

Migrant and Seasonal Farmworker Program Guide

Texas Workforce Commission

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Background

The Migrant and Seasonal Farmworker (MSFW) program under the Wagner-Peyser Act, which originated in 1973, ensures MSFWs have equal access to Employment Service (ES) services, including counseling, testing, job referrals, and training, proportionate to those provided to non-MSFWs. Furthermore, the regulations address:

- outreach initiatives;
- the correction of civil rights violations (including discrimination);
- the improvement of the interstate clearance system;
- the establishment of a complaint system; and
- the implementation of a comprehensive reporting, monitoring, and evaluation system as required by the Wagner-Peyser Act.

Introduction

The ES regulations require that MSFWs must receive employment services that are comparable in quality and quantity to those provided to other job seekers. Therefore, MSFWs must have equal access to job search assistance, training, and other resources that address their specific needs, such as language barriers or transportation challenges. Additionally, the ES regulations ensure a fair and equitable approach to supporting all workers, including those in the agricultural sector.

On November 24, 2023, DOL published a final rule revising the ES regulations to strengthen the provision of services to MSFWs and to enhance the protections afforded by the Monitor Advocate System and the Complaint System. The revisions ensure equitable and nondiscriminatory provision of services to MSFWs, including measures to:

- better serve MSFWs and promote equity in the workforce system, such as requiring states to use state merit staff to provide ES services;
- improve outreach to MSFWs in Texas, a Significant MSFW State, by requiring the Texas Workforce Commission (TWC) to:
 - conduct outreach to MSFWs on an ongoing basis;
 - conduct outreach to a majority of MSFWs in the state; and
 - ensure MSFW outreach staff spends 100 percent of their time on their outreach responsibilities;
- revise several defined terms related to the provision of ES to MSFWs, specifically modifying the criteria for designating Significant MSFW Workforce Solutions Offices and Significant MSFW States; and
- strengthen the role and status of the state monitor advocate (SMA), including ensuring SMAs:
 - are highly qualified candidates;
 - have the appropriate authority necessary to effectively carry out their duties;
 - are not subject to retaliatory action from the state administrator or ES for performing required monitoring activities; and
 - are not assigned duties that are inconsistent with their role to provide oversight.

This guide serves as a supplement to TWC’s Employment Service Guide (ES Guide). Its purpose is to provide additional information on MSFW outreach, federal regulations regarding MSFW protections, and procedures for effectively serving the MSFW population within each of Texas’ 28 Local Workforce Development Board (Board) areas.

This guide also provides guidance needed to operationalize the MSFW program in Texas. Federal guidance includes the following documents:

- [TEGL No. 23-19, Change 2](#), issued May 12, 2023, and titled “Revisions to Training and Employment Guidance Letter (TEGL) 23-19, Change 1, Guidance for Validating Required Performance Data Submitted by Grant Recipients of U.S. Department of Labor (DOL) Workforce Programs”
- [TEGL No. 14-18](#), issued March 25, 2019, and titled “Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL)”

- [TEGL No. 08-17](#), issued February 14, 2018, and titled “Guidance on the Requirement for a Memorandum of Understanding (MOU) Between State Monitor Advocates (SMA) and National Farmworker Jobs Program (NFJP) Grantees”
- [Training and Employment Notice \(TEN\) No. 27-23, Change 2](#), issued January 15, 2025, and titled “Implementation Update for the Final Rule, Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 FR 33898 (Apr. 29, 2024) (Farmworker Protection Rule), in light of recent Federal District Court Orders.”
- [TEN No. 27-23, Change 1](#), issued October 2, 2024, and titled “Announcing Implementation of the Final Rule, Improving Protections for Workers in Temporary Agricultural Employment in the United States, in Compliance with District Court Order”
- [TEN No. 10-23](#), issued November 24, 2023, and titled “Announcing the Release of the Wagner-Peyser Act Staffing Final Rule”
- [TEN No. 20-17](#), issued June 22, 2018, and titled “Communication Plan for Designation of Significant Migrant and Seasonal Farm Worker (MSFW) States, Significant MSFW One-Stop Centers, and Significant Multilingual MSFW One-Stop Centers”

