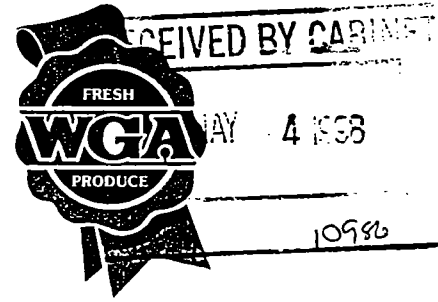


Western Growers Association

Serving the California and Arizona Fresh Produce Industry

May 1, 1998



Ms. Victoria Bradshaw
Deputy Cabinet Secretary
Office of the Governor
Sacramento, CA 95814

Mr. Ray Remy
Director
Employment Development Department
800 Capitol Mall
Sacramento, CA 95814

Dear Vicky and Ray:

The Western Growers Association Board of Directors met this week at its regular quarterly board meeting. The major topic raised by the Board was the issue of availability of labor and its implications for WGA's membership. Because of the seriousness of the issue to WGA's membership, the Board created a Labor Availability Task Force which has been charged with exploring all legislative, regulatory, and non-government solutions to the problem. The task force is comprised of a geographical mix of WGA Board members and other WGA grower, shipper, custom harvesters and farm labor contractors.

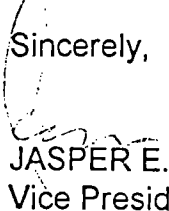
As I stated in my April 16, 1998 letter to you, EDD job classifications, unemployment statistics and recall procedures and resource allocation were and remain, our members believe, some of the main issues which bear on California farm labor availability. As long as the unemployment statistics remain high, even if California farmers wanted to avail themselves of the H2A guest worker program, farmers will not be able to use this method for obtaining labor.

This is, therefore, an invitation to you to meet with the WGA Labor Availability Task Force at its May 19, 1998 meeting in Salinas, California. Your portion of the meeting will last from 12:00 noon to 1:30 p.m. (Lunch will be provided.) The meeting will be held at:

**Grower-Shipper Vegetable Association
512 Pajaro Street
Salinas, California
(408) 422-8844**

Please RSVP to me at (916) 446-1435. Thank you in advance for your participation.

Sincerely,


JASPER E. HEMPEL
Vice President, Government Affairs

Raleigh News & Observer June 9, 1998 (?)

PINK HILL

**Migrant workers say
they were abused**

Migrant workers who fled a Lenoir County cucumber farm said the owner forced them to work a 14-hour shift their first day, even when some became ill.

With eight of the workers at his side, Jaime Delcarpio said the rare mass exodus shows some farmers are abusing Mexican migrant workers recruited and hired by the N.C. Growers Association through the federal H2A guest worker program.

Huddled in Delcarpio's Silo Christian Church in Pink Hill, the workers complained that farmer Anthony Smith worked them from 6 a.m. to almost 9 p.m. June 3, forcing one 21-year-old to continue plucking cucumbers after he spit up blood.

Reached at his home, Smith said he didn't push any workers who were feeling ill.

The workers were whisked away in a bus when church activists became concerned the migrants were too conspicuous in Pink Hill, just over the Duplin County line.

FROM STAFF AND WIRE REPORTS

Bruce Goldstein

Adverse effect wage rate



Idea is that prevailing wage is depressed by foreign workers.
(USC 1188)

Set @ level of regional hourly wage for field & livestock workers

Survey done by USDA

DOL publishes a notice of these rates

turns it into wage rates by state.

AEWR = average of these regional rates (that include

Litigation re: what the ^{adverse effect} wage rate should be.

DC Cir. dismissed lawsuit; said DOL w/lot of discretion.

Reform: could key to 80th percentile
30% above average

GAO
surplus

Regulation of wage levels

DOL: U.S. recruitment

really about wage & working conditions

Crew leaders / labor contractors

use has expanded widely in last 10 yrs.

(since IREA
employers want a shield)

Usually opposed to crew leaders

but

lots are hired by FLCs

($\frac{1}{2}$ - $\frac{2}{3}$ in CA are hired w/ use of FLCs)

→ [Employers should be required to use FLCs
for U.S. recruitment.]

[DOL regs. require this.]

→ If use, must use for both — needs enforcement

(+)

Must use inter-state job service.

