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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 5-20

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE DEVELOPMENT AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE MONITOR ADVOCATES
NATIONAL FARMWORKER JOBS PROGRAM GRANTEEES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Health and Safety Practices for Migrant and Seasonal Farmworkers and Agricultural Employers during the Coronavirus Disease 2019 Pandemic

1. **Purpose.** In response to the spread of Coronavirus Disease 2019 (COVID-19), this guidance requests State Workforce Agencies (SWA), in coordination with the National Farmworker Jobs Program (NFJP) grantees, take certain actions and provide information regarding measures to support health and safety for migrant and seasonal farmworkers (MSFW) and agricultural employers.
2. **Action Requested.** The U.S. Department of Labor’s Employment and Training Administration (ETA) requests NFJP grantees share Center for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) COVID-19-related guidance with farmworkers in NFJP grantee programs and where possible, use grant funds to assist farmworkers who need access to safe and sanitary housing (see section 4 below for more information).

Additionally, in response to the COVID-19 pandemic, ETA strongly recommends that SWAs:

- Provide information on minimizing exposure and the spread of COVID-19, including CDC and OSHA guidance (such as the information provided in the resources section listed below), to MSFWs, including U.S. job seekers referred through the Agricultural Recruitment System for U.S. Workers (ARS), as described in 20 CFR 653.501, and foreign workers temporarily employed as farmworkers in the United States through the H-2A program;
- Share CDC and OSHA COVID-19-related guidance with agricultural employers and encourage them to follow the safety and health guidance on practices to safeguard against

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exposure to COVID-19 (again, such as the information provided in the resources section listed below); and

- Coordinate with NFJP grantees and other federal, state, and local healthcare professionals, including but not limited to public health personnel, when developing health and safety solutions to protect MSFWs, including safe and sanitary housing.

3. Summary and Background.

a. Summary – The COVID-19 pandemic poses a serious safety and health risk to farmworkers who often work, live, and are transported in close proximity to each other. Widespread illness among farmworkers could significantly impact the nation’s food supply. The CDC and OSHA have issued guidelines for safe workplaces during the COVID-19 pandemic.

As part of employers’ responsibilities for farmworker safety and health under the Wagner-Peyser Employment Service, ETA requires that SWAs maintain the required functions of their State Monitor Advocates (SMA) and outreach staff. Specifically, ETA requires SWAs maintain SMAs in their positions and meet the requirements in 20 CFR 653.108(d). Significant MSFW States must maintain their full-time, year-round outreach staff to conduct outreach duties as described in 20 CFR 653.107(b). Non-significant MSFW states may allow outreach staff to conduct other activities that promote farmworker safety, including housing inspections, when they are not in peak harvest season. The Monitor Advocate System ensures MSFWs’ access to resources and protections is equal to that provided to non-MSFWs. The SMA and outreach staff play important roles in ensuring agricultural employers have access to farmworkers and that workers can safely and expeditiously access agricultural jobs. This is a critical time to ensure labor exchange services such as the ARS are available to U.S. job seekers and agricultural employers to maintain our nation’s food supply. If outreach staff in non-significant MSFW states have additional time available after fulfilling their required outreach responsibilities, states may leverage these staff members to help support other critical functions, such as Unemployment Insurance.

b. Background – *Agriculture as critical infrastructure*. The Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has designated farmers and farmworkers “Essential Critical Infrastructure Workers” (see <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>). CISA advises that promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

Safety guidance for agricultural workers. OSHA, in collaboration with CDC, published Interim Guidance for Agriculture Workers and Employers (see <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>). Additionally, the CDC published Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19) (see <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).

Definition of farmworker. The Department notes that a farmworker, as defined at 20 CFR 651.10, means an individual employed in farmwork and includes foreign workers in the United States on H-2A visas.

Agricultural Recruitment System for U.S. Workers (ARS). SWAs must provide information on working conditions to U.S. job seekers referred through ARS (see 20 CFR 653.501(d)(10)). The ARS helps agricultural employers recruit qualified U.S. workers on a temporary or seasonal basis, and provides workers seeking temporary agricultural employment with opportunities for such employment (see 20 CFR 653 Subpart F). Through the ARS, SWAs may recruit and refer qualified U.S. workers from within a state and from other states when they anticipate that there are fewer temporary agricultural workers available than needed in the local area. The regulations at 20 CFR 653.501(c)(1)(iv) require that SWAs ensure intrastate and interstate clearance orders¹ state all the material terms and conditions of the employment. Further, 653.501(c)(3)(iii) requires that SWAs ensure the clearance order includes an assurance that the working conditions comply with applicable federal and state minimum health and safety laws, among others.

