

## Employment and Training Administration, Labor

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AUTHORITY: 38 U.S.C. chapters 41 and 42; Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.; sec. 104 of the Emergency Jobs and Unemployment Assistance Act of 1974 Pub. L. 93-567, 88 Stat. 1845, unless otherwise noted.

### Subpart A—Basic Services of the Employment Service System [Reserved]

### Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

SOURCE: 45 FR 39459, June 10, 1980, unless otherwise noted.

#### § 653.100 Purpose and scope of subpart.

This subpart sets forth the principal regulations of the United States Employment Service (USES) for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart. Special services to ensure that MSFWs receive the full range of employment

related services are established under this subpart.

#### § 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations, offer services to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographical area offers other JS services to other applicants, are prohibited so that all applicants receive employment services on the same basis.

#### § 653.102 Job information.

All State agencies shall make job order information conspicuous and available to MSFWs in all local offices. This information shall include Job Bank information in local offices where it is available. Such information shall be made available either by computer terminal, microfiche, hard copy, or other equally effective means. Each significant MSFW local office shall provide adequate staff assistance to each MSFW to use the job order information effectively. In those offices designated as significant MSFW bilingual offices, such assistance shall be provided to MSFWs in Spanish and English, wherever requested or necessary, during any period of substantial MSFW activity.

#### § 653.103 MSFW job applications.

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.10 of this chapter.

(b) Except as provided in § 653.105, when an MSFW applies for JS services at a local office or is contacted by an Outreach worker, the services available through the JS shall be explained to the MSFW. In local offices which have been designated as significant MSFW bilingual offices by ETA, this explanation shall be made in Spanish, if necessary or requested during any period of substantial MSFW activity. Other local offices shall provide bilingual explanations wherever feasible.

(c) The local office staff member shall provide the MSFW a list of those services. The list shall be written in English and Spanish and shall specify those services which are available after completion of a full application and those services which are available after completion of a partial application. The JS staff member shall explain to each MSFW the advantages of completing a full application.

Applications shall be reviewed periodically by the local office manager or a member of his/her staff to ensure their accuracy and quality. Applications and the application-taking process shall also be reviewed during State and Federal onsite reviews by the State and Regional MSFW Monitor Advocates and/or review staff, who shall check overall accuracy and quality, and offer technical advice on corrections or improvements.

(d) If the MSFW wishes to complete a full application, the staff shall provide all assistance necessary to complete the application and shall ensure that the form includes complete information. It shall include, to the extent possible, the significant history of the MSFW's prior employment, training and educational background and a statement of any desired employment and any training needs in order to permit a thorough assessment of the applicant's skills, abilities and preferences. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES-511). Additional Dictionary of Occupational Titles codes or keywords shall be assigned, where appropriate, based on the MSFW's work

history, training, and skills, knowledges, and abilities. Secondary cards shall be completed and separately filed when keywords are not used. In extremely small local offices where the limited applicant load and file size does not require completion of secondary cards, additional D.O.T. codes shall be noted on the primary application card.

(e) If an MSFW wishes any JS service, and does not wish or is unable to file a full application, the interviewer shall try to obtain as much information as possible for a partial application. The interviewer shall enter the information on the partial application. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and any JS services permitted by the limited information available. He/she shall advise the MSFW that he/she may file a full application at any time.

(f) Partial applications shall be completed according to ETA instructions.

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) To minimize the need for additional applications in other offices, States shall issue JS cards to MSFWs at the initial visit under the following conditions:

(1) When automated data retrieval systems are available in the State. In this instance, JS staff shall advise the MSFW that the JS card may be presented at any other JS office in the State and that services will be provided without completion of an additional application unless the services requested require additional information for adequate service delivery.

(2) When an MSFW is referred on an interstate or intrastate order. In this instance, when it is known to the order-holding local office (through the presentation of an JS card or otherwise) that the MSFW has completed a full application or partial application in the applicant holding office or elsewhere, an additional application shall

not be taken by the order-holding office unless the MSFW requests JS services in addition to referral on the clearance order.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 46 FR 7772, Jan. 23, 1981; 47 FR 145, Jan. 5, 1982]

**§ 653.104 Services to MSFW family members, farm labor contractors, and crew members.**

(a) In addition to other requirements in this subpart, the following special requirements are established for services to MSFW family members, farm labor contractors and crew members. Except as provided at §§653.103(e) and 653.105, no local office shall refer an MSFW family or crew unless each working member of the family or crew being referred, has filed either a full or partial application pursuant to §653.103(b) at a local office or has been issued a JS card in instances set forth in §653.103(h). Local offices may, upon request, provide general information, e.g., the types of crops in other areas, to farm labor contractors and family heads prior to the registration of all working members.