Doesn't work

Growers (outside H2A) don't use the job service (1%)

So, workers don't use it

H2A are told to use it, but workers don't use it,
so not effective to get US workers.

Wyden / Graham

job registry system (how diff. from job service).

~~Ham~~; if focus on job service or recruitment
(does)

only 20K H2A workers
in the country

Barriers to U.S. workers

getting
the
job

① ~~no~~ no worker choice on which employers
(want to stay together as a group)

disperse U.S. workers among growers.

Employers don't allow direct application.

Consolidation of growing seasons.

(blocks out job preference .
generally messing w/ growing season .

Preference for H2A workers is control over workers.

Ernesto Galarza
- Merchants of Labor

non-immigrants
no right to vote w/ feet

→ [No SS or emp. taxes on H2A workers wages.
(10%)]

Keeping
the job ②

⊗ H2A employers are almost 100% H2A

The regs in place now allowed sugar cane abuses.
(in past) as they allow abuses now.

→ Rick Kaufman - runs H2A program

Would welcome shift over to Wage & Hour.

4/14/98

Guestworkers

Not timely

Costly

Seen effectiveness of crack down on illegal immigration in last 18 mo.

37% of workforce is illegal (by self-reporting).

Fixes to existing program
When illegals dry up, need a way to get legal ~~in~~ workers faster and more effectively

Pilots are modest

to test alternatives to H2A structure.

% of workers who are in H2A program

Widen

Wiley and Graham in the Senate (?)

approach, problem in a different way.

Average prevailing wage (?)

Doing away w/ labor cert. - instead, attestation w/ enforcement.

2.1 million agricultural workers

Small v. Large

1.6 - 1.9 million seasonal workers

farmers

(approx 600k are illegal?) - self identified

or certain

If more than 70% of names don't match numbers, IRS sends them back

kill of crops

H2A - fewer than 20,000 workers each year.

get who here is higher minimum wage if by the hour (\$5.70) otherwise, piecemeal (about \$9/hr.)

Return?
guaranteed
return?

\$6.18/hr. tobacco.

\$520/worker through the program.

(North Carolina Growers Association)

Get rid of nation-wide search

What is up w/ domestic recruitment entities

Cost?

Adverse effect wage rate (average hourly earnings)

Prices agriculture occup. out of the market

Oregon — \$7.08/hr.

High for field work

Rem: have to add housing, transportation home, 3/4 guarantee

Want ~~to~~ Prevailing wage in the occupation

On-farm housing — required?
or
~~community-based~~ alternatives?

Paperwork/bureaucracy

Program not working well for shortage
circumstances.

PODESTA

associates, inc.

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FACSIMILE TRANSMISSION

TO: Julie Fernandez

DPC

FAX #: 456-2878 CODE: 258

DATE & TIME: 20 March

FROM: Tom Podesta

NUMBER OF PAGES INCLUDING COVER SHEET: 6

MESSAGE

IF A PROBLEM OCCURS WITH THIS TRANSMISSION, PLEASE CALL (202)393-1010.

PODESTA
associates, inc.

March 20, 1998

MEMORANDUM

TO: Julie Fernandes
FROM: Tony Podesta
SUBJECT: Agricultural Guestworker Program - Request for Meeting

As you know, last week the House Judiciary Subcommittee on Immigration and Claims marked-up legislation that will create a new agricultural guestworker pilot program. The morning of the mark-up Secretary Herman sent a letter to the Subcommittee indicating that the Administration "strongly opposes" enactment of the legislation. We are working with the National Council of Agricultural Employers which supports enactment of legislation to correct the problems of the current guestworker program and I would like to schedule a meeting with you and the appropriate DPC staff to discuss this matter. We have also asked to meet with the NEC on this issue and would be happy to combine the meetings if you'd prefer.

I would anticipate bringing a small group of four or five individuals including actual growers to discuss the need for legislation. Please let me know what works with your schedule. I can be reached at 393-1010.

Attached, for your information, is some material on this issue.

