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Reference: Wagner-Peyser (W-P) Migrant Seasonal Farmworker Registration and Agricultural Employer Services Procedures

**Final Guidance**  
**Wagner-Peyser (W-P) Migrant Seasonal Farmworker Registration and Agricultural Employer Services Procedures**

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**OF INTEREST TO:**

Workforce Florida, Inc. and Regional Workforce Boards

**SUBJECT:**

Wagner-Peyser (W-P) Migrant and Seasonal Farmworker (MSFW) Registration and Agricultural Employer Services Procedures

**PURPOSE:**

To provide guidance and clarification to Regional Workforce Boards (RWBs), One-Stop Center employees and other workforce system partners on the proper procedures relating to the provision of MSFW registration and agriculture employer services in the W-P reporting system.

**BACKGROUND AND UNDERLYING FEDERAL/STATE POLICY:**

According to 20 CFR 652.207, labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities.

In 1973, United States District Court Judge Charles R. Richey rendered a declaratory judgment that farmworkers' Civil Rights had been violated by the U.S. Employment Service system. In August 1974, Judge Richey entered an extensive Consent Order, stipulated and agreed to by both sides, requiring the Department of Labor to undertake specified actions on providing farmworkers all employment services on a non-discriminating basis.

The Settlement Agreement established rules and regulations that provide criteria for serving farmworkers with the same equity of services as provided to non-farmworkers. One of the criteria was to establish full-time MSFW staff in those One-Stop Centers

where a large number of migrant and seasonal farmworkers were known to be available.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) was amended in 1994 and 1997. MSPA provides employment-related protections to migrant and seasonal agricultural workers and is administered and enforced by the Wage and Hour Division of the U.S. Department of Labor.

In 1998, the Workforce Investment Act (WIA) was passed. Section 167 of the WIA provides funds for the National Farmworker Jobs Program (NFJP). This program provides additional services to assist MSFWs and their families to achieve economic self-sufficiency through job training. The program is authorized by Congress to counter the impact of chronic unemployment and underemployment experienced by MSFWs who primarily depend on jobs in agricultural labor. Services provided by the NFJP are supplementary services to those provided by AWI. The Florida Department of Education and its NFJP grantees are our prime partners in providing services to MSFWs. One-Stop Centers should coordinate with these grantees to facilitate MSFWs' access to services available through the workforce system. The Department of Labor also oversees this program and ensures that MSFWs receive the same treatment as non-MSFWs. Each program has slightly different definitions for the term MSFW, which may affect whether a MSFW as defined for purposes of employment services qualifies for the NFJP.

### **DEFINITIONS OF TERMS:**

- "Agricultural Recruitment System (ARS)" is a system that provides agricultural employers with a means of reaching populations of American farmworkers in other parts of the state and nation. Generally, employers taking advantage of the ARS program must pay the prevailing wage rate for the particular job in their area as determined by a yearly survey. In addition, they must provide housing for workers that meet OSHA standards, guarantee at least 40 hours of work during the first week of employment, and provide the workers with return transportation or transportation to another work site after the job is finished.
- "Agricultural Worker" is a worker whose primary work experience has been in farm work.
- "Allowances" is direct payments, which shall not exceed the higher of the state or federal minimum wage, made to farmworker program participants during their enrollment for receipt of intensive or training services.
- "Clearance" is the term for the expansion of a job order whose labor needs are not met in the immediate local area to be "cleared" or released to other local One-Stop Centers within the State (Intrastate Clearance Order) or if not met statewide, may be "cleared" through USDOL-ETA Region III Office in Atlanta to be released as an

Interstate Clearance Order. For more information on this system, refer to the following web site at:

[http://www.dol.gov/dol/allcfr/ETA/Title\\_20/Part\\_653/20CFR653.500.htm](http://www.dol.gov/dol/allcfr/ETA/Title_20/Part_653/20CFR653.500.htm).

