



# Agricultural and Seasonal Workforce Services Advisory Committee

## Meeting details

**Date:** Wednesday, August 16, 2023

**Time:** 1:00 p.m. – 3:00 p.m.

**Location:** Zoom

### Committee members present

- Delia Peña
- Jon Devaney
- Jeff Perrault
- Michele Besso
- Elizabeth Strater (proxy for Victoria Ruddy)
- Rosalinda Guillen
- Michael Gempler
- Edgar Franks

### Committee members absent

- Ignacio Marquez

### Non-voting agency representatives

- Uriel Iniguez
- Juan Briceno-Gamez

### ESD Staff

- Joy Adams
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Margarito Cabrera
- Gustavo Aviles
- Caitlyn Jekel
- Carlos Sandoval-Larios

## Summary

### Welcome and Introductions

Employment Security Department (ESD) Deputy Policy Director, Chairperson, Joy Adams, welcomed everyone, roll call was taken. A quorum was established, eight voting members were present. Motion to approve July meeting minutes: Jeff Perrault; second; Jon DeVaney. Motion carried unanimously.

### Agenda

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

**ASWS Office – Bertha Clayton, Director, ASWS Office, ESD** (Addendum II.)

Recording timestamp **00:04:28**

### Questions & Answers / Comments

#### Office of Foreign Labor Certification (OFLC) Review:

**Rosalinda:** Are visits public? **Bertha:** No

**Jon:** Will there be a report? **Bertha:** Yes. It will be shared with the committee. **Joy:** Committee will be briefed, whether there is a report, or not.

**Mike:** Supply with detailed description of program and function because OFLC should be learning from WA. WA is fulfilling its obligation and many states are not.

**Rosalinda:** Would like to see documents that are presented to them. Why is OFLC monitoring WA? **Bertha:** Can't speak for them, but OFLC is prioritizing this monitoring. OR and CA will likely be receiving monitoring, too.

**National Monitor Advocate (NMA) Employment and Training Administration (ETA) Monitoring:**

**Rosalinda:** Are these interviews in person? **Bertha:** Virtual. Joy has sent out Webex invitation.

**Regional Monitor Advocate (RMA) (ETA) –** Will be presenting at September ASWS Advisory Committee meeting.

**Transient Accommodations (TA) – State Workforce Agency (SWA) Inspection Approach:** Stop Gap Approach to verify that all TA units housing temporary workers meet federal Temporary Worker Housing (TWH) standards. Enhanced verification procedure. Target of 9/1 for housing verifications for all applications filed after 9/1.

**Rosalinda:** Does this include bunk beds? **Bertha:** Yes.

**Uriel:** LNI does not issue licenses for under 10 occupants. Has ASWS discussed verifications under 10?

**Bertha:** No. We are still building.

**Juan:** Correction: Department of Health (DOH) is changing POLICY, not RULES. ESD/DOH/LNI can discuss less than 10. We need to work on an MOU – can discuss it at the next agency meeting.

**Uriel:** Would be nice to streamline process. **Juan:** Need to look at MOU.

**Michele:** Confirming this will happen for ETAs filed after 9/1. What are we doing in the meantime? **Bertha:** Continuation of ad hoc housing verification.

**Rosalinda:** Thank you for doing this work. Need more inspections. The more agencies that have eyes on housing – the better. Intent of committee formation was coordination of state agencies. This is a good example.

**Juan:** All agencies will work to improve this process. SWA is ultimately responding to TWH standards. For a facility to be certified by the Department of Labor (DOL), they need to meet ETA standards. DOH's authority is state authority. Moving forward – require TA licensees to dual license TWH if they are going to have units in designated units. ESD does the final verification.

**Bertha:** We have 19 TA units on application so far and the number is expected to grow as farmers utilize Farm Labor Contractors (FLCs). Will talk about FLCs in September.

**FLC Applications – Petra Meraz, FLC Program Supervisor**

Recording timestamp 00:26:56

DOL received a certification extension request from employer due to heat.

