

# Migrant Seasonal Farmworker Manual

**Missouri Department of Higher Education  
& Workforce Development**

**Office of Workforce Development**

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## **BACKGROUND**

In the spring of 1971, an administrative complaint was filed against the USDOL on behalf of 398 specifically named farm workers and 16 migrant and civil rights organizations. The lawsuit alleged ***repeated violations*** of farmworker civil rights in the provision of employment services. Judge Charles R. Richey, U.S. District Judge ruled against the USDOL, and an order of implementation was issued. The court order declared that USDOL implement provisions of services to the Migrant and Seasonal Farmworkers (MSFWs). In June 1980, the USDOL revised and published a new set of federal regulations (20CFR 653-658). The new regulations set the principal requirements of the U.S. employment service for: Counseling, testing, job referral and job training services for MSFWs that ***were proportionately equal*** to the non-MSFWs provided with the same service. As Wagner Peyser employment services we are required to track the services that are delivered to them and report this activity on a quarterly basis to the State Monitor Advocate (SMA). It is important that the Migrant and Seasonal Farmworker customer is not treated differently than other job seekers.

## **MSFW CHARACTERISTICS**

Missouri's migrant or seasonal farmworkers have a variety of surprising characteristics. The MSFWs in Missouri is not just from the Hispanic population. As the Agricultural Employment Services (AES) staff visits the agricultural employers who have farmworkers, they are finding that a migrant or seasonal farmworker can be from anywhere. In addition to workers of Hispanic descent, we are currently working with individuals of Haitian, Bosnian, South African, Burmese descent, as well as American citizens that qualify as migrant and/or seasonal farmworker. Depending on the origin of the farmworker, the language spoken will vary.

## **DEFINITIONS THAT APPLY TO A FARMWORKER**

***Agricultural worker*** see *Farmworker*.

***Farmwork*** means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities mean all commodities produced

on a farm including crude gum (oleoresin) from a living tree product processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. *Farmwork* also means any service or activity covered under §655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

***Farmworker*** means an individual employed in farmwork, as defined in this section. (20 CFR §651.10)

***Seasonal farmworker*** means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

***Migrant farmworker*** means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

***Migrant food processing worker*** see *Migrant Farmworker*.

***MSFW*** means a migrant farmworker or a seasonal farmworker.

## **SERVICES**

All American Job Centers (AJCs) must offer MSFWs equal access to a full range of employment services, staff must be sensitive to the job seeker's preferences, skills, and needs when considering the availability of agricultural or non-agricultural job opportunities for an MSFW. In order to accomplish this, all AJCs must identify and serve all farmworkers in an equitable manner. All AJCs will ensure that MSFWs who are English Language Learners (ELLs) receive, free of charge, the language assistance necessary to afford them meaningful access to the

programs, services, and information offered by the one-stop centers. AJC staff must provide MSFWs a list of available career and supportive services in their preferred language.

AJC staff must provide the following services:

- **Registration for Wagner—Peyser (WP) and other services**
- **Explanation and use of jobs.mo.gov**
- **Labor market information**

On the state and local labor market conditions, industries, occupations, and characteristics of the workforce, area business identified skills needs, employer wage and benefit trends, short and long-term industry and occupational projections, worker supply and demand, and job vacancies survey results.

In addition, workforce information may include local employment dynamics information such as the high growth and high demand industries, workforce availability, business turnover rates, job creation, job separations, and new hire rates.

- **Outreach**

Outreach staff locates and contact MSFWs who are not being reached by the normal intake activities conducted by the job centers. Through outreach, MSFWs receive the presentation of information of services available at the local one-stop center such as availability of referrals to training, supportive services, career services, as well as specific employment opportunities, and other related services. Additionally, the outreach worker provides a basic summary of farmworker rights in respect to the terms and conditions of employment, including, information on the Employment Services and Employment–related Law Complaint System, as well as information on the other organizations serving MSFWs in the area.

In the field, MSFWs can receive assistance with the complaint system. Additionally, WP and MoJobs registration can be completed outside of the job center if the worker elects to receive services on site. Outreach workers can also provide follow-up activity following the outreach appointment.

- **Job Service Complaint System**

MSFWs have a right to file complaints with the Office of Workforce Development (OWD) when:

1. The complaint pertains to an employer about a job to which an MSFW was referred by a job center,
2. The complaint concerns job service actions or omissions, such as allegations of inequitable services in the job center, or

3. The complaint concerns violations of employment-related and agricultural law such as housing, wages, transportation, and working conditions.

Upon the hiring of an applicant referred by the job center to an Agricultural Recruitment System (ARS) clearance order, job center staff are responsible for providing the customer with farmworker right information as well as conducting a random, unannounced field check.

The workers have the right to file a complaint with a job center office, outreach staff, or SMA if the employer violates the terms and conditions of the clearance order or violates regulations enforced by agencies such as Wage and Hour, Equal Employment Opportunity (EEOC), or Occupation Safety and Health Administration (OSHA).

Specific regulatory provisions are found at 20 Code of Federal Regulations (CFR) Part 658, Subpart E.

See the link provided for the English Employee Rights [WHD-1491](#) (this poster provides protection to foreign & domestic U.S. farmworkers).