Attachments



NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS ISSUE PAPER

GAO FINDINGS ON H-2A AGRICULTURAL GUESTWORKER PROGRAM SUPPORT RATIONALE FOR PENDING GUESTWORKER PROPOSALS

On December 31, 1997, GAO issued a report to Congress on the H-2A agricultural guestworker program. The report was mandated as a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA represents a major congressional effort to reduce illegal immigration into the U.S. Through expanded Border Patrol activities and tough provisions restricting employment of unauthorized workers, including increased INS enforcement and pilot programs to screen out fraudulent employment documents, IIRIRA seeks to cut off the "job magnet" into the U.S.

National and regional agricultural groups believe that an alternative to the H-2A program is needed and sought the GAO report to support this position. Among the reasons agriculture believes an alternative is necessary are:

- The current H-2A program is not practicable because it loaded with burdensome, inconsistent regulations, excessive paperwork, a bureaucratic certification process, and untimely and inconsistent decision making by DOL and other agencies.
- There is an *inadequate legal workforce* in agriculture and any significant increase in enforcement through audits of agricultural employers or expansion of pilot electronic employment record verification programs will adversely impact agricultural employers. Agricultural employers want to be able to obtain a legal workforce rather than hoping that INS won't verify the work eligibility of their workers.
- Agricultural employers have experienced labor shortages as a result of INS audits or enforcement activity on a regional basis and in tight labor markets. This activity has resulted in increased use of the H-2A program which has failed to meet employer needs in a timely manner, a critical factor for the producers of perishable commodities.

The GAO reports says the following about the above concerns of agriculture:

- Employers using the H-2A program are often confused by multiple levels of government with redundant levels of oversight, often resulting in conflicting administrative procedures and regulations. DOL's 325-page manual on the H-2A labor certification requirements employers must comply with is outdated, incomplete and not user-friendly. The H-2A housing requirements are a good example of this problem (GAO Report pp. 9, 53-58. See charts on pp. 40-41 showing complicated administrative process required of agricultural employers).
- There is agreement that a substantial portion of the agricultural workforce is not authorized to work in the U.S. GAO estimates the number at 600,000 out of a workforce of 1.6 million. DOL estimates it at 37% and data indicate that seasonal agricultural workers (SAW) legalized under IRCA declined in FY 1995 to 19% of the farm workforce. Of the 18% of all farmworkers who were in their first year of farm work during FY 1995, 70% were unauthorized foreigners (GAO Report, pp. 5, 7, 26, 30).

- Both INS and agricultural employers agree high quality fraudulent documents are readily obtainable and it is virtually impossible for employers diligently reviewing work documents as required by law to be certain that they have not hired illegally documented workers (GAO Report, p. 35).
- The prevalence of such a large number of unauthorized and fraudulently documented farmworkers leaves individual employers vulnerable to sudden labor shortages if INS targets enforcement efforts at their establishments (GAO Report, pp. 5, 7, 24).
- Limitations of available data make direct measurement of a labor shortage difficult. While a widespread labor shortage does not currently exist, the lack of evidence of such does not preclude the potential for, or existence of, localized shortages particular to specific crops or geographic areas. Experts and USDA officials agree that targeted or concentrated INS enforcement on the agricultural workforce leaves agricultural employers vulnerable (GAO Report, pp. 24).
- While it is premature to draw conclusions about pilot programs created by Executive Order and IIRIRA that screen out fraudulent employment documents, early pilots have been well received by employers (GAO Report, 35-36).
- Since Congress began consideration of IIRIRA in 1995, the number of H-2A applications, and workers certified has increased. The number of workers requested in the first 9 months of 1997 was 49% higher than in 1994 (GAO Report, p. 105).
- While DOL may eventually approve a high percentage of H-2A labor certification applications, in at least a third of the certifications, it missed the statutory deadline and a number of applications are not processed until after the date of need. DOL missed the statutory deadline in over 40% of the cases where employers filed applications at least 60 days before the date of need (GAO Report, pp. 8, 46).
- DOL doesn't collect data that would allow it to determine if and why it misses statutory deadlines. It keeps no data on timeliness of its processing of emergency applications (GAO Report, 47, 48).
- There is no reliable data to indicate that H-2A workers overstay their visas. One cannot assume all the people INS does not have a departure record for have in fact overstayed their visas. This is especially true of those who leave the U.S. by overland transportation, which includes most H-2A workers, since INS does not inspect traffic at land borders (GAO Report, p. 53).

