



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, June 20, 2024

Time: 1:00 p.m. – 3:00 p.m.

Location: In-person with virtual meeting option via Zoom

Physical address: **Union Gap WorkSource:** 1205 Ahtanum Ridge Drive, Union Gap, WA 98903

Committee members present

- Jon DeVaney
- Michael Gempler
- Delia Peña
- Michele Besso
- Edgar Franks
- Jeff Perrault
- Diana Lopez-Batista (proxy for Rosalinda Guillen)

Non-voting agency representatives present

- Caitlin Gates (LNI) (proxy for Uriel Iñiguez)
- Ignacio Marquez (WSDA)
- Juan Gamez (DOH)

Committee members/Non-voting agency representatives absent

- Elizabeth Strater (Proxy for Victoria Ruddy)

ESD staff/Guest presenters

- Joy Adams
- Bertha J. Clayton
- Vickie Carlson
- Petra Meraz
- Carlos Sandoval-Larios
- Caitlyn Jekel
- Craig Carroll
- Alberto Isiordia

Summary

Meeting Recorded

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

Welcome and Agenda Review

Employment Security Department (ESD) Policy Director, Joy Adams, welcomed everyone, reviewed the meeting agenda and asked if anyone had any questions. (See Addendum I.)

Roll Call – Vickie Carlson, Management Analyst, ASWS Office, ESD

Recording timestamp **00:01:40**

Joy Adams asked Vickie Carlson to take roll. Seven voting members were present at the time of meeting minute approval. (Quorum) Motion to approve the April 17th & May 15th meeting minutes- Mike Gempler, 2nd from Delia Peña. Motion carries.

ASWS Office Update – Bertha J. Clayton, ASWS Director (See Addendum II.)

- Petra Meraz, Supervisor, FLC, ASWS, ESD
- Carlos Sandoval-Larios, Temporary Supervisor, Compliance Unit, ASWS

Recording timestamp **00:03:05**

Recording timestamp **00:25:59**

Recording timestamp **00:30:27**

Committee Education – Petra Meraz (See Addendum III.)

Recording timestamp **00:41:49**

H-2A Final Rule: ESD Perspective (See Addendum IV.)

Recording timestamp **01:05:10**

- Bertha J. Clayton & Carlos Sandoval-Larios

Good of the Order – Joy Adams

Recording timestamp **01:47:47**

Public Comments

Recording timestamp **01:56:30**

None

Adjourned

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

2024 Meetings

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

- **July 17, 2024 – 1:00 p.m. to 3:00 p.m.** – Zoom, 212 Maple Park Ave SE, Olympia, WA 98501

Addendums

ADDENDUM I.

AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee
 Thursday, June 20, 2024 | 1:00 pm – 5:00 pm | In-Person | Union Gap WorkSource: 1205 Ahtanum Ridge Drive, Union Gap, WA 98903

TIME	TOPIC
1:00 pm	Joy Adams, Policy Director, Employment System Policy & Integrity Division, ESD <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 • Approval of the May 2024 Meeting Minutes
1:20 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 Office, ESD • Carlos Sandoval-Larios, Temporary Supervisor, Compliance Team, ASWS Office, ESD
1:40 pm	Committee Education – Petra Meraz <ul style="list-style-type: none"> • Standard Occupation Classification (“SOC Codes”) orientation • Common filing issues
2:10 pm	H-2A Final Rule: ESD Perspective <ul style="list-style-type: none"> • Bertha J. Clayton & Carlos Sandoval-Larios
2:50 pm	Good of the Order
2:55 pm	Public Comment
3:00 pm	Adjourn. Next scheduled July meetings: Wednesday, July 17, 2024, 1-3 pm, Zoom & Thursday, July 25, 2024, 1-3 pm, Zoom
Committee Work Session	
3:15 pm	Customer Experience Study Update <ul style="list-style-type: none"> • Olga Kondratjeva, Program Evaluation, Research and Analysis Manager, ESD
3:30 pm	Employment Connections Update <ul style="list-style-type: none"> • Alberto Isordia, Assistant Director of Operations, Employment Connections, ESD
4:00 pm	2024 ASWS Report <ul style="list-style-type: none"> • Review provided draft • Open discussion
5:00 pm	Committee Work Session 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 |

Housekeeping



RECORDING ANNOUNCEMENT:

This meeting is being recorded. Please be advised that your image and voice will be captured and recorded during the videoconference. Your participation in this videoconference equals consent to be recorded.