(b) No local office shall accept an application from an individual for employment as a farm labor contractor or fill an agricultural job order submitted by a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") unless the FLC or FLCE shows or obtains a valid FLC certificate, or FLCE identification card where required by Federal law, and a valid State certification where required by State law. If a FLC or FLCE is temporarily without his or her valid FLC certificate or FLCE identification card the local office shall try to verify the existence of the valid certificate or identification card by telephoning the State central office and/or the Department of Labor's Employment Standards Administration regional office. The local office, however, shall not serve the FLC or FLCE until the existence of the valid certificate or identification card is verified.

(c) Local offices may refer workers to registered farm labor contractors who

are employers provided that a valid job order has been placed with the local office which clearly specifies all the terms and conditions of employment with the farm labor contractor shown as employer of record. Before a local office may refer workers to a farm labor contractor offering employment in another area of the State or in another State, one of two requirements must be met: Either a valid interstate clearance order from another State agency is on file in the office, or an intrastate order has been received from an office in another area of the State which is not within commuting distance of the office where the farm labor contractor is recruiting workers. Unless one of these conditions exists, the local office may only refer workers to a registered farm labor contractor who is an employer placing a local job order. Whenever the job order includes the provision of transportation, a FLC certificate authorizing transportation must be shown before workers are referred on the order.

**§ 653.105 Job applications at day-haul facilities.**

If the State agency is operating a day-haul facility under the exceptional circumstances provisions described in §653.106(a), a list of JS services shall be distributed and a full application shall be completed whenever an MSFW requests the opportunity to file a full application unless this is impractical at that time. In such cases, a full application shall be taken at the earliest practical time. In all other cases, a list of JS services shall be distributed.

**§ 653.106 JS day-haul responsibilities.**

(a) State agencies shall not establish, operate, or supervise any agricultural day-haul facilities unless exceptional circumstances warrant such action and prior approval of the Regional Administrator is obtained.

(b) No JS applicants shall be referred to non-JS operated day-haul facilities, unless the applicant is referred on a specific job order and is provided with a checklist summarizing wages, working conditions, and other material specifications on the job order. Such checklists, where necessary, shall be in English and Spanish. State agencies

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shall use a standard checklist format provided by ETA unless a variance has been approved by the Regional Administrator. However, general labor market information on the availability of jobs, the level of activity of agricultural and nonagricultural employment, and crop conditions shall be provided, upon request, to applicants where specific referrals to employment cannot be made.

(c) JS outreach workers shall visit all JS and non-JS operated day-haul facilities with substantial activity during their operation for purposes of providing MSFWs with information and assistance pursuant to § 653.107(j). Monitoring of such activity shall be conducted pursuant to § 653.108(p).

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

**§ 653.107 Outreach.**

(a) Each State agency shall operate an outreach program in order to locate and to contact MSFWs who are not being reached by the normal intake activities conducted by the local offices. Upon receipt of planning instructions and resource guidance from ETA, each State agency shall develop an annual outreach plan, setting forth numerical goals, policies and objectives. This plan shall be subject to the approval of the Regional Administrator as part of the program budget plan (PBP) process. Wherever feasible, State agencies shall coordinate their outreach efforts with those of public and private community service agencies and MSFW groups.

(b) In determining the extent of their outreach program, States shall be guided by the following statement of ETA policy:

(1) State agencies should make sufficient penetration in the farmworker community so that a large number of MSFWs are aware of the full range of JS services.

(2) Significant MSFW Local offices should conduct especially vigorous outreach in their service areas.

(3) State agencies in supply States should conduct particularly thorough

outreach efforts with extensive follow-up activities which capitalize on the relatively long duration of MSFW residence in the State.

