

VIRGINIA MONITOR ADVOCATE'S ANNUAL SUMMARY OF JS SERVICES
TO MIGRANT AND SEASONAL FARMWORKERS (MSFWs) FOR PROGRAM YEAR 2011

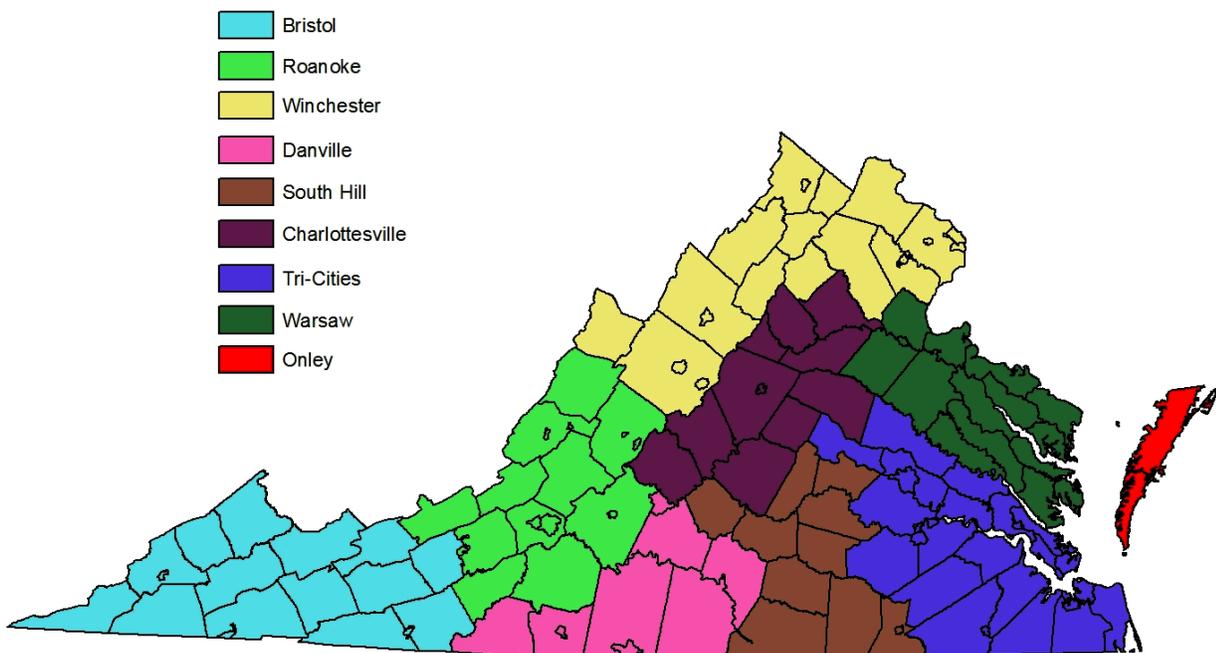
20 CFR 653.108(t)

September 14, 2012

In accordance with 20 CFR 658.603 (f) (5) and as requested by the Philadelphia Regional Office of USDOL, the following summary is provided regarding our services to MSFWs for the Program Year ending June 30, 2012.

During Program Year 2011 (PY11), the Virginia Employment Commission (VEC) conducted an extensive program to provide all appropriate job services to MSFWs. While all areas of the state did not experience the same level of MSFW activity, services were available on an equal basis in each of the thirty-three field offices in Virginia. Ten farm placement specialist positions were assigned among nine field offices shown below to serve the large numbers of MSFWs in the state.

Field Office Areas for Agricultural Services



Within this special One-Stop cadre, over half of the staff were bilingual and provided statewide coverage for MSFWs speaking Spanish. Of the estimated 13,443 MSFWs who were within Virginia during PY11, The Virginia Workforce Connection system indicates that 3,122 were registered, 1,586 were referred to a job, and 231 were placed in a job. Our federally-designated, significant bilingual field office on the Eastern Shore of Virginia was reviewed by the State Monitor Advocate. There were no violations of federal regulations found at the office. However, significant changes are occurring on the Eastern Shore of Virginia related to the labor supply associated with hand-harvested crops like tomatoes, which has resulted in reductions in the number of migrant farmworkers placed into agricultural jobs in that area. The specific reasons for the changes will be detailed within this summary. The local office at Winchester was also reviewed by the State Monitor Advocate. The office at Winchester was returned to the status of "significant" in PY 10 due to the large amount of workers employed in the apple industry and housed in the large labor camp operated by Frederick County Fruit Growers, and the Agricultural Clearance Order/H-2A Activity managed by that field office. There were no significant violations found, but some recommendations for improvement were made, which, upon implementation, should improve the services provided to MSFWs by the Winchester field office.