Conclusion

The GAO report largely supports the foundation for pending legislation (H.R. 2377 and S. 1563) that would create a pilot guestworker program to overcome the administrative and bureaucratic problems that GAO finds characterizes the existing H-2A program. While some initial press reports on the GAO study stated that the absence of a finding of a widespread shortage of agricultural workers may lessen the case for such legislation, those reports ignore the premise of the legislation. The legislation is not based on the existence of a current widespread labor shortage. It is based on the vulnerability of agricultural employers to INS enforcement activity due to its largely fraudulently documented workforce, whether INS enforces the law on a regional, local, limited or widespread basis. As GAO recognizes, agricultural employers are subject to shortages when enforcement occurs.

When shortages occur, a workable guestworker program must be available. It is especially important that a guestworker program for labor intensive agriculture, characterized by highly perishable commodities, provide workers on a timely basis. GAO highlights the H-2A program's inability to do so. GAO supports agriculture's conclusion that the H-2A program could be improved to better serve employers. H.R. 2377 and S. 1563 make necessary improvements by reducing the labor certification bottleneck described by GAO.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

MAR 12 1998

Honorable Lamar S. Smith
Chairman, Subcommittee
on Immigration and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

This letter presents the views of the Administration on H.R. 3410, entitled "Temporary Agricultural Worker Act of 1998." This bill would establish a pilot program to provide another means to bring foreign workers into the United States to provide temporary or seasonal agricultural services. The Administration strongly opposes enactment of H.R. 3410. If H.R. 3410 were passed by the Congress and presented to the President, I would recommend that he veto the bill.

The General Accounting Office (GAO) has recently reported (December 1997), the existing temporary foreign agricultural worker (H-2A) program already assures an adequate and dependable labor supply for agricultural producers, while it seeks to protect the employment, compensation and working conditions of the U.S. agricultural labor force. The recent GAO report found that "ample supplies of farm labor appear to be available in most areas," although there is some possibility of localized shortages relating to specific crops or geographic areas.

Consistent with the findings and recommendations of two bi-partisan commissions -- the Commission on Agricultural Workers and the Commission on Immigration Reform -- the President opposes a new guestworker program. He has, however, directed that, if efforts to halt illegal immigration contribute to agricultural labor shortages, the Departments of Agriculture and Labor should work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers. In response to concerns regarding localized shortages, the Departments of Agriculture and Labor will work cooperatively to determine means of streamlining the current H-2A program to make it more responsive to the needs of agricultural producers, and more effective in protecting U.S. workers.

Also we acknowledge that there have been difficulties administering the H-2A program. However, none of these difficulties require legislation; all can be effectively addressed administratively. The GAO made several such recommendations that the administering agencies have agreed to take the necessary steps to implement. In addition to changes in the program that respond to GAO recommendations, such as shortening the lead time on submitting H-2A

applications from 60 to 45 days, other possible H-2A program changes are being considered that address issues contained in H.R. 3410. These include reducing the lead time for completing housing inspections from 30 to 20 days prior to date of need; providing expedited certification for employers who reduce their use of H-2A workers by 25 percent or more over the previous year, and other changes to strengthen worker protections and enforcement. We plan to proceed with these and other proposals as soon as possible.

In view of the President's position, the GAO's findings and accepted recommendations, and the cooperative efforts of the Departments of Agriculture and Labor to develop ways to administratively restructure the H-2A program, the Administration is strongly opposed to H.R. 3410.

The Office of Management and Budget advises that there is no objection to presentation of this report and that enactment of H.R. 3410 would not be in accord with the Administration's program.

Sincerely,



Alexis M. Herman

INGRID M. SCHROEDER

03/17/98 01:33:21 PM

Record Type: Record

To: Debra J. Bond/OMB/EOP, Noah Engelberg/OMB/EOP, Steven M. Mertens/OMB/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: Guestworkers story

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 03/17/98 01:33 PM -----

James J. Jukes

03/13/98 06:16:46 PM

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To: Ingrid M. Schroeder/OMB/EOP@EOP

cc:

Subject: Guestworkers story

----- Forwarded by James J. Jukes/OMB/EOP on 03/13/98 06:17 PM -----

BNA

Daily Report for Executives

No. 49

Friday March 13, 1998

Regulation, Law & Economics

Employment

House Panel OKs New Farm Guest Workers Despite Objections from Administration

A House Judiciary subcommittee March 12 approved legislation to test new procedures for temporarily employing foreign agricultural workers, raising the prospect of a renewed debate on how to address the impact of strengthened restrictions on illegal immigration on the U.S. agricultural sector.

