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Labor Exchange Agricultural Reporting System (LEARS) ETA Form 5148

TECHNICAL ASSISTANCE INSTRUCTIONS

Part 1: Services to Migrant and Seasonal Farmworkers

A. Outreach Services: This section serves to document outreach services performed by Employment Service (ES) staff.[1] Specifically, this section covers services made through "contacts" as defined in 20 CFR 651.10 during a normal "staff day" which is defined as an 8-hour workday. The number of contacts made and the staff days enumerated in this section should reflect a quantitative response to the estimated number of MSFWs in the State.

1. Enter the best estimate of the peak number of MSFWs in the State during the current period as determined by ES and coordinating agency staff.

Note: The estimate should fluctuate each quarter based on actual conditions in the State and should be informed by several data sources. Potential data sources include surveys (e.g. the National Agricultural Workers Survey; State surveys), Labor Market Information, workers requested through job orders, and information from MSFW-serving organizations, including the NFJP grantee.

2. Enter the number of MSFWs who were contacted through outreach activity by ES staff.

Note: 20 CFR 651.10 defines outreach contact as each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from outreach staff.

Outreach staff means ES staff with the responsibilities described in 20 CFR 653.107(b).

B. Monitoring System: This section provides information on the number of State/Federal monitoring reviews of local offices to determine compliance with regulations.

1. Enter the number of local offices, which serve a significant number of MSFWs and have been identified as "Significant MSFW one-stop centers" pursuant to ETA's designation list found in the Monitor Advocate System's webpage on Performance and Reporting, under the "Significant MSFW States and Local Offices" section at https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/performance.

a. Enter the number of significant local offices reviewed following the procedures for State Monitor Advocate (SMA) on-site reviews at 20 CFR 653.108(g)(2) during this reporting period.

2. Enter the number of non-significant local offices reviewed following the procedures for SMA on-site reviews at 20 CFR 653.108(g)(2) during this reporting period.

[1] *Employment Service (ES) staff* means individuals, including but not limited to State employees and staff of a subrecipient, who are funded, in whole or in part, by Wagner-Peyser Act funds to carry out activities authorized under the Wagner-Peyser Act.

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C. Agricultural Recruitment System for U.S. Workers (ARS): This section covers agricultural job orders and clearance orders.[2] It also covers violations and apparent violations found through the field check process (20 CFR 653.503).

The total number of agricultural job orders placed at the local level will be auto-filled from the sum of C.1 (Total number of agricultural job orders placed at the local level, not attached to an H-2A application) and C.2 (Total number of agricultural job orders placed at the local level, attached to an H-2 application).

1. Enter the total number of agricultural job orders placed at the local level, which are not attached to an H-2A application. This will include all of the following scenarios: (1) local job orders that were never placed into intrastate or interstate clearance and which were only ever cleared for recruitment in one local office service area; (2) local job orders that were placed into intrastate clearance[3] for recruitment throughout the entire State; and (3) intrastate clearance orders that were placed into interstate clearance[4] for recruitment in other States.

Note: C.1 must be greater than or equal to the sum of C.1.a and C.1.b because C.1.a and C.1.b are subsets of C.1. C.1.a and C.1.b. clarify how many of the total number of local job orders that were not placed in connection with H-2A went into either intrastate or interstate clearance. C.1 will be larger than C.1.a plus C.1.b if there were local job orders that never went into intrastate or interstate clearance.

a. Enter the number of local agricultural job orders *not attached* to an application for H-2A workers that were placed into intrastate clearance.

b. Enter the number of intrastate clearance orders placed into interstate clearance.

Example: If there are 25 total job orders in the quarter, including 5 that stayed local job orders (meaning they will filled at the local level), 10 that went into intrastate clearance, and 10 that went into interstate clearance, C.1 should equal 25, C.1.a should equal 10, and C.1.b should equal 10.

2. Enter the total number of agricultural job orders placed at the local level, which are attached to an H-2 application.

Note: C.2 must be greater than or equal to C.2.a. C.2.a will be less than C.2 in cases where a local job order is placed in connection with a future application for H-2A, but the order has not yet been cleared for intrastate or interstate recruitment.

a. Enter the total number of clearance orders attached to an H-2A application placed into the clearance system (both intrastate and interstate).

