



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 13, 2000

THE DIRECTOR

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the Administration's views on H.R. 4548, the "Agricultural Opportunities Act," which I understand your Committee plans to mark up. The Administration shares the goals of assuring that our agricultural labor policy and any reform of the H-2A program both provides growers with a predictable and reliable labor supply, and assures adequate workplace protections for domestic and foreign farm workers. However, this bill would not meet these goals and therefore the Administration strongly opposes enactment of H.R. 4548. If the bill were presented to the President, his senior advisors would recommend that he veto it.

H.R. 4548 would establish a new three-year agricultural guest worker program as an alternative to the existing H-2A temporary nonimmigrant agricultural worker program under the Immigration and Nationality Act. Under this new program, costs and risks would be shifted from the growers to farm workers, who are among the poorest and most vulnerable workers in our society. Specifically, H.R. 4548 would:

- eliminate the current requirement that agricultural growers recruit workers and create a government run job registry – thereby reducing the growers' obligation to conduct positive recruitment;
- erode U.S. worker wages by lowering the required minimum wage and allowing this lower rate to be paid on *average* to a group of workers;
- eliminate workers' guarantee of pay for at least three-quarters of the work hours/days offered in the employer's contract and allow workers to be terminated without pay at any time for "lack of work;" and,
- provide an inadequate mechanism for housing foreign guest workers by allowing growers to give a housing voucher in lieu of actual housing.

In addition, this bill would likely increase illegal immigration, reduce work opportunities for U.S. citizens and other legal residents, and depress wages and work standards for American workers.

The President remains strongly opposed to legislation that would create a new agricultural guest worker program. This position is consistent with the conclusions of two congressionally-created commissions – the bipartisan Commission on Immigration Reform and the Commission on Agricultural Workers – as well as the more recent Binational Study on Migration, a joint study by highly respected scholars from both Mexico and the U.S., which issued its report in September 1997.

The Administration has acknowledged problems with the current H-2A agricultural guest worker program and has been working administratively to reengineer and streamline the program to better assure growers an adequate, predictable labor supply while protecting U.S. farm workers. For example, the President's FY 2001 Budget requested \$10 million to fund America's Agricultural Labor Network ("AgNet") an Internet-based, electronic tool that will facilitate the recruitment of agricultural workers by growers and the movement of agricultural workers to areas with employment needs. This request did not receive support in the House or Senate. In addition, the Departments of Labor and Justice have published regulations to streamline the application process for growers. This too has met resistance from the Congress. The current Conference agreement on the Labor, Health and Human Services, Education and Related Agencies Appropriations Bill, FY 2001, contains a rider blocking these regulations. Congress should work with us on these proposals to improve the current H-2A program.

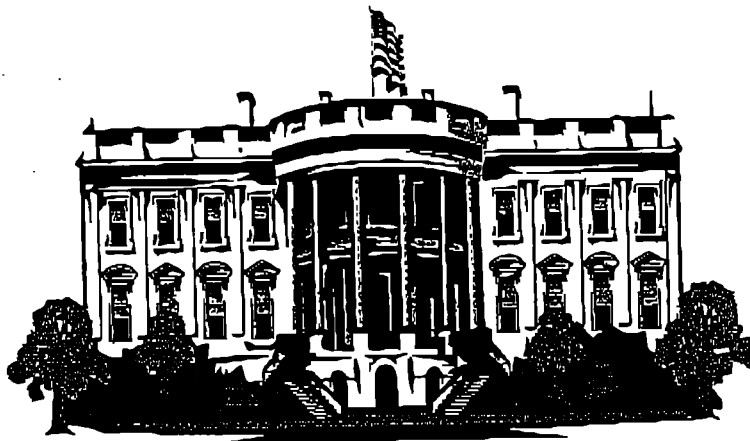
Based on the findings of the bipartisan Commissions and the Administration's proposals to make the current H-2A program more responsive to growers without weakening workers' protections, we believe this bill is unnecessary and would likely worsen the current conditions in the agricultural labor market. Therefore, the Administration remains strongly opposed to H.R. 4548, and if the bill were presented to the President, his senior advisors would recommend that he veto it, as noted above.

Sincerely,



Jacob J. Lew
Director

Identical Letter Sent to The Honorable John Conyers, Jr.



THE WHITE HOUSE

RUTH SAMARDICK

Policy Advisor

National Economic Council

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DATE: 6/15/00 NUMBER OF PAGES (INCL. COVER): 3
FROM: Ruth
TO: Irene Buena
FAX: 61907
COMMENTS: re: ANUP - so fast?

distributed @ hearing
had an intern covering hearing
(she came back by 3, as they
kept recessing's ~~3:15~~ 4:15
panel still hadn't gone

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For Immediate Release
June 15, 2000

Contact: Anthony R. Bedell
Dir. Of Legislative Affairs
(202) 789-2900

American Nursery & Landscape Association Responds To Department of Labor's Veto Recommendation On H.R. 4548

Washington DC- In a move anticipated by the American Nursery & Landscape Association, Department of Labor Secretary Alexis Herman issued a letter recommending a presidential veto of H.R. 4548.

ANLA Executive Vice President Bob Dolibois had this to say about the veto threat from DOL, *"That is par for the course for this Department of Labor. It is still early in the process to send this type of letter to the hearing without giving all sides a chance to work out their differences. We have come a long way, and it is still possible we could come up with a compromise bill that is acceptable to both sides of this issue. We are still hopeful something can be worked out with the White House."*

This bill is a bipartisan legislative solution to the tremendous labor problems that face the nursery industry. The nursery industry wants a legal and predictable workforce! Without a stable and legal workforce, American nursery growers risk losing not only their own market share in this country, but also the thousands of jobs on and off the farm that are created by the industry.

"It is a fair and balanced piece of legislation that seeks a long term solutions to agriculture's critical labor crisis. It also provides some common ground for both sides to come to the table and try and solve this labor crisis," explained Craig Regelbrugge, ANLA's Sr. Director of Government Relations.

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ANLA and its state and regional association partners represent an estimated 16,000 small and family nursery and landscape businesses. ANLA also represents the interests of the following national green industry partners: Associated Landscape Contractors of America, National Arborist Association, and National Christmas Tree Association.

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS**

Legislative hearing on H.R. 4548 the "Agricultural Opportunities Act"

June 15, 2000

11:00 a.m.

2226 RHOB

Panel I

The Honorable Richard W. Pombo

Panel II

Mr. John R. Fraser, Deputy Administrator
Wage And Hour Division
Employment Standards Administration
U.S. Department of Labor

Ms. Cindy Fagnoni, Director
Education, Workforce, and Income Security Issues
Health, Education, and Human Services Division
U.S. General Accounting Office

Panel III

Dr. James S. Holt, Senior Economist, on behalf of the
National Council of Agricultural Employers

Mr. Robert Dolibois, Executive Vice President
American Nursery and Landscape Association

Mr. Mark Krikorian, Executive Director
Center for Immigration Studies

Mr. Marcos Camacho, General Counsel
United Farmworkers Union

Panel IV

Michelle Williamson, President
Sleepy Creek Inc. and Williamson Berry Farms

Mr. Dewey L. Hukill, Labor Advisory Committee
Texas Farm Bureau

Mr. William Buchanan, President
American Council for Immigration Reform

Ms. Cecilia Munoz, Vice President
National Council of La Raza

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Brooke B. Livingston

06/14/2000 08:33:21 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP@EOP, Irene Bueno/OPD/EOP@EOP, Mark D. Magana/WHO/EOP@EOP, Ruth M. Samardick/OPD/EOP@EOP

cc: Kirsten N. Pflomm/WHO/EOP@EOP, Carolyn T. Wu/WHO/EOP@EOP, Gerald G. Lippert/WHO/EOP@EOP

Subject: FOR CLEARANCE: LABOR TESTIMONY ON H.R. 4548, H-2A BILL -- COMMENTS DUE BY 9AM TOMORROW

LOOKING FOR YOUR CLEARANCE BY 9AM TOMORROW MORNING AT THE LATEST. THANKS,
Brooke 5-4790

(Ruth and Irene -- I understand that you have already cleared. Please let me know if that is not the case.)

Position

DOL veto threat. (this is the first statement of policy on this bill -- the bill was introduced on May 25, 2000.) (veto threat is on p. 8)

Background

H.R. 4548 establishes a new 3-year agricultural guestworker program as an alternative to the existing H-2A temporary nonimmigrant agricultural worker program under the Immigration and Nationality Act. The new program established in the bill would reduce worker protections by weakening current requirements that American employers pay wages equal to those of the current program, pay transportation costs and provide housing to foreign workers.

During the 105th Congress, the Secretary of Labor recommended that the President veto H.R. 3410, which was similar to the legislation you are considering today.

Clearance

The following have cleared this testimony: Sylvia Mathews, Barbara Chow, Ted Zegers (OMB);

Timing

DOL will deliver this testimony TOMORROW MORNING AT 11:00AM before the Subcommittee on Immigration and Claims of the House Judiciary Committee.



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**STATEMENT OF JOHN FRASER
Deputy Wage and Hour Administrator
Employment Standards Administration
United States Department of Labor**

before the

**SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE**

June 15, 2000

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to present the Administration's views on H.R. 4548, which would establish a new 3-year agricultural guestworker program as an alternative to the existing H-2A temporary nonimmigrant agricultural worker program under the Immigration and Nationality Act. We recognize the efforts of Congress to address the challenges facing both agricultural producers and farm workers.

Mr. Chairman, I would like to briefly describe current trends in the agricultural economy and workforce that frame the context in which this bill should be considered. I will then present some of our specific objections to H.R. 4548 and provide recommendations for stabilizing the agricultural labor market that will reduce farmers' risks while simultaneously improving the lives of the Nation's farm workers.

First let me state that the Administration has acknowledged problems with the current H-2A program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the program to better assure growers an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society. To this end, the Administration has requested \$10 million to fund America's Agricultural Labor Network ("AgNet") that would benefit growers and workers by having an efficient additional means to match workers with employment opportunities. The Department of Labor has published regulations to reduce the length of time that employers must file an H-2A application from 60 to 45 days before the date when employees are needed; reduce the deadline for when employer-provided housing must be available for inspection before the date of need; and to modify the requirement that certified H-2A employers provide notice of the exact date on which H-2A employees have departed for the place of employment. DOL and the Immigration and Naturalization Service (INS) will soon issue a final regulation that will complete an earlier proposal to delegate authority to adjudicate most H-2A petitions to DOL. This change would significantly reduce the burden to growers when filing for H-2A workers by removing an entire step from the current process. Furthermore, DOL has made additional administrative changes to the H-2A program such as modifications to the positive recruitment requirement. DOL intends to consistently meet the existing 30 day deadline to issue approved certifications for growers.

State of the Agricultural Economy and Labor Market

U.S. agriculture is benefiting economically from increased access to global markets, but farm workers are not sharing in those benefits. Production of labor-intensive commodities like fruits and vegetables has increased and global demand for American produce continues to grow, but farm worker earnings and working conditions are either stagnant or in decline.

