



# COMMONWEALTH of VIRGINIA

Virginia Employment Commission  
703 East Main Street

John R. Broadway  
Commissioner

Post Office Box 1358  
Richmond, Virginia 23218-1358

September 27, 2010

Ms. Lenita Jacobs-Simmons  
Regional Administrator  
U.S. Department of Labor  
Employment and Training Administration  
170 South Independence Mall, West  
Suite 825 East  
Philadelphia, Pennsylvania 19106-3315

Dear Ms. Jacobs-Simmons:

As requested by U.S. Department of Labor regional office and in accordance with 20 CFR 653.108(t), I am submitting the Virginia Employment Commission Annual Summary for PY 09.

Two copies of our summary are enclosed for your review.

We believe we were effective in our services to agriculture during Program Year 2009. Nevertheless, we hope to improve our services as we better refine our program in accordance with the Workforce Investment Act of 1998.

Please direct all questions to Michelle Abraham, State Monitor Advocate, at the address above, or by phone at (804) 786-6094, or by e-mail at: [Carolyn.Abraham@vec.virginia.gov](mailto:Carolyn.Abraham@vec.virginia.gov).

Sincerely,

A handwritten signature in cursive script that reads "Shelby Robinson".

Shelby Robinson  
Assistant Commissioner for Field Operations

Enclosure

VIRGINIA MONITOR ADVOCATE'S ANNUAL SUMMARY OF JS SERVICES  
TO MIGRANT AND SEASONAL FARMWORKERS (MSFWs) FOR PROGRAM YEAR 2009

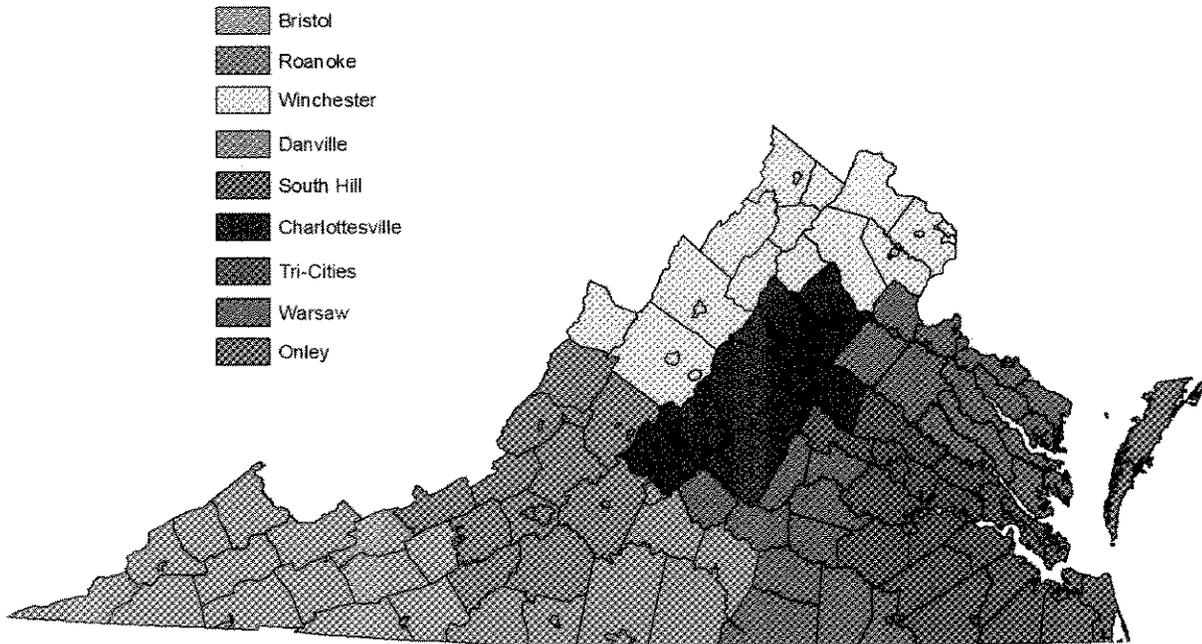
20 CFR 653.108(t)

August 2010

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, 2009:

During Program Year 2009 (PY09), 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 multilingual and provided statewide coverage for MSFWs speaking Spanish. Of the estimated 12,825 MSFWs who were within Virginia during PY09, 4,449 were registered, 3,095 were referred to a job, and 2,205 were placed in a job. Our significant 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. With the exceptions of "Non-Ag Jobs Over 150 Days," and "Placed 50 Cents Above the Minimum Wage" Virginia finished PY09 in compliance with all other MSFW indicators.