Understanding Migrant and Seasonal Farmworkers

The following definitions must be used to accurately classify individuals and ensure that MSFWs receive the appropriate protections and services:

- **Seasonal Farmworker**—An individual employed, or previously employed within the past 12 months, in farmwork of a seasonal or temporary nature and who is not required to be absent overnight from their permanent place of residence.
 - **Seasonal Nature**—Farmwork performed on a seasonal basis typically involves employment that pertains to or is exclusively performed during specific seasons or periods of the year. This work may not be continuous or carried on throughout the year.
 - **Continuity of Employment**—Workers who move from one seasonal activity to another while employed in farmwork are still considered to be employed on a seasonal basis, even if they work during a significant portion of the year.
- **Migrant Farmworker**—A seasonal farmworker who travels to a jobsite and is unable to return to their permanent residence within the same day. This includes full-time students.

MSFW Protections

The MSFW protections included in the ES regulations apply to all state workforce agencies and, consequently, to each Workforce Solutions Office. The following are four main areas in the Wagner-Peyser Act, as amended by Title III of the Workforce Innovation and Opportunity Act (WIOA), that provide ES protections to MSFWs:

- Agricultural Recruitment System (ARS)
- Complaint System
- MSFW Outreach Program
- Monitor Advocate System

To ensure that these services and MSFW protections are effectively implemented, [20 CFR §§653.108-109](#) requires data collection, performance accountability measures, and monitoring by the SMA at both TWC and Workforce Solutions Offices.

MSFW Protections in the Agricultural Recruitment System

The ARS is a referral system that:

- helps agricultural employers recruit qualified U.S. workers (both MSFW and non-MSFW) on a temporary or seasonal basis; and
- provides workers seeking temporary agricultural employment with opportunities for such employment.

Through the ARS, TWC recruits and refers qualified workers from within the state and from other states if there are fewer workers than are needed in the area.

Intrastate and Interstate Clearance Orders

A clearance order is a job order that is processed through the clearance system under the ARS. Intrastate and interstate clearance orders ensure that job seekers and employers in local and multistate labor areas have full access to job opportunities and the available labor pool without regard for the Board area or state boundaries. This is primarily directed at and particularly helpful to agricultural employers and laborers.

Workforce Solutions Office staff must take the following steps to administer the ARS for MSFWs:

1. Recruit within the local labor market area by publicizing the availability of ES services through various channels, including newspapers, electronic media, private and public community agencies, agricultural associations, and MSFW groups.
2. Make clearance order information available at local Workforce Solutions Offices and in WorkInTexas.com.
3. Ensure all farmworkers are informed about the terms and conditions of the employment as set forth in the intrastate and interstate clearance orders by providing farmworkers with clear and concise information regarding:
 - wage payment schedules;
 - working conditions;
 - workers' rights; and
 - other relevant details from the clearance order.
4. If the employer and Workforce Solutions Office staff at the local Workforce Solutions Office experience a worker shortage in the Board area, or if they anticipate a shortage of workers, the job order must be placed into intrastate clearance, making the employment opportunity available to agriculture workers across the state.
5. If the clearance order cannot be filled through intrastate clearance, it must be placed through interstate clearance (with employer approval), making the employment opportunity available to agriculture workers across the country.

For additional procedures related to the ARS, refer to the TWC [Employment Service Guide](#).