The Administration supports policies that will:

- ☐ promote greater predictability and reliability in both the labor supply and availability of work;
 - assure that the system available to growers seeking access to foreign workers is as simple and the least burdensome as possible;
- ☐ improve farm workers' wages, working and living conditions;
- ☐ better connect authorized workers to employment opportunities;
- ☐ increase the number of weeks farm workers are employed each year; and,
- ☐ in turn, increase farm workers' earnings.

The Congress has heard testimony that labor-intensive agriculture in the U.S. – including tobacco, vegetables, fruits, nuts, berries, horticultural and greenhouse commodities – continues to undergo a dramatic transformation. U.S. farm receipts for fruit and horticultural specialty crops have more than doubled – and, for vegetables, more than tripled – during the last two decades. Labor-intensive agriculture underwent explosive growth between 1987 and 1997. Domestic and foreign demand for its commodities has increased substantially, and technological developments in transportation and storage along with changes in consumer tastes and preferences that favor fruits and vegetables have facilitated the expansion. This market expansion has been accompanied by changes in the structure of the labor-intensive agricultural sector. Fewer and fewer farms are growing these commodities on more and more acreage.

But while overall production of labor-intensive agricultural commodities is up – as measured by acreage, production and the market value of sales – as noted earlier, the number of employed farm workers has remained relatively stable. Recent research reports indicate that the total number of hired and contract farm workers in the U.S. decreased slightly between 1990 and 1998, but agriculture's use of hired labor has remained relatively constant over the last ten years – at an estimated 1.8 million workers.

Labor in agriculture has become more productive. And the increased output was apparently accomplished with little investment in mechanized agriculture. But this increased productivity has not resulted in higher wages. Rather, according to both the National Agricultural Worker Survey (NAWS) and the National Agricultural Statistics Survey (NASS), farm worker wages declined over the last decade in real terms.

While the level of employment has remained stable, the NAWS data from 1989 through 1998 reveal that the demographic and employment characteristics of farm workers have changed substantially. Compared to 1988, farm workers in 1998:

- found fewer weeks of employment;
- earned less per hour in real terms;
- continued to have poverty level earnings; and
- were less likely to utilize public assistance/programs designed to help ameliorate the effects of poverty on the working poor.

NAWS findings of falling real wages, less employment, and low annual incomes of U.S. crop workers are all indicators of a national oversupply of farm labor. These same factors contribute to the higher turnover in the agricultural labor market, as workers exit farm labor in search of jobs paying higher wages, offering more hours of work, and offering more steady and predictable employment. Instability in this labor market is due, in part, to agriculture's failure to create the working and living conditions necessary to attract and retain skilled, experienced and authorized workers. Over the last decade, agriculture's ability to retain workers has dwindled. The agricultural sector has replaced many authorized workers with unauthorized workers. Today, only about one-half of the agricultural labor force is authorized to work in the U.S.

Examining farm worker wage, earnings and poverty trends more generally from 1989 to 1998, one finds that over the period of the 1990s – with a strong economy and greater, increasingly widespread prosperity – farm worker wages have lost ground relative to those of workers in the private, non-farm sector. Between 1989 and 1998, the average nominal hourly wage of farm workers rose 18 percent (from \$5.24 to \$6.18), while the wages of workers in the private non-farm sector increased by 32 percent. Consequently, farm workers went from earning 54 percent of the average hourly wage for all production workers in 1989 to earning just 48 percent of that wage in 1998. Adjusted for inflation, the average real hourly wage paid to farm workers -- in 1998 dollars -- dropped from \$6.89 to \$6.18 – over a 10 percent loss in purchasing power.

Compounding the effect of falling real wages is the inability of farm workers to find enough employment. Over the ten-year period 1989-1998, the amount of agricultural employment that farm workers were able to obtain per year declined. In 1989-1990, farm workers were employed, on average, 29.3 weeks per year in agriculture. In 1997-1998, the average number of weeks dropped to 24.9. Even during months in which the demand for farm labor peaks, many farm workers are not employed in agriculture – in July 1997, only 56 percent of all crop workers had a farm job. Earning less per hour (in real wages) and working fewer weeks per year, it is not surprising that the median personal and family incomes of farm workers have remained low since 1989-1990.

Instability in the farm labor market is also reflected in other changes in the demographic and employment characteristics of farm workers. The market is increasingly young, and migrant. These demographic changes have occurred at the same time farm worker employment, wages and earnings have declined:

- the average number of years working for the current agricultural employer has declined;
- the percentage of workers employed seasonally, rather than full-time, increased;

- use of farm labor contractors in labor-intensive agricultural commodities increased; and
- other employer-provided benefits that could help stabilize the workforce and induce workers to remain in the industry -- such as paid holidays and vacations, health insurance and paid transportation -- are also in decline.

All of the above trends paint a picture of the conditions under which farm workers live and work. Low wages, sub-poverty annual earnings, significant periods of un- and under-employment, low utilization of safety net programs all add up to a labor force in significant economic distress. In addition, the continued oversupply of workers will not allow the market conditions necessary to give farm workers sufficient labor market leverage to substantially change these conditions.

Views on H.R. 4548

Mr. Chairman, it is the Administration's view that H.R. 4548 will not ameliorate these serious problems in the agricultural labor market, but rather -- if enacted -- it would almost certainly make them worse. The Administration has been and remains opposed to establishing a new agricultural guestworker program that further increases the supply of agricultural workers and reduces their legal protections.

We have raised serious concerns that legislation like H.R. 4548 would almost certainly:

- * increase illegal immigration;
- * reduce work opportunities for U.S. citizens and other legal residents; and
- * depress wages and work standards for American workers.

The Administration's position on this issue is consistent with the conclusions of two Congressionally-created commissions -- the bipartisan Commission on Immigration Reform, chaired by the late Barbara Jordan, and the Commission on Agricultural Workers, which examined this issue in the early 1990s -- as well as the more recent Binational Study on Migration, a joint study by highly respected scholars from both Mexico and the U.S. which issued its report in September 1997.

Mr. Chairman, let me explain the Administration's opposition to H.R. 4548 by posing and answering four questions that we would urge the Congress to carefully consider. I believe the answers we present demonstrate that H.R. 4548's proposed new guestworker program will have the harmful effects we would expect and is, therefore, not the solution to problems besetting the agricultural labor market.

First, would H.R. 4548 provide growers the stable labor supply they seek? H.R. 4548 would permit admission of an unlimited number of new "H-2C" foreign agricultural guestworkers without any reliable determination that a labor shortage actually exists. So the answer to this question may be "yes" in the short-term and for some growers. Growers currently using the H-2A program would likely move over to the new program envisioned by H.R. 4548 because unquestionably their labor costs would be lower. And many other growers may want to use the

program as well.

Making use of the new H-2C program even more appealing is the fact that this program, for the first time -- and in contrast to all other employment situations in the country, would shift the burden of finding workers from the employer to the government. Agricultural employers desiring to hire foreign guestworkers would have no obligation to find U.S. workers on their own behalf except to apply to the government-operated registry, advertise (on behalf of the registry) in a local publication, and make "reasonable efforts" to contact workers employed in the previous season. Under H.R. 4548, the government would only have 21 days to find an employer's workers, may only search for such workers registered in the State where the work is to be performed, and must contact each potentially qualified worker to obtain a commitment to accept the offered job. Failure to overcome the obstacles to effectively operating an electronic job matching service in the agricultural labor market would allow the employer to obtain its workforce abroad.

The second question is whether H.R. 4548 will protect U.S. agricultural workers from unfair competition? It would not. Domestic farm workers will see their employment opportunities further reduced and farm workers generally will see their wages, benefits and working conditions undermined because of the inferior protections provided by the proposed H-2C program.

As noted, the bill contains no requirement for employers to develop and implement an affirmative or effective domestic farm worker recruitment plan. Nor does it ensure U.S. farm workers their current right to be hired by employers using H-2A workers if they make themselves available for work. Unless they are referred through the registry, those appearing in person for the work offered by the employer could be turned away because this legislation would no longer require the hiring of any U.S. worker who makes him/herself available for work during the first half of the employer's contract period. Moreover, farm workers would also lose their guarantee of pay for at least three-quarters of the work hours/days offered in the employer's contract and could be terminated without pay at any time for "lack of work."

Farm workers would lose rights under current law and no longer be guaranteed any wage higher than the Federal or State minimum wage -- unless the employer decides to pay by-the-hour and offers a higher hourly wage. Any employer would have to promise to pay the locally prevailing wage or the (new) adverse effect wage rate -- that is, the locally prevailing wage plus up to 5 percent. But any employer offering any "incentive payment method" -- that is, piece-rate, task-rate, or group-rate -- would only have to meet this obligation on average for the group of workers as a whole; no individual worker would be guaranteed any higher minimum wage.

Under the current H-2A program, each H-2A worker and similarly-employed U.S. worker must be paid the higher of the State or Federal minimum wage, the locally prevailing wage, or the "adverse effect wage rate" -- which is the average State or regional wage for farm jobs. With the disparity between pay requirements in current law and H.R. 4548, tens of thousands of farm workers would be very likely to experience pay cuts. For example, we estimate that in North Carolina alone, more than ten thousand farm workers -- H-2A and similarly-employed U.S. workers -- could experience a nearly 20 percent pay cut under the wage provisions of the

proposed H-2C program.

Under H.R. 4548, some farm workers who benefit from employer-provided housing now might lose their housing since their employers could substitute a voucher for housing. Moreover, compared to current law, the proposed new program would shift travel costs from growers to low-wage workers. For example, in a change from current law, workers would not have to be reimbursed for travel costs at all if they travel less than 100 miles or if -- for some reason -- they do not reside in housing provided directly or secured through a voucher. Furthermore, domestic farm workers hired through the registry, who work along side H-2A workers, would not be entitled to receive prevailing benefits and working conditions as required under current law.

The third question is whether H.R. 4548 will adequately protect foreign agricultural workers from abuse? Again, the answer is clearly “no.” For the reasons just discussed with regard to domestic farm workers, foreign workers admitted under the H-2C program would lose rights under current law with regard to wages paid and other benefits. In addition, the bill weakens the current housing requirement by allowing growers to provide a housing voucher in lieu of actual housing. One likely result of this approach is if the voucher is convertible to cash, foreign workers may not obtain housing thereby leading to adverse impacts on local communities.

Also, instead of being fully reimbursed for travel expenses, the new H-2C workers would at most only have to be reimbursed for their travel from the border to the place of employment if they complete 50 percent of the contract period, and back to the border if they complete the contract. The current H-2A program requires reimbursement from/to the place where the worker was recruited. Again, under H.R. 4548, there need be no travel reimbursement for distances under 100 miles. Also, like domestic farm workers, the H-2C workers would not be entitled to receive prevailing benefits and working conditions.

Finally, we must consider how H.R. 4548 will affect illegal immigration to the U.S.? The substantially reduced worker benefits and protections afforded under the new H-2C program will provide powerful incentives for many more U.S. agricultural employers to actively reach out to recruit labor from abroad. Experts and academics who study migration flows generally agree that guestworker programs establish migratory networks and paths that increase illegal immigration. Guestworkers tend to come and stay in the receiving country. The program resulting from H.R. 4548 would be no different. And it would make it easier for foreign agricultural workers admitted under the program to become illegal workers by overstaying in this country. And it appears that H.R. 4548 would put the employer under no obligation to ensure the workers it imported leave the U.S. upon completion of the work.