**Petra:** To clarify – FLC staff are not housing inspectors – verifying information as provided on ETA.

**Action Item (ESD)**

- **Rosalinda:** Can we have workers “withdrawn” and “denied” sections separated? **Petra:** We will update the chart for the next fiscal year.

**Compliance Team update – Margarito Cabrera, Compliance Supervisor**

Recording timestamp 00:33:00

**Questions & Answers / Comments:**

**Mike:** Do you visit all the sites where there are farm labor contractors? Do you verify where they are supposed to be working? **Mago:** Yes. The Compliance team goes to where the workers are. Most of the site visits occur at housing. We do not verify where the workers are working. We only verify at housing and some worksites.

**Rosalinda:** Why are you going to housing? It would make more sense to go to worksites to verify that workers are working where they are supposed to be. **Mago:** We don't want to interrupt working operations, but we do visit the worksites at times.

**Rosalinda:** It's more "real" to observe workers in the field. When ASWS reports data – it would be valuable to know if field checks and site visits are for farm labor contractors.

**Mago:** (Clarification) – field checks involve interviews of workers while working, sanitation checks, etc. Field checks are more involved.

**Mike:** Do you ever interview employees of farm labor contractors where they are working? If that is not being done, it should be. **Mago:** Yes, we have done both site visits and field checks to farm labor contractors.

**Mike:** (Clarification) referring to H-2A employees of farm labor contractors.

**Bertha:** (Clarification): Most issues related to farm labor contractors arise after the comparison of a pre-site visit review and what is occurring in the field (i.e., worksites). Site visits are usually conducted in housing because workers are off work and more amenable to listening and interacting.

**Edgar:** There is a growing concern about farm labor contractors and their influence in the field.

**Joy:** At the September ASWS meeting, the committee will discuss farm labor contractors as its discussion topic.

**Legislative Update – Caitlyn Jekel, Director, Government Relations, ESD**

Recording timestamp 00:49:48

WA Cares – Exemption for non-immigrant visa holders (Addendum III.)

**Questions & Answers / Comments:**

**Mike:** I would like to put on the record that this legislation is strongly supported by WA Grower's League.

**Jon:** Appreciated prior stake-holding. I have heard this is a challenge for workers and employers and appreciate ESD taking the lead in addressing this issue.

**Caitlyn:** Willing to engage with groups to provide information and answer questions.

**WSDA Pesticide Advisory Board (Addendum IV.)**

Recording timestamp 00:57:05

**Kelle Davis, Pesticide Management Division Policy Assistant, WSDA**

**Questions & Answers / Comments:**

**Michele:** Is this advisory board going to address safety and health issues (Considering WSDA looking for farmworker board member)?

**Kelle:** Bill was run by Rep. Dent, not WSDA. Farmworker positions added to the board – stipulation in the bill that it does not cover same topics as Pasco board. Safety and health will not be the focus of this committee as it is with the Pasco board.

**Customer Experience Study (Addendum V.)**

Recording timestamp 01:04:36

**Gustavo Aviles, Chief of Analytics Officer/LMI Director, ESD**

**Open Committee Discussion – Bertha Clayton (Addendum VI.)**

Recording timestamp 01:13:10

Domestic Recruitment & TA/TWH Follow-Up

**Bertha:** Committee should identify discussion topics that committee wants to discuss in detail.

**Jon:** Committee has previously discussed topics and formed recommendations that have hit roadblocks requiring exemptions at state/federal levels. Would be helpful to review these topics and discuss how to address underlying issues. Examples: Application to USDOL to suppress employer info, how ESD communicates to workers if we cannot use preferred platforms (WhatsApp). Committee tends to lose momentum and focus once administrative roadblocks occur-let's go back and review them again.

**Mike:** Frequent ask that that there be enhanced recruitment and/or improved recruitment. Needs to be consideration of quick turnaround of using visas and getting foreign person in country if, and when the domestic workers quit. This is a big issue – many efforts go into hiring domestic workers, and there is a high quit rate leaving employers in difficult positions because it is difficult for them to replace the people and get employees needed to do the work. Time-sensitive need. Want to keep committee focused on doing better recruiting domestic people AND ALSO looking at employment patterns and quit rate to determine support for trying strategies. The track record is not good. Need to allow a way for employers to succeed.