Field Checks

Field checks are unannounced visits by TWC's Integrated Service Area Managers (ISAMs) at agricultural worksites where workers have been placed through the ARS. Field checks are conducted during work hours. During a field check, ES Merit staff visits with both employees and employers at the job site to ensure compliance with employment terms of the clearance order. When a U.S. worker is placed on a clearance order, the employer acknowledges that field checks will be conducted to ensure compliance with specified employment conditions including whether the employer provides wages, hours, transportation, and suitable working and housing conditions as specified in the clearance order. The frequency of field checks is determined by the number of clearance orders TWC places in a given quarter based on the following guidelines:

- For quarters where TWC has made placements on 10 or more agricultural clearance orders, a minimum of 25 percent of such orders will be subject to field checks.
- For quarters where TWC has made placements on one to nine agricultural clearance orders, all orders will be subject to field checks.

During field checks, if ISAMs observe, receives information about, or has reason to believe that conditions do not match the clearance order, or an employer is breaking an employment law, the finding must be documented, and reported as an apparent violation. ES Merit staff must attempt to resolve the issue informally unless it involves Employment Opportunity (EO) related issues. If the matter remains unresolved after five business days, TWC must:

- initiate Discontinuation of Services for the employer; and
- submit a written report to the appropriate enforcement agency detailing the suspected violations of employment-related laws.

ISAMs must maintain all field check records.

MSFW Protections in the Complaint System

The ES and Employment-Related Law Complaint System (Complaint System):

- addresses complaints involving failure to comply with ES regulations;
- addresses complaints against an employer about a specific job to which the MSFW was referred through the ES; and
- accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws.

MSFW protections in the Complaint System allow for a shorter period to conduct investigations leading to resolutions. If an MSFW wishes to submit an employment-related complaint, the Complaint System representative at the Workforce Solutions Office nearest to the employer in question must attempt informal resolution within five working days of receipt of the complaint. The Complaint System representative must keep the MSFW informed of progress on the complaint no less than once each 30 day period until the complaint is resolved. The Complaint System representative must also offer to refer the MSFW to other ES services if they are interested.

Filing Complaints

If an MSFW or their representative expresses an interest in filing an ES or employment-related law complaint, Workforce Solutions Office staff receiving the complaint must:

- explain how the Complaint System operates;
- offer to take the complaint in writing;
- make every effort to obtain all necessary information to investigate the complaint;
- request all physical addresses, email addresses, telephone numbers, and any other relevant contact information needed to conduct an investigation of the complaint;
- request that the MSFW contact the nearest Complaint System representative before leaving the area if possible, and explain the need to maintain contact during the investigation;
- ensure the MSFW submits the complaint using either [Form ETA 8429](#) or a written (letter or email) complaint signed by the MSFW or their representative; and
- offer to assist the MSFW in filling out the complaint form and submitting all necessary information and assist if the MSFW complainant desires such help.

Complaint System representatives must provide monthly updates to MSFWs or their representatives on the status of their complaints.

MSFW Complaints Regarding Employment-Related Laws

Complaints filed at a Workforce Solutions Office or TWC regarding an employment-related law must be addressed as follows:

- Workforce Solutions Office staff accepts a hard copy or electronic complaint from the MSFW or their representative using Form ETA 8429 that describes the alleged violation(s) of the employment-related law(s).
- The complaint is referred to the Complaint System representative.
- Once received, the Complaint System representative must attempt to resolve the complaint informally at the local level, unless:

- the complaint was submitted to TWC, and the TWC Complaint System coordinator determines that immediate action or referral is necessary; or
- informal resolution at the local level would be detrimental to the MSFW.
- If the complaint is not resolved within five working days, the Complaint System representative must forward the employment-related law complaint to the appropriate enforcement agency, another suitable public agency, legal aid organization, or consumer advocate organization for further assistance.
- If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job or clearance order, TWC will initiate procedures for discontinuation of services immediately. TWC will notify both the MSFW and the employer of this action.