In sum, the cost of this proposed new H-2C program could be enormous to the Nation. In our view, this proposed new guestworker program would exacerbate the Nation’s problem with illegal immigration, adversely impact the employment opportunities, wages and working conditions of U.S. farm workers, and increase -- not reduce -- the opportunity for abuse of foreign agricultural workers.

Policy Recommendations for Stabilizing the Agricultural Labor Market

Mr. Chairman, there are ways to stabilize the agricultural labor market. We need to implement policies that will address the known problems in the labor market and begin to explore additional steps that may be appropriate to promote greater predictability and reliability in the labor supply and to modernize protections for farm workers to reflect the agricultural labor market of the 21st century. We believe the following recommendations can establish a foundation for progress:

Policy Recommendations

- **Increase the minimum wage.** Congress should raise the minimum wage by \$1 an hour over two years. This increase would make a significant difference in the ability of many migrant and seasonal farm workers who work for wages at or near the minimum wage to earn enough to support themselves and their families.
- **Provide funding for “AgNet”.** Congress should fund “AgNet,” an Internet-based, on-line job matching system to help connect agricultural employers and workers. In its FY 2001 budget request, the Administration has again asked for \$10 million to build and implement AgNet. Even though Congress did not provide that funding when requested for FY 2000, the Department of Labor has developed a prototype and is ready to move forward with the program if appropriations are made available. AgNet will be both an information system and a voluntary labor exchange tailored to the needs of the agricultural sector. Workers will be able to post work experience and the types of opportunities they seek; search for jobs; and have the system match worker information against that submitted by employers. Employers will be able to post jobs and search for workers. We believe AgNet holds the potential to be a new and powerful resource for employers seeking farm workers and for those seeking agricultural jobs. But it will not be the exclusive labor matching service envisioned in H.R. 4548.
- **Continue to streamline and reengineer the current H-2A program.** We are committed to complete current efforts and continue to streamline the H-2A program without weakening protections for U.S. and foreign farm workers. The Department has been working to reengineer and streamline the H-2A program to ease application burdens on growers while maintaining effective worker protections. This includes a change in the regulations -- which will be published as a final rule in the Federal Register within the next few weeks -- to reduce the deadline for when employers must file H-2A applications from 60 to 45 days before the date when workers are needed, and another change to delegate from INS to the Department of Labor authority to adjudicate certain H-2A petitions -- those filed on behalf of workers located outside the U.S. Additionally, the McConnell Amendment requires that certifications now be issued 30 days before the date of need. The Department has also established a section on its web site for H-2A employers, who can now access information about the H-2A program and the necessary forms for processing an H-2A application on-line.
- **Encourage use of available verification systems.** We should work together to increase growers’ use of automated verification systems thereby increasing growers’ confidence in and reducing their business risk associated with their workers’ immigration status.

- **Increase resources for domestic enforcement.** Congress should support increased resources for stronger enforcement of U.S. labor laws. Increased funding and Congressional support for strong labor law enforcement will ensure that the Department can effectively focus on and deploy adequate resources to address those employers which pay less than legal wages and provide substandard work environments.
- **Identify and eliminate barriers for U.S. farm workers accessing “safety net” programs.** We should identify barriers U.S. farm workers face in accessing “safety net” programs they are currently eligible for including the Earned Income Tax Credit (EITC), and farm worker health, housing, and educational assistance.
- **Continue discussions with other countries.** The United States must continue to pursue bi-lateral and (under the terms of the NAFTA labor side agreement) tri-lateral discussions with countries that send farm workers to the U.S. to explore ways in which the workers legal rights can be better protected.

Conclusion

This Administration has consistently opposed proposals similar to H.R. 4548 to supplement or replace the current H-2A program with a new agricultural guestworker program for the reasons stated in this testimony. Indeed, during the 105th Congress, the Secretary of Labor recommended that the President veto H.R. 3410 which was similar to the legislation you are considering today. For these reasons, the Administration strongly recommends that Congress reject this proposal and, if passed by the Congress, the Secretary of Labor would strongly recommend that the President veto H.R. 4548. We urge Congress to examine and give favorable consideration to the recommendations I just outlined as ways to establish a foundation for progress towards stabilizing the agricultural labor market.

I appreciate the attention given by the Subcommittee members and staff to our views, and their consideration. The Department looks forward to continuing to work closely and cooperatively with you and your staff.

Mr. Chairman, that concludes my statement and I will be pleased to respond to questions.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Immigration and Claims,
Committee on the Judiciary, House of Representatives

To: Irene Pueno
@ DPC

20 pages

For Release on Delivery
Expected at 11:00 a.m.,
Thursday, June 15, 2000

H-2A AGRICULTURAL GUESTWORKERS

Status of Efforts to Improve Program Services

Statement of Cynthia M. Fagnoni, Director
Education, Workforce, and Income Security Issues
Health, Education, and Human Services Division



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to contribute to the ongoing discussion regarding our nation's immigration policy and the role guestworker programs should play in that policy. Immigration is a tense and controversial subject, with the H-2A agricultural guestworker program representing some of the most passionate as well as complex aspects of this issue. The H-2A program provides a vehicle for U.S. agricultural employers to bring legal, nonimmigrant foreign workers into the United States to perform temporary seasonal agricultural work when domestic workers are unavailable. As we reported in 1997, about 15,000 workers, or less than 1 percent of the total agricultural workforce, were admitted under the H-2A program in 1996. Comparable data are not yet available for fiscal year 1999. However, the Department of Labor certified 41,827 workers in fiscal year 1999, compared with 17,557 workers in fiscal year 1996, suggesting a significant growth in the use of the program.¹

Today, I would like to review the key findings and conclusions of our December 1997 report, which assessed the H-2A program's ability to meet the needs of agricultural employers while protecting U.S. and foreign agricultural workers, both in the present and

¹In understanding the use of the H-2A program, it is necessary to distinguish between the number of worker certifications Labor approves, the number of H-2A visas the Department of States issues, and the number of workers who enter the United States with H-2A visas. Although the number of certifications Labor issues has increased from 17,557 in fiscal year 1996 to 41,827 in fiscal year 1999, the Immigration and Naturalization Service (INS) does not have current figures on the number of workers imported into the United States with H-2A visas. However, if the ratio of workers who entered with H-2A visas to H-2A labor certifications has remained at its fiscal year 1997 level of about 85 percent, then the program has expanded significantly over the past several years.

if a significant number of guestworkers were to be needed in the future.² I will also review the steps we recommended to reduce the burden of the H-2A program on agricultural employers while better protecting domestic and H-2A workers and the progress that the cognizant agencies have made in implementing those recommendations.

In summary, we believe that the principal conclusions of our 1997 report continue to be valid. More specifically, a sudden, widespread farm labor shortage requiring the entry of large numbers of foreign workers continues to be unlikely now or in the near future, although localized shortages could emerge for specific crops or geographic areas. Although many farmworkers are not legally authorized to work in the United States, INS enforcement efforts are still unlikely to significantly reduce the aggregate number of unauthorized farm workers. While comparatively few agricultural employers seek workers through the H-2A program, those that do continue to be generally successful in obtaining workers. In 1997, we determined that poor information on H-2A program access and the involvement of many agencies in the program could result in redundant oversight and confuse employers that are considering participation and that Labor was not always processing applications in a timely manner. While Labor and INS have made progress in taking the steps we recommended to improve the program's operations, key changes remain to be implemented, particularly those that would permit Labor to assess the timeliness of its applications processing and to improve protections for domestic and H-2A agricultural workers.

²H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers (GAO/HEHS-98-20, Dec. 31, 1997). In congressional deliberations on the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, concerns surfaced about whether the act's increased constraints on the entry of foreign workers into the country would result in a major, widespread

BACKGROUND

The Immigration Reform and Control Act of 1986 created the program, commonly referred to as the "H-2A" program, under which employers may bring agricultural workers into the country on a temporary, nonimmigrant basis. The program's purpose is to ensure agricultural employers an adequate labor supply while also protecting the jobs, as well as the wages and working conditions, of domestic farmworkers. Under the program, agricultural employers that anticipate a shortage of domestic workers can request nonimmigrant foreign workers. The Department of State issues nonimmigrant visas for H-2A workers only after the Department of Justice, through its INS, has approved an employer's petition for authorization to bring in workers. Justice does not approve the petition until Labor has approved the employer's application for certification that a labor shortage exists and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by bringing in guestworkers. This certification is based on, among other things, proof that the employer has actively recruited domestic workers, that the state employment service has certified a shortage of farm labor, and that housing for the workers meets health and safety requirements. The Department of Agriculture acts in an advisory role that includes conducting wage surveys for Labor's determination of the minimum wage rates to be paid by employers of H-2A workers--the so called "adverse effect wage rate"-- which are

shortage of farm labor to meet the needs of agriculture. As a result, the act required GAO to review the H-2A program.

designed to mitigate any negative effect their employment may have on domestic workers similarly employed.

Labor is also responsible for ensuring that agricultural employers comply with their contractual obligations to H-2A workers and for enforcing labor laws covering domestic workers, including the wage, housing, and transportation provisions of the Migrant and Seasonal Agricultural Worker Protection Act. For example, workers who complete 50 percent of the contract period are due reimbursement for transportation from the place of recruitment, while those who complete the entire contract are guaranteed work or wages for a minimum of three-quarters of the contract period and reimbursement for transportation home.³ Agricultural employers must provide the same wages, benefits, and working conditions to H-2A workers that are provided to domestic workers employed in "corresponding employment."

³ Under the three-quarter wage guarantee, an employer must offer each worker employment for at least three-fourths of the workdays in the work contract period, including any extensions. If the employer provides less employment, the employer must pay the amount the worker would have earned had the worker been employed the guaranteed number of days.

A WIDESPREAD FARM LABOR SHORTAGE
IS UNLIKELY IN THE NEAR FUTURE, ALTHOUGH
LOCALIZED SHORTAGES ARE POSSIBLE

In our 1997 report, we concluded that a widespread farm labor shortage did not appear to exist and was unlikely in the near future. Although there was widespread agreement that a significant portion of the farm labor force was not legally authorized to work, INS enforcement activity was unlikely to generate significant farm labor shortages. Based on available evidence from a Congressional Research Service (CRS) report⁴ that recently examined this issue, data from the National Agricultural Workers Survey (NAWS)⁵ released in March 2000, and recent INS policy, we believe that our earlier conclusions remain correct.

Ample Supplies of Farm Labor Appear
to Be Available in Most Areas of the Nation

As we noted in our 1997 report, although data limitations made the direct measurement of a labor shortage difficult, our own analysis suggested that a widespread

⁴ Congressional Research Service, Farm Labor Shortages and Immigration Policy, RL-30395 (Washington, D.C.: Apr. 10, 2000).