(c) The plan shall be based on the actual conditions which exist in the particular State, taking into account the State agency's history of providing outreach services, the estimated number of MSFWs in the State, and the need for outreach services in that State. The approval of the Regional Administrator shall be based upon his/her consideration of the following features of the outreach plan:

(1) *Assessment of need.* This assessment of need shall include:

(i) A review of the previous year's agricultural activity in the State.

(ii) A review of the previous year's MSFW activity in the State.

(iii) A projected level of agricultural activity in the State for the coming year.

(iv) A projected number of MSFWs in the State for the coming year, which shall take into account data supplied by CETA 303 grantees, other MSFW organizations, employer organizations and federal and/or State agency data sources such as the Department of Agriculture and the United States Employment Service.

(v) A statement of the consideration given to the State Monitor Advocate's recommendation as set forth in the annual summary developed under § 653.108(t).

(2) *Assessment of available resources.* This assessment of the resources available for outreach shall include:

(i) The level of funds available from all sources, including the funds specifically made available to the State agency for outreach.

(ii) Resources made available through existing cooperative agreements with public and private community service agencies and MSFW groups.

(iii) Where fewer resources are available for outreach than in a prior year, a statement of why fewer resources are available.

(3) *Proposed outreach activities.* The proposed outreach activities shall be designed to meet the needs determined under paragraph (c)(1) of this section

with the available resources determined under paragraph (c)(2) of this section. The plan for the proposed outreach activities shall include:

(i) Numerical goals for the number of MSFWs to be contacted during the fiscal year by JS staff. The number of MSFWs planned to be contacted by other agencies under cooperative arrangements during the fiscal year also should be included in the plan. These numerical goals shall be based on the number of MSFWs estimated to be in the State in the coming year, taking into account the varying concentration of MSFWs during the seasons in each geographic area, the range of services needed in each area and the number of JS and/or cooperating agency staff who will conduct outreach.

(ii) Numerical goals for the staff years to be utilized for outreach during the fiscal year.

(iii) The level of funding to be utilized for outreach during the fiscal year.

(iv) The tools which will be used to conduct outreach contacts, including personal contact, printed matter, videotapes, slides, and/or cassette recordings.

(v) The records to be maintained by the JS outreach staff—logs of daily contacts to include the number of MSFWs contacted and assistance provided. The name of the individual contacted should be recorded when:

(A) An application for work is taken by an outreach worker,

(B) A referral to a job is made by an outreach worker, and/or

(C) A complaint is taken by an outreach worker.

(d) In developing the outreach plan, the State agency shall solicit information and suggestions from CETA 303 grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 days before submitting its final outreach plan to the Regional Administrator, the State agency shall provide a proposed plan to CETA 303 grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 days for review and comment. The State agency shall:

(1) Consider any comments received in formulating its final proposed plan.

(2) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(3) Transmit the comments and recommendations received and its responses to the Regional Administrator with the submission of the plan. (If the comments are received after the submission of the plan, they may be sent separately to the Regional Administrator.)

(e) The outreach plan shall be submitted as an essential part of the State's annual PBP. The resource requirement of the plan shall be reflected in the PBP budget request. The plan, including the resource requirement, shall be reviewed by the Regional Administrator during the annual PBP approval process. The State agency shall be required to implement the approved outreach plan as part of its compliance with the PBP.

(f) The Regional Administrator shall review and evaluate the outreach plan, including the assessments of needs and resources, in light of the history of the State's outreach efforts and the statements of policy set forth in § 653.107(b). He/she shall approve the plan only if it demonstrates that adequate outreach will be conducted. The approved outreach plan shall be available for review by interested parties.

(g) As part of the annual PBP process, funding of State agencies shall be contingent upon the substantial and timely compliance of the State agency with its prior year outreach plan. However, if the Regional Administrator makes a finding of good faith efforts, he/she may fund a State agency even though it did not achieve substantial and timely compliance.

(h) For purposes of hiring and assigning staff to outreach duties, State agencies shall seek, through merit system procedures, qualified candidates:

(1) Who are from MSFW backgrounds, and/or

(2) Who speak Spanish, and/or

(3) Who are racially or ethnically representative of the MSFWs in the service area.