[2] *Clearance order* means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS) (20 CFR 651.10).
[3] *Intrastate clearance order* means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices within the State.
[4] *Interstate clearance order* means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

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3. Enter the total number of U.S. workers referred on all local agricultural job orders and clearance orders. This will include U.S. workers referred to local job orders, intrastate and interstate clearance orders that are not placed in connection with H-2A, as well as clearance orders that are placed in connection with H-2A.

> Note: 20 CFR 651.10 defines job referral as: (1) The act of bringing to the attention of an employer a participant or group of participants who are available for specific job openings or for a potential job; and (2) The record of such referral. "Job referral" means the same as "referral to a job."

4. Enter the total number of U.S. workers placed on all local agricultural job orders and clearance orders (this includes clearance orders that are attached to an application for H-2A workers and clearance orders that are not attached to an application for H-2A workers). This will include individuals placed on all of the following: (1) local job orders that were never placed into intrastate or interstate clearance and which were only cleared for recruitment in one local office service area; (2) local job orders that were placed into intrastate clearance for recruitment throughout the entire State; and (3) intrastate clearance orders that were placed into interstate clearance for recruitment in other States.

> Note: 20 CFR 651.10 defines "placement" as the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps: (1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant; (2) Made prior arrangements with the employer for the referral of an individual or individuals; (3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker; (4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and (5) Appropriately recorded the placement.

5. Enter the total number of clearance orders with U.S. workers placed. This will only include clearance orders that were placed into intrastate or interstate clearance (not including orders that stayed local job orders).

6. Enter the number of clearance orders on which field checks were conducted.

> Note: 20 CFR 651.10 defines "field checks" as random, unannounced appearances by ES staff and/or Federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

7. Enter the total number of field checks on which violations were resolved locally within 5 business days (without referral to an enforcement agency). 20 CFR 653.503(d) describes informal resolution of field check violations.

8. Enter the total number of field checks on which violations were referred to an enforcement agency.

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Note: ETA Form 5148 asks for field checks with violations (Part 1.C.7. and 1.C.8.), complaints (Part 1.D), and apparent violations (Part 1.E) separately.

- Any violations recorded during field checks in Part 1.C.7. and 1.C.8., must also be recorded in Apparent Violations (Part 1.E).
- Additional information on field check violations is available at 20 CFR 653.503(d).

9. Enter the number of employers for whom discontinuation of service proceedings were initiated.

Note: This field should include the number of employers for whom discontinuation of service proceedings were initiated for any basis listed at 20 CFR 658.501.

20 CFR 653.503(d) requires: "If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing."

D. Complaint System: This section provides data on the effectiveness of the State Workforce Agency (SWA) complaint system established according to 20 CFR 658, Subpart E.

Note:

- "Complaint" means a representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law (see 20 CFR 651.10).
- An "ES complaint" means a complaint regarding the ES regulations.[5] This includes complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations under 20 CFR 651, 652, 653, and 654. As noted in §658.411(d)(6), the complaint system only covers ES-related complaints made within 2 years of the alleged violation.
- "Employment-related laws" means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.
- All complaints handled through this Complaint System must be processed pursuant to 20 CFR 658, Subpart E.

1. Enter the total number of complaints received. The sum of D.1.a through D.1.f may be greater than D.1 if any complaint taken on one Complaint/Apparent Violation Form ETA Form 8429 involved more than one type of complaint (e.g. both ES-related and an employment-related law issue).

a. Enter the total number of complaints that were submitted by or on behalf of MSFWs, which were ES-related against the employer.

[5] *Employment Service (ES) regulations* means the Federal regulations at 20 CFR 651 652, 653, and 654, 658, and 29 CFR part 75.

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b. Enter the total number of complaints that were submitted by or on behalf of MSFWs, which were ES-related against the local employment service office.
c. Enter the total number of employment-related law complaints submitted by MSFWs.
d. Enter the total number of ES-related complaints against the employer submitted by non-MSFWs.
e. Enter the total number of ES-related complaints against the local employment service office submitted by non-MSFWs.
f. Enter the total number of employment-related law complaints submitted by non-MSFWs.

2. The total number of different types of complaints will be auto-filled from the data entered in D.2.a through D.2.j.

For D.2.a through D.2.j, enter the total number of complaints next to each type of complaint.

Note: D.2 types of complaints may be greater than D.1 total complaints.

3. Enter the total number of complaints submitted by or on behalf of MSFWs that were resolved at the local level through informal resolution.

4. Enter the total number of ES-related complaints submitted by or on behalf of MSFWs that are unresolved 45 days after the date that the complaint was made.