⁵ U.S. Department of Labor, Office of the Assistant Secretary for Policy, Findings From the National Agricultural Workers Survey 1997-1998: A Demographic and Employment Profile of United States Farmworkers, Office of Program Economics Research Report No. 8 (Washington, D.C.: Mar. 2000). Since 1988, NAWS has collected detailed information on the basic demographics, legal status, education, family size and household composition, wages, and working conditions of domestic seasonal agricultural services workers, including their participation in the nonagricultural U.S. labor force. NAWS also collects information on hourly and piece rate wage rates, farm labor housing, health care, and many other aspects of field labor working conditions.

farm labor shortage had not occurred in recent years and did not then exist. Our conclusion was based on the combination of (1) the large number of illegal immigrant farmworkers granted amnesty in the 1980s, (2) persistently high unemployment rates in key agricultural areas, (3) state and federal designations of agricultural areas as labor surplus areas, (4) stagnant or declining farm labor wage rates as adjusted for inflation, and (5) continued investments by growers in agricultural production.⁶ For example, our analysis of the monthly and annual unemployment rates of 20 large agricultural counties--those that contain large amounts of fruit, tree nut, and vegetable production in dollar value--found that 13 counties maintained annual double digit unemployment rates and that 19 had rates above the national average during 1994 through 1996. As of June 1997, 11 counties still exhibited monthly unemployment rates double the national average of 5.2 percent, and 15 of the 20 counties had rates at least 2 percentage points higher than the national rate. We also noted that the lack of evidence of widespread farm labor shortages does not preclude the existence or potential for more localized shortages in a specific crop or remote geographic area.

Since our report, the national economy has continued to prosper. National unemployment declined from 4.9 percent in 1997 to 4.2 percent in 1999. Nevertheless, recent CRS work on this issue suggests that our earlier assessment accurately captures the current conditions of the national agricultural labor market. CRS based its conclusion on a variety of economic data that are inconsistent with an agricultural labor shortage scenario: (1) employment of hired farmworkers, including contract workers, fluctuated

⁶H-2A Agricultural Guestworker Program: Response to Additional Questions (GAO/HEHS-98-120R, Apr. 2, 1998).

erratically during the 1990s and actually declined in 1998 by 1.2 to 1.4 percent, in contrast to the growth in total U.S. employment;⁷ (2) the national unemployment rate for hired farmworkers has remained above 10 percent since 1994, has increased since 1997, and at 11.8 in 1998, has remained well above the national average; (3) there was no discernable variation in the average number of weekly hours that hired farmworkers were employed in crop or livestock production throughout the 1990s; (4) the underemployment of farmworkers remains substantial, with the number of days crop workers employed on farms diminishing from an average of 186 days per worker in fiscal years 1993-95 to 174 days per worker in fiscal years 1996-98; and (5) while farmworkers' average hourly wages increased at a slightly faster rate than those in the nonfarm private sector between 1990 and 1998, farmworkers continue to earn little more than \$0.50 for every dollar earned by other private sector workers. The CRS study concluded that "indicators of supply-demand conditions generally are inconsistent with the existence of a nationwide shortage of domestically available farmworkers at the present time" Again consistent with our conclusions, the CRS report did not preclude the potential for localized farmworker shortages during various times of the year.

Data from the latest NAWS survey are also consistent with the conclusions of our 1997 report. If a labor shortage existed, one might expect larger than average increases in hourly agricultural wages rates. Although real wage rates for crop workers increased

⁷ For hired crop workers, used interchangeably with "farmworker" in NAWS, employment increased by 9.3 percent from 1990 to 1998, according to one statistical series. However, this was still well below the 11.7 percent increase exhibited by all wage and salary employment over the same period.

between 1997 and 1998, the latest years for comparison, they remain 10 percent lower than the average agricultural wage rates in 1989.

INS Enforcement Efforts Are Unlikely
to Significantly Reduce the Number of
Unauthorized Farmworkers

In our 1997 report, we estimated that approximately 37 percent of the agricultural labor force--about 600,000 farmworkers--in the United States lacked legal authorization to work. Since then, the estimated number of unauthorized agricultural workers has increased. The latest NAWS has estimated that, as of fiscal year 1998, the proportion of the agricultural labor force that lacked legal authorization to work was more than 52 percent.

The prevalence of such a large number of unauthorized and fraudulently documented farmworkers would leave individual employers vulnerable to sudden labor shortages if INS were to target enforcement efforts at their individual establishments. At the time of our 1997 report, fears of such targeting appeared to be unfounded. INS officials around the country were unanimous in their statements that they did not expect their enforcement efforts to have any general effect on the supply of farm labor, either nationally or regionally, given the large number of fraudulently documented farmworkers and competing enforcement priorities. At that time, most of INS' investigation resources were focused on identifying aliens who have committed criminal acts, including violent

criminal alien gang and drug-related activity, and on detecting and deterring fraud and smuggling. Few investigations involved agricultural employers, and INS officials did not expect a significant increase in enforcement efforts directed at agriculture in the near future. We also acknowledged that although INS efforts were under way to improve employers' ability to identify fraudulent documents, these efforts were still in the early stages and were not likely to have any significant effect on the availability of illegally documented farmworkers in the near future. The degree to which these initiatives, if fully implemented, would affect the number of unauthorized workers and the supply of agricultural workers was unknown.

We believe this conclusion remains accurate for several reasons. Since our report, the percentage of INS' investigations dedicated to worksite enforcement programs has not changed significantly. As we reported in 1997, about 5 percent of the 4,600 investigations completed in fiscal year 1996 involved employers in agricultural production or services, with 40 percent of these involving employers in industries not associated with H-2A, landscapers, lawn maintenance firms, and veterinarians. In fiscal year 1999, INS completed about 3,900 investigations of employers, with about 7 percent directed at agricultural workplaces.

INS is also in the process of changing its approach to worksite enforcement. It has developed a new interior enforcement strategy with two worksite enforcement priorities--one calling for INS to pursue the criminal investigation of employers that are flagrant or grave violators and the other aimed at blocking and removing employers'

access to unauthorized workers.⁸ With respect to this second priority, INS acknowledged the limitations of worksite investigations--“raids”--and is focusing on the crucial employer role in creating an effective deterrent to illegal immigration. It will now work to educate and foster employer cooperation to deny employment to unauthorized workers. INS has not specified how many resources it intends to devote to such employer compliance efforts. Since INS plans to implement its strategy over the next 5 years, it is too soon to know how the proposed changes will be implemented or to assess their effect on the employment of unauthorized workers in agriculture.

In addition, as we reported in 1999, despite several ongoing INS initiatives, the employment verification process still remains susceptible to fraud.⁹ INS continues to test three pilot programs in which employers electronically verify employees' eligibility to work. However, employer participation in the pilot programs under way has been significantly less than INS anticipated--only 1,658 employers in all industries as of June 2000 are participating, and only 425 of these are employers in agricultural production or services.

Finally, INS has made little progress toward its goal of reducing the number of documents that employers can accept for determining employment eligibility. In February 1998, INS issued proposed regulations to reduce the number of documents that

⁸According to our 1999 report, Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist (GAO/GGD-99-33, Apr. 2, 1999), an INS official expected that INS' new emphasis on dismantling the criminal infrastructure that supports unauthorized employment would result in (1) fewer worksite investigations and removals of unauthorized aliens from the workplace, (2) more criminal employer investigations, and (3) heavier penalties.

⁹Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist (GAO/GGD-99-33, Apr. 2, 1999).

can be used from 27 to 14. However, INS received numerous comments on the proposed regulations and INS officials do not know when these regulations will be finalized. INS has also begun issuing new documents with increased security features, which it hopes will make it easier for employers to verify the documents' authenticity. However, aliens are statutorily permitted to show employers various documents other than the INS documents that authorize them to work, and other widely used documents (e.g., Social Security cards and birth certificates) do not have the security features of the INS documents.

It should be noted that the high percentage of fraudulently documented workers means that an employer may hire workers not legally authorized to work in this country without violating the law. An employer that hires illegal aliens who present documentation will be abiding by the law unless the employer knows or should know based on an apparent irregularity in the alien's documentation that the alien is in this country illegally. The Immigration and Nationality Act allows an employer to rely on documentation that reasonably appears on its face to be genuine. Thus, over 600,000 illegal aliens could be working in agriculture without any agricultural employers violating the law with respect to their responsibilities under federal immigration law.

GAO RECOMMENDATIONS TARGETED AT PROBLEMS

IN H-2A PROGRAM OPERATIONS PARTIALLY IMPLEMENTED

In our 1997 report, we identified a number of concerns with the operation of the H-2A program. These concerns included (1) Labor's inability to process applications in a timely manner, (2) multiple agency involvement in the approval of H-2A petitions that added little value to the process, (3) multiple agency involvement in program administration and insufficient information generally, and (4) worker protection provisions that are difficult to enforce. We made recommendations to the cognizant agencies that would address each of these concerns. Most of these recommendations are still in process or no action has yet been taken.

Although Employers Obtain H-2A
Workers, Applications May Not be
Processed in a Timely Manner

In 1997, Labor issued certifications for most of the workers whom agricultural employers requested through the H-2A program, and agency officials reported that they could handle a major increase in program workload with additional resources. However, Labor did not generally process applications in a timely manner and the lack of data made it difficult to monitor timeliness and oversee the program. Labor continues to approve the overwhelming majority of applications, certifying 2,948 out of 3,130, or over 94 percent, of all applications submitted during fiscal year 1999 and accounting for 88 percent of the 47,300 worker certifications requested.

The H-2A application process sets very specific time requirements that employers and Labor must meet. At the time of our report, these statutory and regulatory deadlines included a requirement that employers file an application for workers at least 60 days before they are needed and that Labor issue a decision on the certification of a labor shortage at least 20 days before the date of need. In 1997, we determined that Labor did not always process applications on time, making it difficult to ensure that employers were able to get workers when they needed them. Although no data were available on how many employers failed to obtain the required workers by the date of need, we identified some applications that were not certified by Labor until after the date of need. Because Labor did not have data on program operations, we could not assess the explanations Labor provided us for its inability to process applications in a timely fashion. In response, we recommended that Labor regularly collect data on its performance in meeting H-2A regulatory and statutory deadlines for processing H-2A applications and that it use these data to monitor and improve its performance. Labor is currently developing such a system and hopes to have it in place by October 2000.

Multiple Agency Involvement in Petition Approval

Added Little Value to the Process

After receiving Labor's certification, INS must approve an employer's petition for H-2A visas before workers can apply to the State Department for visas, a procedure that can add up to 3 weeks to processing time. INS officials agreed that the INS petition approval process adds little value to the process because petitions for H-2A visas, unlike other visa petitions, do not generally identify individual workers. Therefore, INS examiners check only to make sure that Labor has issued a certification and that an employer has submitted the correct fees for the petition.¹⁰ To simplify the H-2A application process and reduce the burden on agricultural employers, we recommended that the Attorney General delegate authority for approval of H-2A visa petitions from INS to the Secretary of Labor or his or her designee and revise corresponding regulations as necessary to implement and facilitate such an agreement, including a revision of visa extension and appeals procedures. According to an INS official, the Office of Management and Budget recently cleared and finalized the regulation, and it will be released after final administrative details are completed.

Even if all processing deadlines are met, agricultural employers, their advocates, and state employment officials told us that the workers may not be available when needed. This is because the weather and other factors make it hard to estimate 60 days in advance when workers will be needed. This is especially true for crops with short harvest

periods. The 60-day deadline may also encourage employers to estimate the earliest possible date, which can have negative consequences for workers who arrive before the employer has work for them: they are left with no income until work is available. To address this problem, we recommended that the Secretary of Labor amend the regulations to allow H-2A applications to be submitted up to 45 rather than 60 days before the date of need, if INS' role in the petition approval process was eliminated as we recommended. Labor implemented our recommendation and employers now need to apply only 45 days before the date of need.