- "Commuting Distance" is the distance that a worker can reasonably be expected to commute from the worker's residence to the place of work and return to his/her residence on a daily basis.
- "Complaint" is a representation made or referred to a state or One-Stop Career Center office of a violation of the employment service/One-Stop Career Center regulations and/or other federal, state or local employment related law.
- "Department or DOL" is the Department of Labor, including its agencies and organizational units, unless otherwise indicated.
- "Employer" is a person, firm, corporation, or other association or organization (1) which currently has a location within the United States (US) to which US workers may be referred for employment and which proposes to employ a worker at a place within the US and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee.
- "Farm work" is work performed for wages in agricultural production or agricultural services in establishments included in those industries within the North American Industry Classification System (NAICS).
- "Grantee for MSFW Programs" is an entity to which a WIA grant is awarded directly from the Department of Labor to carry out the MSFW program in one or more designated state or sub-state service areas.
- "H2A" is a program that enables agricultural employers to hire foreign citizens for seasonal jobs when there are not enough U.S. workers to fill the available job openings. Before taking advantage of the H2A program, the employer must attempt to recruit and agree to hire any qualified U.S. workers that are available. In addition, the employer must provide the H2A workers with housing that meets OSHA standards, wage guarantees, and transportation to and from the work site.
- "Intrastate Job order" is a job order describing one or more hard-to-fill job openings, which a One-Stop Center uses to request recruitment assistance from other One-Stop Centers within the state. Agricultural job openings will appear on the Internet or EFM, if there is an approved clearance order.
- "MSFW" is a migrant farmworker, a migrant food processing worker, or a seasonal farmworker.

- "Migrant Farmworker" is a seasonal farmworker who had to travel to do the farm work so that he/she was unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.
- "Migrant Food Processing Worker" is a person who, during the preceding twelve months, has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing, earned at least half of his/her earned income from food processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.
- "National Farmworkers Jobs Program (NFJP)" is a program that is administered by the USDOL-ETA National Office whose mission is to empower migrant and other seasonally-employed farmworkers and their families to achieve economic self-sufficiency by providing services that address their employment related needs The following link provides information on the NFJP program:  
<http://www.doleta.gov/MSFW/html/NFJP.cfm>.
- "Outreach" is an effort by the One-Stop Center to personally contact MSFWs outside of the center who have not used the services offered by the center.
- "Quality Contact" is a contact with a MSFW where a reportable support service is provided and documented with the MSFWs name and social security number.
- "Seasonal Farmworker" is a person who, during the preceding twelve months, worked at least an aggregate of 25 or more days or part of days in which some work was performed in farm work, earned at least half of his/her earned income from farm work, and was not employed in farm work year round by the same employer. For the purposes of this definition only, a farm labor contractor is not considered an employer. Non-migrant individuals who are full-time students are excluded.
- "Significant MSFW One-Stop Centers" are offices designated annually by ETA, at those One-Stop Centers where migrant and seasonal farmworkers account for ten percent or more of annual job seekers and those One-Stop Centers which the Administrator determines should be included due to special circumstances.
- "Underemployed" is an individual who is working part-time but seeking full time employment or is an individual who is employed full-time but whose annual income remains below the poverty line.
- "Work Experience" is a short-term or part-time employment or work assignment activity with a public or private nonprofit host agency for those participants needing assistance in learning the basic requirements of the workplace.

## **MSFW PROGRAM OPERATIONS**

All One-Stop Centers must provide the same equity of services to MSFWs as are provided to non-farmworkers. The United States Department of Labor, Employment Training Administration (ETA) established equity and minimum service level standards for Migrant and Seasonal Farmworkers that must be met by states. The standards, designed to measure the level of equity and quality of services provided by a state to workers during the program year, are:

### **Equity Measures**

- Referred to Jobs
- Received Staff Assisted Services
- Referred to Supportive Services
- Career Guidance
- Job Development Contacts

### **Minimum Service Levels**

- MSFWs Placed in a Job
- Placed 50 Cents Above Minimum Wage
- Placed in Non-Ag Jobs Over 150 Days

Additionally, all farmworkers must be provided with a copy of the form [AWI 511N](#) (available in [Spanish](#) and [Creole](#)) that explains available services. Upon registration, MSFWs must be coded as such and a definition selected to justify the code selected. Agriculture job orders have specific requirements that need to be addressed on the written order.

One-Stop Centers with a significant number of MSFWs in the area must have a MSFW Outreach Specialist assigned to perform the outreach function. These offices are designated annually by ETA, and include those One-Stop Centers where MSFWs account for ten percent or more of the annual job seekers. Offices that ETA determines should be included due to special circumstances, such as an estimated large number of MSFWs in the One-Stop Center service area, may also be designated.