MSFW Complaints Regarding Unlawful Discrimination

Complaints alleging unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, such as those enforced by the Equal Employment Opportunity Commission (EEOC) or the DOL's Civil Rights Center (CRC), or in violation of the Immigration and Nationality Act's anti-discrimination provision, must be addressed as follows:

- Workforce Solutions Office staff accepts a hard copy or electronic complaint from the MSFW or their representative using Form ETA 8429 that describes the alleged unlawful discrimination.
- The complaint is referred to the Complaint System representative.
- Once received, the Complaint System representative must record in the complaint log and immediately refer the complaint to the TWC EO officer via email.
- The Complaint System representative must notify the MSFW of the referral to the TWC EO officer in writing via letter or email.

Email: EO.complaint@twc.texas.gov

Attn: EO Compliance Dept., Fraud Deterrence and Compliance Monitoring Division

For additional assistance, the EO Compliance Department can be reached by phone at (512) 463-2400 or Relay Texas: 711, 1-800-735-2989 (TDD), or 1-800-735-2988 (Voice).

MSFW Complaints Regarding the ES Regulations

When an ES complaint is filed against an employer or Workforce Solutions Office, the Workforce Solutions Office staff serving the area where the employer is located must process the complaint.

Complaints filed at the Workforce Solutions Office or TWC regarding failure to comply with ES regulations must be addressed as follows:

- Workforce Solutions Office staff accepts a hard copy or electronic complaint from the MSFW or their representative using Form ETA 8429 that describes the alleged violation.
- The complaint is referred to the Complaint System representative
- Once received, the Complaint System representative must investigate and attempt to resolve the complaint immediately.

- If the complaint is not resolved within five working days, the Complaint System representative must send the complaint to the TWC Complaint System coordinator for resolution.
- The Complaint System representative must notify both the MSFW (or their representative) who filed the complaint and the respondent in writing of the determination of the complaint investigation or referral to TWC.
- Once received, the TWC Complaint System coordinator must investigate the complaint immediately and make a determination within 20 working days of receipt.
- All ES complaint determinations must be sent to the complainant in writing (via hard copy or email) and include:
 - the results of the TWC complaint investigation;
 - the conclusions reached on the allegations of the complaint;
 - if a resolution was not reached, an explanation of why the complaint was not resolved; and
 - a notice of the TWC complaint appeals process and how to appeal the determination within 20 working days of receipt of the TWC Determination Notice if TWC determines that the employer has not violated the ES regulations or if the complaint is against TWC.

A complaint regarding the ES regulations must be received within two years of the alleged occurrence to be timely received and processed to resolution.

Apparent Violations

The Complaint System also addresses apparent violations. If ES Merit staff has reason to believe, or receives information regarding a suspected violation of employment-related laws or ES regulations by an employer, staff must document the suspected violation as an apparent violation, using ETA Form 8429 and refer the violation to the appropriate ES Supervisory staff to ensure that it is documented in the Complaint System Log. Once the apparent violation is documented, the ES supervisory staff will ensure the apparent violation is received by the Complaint System representative, who then:

- attempts informal resolution following the same process used to resolve MSFW complaints regarding employment-related laws for employers who have filed a job order with the Workforce Solutions Office during the previous 12 months; or
- refers the apparent violation to the appropriate enforcement agency in writing for employers who have not filed a job order with the Workforce Solutions Office during the previous 12 months.

Additionally, apparent violations based on discrimination, must be processed as complaints based on discrimination and be immediately referred to the TWC EO officer.

MSFW Outreach

TWC operates an outreach program dedicated to locating and contacting MSFWs who are not being reached through intake activities conducted by Workforce Solutions Office staff. The objectives of the outreach program are to:

- contact MSFWs where they work, live, or gather to inform them of the full range of employment and training services available at Workforce Solutions Offices;
- explain their employment rights to MSFWs and make them aware of the availability of the Complaint System;
- provide supportive services and referrals to other service providers as needed; and
- work with agricultural employers to advise them about the availability of the ARS for U.S. workers and to provide compliance assistance where appropriate.