Finally, to protect work opportunities for domestic workers by ensuring that sufficient time is available for agricultural employers to positively recruit domestic workers while reducing the total processing time, we recommended that Congress amend the Immigration and Nationality Act so that, as long as the authority for approval of H-2A visa petitions remains with Labor, Labor would be required to complete all applications at least 7 days before the date of need, rather than 20 days. However, rather than requiring Labor to complete all applications at least 7 days before the date of need, the Congress changed the requirement that Labor complete all applications from 20 days to no later than 30 days before the date of need (P.L. 106-78).

¹⁰This verification that Labor has issued a certification is performed again by the State Department, according to officials at the two consulates--Monterrey and Hermosillo, Mexico--that process almost all H-2A visas.

Insufficient Information and Multiple Agencies

Administering the H-2A Program Can Make

Program Participation More Difficult

As we reported in 1997, employers, advocates, and agency officials expressed frustration about the poor information on H-2A procedures. Labor's handbook on the H-2A Labor certification process included information that was outdated, hard to understand, and incomplete. Program participants can also be confused by the multiple agencies and levels of government involved in the H-2A program, which fosters redundant agency oversight and the inability to determine compliance with program requirements. In some states, for example, employer-provided farmworker housing is subject to federal, state, and local housing regulations and must be inspected by multiple agencies. To address this issue, we recommended that Labor update and revise the H-2A handbook to include the procedures for all agencies involved and key contact points, both in Labor and other agencies. Labor has not yet taken action on this recommendation, preferring to wait until other regulations related to our recommendations have been promulgated.

Worker Protection Provisions

Are Difficult to Enforce

Violations of H-2A worker protection provisions, including the requirement that foreign guestworkers be guaranteed wages equivalent to at least three-quarters of the

amount specified for the entire contract period, are difficult to identify and enforce. H-2A guestworkers may be less aware of U.S. laws and protections than domestic workers, and they are unlikely to complain about worker protection violations, such as the three-quarter guarantee, fearing they will lose their jobs or will not be hired in the future.

Labor officials noted operational impediments in enforcing these protections. For example, the three-quarter guarantee applies only to the end of the contract period, and H-2A workers must leave the country soon after the contract ends. Labor officials said that monitoring the three-quarter guarantee is difficult because they cannot interview workers after they return to Mexico to confirm their work hours and earnings. Such enforcement difficulties create an incentive for less scrupulous employers to request contract periods longer than necessary: If workers leave the worksite before the contract period ends, the employer is not obligated to honor the three-quarter guarantee or pay for the workers' transportation home. And if a worker abandons the contract, it can be very difficult to determine whether he or she has left the country or is instead remaining and taking jobs that might otherwise go to domestic workers.

In general, Labor's Wage and Hour Division (WHD) of the Employment Standards Administration is the primary agency for enforcing existing H-2A contracts and other labor standard provisions, while the Employment and Training Administration (ETA) administers the H-2A program, working with state job services and agricultural employers to facilitate the application process. However, under current law, ETA exercises Labor's authority to suspend an employer's participation in the H-2A program

in the event that the employer has committed a serious labor standard or contract violation, and WHD, when conducting an enforcement action, must request that ETA consider using this authority. Given the overall separation of program functions between WHD and ETA, placing this suspension authority in ETA seems incongruent. Consolidating this suspension authority in WHD would permit ETA to concentrate more effectively on the H-2A program's crucial duties and possibly increase the effectiveness of WHD enforcement.

The H-2A program also requires that agricultural employers provide H-2A workers the same minimum wages, benefits, and working conditions as those provided to domestic workers employed in "corresponding employment." Current Labor regulations guarantee wages for the first week of work to domestic workers who are referred to agricultural employers through the interstate clearance system of the Employment Service, unless the employer informs the state employment service of a delay in the date of need at least 10 days in advance. However, no provisions are made to provide the same guarantee to H-2A workers, resulting in a disparity of treatment and the potential for personal hardship for foreign workers.

To address these issues, we recommended that Labor transfer the authority to suspend employers with serious labor standard or H-2A contract violations from ETA to WHD, revise its regulations to require agricultural employers to guarantee H-2A workers wages for the first week after the date of need, pay workers those wages no later than 7 days after the date of need, and revise regulations to apply the three-quarter guarantee

incrementally during the duration of the H-2A contract in a manner that would improve the protection afforded to H-2A workers but also minimize any additional administrative burdens on agricultural employers. At this time, Labor has not determined how best to take action in each of these areas.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or Members of the Subcommittee may have.

GAO Contacts and Acknowledgements

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(205516)

**Comparison of Existing H-2A Farm Worker Program
Current H-2A vs. Smith/Graham Proposals (S.1814) and Pombo Proposal**

Existing H-2A Farm Program	Smith/Graham Proposal (S.1815)	Pombo Proposal (H.R.4548)
I. Substantive Worker Protections:	I. Substantive Worker Protections Proposed Changes to H-2A:	I. Substantive Worker Protections (H-2C)
Specific information, protections, and assurances that employers must give both U.S. and foreign workers hired under the H-2A program:	The employer must provide certain "assurances" in its application about the terms and conditions under which workers will be employed:	The employer must provide certain "assurances" in its application about the terms and conditions under which workers will be employed:
1. Rate of pay: The highest of federal/state minimum wage, prevailing wage or adverse effect wage rate (AEWR). AEWR is defined as the average pay for the jobs in farwork as a whole. (Statutory)	1. Rate of Pay: The higher of the prevailing wage or the AEWR (and is not required to pay more). The AEWR, as determined by the USDA average wage for field and livestock workers, is redefined so that it can never be higher than 105% of the prevailing wage in the occupation but may be less. <i>In no case can wage be less than higher of state or federal minimum wage.</i>	1. Rate of Pay: Same as S.1814, except H.R. 4548 provides an "alternative methods of payment" provision that allows the employer to pay in a different method than that in which the prevailing wage is determined. Then, it mandates that the employer design the alternative form of payment in a way that would result in pay equal to the prevailing rate. Still, in no case can wage be less than higher of state or federal minimum wage.

2. Workers are entitled to disclosure of the all material terms and conditions of employment, including the following: (regulatory)

- (a) Any minimum "productivity" standard;
- (b) Employer must guarantee that at least three-fourths of the employment offered will be provided;
- (c) List any qualifications necessary for the job.

2. Workers are entitled to Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosure of the terms and conditions of employment only at the point the visa is issued, not at the time of recruitment.

- (a) no minimum productivity standard need be disclosed
- (b) no 3/4 guarantee
- (c) occupational qualifications must be in the application.

2. Same S.18143. Employer temporary labor camp housing must be provided by the employer at no charge to migrant workers and must meet all federal, state and local health and safety standards. The employer may secure rental and/or public accommodations that meet local or state standards. If there are no local or state standards, the housing must meet Federal temporary labor camp standards. The housing must be provided at no charge to the worker.
(Statutory)

3. Housing or a voucher must be provided by the employer. Employer provided temporary labor camp housing must meet federal standards. Employer provided rental or public accommodations must be local standards, or, in the absence of local standards, State standards. The Federal standards do not apply even if there are no local or state standards. The employer may charge the worker fair market value (not to exceed cost) for utilities and maintenance, and require the posting of a security deposit (not to exceed \$50).

For 3 years after enactment, the employer may provide a housing voucher in lieu of housing. After that grace period, housing voucher may only be provided in lieu of housing if Governor certifies that there is adequate housing available in area of employment. (Certification valid for 3 years, but voucher may be provided for one year after expiration.) The voucher must be the equivalent of the *statewide average* HUD Section 8 fair market rental rate based on the assumption of 2-bedroom unit with two persons per bedroom.

EXCEPTION: If employer does not have enough housing for all workers, may provide voucher instead.

3. Same as S.18144. Transportation cost to the work site reimbursed after 50% of contract period: return transportation costs provided at end of contract.
(Regulatory)

4. Employer must reimburse workers for incoming transportation after completion of 50% of the period of employment of the job opportunity for which the workers was hired and for return transportation at completion of the period of employment. Only applies to workers residing in employer-provided (or voucher-paid) housing who travel over 100

4. Same as S.1814

miles to place of employment. In case of international travel, reimbursement must only be from place where visa issued or from border crossing station, not from actual residence.

5. Assurance that workers' compensation is provided.
(Statutory)

5. Workers compensation or its equivalent must be provided.

5. Same as S.1814

6. Employers may not discriminate against domestic workers in hiring, terms and conditions of employment, or termination in favor of foreign workers. U.S. workers given an affirmative preference.
(Statutory)

6. Employer must assure that authorized workers (including adjusted nonimmigrants) *in that state or contiguous state registry* will be hired if they are referred through the registry.

6. Same as S.1814

7. May not use H-2A workers to replace workers involved in a labor dispute.
(Statutory)

7. "Assurance" that the job opportunity is not vacant because a worker is involved in a strike, lockout, or work stoppage in the course of a labor dispute.

7. Same as S.1814

8. Employer must observe all prevailing practice or benefits in the area, such as providing family housing, productivity standards, employer provided tools, etc.
(Regulatory)

8. No similar protection.

8. Same as S.1814

9. No MSPA transportation safety protection. (WHAT'S THIS?)

9. Same as S.181410. Workers referred by registry will not be terminated except for lawful, job-related reasons INCLUDING LACK OF WORK.

But there is a 3/4 guarantee of term of work.

II. Recruitment and Hiring of U.S. Workers

1. Employer develop and implement an affirmative domestic worker recruitment plan. (Statutory)

9. MSPA transportation safety protections provided. (WHAT'S THIS?)

10. Workers referred by registry will not be terminated except for lawful, job-related reasons INCLUDING LACK OF WORK.

No 3/4 guarantee.

II. Recruitment and Hiring of U.S. Workers

1. Employer must assure that will post notice of registry in conspicuous place at worksite, and advertise job opportunity for which seeking workers from registry in publication in local labor market likely to be patronized by potential farmworkers ("if any") and refer interested workers to the registry. The employer must "assure" that workers satisfactorily employed the previous year in the occupation and at the location have been sent a letter informing them of the job opportunity.

Employer must place ad in paper 14 days after applying to DOL for workers.

10. Same as S.1814

II. Recruitment and Hiring of U.S. Workers

1. Same as S.18142. Qualified domestic workers must be given jobs within the first 50% of the contract period even if foreign workers are displaced.

(Was Statutory, now regulatory)

2. U.S. workers (includes adjusted non-immigrants) must be employed during the first 50% of the "anticipated period of employment shown in the employer's application" but only if referred by the registry, *unless*: (1) for period employer not using H-2A's in occupation (ie: could accept only adjusted nonimmigrants); or (2) if registry search underway where worker qualifies and substantially same terms & conditions available. U.S. workers have right of first refusal for jobs available through registry. If job opportunity already taken by or committed to an H-2A, Secretary will make every effort to find open job acceptable to worker, whether or not job listed on registry.

