

**MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING**

November 14, 2007

The Migrant and Seasonal Farmworkers Board Meeting was held at the Virginia Employment Commission Administrative Office in Richmond, Virginia.

The following Board Members were present: Kenneth Annis, Chairman; Veronica Donahue, Hart Hudson, Kelly Robinson, Sharon Saldarriaga, Christian Schweiger, and Peter Von der Lippe. The following Board Members were absent: Mario Moreno, Vice-Chairman; Elisia Almendarez-Moore, Tupper Dorsey, Richard Hall, Thomas Kellum, Adrian Reddington, and J. M. Scott. Staff in attendance from the Virginia Employment Commission were: Dolores Esser, Nicholas Kessler, Joyce Fogg, Jack Turner, Michelle Abraham, Will Jacobs, and Evelyn Lewis. The following guests and speakers were present: Tim Freilich, Virginia Justice Center for Farm and Immigrant Workers; Bruce Clark, U. S. Department of Labor; Leigh A. Sellers, Legal Aid Justice Center; and Gwen Taylor, Workers Compensation Commission.

Call to Order

Chairman Kenneth Annis called the meeting to order at 10:00 a.m.

Welcome and Introduction

Chairman Annis welcomed all in attendance and extended greetings to the guests, board members, and all those present.

Approval of Agenda

Chairman Annis moved that the agenda be approved. It was seconded by Sharon Saldarriaga and approved by unanimous vote.

Approval of Minutes

Kelly Robinson moved that the minutes of the February 7, 2007, meeting be approved. Peter Von der Lippe seconded it, and the minutes were approved by a unanimous vote.

VEC Services for Immigrants and Foreign Workers

Commissioner Esser reported that she was invited to give a presentation at the second meeting for the Commission on Immigration. The purpose of the Commission is to study reports, make recommendations to address the costs of immigration and benefits on the Commonwealth including the impact on education, healthcare, law enforcement, local demands for services in the economy, and the effect on the Commonwealth of federal immigration and funding policies. The Commission may make recommendations and coordinate the proposals of all Commissions and agencies relating

to this purpose. The Virginia Employment Commission (VEC) fell into this category for the reasons of the job service point of view, the migrant and seasonal farmworkers, the H-2A – H-2B programs, and the unemployment insurance. At this meeting, the VEC and Department of Education were on the agenda.

The next meeting of the Commission on Immigration is December 13. If any MSFW Board member is interested in attending, Commissioner Esser will make sure they receive the meeting announcement notice. At that meeting, the Commission plans to have the State Police, Attorney General's Office, and DMV on the agenda.

The members of the Commission on Immigration consist of a group of legislators, lay people from various areas of the state, and professionals.

Commissioner Esser did a PowerPoint overview of what she presented at the meeting to the Commission on Immigration thus giving insight on some of the services that are provided at the VEC. The services consist of: Employment Services, Foreign Labor Certification Program, Unemployment Insurance Benefits, Trade Adjustment Assistance, Migrant and Seasonal Farmworkers Advisory Board, and Inter-Agency Migrant Worker Policy Committee.

Legislative Update

Tim Freilich, Legal Justice with the Virginia Justice Center for Farm and Immigration Workers, provided a legislative overview update. He introduced Leigh Sellers, a candidate for a Master's degree in Social Work at the Virginia Commonwealth University with a focus in public policy. Ms. Sellers has been assisting Mr. Freilich this year, and he extended accolades to her for all her assistance.

Mr. Freilich stated that his legislative report would consist of the federal, state, and local levels of government. There has been a demographic shift in Virginia. More than 10 percent of Virginians were born outside of the United States. They contribute to all sectors of Virginia's economy from the highly educated H-2B workers located in the high-tech divisions at the Dulles Corridor to the agricultural workers with the H-2A visas working in tobacco in the South Hill area, to the migrant farmworkers in Southwest Virginia cutting Christmas trees. Virginia is dependent on a large workforce of the immigrant workers, both documented and undocumented.

