



Guidance for Working with Labor Contractors

Fair Trade USA®

Version 1.0.0

Introduction

Due to changing practices and labor shortages, it is increasingly common to find that a significant portion of a farm or facility's workers are hired through labor contractors¹. Although this means farms and facilities do not have a direct relationship with these workers, Certificate Holders are still responsible for ensuring they receive the same protections as the workers they directly employ – the intent is that workers on Fair Trade Certified™ farms and facilities receive the same rights and benefits regardless of whether they are employed directly or indirectly.² As a result, implementing the Fair Trade USA Agricultural Production Standard (APS) is more complicated when labor contractors are used to employ workers. Moreover, as with all requirements under the APS, these protections are subject to verification through the audit process. Certificate Holders should thus note that the use of labor contractors expands the scope of the audit and typically increases the cost of the audit.

Despite these challenges, Fair Trade USA recognizes that labor contractors play a vital role for farms that have large fluctuations in labor needs due to the seasonality of their production. Labor contractors can also be desirable employers for workers since some offer year-round employment through work on multiple products on multiple farms. The APS can strengthen these labor models through its effective implementation, thus reducing the risks associated with working with labor contractors by improving transparency in labor practices and ensuring the well-being of workers. In order to maximize these benefits, Certificate Holders must proactively communicate relevant requirements. In addition, where needed and possible, Certificate Holders should include these requirements in their contracts with labor contractors and assist them with their implementation.

Purpose

The purpose of this document is to help Certificate Holders better understand the APS requirements outlined in Modules 2-6 that are relevant to working with labor contractors, in order to facilitate implementation of and compliance with the APS.

¹ Note that in some countries, labor contractors are specifically referred to as Farm Labor Contractors (FLCs). At Fair Trade USA, these terms are equivalent and all requirements and supporting documents referring to labor contractors apply equally to FLCs. Likewise, recruiters who are also the employer of recruited workers also fall under the same requirements.

²As outlined in the Introduction of the APS, "Where the term "workers" is used in compliance criteria, the requirement applies to all workers included in the scope of the Certificate, regardless of whether they are temporary or permanent, work full-time or part-time, or hired directly or indirectly via a labor contractor."



Scope

This document applies to all APS Certificates where labor contractors are used to employ workers on sites within the scope of a Certificate.

Terms and Definitions

The following terms and definitions, cited from the Fair Trade USA Glossary, are key concepts for the understanding of this guidance document and are included here for reference:

employer: Any individual or entity that controls and directs workers under an express or implied contract and is responsible for paying those workers' wages. This includes labor contractors.

labor contractor: A person, corporation, or agency who, for a fee, employs workers to perform work for or under the direction of a third party. They are responsible for paying those workers' wages, and may also recruit, supervise, provide board, lodging, or transportation for those workers.

recruiter: An individual who plays a role in job placement and acts as a facilitator between the workers and the eventual employers. Recruiters may be directly employed or be an intermediary or third party such as a labor broker or recruitment agency.

worker: The general term designating personnel working in or for entities included in the scope of the certificate, regardless of whether they are temporary or permanent, work full-time or part-time, or hired directly or indirectly via a labor contractor. It excludes middle and senior management, and normally only includes personnel who are eligible to join unions.

References

The following references are relevant for the understanding of this guidance document and can be downloaded from www.FairTradeCertified.org:

- Agricultural Production Standard
- Requirements for Certificate Scope Under the APS
- Guidance for Determining Scope Under the APS

1. Overview

Compliance criteria in the APS relate to labor contractors in a variety of ways. Ultimately it is the Certificate Holder who is accountable for compliance, and it is through this lens that all compliance criteria in the APS must be viewed. In practice, however, the APS requirements that relate to labor contractors are implemented by a variety of stakeholders, including the Certificate Holder, site management, employers, and workers themselves. These requirements cover:

- The use of labor contractors and recruiters
- Worker rights and employment conditions, and employer-worker relations
- Safety and environmental measures on sites in the scope of the Certificate
- How workers handle hazardous materials



- How workers handle Fair Trade Certified products
- Workplace services provided to workers
- Housing services provided to workers

While some requirements always fall to one group of stakeholders, the responsibility for others may be shared by multiple stakeholders, and still for other requirements, it depends on the country's legal framework and/or the precise arrangement that exists between the labor contractor and the farm or facility. It is therefore impossible to develop a standardized list of APS requirements that apply to all labor contractors for all Certificate Holders. Instead, this document breaks down relevant criteria as follows:

- Section 2: Certificate Holder Responsibilities – Compliance criteria that Certificate Holders must implement to ensure the effective management and oversight of labor contractors.
- Section 3: Labor Contractor Responsibilities – Compliance criteria that relate to the worker-employer relationship, and therefore must be subsumed by the labor contractor.
- Section 4: Other Responsibilities – Compliance criteria that may fall to either the labor contractor or the Certificate Holder or farm/facility, or that may be a shared responsibility, depending on the context.