ANUNCIO GRABADO:

Esta junta está siendo grabada. Por favor tenga en cuenta que su imagen y voz serán capturados y grabados durante la videoconferencia. Su participación en esta videoconferencia significa dar consentimiento de ser grabado.

Committee Business



- Roll call & committee member sharing
- Agenda review
- Approval of April 2024 meeting minutes
- Approval of May 2024 meeting minutes

ADDENDUM II.

ASWS Office Update - June 2024



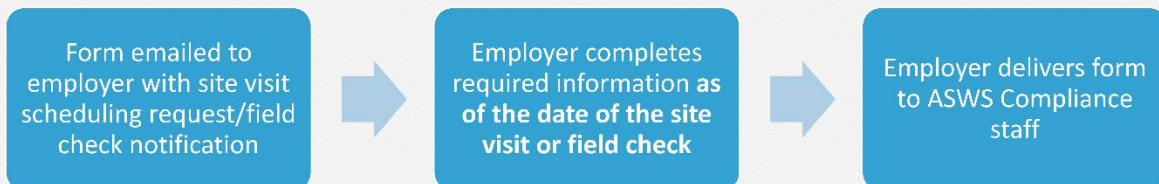
Bertha J. Clayton, ASWS Director, ESD

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
 - Target MET by ASWS

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).

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



Initiated by ESD	1*
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*Final debarment determination made by USDOL WHD. ESD must initiate per 20 CFR 658.501(a)(4).

Processing and Adjudicating Foreign Labor Certification Applications



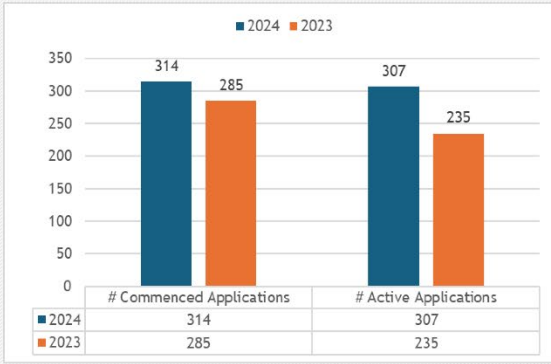
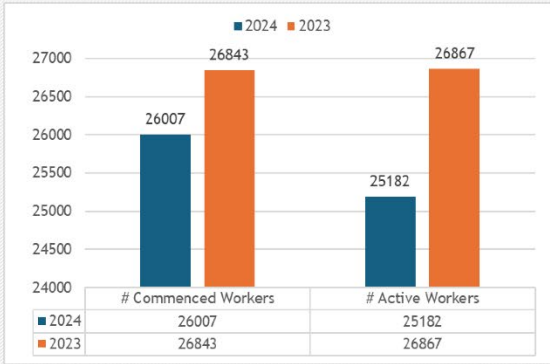
Petra Meraz, Foreign Labor Certification Program Supervisor, ASWS, ESD

Year to Date Comparison

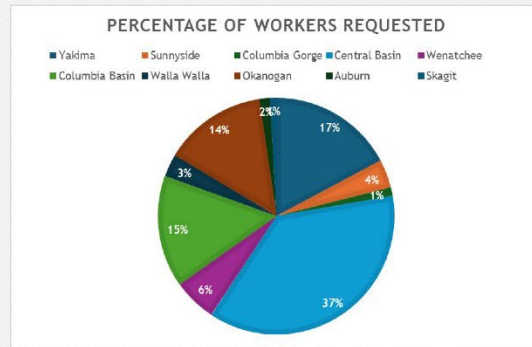
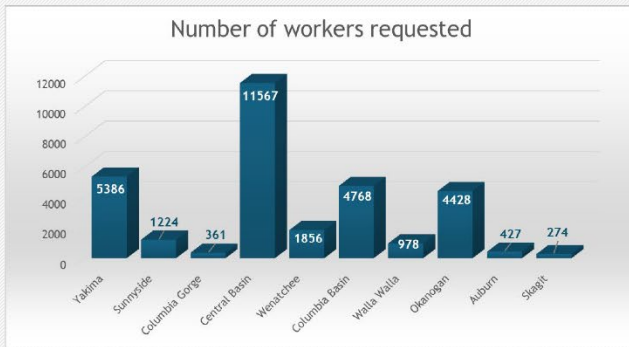


