

**DEPARTMENT OF JUSTICE****Notice of Lodging of Proposed Consent Decree Under the Clean Water Act**

On March 1, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States v. Walnuttale Family Farms, LLC and Kevin Lettinga*, Civil Action No. 1:20-cv-397.

On May 7, 2020, the United States filed a complaint against Walnuttale Family Farms, LLC and Kevin Lettinga (collectively, the “Defendants”) alleging violation of the Clean Water Act (“CWA”) and the Defendants’ National Pollutant Discharge Elimination System (“NPDES”) permits at its concentrated animal feeding operation (“CAFO”) in Wayland, Michigan. The violations include discharges of manure and process wastewater, inadequate operation and maintenance of waste storage devices, and failure to land apply manure in accordance with the Facility’s NPDES permits. On May 11, 2020, Sierra Club moved to intervene in this action, alleging similar violations.

The proposed Consent Decree resolves the United States’ and Sierra Club’s claims by requiring the Defendants to assess and correct any problems with their waste storage structures, imposing heightened standards for land application of CAFO waste, and enhancing reporting requirements. The Consent Decree also requires Defendant to pay a civil penalty of \$33,750 to the United States based on their limited ability to pay a civil penalty. In addition to the civil penalty, Defendants will pay \$11,250 to the Sierra Club for a portion of its attorneys’ fees. Finally, the proposed Consent Decree resolves violations of a prior Consent Decree and supersedes the prior Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to the United States District Court for the Western District of Michigan in the lawsuit entitled *United States v. Walnuttale Family Farms, LLC and Kevin Lettinga*, D.J. Ref. No. 90–5–1–1–07515/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$19.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Patricia McKenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**BILLING CODE 4410–15–P**

**DEPARTMENT OF LABOR****Employment and Training Administration****Request for Information Concerning a Report on Labor Market Information on the Native American Work Force**

**AGENCY:** Employment and Training Administration, U.S. Department of Labor.

**ACTION:** Request for information.

**SUMMARY:** The Department of Labor (the “Department”) requests information on issues related to the development of a report concerning “Labor Market Information on the Indian Workforce,” pursuant to the requirement in the Indian Employment, Training and Related Services Consolidation Act of 2017. The law tasks the Secretary of Labor to “in a consistent and reliable manner, develop, maintain and publish, not less than biennially” information related to 574 federally recognized tribes who are eligible for services under the Bureau of Indian Affairs (in the Department of the Interior). The Department invites tribal leaders, representatives, data specialists, and tribal members, as well as researchers and other interested parties to submit information related to the discussion

and questions identified in the Supplementary Information section below. Responses to this Request for Information (RFI) will help the Department to identify approaches for generating accurate, timely and useful labor market information, and will complement the Department’s consultations, as required under the law, with the Department of the Interior, tribes, and the Census Bureau.

**DATES:** Submit written responses on or before April 9, 2021. Responses are requested by 11:59 p.m. on the date above.

**ADDRESSES:** Information provided in response to this request can be submitted electronically to: [ILFR@dol.gov](mailto:ILFR@dol.gov) or in hard copy, by mail or delivery service, to: Wayne Gordon, Director, Division of Research and Evaluation, Employment and Training Administration, U.S. Department of Labor, Room N–5641, 200 Constitution Avenue NW, Washington, DC 20210.

**Additional Information and Instructions**

(1) All submissions should reference the agency name (Employment and Training Administration (ETA) and concern “Information Concerning a Report on Labor Market Information on the Native American Work Force.”

(2) Submissions should include a name, phone number, and email address for a single point of contact, in addition to the organizations, tribes, or other governmental agencies with which respondents are associated.

(3) Responses will not be posted publicly but will be summarized in a report prepared by the Department of Labor. It should be noted that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. For that reason, the Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

(4) Please refer to the section on Supplementary Information below for background information and questions that respondents may want to address in their submissions. Should they choose to reply to some or all of those questions, respondents are requested to identify the section number(s) relevant to the appropriate sections of their submission.

(5) Please note that research and evaluation studies, statistical information, training materials, policy statements or reports, or other relevant information may also be included or

referenced in responses. Please include hyperlinks if available.

