



Workforce Issuance

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☒ Policy ☐ Information

To: MassHire Workforce Board Chairs
MassHire Workforce Board Directors
MassHire Career Center Directors
MassHire Fiscal Officers
MDCS Operations Managers

cc: WIOA State Partners

From: Diane Hurley, Acting Director
MassHire Department of Career Services

Date: December 13, 2024

Subject: **Farm Labor Camp Inspections - Foreign Labor Certification (FLC) H2A Program**

Purpose: To notify MassHire Workforce Boards, MassHire Career Center Operators and local workforce partners of the protocols and procedures for conducting pre-occupancy, post-occupancy and re-inspections of farm labor camps in Massachusetts.

As the USDOL- designated State Workforce Agency (SWA), MassHire Department of Career Services (MDCS) administers the Foreign Labor Certification (FLC) H2A Program and aims to:

1. ensure the agency's compliance with Federal, State and local regulatory requirements associated with the H2A Program
2. better facilitate the evaluation of proposed and existing farm labor camps
3. improve procedural consistency in every inspection
4. substantiate increased communications with agents and employers regarding regulatory and internal timelines, and
5. ensure greater transparency for employers/agents and other stakeholders

Background: As a requirement for participation in the Foreign Labor Certification (FLC) H2A Program, employers must provide housing, at no cost, to H-2A workers and to

those workers in corresponding employment who are not reasonably able to return to their residence within the same working day.

H-2A employers may house workers in temporary labor camps that they own or control, or they may use rental or public accommodations using the applicable housing standards under the H-2A program.

Familiarity with Federal, State, and local regulations governing farm labor camps can help employers secure suitable housing for prospective workers. While adapting residential structures to meet farm labor camp standards can be challenging, successful compliance is often achievable.

Policy: The following standards, at a minimum, will be applied to farm labor camps in Massachusetts:

Housing Detail	Minimum Applicable Standards*	Employer Checklists
Housing that was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980.**	ETA 20 CFR Part 654 Subpart E In addition: Local Building Codes (employers must reach out to their local board of health for details)	ETA Housing Safety and Health Checklist
Housing constructed after April 3, 1980	ETA 20 CFR Part 654 Subpart E OSHA 29 CFR 1910.142 , MDPH 105 CMR 420.00 In addition: Local Building Codes (employers must reach out to their local board of health for details)	OSHA Housing Safety and Health Checklist
		MDPH Housing Guidance (download) Applied if housing more than one (1) occupant.
Rental and Public Accommodations	OSHA (Limited) 29 CFR 1910.142(b)(2) , (3) , (9) , (10) , and (11) , (c) , (d)(1) , (9) , and (10) , (f) , (g) , (h)(2) and (3) , and (j) . In addition: Local Building Codes (employers must reach out to their local board of health for details)	Rental and Public Accommodations Guidance

*When evaluating elements of a farm labor camp that are referenced/covered by ETA, OSHA, MDPH, or Local Building Codes, the FLC housing inspector **must apply the most stringent applicable standard**.

**Housing that was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980 that has had at least two (2) major upgrades (e.g. adding or renovating rooms, replacing a roof, windows, etc.) will be evaluated under OSHA [29 CFR 1910.142](#), [MDPH 105 CMR 420.00](#).

Pre-occupancy Inspections

To ensure the timely physical inspection of farm labor camps in Massachusetts the following actions must be taken by an employer/agent **BEFORE** MDCS can schedule and ultimately conduct a pre-occupancy farm labor camp inspection.

1. The employer/agent must submit the [USDOL ETA790/790A](#):
 - **as soon as 75 but no later than 60 calendar days*** before the employer's date of need, and
 - clearly and accurately identify all locations** where workers are intended to stay for the duration of the season.

*Unless the employer/agent is submitting an Emergency Filing to the USDOL-CNPC in accordance with 20 CFR 655.134.