	2024	2023	% YoY Increase or Decrease
# Applications	369	358	+3%
# Workers Requested	31269	33984	-9%
# Withdrawn Applications	17	22	-29%
# Withdrawn Workers	409	2451	-400%
# DOL Denied Applications	2	6	-200%
# DOL Denied Workers	20	132	-560%
# Commenced Applications	314	285	+9%
# Commenced Workers	26007	26843	-3%
# Impossibilities Applications	3	0	--
# Impossibilities Workers	196	0	--
# Active Applications	307	235	+30%
# Active Workers	25182	26867	+6%

Commenced & Active YTD Comparison



Number & Percentage of workers requested by AHO to date



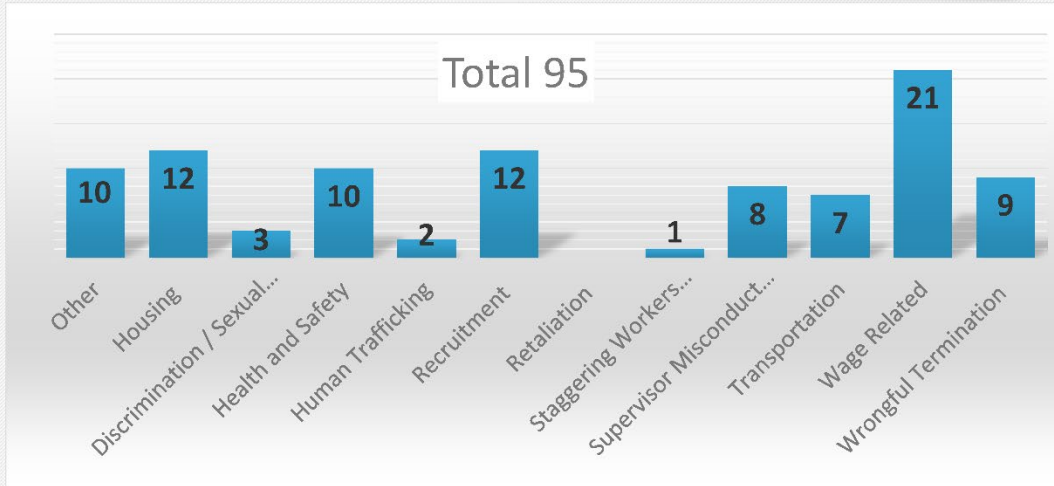
Completing site visits (field visits) and Field Checks



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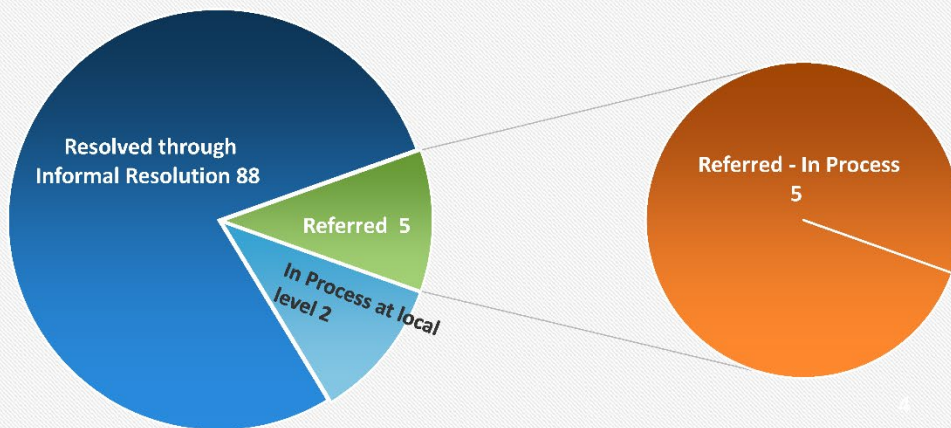
Carlos Sandoval-Larios, Temporary Compliance Team Supervisor, ASWS, ESD

Processing complaints consistent with 20 CFR 658, Subpart E *Reporting Period: 10/01/23 - 06/01/24*



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Status of Complaints / Apparent Violations *Reporting Period: 10/01/23 - 06/01/24*



Conducting Field Visits (Site Visits)

Review period: 10/01/23 - 6/01/24



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	236
Approximate number of workers who attended Site Visits and received information	15,508