It is important that the Migrant and Seasonal Farmworkers Board assist Virginia's legislators and come up with effective policies. In the spring of 2006, the House of Representatives introduced House Bill 4437, an enforcement only bill that would have made it a crime to be undocumented in the U. S. This bill drove hundreds of thousands of people to protest. The Senate then passed a comprehensive reform bill that included not only enforcement, but addressed the future flows of immigrants coming into the U. S. and looked at the 12 million undocumented immigrants currently in the U. S.; however, no compromise was reached between the Senate and the House; therefore, comprehensive reform died. The interesting item that came out of Congress in regard to immigrant workers was raising the minimum wage. In July 2007, the minimum wage increased to \$5.85. In July 2008, it will increase to \$6.55 and to \$7.25 in 2009.

As for legislation on the state level, there were about 50 different anti-immigrant proposals targeted at the immigrants and undocumented workers, making life more difficult for them. Those proposals regarding verification of immigration status also affected all Virginians more than just the undocumented workers. There are very few undocumented workers applying for benefits through the federal or state government because they know they will be caught. All but three of those bills were killed in the General Assembly.

One of the hottest and most talked about issues was the use of state and local police for the enforcement of civil violations of federal immigration law. Another hot issue was the access to primary education for undocumented students (students who were brought here as kids and grew up in the United States, but are undocumented because they were brought here by their undocumented parents). The third hot issue was the use by non-profits of state or local funds if the non-profit did not verify the immigration status of the people that they were serving. All three of these bills were killed in last year's General Assembly.

Since the 2007 General Assembly Session, there was a change in Congress. There was great hope among immigrant advocates that comprehensive immigration reform would finally become a reality, as the country acknowledged that there were 12 million immigrants in the United States. The immigrants are working hard, not doing any harm; however, nothing happened. Instead, the Bush Administration announced their efforts to tighten enforcement. The Administration added more border patrol officers at the Southwest Mexico U. S. Border. The "absconder initiative" was set in place that the Immigration Customs Enforcement (ICE) is undertaking that looks for undocumented immigrants with outstanding orders of removal. These are undocumented immigrants who may have a deportation order and did not return to court when they were told to as scheduled; (they were picked up, released but informed that they had to show up in court on a certain date, but when they did not return to court, an order for removal was issued and that order has been hanging out there, and in many cases, for years). Those orders have been entered into the National Crime Information Center Database that police officers have access to through the Virginia Crime Information Network in their patrol cars. ICE is now looking for these individuals who have outstanding orders of removal. They have strike forces that go out and rush a house and detain the person and anyone else they can determine is undocumented. This is impacting not only the undocumented immigrants, but also some U. S. citizens because of the issue of mixed-status families. In the U. S. as of 2005, there were 6.6 million families in which either the head of the family or the spouse was unauthorized. The families contain about 14.6 million people including an estimated 3.1 million children who are U. S. citizens by birth, but have one or more family members who are undocumented.

Another issue is the Social Security Administration's "no-match letters." It is a letter that an employer might receive if the name and Social Security number of an individual do not match. In the past, the employers were not expected or allowed to take much action; however, the new initiative was to include a note from the Department of Homeland Security that told employers that if they received one of those letters and the employer does not re-verify the information and the employee is still working for the employer after 90 days, Homeland Security would take it as a sign that the employer knows that they are employing someone that is not lawfully present. This policy was challenged and stopped in Federal Court because the Social Security Administration's database has millions of erroneous records. The argument was that if they pass this policy and are telling employers if they can't re-verify this information, once the letter is sent to the employer the employer

would be taken to court. This would have had a disastrous affect on companies throughout the U. S. because companies would receive these letters and fire workers who were lawfully present. This could have occurred because there was an error in the database. The no-match letter has been held up out of Federal Court and is not moving forward.

In the last year on the local level, the most prominent issue was related to the Workers Day Labor Center in Herndon, Virginia. The previous mayor and town council tried to establish and reduce the negative impact of having a large group of day laborers looking for work in their community. There was an election with a new mayor and town council being elected. The new mayor and town council shut down the Workers Day Labor Center even though it had a positive role in reducing the exploitation of workers in Herndon.