**FOR FURTHER INFORMATION CONTACT:**

Wayne Gordon, Room N-5641, 200 Constitution Avenue NW, Washington, DC 20210; by email: [ILFR@dol.gov](mailto:ILFR@dol.gov); or by telephone: (202) 693-3179 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889-5627 to obtain information.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

A report on labor market information on the Native American workforce was first required under the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102-477, enacted October 23, 1992). Under that law, the Secretary of the *Interior* was responsible for producing a report biennially regarding the same data required in the Labor Department report, under the 2017 law, *i.e.*, “at the national level, by State, Bureau of Indian Affairs Service area, and tribal level for: (1) The total service population; (2) the service population under age 16 and over 64; (3) the population available for work, including those not considered to be actively seeking work; (4) the employed population, including those employed with annual earnings below the poverty line; and (5) the numbers employed in private sector positions and in public sector positions.”

The Interior Department’s Bureau of Indian Affairs (BIA) produced 13 reports (entitled *The American Indian Population and Labor Force Report*) with the last report issued in 2013. Prior to that report, the population estimates in the reports were based primarily on data provided by the tribes themselves. However, in response to concerns about the accuracy and consistency of tribally provided data, BIA’s 2013 report made a number of changes. These included use of data from a combination of sources, such as the decennial Census, multi-year data from the Census Bureau’s American Community Survey (ACS), and data provided from a survey that BIA conducted with tribes. The report also used new methods for estimating service populations based on county-level data that attempted to approximate the geographic boundaries of tribes and nearby areas. Importantly, in regard to the Native American workforce, the report did not present estimates that met the exact requirements of the law, due to the lack of underlying data upon which to base such estimates. For that reason, the report used only Census data and presented percentage (rather than

population) estimates on employment and unemployment regarding tribal areas (rather than for the service populations), and only state and national level estimates on some of the other measures identified in the law. Overall, then, the 2013 report raised many concerns and issues that remain to be resolved in regard to developing future reports presenting labor market information on the Native American workforce.

**II. Request for Public Comment**

The Department seeks information to help assure that future reports will present data that is accurate, consistent, and useful, and offers below additional information and series of questions that respondents may want to use to guide responses to this RFI. Response to this RFI is voluntary. Most of the questions, it should be noted, are geared to tribes themselves, since they are the primary intended beneficiaries of the report.

(1) *Uses of the Report:* The Department is interested in how to assure that the population and labor force data presented in the report are as useful as possible, and for that reason, requests information related to the following:

a. How did your tribe use information from past reports, such as for grant applications, service planning, economic development, or other purposes?

b. What data has your tribe used for those purposes since the last report was produced in 2013?

c. What do you think are likely to be the most important uses for the data in future reports for your tribe?

(2) *Scope and Frequency of Reports:* The law requires that the information in the report must include but is “not limited to” data on the total and prime age service populations and employment, both generally, by annual poverty-level earnings, and by private and public sector employment. These required data elements do not, however, cover a range of population and labor market data that are typically available to other jurisdictions at the county and municipal level in the U.S. Examples of the data available to other jurisdictions include those related to age, gender, educational level, occupation, and industry, derived from both household and establishment surveys, among other sources. Also, in recent years, the Census Bureau has made changes in its sampling and geographic mapping capabilities, and created more accessible population statistics for individual tribes through its website, *My Tribal Area* at <https://www.census.gov/tribal/>. Further the law also requires the report

to be produced every two years, which would require updating all the data presented in it, based on new data collection with samples of sufficient size and representativeness to assure accurate results. In light of options for adding other labor force and labor market data elements, improvements in the population data that may be available on your tribe, and challenges in collecting the underlying data, information is requested on the following:

a. What other labor market or workforce data, beyond the required elements, would it be helpful to have in the reports?

b. How frequently should reports be issued, and for what purposes?

c. Should biennial reports cover all the data elements each time and if not, what other options should be considered?

(3) *Data Sources and Quality:* As noted above, prior reports drew from different data sources, such as the decennial census, the American Community Survey, tribal enrollment data, and surveys of tribes. Although the past reports endeavored to provide the most accurate estimates possible, they have engendered a variety of concerns such as: An undercount overall and at the tribal level; incomplete information on the depths of “joblessness” among those are not actively seeking work due to lack of available jobs; use of small samples and data collection methods that result in incomplete or inaccurate data; a “spatial mismatch” between tribal areas and county-level data, and lack of recognition of part-year residency of tribal members; and difficulties in determining who should be counted in the service populations in tribal areas. To address some of these problems, several tribes and tribal advocacy organizations have conducted research on alternative methods for collecting or adjusting available data on individual tribes’ populations and various service needs. In light of these issues, information is sought on the following:

a. What in your view are the best *existing* sources of data, for assuring accuracy and consistency, such as that from the ACS, tribal enrollment and membership records, or some combination of existing sources?

b. Are there other data sources or data collection methods of which you are aware, that may be of interest to your tribe in developing more accurate population or labor force estimates?