MSFW outreach staff are the only staff authorized to perform MSFW outreach work. MSFW outreach staff may coordinate MSFW outreach activities with National Farmworker Jobs Program (NFJP) grantees as well as with public and private community service agencies and MSFW groups. NFJP grantee activities involving MSFWs is not a substitute for MSFW outreach responsibilities.

MSFW Outreach Staff Responsibilities, Qualifications, and Guidelines

As one of 20 states with the highest estimated year-round MSFW activity, DOL has designated Texas as a Significant MSFW State. As a Significant MSFW State, MSFW outreach staff must:

- be full-time, year-round ES merit staff employees;
- contact a majority (51%) of MSFWs in the state on an annual basis; and
- devote 100 percent of their work time to outreach staff responsibilities.

DOL also designates Workforce Solutions Offices as Significant MSFW Workforce Solutions Offices if their MSFW population accounts for 10 percent or more of their annual participants or reportable individuals in ES, as well as those who are included due to special circumstances such as when there is a large number of MSFWs estimated in the Board area. MSFW outreach staff who are assigned to Significant Workforce Solutions Office areas must implement a targeted outreach strategy to ensure that ES services are tailored to the unique needs of MSFWs in their area. The following Workforce Solutions Offices currently have such a designation.

Texas Significant MSFW Offices by Board Area

Board	Cities
Workforce Solutions Lower Rio Grande Valley	Mission/Rio Grande City Edinburg Weslaco Raymondville
Workforce Solutions Borderplex	Horizon (North Loop)
Workforce Solutions South Plains	Muleshoe Plainview
Workforce Solutions Middle Rio Grande	Eagle Pass
Workforce Solutions South Texas	Laredo
Workforce Solutions Cameron County	Brownsville Harlingen

MSFW Outreach Staff Qualifications

MSFW outreach staff must:

- be able to speak the language of a significant proportion of Texas' MSFW population in their assigned Board areas.
- have:
 - a background as an MSFW; or
 - prior experience in farmworker activities.

Boards must provide training to MSFW outreach staff regarding the services available at the local Workforce Solutions Offices. ES Supervisory staff must also ensure that MSFW outreach staff are trained in the procedures of their assigned Workforce Solutions Offices and in the services, benefits, and protections afforded to MSFWs by the ES regulations, including:

- protecting farmworkers against sexual harassment, sexual coercion, assault, and human trafficking;
- access to and assistance with the Complaint System; and
- knowledge of local, state, regional, and national enforcement agencies that would be appropriate to receive referrals.

MSFW Outreach Staff Responsibilities

When conducting outreach, MSFW outreach staff must:

- provide information to MSFWs at their working, living, or gathering areas (such as day-haul sites), including:

- information on services available at the local Workforce Solutions Office, including training, supportive services, career services, and specific employment opportunities;
- information on the Complaint System;
- information on the other organizations that serve MSFWs in the Board area; and
- a basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment;
- obtain permission from the employer before entering work areas on an employer's property to perform outreach duties, unless otherwise authorized to enter by law;
- obtain permission from workers before entering their living areas;
- comply with appropriate state laws regarding access;
- refrain from engaging in political, unionization, or anti-unionization activities during the performance of their duties; and
- receive, carry, and display, upon request, identification cards or other material that identifies them as representatives of the state.

After providing information to MSFWs regarding the services available to them, MSFW outreach staff must encourage the MSFWs to visit the local Workforce Solutions Office to obtain the full range of employment and training services. If an MSFW cannot or does not wish to visit the local Workforce Solutions Office, MSFW outreach staff must offer the following services on-site:

- Assistance preparing applications for ES services
- Assistance in obtaining referral(s) to current and future employment opportunities
- Assistance preparing ES or employment-related law complaints
- Referral of complaints to the Complaint System representative or ES Supervisory staff
- Referral to supportive services and/or career services in which the MSFW or a family member may be interested
- Assistance in making appointments and arranging transportation for individual MSFWs or members of their family to and from local Workforce Solutions Offices or other appropriate agencies.