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

- A. **"Contact at least one third of the peak estimated MSFW population."** 42 percent were contacted.
- B. **"The VEC will use current farm placement staff located in nine field offices to provide statewide coverage."** All areas of the state were adequately covered.
- C. **"The VEC will provide bilingual staff for the MSFW significant field office in Onley."** Onley was a significant MSFW field office, and had 2 bilingual farm placement staff.
- D. **"The Rural Services Division will conduct a statewide effort to locate qualified farmworkers."** Even after all positive recruitment efforts by the VEC and many growers, a labor shortage of U.S. workers still prevailed. During this PY, 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 individuals.
- F. **"Each farm placement specialist will maintain a vigorous outreach program and document all efforts according to JS regulations."** According to final PY09 statistics, on average each farm placement specialist made 20 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.

G. "All housing inspection requests will be processed by Rural Services staff in VEC field offices." For PY09, VEC staff provided all housing inspections as required by 20 CFR Part 654, Subpart E.

H. "The Eastern Shore Field Office in Onley is a significant 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 regulation. These 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 50 percent of the peak estimated MSFWs in their area.

For PY09, the Eastern Shore Local Office at Onley achieved the following:

	<u>MSFWs</u>	<u>NON-MSFWs</u>
Total Applications	2,729	6,812
Referred to Job	2,299	3,986
Total Individuals Placed	2,160	840

## 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 PY09, 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 PY09:

A.	Contacted Through Outreach Activities:	5,335
B.	Registering for Service:	4,449
C.	Referred to Agricultural Jobs:	2,237
D.	Referred to Non-Agricultural Jobs:	858
E.	Placed in Agricultural Jobs:	2,155
F.	Placed in Non-Agricultural Jobs:	50
G.	Referred to Training:	13
H.	Receiving Career Guidance	39

I. Receiving Job Development:	24
J. Receiving Testing:	3
K. Referred to Supportive Service:	30
L. Receiving Some Service:	3,530
M. Placed According to Wage Rates:	
* Under \$7.25	1,239
\$7.25 and over	689
\$7.75 and over	66
\$8.85 and over	49

\* The large number of placements that were shown as being paid under the federal minimum wage rate of \$7.25 were entered on job orders that were listed before the federal minimum wage rate increase from \$6.55 to \$7.25 on July 24, 2009. Therefore, all workers were actually paid at least the federal minimum wage in accordance with federal law.

N. Placed According to Duration:

<u>In Agriculture</u>	
3 days or less	0
From 4 to 150 days	177
Over 150 days	1, 984
<u>In Non-Agriculture</u>	
3 days or less	0
From 4 to 150 days	2
Over 150 days	49

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

For PY09, the VEC exceeded three of five Equity Indicators for service to MSFWs as listed below. "Referred to Support Services and Career Guidance" was not in compliance based on our reporting system.

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. However, we believe

that the VWC system is not properly reflective of the number of MSFWs that were actually referred to support services. In reference to the non-compliance in the Career Guidance indicator, the reluctance of the migrant farmworkers to want to leave the seasonal, temporary agricultural jobs that they come to Virginia to perform, is the basis for the non-compliance in this area. The largest concentration of migrant farmworkers comes to the Eastern Shore of Virginia solely for the tomato harvest, which lasts about 2 ½ to 3 months. Most migrant workers do not remain in Virginia once the season ends.