**Michele:** Understood. First thing – need to recruit workers! Question: What is being done to recruit workers for these jobs? Now that there is no requirement for newspaper publication – there is a general requirement that recruitment be what it would be for non-H-2A jobs. Requirement that the same level of effort be used to recruit H-2A workers. Also, what is being done to get the word out about H-2A jobs – the committee should make recommendations. The study confirmed what we know. Traditionally, hiring was done through word of mouth/supervisor recruitment, etc. Once H-2A workers come – no incentive to do that. If there isn't word of mouth, how is word getting out about jobs?

**Rosalinda:** The way that workers are being recruited (WorkSource/outreach) – what is narrative being used by ESD outreach staff to recruit domestic workers? Can't recruit domestic workers if they know that H-2A workers will fill positions. Clear that large employers prefer H-2A workers. There is no incentive for farmworkers to see long term job security with WA growers – insecurity is growing. The message out there is that domestic workers use their rights as a worker, and therefore, growers will prefer H-2A workers. Migrant routes have stopped because there is little job security and prospects. Some growers who want H-2A workers start changing local hiring patterns for long-term workers – it is harder to get re-hired. Workers will work for good growers who respect their rights and have good wages.

**Edgar:** Perception in the community is that H-2A workers are preferred by employers. Anthro-Tech's (A-T) report confirmed this. The best way to recruit and retain workers is to have the best wages. Prevailing wage survey – wages have decreased – this does not recruit a local workforce. Policies and procedures should reflect the intent to recruit workers.

**Joy:** Appreciate the honesty and openness of committee's discussion.

**Jeff:** Comment from grower's perspective – H-2A program is expensive and would prefer not to use it. Would like to utilize the available local workforce. H-2A program wages have been increased by DOL's new rules. There is an incentive for employers to recruit more domestic workers.

**Rosalinda:** Want to thank Jeff for comment. We want to work with farmers and growers to recruit workers – would like to have a direct relationship with growers. Are employers willing to sit down with FUJ? We believe that if you hire workers from your community – you are not only meeting the needs of your business, but also supporting the local economy. Now, we see the more H-2A workers that come in – local economy begins to shift toward where money is being spent. Need to have honest conversations about what it will take for

workers to work for growers' season after season. Conversations should be real and produce visible results for workers so that workers can see economic well-being and health.

**Michele:** How do we take this to the next step? Issues are identified -- rather than having it end -- how do we follow up?

**Joy:** Want to move it forward. Let's look at barriers encountered (per Jon's suggestion) and discuss underlying issues. Use A-T report as framework of issues.

**Michele:** Good. Do issues raised today fit in A-T research? A-T found out about how people traditionally look for jobs, but now we need to know what potential solutions are.

**Rosalinda:** Let's see what has happened in relation to issues brought up. Discussions would be better in person. We have moved forward in working on the H-2A program, but the recruitment of domestic workers has not moved forward in the way that I hoped. If it had, the number of H-2A workers would be going down, and domestic workers would be going up. Need to give this issue as much time as we do the H-2A program.

#### **ASWS Committee Letter to DOH Leadership – Joy Adams**

Recording timestamp **01:42:54**

**Michele:** Drafted letter reflecting committee's support for policy change for dual licensing of TA facilities (TWH license).

**Mike:** The letter accomplishes the committee's objectives.

Motion to Approve ASWS Committee Letter to DOH Leadership: Mike Gempler; second; Rosalinda Guillen. Motion passed unanimously.

Vickie Carlson will prepare for Joy Adams' signature (on behalf of the committee).

#### **Action Item (ESD)**

- **Joy:** Compile a list of issues from prior meetings and those discussed today.