E. **Apparent Violations**: The regulations at 20 CFR 658.419 state, "If a SWA, ES office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, ….the employee must document the suspected violation and refer this information to the ES office manager." This section covers those apparent violations and helps the Department track the number and types of apparent violations.

Note: Apparent violations reported in this section should include violations that involve both MSFWs and non-MSFWs.

1. The total number of apparent violations will be auto-filled from the data entered in E.1.a through E.1.c.

a. Enter the number of apparent violations that involve ES regulations and are against the employer.

b. Enter the number of apparent violations that involve ES regulations and are against the local ES office.

c. Enter the number of apparent violations that involve employment-related law.

Note: A single apparent violation may be marked for multiple entities in E.1.a through E.1.c.

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2. Enter the total number of apparent violations resolved at the local level through informal resolution, which were therefore not referred to enforcement.

3. The total number of different types of apparent violations will be auto-filled from the data entered in E.3.a through E.3.j.

For E.3.a through E.3.j, enter the number of apparent violations received for each type of apparent violation.

Note: E.3 type of apparent violations may be greater than E.1 total number of apparent violations because there may be multiple types of apparent violations in one apparent violation form.

Part 2: Narrative Response

To prevent LEARS from stalling during your narrative entry, please copy and paste your activities from a Word or Notepad document. Avoid using special characters, which may cause errors. Section A and B allow up to 1,000 characters in each narrative field. Section C allows up to 4,000 characters.

A - Issues, Accomplishments, and Anecdotes

For each of the activities below, provide any issues, accomplishments, or anecdotes that you would like to highlight. You may also provide any challenges you and/or outreach staff may have encountered. Comments should explain any irregularities or performance issues, including the SWA's plans to improve conditions. For example, if the SWA is not meeting required equity ratio indicators or minimum service level indicators, this section should be used to explain possible causes and corrective action plans.

1. Outreach
2. Monitoring (such as common issues, findings, observations, or best practices)
3. MSFW Apparent Violations
4. MSFW Complaints
5. Field Checks on Clearance Orders (including details about any discontinuation of services and the names of those employers)

B - Training and Technical Assistance

Local Office Visits, Conferences, Workshops, Training Opportunities

In this section, describe the technical assistance the SWA or SMA provided over the reporting period, this includes conferences, webinars, conference calls, training provided during local office visits, and any other kind of training and technical assistance provided.

C – Other

If there is any additional information you would like to provide, please add it here.

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Part 3: Minimum Service Level Indicators

Minimum Service Level Indicators: Pursuant to 20 CFR 653.109(h), ETA's 20 designated Significant MSFW States are required to meet minimum service level indicators each quarter (see https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/performance and click on the link under "Significant MSFW States and Local Offices" for the most recent list of Significant MSFW States. This section documents the minimum service level indicators to ensure MSFWs receive services that are quantitatively proportionate to the services provided to non-MSFWs.

The current Minimum Service Level Indicators were transmitted in TEGL 14-18 Attachment 5: Monitor Advocate, available at https://wdr.doleta.gov/directives/attach/TEGL/TEGL_14-18_Attachment-5_Acc.pdf. The table below shows minimum service level indicators captured by the ETA Form 5148 with additional information explaining what is required under each category. The Department notes that the remaining service level indicators and all equity ratio indicators are captured through the Workforce Integrated Performance System (WIPS) and are therefore not represented here. SWAs and SMAs should review WIPS reports to ensure compliance with the minimum service level indicators and equity ratio indicators that are not a part of this report. **Compliance issues with indicators not listed in Part 3 should be explained in Part 2 Narrative Responses.**

Note: Based on the data, which is either auto-populated from Part 1 or entered by the user, the system will mark each indicator as compliant or not compliant (Yes/No).

DATA ITEMS	Compliance Level	Actual Level (%)	Actual Denominator	Actual Numerator	Compliant?	
					Yes	No
1. Reviews of significant offices (Onsite reviews conducted by the SMA or designated SWA official of significant MSFW one-stop centers) Note: All significant MSFW one-stop centers not reviewed onsite by Federal staff must reviewed at least once per year by the SMA or designated SWA official. Compliance must be met by the end of quarter 4, program year to date.	100%	% Auto-populated	Auto-populated from Part 1, B.1 (cumulative column)	Auto-populated from Part 1, B.1.a (cumulative column)		
2. Field checks conducted when 10 or more job orders have been placed through the ARS[6] (must be met on a quarterly basis, if applicable).	25%	% Auto-populated	Auto-populated from Part 1, C.5 (report period column)	If 10 or more clearance orders had placements, this box will be auto-populated from Part 1, C.6 (report period column)		
3. Field checks conducted when nine or fewer job orders (but at least one) have been placed through the ARS (must be met on a quarterly basis, if applicable).	100%	% Auto-populated	Auto-populated from Part 1, C.5 (report period column)	If nine or fewer clearance orders had placements, this box will be auto-populated from Part 1, C.6 (report period column)		