Fair Trade USA recommends Certificate Holders carefully review the APS and the information provided in this document as early as possible in the certification process. Under compliance criterion 3.1.3.b, labor contractors are subject to audit beginning in Year 0 and any non-compliances that arise due to labor contractor performance will be reflected in the overall audit and certification decision. At a minimum, the criteria listed in Section 3 are always relevant for compliance with 3.1.3.b. In addition to these criteria, auditors rely on Section 4 of this document and the Internal Management System (IMS) manual to identify other requirements labor contractors are responsible for implementing. If a labor contractor is found to be non-compliant (NC) with any relevant criterion, an NC is raised for both 3.1.3.b and the relevant compliance criterion.

Note that labor contractors are only required to implement the APS for workers that work on Fair Trade Certified farms/facilities while they are working on Fair Trade Certified farms/facilities. Fair Trade USA does not require the labor contractor's entire workforce or entire operations to undergo audit.

2. Certificate Holder Responsibilities

Because Certificate Holders do not have absolute authority over labor contractors, it is important that they take a thoughtful approach to these relationships. This section outlines requirements and recommendations that enable Certificate Holders to effectively manage and support labor contractors in a way that reduces risk and effectively protects the well-being of workers and their communities.

Ensuring Proper Use of Labor Contractors and Recruiters

While labor contractors and recruiters can offer value to both farms and workers, it is important for Certificate Holders to demonstrate their use aligns with workforce needs and fair trade values. The below compliance criteria were designed to this end. The intent of these criteria is to ensure Certificate Holders and the entities in their Certificate reflect on their use of labor contractors and recruiters, using them only when justified and working only with actors who will ensure the protection of workers and respect the requirements outlined in the APS.

Implementation responsibility for these criteria lies with the Certificate Holder and/or the entities (farms and facilities) included in the scope of its certificate.



Theme	APS Compliance Criteria
Workforce Analysis	3.1.2.a, 3.1.2.b, 3.1.2.c,
Labor Contractor Use	3.1.3.a, 3.1.3.b, 3.1.3.c, 3.1.3.d
Recruiter Use	3.5.1.c

Leveraging the Internal Management System (IMS)

Module six, the Internal Management System, was designed to support Certificate Holders with the implementation and monitoring of the APS requirements. Because the IMS focuses on identifying risks of non-compliance with the APS, monitoring the risks identified, and taking measures to address areas where non-compliances with the APS are identified, in order to be effective, the IMS must account for all activities and workers in the scope of the Certificate, including those managed by labor contractors. While the APS does not require labor contractors to have their own separate IMS, their operations must be accounted for in the IMS.

Implementation responsibility for these requirements and recommendations lies with the Certificate Holder and/or the entities (farms and facilities) included in the scope of its certificate, however their successful implementation requires collaboration and cooperation on the part of the labor contractor. The more engaged labor contractors are in these processes, the lower the risk of non-compliance for the Certificate Holder.

Theme	APS Compliance Criteria	Labor Contractor Context
Implementation Management	6.1.1.a	Best practice is to require labor contractors to designate an individual to serve as a point of contact for APS implementation and reporting.
IMS Manual	6.1.3.a	At a minimum, in developing the IMS Manual, the Certificate Holder must consider and specifically highlight the roles and responsibilities of labor contractors. Best Practice is to also work with the labor contractor to develop their own manual or to share with them an abbreviated version of the Certificate Holder's IMS Manual.
Risk Management	6.1.4.a, 6.1.4.b, 6.1.5.a, 6.1.5.d, 6.1.6.a, 6.1.6.b	Since the use of labor contractors creates additional risk, labor contractors must be considered in the risk assessment and risk management plan. Workers employed by labor contractors must also be considered in regular inspections (6.1.5.a), pre-inspections (6.1.5.d), and remediation processes (6.1.6.a-b). Where allowed under local law, Fair Trade USA also recommends Certificate Holders apply these practices to evaluate relevant labor contractor policies, procedures, and other internal operations (see Section 3 below).

While not required by the APS, Fair Trade USA recommends that Certificate Holders leverage the delineation of responsibilities in the IMS Manual in order to provide a clear written statement of responsibilities to labor contractors. This could be achieved through the recommended best practice of sharing an abbreviated IMS Manual, as mentioned above in 6.1.3.a, or through the development of a separate document. Fair Trade USA also recommends farms and facilities consider including APS responsibilities and related requirements in contracts with labor contractors.



Providing Training and Capacity Building on the APS and its Requirements

Many labor contractors may be unfamiliar with sustainability standards and the certification and audit process. Fair Trade USA recommends Certificate Holders hold training and/or advisory sessions with labor contractors to ensure their complete understanding of the APS and its related requirements.

In particular living wage requirements (3.3.1.b and 3.3.1.c), while listed as labor contractor responsibilities below, will likely require training and close collaboration between the Certificate Holder and the labor contractor.