(i) The five States with the highest estimated year round MSFW activity

shall assign, in accordance with State merit staff requirements, full-time, year round staff to outreach duties. The remainder of the significant MSFW states shall make maximum efforts to hire outreach staff with MSFW experience for year round positions and shall assign outreach staff to work full-time during the period of the highest MSFW activity. Such outreach staff shall be bilingual if warranted by the characteristics of the MSFW population in the State, and shall spend a majority of their time in the field. The Regional Administrator may grant approval for a deviation from the requirements of this section if the State agency provides adequate evidence that outreach activities and service delivery to MSFWs would be improved through other staffing arrangements.

(j) For purposes of this subpart, an outreach "contact" shall include either the presentation of information and offer of assistance specified in paragraphs (j)(1) and (j)(2) of this section, or the followup activity specified in paragraph (j)(3) of this section.

(1) Outreach workers shall explain to MSFWs at their working, living or gathering areas, including day-haul sites, by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following:

(i) The services available from the local office, including the availability of referrals to agricultural and non-agricultural employment, to training, to supportive services, as well as the availability of testing, counseling and other job development services;

(ii) Types of specific employment opportunities which are currently available in the JS system;

(iii) Information on the JS complaint system and other organizations serving MSFWs;

(iv) A basic summary of farmworker rights with respect to the terms and conditions of employment;

(v) *Provided, however,* That outreach workers shall not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer, unless otherwise authorized to enter by law, shall not enter workers' living areas without the permission of the

workers, and shall comply with appropriate State laws regarding access.

(2) After making the presentation, outreach workers shall urge the MSFWs to go to the local office to obtain the full range of JS services. If an MSFW cannot or does not wish to visit the local JS office, the outreach workers shall offer to provide on-site the following:

(i) Assistance in the preparation of applications;

(ii) If an unemployed MSFW, assistance in obtaining referral to specific employment opportunities currently available; if an employed MSFW, information regarding the types of employment opportunities which will become available upon the date on which the MSFW indicates that he/she will be available following his/her current employment.

(iii) Assistance in the preparation of either JS or non-JS related complaints;

(iv) Receipt and subsequent referral of complaints to the local office complaint specialist or local officer manager;

(v) Referral to supportive services for which the individual or a family member may be eligible;

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFWs or members of their family to and from local offices or other appropriate agencies.

(3) Outreach workers shall make follow-up contacts as are necessary and appropriate to provide to the maximum extent possible the assistance specified in paragraphs (j)(1) and (j)(2) of this section.

(4) In addition to the foregoing outreach contacts, the State agency shall publicize the availability of JS services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also shall be utilized to facilitate the widest possible distribution of information concerning JS services.

(k) Outreach workers shall be alert to observe the working and living conditions of MSFWs and, upon observation, or upon receipt of information regarding a suspected violation of federal

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or State employment-related law, document and refer information to the local office manager for processing in accordance with §653.113.

(l) Outreach workers shall be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the JS. They shall also be trained in the procedure for informal resolution of complaints. The program for such training shall be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA, and each State's program shall be reviewed and commented upon in advance by the State MSFW Monitor Advocate.

(m) During months when outreach activities are conducted, outreach workers shall maintain complete records of their contacts with MSFWs and the services they perform in accordance with a format developed by ETA. These records shall include a daily log, a copy of which shall be sent monthly to the local office manager and maintained on file for at least two years. These records shall include the number of contacts and names of contacts (where applicable), the services provided (e.g., whether a complaint was received, whether an application was taken, and whether a referral was made). Outreach workers also shall maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records shall include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to §653.107(l).

(n) During months when outreach activities are conducted, each local office manager shall file with the State MSFW Monitor Advocate a monthly summary report of outreach efforts. These reports shall summarize information collected, pursuant to paragraph (m) of this section. The local office manager and/or other appropriate State office staff members shall assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Per-

formance shall not be judged solely by the number of contacts made by the worker. The monthly reports and daily outreach logs shall be made available to the State MSFW Monitor Advocate and federal On-Site Review Teams. In addition, the distribution of any special funds for outreach, should funds become available, shall be based on the effectiveness and need of the State's outreach program as monitored by ETA.

(o) Outreach workers shall not engage in political, unionization or antiunionization activities during the performance of their duties.

(p) Outreach workers shall be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

### § 653.108 State agency self-monitoring.

(a) State Administrators shall assure that their State agencies monitor their own compliance with JS regulations in serving MSFWs on an ongoing basis. The State Administrator shall have overall responsibility for State agency self-monitoring.