Although not apparent within our Virtual One Stop figures as compared to ETA LEARS reporting elements, we conclude that Virginia finished PY11 in compliance with all MSFW indicators. Finding a resolution to the ongoing discrepancy between the reporting scheme of the LEARS and the 9002 would clarify our position.

I. PROGRAM YEAR PERFORMANCE VERSUS PROGRAM YEAR PLAN: CFR 653.108 (t).

- A. **"Contact at least one third of the peak estimated MSFW population."** For PY 11, the peak estimate of MSFWs in Virginia was 10,640. Our staff actually made 7,375 contacts with MSFWs. Therefore, Virginia greatly exceeded our statewide outreach goal by contacting 69% of the MSFW population. This is nearly double our performance from PY 10.

- B. **"The VEC will use current farm placement staff located in nine field offices to provide statewide coverage."** The VEC is currently in the process of filling a vacancy in the Warsaw Field Office following the departure of the candidate hired in PY 10. Because of the significant number of MSFWs in that Crop Reporting Area, coupled with the receipt of complaints from workers, the State Monitor Advocate found it necessary to personally conduct outreach to MSFWs during June 2012 and utilize other Farm Placement Specialist staff to assist. Due to those efforts, the office was able to meet the outreach goal set for that office for PY 11. Outreach numbers for this program year on a statewide basis increased from the level during PY10 and existing staff have intensified efforts to locate and serve the MSFW population in Virginia.

- C. **"The VEC will provide bilingual staff for the MSFW significant field office in Onley on Virginia's Eastern Shore."** The Eastern Shore Field Office at Onley was a significant MSFW field office, and had two bi-lingual Farm Placement Specialists. Both of those staff members are of Spanish origin, speak the predominant language of the farmworkers, and have a background in agriculture and farm work.
- D. **"The Rural Services Division will conduct a statewide effort to locate qualified farmworkers"** Even after all positive recruitment efforts made by the VEC and many growers, a labor shortage of U.S. workers still prevailed. During this PY11, the Virginia Workforce Connection was used in our One-Stop offices to display jobs and refer U.S. workers.
- E. **"Meetings with growers and agricultural associations will be conducted by Rural Services staff to promote communications, recruiting, farm opportunities, and a better understanding of and compliance with legal requirements"** The Rural Services staff conducted seminars statewide, and met with many employers, associations, agents and individuals to promote our job services and educate the agricultural community.
- F. **"Each farm placement specialist will maintain a vigorous outreach program and document all efforts according to JS regulations."** According to final PY11 statistics, on average, each farm placement specialist made 19 MSFW contacts per staff day worked. Documentation was properly maintained. While staff from Winchester, Onley, South Hill, Warsaw or Bristol could be brought into an area to speak with the local MSFWs, other farm placement staff continued to improve their ability to converse with the MSFWs in Virginia in a common language. The Farm Placement Specialist Staff also worked closely with the Virginia WIA 167 Grantee, Telamon Corporation, whose staff is bi-lingual. With the coordinated efforts, Virginia's Migrant and Seasonal Farmworker population was well served.
- G. **"All housing inspection requests will be processed by Rural Services staff in VEC field offices."** For PY11, VEC staff provided all housing inspections as required by 20 CFR Part 655, Subpart B. The Rural Services staff conducted approximately 640 housing inspection visits and also did numerous courtesy visits in order to assist agricultural employers in the state who provide housing to agricultural workers. The VEC Monitor Advocate consulted on a regular basis with the State Environmental Health Director for the Virginia Department of Health regarding any issues raised in relation to permitting Migrant Labor Camp and complaints about farm worker housing.
- H. **"The Eastern Shore Field Office in Onley is a significant bi-lingual MSFW field office. As such, they will maintain a vigorous outreach effort and provide appropriate documentation. They will also provide the full range of JS services as**