Another issue was the use of local law enforcement to enforce civil violation immigration law. A big push was to sign an agreement under the Immigration and Nationality Act called the 287G Agreement. This was an agreement where a local police force or sheriff could sign an agreement with the Department of Homeland Security that stated the local officials could receive training in the enforcement of civil violations of federal immigrations law, and are going to take authority and start going out and begin enforcing immigration laws in conjunction with federal authorities.

Another issue was that multiple jurisdictions around the state have had individuals who work in the jails authorized to transport a detained individual to federal custody. What was being recognized was that the local governments were trying to get more undocumented people into custody and because the federal government is not deporting them, they are being released.

An issue that may come up during the next General Assembly session is the state and local law enforcement of federal immigration laws. There is a proposal to have all state troopers trained to enforce civil violations of immigrations laws.

For the federal level, there are three bills that have been introduced for the upcoming federal legislature. One of the bills is regarding the SAVE Act (Secure America through Verification and Enforcement Act). This is a bill that would expand the basic pilot program. Currently, there are about 17,000 to 30,000 employers signed up for the basic pilot to try to verify all the people they hire, which is 30,000 employers out of 5.9 million employers nationwide who would be required to use this program if this bill, House Resolution 4088, were passed. The U. S. Government has untaken studies about the basic pilot, E-Verify Program, and is finding serious problems including unacceptable high error rates. The Social Security Administration estimates that 17.8 million of its records contain errors related to name, date of birth, or citizenship status, and that 12.7 million of those records relate to U. S. citizens. This is what held up the no-match plan. Other federal bills being introduced are related to enforcement only, and not comprehensive reform.

For the state level, the bills that are being introduced in the upcoming General Assembly session consist of the following:

- All local sheriffs upon a lawful arrest for a crime should confirm that person's legal presence in the U. S.;

- Have one person on duty in every jail who has the 287G authority to transfer them to federal custody if they are undocumented;
- At presumption, if someone is not lawfully present in the U. S., they are a flight risk and should be denied bail if they are picked up;
- Prohibiting illegal aliens from attending Virginia public institutions of higher education.

None of these bills specifically talk about agricultural employers in Virginia, but they are mentioned because of the dramatic impact on how Virginia is perceived by immigrant workers and the quality of life that immigrant workers are able to lead while working for not just Virginia's agricultural employers, but Virginia's employers generally. It is hoped that every employer that is benefiting from immigrant workers, both documented and undocumented, would care about their workforce, if not for economic reasons, for moral reasons as well.

The Crime Commission recommendations that are coming out now are similar to the upcoming General Assembly bills recommendations:

- Presumption of no bail if undocumented;
- State Police should enforce immigration laws;
- Localities should get to keep more of the money from the federal government that is paid whenever a locality detains an undocumented person; doing the job of the feds.

For the local level, Prince William County is rolling out their policies on undocumented immigrants. It is now referred to as the Culpeper Coalition, which is a coalition of 20 local jurisdictions statewide who are concerned about immigrants in Virginia and are dedicating themselves to educate the General Assembly on the issues of undocumented immigrants. It cannot be stressed enough about growers talking to their local government officials about the focus on undocumented immigrants in the communities and how they are depended upon to fill out the growers' workforce. This is really important on the local level.

In conclusion, the MSFW Board should continue to support legislation on the federal level for comprehensive immigration reform that recognizes our dependents on immigrant workers, both documented and undocumented. Uniformed statewide policies should be developed that protect immigrant victims and witnesses of crime to make sure that nobody is afraid to report a crime to the police. Racial and ethnic data should be collected and reported for immigrants that are stopped, detained, arrested, or convicted of immigration related offenses by law enforcement so that agricultural growers know that their workers are being treated fairly by the authorities. The trust between the immigrant workers of Virginia and the state and local law enforcement should be preserved. Virginia's Attorney General should lead a crackdown on employers that are gaining a competitive advantage over their rivals by hiring and exploiting undocumented workers. Finally, Virginia's Agricultural Associations need to begin advocating on behalf of their individual employers, and the MSFW Board needs to make it clear that Virginia's agricultural employers are depending on migrant and seasonal farmworkers who are not just in the H-2A or H-2B programs, but that are also outside those programs and are contributing dramatically.