(b) The State Administrator shall appoint a State MSFW Monitor Advocate. The State Administrator shall inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State MSFW Monitor Advocate. Among qualified candidates determined through State merit system procedures, the State agencies shall seek persons (1) who are from MSFW backgrounds, or (2) who speak Spanish or other languages of a significant proportion of the State MSFW population, or (3) who are racially or ethnically similar to the MSFWs in the State, or (4) who have substantial work experience in farmworker activities.

(c) The State MSFW Monitor Advocate shall have direct, personal access, whenever he/she finds it necessary, to the State Administrator and shall work in the State central office. The State MSFW Monitor Advocate shall have status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity and responsibility.

(d) The State MSFW Monitor Advocates shall be assigned staff necessary to fulfill effectively all of his/her duties as set forth in this subpart. The number of staff positions shall be determined by reference to:

(1) The number of MSFWs in the State, as measured at the time of the peak MSFW population (MSFW activity), and (2) the need for monitoring activity in the State. The MSFW Monitor Advocates shall devote full time to Monitor Advocate functions, except that the USES Administrator may reallocate positions from States of low MSFW activity to States of higher MSFW activity and may approve a plan for less than full-time work in States of low MSFW activity. Any such plan must demonstrate that the State MSFW Monitor Advocate function can be effectively performed with part-time staffing.

(e) All State MSFW Monitor Advocates and Assistant MSFW Monitor Advocates shall attend within the first three months of their tenure a training session conducted by the Regional MSFW Monitor Advocate. They shall also attend whatever additional training sessions are required by the Regional or National MSFW Monitor Advocate.

(f) The State MSFW Monitor Advocate shall provide any relevant documentation requested from the State agency by the Regional MSFW Monitor Advocate.

(g) The State MSFW Monitor Advocate shall:

(1) Conduct an ongoing review of the delivery of services and protections afforded by JS regulations to MSFWs by the State agency and local offices. The State MSFW Monitor Advocate, without delay, shall advise the State agency and local offices of (i) problems, de-

ficiencies, or improper practices in the delivery of services and protections afforded by these regulations (including progress made in achieving affirmative action goals and timetables), and (ii) means to improve such delivery.

(2) Participate in onsite local office MSFW formal monitoring reviews on a regular basis.

(3) Assure that all significant MSFW local offices not reviewed onsite by Federal staff, are reviewed at least once a year by State staff, and that, if necessary, those local offices in which significant problems are revealed by required reports, management information, the JS complaint system or otherwise are reviewed as soon as possible.

(4) Assure that the monitoring review format, developed by ETA, is used as a guideline in the conduct of local office MSFW onsite formal monitoring reviews. This format will ensure that applications and the application-taking process are reviewed during State onsite reviews by State MSFW Monitor Advocates and/or review staff, who shall check overall accuracy and quality, and offer technical advice on corrections or improvements.

(5) Review the State agency's outreach plan, and on a random basis, the outreach workers' daily logs and other reports including those showing or reflecting the workers' activities, to ensure that they comply with the outreach plan.

(h) Formal onsite MSFW monitoring reviews of local offices shall be conducted using the following procedures:

(1) Before beginning such a review, the State MSFW Monitor Advocate and/or review staff shall study:

- (i) Program performance data,
- (ii) Reports of previous reviews,
- (iii) Corrective action plans developed as a result of previous reviews,
- (iv) Complaint logs, and
- (v) Complaints elevated from the office or concerning the office.

(2) Upon completion of a local office onsite formal monitoring review, the State MSFW Monitor Advocate shall hold one or more wrap-up sessions with the local office manager and staff to discuss any obvious findings and offer initial recommendations and appropriate technical assistance.



(3) After each review the State MSFW Monitor Advocate shall conduct an indepth analysis of the review data. The conclusions and recommendations of the State MSFW Monitor Advocate shall be put in writing, shall be sent to the State Administrator, to the official of the State agency with line authority over the local office, and other appropriate State agency officials.

(4) The state MSFW Monitor Advocate may recommend that the review responsibility set forth in this subsection be delegated to a responsible professional member of the administrative staff of the State agency, if and when the State Administrator finds such delegation necessary. In such event, the State MSFW Monitor Advocate shall be responsible for and shall approve the written report of the review.