One full-time, year round outreach worker position is assigned to the following significant One-Stop Centers: Quincy, Plant City, Winter Haven, Bradenton, Sebring, Port Saint Lucie, Belle Glade, Homestead, and Immokalee. Whenever possible, persons performing outreach will be: from a MSFW background; bilingual; or from a minority group most representative of the MSFW population in the area. During the off season, MSFW outreach workers may perform other W-P related duties. One-Stop Centers designated as significant offices must develop an annual outreach plan setting numerical goals, policies and objectives.

## **OUTREACH WORKER ACTIVITIES**

1. The MSFW outreach worker shall explain the following program components to MSFWs at their working, living or gathering areas, by means of written and oral presentations either spontaneous or recorded, and in a language readily understood by them:

- A. services available from the One-Stop Center, including the availability of referrals to agricultural job orders and non-agricultural employment, to training, to supportive services, as well as the availability of testing, counseling, and other job development services;
- B. types of specific employment opportunities which are currently available in the One-Stop Center system;
- C. information on the One-Stop Center complaint system;
- D. information on other organizations serving MSFWs; and
- E. basic summary of farmworkers' rights with respect to the terms and conditions of employment.

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 the appropriate State laws regarding access.

After making the presentation, outreach workers shall encourage the MSFWs to go to the One-Stop Center to obtain the full range of One-Stop Center services. Under Title I, Section 101 of WIA, MSFWs must be provided information and services available through the One-Stop Center partners.

These services must include, but are not limited to, core services, intensive services and training opportunities available at each workforce delivery area.

#### **MSFW DESK AID**

[http://www.floridajobs.org/PDG/MSFW/MSFW\\_Desk\\_Aid\\_0410.pdf](http://www.floridajobs.org/PDG/MSFW/MSFW_Desk_Aid_0410.pdf)

Each One-Stop Center employee who processes applications for agricultural workers should maintain a personal copy of the desk aid. The MSFW Desk Aid serves as a convenient guide for determining the coding for MSFWs. An agricultural worker is one whose primary work experience has been in farm work in industries in North American Industry Classification System (NAICS) that include subsection 111--Crop Production; subsection 112--Animal Production; and subsection 115--Support Activities for Agriculture and Forestry (excluding the following codes: 1125 (under 112) and 1152 and 1153 (under 115)), whether alien or citizen who is legally allowed to work in the United States. The terms Seasonal Farmworker, Migrant Farmworker, and Migrant Food Processing Worker are also defined as to how they relate to agricultural programs.

## **NOTICE TO JOB SEEKERS – AWI 511N**

[http://www.floridajobs.org/PDG/MSFW/AWI\\_511N\\_eng.pdf](http://www.floridajobs.org/PDG/MSFW/AWI_511N_eng.pdf)

[http://www.floridajobs.org/PDG/MSFW/AWI\\_511N\\_spanish.pdf](http://www.floridajobs.org/PDG/MSFW/AWI_511N_spanish.pdf)

[http://www.floridajobs.org/PDG/MSFW/AWI\\_511N\\_creole.pdf](http://www.floridajobs.org/PDG/MSFW/AWI_511N_creole.pdf)

The One-Stop Center can provide a number of employment services that are available without a registration in EFM. In order to receive some of these services the job seeker may have to fill out a full or partial application. Federal Regulation 653.103(c) requires this list of services to be in English and Spanish. However, in Florida, the AWI-511N is also available in Creole.

## **MSFW REGISTRATION**

In EFM, a partial registration may be input for a MSFW after all benefits of a full registration have been explained and the MSFW elects not to complete a full registration. When a partial registration has been input and the MSFW returns to the office seeking work or other job seeker services, a full registration should be taken at that time. Both full and partial registrations for MSFWs should include applicable information in the Farm Worker Information section. All MSFWs should be given a "Notice to Job Seekers" (Form AWI- 511N) and the date that the MSFW received the form should be entered in EFM.

MSFW Work History - Federal Regulations at 20 CFR 653.103 (d) require data for MSFWs work history to be comprehensive and specific. MSFW applications must contain the job seeker's significant work history, with a description of the work performed, training, and educational background and a statement of any desired employment and necessary training. This information must be listed in the Background section on the Personal Information screen in EFM. Associated crop codes must be listed as well; these can be entered in a case note. Work applications must contain sufficient information to permit a thorough assessment of the job seeker's skills, knowledge, and abilities. The MSFW standards for required data for work history apply to all job seeker intake systems whether automated or non-automated. Federal regulations at 20 CFR 653.103 (d) also provide that additional O\*NET codes or keywords are to be assigned, where appropriate, based on the MSFW's work history, training, and skills, knowledge, and abilities.