**Should workers be moved from the proposed housing location(s), regardless of the reason, duration or time in the season, the employer(s) must inform MDCS and MDPH of the change, immediately.

Please note: Lack of housing or non-compliant housing are generally not considered good and substantial causes for emergency filing.

2. Employers must submit a [Farm Labor Camp Application](#) to the Massachusetts Department of Public Health (MDPH). To ensure a timely filing, employers are strongly encouraged to do so prior to or immediately following the filing of the ETA790/790A.

MDPH's [Farm Labor Camp Application](#) consists of the following elements:

- Certificate of Occupancy Application
- a local Fire Department Inspection
- a local Building Inspection, and
- the results of water tests (for private wells)

Once the [Farm Labor Camp Application](#) has been submitted to, and reviewed and approved by MDPH, the MDCS FLC Unit is notified of the determination. This communication validates that the proposed farm labor camp(s) has/have met the prerequisites for a physical inspection and MDCS can proceed with scheduling and conducting a pre-occupancy farm labor camp inspection.

If the Farm Labor Camp Application is not approved or is incomplete, the MDPH will inform MDCS of the status of the application. Until the application is approved, the MDCS FLC Unit cannot proceed with scheduling or conducting a pre-occupancy inspection. In situations such as this, deficiencies or issues hindering the approval of the application must be addressed by the employer with MDPH to remedy/rectify any outstanding issues.

Untimely filings with the MDPH may result in the MDCS FLC Unit reporting to the USDOL/CNPC that housing was not able to be inspected, as required, **30 days**

prior to the start date of need per [20 CFR 655.122\(d\)\(6\)\(i\)](#). This action can result in the case being denied by the USDOL/CNPC for not having housing or not having housing in compliance with Federal, State and/or local laws.

Please see Attachment A for a general timeline to help ensure timely actions throughout the FLC H2A process.

Note: MDCS as agent of, and in agreement and collaboration with the Massachusetts Department of Public Health (MDPH), will certify farm labor camps for the number of “anticipated workers”; this includes both H-2A and any referred U.S. workers. Farm labor camps in the Commonwealth are not approved for their maximum capacity nor are they approved for a “random” number of occupants. Requests to increase the number of occupants can be made to the MDCS FLC Unit at H2AProgram@mass.gov.

Re-Inspections

Re-Inspections are conducted in-person, when the deficiencies identified during the pre-occupancy inspection are either major deficiencies or there are many minor deficiencies. Alternatively, at the discretion of the MDCS FLC Housing Inspector or Supervisor, employers may submit pictures/videos in lieu of an in-person re-inspection.

The purpose of a reinspection is to validate/verify that the deficiencies identified during the pre-occupancy inspection have been addressed and that the remedy to the deficiencies brings the farm labor camp into compliance with Federal, State and/or local regulations, as applicable. While the reinspection is generally exclusively focused on the remedy of the previously identified deficiencies, there are times where either the remedy of a particular deficiency creates a “new” deficiency or as a result of the reinspection the inspector identifies a deficiency that was previously not identified. In these instances, the FLC inspector will consult with the FLC Unit supervisor, document the deficiency and depending on the severity of the “new” deficiency work with the employer to find an appropriate solution to the deficiency.

Post-Occupancy Inspections

Post-Occupancy inspections are inspections that take place after the workers have arrived and are occupying the farm labor camp. Post-occupancy inspections are intended to ensure that farm labor camp is being maintained to the standards by which it was approved. For this reason, it is important that employers establish and communicate to their workers clear expectations for how the farm labor camp must be maintained. Employers are also strongly encouraged to periodically visit/monitor their farm labor camp(s) for compliance.

In Massachusetts, post-occupancy inspections are a collaborative effort between the MDPH and MDCS. Post-occupancy inspections are conducted on no less than 25% of the total number of H2A employers in the state during any given year.