Conducting Field Checks

Review period: 10/01/23 - 6/01/24



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 <i>(seeker referred by ESD to job order and started working)</i>	21
Number of Field Checks Performed by ASWS	6

Field Check Findings

Review period: 10/01/23 - 6/01/24



Payroll

- No paystubs received

Field Sanitation:

- No drinking water WAC 296-307-09740
- No handwashing stations

Housing:

- First Aid Kit (missing/out of stock) 20 CFR 654.417
- Smoke Detectors (not working) WAC 246-358-080
- Cooking and food-handling facilities (not enough stove burners) WAC 246-358-125
- Safety (windows blocked by furniture) 20 CFR 654.417(a)
- Garbage cans missing their lids 20 CFR 654.414
- Laundry, (machines coin-operated)

Recruitment:

- Employer-conducted recruitment (different hiring practices for foreign and local workers) 20 CFR 655.440

2/6 Field Checks: **No findings**

ADDENDUM III.

Committee Education



**Employment
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WASHINGTON STATE

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

Determine Standard Occupational Classification (SOC) Codes



If one SOC code is classified, the AEW for that occupation is the controlling AEW.

If two or more SOC codes exist, but the AEW determinations are identical, the SWA/DOL will assign the AEW associated with either SOC code.

If two or more SOC codes exist with different AEW determinations, then the SWA/DOL will identify the highest AEW determination and that becomes the controlling AEW.

Example:

Multiple SOC codes - Different AEW's



- Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives for tilling soil and applying pesticide and fertilizers; transplanting, weeding, thinning, or pruning crops.
- Repair and maintain farm vehicles, equipment, fences, and other structures.
- Direct and monitor the work of casual and seasonal help during planting and harvesting.
- Load agricultural products into trucks, and drive trucks to market or storage facilities.
- Driver's license required.
- **Operate passenger-only vehicles to pick-up other farmworkers based on a regular or arranged daily/weekly schedule from employer-provided housing or a centralized pick-up point(s) and drop-off at worksites and return farmworkers back to such locations at the end of the workday.**

SOC Assignment:

Based on work tasks/requirements listed in O*NET OnLine, the SOC code is a combination of

- 45-2092 – Farmworkers and Laborers, Crop, Nursery, and Greenhouse; **and**
- 53-3053 - Shuttle Drivers and Chauffeurs

Sample Job Duties or Work Tasks



Distinctions Between “Directing/Monitoring” Farmworkers vs. “Supervising” Farmworkers

Sample Job Duties or Work Tasks	Farmworker "Team Lead" 45-2092	Farmworker Supervisor 45-1011
Assign work tasks, issue equipment, and communicate to coordinate overall work	YES	YES
Monitor crop progress and report status to farmer or farm supervisor/manager	YES	YES
Provide training to workers on crop/farming techniques	YES	YES
Record information about crops, such as pesticide use, yields, or costs	YES	YES
Maintain inventory/order materials as required by farmer or farm supervisor/manager	YES	YES
Plan/schedule work crews, equipment, or transportation for worksite(s)	NO	YES
Confer with farmer or farm manager to make operational decisions	NO	YES
Train workers in food safety and/or occupational health regulations	NO	YES
Evaluate employee performance and take necessary personnel actions	NO	YES
Maintain personnel records and/or financial transactions	NO	YES

Example 1



Key Work Tasks Identified on Form ETA-790A

- Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives for tilling soil and applying pesticide and fertilizers; transplanting, weeding, thinning, or pruning crops
- Repair and maintain farm vehicles, equipment, fences, and other structures.
- **Direct and monitor the work of casual and seasonal help during planting and harvesting.**
- Load agricultural products into trucks, and drive trucks to market or storage facilities.
- Driver's license required.

SOC Assignment:

Based on work tasks/requirements listed in O*NET OnLine, the SOC code is

- 45-2092 – Farmworkers and Laborers, Crop, Nursery, and Greenhouse

Example 2



▶ Key Work Tasks Identified on Form ETA-790A

- Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives for till soil and applying pesticide and fertilizers; transplanting, weeding, thinning, or pruning crops
- Record information about crops, such as pesticide use, yields, or costs.
- Repair and maintain farm vehicles, equipment, fences, and other structures.
- **May supervise casual and seasonal help during planting and harvesting.**
- Load agricultural products into trucks, and drive trucks to market or storage facilities.
- Driver's license required.