#### **Public Comment**

None

Recording timestamp **01:47:16**

#### **Good of the Order – Joy Adams**

Recording timestamp **01:37:04**

#### **Future Agenda Items:**

- **Bertha:** RMA, Committee orientation, open discussion regarding farm labor contractors, looking forward to 2024.
- **Juan:** Need to discuss MOU between ESD/DOH/LNI (housing inspections). Need to also discuss roles and responsibilities as it pertains to agency committee membership.

#### **Adjourned**

Joy Adams thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 2:50 p.m.

#### **2023 Meetings**

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

- **September 20, 2023 – 1:00 p.m. to 5:00 p.m.** In-Person Meeting (Cosecha Court II Community Room 250 Cherry Hill RD Granger, WA 98932)

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee  
 Wednesday, August 16, 2023 | 1:00 pm – 3:00 pm | Zoom | 212 Maple Park Ave SE Olympia WA 98501

TIME	TOPIC
1:00 pm	Welcome Joy Adams, Deputy Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> <li>• Roll Call – Vickie Carlson</li> <li>• Agenda Review – Joy Adams</li> <li>• Approval of the July meeting minutes</li> </ul>
1:10 pm	ASWS Office Update – Bertha Clayton, Director, ASWS Office, ESD <ul style="list-style-type: none"> <li>• ASWS Office – Bertha Clayton</li> <li>• FLC Applications – Petra Meraz, Foreign Labor Certification Program Supervisor</li> <li>• ASWS Compliance Update – Margarito Cabrera, Compliance Unit Supervisor</li> </ul>
1:30 pm	WA Cares – Exemption for non-immigrant visa holders Caitlyn Jekel, Director, Government Relations, Executive Programs, ESD
1:45 pm	WSDA Pesticide Advisory Board Kelle Davis, Pesticide Management Division Policy Assistant, WSDA
2:00 pm	Break
2:10 pm	Customer Experience Study – Phase II Update Presenter: TBA
2:20 pm	Open Committee Discussion, Joy Adams <ul style="list-style-type: none"> <li>• Topic: Domestic Recruitment</li> </ul>
2:40 pm	TA/TWH Follow up – ASWS Committee letter to DOH Leadership, Joy Adams <ul style="list-style-type: none"> <li>• Motion to approve letter</li> </ul>
2:50 pm	Good of the Order – Joy Adams
2:55 pm	Public Comment
3:00 pm	Adjourn

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



Bertha J. Clayton, ASWS Director, ESD

Monitoring of ASWS Programs:



August 21-25, 2023 - USDOL Office of Foreign Labor Certification:

- **Objective:** Assess progress in meeting terms and conditions of the grant agreement, document that funds are being spent in the most effective manner to accomplish FLC program activities, review program performance information, and offer technical assistance designed to continuously improve service delivery.
- **Fiscal Team:** Olympia, WA & **Program Team:** Kennewick, WA

August 21, 2023 - USDOL Employment Training Administration (ETA):

*20 CFR 658.602 (National Monitor Advocate, during harvest season) must visit four states with highest level of MSFW activity during the prior fiscal year)*

- **Objective 1:** Meet with SMA and ES staff to discuss MSFW Service Delivery
- **Objective 2:** Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES delivery and coordination with other agencies.

## Monitoring of ASWS Programs:



September 20, 2023

USDOL Employment Training Administration (ETA): Regional Monitor Advocate

- Routine monitoring visit (1-day)
- Meet with ES Administrator to discuss ES delivery.
- Will attend ASWS Advisory Committee Meeting

Joint Legislative Audit & Review Committee (JLARC) – Legislative Audit

- Field work winding down
- Report due October 2024

## Transient Accommodations - Updated approach by SWA



- ASWS developing “stop-gap” procedure to verify that all TA units housing Temporary Workers meet federal TWH standards.
  - DOH plans to implement dual licensing model for TA facilities housing temporary workers “prior to 2024 growing season”.
- Enhanced verification procedures will include confirming that minimum square footage per occupant standards are met. Additionally: number of beds, kitchenette, personal storage will be prioritized.
- Phases: Design → Train Staff → Pilot → Implement → Evaluate/Make adjustments
- Target: September 1 (all TA units on ETA-790s filed after 9/1/23 will be verified for TWH compliance by ASWS).