Notices of Deficiency (NODs) issued as a result of a post-occupancy inspection must be addressed within 5 days regardless of the end date of need or the amount of time remaining on the contract.

Results of Pre/Post- Occupancy Inspections

When deficiencies are identified as a result of the pre-occupancy/post-occupancy inspection(s) the MDCS FLC Housing Inspector must issue a Notice of Deficiency (NOD) outlining the items/issues that must be addressed in order for the proposed farm labor camp to be found compliant with Federal, State and/or local standards.

Upon completion of the pre/post occupancy inspection (prior to leaving the proposed farm labor camp) the FLC Inspector will verbally review all the identified deficiencies with the employer (or their representative) present at the time of the inspection. An employer and agent (as applicable) will receive an email communication containing the official NOD within 24-48 hours of the conclusion of the inspection.

Pursuant to 20 CFR 653.502(e) the employers are afforded five (5) calendars days, from receipt of the official NOD, to remedy any deficiencies identified as a result of an inspection.

Deficiencies

Deficiencies are issues noted by the MDCS FLC Housing Inspector, that cause housing to not be in compliance with either Federal, State or local regulations, during an inspection. Deficiencies are generally categorized as minor or major deficiencies.

Minor deficiencies are less severe issues that do not pose an immediate threat to the health or safety of the workers. These issues require attention but do not necessitate much time to resolve. Minor deficiencies are often addressed through routine maintenance and regular inspections. Examples of minor deficiencies are maintenance issues like small leaks, missing or expired items in the first-aid kit, torn screen(s), minor pest problems, etc.

Major deficiencies are serious issues that pose a significant risk to the health, safety, or well-being of the workers. These issues require urgent attention and immediate corrective action to ensure the safety and health of the workers.

Examples of major deficiencies are, major structural damage, lack of clean drinking water, inadequate sanitation facilities, or severe pest infestations, etc.

Generally, the remedies to deficiencies are straightforward/obvious. There can be a multitude of ways to address the same deficiency depending on the farm labor camp's structure type, location of the deficiency, number of floors, and other features. Whenever possible the MDCS FLC Housing Inspector may provide the employer with suggestions for possible ways a particular deficiency may be addressed based on how other employers throughout the state have addressed the same deficiency.

In some instances, the identified deficiency may have never been encountered by the MDCS FLC housing inspector or perhaps the deficiency may have not been encountered under the particular scenario being observed. Employers are encouraged to reach out to their peers, licensed contractors or tradespeople, and/or the MDCS FLC housing inspector/supervisor to discuss any ideas to remedy the identified deficiency to see if they are acceptable and will bring the farm labor camp into compliance.

Failure to address the deficiencies identified, timely, may result in a delay in the processing of the job order, denial of the job order and/or a referral to the USDOL Wage & Hour Division (for investigation), as required.

Farm Labor Camp Notice of Deficiency (NOD)

A NOD is a formal document that summarizes the results of the pre/post occupancy inspection. It provides the employer with:

- the deficiencies that were noted during the inspection,
- the supporting regulations for the deficiencies,
- the specific location of the deficiencies, and
- the possible remedies for such deficiencies (if applicable)

The NOD is sent by the FLC housing inspector to the employer/agent (with a copy to the unit supervisor) within 24-48 hours of having completed the inspection.

Responding to a Farm Labor Camp Notice of Deficiency (NOD)

When an employer responds to a NOD, every item listed on the NOD must be addressed. Generally, at the end of the pre/post occupancy inspection and within the email containing the NOD that is sent to the employer, the employer is advised as to whether the resolved deficiencies can be shown via pictures/video attached to an email with, or whether an in-person reinspection is warranted. This decision is based on the number of deficiencies and whether the deficiencies are minor or major in nature.

Feasibility Studies

A feasibility study is the review or pre-assessment of any proposed farm labor camp, to determine what modifications (if any) need to be made in order for the farm labor camp to successfully pass a formal pre-occupancy inspection.