Spanish Employee Rights [WHD-1491 Spanish](#).

Haitian Employee Rights [WHD-1490 Haitian](#).

- **Receiving Basic Career Services (Staff-Assisted)**

Participants receive any basic career service (includes any career service under WIOA Section 134(c)(2)(A)(i)-(xi) that is not provided via self-service or information services and activities).

Leave blank on case note and activity code if the participant did not receive a basic career service with significant staff involvement.

[This service also counts for Workforce Innovation and Opportunity Act (WIOA) Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), Reentry Employment Opportunities (REO) (Adults), TAA, and Job for Veterans' State Grant (JVSG)]\*\*

- **Receiving Staff-Assisted Career Guidance Services**

Participants receive career guidance services with significant staff involvement. Career guidance services include the provision of information (Including information on local performance and eligible training providers), materials, suggestions, or advice intended to assist the job seeker in making occupation or career decisions.

Leave blank on case note and activity code if the participant did not receive a career guidance service.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), Reentry Employment Opportunities (REO) (Adults), and Job for Veterans' State Grant (JVSG)]\*\*

- **Receiving Staff-Assisted Job Search Activities**

Participants are provided job search activities with significant staff involvement, and which are designed to help the participant plan and carry out a successful job-hunting strategy. The services include resume preparation assistance, job search (career) workshops, job finding clubs, and the development of a job search (employment) plan.

"Resume Assistance" - Providing instructions on the content and format of resumes and cover letters and providing assistance in the development and production of the same.

"Job Search Workshops" - An organized activity that provides instructions on resume writing, application preparation, interviewing skills, and/or job lead development.

"Job Finding Clubs" - Have all the elements of a Job Search Workshop, plus a period of structured application where participants attempt to obtain jobs.

"Job Search Planning" - Development of a plan (not necessarily a written plan) that includes the necessary steps and timetables to achieve employment in a specific occupational, industry, or geographic area.

Leave blank on case note and activity code if the participant did not receive a job search activity with significant staff involvement.

Additional Note: This definition excludes participants who receive workforce information services or attend a Transition Assistance Program (TAP) employment workshop such as VET program services. Those services are collected and reported separately.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), Reentry Employment Opportunities (REO) (Adults), and Job for Veterans' State Grant (JVSG)]\*\*

- **Referral to Employment**

Participants receive referrals to employment, which include significant staff involvement. A referral to employment is (a) the act of bringing to the attention of an employer a job seeker or group of registered job seekers who are available for a job and (b) the record of such a referral.

Leave blank on case note and activity code if the participant did not receive a referral to employment.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), Reentry Employment Opportunities (REO) (Adults), and Job for Veterans' State Grant (JVSG)]\*\*

- **Receiving Unemployment Insurance (UI) Claim Assistance**

Job seekers are provided meaningful assistance in filing a UI claim.

Leave blank on case note and activity code if the participant did not receive unemployment insurance claim assistance.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), and Job for Veterans' State Grant (JVSG)]\*\*

- **Referral to Federal (Approved) Training**

Participants are referred to training programs supported by the Federal Government, such as WIOA-funded projects, Trade Adjustment Assistance (TAA), Adult Education, Vocational Rehabilitation, and Job Corps.

Leave blank on case note and activity code if the participant did not receive a referral to federal training.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), and Job for Veterans' State Grant (JVSG)]\*\*

- **Referral to Other Federal /State Assistance (Supportive services & UMOS)**

Job seekers are referred to Other Federal/State Assistance. This may include Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families (TANF), health insurance assistance, child support assistance, tax preparation support, and any other Federal or State assistance programs.

Leave blank on case note and activity code if the participant is not referred to Other Federal/State assistance.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), and Job for Veterans' State Grant (JVSG)]\*\*

- **Receiving Individualized Career Service (Counseling)**

Participants receive individualized career services as described in WIOA sec. 134(c)(2)(xii). Services, if determined to be appropriate in order for an individual to obtain or retain employment, that consist of—

- (I) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—
  - Diagnostic testing and use of other assessment tools; and
  - In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;
- (II) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals, including providing information on eligible providers of training services pursuant to paragraph (3)(F)(ii), and career pathways to attain career objectives;
- (III) Group counseling;
- (IV) Individual counseling;
- (V) Career planning;



- (VI) Short-term prevocational services, including the development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training;
- (VII) Internships and work experiences that are linked to careers;
- (VIII) Workforce preparation activities;
- (IX) Financial literacy services, such as the activities described in section 129(b)(2)(D);
- (X) Out-of-area job search assistance and relocation assistance; or
- (XI) English language acquisition and integrated education and training programs.

[This service also counts for WIOA Adults, WIOA Dislocated Workers, Dislocated Worker Grant (DWG), Reentry Employment Opportunities (REO) (Adults), Job for Veterans' State Grant (JVSG), and NFJP - UMOS]\*\*

\*\* This information obtained from ETA-9172: DOL-only Participant Individual Record Layout (PIRL) see the link provided [PIRL COMBINED 2.28.20 SP](#).

### **IN-TAKE PROCESS**

Upon first arriving at a Missouri Job Center or if communicating via telephone, the following methods should be used to provide career services:

- Adequately identifying the MSFW at the point of registration;
- Explaining services available;
- Assessing the immediate needs of the farmworker;
- Referral to appropriate service providers as needed; and
- Systematic follow-up with each individual to ensure their needs are met.