Wage and Hour Issues

Bruce Clark, District Director for the Richmond Office of the Wage and Hour Division of the U. S. Department of Labor, gave a report on the wage and hour issues of what his office has done in Virginia within the last two years. Mr. Clark stated that his office enforces the minimum wage overtime regulations, Ag Regulations, and H-2A. His office does the enforcement of the basic worker protection laws for Central Virginia. There is an office in Baltimore that handles the enforcement responsibilities for Northern Virginia and an area office in Charleston, West Virginia, that handles the enforcement responsibilities for Southwest Virginia.

In 2007 his office visited 46 growers, which were up from 2006 that consisted of 40 investigations. In 2005 only 16 growers were visited. The plan for 2008 is to visit/investigate 40 growers. Most of the visits are non-complaint driven. The normal procedure is not to question immigration status. They do look at I-9 forms, which is an agreement with ICE. If someone comes to them to complain, his office does not inquire about their immigration status of whether they are documented or undocumented. They do inquire about identifying information such as street address or phone number. Even if the immigrants are undocumented, that does not affect the enforcement of the law on their behalf. Legal or illegal, the Wage and Hour Division applies the rules fairly to both.

In 2007, of the 46 growers that were visited, 12 of them were nurseries. Nurseries have used migrant workers in the past and are starting to use H-2A and H-2B workers. Nine vineyards were visited, many of which had wine yards attached. They also visited 24 tobacco growers and one vegetable grower. Twenty of the 46 investigations involved growers that had migrant or seasonal workers. Of the 20 in which migrant workers were found, five of them had some violations that were fairly small. None had underpayments for the workers, and none of them had horrible housing or transportation. Most of the five violations were letter of the law, technicality type violations. Of the 46 growers visited, 36 had H-2A workers. Thirty of the 36 H-2A workers had violations. The largest violation was failure to provide a copy of the work contract. The biggest lesson learned in 2007 for Hour and Wage was that growers who had H-2A workers also had what is known in the law as corresponding workers, i.e., U. S. workers or migrant workers who are not here under an H-2A visa, but who are doing the same work as the H-2A workers. Wage and Hour is finding that if the growers have a U. S. worker working alongside an H-2A worker, the grower has to provide a work contract to the U. S. worker as well as the H-2A worker. H-2A workers are routinely given a copy of the work contract, but the U. S. workers are not. The provision in the H-2A law is that the H-2A foreign worker cannot displace a U. S. worker in any aspect, except for free housing. The H-2A worker has to be paid the Adverse Effect Wage Rate (AEWR), and if the H-2A worker is paid the AEWR, then the U. S. worker performing corresponding work has to be paid the AEWR also. The AEWR is rather high compared to most farm jobs wage rates. This was the second highest violation found. U. S. workers or migrant workers who work corresponding work were not always being paid the AEWR. A substantial amount of the back wage findings came from that fact; however, most of the back wage findings came from a nursery that actually lost the overtime exemption for agricultural workers when their workers also worked in their landscaping portion of the business, and the landscaping work was determined not to be agricultural work. Agricultural workers are exempt from overtime, no matter if they are H-2A workers, migrant workers, or U. S. workers. Any week they perform non-agricultural work, they lose that overtime exemption.

Among several of the issues found in the investigative work in 2007 was the issue of a grower canceling his H-2A job order. In order to have a captive workforce for the season, the grower applied for and was granted an H-2A certification for 40 workers. At the beginning of the job contract, the grower had obtained enough U. S. workers and did not need the H-2A workers. A letter was mailed to the DOL/ETA Processing Center in Atlanta canceling the contract. The problem occurred with ETA stated it never received the letter to cancel the contract. Wage and Hour went with the theory that the grower did everything he could to try to cancel the job order because he had a receipt from UPS indicating that the letter was delivered to the Atlanta Processing Center as of a certain date. After that date, the grower did not have to pay the AEWB to any corresponding workers who started working after that date. Any corresponding worker that started working from the beginning date of the job order to the date of the letter had to be paid the AEWB. Any worker that started in that period of time is entitled to the AEWB until the end of the contract period. This was a big issue that had not come to the attention of Wage and Hour in the past. To sum it up, if a grower applies for and gets granted H-2A certification, whether any foreign workers actually come to the U. S. during that growing season or not, the grower must pay the AEWB, and also for any worker that performed any corresponding work from the time that the job order started to the time that the grower canceled the job order and beyond for anyone who began working during that period.