SMA-NFJP Memorandum of Understanding (MOU). To foster collaboration between the SMA and the NFJP grantee in each state, Wagner-Peyser Act regulations at 20 CFR 653.108(l) require the SMA to establish an MOU with the NFJP grantee. These MOUs allow SMAs and NFJP grantees to work together, share resources, and support farmworkers' safe employment and training.

4. **Details.**

NFJP Actions to Improve Farmworker Health and Safety. CDC and OSHA guidelines help to prevent and manage workplace COVID-19 exposures; thus, recommended measures are more stringent than current regulatory standards. For instance, the CDC recommends maintaining a distance of six feet between workers, and OSHA and CDC guidance recommends farmworkers in the same shared housing unit should follow the Households Living in Close Quarters Guidance, which recommends maintaining a minimum of six feet of distance between beds if possible (see <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/living-in-close-quarters.html>). However, most farmworker housing that meets OSHA and ETA standards do not comply with CDC spacing guidelines. NFJP Housing grantees and Career Services and Training grantees may have some ability to support MSFWs who need housing services, depending on the statement of work, grant budget, and other specific circumstances for a given grantee. Specifically:

- NFJP Housing Grantees: The Department allocates funds for Housing Grants for permanent housing services and temporary housing services. As specified in the NFJP appropriation (P.L. 116-94), ETA must award at least 70 percent of Housing Grant funds for permanent housing. While housing grantees need to uphold the 70 percent permanent housing requirement, grantees may use remaining grant funds to

¹ Clearance order means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS). 20 CFR 651.10.

support temporary housing for eligible MSFWs. Housing grantees must continue to follow 20 CFR Part 685 and program requirements as described in Training and Employment Guidance Letter (TEGL) 18-16.

- NFJP Career Services and Training (CST) grantees: Pursuant to 20 CFR 685.360(b), CST grantees may provide housing services to eligible MSFWs as described in their program plan. Additionally, CST grantees may provide emergency assistance, including temporary housing services, to MSFWs. Under certain circumstances, NFJP grantees may provide emergency assistance to H-2A workers to address an immediate and short-term need. CST grantees must continue to follow program requirements as described in 20 CFR Part 685 and TEGL 18-16.
- The NFJP Grants Directory is available at <https://www.dol.gov/agencies/eta/agriculture/grants>.
- The Department notes that NFJP grantees can partner with SWAs to provide coordinated services to employers as SWAs help agricultural employers consider how to safely house farmworkers, potentially in additional spaces beyond their existing housing facilities.

Resources. SWAs and NFJP grantees may provide a combination of local, regional, state, and federal resources to stakeholders. The following are some federal resources (including resources in Spanish) that may be taken into consideration:

- *Interim Guidance for Agriculture Workers and Employers* (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>);
- *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)* (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>);
- *How to Protect Yourself and Others*, which includes some resources in Spanish (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>).
- Social media toolkit in Spanish (<https://www.cdc.gov/coronavirus/2019-ncov/communication/social-media-toolkit-es.html>);
- *Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19* (<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>);
- US Department of Labor COVID-19 related resources (<https://www.dol.gov/coronavirus>);
- *Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus* (English) (<https://www.osha.gov/Publications/OSHA3994.pdf>);
- *Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus* (Spanish) (<https://www.osha.gov/Publications/OSHA3995.pdf>).
- *Households Living in Close Quarters Guidance* (<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/living-in-close-quarters.html>);

- *Health Resources and Services Administration Data Warehouse to Identify the Health Center Nearest You* (<https://findahealthcenter.hrsa.gov/>); and
- *WorkforceGPS Employment and Training Administration Resource List for agricultural employers and MSFWs* (https://farmworker.workforcegps.org/resources/2019/09/26/18/04/MSFW_Special_Topics).

5. **Inquiries.** SWAs may direct any questions to the appropriate Regional Monitor Advocate, listed at: <https://doleta.gov/mas/contact/>. NFJP grantees may reach out to the SMA in their area regarding collaborating on housing assistance. The SMA directory is located at: <https://www.dol.gov/sites/dolgov/files/ETA/mas/pdfs/Monitor-Advocate-National-Directory.pdf>. NFJP grantees may reach out to their Federal Project Officer (FPO) for all other questions. The NFJP FPO directory is located at: https://www.dol.gov/sites/dolgov/files/ETA/Farmworker/pdfs/NFJP_directory.pdf.

6. **References.**

- 20 CFR 653 Subpart B—Services for Migrant and Seasonal Farmworkers;
- 20 CFR 653 Subpart F—Agricultural Recruitment System for U.S. Workers (ARS);
- 20 CFR 685 National Farmworker Jobs Program Under Title I of The Workforce Innovation and Opportunity Act;
- TEGL 18-16 “*Program Eligibility and Enrollment Guidance for the National Farmworker Jobs Program*” (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3435); and
- CISA Guidance on the Essential Critical Infrastructure Workforce (<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>)

7. **Attachment(s).** Not Applicable.