(5) The local office manager shall develop and propose a written corrective action plan. The plan shall be approved, or appropriately revised, by appropriate superior officials and the State MSFW Monitor Advocate. The plan shall include actions required to correct or to take major steps to correct any problems within 30 days or if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period shall be specifically stated.

(6) State agencies, through line supervisory staff, shall be responsible for assuring and documenting that the local office is in compliance within the time period designated in the plan. State agencies shall submit to the appropriate ETA regional offices copies of the onsite local office formal monitoring review reports and corrective action plans for significant local offices.

(i) The State MSFW Monitor Advocate shall participate in federal reviews conducted pursuant to subpart G.

(j) At the discretion of the State Administrator, the State MSFW Monitor Advocate may be assigned the responsibility as the complaint specialist. The State MSFW Monitor Advocate shall participate in and monitor the performance of the complaint system, as set forth at 20 CFR 658.400 *et seq.* The State MSFW Monitor Advocate shall review the local office managers' infor-

mal resolution of complaints relating to MSFWs and shall ensure that the State agency transmits copies of the logs of MSFW complaints to the regional office quarterly.

(k) The State MSFW Monitor Advocate also shall serve as an advocate to improve services for MSFWs within JS. The State MSFW Monitor Advocate shall establish ongoing liaison with CETA 303 and other organizations serving farmworkers, and employers and/or employer organizations, in the State. The State MSFW Monitor Advocate shall meet frequently with representatives of these organizations to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with JS or improving JS services to MSFWs.

(l) The State MSFW Monitor Advocate shall conduct frequent field visits to the working and living areas of MSFWs, and shall discuss JS services and other employment-related programs with MSFWs, crew leaders, and employers. Records shall be kept of each such visit.

(m) The State MSFW Monitor Advocate shall participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee.

(n) The State MSFW Monitor Advocate shall ensure that outreach efforts in all significant MSFW local offices are reviewed at least yearly to ensure that there is continuing compliance with 20 CFR 653.107. This review will include accompanying at least one outreach worker from each significant MSFW local office on his/her visits to MSFWs' working and living areas. The State MSFW Monitor Advocate shall review findings from these reviews.

(o) The State MSFW Monitor Advocate shall review and assess the adequacy of the annual State affirmative action plan for MSFWs, and shall report such findings to the State Administrator.

(p) The State MSFW Monitor Advocate shall ensure that JS outreach activities are reviewed periodically at day-haul sites at which these activities are conducted. Complete records of such visits shall be kept. The State

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MSFW Monitor Advocate shall ensure that local offices and the State Administrator are advised of any deficiencies.

(q) The State MSFW Monitor Advocate shall review on at least a quarterly basis all statistical and other MSFW-related data reported by significant MSFW local offices in order (1) to determine the extent to which the State agency has complied with regulations at § 653.100 *et seq.*, and (2) to identify the areas of inadequate compliance.

(r) The State MSFW Monitor Advocate shall have full access to all statistical and other MSFW-related information gathered by State agencies and local offices and may interview State and local office staffs with respect to reporting methods. Subsequent to each review, the State MSFW Monitor Advocate shall consult, as necessary, with State and local offices and provide technical assistance to ensure accurate reporting.

(s) The State MSFW Monitor Advocate shall review and comment on proposed State JS directives, manuals, and operating instructions relating to MSFWs and shall ensure (1) that they accurately reflect the requirements of the regulations, and (2) that they are clear and workable. The State MSFW Monitor Advocate also shall explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(t) The State MSFW Monitor Advocate shall prepare for the State Administrator an annual summary of JS services to MSFWs within his/her State based on statistical data and his/her reviews and activities set forth in these regulations. The summary shall include an assessment of the State agency's activities related to MSFWs such as those covered in the State agency's PBP, outreach plan, and affirmative action plan, and the other matters with respect to which the State MSFW

Monitor Advocate has responsibilities under these regulations. A copy of this summary shall be forwarded to the Regional Administrator by the State Administrator.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

**§ 653.109 Data collection.**

State agencies shall: (a) Collect data on MSFWs, including data on the number (1) contacted through outreach activities, (2) registering for service, (3) referred to agricultural jobs, (4) referred to non-agricultural jobs, (5) placed in agricultural jobs, (6) placed in non-agricultural jobs, (7) referred to training, (8) receiving counseling, (9) receiving job development, (10) receiving testing, (11) referred to supportive service, (12) receiving some service, (13) placed according to wage rates, and (14) placed according to duration. The State agencies also shall collect data on agricultural clearance orders (including field checks), MSFW complaints, and monitoring activities, as directed by ETA. These data shall be collected in accordance with the ESARS Handbook and applicable ETA Reports and Analysis Letters.