In another 2007 investigation, there was a case in which a migrant was transporting other workers, and the migrant transporter driver's license had expired.

Finally, U. S. workers are being referred to an H-2A grower, and either the H-2A grower is not accepting the U. S. worker as a new hire, or letting them work for a day and then terminating them for no good reason. So far, Wage and Hour has not been able to document a violation. In every case they have looked at so far, the U. S. worker has quit. The H-2A rules state that the grower has to accept any qualified U. S. worker up to 50 percent of the contract period. The grower cannot discriminate against U. S. workers and not pay the U. S. workers the same rate of pay of AEWB that he is paying the H-2A workers or prefer to hire H-2A workers over U. S. workers. Whenever Wage and Hour receives an allegation that this is occurring, they will check into it, look at the facts, and make a determination. So far, Wage and Hour has not been able to uphold an unfair determination.

In conclusion, this was an overview of the 2007 season. In 2008, Wage and Hour plans to visit approximately 40 growers. They are also reviewing a list of farm labor camps to ensure the camps meet with the housing standards and the laborers are paid properly.

Pesticide Safety Program

Sharon Saldarriaga with Telamon stated that a couple of years ago, the MSFW Board supported Telamon's request for obtaining funding from the Department of Agriculture to have a pesticide safety trainer that would provide WPS training to workers in Spanish. It has been very successful. Telamon's goal for training was 1,200 and within the first year, 2,265 farmworkers were trained. The goal was exceeded by 188 percent. They recently received notice that they were funded again this year. The only problem they are still facing is that they do not have quite enough funds. As the program became more popular, it meant more travel to greater distances for other areas in the state. More funds were spent on travel than was anticipated. Additional funds were requested; however,

they received the same amount. To supplement the funding, Telamon is contributing 25 percent towards the travel.

Housing Program Update

Sharon Saldarriaga reported that the Parker Housing Project pilot has been completed. There were issues regarding the cost, completion time, and obtaining volunteer workers to complete the project. Only one straw bail house was actually completed. The other houses that were completed are cinderblock. Again, this was due to the cost and time it took to complete one straw bail house.

Rappahannock Migrant and Seasonal Farmworker Council

Will Jacobs, Farm Placement Specialist representing the Rappahannock Region Farmworker Council, distributed a handout, which provided an impact statement of the Rappahannock Migrant and Seasonal Farmworker Council, covering 14 counties in northeastern Virginia, Northern Neck, and Middle Peninsula.

The impact statement included examples of economic impact within the region. For example, Westmoreland County has over 2,000 acres of vegetable crops each year with a market value in excess of \$4,000,000, some sold wholesale and much sold retail direct to consumers. Neighboring counties have vegetable acreage in excess of 1,000 acres, which adds another one to two million dollars in sales. The Northern Neck of Virginia Farmers' Market is a regional wholesale shipping point market pulling produce from a 50 mile radius to Oak Grove, Virginia, plus providing brokerage services for products in other parts of the country. In the last nine years, they have handled over \$74,000,000 in wholesale produce or an average of \$8.2 million per year.

Westmoreland County has both large and small ornamental nurseries with total sales in excess of \$10,000,000 each year. This is another labor-intensive industry, and it exists as the results of the benefits of having migrant labor. According to the 2002 agricultural census, the total crop receipts for these nine counties was \$64,497,000.

According to the statistics and observation from the Virginia Employment Commission, 33 percent of migrant and seasonal farmworkers have been in the U. S. less than two years. The average income for unauthorized immigrants is \$12,000 per year across all industries. Unauthorized immigrants are concentrated in agriculture more than any other industry.

The Rappahannock Migrant and Seasonal Farmworker Council would like to get the impact statement information to the public in the near future, thus emphasizing to the community and the area the importance that the migrant farmworkers have on the growers and the community.