2. Same as S.18143. Job offer must be placed in the employment service interstate clearance system and distributed to areas of known labor supply.
(Statutory)

3. No posting on the Interstate Clearance System required. A new system—the Registry—is created and is intended as the worker recruitment and referral system. The creation, maintenance, and operation of the Registry is the obligation of DOL. Only states having any group of agricultural producers wanting to use registry will be represented by a registry – states cannot decide on their own.

3. Same as S.1814

Same as S1814

The Registry—actually multiple registries encompassing *only* one state or in special case of New England, a group of contiguous states—are intended to be the sole means by which the Secretary determines if there are U.S. workers or adjusted nonimmigrants available for the jobs. The registry refers available workers to employers seeking foreign workers. Registry must verify employment authorization of all registered workers. *Employers may require prospective employees to register as means of verifying employment eligibility.*

The Registry provisions appear to leave the hiring decision to the Department. According to Section 5(a) the Secretary determines if the worker is ready, willing and able to accept the job opportunity and will commit to work at the time and place needed. If so, the worker is provided employer information, the location where to report, and a statement of the terms and conditions of employment.

Adjusted nonimmigrants who fail to report to a job for which they have made an affirmative commitment will be removed from registry for 6 months for first failure, 1 year for each succeeding failure.

Employers may be debarred from Registry for maximum of 3 years from violation.
(However, H-2A workers may be disqualified from program for program violations during past 5 years.)

The employer is provided names, addresses, social security numbers and contact information of the workers referred. The search and referral for registered workers takes place in just 14 days. If the number of referred workers is less than the employer's request, Secretary provides notice to AG of need for H-2A workers.

4. User fee collected to partially defray administration of the program.
(Statutory)

4. Secretary establishes a registry user fee and an H-2A user fee. Such fees shall be sufficient to reimburse Departments of Labor, Agriculture, State, and AG for direct costs of: (1) use of registry, including registration, referral and validation, but not including services otherwise provided without registries; and (2) use of H-2A, including establishment and certification of eligible employers, issuance of documentation and admission of H-2A's. Not more than 10% of direct costs of new enforcement reimbursable through user fees. If funds needed for startup of registries, paid by the DOL Wagner-Peyser Act funds, which can be repaid by subsequent user fees.

4. Same as S.1814
III. Enforcement of Labor and Immigration Laws

1. DOL may enforce compliance with labor laws by H-2A employers like any other employer.
(Statutory)

2. DOL may sue in court for violation of the terms and conditions of employment on behalf of workers.
(Statutory)

3. Violations may result in civil money

III. Enforcement of Labor and Immigration Laws

1. DOL may investigate only upon complaints by aggrieved person or organization, including bargaining representatives or at its discretion. Complaint investigations limited to allegations of violations within the last 12 months.

2. No similar protection. May seek to collect back wages, civil money penalties or enforce debarment only.

3. Limited civil money penalties (up to \$1000)

III. Enforcement of Labor and Immigration Laws

1. Same as S.1814

2. Same as S.1814

3. Same as S.1814

penalties, full Fair Labor Standards Act back wage remedies, actual monetary damages or debarment.
(Statutory)

and back wage collection; for wage violations, debarment from H-2A program for one year for violation. For “other violations” – misrepresentation of a material fact on the application or failure to meet “assurances” (*note p. B-44, lines 17 & 21, reference should be to sec. 301, not 401*) or serious violations of child labor, wage (only nonpayment, underpayment goes to regular wage violations) or housing – limited civil money penalties, cease and desist order (*no injunctive what?*), and debarment for one year for first “substantial” violation. If 2nd determination of wage or “other violations” *in same category of violations with respect to same alien*, three years H-2A debarment. Permanent debarment for third wage or other “substantial” violation.

4. H-2A employers must post a bond to assure the return of the H-2A workers at the conclusion of the contract or became employed by another certified employer.

4. *It is the obligation of the AG to develop a mechanism for insuring that the worker has left the U.S. after completion of work.* 5. H-2A workers must leave the U.S. within 10 days of completion of the H-2A employment.

6. No limitations on number of H-2A workers but there must be an independent DOL determination of shortage after attempts to recruit U.S. workers.
(Statutory)

7. Workers excluded from MSPA.
(Statutory in MSPA)

4. Employer under no obligation to insure the worker leaves the U.S. upon completion of work.

5. Worker under no obligation to leave U.S. until 14 days after end of employment.

6. No limitation on the number of workers admitted under this program.

7. Workers partially (?) covered by MSPA. Limited disclosure and housing rights.

8. An H-2A worker who files a complaint may not change to another approved H-2A employer until the employer about whom he has complained is supplied a replacement registry or H-2A worker.

5. Same as S.1814

6. No limitation.

7. Same as S.1814

8. An H-2C worker who files a complaint may not change to another approved H-2C employer until the employer about whom he has complained is supplied a replacement registry worker and until another employer has agreed to employ the worker.

IV. Procedural Safeguards

IV. Procedural Safeguards

IV. Procedural Safeguards

1. Application normally must be filed with local SESA and DOL regional office at least 45 days before beginning of work so domestic farm workers can be recruited. (Can not require filing more than 45 days before date of need, can shorten time by regulation.)

1. Application must be filed with the Department of Labor not later than 28 days before date of need. An employer may withdraw the application so long as there are no foreign workers employed by the applicant. The withdrawal relieves the applicant of any obligations owed to foreign workers undertaken in the application. U.S. workers who have rights under other law or regulation governing recruitment may still have some rights. 2. DOL must approve or notify applicant of any legal objections to the application within 7 days. (Statutory)

3. Emergency petitions for unforeseen need may be filed at any time and will be processed within one to two weeks. (Regulatory)

4. Application may be rejected by DOL if it does not adequately protect U.S. workers from adverse effects by the foreign workers. (Statutory)

1. Application must be filed with the Department of Labor not later than 21 days before date of need. An employer may withdraw the application so long as there are no foreign workers employed by the applicant. The withdrawal relieves the applicant of any obligations owed to foreign workers undertaken in the application. U.S. workers who have rights under other law or regulation governing recruitment may still have some rights.

2. DOL reviews to ensure the "assurances" under Sec. 4(a) have been made. If complete, the application is approved within 7 days. If not the Department shall reject within 7 days. The applicant must be provided an opportunity to resubmit an amended application or, at the applicants option, an expedited review or de novo administrative hearing before an ALJ.

The applicant may submit an application to the Attorney General for issuance of visas if the Secretary fails to refer sufficient workers from the registry or fails to submit the report of insufficient workers.

3. Employers may seek an expedited approval if they did not use the program the prior year; who face an "unforeseen" need for workers; and whom the Secretary can not refer workers from the registry.

4. DOL has no authority to determine whether or not the offer would adversely affect U.S. workers.

2. Same as S.1814

4. Same as S.1814

5. No employer may have access to H-2A workers unless has applied to registry and received report by Secretary of number of job opportunities for which registered workers could not be referred.

5. No employer may have access to H-2C workers unless has applied to registry and received report by Secretary of number of job opportunities for which registered workers could not be referred.

V. "Legalization" provisions:

V. "Legalization" provisions:

1. Grants a new "adjusted nonimmigrant" status to alien workers who have performed at least the lesser of 880 hours or 150 work days (a work day is any day of one or more hours agricultural employment) in previous 12 months. Waives IRRIRA bar on previous unauthorized employment.

2. Adjusted workers could work only in agriculture for 5-7 years after adjustment.

3. Workers with adjusted status could only remain in the U.S. for 300 days in any calendar year. Exception: 300 day/year limitation does not apply to workers with adjusted status who have established a permanent residence in U.S. and who have a U.S.-born minor child who resides with them PROVIDED that alien performs a minimum of 240 days/year of agricultural work.

4. Adjusted nonimmigrant status revoked, and alien deported, if fails to perform 1,040 hours or 180 work days in 3 calendar years.

V. "Legalization" provisions:

5. Legal permanent resident status (LPR) granted to adjusted aliens who perform 5 years of qualifying agricultural employment, defined as any calendar year with at least the lesser of 1,040 hours or 180 work days. EXCEPTION: Aliens who legally stay more than 300 days/year must work at least 240 work days that year.

6. Adjusted alien must apply for adjustment within 6 months after completing 5th year of qualifying employment, or lose all immigration rights. Upon demonstrating prima facie case of eligibility, worker granted temporary resident alien, and pending adjudication of LPR adjustment may work in any U.S. employment and qualify for assistance and benefits as if LPR.

7. AG must disseminate information regarding public benefits available to aliens under this section. *However*, alien cannot be determined inadmissible as a public charge if can demonstrate history of employment in U.S. evidencing self-support without reliance on public cash assistance.

Numerical Limitation: LPR adjustment of adjusted nonimmigrants will not be counted against any quotas or be offset against any quotas. in any fiscal year, not more than 20% of the number of aliens who obtained adjusted nonimmigrant status adjust to LPR status. Priority given to aliens with greater number of work hours. Other aliens who qualify but are not adjusted to LPR due to numerical limitation may work in any U.S. employment, or if work in agriculture, continue to accrue those work hours for credit toward application for adjustment to LPR status.

VI. Other Provisions

1. Commissions & Reports required:
 - a) commission on housing migrant ag workers, with final report due in 3 years;
 - b) study of relationship between child care and child labor, due in 3 years;
 - c) study of field sanitation, due in 3 years;
 - d) study of coordinated and targeted labor standards enforcement, due in 3 years;
 - e) bilateral commission(s) between U.S. and each country with minimum 10,000 H-2A's in U.S. – no report just a forum.
2. Effective date 1 year after enactment, with Secretary report on measures taken and progress within 180 days.

VI. Other Provisions

1. Same as S.1814
- 2, Same as S.1814

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Fax Cover Sheet

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FOR IMMEDIATE RELEASE

June 2, 2000

CONTACT: Hilary McLean
916/445-4571**GOVERNOR DAVIS, OTHER BORDER GOVERNORS CONCLUDE
CONFERENCE, SIGN DECLARATION ON EDUCATION,
ECONOMIC DEVELOPMENT, BORDER CROSSING, AGRICULTURE**
Dialogue Among 10 Governors from U.S. and Mexico Produce Shared Vision for Future

SACRAMENTO – At the closing of ceremony of the 18th Annual Borders Governors Conference, Governor Gray Davis and nine governors and their delegates issued a joint declaration aimed at furthering regional economic development, improved border crossings and cooperative ventures protecting the environment and improving the quality of life for the border region. During the two-day conference the governors also shared ideas and dialogue on how to strengthen relations between border states.

"Through continued dialogue and growing relationships we have embraced a common vision for bordering states, and created a roadmap to reach achievement of common goals," said Governor Davis. "The cooperation and shared respect between the governments of neighboring communities will form the foundation of a common future rich with unity and economic promise."

Serving as conference chair, Governor Davis hosted the event, the first held in California's Capitol, and led discussions among the governors of Arizona, New Mexico and Texas, as well as the governors from Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora and Tamaulipas of the United Mexican States.

Frequent work meetings held between the governments of the border states have made it possible to establish a mechanism for ongoing dialogue and consultation in order to address diverse and complex border issues. These meetings have fostered a close working relationship among the governors, allowing them to openly discuss sensitive topics. The cooperative spirit among the governors contributed to strengthening the relationships between the United States and Mexico.