(b) Collect data on the number of MSFWs who were served as to whether they were male, female, black, Hispanic, American Indian, Asian, or Pacific Islander.

(c) Provide necessary training to State agency, including local office personnel, to assure accurate reporting of data;

(d) Collect and submit to ETA as directed by ETA, data on MSFWs required by the PBP, and

(e) Periodically collect and verify data required under this subsection, take necessary steps to ensure its validity, and collect and submit data for verification to ETA, as directed by ETA; and

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(f) Submit additional reports to the ETA at such times and containing such items as ETA directs.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

### § 653.110 Disclosure of data.

(a) State agencies shall disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by State and local offices pursuant to § 653.109, if possible within 10 working days after receipt of the request.

(b) If a request for data held by a State agency is made to the ETA national or regional office, the ETA shall forward the request to the State agency for response.

(c) If the requested data cannot be supplied within 10 working days of receipt by the State agency of the request, the State agency shall respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, however, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided this reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, may also be withheld provided the reason is given to the requestor in writing.

### § 653.111 State agency staffing requirements.

(a) On a statewide basis, staff representative of the racial and ethnic characteristics in the work force shall be distributed in substantially the same proportion among (1) all "job groups" (as that term is defined by the Office of Federal Contract Compliance

Programs), and (2) all offices in the plan(s).

(b)(1) As part of the PBP, each State agency shall develop and submit to the Regional Administrator affirmative action plans for all significant local offices within its jurisdiction (which, for the purposes of this provision, means those local offices representing the top 20 per cent of MSFW activity nationally). These affirmative action plans shall include goals and timetables and shall ensure that sufficient numbers of qualified, permanent minority staff are hired. Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff shall be hired in accordance with State merit system procedures, where applicable. These affirmative action plans shall be prepared on an individual office basis.

(2) The affirmative action plans shall include an analysis of the racial and ethnic characteristics of the work force in the local office service area. To determine the "work force" for the purpose of this paragraph, the State agency shall include the racial and ethnic characteristics of any MSFW population which is not a part of the permanent work force by computing an estimate of the total work years MSFWs collectively spend in the area and including a number of workers equivalent to this estimate as part of the permanent work force. This computation shall be made by calculating the average length of time, as a fractional part of a year, MSFWs stay in the area and then multiplying this figure by the total estimated MSFW population in the area during the previous year.

(3) The affirmative action plan also shall include an analysis of the local office staffing characteristics. The plan shall provide a comparison between the characteristics of the staff and the work force and determine if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the work force in the local office service area(s).

(4) If the staff under-represents any of these characteristics, the State agency shall establish a staffing goal at a level equivalent to the percentage of the characteristics in the work force

in the local office service areas. The State agency also shall establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the State agency shall consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds, and all affirmative action plans shall establish timetables that are designed to achieve the staffing goal no later than December 31, 1983.

(c) In addition, each State agency which has significant local offices, shall undertake special efforts to recruit MSFWs and persons from MSFW back-grounds for its staff, shall document achievements, and shall include in the affirmative action plan(s) a complete description of specific actions which the agency will take and time frames within which these actions will be taken.

(d) In developing the affirmative action plan for significant local offices, the State agency shall solicit from CETA 303 and other appropriate MSFW groups, employer organizations and other interested organizations, estimates of the total MSFW population in each local office service area, and the average length of time the MSFWs stay in the area. In addition, State agencies shall solicit, consider, incorporate as appropriate, respond to and include copies of comments from CETA 303, other appropriate MSFW groups, employer organizations, and other interested organizations, following procedures set forth for the annual outreach plan at § 653.107(d).

(e) As part of the annual Program and Budget Plan (PBP) process, the funding of State agencies which are required to develop and implement affirmative action plans for significant local offices shall be contingent upon the timely submittal of adequate affirmative action plans and the substantial and timely attainment of the goals and timetables contained in those plans. However, if the Regional Administrator makes a finding of good faith efforts, he/she may fund a State agency even though it did not achieve substantial and timely compliance.