## FLC Applications update



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

## FLC Applications update

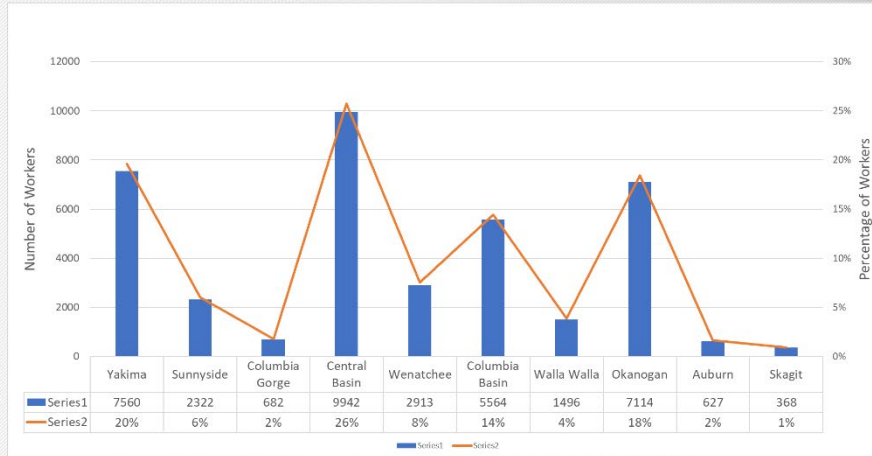


	PY 2023 H-2A Data		PY 2022 H-2A Data	
	10/1/2022	8/10/2023	10/1/2021	8/10/2022
	Applications	Workers requested	Applications	Workers requested
Total processed to date	422	38588	390	34406
Withdrawn/Denied	30	2743	29	2525
Contracts Commenced	334	31230	321	28513
Contract Impossibility	0	0	4	299
Active Cases	306	29724	282	28943

\*The numbers reported are not reflective of the number of foreign workers that arrive in Washington State.