Upon completion of intake, the MSFW's training needs are assessed. Many times completion of training or an upgrade of skills is difficult to accomplish because workers have a family they must support. If training is possible and necessary, then the participant is referred to the Job Center Skills Team (WIOA staff) for evaluation. Even if training options do or do not meet the individual's needs, a referral to other service providers such as the 167 Grantee NFJP, United Migrant Opportunity Services (UMOS) will be made. In addition, English as a Second Language (ESL), high school equivalency classes, and human resources services are provided by Migrant Education Program all over the state to MSFWs 21 years of age and under. For more information on MEP see the link provided [DESE - Migrant Education](#).

## **JOB CENTER PROCESS**

Once the MSFW is identified, they must be registered into MoJobs. The link below outlines the step-by-step process:

<https://app-jobs.mo.gov/admin/gsipub/htmlarea/uploads/MSFW-Dec%202017.pdf>

## **AGRICULTURAL RECRUITMENT SYSTEM**

### **Relevant Regulations**

**20 CFR 652.2**

**20 CFR 653, Subpart F**

**20 CFR 654 and 29 CFR 1910.142**

Definitions and acronyms:

AES – Agricultural Employment Service

ARS – Agricultural Recruitment System

AJC – American Job Center

ES – Employment Service (Job Service)

FLC – Foreign Labor Certification

ICO – Intra/Interstate Clearance Order

JS – Job Service

MSFW – Migrant and Seasonal Farmworker

OHO – Order Holding Office

RMA – Regional Monitor Advocate

SMA – State Monitor Advocate

SWA – State Workforce Agency (JS)

WP – Wagner-Peyser

*Agricultural employer* means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

*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 a Job center office uses to request recruitment assistance from other Job center offices **within the State.**

*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 a job center uses to request recruitment assistance from other job center offices **in other State(s)/territories as approved by DOL Regional office.**

### **Summary:**

- The ARS was developed as a result of the WP Act of 1933.
- This Act requires that the U.S. Employment Service maintain a system to ensure the orderly movement of workers within and between states/territories.
- The ARS is a system for processing intrastate (within the state) and interstate (outside of the state) Job Clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis.
- The ARS connects *agricultural employers* who are recruiting temporary workers with *job seekers* outside of their local area. The system is valuable to both groups and is available at no cost.
- Workers' rights are protected by the assurance that working and housing conditions meet the preoccupancy housing inspection standards, and will be available prior to their movement across a county or state lines.
- ARS is a domestic labor exchange process, funded by state WP allotment grants, not by foreign labor certification grants.
- Both agricultural employers and Farm Labor Contractors can use the ARS to seek workers.
- No ES office or SWA may place a job order seeking workers to perform farm work into intrastate or interstate clearance unless the job center office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area OR the job center office anticipates a shortage of local workers.
- Employers who have an approved preoccupancy housing inspection housing are provided access to a broader workforce through the ARS, once it has been determined that the local labor market will not be sufficient.

### **Process:**

#### **Local Recruitment**

The employer determines the need for workers, places an agricultural job order on MoJobs labor exchange system, and notifies the local job center office. Alternatively, they may place the job order directly with their local Job center office.

The Employment Service office (local job center) and employer promote the job order and attempt to recruit workers within the local labor market area. The normal commuting distance is normally a 50-mile radius or as determined by the local office.

Dissemination of agricultural job order for temporary farmwork process (including H-2A job orders):

1. Job order is identified by an “AES” prefix on the job title in MoJobs. (Or is pulled from H-2A job order queue.)
  - a. All agricultural-related temporary or seasonal job orders are identified in the description by starting with “AES,” and recorded as AES under the special category section during the job order entry process. This facilitates job searching, referrals, reporting, and tracking. Additional guidance can be found in the [WP Labor Exchange Manual](#).
2. Job center staff ensures employer information is suppressed, and application instructions direct candidates to the local job center.
3. Job center staff sends a copy of the job order to the local area for posting in the resource room & recruiting engaging local Business Services staff to assist and provide services to the agricultural employer including recruitment events.

#### Facilitate the posting of local job order on MoJobs:

The agricultural job postings must include the following information:

- Wages (i.e., piece rate, hourly pay, bonuses, etc.).
- Housing information, if applicable (i.e., deposit required, utility charges, licensed, etc.).
- Map/directions from the local Job center office to the employer.
- Duration of work (i.e., four weeks, June through October, etc.).
- The statement “Local Recruitment Only.”

#### Referral process for U.S. candidates:

If domestic candidates wishing to apply for a temporary agricultural position and present themselves or communicate via telephone with their local job center, staff will review the minimum qualifications of the position and assess candidates.

If a candidate meets minimum qualifications, job center staff will contact the employer to arrange a candidate interview.

If job center staff refer an MSFW to an intrastate job order or places an MSFW at a job posted through an intrastate job order, the MSFW must be registered under WP in MoJobs. All services provided to MSFW must be recorded to show that Missouri is actively implementing ARS and providing employment services to MSFWs. Job center staff must keep track of all workers referred to the job order and follow up with the employer to ensure placement. Qualified U.S. workers MUST be hired by the employer. If not hired the employer must have good reasons for not hiring a qualified domestic worker. If the employer does not provide a good reason, the job center staff who made the referral of the qualified domestic worker can write an Apparent Violation (AV) and refer it to the SMA and Wage & Hour Division.