SOC Assignment

Based on normal tasks and requirements listed in O*NET OnLine, the SOC code is combination of

- 45-2092 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse, **and**
- 45-1011 - First-Line Supervisors of Farming, Fishing, and Forestry Workers.

Example 3



Key Work Tasks Identified on Form ETA-790A

- Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives for tilling soil and applying pesticide and fertilizers; transplanting, weeding, thinning, or pruning crops.
- Repair and maintain farm vehicles, equipment, fences, and other structures.
- Direct and monitor the work of casual and seasonal help during planting and harvesting.
- Load agricultural products into trucks, and drive trucks to market or storage facilities.
- Driver's license required.
- **Operate trucks or other multi-purpose vehicles to transport workers from housing (whether on or off farm) to the farm properties; haul tools, supplies, or crops; transport workers from place to place around the farm properties during the workday (including on public roads to reach farmer's fields); and/or transport workers to the grocery store, bank, or laundry facilities on an as-needed basis.**

SOC Assignment:

Based on work tasks/requirements listed in O*NET OnLine, the SOC code is a combination of

- 45-2092 – Farmworkers and Laborers, Crop, Nursery, and Greenhouse; **and**
- 45-2091 – Agricultural Equipment Operator

Example 4



Key Work Tasks Identified on Form ETA-790A

- Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives for tilling soil and applying pesticide and fertilizers; transplanting, weeding, thinning, or pruning crops.
- Repair and maintain farm vehicles, equipment, fences, and other structures.
- Direct and monitor the work of casual and seasonal help during planting and harvesting.
- Load agricultural products into trucks, and drive trucks to market or storage facilities.
- Driver's license required.
- **Operate passenger-only vehicles to pick-up other farmworkers based on a regular or arranged daily/weekly schedule from employer-provided housing or a centralized pick-up point(s) and drop-off at worksites and return farmworkers back to such locations at the end of the workday.**

SOC Assignment:

Based on work tasks/requirements listed in O*NET OnLine, the SOC code is a combination of

- 45-2092 – Farmworkers and Laborers, Crop, Nursery, and Greenhouse; **and**
- 53-3053 - Shuttle Drivers and Chauffeurs

ADDENDUM IV

H-2A Final Rule: ESD Perspective



Employment
Security
Department
WASHINGTON STATE

Bertha J. Clayton, ASWS Director, ESD
Carlos Sandoval-Larios, Temporary Compliance Team Supervisor, ASWS, ESD

Amended DOL H-2A Final Rule



- The U.S. Department of Labor (DOL) published the amended [Final Rule](#) for 20 CFR Parts 651, 653, 655 and 658 (*Improving Protections for Workers in Temporary Agricultural Employment in the United States*) on April 29, 2024.
- The amended Final Rule goes into effect on June 28, 2024.
- H-2A applications submitted on or after 12:00 am EST on August 29, 2024 will be processed in accordance with the amended Final Rule.
- The ASWS Advisory Committee got a preview of the *proposed* rules at its October 2023 meeting.

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Categories of H-2A Rule Changes



The rule changes fall into six broad categories:

1. Protections for workers who advocate for better working conditions and labor organizing activities.
2. Classification of justifiable termination for cause.
3. Immediate effective date for updated AEWR.

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Categories of H-2A Rule Changes



(continued)

4. Enhanced transparency for job opportunity and foreign labor recruitment.
5. Enhanced transparency and protections for agricultural workers.
6. Enhanced integrity and enforcement capabilities.

29

Rule Changes under 20 CFR Part 651



20 CFR 651.10

Codifies additional and revised definitions for clarity and transparency:

- Agent (adopted as proposed)
- Criteria clearance order / Non-criteria clearance order (adopted as proposed)
- Discontinuation of services (adopted as proposed)
- Employment-related laws (clarified to include “rules” and “standards” with regulations)
- Farm labor contractor (adopted as proposed)
- Joint employer (adopted as proposed)
- Successor in interest (some definitional language moved to 658.500)
- Week (adopted as proposed)

30

Rule Changes under 20 CFR Part 653



20 CFR 653.501

- Requires SWAs to consult USDOL's OFLC, WHD, and OWI debarment and discontinuation of services lists before placing intrastate and interstate clearance orders and initiate discontinuation of ES services if employers seeking clearance orders are on any of those lists.
- Prohibits SWAs from approving interstate clearance orders from employers whose ES services have been discontinued by other States.
- Requires SWAs to apply discontinuation of ES services to all applicable entities, not just employers.