required by the regulations. These services may include distribution of written brochures explaining community services, labor camp visits, taking MSFW applications, coordination with other MSFW agencies, explaining the complaint system, and bilingual translations " All of the above were provided in accordance with the current WIA and Wagner-Peyser Plan. Onley exceeded the minimum outreach requirements and contacted 100 percent of the peak estimated MSFWs in their area. Their outreach efforts for this PY were excellent and the outreach staff and Field Office Management should be commended for their outstanding performance.

For the Program Year 2011, the Eastern Shore Field Office processed two Agricultural Clearance and Food Processing Orders using the H-2A Program. The Field Office also received 20 local agricultural job orders. The Eastern Shore Field Office has experienced a marked decline in the MSFW population due to the fact that one of the largest tomato producers on the East Coast, East Coast Brokers and Packers, did not plant tomatoes on the Eastern Shore of Virginia in the spring of 2012 due, in part, to unfavorable harvest conditions from their significant holdings in Florida.

As employers continue to move toward using the E-verify system for verifying work authorization and, and because of the significant increase in enforcement and security at the borders, it is apparent that it is becoming much more difficult for the migrant population to secure employment. As such, this must be considered a contributing factor in the marked decrease in the number of registrations, referrals and especially placements of migrant and seasonal farmworkers in Virginia.

II. PROGRAM YEAR PERFORMANCE:

The VEC collected the data listed below in accordance with the USDOL definition for MSFWs. Precise counts of the farmworker population were very difficult to obtain due to the transitory nature of the MSFW population. During PY11, the VEC used an Internet based operating system for our Virtual One-Stop (VOS) service locations developed by Geographic Solutions, Inc. Information for this annual report was obtained using the data from our VOS reports, which are based on the format and definitions of the current "9002 Report".

MSFWs provided some service by the VEC in PY11:

| | | |
|----|--|---------|
| A. | Contacted Through Outreach Activities: | 7,375 |
| B. | Registering for Service: | 3,122 |
| C. | Referred to Agricultural Jobs: | 1,586 |
| D. | Referred to Non-Agricultural Jobs: | 43.14 % |
| E. | Placed in Agricultural Jobs: | 7.08% |
| F. | Placed in Non-Agricultural Jobs: | 3.32 % |

| | | |
|----|---------------------------|--------|
| G. | Referred to Training: | .96 % |
| H. | Receiving Career Guidance | 5.42 % |

| | | |
|----|---------------------------------|---------|
| I. | Receiving Job Development: | .96% |
| J. | Receiving Testing: | .60 % |
| K. | Referred to Supportive Service: | 2.69 % |
| L. | Receiving Some Service: | 74.85 % |
| M. | Placed According to Wage Rates: | |

| | |
|-----------------|--------|
| Under \$7.25 | 0 |
| \$7.25 and over | 10.40% |
| \$7.75 and over | 4.52 % |

III. INDICATORS OF COMPLIANCE AND CORRECTIVE ACTIONS: 20 CFR 653.100 AND 20 CFR 653.112 (a-c)

For PY11, the VEC exceeded all five Equity Indicators for service to MSFWs. Corrective action measures implemented in PY 11 have been effective in enabling us to meet these indicators. It must be stressed however that, this information reported on the LEARS Report and also described therein, is a result of an extrapolation using available data from the reports of The Virginia Workforce Connection (VWC) internet-based, virtual one-stop job service system of services to MSFWs, and longstanding historical service trends of the SWA. The discrepancy between the LEARS and 9002 reporting schemes are in need of reconciliation at the Federal Level.