H-2A Program Updates

Michelle Abraham provided updates regarding the H-2A Program. She distributed a "Training and Employment Guidance Letter" (TEGL) issued on November 6 regarding clarification guidance on the processing of H-2A labor certifications.

The major issues addressed in the TEGE were:

- Worksite(s) Crossing State Jurisdictional Boundaries – in circumstances where employers have one or more worksite locations in different states, the employer should file a single H-2A labor certification application concurrently with the National Processing Center that handles the state where the work is to begin and also file it with the State Workforce Agency (SWA) where that work will begin. The SWA must transfer the H-2A job order to all the states where the work will be performed.
- Timing Requirements for Filing H-2A Applications.
- Completion of the housing inspections.
- Submission of evidence on behalf of the Employer to prove they have workers compensation; this must be done thirty days prior to the employer's date of need on their application.
- Advertising requirements for the employers – H-2A employers must have ads that direct the applicant to apply at the state workforce agency for a referral to the employer's place of business. Regardless of that, the employer still has the obligation to respond to the applicants that come and apply directly without going through the state workforce agency. In addition, the employer must have a mechanism to take messages, if the employer is not available to receive applicants, and the employer is obligated to respond to the applicants within 24 hours.
- Verification of the Employment Eligibility of U. S. Workers – The SWA will be responsible for determining that U. S. worker referrals that come through them are able, willing, and eligible to work. Therefore, the SWAs are being directed that they are going to have to verify the employment eligibility of any U. S. worker referred on an H-2A job order. The ETA and Department of Labor is recommending that the State Workforce Agencies use the E-Verify web-based system administered by the U. S. Citizenship and Immigration Service to verify the employment status of the U. S. workers that are going to be referred to the H-2A jobs. They understand that a lot of SWAs do not have the capability at this time to do that; therefore, they will not be enforcing the states to do the E-Verify until December 15, 2007. They will also recommend that the SWAs complete the I-9 process on H-2A worker referrals that come through the state workforce agencies, but will provide training on this before the December 15th implementation date.
- SWA Referrals During Contract Period – Once the H-2A workers depart from the employer's place of business, they are recommending that the SWAs make every effort to try and refer U. S. workers that are interested in H-2A jobs to any non H-2A jobs first that might be in that area of employment or to H-2A employers where the workers have not actually departed for workers place of business.
- Housing – The SWAs must be prepared to conduct housing inspections prior to the filing of H-2A applications if so requested by the employer. The employer needs to notify the SWA of housing changes before moving workers, which has been a standard procedure.

Revised I-9 Form

Jack Turner distributed handouts that provided a summary on the revised Form I-9. He reported that since 1997 the realization was made that the Form I-9 needed some modifications; however, changes to the form were not implemented. The “Handbook for Employers” which is also on the Virginia Employment Commission’s rural services webpage drives the Form I-9. The format for conducting the use of the Form I-9 is to look for the documents listed on the back of the form. The most frequently asked questions and answers about the Form I-9 are as follows:

- Where can I get the new Form I-9 and the Employer Handbook (M-274)?

Both Form-I-9 and the Employer Handbook are available as downloadable PDFs at www.uscis.gov. Employers without computer access can order USCIS forms by calling the toll-free number at 1-800-870-3676. Individuals can also request USCIS forms and information on immigration laws, regulations, and procedures by calling the national Customer Service Center toll-free at 1-800-375-5283.

- What is the difference between the revised Form I-9 and the old one?

Five documents have been removed from List A of the List of Acceptable Documents:

- *Certificate of U. S. citizenship (Form N-560 or N-561)*
- *Certificate of Naturalization (form N-550 or N-570)*
- *Alien Registration Receipt Card (I-151)*
- *Unexpired Reentry Permit (Form I-327)*
- *Unexpired Refugee Travel Document (Form I-571)*

One document was added to List A of the List of Acceptable Documents:

- *Unexpired Employment Authorization Document (I-766)*

- Can I accept documents that used to be on the Form I-9 but aren’t now?

No. Employers may only accept documents listed on the List of Acceptable Documents on Form I-9. When re-verifying employees, employers should ensure that they use the new Form I-9 with its updated list of acceptable documents.