"We assembled here to chart a course for the future," said Governor Davis. "We, the border governors, have reaffirmed our commitment to the 'spirit of unity' between the great people of this region."

Additional discussions centered on five key issues: agriculture, border crossings, economic development, education and the environment. Following are key elements of the joint declaration:

- To effectively increase trade and strengthen commercial exchange along the border, both nations must invest in modern and efficient infrastructure at their ports of entry – enabling the spirit of the NAFTA (North American Free Trade Agreement) to reach its full potential and positively impact the development of the region.

(more)

Borders Governors Conference/2-2-2

- To capitalize on integrated regional development efforts, it is essential that the exchange of goods, services, and the legal transit of people be conducted in a timely and efficient manner, with respect for human dignity, to promote trade and tourism while projecting a positive image of our border.
- The border states, in partnership with the federal government and private sector, acknowledge and share the responsibility of protecting and improving the environment and natural resources of the border by implementing programs aimed at preserving the wealth of natural resources in the region and increasing the quality of life for our citizens.
- The joint efforts of the border states to implement programs supporting health and safety initiatives are the result of coordination, shared responsibility, and sensitivity to the health and well-being of the residents in the region.
- The border states unite in the desire to strengthen bilateral cooperation in order to address the effects of natural disasters in our region, particularly by working together to combat forest fires and reduce the negative effects of drought and flooding occurring on both sides of the border.

Concluding the conference, Governor Davis stated: "We came together, ten great states and many great people. Today we leave with the confidence that together we will share one great future."

Please see the attached joint declaration signed at the closing ceremony of the Borders Governors Conference.

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**XVIII BORDER GOVERNORS CONFERENCE
UNITED STATES-MEXICO
JUNE 1-2, 2000
SACRAMENTO, CALIFORNIA**

JOINT DECLARATION

PREAMBLE

THE GOVERNORS OF THE STATES OF ARIZONA, CALIFORNIA, NEW MEXICO AND TEXAS OF THE UNITED STATES OF AMERICA AND THE STATES OF BAJA CALIFORNIA, CHIHUAHUA, COAHUILA, NUEVO LEON, SONORA AND TAMAULIPAS OF THE UNITED MEXICAN STATES, MEETING IN THE CITY OF SACRAMENTO, CALIFORNIA ON JUNE 1-2, 2000, HAVING ANALYZED, IN THE FRAMEWORK OF THE XVIII CONFERENCE OF UNITED STATES-MEXICO BORDER GOVERNORS, THE TOPICS RELATING TO AGRICULTURE, BORDER CROSSINGS, ECONOMIC DEVELOPMENT, EDUCATION, ENVIRONMENT, TOURISM AND

WHEREAS

THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ARE TWO SOVEREIGN AND INDEPENDENT NATIONS, EACH WITH ITS OWN CLEAR IDENTITY, SHARING MORE THAN TWO THOUSAND MILES OF COMMON BORDER, THUS CONSTITUTING ONE OF THE MOST DYNAMIC REGIONS OF THE WORLD;

THIS BORDER, SERVING AS A MODEL OF BINATIONAL INTEGRATION, AND OFFERING GREAT CHALLENGES AND OPPORTUNITIES, IS A PLACE THAT UNITES TWO CULTURES AND GLOBAL VISIONS, WHERE A PHILOSOPHY OF BOUNDARIES BECOMES THE IMPETUS FOR COOPERATION AND ACCOMPLISHMENT;

THIS VISION, ENHANCED BY OUR CLOSE PROXIMITY, HAS ALLOWED US TO VIEW THE BORDER FROM A TRANSBORDER REGIONAL PERSPECTIVE, THEREBY ENABLING THE PURSUIT OF NEW OPPORTUNITIES;

THE TEN STATES COMPRISING THE UNITED STATES-MEXICO BORDER REGION POSSESS A SERIES OF INHERENT COMPETITIVE ADVANTAGES AND ECONOMIC SYNERGIES THAT ENABLE JOINT ECONOMIC DEVELOPMENT, THEREBY INCREASING TRADE AND FOSTERING REGIONAL INTEGRATION;

TO EFFECTIVELY INCREASE TRADE AND STRENGTHEN COMMERCIAL EXCHANGE ALONG THE BORDER, BOTH NATIONS MUST INVEST IN MODERN AND EFFICIENT INFRASTRUCTURE AT THEIR PORTS OF ENTRY, THUS ENABLING THE SPIRIT OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) TO REACH ITS FULL POTENTIAL AND POSITIVELY IMPACT THE DEVELOPMENT OF THE REGION;

TO CAPITALIZE ON INTEGRATED REGIONAL DEVELOPMENT EFFORTS, IT IS ESSENTIAL THAT THE EXCHANGE OF GOODS, SERVICES, AND THE LEGAL TRANSIT OF PEOPLE BE CONDUCTED IN A TIMELY AND EFFICIENT MANNER, WITH RESPECT FOR HUMAN DIGNITY, TO PROMOTE TRADE AND TOURISM WHILE PROJECTING A POSITIVE IMAGE OF OUR BORDER;

THE BORDER STATES, IN PARTNERSHIP WITH THE FEDERAL GOVERNMENT AND PRIVATE SECTOR, ACKNOWLEDGE AND SHARE THE RESPONSIBILITY OF PROTECTING THE ENVIRONMENT AND NATURAL RESOURCES OF THE BORDER BY IMPLEMENTING PROGRAMS AIMED AT PRESERVING THE WEALTH OF NATURAL RESOURCES IN THE REGION;

THE BORDER STATES UNITE IN THE DESIRE TO STRENGTHEN BILATERAL COOPERATION IN ORDER TO ADDRESS THE EFFECTS OF NATURAL DISASTERS IN OUR REGION, PARTICULARLY BY WORKING TOGETHER TO COMBAT FOREST FIRES AND REDUCE THE NEGATIVE EFFECTS OF DROUGHT AND FLOODING OCCURRING ON BOTH SIDES OF THE BORDER;

THE JOINT EFFORTS OF THE BORDER STATES TO IMPLEMENT PROGRAMS SUPPORTING HEALTH INITIATIVES ARE THE RESULT OF COORDINATION, SHARED RESPONSIBILITY, AND SENSITIVITY TO THE HEALTH AND WELL-BEING OF THE INHABITANTS OF THE REGION;

THE FREQUENT WORK MEETINGS HELD BETWEEN THE GOVERNMENTS OF THE BORDER STATES HAVE MADE IT POSSIBLE TO ESTABLISH A MECHANISM FOR ONGOING DIALOGUE AND CONSULTATION IN ORDER TO ADDRESS DIVERSE AND COMPLEX BORDER ISSUES;

MEETINGS OF THIS NATURE HAVE MADE IT POSSIBLE TO ESTABLISH A CLOSE WORKING RELATIONSHIP AMONG THE GOVERNORS OF THE BORDER STATES, ALLOWING THEM TO OPENLY DISCUSS THE MAIN TOPICS THAT CONSTITUTE THE WORK TABLES INCLUDED IN THE XVIII BORDER GOVERNORS CONFERENCE;

THIS UNDERSTANDING AMONG THE GOVERNORS OF THE BORDER STATES HAS CONTRIBUTED TO STRENGTHENING THE RELATIONSHIP BETWEEN THE UNITED STATES AND MEXICO, AND

WHEREAS, WE THE BORDER GOVERNORS IN THE SPIRIT OF COOPERATION AND RESPECT FOR THE SOVEREIGN RIGHTS OF EACH INDIVIDUAL COUNTRY DISCUSSED THE UNFORTUNATE INCIDENTS TAKING PLACE ON BOTH SIDES OF THE BORDER AND AGREED TO IMPROVE COORDINATION AMONG THE APPROPRIATE AUTHORITIES OF THE THREE LEVELS OF GOVERNMENT OF BOTH COUNTRIES.

WE, THE GOVERNORS, ENDORSING THIS JOINT DECLARATION, HEREBY ADOPT THE FOLLOWING TOPICS OF SIGNIFICANT IMPORTANCE TO THE BORDER REGION:

BORDER CROSSINGS

1. REQUEST THAT BOTH FEDERAL GOVERNMENTS TAKE IMMEDIATE ACTION TO IMPLEMENT THE ORIGINAL TRUCKING REGULATION PROVISIONS, INCLUDING PHASING, OF NAFTA WHICH ALLOW FOR BOTH U.S. AND MEXICAN TRANSPORTATION COMPANIES TO OPERATE FREELY WITHIN THE LIMITS OF THE BORDER STATES.

2. REQUEST THAT BOTH PRESIDENTS IMMEDIATELY DIRECT THEIR RESPECTIVE INSPECTION AGENCIES TO DEVELOP AND IMPLEMENT WITHIN THE NEXT 12 MONTHS A "SINGLE STANDARD FORM" USING ADVANCED TECHNOLOGIES FOR REQUIRED INTERNATIONAL BORDER CROSSING DOCUMENTATION UTILIZED BY TRANSPORTERS, IMPORTERS AND EXPORTERS OF BOTH COUNTRIES.
3. ENCOURAGE THE CITIES AND REGIONAL PLANNING ORGANIZATIONS ALONG THE U.S.-MEXICO BORDER TO DEVELOP BINATIONAL INTEGRATED URBAN LAND USE PLANS PRIOR TO REQUESTING PERMITS FOR NEW INTERNATIONAL BORDER CROSSINGS.
4. REQUEST THAT FEDERAL AGENCIES INVOLVED IN BORDER ACTIVITIES DESIGNATE A SENIOR OFFICIAL TO WORK WITH STATE OFFICIALS ON BORDER ISSUES.
5. OPPOSE ANY FEDERALLY MANDATED BORDER CROSSING FEES THAT NEGATIVELY AFFECT THE ECONOMY OF THE BORDER.
6. OPPOSE ANY EXIT CONTROL SYSTEM AT BORDER PORTS OF ENTRY THAT NEGATIVELY IMPACTS TRADE, TOURISM OR OTHER LEGITIMATE CROSS-BORDER TRAFFIC, AND RECOMMEND THAT SECTION 110 BE AMENDED IN FAVOR OF A MORE TRADE-EFFICIENT AND BORDER-FRIENDLY ALTERNATIVE
7. CONTINUE TO SUPPORT THE EXPANSION AND SIMPLIFICATION OF THE CURRENT H-2 PROGRAMS FOR TEMPORARY WORKERS IN THE U.S., IN ORDER TO SATISFY THE DEMAND FOR LABOR IN THE AGRICULTURE AND SERVICE INDUSTRIES.] 

ECONOMIC DEVELOPMENT

1. EXPAND AND PROMOTE THE BORDER STATES' ECONOMIC DEVELOPMENT WEB PAGE, WHICH OFFERS INFORMATION ABOUT INDUSTRIAL CLUSTERS, DIRECTORIES OF THE PRINCIPAL COMPANIES IN THE REGION, AS WELL AS A CALENDAR OF THE MOST IMPORTANT LOCAL, REGIONAL AND INTERNATIONAL TRADE SHOWS.
2. PROMOTE THE PARTICIPATION OF ENTREPRENEURS TO THE REGION'S MOST IMPORTANT TRADE SHOWS WHICH HAVE BEEN IDENTIFIED BASED ON THE STRENGTHS AND CHARACTERISTICS OF EACH STATE OR SUB-REGION, THUS CONTRIBUTING TO A MORE EFFECTIVE REGIONAL INTEGRATION.
3. ORGANIZE MULTI-STATE PARTICIPATION IN COMMERCIAL MISSIONS AND INTERNATIONAL TRADE SHOWS TO STRENGTHEN THE REGION'S SUPPLIER CHAINS (SOURCING) BY TAKING ADVANTAGE OF THE OPPORTUNITIES PROVIDED BY NAFTA AS WELL AS THE DIFFERENT COMMERCIAL TREATIES ENTERED INTO TO BY MEXICO.