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Rule Changes under 20 CFR Part 653



20 CFR 653.501 (continued)

- Requires employers to notify workers placed under clearance orders rather than all who are referred because the obligation to provide housing and subsistence to those already traveling to the place of employment and to pay wages for up to 2 weeks or provide alternative work is relevant only to workers who are placed with employers and not to those referred but not placed.

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Rule Changes under 20 CFR Part 653



20 CFR 653.501 (continued)

- Requires employers to provide housing and subsistence to all workers already traveling to places of employment at no cost to the workers until work begins and to pay the specified hourly or piece rate of pay on the clearance order, with the latter being the higher of the Federal or State minimum wage or prevailing wage, and further require employers that fail to provide the required notice at least 10 business days before the original date of need to pay the required wage for up to 2 weeks.

33

Rule Changes under 20 CFR Part 653



20 CFR 653.501 (continued)

- Clarifies that any alternative work must be in approved clearance orders to ensure employers do not require workers to perform work at sites not approved by SWAs and, for criteria clearance orders, instruct SWAs to process violations of these requirements as apparent violations that are observed or for which information has been received by SWAs or ES office or outreach staff, which must be documented and referred for further action.

34

Rule Changes under 20 CFR Part 655



20 CFR 655.135

- Enhances protections for H-2A workers to advocate and negotiate for better working conditions for themselves and coworkers (including domestic workers under H-2A clearance orders) and prevent employers from suppressing this activity by:
 - Expanding and explicitly protecting certain activities in which workers can engage without intimidation, threats, or retaliation.
 - Permitting workers to invite or accept guests to worker housing and provide labor organizations limited right of access to worker housing.

35

Rule Changes under 20 CFR Part 655



20 CFR 655.122

- Defines “termination for cause” at 655.122(n) by proposing six criteria that must be satisfied and which will assist in determining whether an individual worker was terminated for just reasons to ensure employers do not arbitrarily and unjustly terminate workers.
- Per public comment, DOL clarified the rule by replacing *productivity standard* with *performance expectation*, requiring disciplinary records to denote the infraction, and excluding discrimination based on family status as a termination for cause reason.

36

Rule Changes under 20 CFR Part 655



20 CFR 655.120

- Designates the effective date of updated Adverse Effect Wage Rates (AEWRs) as the date of publication in the Federal Register and revise 655.120(b)(3) to state that employers are obligated to pay updated AEWRs immediately upon publication of the new AEWRs in the Federal Register to help ensure workers are paid at least the updated AEWRs as soon as they are published so as not to adversely affect the wages and working conditions of similarly employed U.S. workers.

37

Rule Changes under 20 CFR Part 655



20 CFR 655.122

- Requires employers to disclose any minimum productivity standards imposed as a condition of job retention so workers are fully apprised of the terms and conditions of employment, including productivity standards that may serve as a basis for termination for cause.
- Prohibits employers from terminating workers for failure to meet minimum productivity standards if they did not disclose the standards in advance.

38

Rule Changes under 20 CFR Part 655



20 CFR 655.122 (continued)

- Requires minimum productivity standards to be bona fide and normal and accepted among non-H-2A employers in the same or comparable occupations and crops.
- Requires employers to offer and advertise on the job order any applicable prevailing piece rate, the highest applicable hourly wage rate, and any other rate the employer intends to pay, and to pay workers the highest of these wage rates.

39

Rule Changes under 20 CFR Part 655



20 CFR 655.122 (continued)

- Requires employers to specify in job orders any applicable overtime premium wage rate(s) for overtime hours worked and the circumstances under which such overtime hours will be paid.
- Prohibits employers *or any other person* from operating employer-provided vehicles required by USDOT to have seat belts unless all passengers and the driver are properly restrained by seat belts that meet DOT standards and employers maintain those seat belts in good working order and ensure that each worker is wearing a seat belt when the vehicle is operated.

40

Rule Changes under 20 CFR Part 655



20 CFR 655.135

- Prohibits employers from holding or confiscating workers' passports, visas, or other immigration or government identification documents beyond compliance with the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), which is required under current H-2A regulations.

41

Rule Changes under 20 CFR Part 655



20 CFR 655.175

- Limits minor delays to 14 calendar days or less and require employers to notify each worker and the SWA of any delay in the start date of work.
- Requires employers to pay workers the applicable wage rate for each day work is delayed, for a period of up to 14 calendar days, starting with the certified start date, if employers fail to provide adequate notice of the delay.