#### Placement into intrastate clearance or interstate clearance:

An ICO can be placed when the job center office and employer have attempted and have **not** been able to obtain sufficient workers within the local labor market area **or** the job center office *anticipates* a shortage of local workers.

**If there are not a sufficient number of local workers found in seven days**, the employer should be advised of the option to place the job order into the ARS system as an ICO. The Agricultural and Food Processing Clearance Order ETA Form 790 (see Appendix A found on Missouri Agriculture Recruitment System (ARS) Handbook) must be completed in full and all assurances provided. The employer housing must be registered, inspected, and certified for the number of workers requested prior to placing the job order into intrastate recruitment. The job order (clearance order) may now be placed into intrastate clearance (statewide) if all requirements are met. Job center staff may assist if requested by the employer.

The employer must be made aware that in order to use ARS, he or she is required to provide workers with the following assurances:

- Unless the job center or the SWA staff is notified 10 working days prior to the original cited start date, the employer is required to provide work or equivalent pay for the first week of employment cited in the ETA Form 790.
- If the employer extends the period of employment, he or she is still obligated to pay each worker any wages that are owed.
- All working conditions must comply with applicable federal and state employment-related laws.
- The employer will notify the local job center office or the SWA as soon as possible if there are any changes to the terms and conditions of the job.
- If the employer is acting as a Farm Labor Contractor, he or she must have a valid Farm Labor Contractor registration certificate.
- Licenses must be provided to workers who were recruited from outside of the local area at no cost.
- Outreach workers will have reasonable access to farmworkers.

If the employer would like to file an ICO:

- Complete the ETA Form 790 and have the employer sign this form and the Assurances Form (Appendix C - ARS Handbook). Additionally, have the employer complete for [WH-516 Form](#) (Appendix D - ARS Handbook).
- Provide the employer with a copy of the ETA Form 790, the Assurances, and WH-516 Form.
- A pre-occupancy housing inspection is conducted by field staff. If housing does not meet applicable standard(s) at the time the clearance order is placed, the employer may file a Request for Conditional Access into ARS (Appendix G - ARS Handbook) with the local job center office.
- Wages cannot be less than the highest of: 1) prevailing wage for similar work in the area (2) federal minimum wage or (3) state minimum wage. Check [Dep of Labor & Industrial Relations](#) webpage for prevailing wage. Farmers who hire even a single H-

2A worker must also pay the Adverse Effect Wage Rate (AEWR) to every domestic worker as well if it is higher than what they would otherwise receive. Check [DOL's website for the current AEWR for Missouri](#).

- Email all required forms to [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov):
  - Agricultural and Food Processing Clearance Order (ETA Form 790).
  - Signed Assurances Form (Appendix C - ARS Handbook).
  - If needed, the Request for Conditional Access into the ARS (Appendix G - ARS Handbook).

**If the employer is not interested in utilizing the ARS:**

- Update any job order information necessary and keep the posting active.
- Continue local recruitment efforts.
- Maintain contact with the employer.

**If labor needs cannot be met within the state, the job order may be placed in interstate clearance.**

- The local job center staff will send the ETA Form 790 and a copy of the job order to the SMA.
- SMA will submit ETA Form 790 to DOL Regional Monitor Advocate (RMA).
- The ETA Regional Monitor Advocate will approve ETA Form 790 and provide the SMA with the areas of supply to which the order will be sent.
- The SMA will transmit a copy of the ETA Form 790 to the SMA in the supply state(s) for interstate recruitment.

**Job Center Staff Responsibilities:**

Ensure that the agricultural clearance form prescribed by DOL (ETA Form 790 or its subsequently issued form) and its attachments are complete and comply with all federal and state regulations when placing intrastate or interstate clearance orders.

All clearance orders must be posted in accordance with ETA guidance. If the job order for the job center office incorporates offices beyond the local commuting area, the job center office must suppress employer information to facilitate the orderly movement of workers with the ES system.

Job center staff must determine through pre-occupancy registration and inspection performed by field staff that housing assured by the employer is available and meets applicable standards or has been approved for conditional access to the clearance system.

Review agricultural job order to ensure it:

- Includes required language and assurances described in 20 CFR 653.501(c).
- Does not contain unlawful discriminatory information.
- Contains all conditions of employment.

- Housing location is listed and provided *free of charge* to workers outside of commuting distance from their permanent residence.
- Housing has been inspected and certified.
- Information on transportation and if it will be provided.
- Provides that wages are the highest of the minimum wage (Federal or State or prevailing wage).
- Is signed by the employer.

The job center will complete ETA Form 790 and share job orders with staff and other job centers to promote the recruitment efforts of MSFW across the State.

### **The Order Holding Office (OHO):**

The OHO is the office where the job order originated. In other words, it is the employer's local Job Center office. The OHO acts as the primary liaison between job seekers and the employer. OHO is responsible for the placement process until workers recruited outside of the local area arrive at the job site and commence employment. This includes the responsibility to:

- Maintain contact with the employer and advise labor supply states of any changes in crop and recruitment conditions.
- Inform the employer of any changes in the status of recruited workers.