MDCS's feasibility study is designed to:

- Assist the employer in identifying/constructing a farm labor camp that meets Local, State and Federal standards,
- assist the employer in determining whether the housing that they are considering introducing to the H2A program is worth the investment (both time and money), and
- to increase the likelihood that newly proposed housing enters the H2A program with no major deficiencies to address, hopefully for years to come.

The feasibility study largely focuses on some of the larger items that can often disrupt the timely posting of a job order because of the time or cost that it may require to bring the housing into compliance. This often occurs when attempting to introduce buildings/structures that were not constructed with intent of being used as a farm labor camp.

Employers are strongly encouraged to request a feasibility study in the following instances:

- New (to H2A) Employers: before a job order is submitted to the CNPC (Chicago National Processing Center) or the MDCS (no time limit),
- Existing Employers: if they anticipate expanding, modifying, or increasing the capacity of their existing farm labor camps,
- Existing Employers: if they anticipate purchasing a property or constructing a new structure.

MDCS Inspection Scheduling Methodology

The following items are confirmed by the MDCS FLC Unit when scheduling pre-occupancy inspections:

- Is there an active Application for Temporary Employment Certifications (ETA790/790A) filed with USDOL?
- Has MDCS received approval from MDPH to proceed to conduct the Pre-Occupancy Inspection?

If the items above have been met, the MDCS FLC Unit will schedule the inspection for the proposed farm labor camp between 45 and 30 days prior to the date of need. Scheduling priority is based on date of need identified on the job order and the date the application was received. Exceptions are limited and may be made on a case-by-case basis.

Communications

In an effort to foster transparency regarding the requirements/processes associated with farm labor camp inspections, the MDCS FLC Unit will be increasing the number of communications (see chart below) to employers and/or agents regarding farm labor camp inspections.

These communications will provide employers and/or agents with important information regarding upcoming season activity, including but not limited to:

	Correspondence to	Content/Purpose	When/Frequency
General	All H2A Employers	Regulatory updates, any expected upcoming changes, what to expect for the next season.	September/October - Annually
	All H2A Agents		
Inspection Related Communications	H2A Employers	May include any inquiries regarding the proposed location, scheduling process, pre-inspection checklist, etc.	Upon receipt of notification from the CNPC of the Job Order submission.
	H2A Employers	Will include proposed/available date(s) for a pre-occupancy inspection.	Upon notification from the MDPH that all required paperwork has been submitted, reviewed, and approved.
	H2A Employers	Will include the agreed upon date and time of the pre-occupancy inspection.	Upon confirmation by the employer.
	H2A Employers	To inform (in writing) of deficiencies (if any) that were identified during the pre-occupancy inspection.	Between 24-48hrs after the pre-occupancy inspection. Employers have 5 days to remedy all deficiencies identified during the pre-occupancy inspection.
	H2A Employers and Agents	Response to the remedies presented by the employers as a result of NOD.	Between 24-48hrs after the employer's response to the identified deficiency(ies).

Action

Required: Local areas are encouraged to actively ensure that local agricultural employers are aware of this policy.

Effective: Immediately.

Inquiries: Please email all questions to PolicyQA@mass.gov. Also, please indicate the Issuance number and description.

Attachment: A: Overview of Housing Inspection Process and Timeline.

References: [TEGL No. 11-07, Change 2: Clarification of Certain Procedures for Processing H-2A Labor Certification Applications](#)
[TEGL 17-06, Change 1 \(June 14, 2011\) Special Procedures: Labor Certification Process for Employers in the Itinerant Animal Shearing Industry under the H-2A Program](#)
[TEGL 33-10 \(June 14, 2011\) Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H-2A Program](#)
[TEGL 16-06, Change 1 \(June 14, 2011\) Special Procedures: Labor Certification Process for Multi-State Custom Combine Owners/Operators under the H-2A Program](#)