42

Rule Changes under 20 CFR Part 655



20 CFR 655.182

- In debarment matters, reduces from 30 calendar days to 14 calendar days, unless employers request an extension of the rebuttal period, in writing, and demonstrate good and substantial cause for extensions:
 - The time for parties to submit rebuttal evidence to OFLC.
 - The time for parties to appeal Notices of Debarment to the Office of Administrative Law Judges (OALJ).
 - The time for parties to appeal debarment decisions to the Administrative Review Board (ARB) from the OALJ.

43

Rule Changes under 20 CFR Part 655



20 CFR 655.104

- Clarifies the liability of successors in interest for debarment purposes and streamline DOL's procedures to deny labor certifications filed by or on behalf of successors in interest to debarred employers, agents, and attorneys under the well-established successorship doctrine and to better ensure that debarred entities do not circumvent the effects of debarment.
- Proposes conforming revisions to 655.103(b), 655.181, and 655.182 and 29 CFR 501.20.

44

Rule Changes under 20 CFR Part 655



20 CFR 655.103

- Defines *single employer* and codify use of the single employer test (sometimes called “integrated employer” test) or similar analysis to determine if separate employers are a single employer for purposes of assessing seasonal or temporary need, or for enforcement of contractual obligations.
- Prevents employers from using their corporate structures to circumvent statutory and regulatory requirements.

45

Rule Changes under 20 CFR Part 658



20 CFR 658.501

- SWAs must discontinue ES services to employers who submit and refuse to correct or withdraw job orders containing terms and conditions that are non-compliant with employment-related laws, not just alter certain specifications as currently provided under the rule.
- Removes language that limits the basis for discontinuation to only those assurances involving employment-related laws because employers must ensure that workers referred on clearance orders are made aware of all assurances and protected by those assurances if placed on the orders.

46

Rule Changes under 20 CFR Part 658



20 CFR 658.501 (continued)

- Requires SWAs to initiate procedures for discontinuation of ES services to employers who are currently debarred from H-2A/H-2B programs.
- Adds that the basis for discontinuing ES services includes employers who violate ES regulations to clarify that ES violations may be found as a result of apparent violations.
- Clarifies that the requirement to accept qualified workers applies only to criteria clearance orders and not to non-criteria clearance orders.

47

Rule Changes under 20 CFR Part 658



20 CFR 658.501 (continued)

- Explains what SWAs must do when employers participating in the ES system may not have complied with the terms of their certification under the H-2A and H-2B programs.
- Requires SWAs to determine whether they must initiate discontinuation of ES services because they cannot proceed based solely on information that employers *may* have violated the terms of their certifications and must instead take that information and determine whether one of the bases for discontinuation applies and, if so, initiate discontinuation.

48

Rule Changes under 20 CFR Part 658



20 CFR 658.502

- Clarifies that this section relates only relates to SWAs initial notices to employers proposing discontinuation and not to the final notices and that the initial notices must state the reasons for proposing discontinuation and that the SWA intends to discontinue services and the SWA must initiate discontinuation under all applicable bases if more than one applies.

(continued)

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Rule Changes under 20 CFR Part 658



20 CFR 658.502 (continued)

- Removes language providing employers the opportunity for pre-discontinuation hearings to align hearing procedures for discontinuation of ES services with hearing procedures for the ES Complaint System, which allows for hearings by State hearing officials only after SWAs issue final decisions on complaints.
- States that SWAs must notify employers that all ES services – rather than all employment services – will be discontinued per scope of the rule.

50

Rule Changes under 20 CFR Part 658



20 CFR 658.502 (continued)

- Clarifies what evidence and assurances employers may provide to avoid discontinuation of ES services by stating that employers may provide evidence that the determinations at issue are not final because and SWAs cannot discontinue services where determinations are not final.
- Adds language requiring employers to submit evidence that their period of debarment is no longer in effect and that they have taken all actions required by the enforcement agency as a consequence of the violation.

51

Rule Changes under 20 CFR Part 658



20 CFR 658.502 (continued)

- SWAs must list and provide facts in notices to employers proposing to discontinue ES services when based repeatedly causing the initiation of discontinuation of ES services explaining prior instances and notify employers that all ES services will be terminated unless the employers provide adequate evidence that the SWA's initiation of discontinuation in prior proceedings was unfounded.