The OHO is also responsible for oversight after recruited workers arrive. This includes:

- The requirement for the OHO to visit the worksite upon the arrival of any interstate workers within three days of their arrival.

### In-office:

- Create a folder to maintain all information, including:
  - Signed ETA Form 790.
  - Signed Assurances.
  - Completed WH-516 Form.
  - Local [MoJobs](#) job posting.
  - Applicant Referral Log.
  - Agricultural Job Order Referral Form and Referral Checklist ([DWD-5527](#)) for all referrals.
  - Full registration completed for any local applicants.
- Ensure that ICO language states all referrals must be coordinated with the OHO.
- Search job seekers on [MoJobs](#) and call in appropriate applicants to review the job order and ETA Form 790.

### With the employer:

- Make all changes to material terms and conditions in the ICO requested by the employer and forward to [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov).
  - Upon approval of changes, send amended ETA Form 790 to Applicant Holding Offices (AHOs).

### With referrals:

- Follow up on all referrals to the job order (whether local, intrastate, or interstate) within 48 hours.
- Confirm all actions concerning job seekers outside of the local area with the AHO (hires, refusals, no-shows, etc.).
- Track all referrals by using the Referral Log.
- Contact referred workers who have been terminated or refused employment by the employer and inform them of the Job Service Complaint System.

### **AHO Responsibilities:**

A job center becomes an AHO when a job seeker would like to apply to an ICO job order outside of the local area. AHO responsibilities include:

### In the office:

- Create a folder to maintain all information:
  - Signed ETA Form 790.
  - Signed Assurances.
  - Completed WH-516 Form.
  - [MoJobs](#) job posting.
  - Referral log.
  - [DWD-5527](#) Form (Applicant Referral Form) for all referrals.
- Provide language services to the job seeker and employer as needed.

### With interested applicants:

- Complete registration for each applicant prior to referral.
- Review the required qualifications of the job order and verify that the applicant meets these requirements.
- Advise the applicant of all terms and conditions of the job order to ensure that he or she is willing and able to complete the work.

Once it is determined that an applicant is willing, able, and qualified to do the work described on the job order, you are ready to make a referral by doing the following:

- Complete the Applicant Referral Form, and provide the applicant with a copy of this form, as well as a copy of the ETA Form 790.
- Verify that each crew leader has a current federal Farm Labor Contractors Certificate.
- Contact the OHO to verify that the start date and all terms and conditions of the job order remain the same.
  - For a position that has not started yet, this must be done 5 – 9 days prior to the first day of work to guarantee workers' employment or equivalent wages for the first week specified in the contract.



- Follow the instructions on item 15 of the ETA Form 790 to arrange a mutually satisfactory time for the employer and worker(s) to communicate.

**Field Checks (20 CFR 653.503):**

If a worker is placed on a clearance order (including an order linked to an application for H-2A workers), job center staff must notify the employer in writing that the job center staff through its ES offices, must conduct random, unannounced field checks to determine and document whether wages, hours and housing conditions are being provided as specified in the clearance order. Email [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov) to obtain the generic Notice of Field Checks letter. The Job Center staff can mail and/or email to the employer prior to conducting the field check.

Where the job center staff has made placements on 10 or more agricultural clearance orders during the quarter, the SWA must conduct field checks on at least 25% of the total of such orders.

Where the job center staff has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100% of such orders. This requirement must be met on a quarterly basis.

Field checks must include a visit(s) to the worksite at a time when workers are present. When conducting field checks, job center staff must consult both the employees and employer to ensure compliance with the full terms and conditions of employment.

If job center staff observe or receive information, or otherwise has reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the job center staff must document the finding and attempt informal resolution where appropriate (for example, information resolution must not be attempted in certain cases, such as Equal Opportunity or Human Trafficking related issues and others identified by the Department through guidance). If the matter has not been resolved through informal resolution within 5 business days, the SWA must initiate discontinuation of services as set forth in 20 CFR 658, subpart F, and must refer the apparent violations of employment-related laws to appropriate enforcement agencies in writing.

The local job center will designate staff to conduct the field checks. The designated staff can conduct and/or coordinate their field checks alongside an MSFW Outreach staff who performs field visits or conducting work agreement reviews. If the designated staff member needs training on what to look for while doing field checks, the local job center can contact SMA or MSFW outreach staff at [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov).

### **Closing of the Clearance Order:**

Once all positions have been filled (number of workers requested on the ETA Form 790) or the date of need has ended, Job center staff will notify the SMA regarding the need to close the clearance order, as no more workers are needed by the employer. SMA will notify the supply states that the job order has closed.

Job center staff must maintain contact with the employer and conduct follow-up calls to the employer to obtain information to proceed with the closing of a Clearance Order.

### **H-2A Temporary Labor Certification Program:**

ARS for recruiting only domestic workers is a separate route from H-2A Temporary Labor Certification in which the employer completes ETA Form 790 along with ETA Form 790A application. In this process, the employers must complete four steps in the H-2A Temporary Labor Certification process **through** DOL's **FLAG online filing system** under the link provided <https://flag.dol.gov/>. Unlike ARS for recruiting only domestic workers, the H-2A Program is **not free** and has fees associated with the program.