(4) *Data Collection Capacity:* Improving data quality and accuracy may depend on development of tribes’ ability to collect their own data, but

relatively little is known about the current capacity of tribes to do so, nor how challenges in collecting and reporting data may vary among tribes that have widely different population sizes and locations. For that reason, the Department seeks information on the tribes' current capacity for data collection, analysis and reporting. The following questions may be useful in providing information about this:

- a. Does your tribe collect any population or labor force data? If so, what type of data does your tribe currently collect?
- b. What are the methods used to collect that data, and how might those relate to the size and location of your tribe?
- c. How often are those data collected, updated, and reported?
- d. How many staff (full and part time), including volunteers, are dedicated to such an effort, and if so, does your tribe partner with external organizations for such activities?
- e. If your tribe were to undertake additional data collection and reporting, what types or training and technical assistance might be most useful to your tribe? Would additional computer or internet resources be needed in order to engage more data collection?

(5) *Privacy and Data Security*: Protecting the privacy of individuals and their families has been of increasing importance to tribes, and was an important topic in the consultations conducted with tribes by the Census Bureau in 2019. In light of this, information is requested on the following:

- a. What are the most important issues related to privacy and data security regarding the future reports with labor market information on the Native American work force?
- b. What are the key issues of concern regarding privacy, including access to and security of, tribally-collected data?

(6) *Technical Issues*: There are a number of technical issues that will need to be resolved in order to develop a report on labor market information on the Native American work force that includes the data as required in the law, and possibly other data. Information is sought on relevant issues and possible options to resolve these technical issues, including but not limited to the following:

- a. What are the key issues concerning consistency across tribes for population and labor force counts, especially the number counted as the "service population"?
- b. What are the key issues in regard to the definition and boundaries of

tribal "service areas" and how might those be resolved?

c. Should there be a single data source used, or multiple possible data sources permitted in the report?

d. Should data standards be developed and if so, by whom? and

e. What other technical issues need to be addressed in regard to national survey data or tribally generated data?

### III. Conclusion

The Department invites all tribes and other interested parties to submit information relevant to development of the report, including but not limited to the questions posed in this RFI. The information provided by respondents will help in identifying and clarifying a range of approaches for meeting the requirements of the law, and for generating accurate, reliable and timely population, labor force, and labor market information that will be useful to tribal governments, as well as to Federal and state agencies that provide support to them and their members.

**Suzan G. LeVine,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

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**BILLING CODE 4510-FM-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Labor Certification Process for the Temporary Employment of H-2A and H-2B Foreign Workers in the United States: Annual Update to Allowable Monetary Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the annual updates to allowable monetary charges employers of H-2A workers, in occupations other than herding or production of livestock on the range, may charge these workers when the employer provides three meals per day. This notice also announces the maximum travel subsistence meal reimbursement a worker with receipts may claim under the H-2A and H-2B programs. Finally, this notice includes a reminder regarding employers' obligations with respect to overnight

lodging costs as part of required subsistence.

**DATES:** This annual update is effective on March 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, N-5311, 200 Constitution Avenue NW, Washington, DC 20210, by telephone at 202-693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A or H-2B nonimmigrant temporary workers in the United States unless the petitioner has received an H-2A or H-2B labor certification from the Department. The labor certification generally provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 20 CFR 655.1(a) and 655.100.

#### Allowable Meal Charge

H-2A agricultural employers who are employing workers in occupations other than herding or production of livestock on the range must offer and provide each worker three meals per day or provide the workers free and convenient cooking facilities.<sup>1</sup> See § 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. See *id.* The amount of meal charges is governed by § 655.173.

By regulation, the Department has established the methodology for determining the maximum amount that H-2A agricultural employers may charge workers for providing them with three meals per day. See § 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based on

<sup>1</sup> H-2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. See 20 CFR 655.210(e).