Note: MSFW outreach staff do not perform individualized career services, but record appointments and referrals made.

Additionally, MSFW outreach staff must:

- make follow-up contacts and coordinate follow-up activities with Workforce Solutions Office staff, as necessary;
- be alert to apparent violations when observing the working and living conditions of MSFWs; and
- document and refer information regarding apparent violations to the appropriate ES Supervisory staff as described in [20 CFR § 658.419](#) and the [MSFW Protections in the Complaint System](#) section of this guide.

MSFW outreach staff must maintain complete records of their contacts with MSFWs and the services they perform in the MSFW Daily Outreach Log. MSFW outreach staff must send a copy

of the log to the appropriate ES Supervisory staff on a monthly basis and the log must be maintained on file for at least three years. The MSFW Daily Outreach Log must include:

- the number of MSFW contacts;
- the names of the contacts (if available); and
- the services provided (such as complaint received, request for career services, and the like).

MSFW outreach staff must also maintain records that include:

- each apparent violation or complaint for which they have knowledge;
- their actions in collecting details related to the apparent violation or complaint; and
- a description of the circumstances and names of any employers who have refused outreach staff access.

MSFW outreach staff must not spend their time in the field when weather conditions or other circumstances are not suitable for outreach activities. When conditions are unsuitable for outreach activities, MSFW outreach staff may use this time to:

- plan for upcoming outreach visits;
- review and update the materials used during MSFW outreach presentations;
- follow up with current MSFW contacts via phone, text, or email;
- complete daily outreach logs; or
- complete other administrative activities including timesheets and expense reports.

Other Outreach Staff Responsibilities

MSFW outreach staff must allocate time to participate in contractor-led training regarding services provided in the Workforce Solutions Offices in their assigned areas. MSFW outreach staff must also attend trainings hosted by TWC, the SMA, and any other agency or organization that is providing information related to worker rights and employment related laws, such as discrimination and human trafficking.

MSFW outreach staff may allocate time to complete administrative activities, such as:

- regular office meetings;
- completing timesheets;
- completing expense reports; and
- other related activities.

MSFW outreach staff must not perform ES services for:

- employers (including employers in the agricultural sector);
- non-MSFWs; or
- MSFWs who have not been previously contacted through outreach activities but are seeking workforce services through a workforce solutions office.

Serving MSFWs in the Workforce Solutions Office

MSFWs require ongoing assistance and support within the Workforce Solutions Office to fully access services. Boards and ES Supervisory staff must ensure that services provided by Workforce Solutions Office staff are delivered fairly and without discrimination. Boards and ES Supervisory staff must ensure Workforce Solutions Office staff offers the full range of career and supportive services, benefits and protections, and job and training referral services as those provided to non-MSFWs.

Workforce Solutions Office staff at each Workforce Solutions Office must customize the provision of services to accommodate the individual preferences, needs, and skills of MSFWs, as well as the availability of job training opportunities, ensuring that MSFWs can reasonably receive services. Therefore, Workforce Solutions Office staff must be prepared to:

- assist MSFW job seekers in finding employment, including promoting their familiarity with TWC's labor exchange system, WorkInTexas.com. Workforce Solutions Office staff must ensure that job order information is prominently displayed and available to MSFWs through every feasible method at each Workforce Solutions Office. Such information must, at minimum, be made available through the state's electronic labor exchange system—WorkInTexas.com—and through the Workforce Solutions Office. Boards and ES Supervisory staff must ensure Workforce Solutions Office staff at each Workforce Solutions Office assist MSFWs in accessing job order information easily and efficiently;
- assist employers in filling jobs;
- facilitate job matching between job seekers and employers;
- participate in clearing labor between states, including the use of a standardized classification system;
- meet the work test requirements of the state unemployment compensations system;
- provide labor exchange services as identified in the ES Guide;
- provide MSFWs with a list of available career and supportive services in a language understood by the MSFW; and
- refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

MSFW Intake Activities

Boards and ES Supervisory staff must ensure that when Workforce Solutions Office staff conducts intake activities with MSFWs, the process includes:

- the identification of the customer as an MSFW at the point of registration and the assurance that the identification is reflected under **Farmworker Information** on the **Personal Profile** tab in WorkInTexas.com;
- an assessment of the immediate needs of the MSFW;
- the provision of an explanation of services; and
- the provision and referral of the MSFW to appropriate services as needed.