- Are there any changes in the way the new Form I-9 is completed?

No. The updated form should be completed exactly the same way as the old one was. The only difference is the types of documents that employers may accept.

- Is the Form I-9 available in different languages?

The Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may have employees complete the Spanish version for their records. Employers in the 50 states and other U. S. territories may use the Spanish version as a translation guide for Spanish-speaking

employees, but must complete the English version and keep it in the employer's records. Employees may also use or ask for a translator/preparer to assist them in completing the form.

- Are employers in Puerto Rico required to use the 2007 Spanish version of Form I-9?

No. Employers in Puerto Rico may use either the Spanish or the English version of the 2007 Form I-9 to verify employees. Employers in Puerto Rico may not use the expired 1988 Spanish edition of Form I-9.

- May I continue to use earlier versions of Form I-9?

No. Employers must use the 2007 edition of Form I-9, approved on June 5, 2007. All previous versions of Form I-9, in English or Spanish, are no longer valid. The 1988 version of Form I-9 in Spanish expired in 1991. Employers who continue to use the outdated editions of form I-9 are subject to fines and penalties.

- When do I need to begin using the 2007 edition of Form I-9?

The revised Form I-9 is available now and will become effective once the notice is published in the *Federal Register*. Employers are encouraged to start using it as soon as possible. After the effective date, employers may incur fines and penalties for failing to use the new Form I-9.

- Do I need to complete the 2007 Form I-9 for all my employees or just the new ones?

Employers only need to complete the 2007 Form I-9 for new employees. Employers do not need to complete new forms for existing employees. However, employers must use the 2007 Form I-9 when their employees require re-verification.

Also, the employers can no longer ask the employees for their social security number, unless the employer is using the E-Verify system.

In conclusion, the topic of importance is that the Form I-9 is new.

Funding Issues

Commissioner Dolores Esser reported on the funding issues. She stated that every employer pays \$56 for every employee they have working for them. It is called the Federal Unemployment Tax Act (FUTA), collected by the IRS. That money goes to the federal government, and the federal government appropriates that money back to the states for the administration of the job service, the unemployment insurance, and labor market information. Virginia has ranked next to last on the percentage of funds that we get returned. In 2005, the VEC was getting 30.2 percent or 30 cents back on every dollar that the employers paid. In 2006, VEC was getting 27.6 percent returned.

Commissioner Esser and staff have met with the Congressional Delegation. The Governor made it his top priority of discussion when he met with the Congressional Delegation last spring. There has been some action on it, but no action to improve the state's status. Consequently, because there is

no additional funding coming back, the reduction of staff and or offices would have to take place; therefore, the agency held public hearings throughout the state in the spring. There were over 500 people in attendance at the 11 public hearings held, and as many letters and emails. People think that these are their state tax dollars because these are state employees; however, this is not the case. It is the employers that are paying the freight for these programs, and this needed to be explained, as well as where Virginia ranked and that the agency was not getting back what was considered its fair share.

A report was due to the Governor in July, which was presented to him along with the VEC's proposals. Commissioner Esser has had numerous meetings with the Governor's cabinet. Meanwhile the clock is ticking on the agency's budget. It has been very difficult for the staff.

Old Business

Sharon Saldarriago stated that the Board does not support proposed legislation that is detrimental to undocumented workers. A motion was made that the MSFW Board adopt a statement that the Board does not support the expansion of law enforcement authority including the enforcement of civil violations of federal immigration laws. It was seconded and unanimously approved.

New Business

There was no new business to report.

Items from Commissioner Dolores Esser

Commissioner Esser stated that the names of MSFW Board members who have not attended meetings have been submitted to the Office of the Secretary of the Commonwealth; however, there have not been any reappointments. The Board will proceed as usual until new appointments are made.

Commissioner Esser and Joyce Fogg, Public Relations Manager, stated that the upcoming meeting dates need to be decided on. After discussions, Commissioner Esser stated that proposed dates would be selected and emailed to the Board, requesting that the Board respond back to Ms. Fogg.

Public Comments

There were no public comments.

Adjournment

There being no further business, the meeting adjourned at 1:28 p.m.