**Virginia Employment Commission
MSFW Indicators
STATEWIDE PERFORMANCE**

| FIVE EQUITY INDICATORS | COMPLIANCE REQUIREMENTS | PERFORMANCE ACHIEVED | COMPLIANCE STATUS |
|---------------------------|-------------------------|----------------------|-------------------|
| 1. MSFWs referred to jobs | 30% | 54% | In |

| | | | | |
|----|---|-------|-------|----|
| 2. | MSFWs referred to supportive service | 2.14% | 8.40% | In |
| 3. | Career Guidance | 3% | 3.80% | In |
| 4. | MSFWs for whom job development contacts were made | 0.36% | 0.56% | In |
| 5. | MSFWs for whom some services were provided | 63% | .70 | In |

For PY1, the VEC exceeded five of the seven Minimum Service Level Indicators listed below. MSFWs "Placed in a job" and "Placed 50 Cents Above the Minimum Wage" were not in compliance.

| | SEVEN MIN. SVS. LEVEL INDICATORS | COMPLIANCE REQUIREMENTS | PERFORMANCE ACHIEVED | COMPLIANCE STATUS |
|----|--|--------------------------------|-----------------------------|--------------------------|
| 1. | MSFWs placed in a job | 42.5% | 10.40 | Out |
| 2. | MSFWs placed in a job exceeding minimum wage by at least \$.50 an hour | 14% | 4.52% | Out |
| 3. | MSFWs placed in long-term non-agricultural | 3% | 3.32% | In |

jobs

| | | | |
|--|------|------|----|
| 4. Field checks conducted on agricultural clearance orders where JS placements are made | 25% | 100% | In |
| 5. Number of MSFWs contacted by JS outreach (19 contacts per staff day) staff per staff year | 33% | 69% | In |
| 6. Complaints remaining unsolved for more than 45 working days after receipt | 10% | 100% | In |
| 7. Significant MSFW field office review | 100% | 100% | In |

IV. OUTREACH PROGRAM, FIELD CHECKS, AND FIELD VISITS: 20 CFR 653.107 (a) & (e) AND 20 CFR 653.503 (a).

For PY11, the SWA estimated the total and peak MSFW state labor force. Every county in Virginia was assigned to a field office farm placement specialist. The VEC farm placement specialist met in each county with numerous local groups with an interest in MSFWs. Suggestions were sought from appropriate individuals and from such organizations as Telamon Corporation (WIA 167), The Virginia Council of Churches, Legal Aid, and other advocacy groups. County extension agents, mandated key members of this effort, were consulted also. A consensus was reached and reported to the Monitor Advocate, who then reviewed the estimates and made a final determination. Local groups and individuals who participated, and many interested parties commented on the informative and productive nature of the efforts. Furthermore, these estimates are widely thought to be the best estimates available of the MSFW population in Virginia. This process has been repeated for the PY12 effort, which is posted on the Virginia Employment Commission website.

To serve the MSFW population in PY11, Winchester, Onley, South Hill, Bristol and Warsaw had bilingual or Spanish conversant farm placement staff assigned to them. Four other field offices in areas of high agricultural activity had a farm placement specialist on staff. Telamon (WIA 167) staff were readily available to assist with translations if needed. The Virginia Employment Commission has established a Partnership Agreement with Telamon, which has proven to be very beneficial to MSFWs in Virginia.

Each Farm Placement Specialist was responsible for conducting all aspects of MSFW outreach. Penetration of the farmworker community was extensive. All offices used farm placement specialists to meet with MSFWs in various locations. They handed out printed materials, in both Spanish and English, describing the local community, Job Service programs, other community resources, and social service agencies. Applications for Job Service programs were taken in places where MSFWs lived and worked. The Job Service complaint system was described to MSFWs and assistance provided in its use. The number of complaints remained consistent with PY 10. Many complaints were effectively resolved at the local level.

The Eastern Shore field office at Onley continued its comprehensive program to provide MSFWs with the U. S. Citizenship and Immigration Service Form I-9, Employment Eligibility Verification. They also offered to complete the withholding forms for federal and state taxes. The use of this service has seen a significant decline as employers have begun to utilize the E-verify process.

Still, many MSFWs visited the Onley office and coordination among farmworkers, crew leaders, and growers was greatly facilitated.

Field checks (20 CFR 653.503 (a)) were conducted across Virginia. During PY11, the VEC greatly exceeded the minimum field check requirement of 25 percent for agricultural work sites to which JS placements were made through the intrastate or interstate clearance system. For the year, all the covered job orders were field checked. In the majority of the field checks, no significant deficiencies were noted. However, occasional problems were detected by the VEC Farm Placement Specialists and discussed with the employer. In other cases, on-the-spot corrections were suggested and followed up on to ensure compliance.