- Step 1: Employer will file a Job Order (ETA Form 790) with the SWA's Foreign Labor Certification (FLC) Coordinator 75 to 60 calendar days before the start date of work.
- Step 2: Employer will file an H-2A Application with the Chicago National Processing Center (NPC) no less than 45 calendar days before the start date of work.
- Step 3: Employers will conduct recruitment for U.S. Workers on their own in addition to the recruitment conducted on their behalf by the SWA. Employers will begin recruitment on the date they receive the Notice of Acceptance from the Chicago NPC until they complete the recruitment steps.
- Step 4: Employers will complete the Temporary Labor Certification Process by submitting the following documents to the Office of Foreign Labor Certification (OFLC) Chicago NPC: recruitment report, the terms and conditions of their job order and H-2A application, and other required documentation guaranteeing certain protections to employed workers. No less than 30 calendar days before the start date of work.

Under the H-2A Program, SWA will facilitate the filing process at the State level. FLC Coordinator will assist employers in scheduling housing inspections, resolving deficiencies on their work contract and housing units, and answering questions. Local job centers are expected to make referrals of qualified workers to any job order attached to the H-2A application in MoJobs system until 50% of the contract period has elapsed. Employers must consider any U.S. worker referral made under the 50% rule. Additional guidance for Job Orders attached to an H-2A and H-2B can be found at the [WP Labor Exchange Manual](#). A field check will be conducted anytime an employer hires a domestic worker that was referred by a job center to a job order attached to an H-2A application. Job centers will direct employers, agents, or attorneys inquiring about the H-2A program to the FLC Coordinator.

More information regarding H-2A Program process can be found under the link provided: <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2a>

For Complete Step-by-Step Process see *Missouri Agricultural Recruitment System (ARS) Handbook*. Email [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov) to obtain the ARS handbook.

## **BUSINESS SERVICE OUTREACH**

Certain career services must be made available to local employers, specifically, labor exchange activities and labor market information described in § 678.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries.

Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:

- (1) Customized screening and referral of qualified participants in training services to employers;
- (2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;
- (3) Customized recruitment events and related services for employers including targeted job fairs;
- (4) Human resource consultation services, including but not limited to assistance with:
  - i. Writing/reviewing job descriptions and employee handbooks;
  - ii. Developing performance evaluation and personnel policies;
  - iii. Creating orientation sessions for new workers;
  - iv. Honing job interview techniques for efficiency and compliance;
  - v. Analyzing employee turnover;
  - vi. Creating job accommodations and using assistive technologies; or
  - vii. Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;
- (5) Customized labor market information for specific employers, sectors, industries, or clusters; and
- (6) Other similar customized services.

Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Workforce Development Board (WDB), or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB and in cooperation with the State.

Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

- 1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);
- 2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;
- 3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized postsecondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;
- 4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;
- 5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and
- 6) Assisting employers with accessing local, State, and Federal tax credits.

All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3).

Missouri's State WIOA Plan requires local areas to reach out to specific target groups, including women, minorities, and older individuals, individuals with limited English proficiency, and persons with disabilities. Office of Workforce Development requires each local area to ensure that their Affirmative Outreach and recruitment plans are implemented to broaden the composition of the applicant for employment, registrant, and participant pools. OWD has made region-specific demographic information available to LWBs and has required outreach to target groups in the State WIOA Plan and Local Plan.

OWD will provide Wagner—Peyser Act funded services to MSFWs and to prospective and actual employers of these individuals. OWD will make every effort to strengthen its working relationships with MSFWs and employers to encourage the utilization of Missouri Job Centers. The local offices' outreach activities must be designed to meet the needs of MSFWs in the State and to locate and contact MSFWs who are not being reached through normal intake activities.

An assessment of the unique needs of farmworkers in the area based on past and projected agricultural and farmworker activity in Missouri is found under the Agricultural Outreach Plan (AOP) for Missouri. Such needs may include but are not limited to employment, training, and housing.

Housing, transportation, as well as childcare, have been identified as primary needs of farmworkers. Since many of the temporary farmworkers do not live close to their employer, housing, transportation, and childcare are unique needs of the MSFW. Only about 12 % of

employers who hire MSFWs provide some type of housing for their workers and even fewer provide some sort of transportation. As AES staff visit with employers who are looking for workers, housing and transportation needs are pointed out as possible problems for workers. Staff will work with the employer, MSFWs, and collaborate with UMOS to help remedy these problems. UMOS has Migrant and Seasonal Head Start (MSHS) and Migrant Child Care for seasonal or temporary farmworkers. During peak harvest season, UMOS provides MSHS to children during weekend hours. MSHS sites in Missouri are Caruthersville, Malden, Mt. Vernon, and Lexington.

To better serve the agriculture employer, OWD will continue to conduct outreach to agriculture employers to make them aware of the services we provide to assist them in their agriculture businesses. The [MoJobs](#) website has a dedicated [AES page](#) promoting services to agricultural employers. In addition, the MoJobs website includes valuable information for all employers, including information on job postings and recruitment services, work-based learning programs, available tools to help assess employees, available workshops for employers, links to business resources, and contact information for business services staff throughout the state. Every new business registrant in MoJobs must be contacted by a representative from the local business team who offers additional workforce system services.