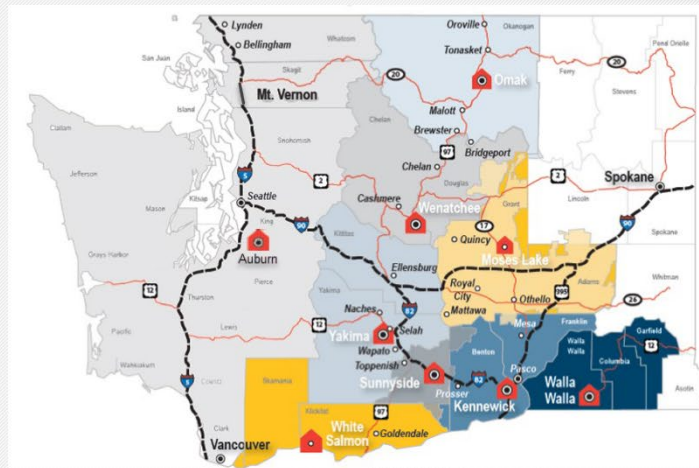


# Main Application Holding Offices



Confirmed by 14 Employers – 673 workers are in Washington

# Main Application Holding Offices Map

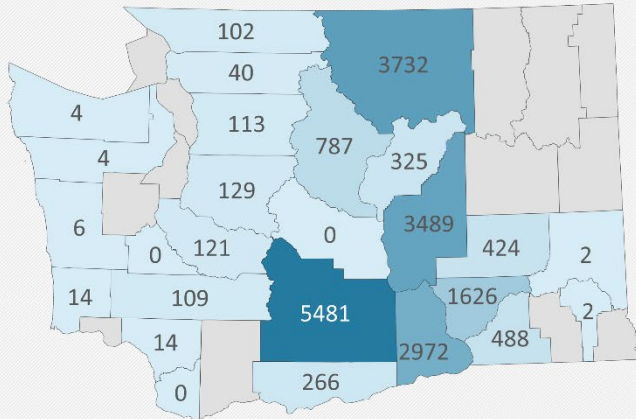




## Approximate Workers Contacted



By County from Jan-July 2023



Site Visits by Month



## Field Checks – 2023



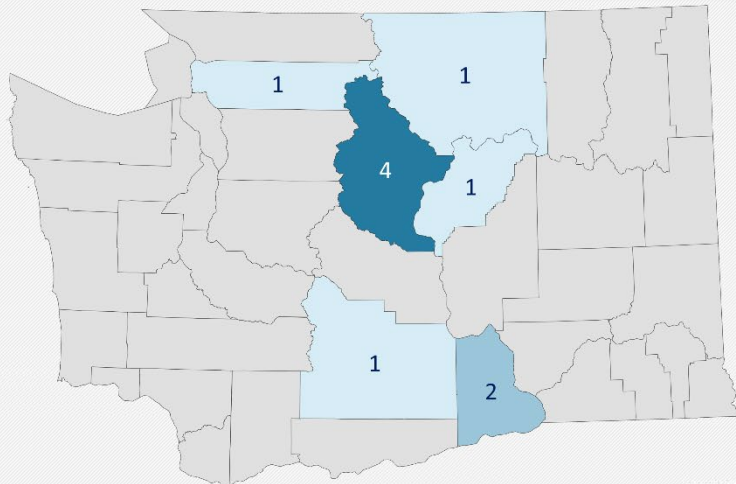
### 20 CFR 653.503 Field Checks

(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.

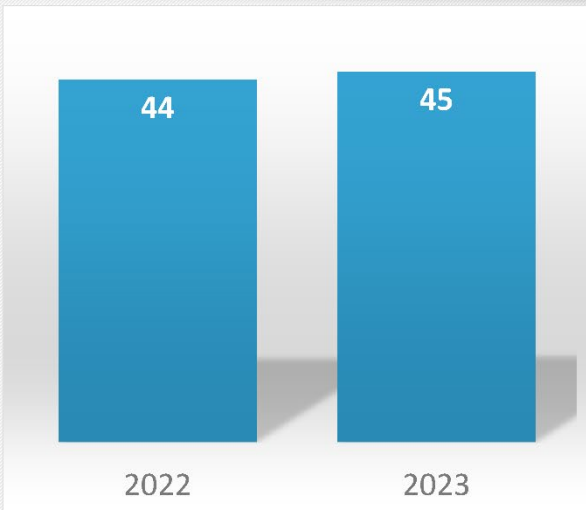
Number of Placements <i>(seeker referred and started working)</i>	14
Number of Field Checks Performed by ASWS	10
Number of Field Checks currently pending	2