Additionally, Boards must ensure that each Workforce Solutions Office is in compliance with the requirements to provide language access and assistance to all individuals with limited English

proficiency (LEP), including MSFWs who are LEP individuals. Additional information regarding language access requirements can be found in [Equal Opportunity Letter 01-2024](#), issued April 2, 2024, and titled “Language Access Requirements.”

Monitor Advocate System

The Monitor Advocate System is crucial to protecting MSFW rights. It is designed so that the SMA can monitor the provision of ES services and ensure that services are provided to MSFWs who are qualitatively equivalent and quantitatively proportionate to all other job seekers. The Monitor Advocate System:

- tracks equity ratio indicators and minimum service level indicators;
- conducts site visits, on-site reviews, and field visits to working and living areas of MSFWs; and
- reviews quarterly data reports, outreach logs, and complaint logs;
- prepares annual summaries; and
- approves Agricultural Outreach Plans.

The State Monitor Advocate

The ES Staffing final rule strengthens the status of the SMA by including requirements to ensure that the SMA is a highly qualified individual and has the appropriate authority necessary to effectively carry out their duties and clarifies the SMA's role so they are not assigned duties inconsistent with their oversight responsibilities. The SMA must be an individual who:

- is a senior-level ES Merit staff employee;
- reports directly to the TWC executive director or their designee;
- has sufficient authority, staff, resources, and access to top management to monitor compliance with ES regulations; and
- has the knowledge, skills, and abilities necessary to fulfill the role, including:
 - being from an MSFW background;
 - speaking the language of a significant proportion of Texas' MSFW population, which is primarily Spanish; or
 - having substantial work experience in farmworker activities.

State Monitor Advocate Responsibilities

The SMA must conduct an ongoing review of how TWC and Workforce Solutions Offices deliver services and protections to MSFWs as provided by ES regulations. This includes:

- monitoring compliance with [20 CFR § 653.111](#) and ensuring that Significant MSFW Workforce Solutions Offices are staffed to meet the unique needs of MSFWs in the area;
- monitoring the ARS; and
- reviewing the appropriateness of informal resolutions of complaints and apparent violations as documented in the complaint logs.

As an advocate to improve services for MSFWs, the SMA must perform the following duties:

- Develop an ongoing partnership with NFJP grantees and other organizations serving farmworkers, employers, and employer organizations in the state. The SMA must meet with these groups quarterly (at minimum) to receive input on how to improve coordination with Workforce Solutions Offices or the coordination of services to MSFW.
- Establish an ongoing partnership with the TWC EO Officer.

- Conduct frequent field visits to the working, living, and gathering areas of MSFWs to discuss the effectiveness of TWC's provision of ES and other employment-related programs.
- Participate in appropriate regional public meetings held by DOL's Regional Farm Labor Coordinated Enforcement Committee and other Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD) task forces.

ES Compliance

The SMA must participate in on-site monitoring reviews of Workforce Solutions Offices on a regular basis. Prior to this review, the SMA must review:

- program performance data;
- reports of previous reviews;
- corrective action plans that were developed as a result of previous reviews;
- complaint logs, including logs documenting the informal resolution of complaints and apparent violations; and
- complaints that concern or were elevated from the Workforce Solutions Office that is being reviewed.