**Virginia Employment Commission  
MSFW Indicators  
STATEWIDE PERFORMANCE**

<b>FIVE EQUITY INDICATORS</b>	<b>COMPLIANCE REQUIREMENTS</b>	<b>PERFORMANCE ACHIEVED</b>	<b>COMPLIANCE STATUS</b>
1. MSFWs referred to jobs	30%	70%-3,095	In
2. MSFWs referred to supportive service	1.2%	0.7%-30	Out
3. Career Guidance	1.2%	0.2%-11	Out
4. MSFWs for whom job development contacts were made	0.3%	0.2%-15	In
5. MSFWs for whom some services were provided	80%	54%-3,530	In

For PY09, the VEC exceeded five of the seven Minimum Service Level Indicators listed below. MSFWs "Placed in Long-Term Non-Ag. Jobs" 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%	50%	In
2. MSFWs placed in a job exceeding minimum wage by at least \$.50 an hour	14%	4.48%	Out
3. MSFWs placed in long-term non-agricultural jobs	3%	1.10%	Out
4. Field checks conducted on agricultural clearance orders where JS placements are made	25%	100%	In
5. Number of MSFWs contacted by JS outreach staff per staff year (20 contacts per staff day)	33%	47%	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 PY09, 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), members of the State MSFW Board, 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 participated, and many staff members commented on the informative and productive nature of the efforts. The process was refined and repeated for the PY10 effort, which are underway currently.

To serve the MSFW population in PY09, 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 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 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. This program has been expanded and refined, and is now Web based. It provided approximately 2,674 MSFWs with the required Certificate of Eligibility form and tax documentation for the past PY.

Through this outstanding effort, the individual farmworker was able to avoid the repetitious burden of providing adequate documentation to work in the United States.

This program also averted the unfortunate circumstance wherein a MSFW, once certified, might lose or misplace the required documentation.

Due to this local effort, many MSFWs were brought into the Onley office and coordination among farmworkers, crew leaders, and growers was greatly facilitated.

In addition to significant placements of MSFWs into local agricultural job orders, the Eastern Shore Crop reporting area received their first H-2A Clearance Order request for Custom Combine Operators since the inception of the H-2A Program.

Field checks (20 CFR 653.503 (a)) were conducted across Virginia. During PY09, the VEC greatly exceeded the minimum field check requirement of 25 percent for agricultural work sites to which JS placements have been 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 to ensure compliance.

During PY09, the VEC improved “Services to MSFWs” and “Services to Agricultural Employers” on the agency Internet homepage at: <http://www.VaEmploy.Com>. 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 PY09 the VEC made the Internet available in all of its field offices, now 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 3-4, 2010, 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 three 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. All other field offices in Virginia were either subjected to periodic desk reviews or on-site visits by the Monitor Advocate. 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.

In compliance with federal regulations at 20 CFR 653.107(h), the VEC has made appropriate efforts to hire qualified MSFWs and persons with MSFW backgrounds for staff positions. Onley, as significant MSFW field office, during PY09 had on staff 2 individuals, one who was from MSFW backgrounds, bilingual, and Hispanic and one who was bilingual and Hispanic. Both are fluent in reading and writing in Spanish and one is fluent in 6 other languages.

## 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 Rural Services Manager was from an MSFW Background and bi-lingual in Spanish.

### Field Office Services

Field offices statewide accepted job orders from agricultural employers. However, most employers using either the clearance system or requesting 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 alien labor certification program for H-2A. 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:

All activities to improve services to MSFWs and employers were described previously in this annual report. However, there are several efforts which deserve highlighting. First, the Onley field office continued to provide employers of eligible MSFWs with the I-9 Certificate. In addition, for PY09, Onley generated IRS W-4 forms and state tax forms for each MSFW. These forms, when presented to the employer, significantly aided in the correct computation of individual income tax for the employee. This specialized service greatly facilitated the subsequent employment of MSFWs as they traveled from one location and employer to another.

Second, 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 66 H-2A job orders were processed during PY 09 and 477 U.S. workers were referred to 2455 job openings.

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.

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