4. ORGANIZE SEMINARS THROUGH EACH STATE TRADE AND COMMERCE AGENCY, TARGETED AT REGIONAL SUPPLIERS TO DISSEMINATE THE ADVANTAGES OF THE APPLICATION OF THE "RULE OF ORIGIN," WHICH WILL FAVOR THE SOURCING OF GOODS WITHIN THE NAFTA REGION.

TOURISM

1. INCLUDE WITHIN THE ANNUAL OPERATIONAL PROGRAMS OF THE STATE TOURISM OFFICES, AS WELL AS WITHIN NATIONAL TOURISM PROGRAMS, PROMOTION OF BORDER CULTURAL HERITAGE, HISTORIC CORRIDORS AND ECOTOURISM, TAKING ADVANTAGE THE NATURAL SCENIC DIVERSITY IN THE BORDER REGION.
2. JOINTLY DEVELOP EDUCATIONAL PROGRAMS THAT INFORM AND ASSIST POTENTIAL TRAVELERS TO THE BORDER REGION REGARDING RULES AND LAWS ABOUT TRANSPORTING VEHICLES AND FIREARMS, INSURANCE COVERAGE AND IMMIGRATION AND CUSTOMS PROCEDURES.
3. OPPOSE NEW MEASURES RELATING TO MIGRATION AND FISCAL MATTERS THAT NEGATIVELY IMPACT THE TRANSIT OF PEOPLE, TOURISM AND ECONOMIC DEVELOPMENT, ENCOURAGING MODIFICATIONS TO PRE-EXISTING MEASURES TO FACILITATE BORDER CROSSINGS.
4. JOINTLY WORK TO DESIGN AND IMPLEMENT A MECHANISM TO CONSISTENTLY AND ACCURATELY COLLECT INFORMATION REGARDING THE VOLUME OF CROSS-BORDER TRAVEL AND TRAVELERS, TO GAIN COMPARABLE DATA TO MEASURE THE IMPORTANCE OF BORDER TOURISM.

AGRICULTURE

1. REQUEST THAT THE UNITED STATES CONGRESS EXPAND AND SIMPLIFY THE CURRENT H2A UNSKILLED LABOR VISA PROGRAM, WHICH ALLOWS AGRICULTURAL LABORERS TO WORK FOR A TEMPORARY PERIOD IN THE UNITED STATES, IN ORDER TO MEET THE EXISTING LABOR SHORTAGE IN THE AGRICULTURAL INDUSTRY.
2. REQUEST THAT THE FEDERAL AND STATE INSPECTION AGENCIES AT THE PORTS OF ENTRY ALONG THE U.S.-MEXICO BORDER WORK TO HARMONIZE AND MAINTAIN A CONSISTENT INSPECTION PROCESS, IDENTIFYING DISCREPANCIES IN CURRENT PROCEDURES AND PROMOTING OUTREACH, IN ORDER TO FACILITATE A SMOOTH INTERCHANGE OF BI-NATIONAL AGRICULTURAL PRODUCTS.
3. PROMOTE PLANT AND ANIMAL HEALTH, PHYTOSANITARY/SANITARY AND FOOD SAFETY PRACTICES, AS WELL AS QUALITY ASSURANCE MEASURES THAT ENSURE THE WELL-BEING OF CONSUMERS IN BOTH COUNTRIES, BY ENCOURAGING STATE AGRICULTURAL AGENCIES TO ENHANCE COOPERATION IN THEIR COLLECTIVE EDUCATIONAL OUTREACH AND INFORMATION DISSEMINATION TO PRIVATE INDUSTRY.

4. ENCOURAGE THE CONTINUED DEVELOPMENT OF BI-NATIONAL SCIENTIFIC AND ACADEMIC EXCHANGE PROGRAMS INTENDED TO ADDRESS RAPIDLY CHANGING ENVIRONMENT AND CROSS-BORDER MARKETING NEEDS OF AGRICULTURAL PRODUCERS IN BOTH COUNTRIES.

ENVIRONMENT

1. REQUEST THAT THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES RESTORE THE BUDGET FOR THE BORDER ENVIRONMENTAL INFRASTRUCTURE FUND (BEIF) TO AT LEAST \$100 MILLION PER YEAR, AS PROJECTED BY THE NORTH AMERICAN DEVELOPMENT BANK'S (NADBANK) TEN-YEAR NEEDS ASSESSMENT, IN ORDER TO ADDRESS THE SUBSTANTIAL DEFICIENCIES IN THE BORDER REGION AND RECOGNIZING THE PROGRESS ACHIEVED WITH THESE FUNDS IN PREVIOUS YEARS.
2. REQUEST THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) EXPAND THE SCOPE OF THE BORDER ENVIRONMENTAL INFRASTRUCTURE FUND (BEIF) FROM WATER AND WASTEWATER, TO INCLUDE FUNDING FOR MUNICIPAL SOLID WASTE PROJECTS.
3. REQUEST THAT BOTH FEDERAL GOVERNMENTS EXPLORE ESTABLISHING MECHANISMS TO REDIRECT EXISTING REVENUES GENERATED LOCALLY TO SUPPORT BORDER ENVIRONMENTAL PROGRAMS, RECOGNIZING THAT BOTH NATIONS HAVE BENEFITED FROM INCREASED ECONOMIC ACTIVITY IN THE BORDER REGION AND THAT THE RESULTING ENVIRONMENTAL CHALLENGES REQUIRE ADDITIONAL FUNDING.
4. REQUEST THAT BOTH FEDERAL GOVERNMENTS INFORM RESPECTIVE STATES IN WRITING ABOUT PROPOSED PROJECTS WITH POTENTIAL TRANSBOUNDARY ENVIRONMENTAL IMPACT, AND ACT IMMEDIATELY FOR THE ESTABLISHMENT OF AN INTERNATIONAL AGREEMENT, RECOGNIZING THAT THE BORDER STATES WILL COORDINATE AND NOTIFY ALL AFFECTED STATES.
5. PROTECT SHARED WATER RESOURCES IN THE BORDER REGION BY ENCOURAGING APPROPRIATE STATE AND FEDERAL AGENCIES TO PROMOTE CONSERVATION POLICIES FOR ALL WATER USE SECTORS.
6. REQUEST THAT MEXICO'S SECRETARIAT OF THE ENVIRONMENT, NATURAL RESOURCES AND FISHERIES (SEMARNAP) AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA), DEVELOP A BINATIONAL PROGRAM WITH STATE INPUT FOR ENVIRONMENTALLY SOUND HANDLING AND MANAGEMENT OF PESTICIDES, FERTILIZERS, AND TOXIC SUBSTANCES USED IN AGRICULTURE AND LIVESTOCK INDUSTRIES IN ORDER TO PROTECT PUBLIC HEALTH.

7. REQUEST THAT THE SOUTHWEST CENTER FOR ENVIRONMENTAL RESEARCH AND POLICY (SCERP) APPROVE THE INCORPORATION OF A STATE REPRESENTATIVE FROM EACH COUNTRY TO THE MANAGEMENT COMMITTEE TO BE MORE RESPONSIVE TO THE ENVIRONMENTAL NEEDS OF THE BORDER STATES.
8. STRENGTHEN AND FORMALIZE THE COORDINATION MECHANISM AMONG THE ENVIRONMENTAL AGENCIES OF THE TEN STATES, WHICH WAS INITIATED WITH THE SUPPORT OF THE UNITED STATES' WESTERN GOVERNORS' ASSOCIATION (WGA), AND ENCOURAGE PURSUIT OF CONTINUED FUNDING.
9. REQUEST THAT EACH FEDERAL GOVERNMENT INCREASE THE APPROPRIATION FROM \$1.6 MILLION TO AT LEAST \$2 MILLION FROM EACH COUNTRY TO THE BORDER ENVIRONMENTAL COOPERATION COMMISSION (BECC), THROUGH MEXICO'S SECRETARIAT OF THE ENVIRONMENT, NATURAL RESOURCES AND FISHERIES (SEMARNAP) AND THE U.S. STATE DEPARTMENT, TO IMPROVE THE EFFICIENCY OF THE PROJECT APPROVAL PROCESS, INCLUDING REEVALUATION OF CRITERIA AND CERTIFICATION OF PROJECTS PROPOSED BY THE PRIVATE SECTOR.
10. REQUEST THAT THE NORTH AMERICAN DEVELOPMENT BANK (NADBANK) AND THE BORDER ENVIRONMENT COOPERATION COMMISSION (BECC) INCLUDE A STATE REPRESENTATIVE FROM EACH COUNTRY ON THE U.S.-MEXICO INFRASTRUCTURE COORDINATION COMMITTEE IN ORDER TO INCORPORATE STATE INTERESTS.

EDUCATION

1. STRENGTHEN AND PROMOTE SUCCESSFUL TECHNICAL TRAINING AND WORK FORCE DEVELOPMENT PROGRAMS TO ENHANCE THE WELFARE AND PROSPERITY OF THE ECONOMIES AND RESIDENTS OF OUR REGION.
2. PROMOTE EDUCATIONAL LANGUAGE PROGRAMS THAT ENCOURAGE THE EFFICACY AND FLUENCY OF ENGLISH AND SPANISH.
3. INTENSIFY COLLABORATION TO MEET FUTURE TEACHER TRAINING AND OTHER EDUCATIONAL NEEDS, WORKING WITHIN EACH STATE GOVERNMENT, AS WELL AS WITH THE MULTI-STATE REGION, TO PROMOTE THE EXCHANGE OF INFORMATION AND THE ANALYSIS OF STRATEGIES TO SOLVE COMMON NEEDS.
4. REVITALIZE THE EDUCATIONAL STRUCTURES AND PROGRAMS IN THE BORDER STATES TO EXPAND, COORDINATE AND CONSOLIDATE ACADEMIC, TECHNICAL, CULTURAL AND EDUCATIONAL EXCHANGES.
5. PREPARE A COMPLETE DIRECTORY OF THE EXCHANGE PROGRAMS IN THE TEN BORDER STATES, IDENTIFYING PUBLIC AND PRIVATE FINANCIAL AND HUMAN RESOURCES TO SUPPORT SUCH PROGRAMS.

HAVING AGREED TO THE FOREGOING, THE TEN BORDER GOVERNORS AGREED TO MEET NEXT YEAR IN THE STATE OF TAMAULIPAS, ELECTING THE GOVERNORS OF TAMAULIPAS AND ARIZONA AS PRESIDENT AND VICE PRESIDENT, RESPECTIVELY, OF THE XIX BORDER GOVERNORS CONFERENCE. SIGNED IN SACRAMENTO, CALIFORNIA, THE 2ND OF JUNE, 2000.