Once the on-site monitoring review is complete, the SMA must:

- hold at least one wrap-up session with the Board and ES Supervisory staff to discuss any findings and offer initial recommendations and appropriate technical assistance;
- conduct an in-depth analysis of the review data and report necessary corrective actions regarding any findings of noncompliance or areas of concern; and
- submit copies of the on-site monitoring review reports and corrective action plans to the appropriate U.S. Department of Labor, Education and Training Administration regional office.

Appendix A: Definitions

Apparent violation: A suspected violation of employment-related laws or Employment Service regulations by an employer, which staff observes, has reason to believe, or receives information (other than a complaint).

Agricultural Recruitment System (ARS): – A method or series of steps for processing intrastate (within the state) and interstate (outside of the state/between states) clearance orders that seek U.S. workers (both MSFW and non-MSFW) to perform farmwork on a temporary basis (less than 12 consecutive calendar months). The ARS provides both employers and workers with recruitment and referral services for temporary employment in agriculture.

Clearance order: A job order that is processed through the clearance system under ARS.

Complainant: The individual, employer, organization, association, or other entity filing a complaint.

Complaint: A representation made or referred to TWC or Workforce Solutions Office of an alleged violation of the ES regulations and/or other federal laws enforced by WHD or OSHA, as well as other federal, state, or local agencies enforcing employment-related law.

Complaint System Representative: A trained ES Merit staff member who is responsible for processing complaints.

Employment-related laws: Those laws that relate to the employment relationship, such as those enforced by the DOL's WHD, OSHA, or other federal, state, or local agencies.

Employment Service Supervisory staff: The ES Merit staff member in charge of ES services provided in a Workforce Solutions Office.

Enforcement agency: WHD or OSHA, as well as other federal, state, or local agencies enforcing employment-related law.

Farmwork: The cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, “agricultural commodities” means all commodities produced on a farm, including crude gum (oleoresin) from living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means agricultural labor or services covered under 20 CFR [§655.103\(c\)](#) and/or [29 CFR §500.20\(e\)](#).

Farmworker: An individual employed in farmwork.

Field checks: Unannounced visits by ES Merit staff and/or other state or federal staff at agricultural worksites to which ES placements have been made through the intrastate or

interstate clearance system to ensure that conditions are as stated on the clearance order and that the employer is not violating an employment-related law.

Field visits: Announced appearances by the SMA, regional monitor advocate, the national monitor advocate (or national monitor advocate's staff), or outreach staff to the working, living, and gathering areas of MSFWs to perform the duties described at [20 CFR §653.107\(b\)\(i\)](#) and [20 CFR §653.107\(b\)\(3\)-\(4\)](#).

Interstate clearance order: An agricultural clearance order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which a Workforce Solutions Office uses to request recruitment assistance from other ES offices in another state.

Intrastate clearance order: An agricultural clearance order for temporary employment that (employment on a less than year-round basis) describes one or more hard-to-fill job openings, which a Workforce Solutions Office uses to request recruitment assistance from all other Workforce Solutions Offices in Texas.

Migrant farmworker: A seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day.

On-site review: An appearance by the SMA at a Workforce Solutions Office to monitor the delivery of services and protections afforded by ES regulations to MSFWs by TWC and local Workforce Solutions Offices.

Seasonal farmworker: An individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

Significant MSFW States: Those states designated by DOL and must include the 20 states with the highest estimated number of MSFWs. Texas is a Significant MSFW State.

Significant MSFW Workforce Solutions Office: Those Workforce Solutions Offices designated by DOL and including those Workforce Solutions Offices where MSFWs account for 10 percent or more of annual participants or reportable individuals in ES and those local Workforce Solutions Offices that the Office of Workforce Investment Administrator determines must be included due to special circumstances, such as an estimated large number of MSFWs in the service area.

Workforce Solutions Office staff: staff providing services at a Workforce Solutions office, including Board contract service providers, state merit staff providing ES services under Wagner-Peyser, or staff of other partner programs co-located within the Workforce Solutions Office.