worn down.

Check your safety belts!

- 80 percent of people killed in rollover crashes in 15-passenger vans were not wearing their safety belts
- Require all occupants to use their safety belts or appropriate child restraint

Check yourself, the driver!

- U.S. DOT recommends 15-passenger vans be driven by trained and experienced drivers.
- Ensure you are well rested and alert.
- Maintain a safe speed for weather and road conditions.

What will the Department of Labor do to help?



- Public Meetings
- Meetings with Grower Associations
- Cross Training with State agencies & Farmworker Assistance Groups
- Newsletter articles-Trade Journals
- Contacts with State Farm Bureaus

Where to Get More Information

- <http://www.nhtsa.dot.gov/cars/problems/studies/15PassVans/15PassCustomerAdvisory.htm> This is the U.S. Dept. of Transportation's (NHTSA) 15-passenger van consumer advisory page, with several informative links.
- <http://www.dol.gov/whd/mspa/index.htm> (This is Wage & Hours' web page entitled "Compliance Assistance – Migrant and Seasonal Agricultural Worker Protection Act – MSPA))

ADDENDUM IV.

Weather Related Update



Ignacio Marquez, Regional Assistance to the Director, Department of Agriculture
Bertha J. Clayton, Director, ASWS Office, ESD

Weather Related Update



- Drought, production impacts
- Winter freeze
- Contract Impossibilities

ADDENDUM V.

Customer Experience Study Update



Olga Kondratjeva, Program Evaluation, Research and Analysis Manager, ESD

Customer Experience Study



Purpose: Better understand the experience of farmworkers and employers in the ESD application and referral.

Key updates:

- Anthro-Tech submitted the first report of Phase II in January.
- Anthro-Tech is preparing for the second part of Phase II:
 - Alignment on research plan and interview guides.
 - Fieldwork is planned in June (Whatcom/Skagit and Yakima).
- Planned final report date is August 2024.

Good of the Order



- Summary of Meeting
- Future Agenda Items
- Public Comment

Public Comment



PUBLIC COMMENT:

If you would like to make public comment, including any suggested future agenda items, please state your name and spell it so we can capture it correctly for the minutes, as well as the organization you represent if any. Your comments are being recorded. However, if you would like your comments to be included in the meeting minutes, please submit them in writing via email to Vickie Carlson at Vickie.Carlson@esd.wa.gov. Please limit your comments to two minutes.

COMENTARIO PUBLICO:

Si desea hacer un comentario público, incluyendo temas ó elementos de seguridad para agendas futuras, por favor indique su nombre y deletreelo para poder capturarlo correctamente en los apuntes de la junta, también indique la organización a la que representa si hay alguna. Sus comentarios estan siendo grabados. Sin embargo, si desea que sus comentarios sean incluidos en los apuntes de la junta, por favor envíelos por escrito por correo electrónico a Vickie Carlson a vickie.carlson@esd.wa.gov. Por favor limite sus comentarios a dos minutos.



Agricultural and Seasonal Workforce Services
ADVISORY COMMITTEE



Next In-Person

ASWS Advisory Committee Meeting

THURSDAY, June 20, 2024

1:00 p.m. – 5:00 p.m.

Union Gap WorkSource

1205 Ahtanum Ridge Drive, Union Gap, WA 98903

Contact information

Joy Adams, Director of Employment System Policy & Integrity Division joy.adams@esd.wa.gov

Employment Security Department • Employment System Policy & Integrity