Local Business Outreach Team staff and MSFW outreach staff solicit job orders from agricultural employers on a regular basis. MSFW outreach staff coordinate employer outreach and marketing with business teams prior to making contact with the agricultural employer. Both the business team and MSFW outreach staff utilize [MoJobs](#) as the common case management system. All employer contacts are recorded within MoJobs, ensuring no duplication of services. In addition to local business outreach teams, MSFW outreach staff closely coordinate with multiple agencies, such as UMOS, the WIOA 167 grantee, Chambers of Commerce, local economic development organizations, and educational agencies to ensure business needs are met. This close coordination results in a streamlined and efficient service delivery while preserving the integrity of the program and avoiding duplication.

OWD will strive to improve our services to agriculture employers by reaching out to them to continue to learn how we can be of assistance and tailor our services specific to the agriculture community.

SMA program and outreach staff encourage the use of the Agricultural Recruitment System (ARS) in all contacts with employers and groups, including at the beginning of the season, end of the season, and partner and employer meetings. Missouri will provide technical assistance to those employers throughout the ARS and ICO process.

For more information regarding Missouri's Wagner—Peyser Agricultural Outreach Plan, see the link provided [Missouri PYS 2020-2023](#).

## **SERVICES TO AGRICULTURAL EMPLOYERS**

Labor exchange services must be available to all employers. For example self-service, including virtual services, facilitated self-help service, and staff-assisted service.

Agricultural employers should be provided with the same employer services any other non-agricultural employer would receive from the job centers. Services for agricultural employers include making referrals to job seekers to available job openings, assistance with the development of job order requirement, matching job seeker experience with job requirement and skill, assistance with special recruitment needs, arranging job fairs, assisting to analyze hard to fill job orders, job restructuring, and helping employers deal with layoffs.

Additional services include, but are not limited to:

- Additional Training Options
  - Agricultural Labor Law Information
  - ARS
  - Field Checks
  - Field Visits
  - Free Migrant Housing Inspections
  - Foreign Labor Certification – H-2A
  - Hiring Events/Job Fairs
  - H-2A Posters
  - MSPA (Migrant Seasonal Farmworker Protection Act Poster)
  - Other Required postings as needed
  - Routine Field Sanitation Checks
- 
- Customized screening and referral of qualified participants in training services to employers.
  
  - Customized employment-related services to employers, employer associations, or other such organizations on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act Employment Service.
  
  - Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local WDB and consistent with the local plan and WIOA.
  
  - Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and promoting entrepreneurial skills training and microenterprise services.

- Improving services and linkages between the local workforce development system (including the local one-stop delivery system) and employers, including small employers, in the local area.

Job order information obtained from an employer must be conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through [MoJobs](#) labor exchange system and through the job center. Staff must provide adequate assistance to MSFWs to access the job order information. OWD staff can place job advertisements in local Hispanic newspapers; including, but not limited to K.C. Hispanic News, Kansas City (Hispanic) newspaper.

Staff strive to work closely within the agricultural sector to identify the needs of farmers, producers, and agricultural businesses and to provide assistance to fulfill those needs. Currently, the biggest factor affecting agriculture in Missouri is a reliable, qualified workforce. Many of the farmers, producers, and agricultural businesses have the desire to increase their production but are held back from expanding due to the lack of farmworkers. Many farmers are turning to the H-2A Temporary Visa Program to bring foreign nationals to the U.S. to conduct farmworker that is temporary or seasonal in nature.

During peak harvest season, it is important to have access to a strong agricultural workforce that can assist producers in garnering the greatest yield from their crops. It is important to make agricultural employers aware of AES and ARS services that are available through the Job centers. OWD staff participates in local job fairs and community events throughout the state to expand awareness to this population about the services that are available for both MSFW and agricultural employers.

Each region of the State will have a job center to assist central office staff in the implementation and coordination of local outreach activities. Training will be completed on outreach throughout the State requiring a minimum number of staff from each job center to attend. Training will be available on the Learning Management System (LMS). This strategy will increase local program knowledge and will increase MSFW registrations for Missouri and provide a wide range of services to the farmworkers and agricultural employers.

### **UNITED MIGRANT OPPORTUNITY SERVICES (UMOS)**

Regions will continue to partner with local agencies whenever possible including the WIOA Title I section 167 grantee. OWD and the Local WDBs have an MOU with the 167 National Farmworker Jobs Program (NFJP) grantee, UMOS, to ensure the most effective and efficient utilization of the funds provided by USDOL for administration and operation of the statewide Migrant Seasonal Farmworkers outreach program. OWD and UMOS will work together as partners to provide a full spectrum of services to Missouri's MSFWs and agricultural employers.

The MOU allows for combined training to Job center staff by OWD's SMA and UMOS local staff. It allows for co-referrals and enrollment into both agencies. Staff is required to make referrals to UMOS and make a record of such referrals under the proper activity code **136 Referred to WIOA Services**. A case note needs to enter stating the participant was referred to UMOS (Common intake can be done under this activity code for WP and WIOA). Staff is encouraged to use brochures and other outreach materials that feature both agencies and the available services. Current outreach staff also work with the local workforce boards to encourage natural collaboration and communication among the partners and the UMOS staff. UMOS covers the entire state of Missouri even though their Farmworker Program offices are located only in Carthage, Lexington, and Kennett.