# ASWS Field Checks by County in 2023

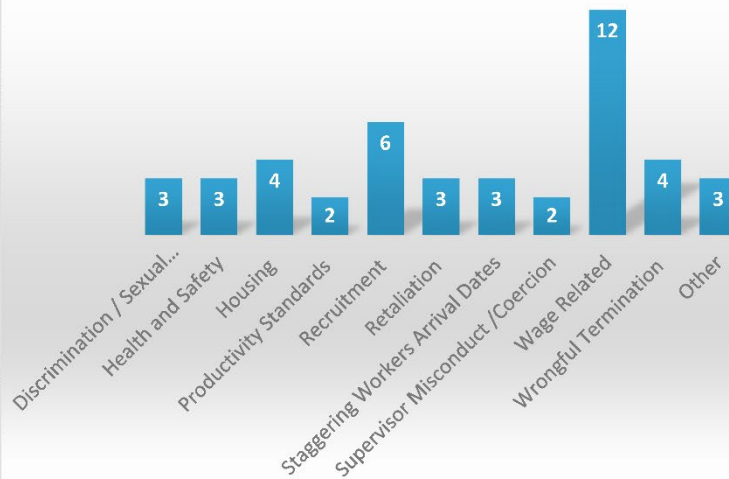


Total Field Checks  
**10**

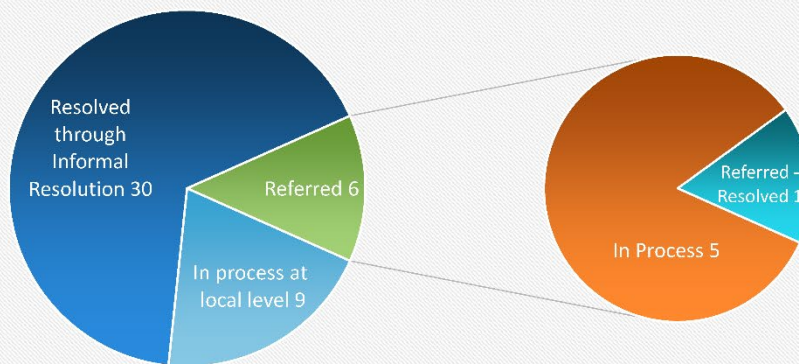
# Complaints / Apparent Violations – 2022 vs 2023



## Type of Allegations: Complaints / Apparent Violations Jan - July 2023



## Status: Complaints / Apparent Violations Jan - June 2023



## Complaint / Apparent Violation Scenario



Carlos Sandoval-Larios, Compliance Specialist, ASWS, ESD

### ADDENDUM III.

## Legislative Update



Caitlyn Jekel, Government Relations Director, ESD

## Legislative Update



### WA Cares Program: Non-immigrant Work Visa Exemptions

**Current Statute**

- Employees with a non-immigrant work visa are automatically assessed premiums for the WA Cares fund.
- These workers may apply for an exemption from WA Cares premium assessment, should they choose to do so.
- Exemption requests are processed by the Department on a quarterly basis.

**Premium collection experience**

- The requirement to apply for the exemption is burdensome for impacted workers, their employers and the Department.
- The Department has received a high volume of paper applications which are processed manually.
- In many cases, ESD did not receive adequate information to communicate with impacted workers.

**Proposed solution**

- The Department is developing Agency Request Legislation to provide automatic exemptions for these workers.
- The Department is exploring bill language that addresses an opportunity to voluntarily participate.
- If individuals' work authorization status changes in the future, the exemption status would no longer apply.

### ADDENDUM IV.

## WSDA Pesticide Advisory Board



**Employment  
Security  
Department**  
WASHINGTON STATE

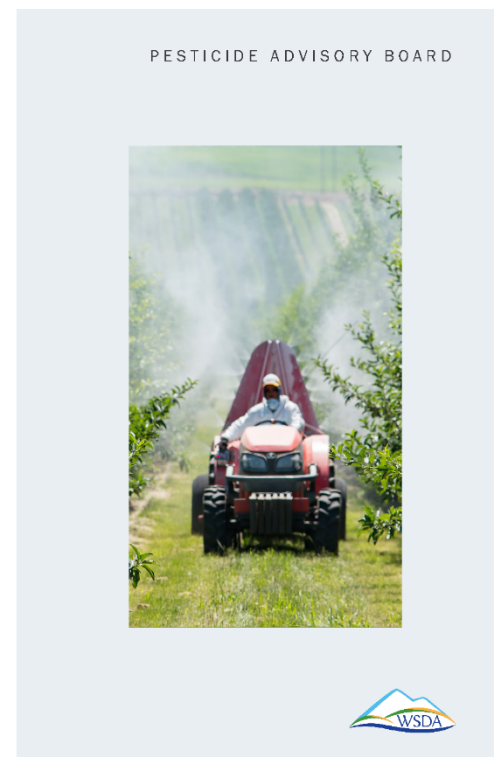
Kelle Davis, Pesticide Management Division Policy Assistant, WSDA





## PESTICIDE ADVISORY BOARD

- ESHB 1019 (Re)Established the Pesticide Advisory Board within the Department of Agriculture
- Purpose is to advise Pesticide Management Division on issues related to the use and application of pesticides in the state, such as proposed rulemaking, fee increases, crop issues, Endangered Species Act issues, water quality, and other technical issues.
- Composed of 13 voting members and 19 non-voting members
- Voting members include a farmworker advocate and a migrant farmworker
- **We are still looking for members to fill these positions**