[6] Field check measures in Part 3 items 2 and 3 of these instructions and in the EBSS system agree with the requirements stated in 14-18 Attachment 5: Monitor Advocate, however the current ETA Form 5148 contains a slightly different standard. ETA will correct Form 5148 to agree with TEGL 20-16 and these instructions.

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4. Outreach contacts[7] per week (see additional explanation below)	100%	% Auto-populated	40 (auto-populated as 40 contacts per week)	Auto-populated from Part 1, A.2 MSFW contacts by ES staff in the report period and divided by 13 weeks in the quarter		
5. Timely processing of complaints (ES Complaints)	100%	% Auto-populated	Auto-populated from the sum of Part 1, D.1.a, D.1.b, D.1.d, and D.1.e for the report period (quarterly data)	Enter the number of ES-related complaints (MSFW and non-MSFW) that were resolved within 45 days after the date the complaint was made for the report period (quarterly data)		

Outreach Contacts Per Week (Data Item 4):

Part 3 data item 4 reflects an average compliance level for outreach contacts per week in the given quarter. Significant MSFW States must maintain their full-time, year-round outreach staff to conduct outreach duties as described in 20 CFR 653.107(a)(4). To attain 100 % of this indicator, the denominator is set at 40 outreach contacts for each week, which totals 520 contacts per quarter. SWAs should provide a narrative response under Part 2.A.1 Outreach to explain planned and actual progress. Please include any positive development and challenges or concerns that have affected a SWA's ability to meet this level of outreach contacts or slowed its plans that were submitted as a part of its Agricultural Outreach Plan.

Part 4: Annual Summary

Note: SWAs must ONLY complete Part 4 in the fourth quarter of each program year (quarter ending June 30.

State Annual Summary of Services to MSFWs 20 CFR 653.108(s)	
This section is completed only in the fourth quarter of each program year (quarter ending June 30). This section must include the SMA's Annual Summary, which describes how the State provided employment and training services to MSFWs within the State based on statistical data, reviews, and other activities as required at 20 CFR 653 and 658. The narrative must be written by the SMA (though it may be uploaded to this report by another State staff member). It must represent the SMA's own observations, conclusions, and recommendations. To prevent LEARS from stalling during your entry, please copy and paste your text from a Word or Notepad document. Avoid using special characters, which may cause errors. The summary must include:	
(1) A description of the activities undertaken during the program year by the	

[7] *Outreach contact* means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from outreach staff (see 20 CFR 651.10).

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SMA pertaining to his/her responsibilities set forth in this section (20 CFR 653.108) and other applicable regulations in this chapter (20 CFR Chapter V).	
(2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the State Administrator.	
(3) An assurance the SMA devotes all of his/her time to Monitor Advocate functions. Or, if the SWA proposed the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing.	
(4) A summary of the monitoring reviews conducted by the SMA, including:	
(i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;	
(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and	
(iii) A summary of any technical assistance the SMA provided for the SWA and the ES offices.	
(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW ES offices.	
(6) A summary of the State's actions taken under the Complaint System described in part 658, Subpart E of this chapter, identifying any challenges, complaint trends, tracking resolution of complaints, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform and educate MSFWs, employers, and farmworker advocacy groups about the Complaint System.	

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(7) A summary of how the SMA is working with WIOA sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations, in the State, and an assurance that the SMA is meeting at least quarterly with representatives of these organizations. The summary should include whether the SMA has established an MOU with the NFJP grantee or other farmworker organizations in accordance with 20 CFR 653.108(l).	
(8) A summary of the statistical and other MSFW-related data and reports gathered by SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.	
(9) A summary of the training conducted for SWA personnel, including ES office personnel, on techniques for accurately reporting data.	
(10) A summary of activities related to the AOP and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the SWA will take to address those deficiencies.	
(11) For significant MSFW ES offices, a summary of the functioning of the State's staffing program under 20 CFR 653.111.	