During PY11, the VEC improved "Services to MSFWs" and "Services to Agricultural Employers" on the agency Internet homepage at: <http://www.vec.virginia.gov>. Agency farm placement staff and locations were listed. Topics and related hot links included the Immigration Reform and Control Act, the H-2A program, migrant labor camps, field sanitation, the Migrant and Seasonal Agricultural Worker Protection Act, minimum wage requirements, unemployment insurance, workers' compensation, Virginia Occupational Safety and Health Law, and federal and state tax regulations.

Continuing in PY11, the VEC made the Internet available for use by MSFWs in all of

its field offices, which is enhanced with an automated translation capability. Assistance with using the Internet, where needed by farmworkers, was one of the services provided by specially trained farm placement staff in selected field offices.

The Internet has also provided VEC staff with ready access to the many web sites which serve the agricultural community. It has allowed agency personnel to keep current on the numerous issues affecting farmworker employment.

V. ONE-STOP CAREER CENTER REVIEWS AND FINDINGS--20 CFR 653.108 (g)(1-3)

- A. **Eastern Shore Field Office Review:** This significant MSFW field office was reviewed June 21-22, 2012, by the State Monitor Advocate. The following areas were reviewed: office facilities, staffing, job applications, job orders, complaint file, MSFW outreach documentation, program monitoring reports, and MSFW services. At the time of the review, this field office had two Spanish speaking staff. Statistical equity was achieved in all five equity indicators and in four of the six minimum service level indicators. MSFWs "Placed in Non-Ag Jobs Over 150 Days" and "Placed 50 Cents Above the Minimum Wage" were in non-compliance.
- B. The State Monitor Advocate and Rural Service Manager also visited the Warsaw, Farmville, Tri-Cities and Charlottesville and Winchester local offices to review services provided and conduct on-site training of staff members. For the **Winchester Local Office formal review**, the following areas were observed and evaluated: office facilities, staffing, job applications, job orders, complaint file, MSFW outreach documentation, program monitoring reports, and MSFW services. During this review the State Monitor Advocate recommended to the field office Manager that Workforce Services Staff be re-trained on methods to identify and provide necessary services to individuals identified as MSFWs. Although the Farm Placement Specialist was well-informed of these measures, it was determined by the State Monitor Advocate that refresher training for Workforce Services staff on identifying and working with MSFWs would improve services provided to them when they utilize the Field Office for services. The Bristol, Danville and Roanoke local offices were subjected to periodic desk reviews by the State Monitor Advocate and Rural Services Manager to ensure compliance with federal regulations. Through the use of automated reports, each field office was carefully reviewed for compliance with the mandatory "equity" and "minimum service level indicators." Where significant discrepancies were noted, there was direct communication with the field office manager and corrective action suggested.

During field office visits, the service delivery to MSFWs was reviewed by the Monitor Advocate. All of the required areas of field office activity on behalf of MSFWs were checked, including the display of required posters, the JS

complaint system, outreach documentation, physical layout of the office, JS applications, and job orders. No significant problems were revealed regarding compliance issues. Currently, two-thirds of our farm placement staff are adequately conversant in Spanish. Nevertheless, for those still trying to improve their proficiency, Spanish language audio tapes, previously provided to all farm placement staff, continued in use. Classroom instruction was also available upon request.

In compliance with federal regulations at 20 CFR 653.107(h), the VEC has made appropriate efforts to hire qualified FPS staff and persons with MSFW backgrounds. Onley, as a significant, bilingual MSFW field office, during PY11 had on staff 2 individuals: both were from MSFW backgrounds, fully bilingual, and of Spanish descent. Recruitment advertisements for positions in that office state "Fluency in Spanish required." The State Monitor Advocate recommended during this PY to the agency Human Resources Management Staff that all future hires into FPS positions be conversant in Spanish, which is the predominate language of many MSFWs in Virginia. As such, our recruitment advertisements state "Fluency in Spanish preferred" in all FPS offices, with the exception being the Eastern Shore Field Office where fluency in Spanish is required.