### PESTICIDE ADVISORY BOARD

- Time commitment—Two 4-hour meetings per year (one virtual—one in-person/virtual)
- First meeting will be in-person/virtual in Central Washington (Yakima) in November 2023
- Translation/interpretation services will be provided
- WSDA will pay per diem for travel (mileage, lodging & meals) for in-person attendees
- Board members are eligible for stipend of up to \$200.00 per day for meeting attendance. [RCW 43.03.220](#) allows for compensation of part-time boards and commissions.
- **PLEASE contact Kelle Davis if you or someone you know is interested in serving on this important board.**

PESTICIDE ADVISORY BOARD



### QUESTIONS?

Kelle Davis  
Policy Assistant, Pesticide Management Division  
(360) 902-1851  
[kmdavis@agr.wa.gov](mailto:kmdavis@agr.wa.gov)



ADDENDUM V.

## Customer Experience Study Update



Gustavo Aviles, Chief Analytics Officer/LMI Director, ESD

## Customer Experience Study



**Phase I study:**

- Preparing a summary report.

**Phase II study overview:**

- Address any gaps, including aligning the research recruitment and timing.
- Exploring new research questions based on findings from Phase I.
- Understand the potential impact of any planned or implemented improvements.

## Customer Experience Study



### Phase II timeline:

- July 24, 2023: Phase II kick-off meeting.
- August – October 2023: Research activities with apple, pear, and grape farmworkers and growers.
- End of 2023: Initial report of findings.
- May – July 2024: Research activities with cherry and berry farmworkers and growers.
- July 31, 2024: Final report of findings.

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## Customer Experience Study



### Research Plan

- Overarching **goal** is to identify specific recommendations (test potential improvements) to inform of potential modifications to the agricultural recruitment system.
- Growers:
  - Considering doing two interviews at different points in time: before and during seasonal activity.
  - Recruitment criteria hasn't been developed yet but will be as representative as possible
  - Interest in outcomes - not just increase recruitment.
- Washington State IRB application is submitted and waiting for review.

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## Customer Experience Study



### Research Activities

- Interview with ESD staff.
  - **Goal:** Conduct remote interviews to gather contextual knowledge on job search and recruitment process for apple, pear, and grape farms.
  - Timeframe: 2 weeks.
  
- Contextual inquiry at WorkSource offices.
  - **Goal:** Conduct in-person interviews, observational research (job shadowing) during field visits to learn more about the internal processes of WorkSource staff around supporting job search, recruitment and referral process.
  - Timeframe: 1 week (Field Visit I).

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## Customer Experience Study



### Research Activities

- Interviews & usability study with farmworkers
  - **Goal:** Conduct in-person interviews with farmworkers to understand their approach to job searching during harvest season, and test job orders to better understand what resources, information and tools would best support them.
  
- Interview with growers
  - **Goal:** Conduct in-person and/or remote interviews with employers to better understand their touchpoints with ESD and WorkSource offices, and identify what resources, information and tools would best support them in the recruitment process.
  - Timeframe: 1 week (Field Visit I).

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ADDENDUM VI.

Open Committee Discussion



Open Committee Discussion, Joy Adams  
Topic: Domestic Recruitment

TA/TWH Follow up



Joy Adams, Deputy Director, ESPI, ESD

## ASWS Committee Letter to DOH Leadership



- Discussion
- Motion to approve letter

## Public Comment



- Public Comment

## Good of the Order



- Summary of Meeting
- Future Agenda Items



Agricultural and Seasonal Workforce Services  
ADVISORY COMMITTEE



Next In-Person

**ASWS Advisory Committee Meeting**

Wednesday, September 20, 2023

1:00 p.m. – 5:00 p.m.

Cosecha Court II Farmworker Housing Community Room 250  
Cherry Hill RD  
Granger, WA 98932

**Contact information**

Joy Adams, Deputy Director of Employment System Policy & Integrity Division

*Employment Security Department • Employment System Policy & Integrity*