## **LOG OF DAILY OUTREACH ACTIVITIES – JS 1303**

<http://www.floridajobs.org/pdg/msfw/Log.rtf>

Every associate who makes an outreach contact with a MSFW or an agency or organization that serves MSFWs, should record that contact on the Log of Daily Outreach Activities, JS-1303. Each outreach contact made each day must be included on the log and a copy maintained in the One-Stop Center for five years after the date of completion. Completed reports should be submitted by the fifth working day following the report month, to the Senior Monitor Advocate, 107 E. Madison Street, Caldwell Building, Mail Stop Code G229, Tallahassee, FL 32399-4133. Log data should be



included in the monthly Services to Migrant and Seasonal Farmworker Report, AWI-1659, and the Report of Migrant and Seasonal Farmworker Specialist Activities, AWI-1301. Federal Regulations stipulate that One-Stop Center Managers should review Logs of Daily Outreach Activities to ensure proper completion and provision of services.

The name of the individual performing the outreach plus the name of the One-Stop Center should be entered in the appropriate spaces in the upper right hand corner of the form.

Instructions for completion of the Log of Daily Outreach Activities can be found at: <http://www.floridajobs.org/pdg/msfw/log%20instructions.rtf>.

### **MSFW REPORT – AWI 1659 & AWI 1301**

[http://www.floridajobs.org/PDG/MSFW/1659MSFWform\\_0710editable.pdf](http://www.floridajobs.org/PDG/MSFW/1659MSFWform_0710editable.pdf)  
[http://www.floridajobs.org/PDG/MSFW/LES\\_Form\\_AWI-1301\\_editable.pdf](http://www.floridajobs.org/PDG/MSFW/LES_Form_AWI-1301_editable.pdf)

Every significant One-Stop Center must complete the Services to Migrant and Seasonal Farmworker Report (AWI-1659) and the Report of Migrant and Seasonal Farmworker Specialist Activities (AWI-1301) on a monthly basis. Completed reports should be submitted by the fifth working day following the report month to the Senior Monitor Advocate, 107 E. Madison Street, Caldwell Building, Mail Stop Code G229, Tallahassee, FL 32399-4133. Managers should assure that all data is accurate and include information from other One-Stop Centers in the region.

Instructions for completion of the AWI-1659 can be found at: [http://www.floridajobs.org/PDG/MSFW/AWI\\_1659\\_Inst\\_0710.pdf](http://www.floridajobs.org/PDG/MSFW/AWI_1659_Inst_0710.pdf)

### **LOG OF APPARENT VIOLATIONS – AWI 1300**

[http://www.floridajobs.org/PDG/MSFW/LES\\_Form\\_LET\\_AWI\\_1300.pdf](http://www.floridajobs.org/PDG/MSFW/LES_Form_LET_AWI_1300.pdf)

All One-Stop Center staff must be trained and prepared to address complaints. Any associate who observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or One-Stop Center regulations pertaining to MSFWs is required to document and refer the information to the One-Stop Center Manager. The One-Stop Center Manager is then required to determine if the office has received a job order from that employer within the last twelve months. If no job order has been filed within this period, the Manager is then required to refer the apparent violation of law pertaining to MSFWs in writing to the appropriate enforcement agency. If the office has received an order from the employer within the last twelve months, the Manager should attempt to assist the employer in achieving compliance with the law within five days or refer the matter in writing to the appropriate enforcement agency following the five-day period. If informal resolution cannot be achieved, procedures for discontinuation of services must be initiated. Authority for Discontinuation of Services to an employer by the One-Stop Center is located in Federal Regulation 658 Subpart F.



Apparent violations must be documented by One-Stop Center staff on the Log of Apparent Violation Form AWI-1300. Instructions for filling out this form may be found at <http://www.floridajobs.org/pdg/msfw/1300instructions.rtf>.

One incident may be a violation of one or more employment related laws or One-Stop Center regulations. The most accurate method of logging apparent violations is to have an entry for each apparent violation.