If a staff or a Job center needs a complete list of UMOS Farmworker Program and UMOS Migrant and Seasonal Head Start Program locations and contact information, please email [AES@dhewd.mo.gov](mailto:AES@dhewd.mo.gov).

To find out more about UMOS click on the link provided <https://www.umos.org/>.



# Migrant and Seasonal Farmwork Desk Aid (MSFW)

## SEASONAL FARMWORKER

Worked for at least 1 day doing farm work during the last 12 months

**AND**

Farm work is temporary or seasonal in nature

**AND**

Can reasonably return to permanent place of residence on a daily basis

Note: A full-time student who is a non-migrant is NOT a Seasonal Farmworker

## MIGRANT FARMWORKER

Is a Seasonal Farmworker

**AND**

Travels to do farm work

**AND**

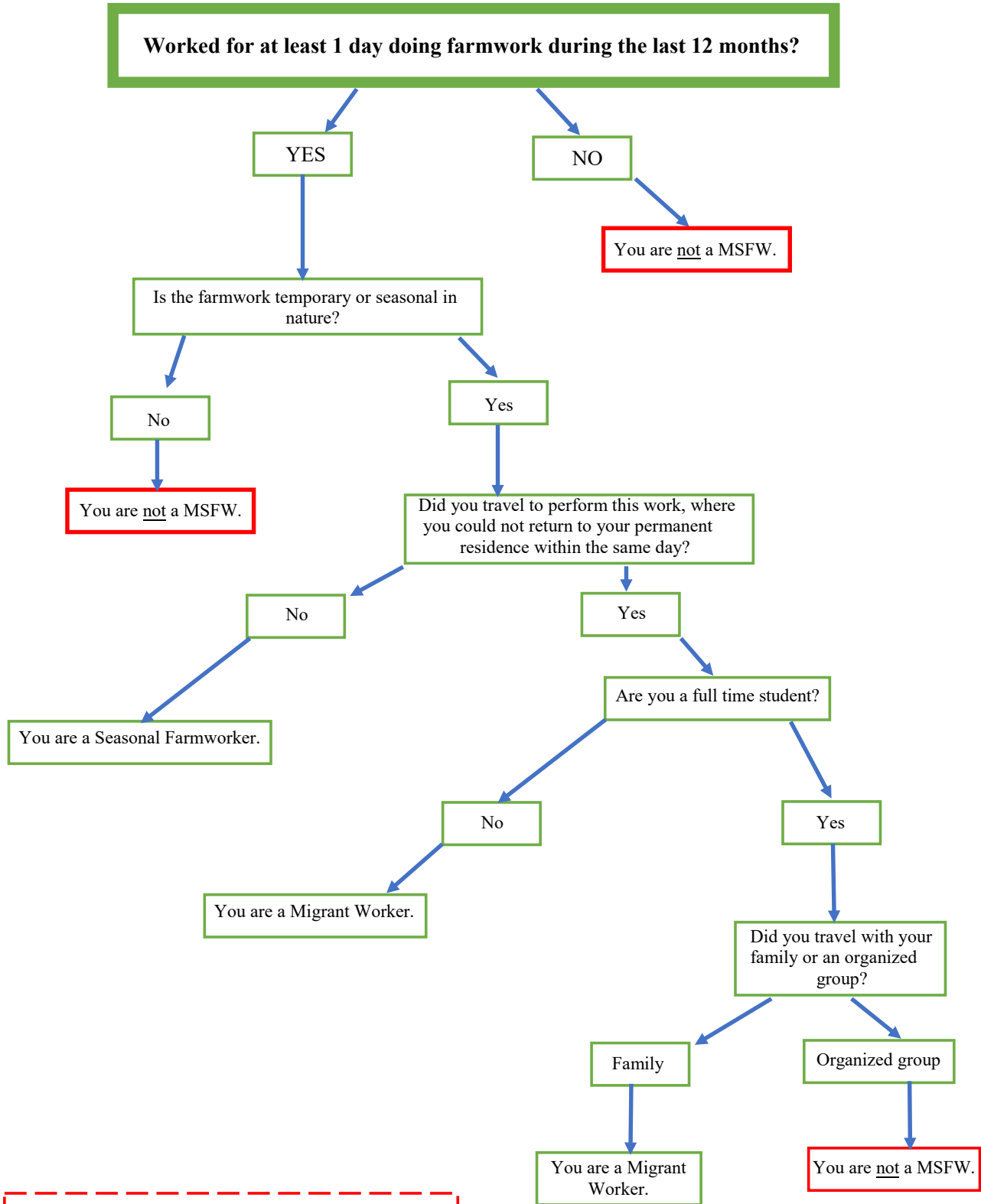
Is not reasonably able to return to permanent residence within the same day

Note: A full-time student traveling with family is a Migrant Farmworker

Note: A full-time student who is traveling in an organized group is NOT a Migrant Farmworker

## FARM WORK DEFINITION

The cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under §655.103(c) of this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.



*\*Note- A full-time student who is a Non-Migrant is **NOT** a seasonal farmworker*