(f) All State Employment Security Agencies (SESAs) required to develop affirmative action plans for significant local offices shall keep accurate records of their employment practices for those offices, including information on all applications. These records shall be maintained in accordance with the recordkeeping requirements concerning affirmative action which are established by ETA and distributed to the SESAs. All records shall be made available to the State MSFW Monitor Advocate, EEO staff and Federal On-Site Review Teams.

(g) Affirmative action plans shall contain a description of specific steps to be taken for the adequate recruitment of MSFWs for all vacant positions in significant local offices and the central office. These steps shall include advertisements in newspapers, radio or other media, in a manner calculated to best reach the MSFW population, and contacts by outreach workers and the State MSFW Monitor Advocate with groups serving the MSFW population.

(h) State EEO staff shall have the responsibility for developing affirmative action plans. The State MSFW Monitor Advocate(s) shall comment on the plan to the State Administrator. Upon submission of the affirmative action plan as part of the State agency's PBP submittal, the Regional MSFW Monitor Advocate shall review the affirmative action plan(s) as it pertains to MSFWs and comment to the Regional Administrator. As part of his/her regular reviews of State agency compliance, the Regional MSFW Monitor Advocate shall monitor the extent to which the State has complied with its affirmative action plan(s) as it pertains to MSFWs. The Regional MSFW Monitor Advocate's finding as to the adequacy of the plan(s) and as to the State's compliance with the plan(s) shall be considered in PBP decisions involving future funding of the State agency.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

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### § 653.112 State agency program budget plans.

(a) Each State agency, in its annual program budget plan, shall describe its plan to carry out the requirements of this subpart in the following year. The plan shall include, where applicable, the outreach and affirmative action plans required by §§ 653.107 and 653.111, respectively. For significant MSFW States, ETA shall establish program performance indicators reflecting equity indicators and indicators measuring minimum levels of service to MSFWs which the significant MSFW State agencies will be required to meet. These program performance indicator requirements shall be contained in the PBP Guidelines which ETA promulgates on an annual basis.

(b) Equity indicators shall address JS controllable services and shall include, at a minimum, individuals referred to a job; receiving counselling; receiving job development; receiving some service; and referred to supportive service.

(c) Minimum level of service indicators shall address other services to MSFWs and shall include, at a minimum, individuals placed in a job; placed in a job with a wage exceeding the Federal minimum wage by at least 50 cents/hour; placed long-term (150 days or more) in a non-agricultural job; review of significant MSFW local offices; field checks on agricultural clearance orders; outreach contacts per staff day; and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year shall be based on the following:

(1) Past State agency performance in serving MSFWs, as reflected in on-site reviews and data collected under § 653.109;

(2) The need for services to MSFWs in the following year, comparing prior and projected levels of MSFW activity;

(3) The ETA program priorities for the following year; and

(4) Special circumstances and external factors existing in the particular State.

(d) The Regional Administrator shall review this portion of the PBP, and approve it upon making a written determination that it is acceptable in light of the requirements of this subpart.

The Regional Administrator's written determination shall be available to the public upon request.

(Approved by the Office of Management and Budget under control number 1205-0039.)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982]

### § 653.113 Processing apparent violations.

(a) If a State agency employee observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment related laws or JS regulations by an employer, except as provided at § 653.503 (field checks) or § 658.400 of this chapter (complaints), the employee shall document the suspected violation and refer this information to the local office manager.

(b) If the employer has filed a job order with the JS office within the past 12 months, the local office shall attempt informal resolution. If the employer does not remedy the suspected violation within 5 working days, procedures at part 658, subpart F of this chapter shall be initiated and, if a violation of an employment related law is involved, the violation shall be referred to the appropriate enforcement agency in writing.

(c) If the employer has not filed a job order with the local office during the past 12 months, the suspected violation of an employment related law shall be referred to the appropriate enforcement agency in writing.

### Subpart C—Services for Veterans [Reserved]

### Subpart D—Services to the Handicapped [Reserved]

### Subpart E—Support Services [Reserved]

### Subpart F—Agricultural Clearance Order Activity

SOURCE: 45 FR 39466, June 10, 1980, unless otherwise noted.