For additional instructions and information refer to guidance dated June 2009 Revision to the Complaint-Resolution System Handbook found at: [http://www.floridajobs.org/PDG/MSFW/WP\\_ComplaintResolHndbkrev0609.pdf](http://www.floridajobs.org/PDG/MSFW/WP_ComplaintResolHndbkrev0609.pdf).

### **AGRICULTURAL JOB ORDERS**

Agricultural job orders with the NAICS farm work industries that include subsection 111--Crop Production; subsection 112--Animal Production; and subsection 115--Support Activities for Agriculture and Forestry must contain the criteria listed below:

1. Specific days and hours to be worked must be included in the job summary. Phrases such as "TBA" are not acceptable. A qualifying phrase may follow the days and hours such as:

Example: "M-S, 6:30 a.m. - 4:00 P.M. - Days and hours to be worked depend on crop and weather conditions."

2. The summary of the job description should include all pertinent data. Describe the job specifically. What does the worker do? How does he/she perform the work? Why does he/she do it? What degree of skill is involved?

Example: "Pick oranges by hand, use up to 24 ft. ladder with 1¾ bushel pick sack, will dump into large bins."

3. If the worker is to be paid by piece rate, the job summary should include the following:

- A. The amount to be paid;
- B. The unit of measurement;
- C. A brief, concise description of the size or capacity of the measurement;
- D. A statement as to whether or not the agricultural employer is covered by Fair Labor Standards Act (FLSA) or employer guarantees minimum wage.

Example: "\$0.90 per 1<sup>3</sup>/<sub>5</sub> bushel, employer covered by FLSA."

4. If the employer is a farm labor contractor (FLC) or farm labor contractor employee (FLCE), the job order must include the federal and state registration number. If driving, transporting or housing of workers is involved, verify through the State Office, that the FLC/FLCE has these authorizations on his license and that they have not expired.
5. The statement "Referrals within commuting distance only" is required if the order is not to be placed in the clearance system.
6. If the work site is different from the employer address, both addresses are important. Precise location and directions to get to the job site are imperative. If an employer gives a post office box as his/her address, directions to job site must be indicated on the EFM "Work Sites" screen in the Corporate Profile or in the "Job Application Methods Accepted" section on the job order.
7. Use job titles that match the O\*NET codes if possible, otherwise use the job title the employer provides.
8. If 4-150 days of duration are indicated, a specific estimated number of days or months must be shown.

Example: "February-June depending on weather, etc."

9. A wage rate must be specific on job orders. The note "depending on experience (DOE)" is not acceptable. Employers covered by FLSA must adhere to minimum wage laws.

Agricultural job orders for work out-of-state must go through the Agricultural Recruitment System (ARS) and be approved by the State Agency and ETA first, before posting in EFM. For more information, please visit <http://www.doleta.gov/programs/ars.cfm>.

For additional instructions and information, reference Guidance 035 Wagner-Peyser (W-P) Job Seeker Registration and Employer Services Procedures found at <http://www.floridajobs.org/pdg/administration/035Wagner-PeyserFG0303.rtf> and the MSFW web site at [http://www.floridajobs.org/workforce/msfw\\_services.html](http://www.floridajobs.org/workforce/msfw_services.html).

## **AUTHORITY**

Authority for the Services to MSFWs is found at [http://www.access.gpo.gov/nara/cfr/waisidx\\_10/20cfrv3\\_10.html#601](http://www.access.gpo.gov/nara/cfr/waisidx_10/20cfrv3_10.html#601):

20 CFR 651.10 Definition of Terms;

20 CFR 653, Subpart B Services for Migrant and Seasonal Farmworkers (MSFWs);

20 CFR 658 Subpart F Discontinuation of Services to Employers by the One-Stop Center system;

20 CFR 653.102 Required Data for Agricultural Job Orders;

20 CFR 653.103(d) Employment Service Program Letter No. 11-88 Required Data for MSFW Work History;

20 CFR 660-671 Regulatory Requirements Applicable to Programs Operated with Funds under title I of the Workforce Investment Act of 1998; and

29 USC 2801 et seq. Workforce Investment Act of 1998, Title I, §§ 101,106, 167, and 184

### **SUPERSESION**

AWI FG 03-040 Final Guidance for Wagner-Peyser (W-P) Migrant Seasonal Farmworker Registration and Agricultural Employer Services Procedures

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.