52

Rule Changes under 20 CFR Part 658



20 CFR 658.502 (continued)

- Explains the circumstances that warrant immediate discontinuation of services and states that SWAs must discontinue services immediately without notice or opportunity to respond if employers have met any of the bases for discontinuation of ES services and, in the judgment of the SWA Administrator, exhaustion of administrative procedures would cause substantial harm to workers. The current rule says SWAs “may” discontinue services and only when there may be harm to a substantial number of workers.

53

Rule Changes under 20 CFR Part 658



20 CFR 658.503

- Requires that within 20 working days of receipt of the employer’s response to the SWA’s notification, or at least 20 working days after the SWA’s notification is received by the employer if the SWA does not receive a response, the SWA must notify the employer of its final determination in a manner that allows the SWA to track receipt of the notification, such as certified mail, and specify the reasons for its determination.

54

Rule Changes under 20 CFR Part 658



20 CFR 658.503 (continued)

- Adds language explaining the procedures for immediate discontinuation of ES services and state that SWAs must notify employers in writing that services are discontinued as of the date of the notice, that employers may request reinstatement or hearings, and that a request for a hearing on immediate discontinuation does not stay discontinuation pending the outcome of the hearing and specify the facts supporting the basis for discontinuation under 658.501(a) and the reasons that exhaustion of the administrative procedures would cause substantial harm to workers.

55

Rule Changes under 20 CFR Part 658



20 CFR 658.503 (continued)

- SWAs must notify the ETA Office of Workforce Investment of any final determination to discontinue ES services.
- SWAs must notify relevant ETA regional offices if ES services are discontinued subject to Federal Contractor Job Listing Requirements.
- SWAs must notify complainants of employers' discontinuation of ES services if the discontinuation is based on a formally-filed complaint.
- SWAs must remove active job orders from the clearance system and must not process any future job orders for as long as services are discontinued.

56

Rule Changes under 20 CFR Part 658



20 CFR 658.504

- Requires that employers who request hearings following discontinuation do so within 20 working days of the date of discontinuation.
- Clarifies the circumstances and procedures under which **SWAs** must reinstate services when employer submit a written reinstatement requests.
- Retains the 20-day timeline within which **SWAs** must notify employers whether they grant or deny reinstatement requests and requires SWAs to specify the reasons if they deny requests.

57

Rule Changes under 20 CFR Part 658



20 CFR 658.504 (continued)

- Clarifies circumstances and procedures under which SWAs must reinstate services when employers submit timely, written requests for hearings.
- Requires SWAs to notify the Office of Workforce Investment (OWI) of determinations reinstating ES services or decisions upholding SWA determinations to discontinue services within 10 working days of the issuance of the determinations so a proposed OWI discontinuation of services list can be kept current and reinstated employers can promptly access ES services.

58

Rule Changes under 29 CFR Part 501



29 CFR 501.3

- Adds definitions for *key service provider* and *labor organization* in 501.3(a) to conform to the proposed addition of these terms to the definitions in 20 CFR 655.103(b)
- Removes the definition of *successor in interest* from 501.3(a) to conform to and for the reasons described for proposed 20 CFR 655.104.
- Adds definition of *single employer* to conform to and for the reasons described in the discussion of proposed 20 CFR 655.103(e).

59

Rule Changes under 29 CFR Part 501



29 CFR 501.4

- Revises 501.4(a) to conform to proposed changes to 20 CFR 655.135(h) to expand and strengthen anti-retaliation provisions, but leaves untouched provisions in 501.4(b) on WHD investigations and enforcement of 501.4.

29 CFR 501.10

- Adds severability clause to explain that any provision of 29 CFR part 501 held to be totally invalid or unenforceable will be severed from 29 CFR part 501 while not affecting the remainder of 29 CFR part 501.

60

Rule Changes under 29 CFR Part 501



29 CFR 501.20, 501.33, and 501.42

- Conforms WHD regulations to maintain consistency with and implement various proposed changes to ETA's debarment regulation at 655.182 as they relate to the following:
 - Successors in interest
 - Passport withholding
 - Timelines to appeal
 - Requests for hearings

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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



Employment Security Department
WASHINGTON STATE

ASWS Advisory Committee Meeting

Wednesday, July 17, 2024

1:00 p.m. – 3:00 p.m.

Zoom

Contact information

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

Employment Security Department • Employment System Policy & Integrity