3. Labor Contractor Responsibilities

In the case of the worker protections outlined by the APS, fundamental rights and working conditions can only be ensured by the direct employer. Likewise, some policies, procedures, and recordkeeping that relate to these requirements must also be implemented by the employer.

Implementation responsibility for the below criteria lies with the labor contractor, as relevant based on farm size, but the consequences of non-compliance fall on the entire Certificate. Fair Trade USA recommends that Certificate Holders ensure these requirements are fully and clearly communicated to labor contractors (as recommended above for 6.2.1.a) and included in labor contractor contracts (as recommended above for 6.2.1.b).

Theme	APS Compliance Criteria
Fundamental Rights	2.1.1.a, 2.2.1.a, 2.2.2.a, 2.3.1.a, 2.3.1.b, 2.4.1.a, 2.4.1.b, 2.4.2.a, 2.4.2.d
Policies, Procedures, & Recordkeeping	2.2.3.a, 2.4.2.b*, 2.4.2.c, 3.2.4.b, 3.5.1.b, 3.7.2.a*, 3.7.2.b, 3.7.3.a*, 3.7.3.c*
Working Conditions	3.1.1.a, 3.1.1.b, 3.1.1.c**, 3.1.1.d**, 3.1.2.c**, 3.2.1.f***, 3.2.2.b****, 3.2.2.c****, 3.3.1.a, 3.3.1.b, 3.3.1.c, 3.3.2.a, 3.3.2.b, 3.3.2.c, 3.3.2.d, 3.3.3.a, 3.3.3.b, 3.3.3.c, 3.3.3.d, 3.3.4.a, 3.3.4.b, 3.3.4.c**, 3.4.1.a, 3.4.1.b, 3.4.1.c, 3.4.2.a, 3.4.2.b, 3.4.2.c, 3.5.1.a, 3.5.1.c, 3.7.2.d, 3.7.3.b*
Housing & Related Services	3.6.1.a, 3.6.2.a, 3.6.2.b, 3.6.2.c, 3.6.2.d, 3.6.2.e, 3.6.2.f, 3.6.3.a, 3.6.3.b
Compliance	3.1.3.b, 5.3.2.a, 5.3.3.a, Annex D

* The required internal policies and procedures on sexual harassment, grievances, and a suggestion system can be developed by the Certificate Holder or farm/facility, but they must be implemented by the labor contractor. Likewise, the Social Engagement Team (SET) may be organized at the farm/ facility level, but labor contractor workers are required to participate either directly or indirectly through representation and labor contractor management must be engaged as relevant. Alternatively, a separate SET can be organized for each labor contractor and labor contractors can leverage or develop their own separate policies and procedures.

** Workers are determined to be *permanent* or *temporary* based on the duration of their work with the Fair Trade Certified farm or facility, not on the duration of their work with the labor contractor.



*** Farms and facilities need to work with the labor contractor to develop a process to ensure that workers who become unable to perform certain tasks due to medical conditions are offered an alternate job at the same pay and benefits for at least the agreed-upon duration of employment. The alternate job may be provided by either the labor contractor or the farm/facility.

**** Either the farm, facility, or labor contractor can provide the required medical exam, however the responsibility to review recommendations and develop and implement a remediation plan rests with the labor contractor.

4. Other Responsibilities

Beyond the requirements listed in Section 2 and Section 3, there are several other responsibilities that will need to be delineated based on the arrangement that exists between the labor contractor and the farm or facility. This section is meant to highlight these criteria to Certificate Holders, so that they can properly delegate implementation where appropriate. While the goal is to be comprehensive, every context is different and Certificate Holders are encouraged to thoroughly review the entire APS with labor contractors in mind.

Theme	APS Compliance Criteria
Working Conditions	3.3.1.c,
Worker & Workplace Safety	3.2.1.a, 3.2.1.b, 3.2.1.c, 3.2.1.d, 3.2.1.e, 3.2.1.h, 3.2.2.a, 3.2.2.b, 3.2.2.c, 3.2.3.c, 3.2.4.a*, 3.2.4.c, 3.2.4.d**, 3.6.1.a, 4.4.1.b, 4.4.1.c, 4.4.2.a, 4.4.2.b, 4.4.2.c
Worker Training & Practices	3.2.1.g, 3.2.3.a, 3.2.3.d, 3.7.1.a, 3.7.2.a, 4.2.1.b, 4.2.2.d, 4.4.1.a, 4.4.1.d, 4.4.1.e, 4.5.1.a, 4.5.1.b, 4.5.2.a, 4.5.3.b, 4.5.3.c, 4.5.3.d, 4.5.3.e, 5.1.1.a, 5.1.1.b

* While labor contractors are not required to conduct a separate written assessment of workers' occupational risks, the assessment and associated actions completed by the CH or farm/facility must include workers employed by labor contractors.

** While labor contractors need not establish their own Occupational Health and Safety Committee (OHSC), the OHSC must consider workers employed by labor contractors while fulfilling its role.