VIII. SERVICES TO AGRICULTURAL EMPLOYERS

Services provided to agricultural employers originated either at the field office level or from the Rural Services Unit located within the Central Office. The State Monitor Advocate is from a MSFW background and is fluent in Spanish. Both the State Rural Services Manager and the State Monitor Advocate have extensive knowledge of the needs of Agricultural Employers in Virginia.

Field Office Services

Field offices statewide accepted job orders from agricultural employers. However, most employers using the clearance system to request H-2A workers worked more closely with one of the nine field offices, which have farm placement staff. Field offices listed job orders and participated in the recruitment of agricultural workers. Housing inspections were conducted for agricultural employers by field office personnel. Problem resolution among agricultural workers was available from field office personnel at the employer's request. Field office staff were responsible for conducting random field checks and continued this activity.

Central Office Services

The Rural Services Unit, located within the Central Office, had primary responsibility for coordinating certain agency services to agricultural employers. This unit also administered the foreign labor certification program for H-2A and H-2B. Inquiries from agricultural employers were answered on numerous issues, which ranged from

housing requirements to wage-related questions.

Interagency cooperative efforts which benefited agricultural employers were initiated by this unit. For example, the Internet program serving MSFWs and agricultural employers was developed and posted to the agency web site through the joint efforts of the VEC, the Cooperative Extension Service, Virginia Polytechnic Institute and State University, and the Virginia Department of Labor and Industry. This program, described previously in this summary, has allowed agricultural employers to have easy access to answers to many questions which arose in the conduct of their business.

The Rural Services Unit continued to offer seminars for agricultural employers. The goal of these presentations was to inform the participants of the numerous legal requirements in agricultural employment.

IX. OTHER ACTIVITIES AND ISSUES:

The State Monitor Advocate participated intensely in the planning and preparation of the WIA and Wagner-Peyser State Plan. The State Monitor Advocate was responsible for preparing the 2012 Plan to Serve Agriculture contained therein, and solicited input from the WIA 167 Grantee (Telamon), The Virginia Department of Agriculture and Consumer Services, The Virginia Department of Health, Employer Associations and Agents and other interested parties. Their input was evaluated and incorporated where appropriate.

All activities to improve services to MSFWs and employers were described previously in this annual report. However, there are several issues that should be mentioned.

The Commonwealth of Virginia has not been immune to the nationwide rise in unemployment. As such, we have seen a significant rise in U.S. worker interest in H-2A job orders and there has been a marked increase in referrals to these jobs. There has also been an increase in the number of workers sought through that program, most likely due to the increased national emphasis on curbing illegal immigration.

The VEC has also a consistent number of complaints filed in connection with H-2A job orders. For PY 11, we received and processed 19 such complaints. We are still awaiting the results from the enforcement agencies to which the complaints were referred. It would be of benefit to MSFWs and many interested parties including the State Workforce Agencies, if the provisions of the regulations related to the Regional Farm Labor Coordinated Enforcement Committee, found at 29 CFR 42.20, would be enforced.

On a more positive note, the VEC Central Office Rural Services Unit conducted seminars for Virginia growers and reached many interested individual employers.

Information was supplied on legislation, regulations, housing requirements, wage practices, record keeping, and related topics. This unit has also successfully implemented the changes in the H-2A program on a statewide basis so that those changes imposed little negative effects on the more than 260 agricultural employers who use the program across Virginia. Approximately 65 H-2A job orders were processed during PY11 and 317 U.S. workers were referred to the H-2A job openings.

The State Monitor Advocate and Rural Services Manager jointly conducted regional training sessions for Farm Placement Specialists and Management. Topics covered were the Job Services Complaint System, Providing Services for MSFWs, the Migrant Indicators of Compliance Reports, MSFW Registration Processes, H-2A Job Order Processing, and Prevailing Wage and Practices Surveys.

Lastly, the reporting system, historically known as the “Migrant Indicators of Compliance”, is still in serious need of updating. It is based on the now defunct ESARS database. With the adoption in 2000 of the “9002 Report” and its data elements, the “Migrant Indicators of Compliance” became invalid. SWAs no longer have a method for insuring that they are providing equitable services to MSFWs. It would be beneficial for all states if this discrepancy was addressed and corrective action measures taken.