The immigration and claims subcommittee last formally visited the issue in September during consideration of a bill (HR 2377) sponsored by Rep. Robert Smith (R-Ore), chairman of the House Agriculture Committee. Smith introduced new legislation (HR 3410) March 10 that mostly mirrors his original measure, with a few modifications.

The bill approved by the subcommittee by voice vote would, like its predecessor, establish a 24-month pilot program to test streamlined procedures for companies to secure approval to employ temporary alien workers. However, the latest version of the measure reduces the number of agricultural workers who could be admitted under the pilot program from 25,000 to 20,000.

The pilot program would not affect the Labor Department's existing H-2A program and would be available in a minimum of five geographically and agriculturally diverse areas designated by the secretary of agriculture. The bill calls for an evaluation of the pilot by an unbiased party, such as the General Accounting Office, to determine how effective it is in providing a legal workforce and adjusting to the needs of U.S. farmers.

Need to Address Worker Shortage

Representatives of agricultural employers maintain that a program other than the existing H-2A program is essential to address a shortage of workers who are legally entitled to work in the United States and who are willing and able to perform temporary and seasonal farm work. Those opposed to a new guest worker program argue that if, indeed, there is a shortage of agricultural labor in the United States, it should be addressed by improving wages and working conditions.

The debate is reminiscent of one that took place two years ago when the 1996 illegal immigration bill was wending its way through Congress. Spurred by fears that the bill's strengthened restrictions on illegal immigration would result in shortages of farm labor, there was an unsuccessful move to incorporate a guest worker program in the measure. President Clinton threatened to veto the bill at the time if the move were successful, expressing concern that a new program for admitting alien farm workers into the United States would end up increasing illegal immigration and adversely affecting wages, job opportunities, and working conditions for U.S. workers.

The administration remains opposed to establishment of a new alien guest worker. Labor Secretary Alexis M. Herman indicated in a March 12 letter to the subcommittee. Saying that she would recommend that the president veto Smith's bill, Herman pointed out that opposition to a new program is consistent with the findings and recommendations of two bipartisan commissions--the Commission on Agricultural Workers and the Commission on Immigration Reform.

Streamlining Current Program

Herman also told the subcommittee that the Departments of Labor and Agriculture have been directed to confront evidence of a link between efforts to halt illegal immigration and agricultural labor shortages by working together to improve existing programs. She reminded the panel that GAO just recently reported that the existing H-2A program already assures an adequate and dependable labor supply for agricultural producers, while at the same time seeks to protect the employment, compensation, and working conditions of the U.S. agricultural labor force.

Herman quoted from the report, saying that "ample supplies of farm labor appear to be available in most areas." She acknowledged, however, the possibility of localized labor shortages relating to specific crops or geographic areas. In response to these concerns, the departments of Agriculture and Labor are looking to streamline the H-2A program to make it both more responsive to the needs of growers and more effective in protecting U.S. workers, she said.

The agencies also have agreed to take a number of steps recommended by GAO to address difficulties in administering the program, Herman wrote. Among the changes under consideration are shortening the lead time for submitting applications for workers under the program from 60 to 45 days and expediting certification for employers who reduce their use of H-2A workers by 25 percent or more from the previous year.

Additional recommendations may come to light at the end of this month when the Labor Department's own

our goal

What has been agreed to?
What has not?

inspector general concludes a review of the H-2A program.

Bill's Offset Lauded

While he has consistently expressed concern that a guest worker program will contribute to illegal immigration, Rep. Lamar Smith (R-Texas), the subcommittee's chairman, appears ready to give the new proposal a try. During the markup, he pointed to a provision in the measure that would reduce by up to 5,000 the number of visas issued under each of two other programs, the unskilled worker visa program and the diversity visa program.

Kicking in during the second year of the program's operation, the reduction in those two programs' visas would partially offset the number of pilot program visas granted the previous year, Smith explained. "This offset will ensure that even if HR 3410 does result in appreciable illegal immigration, total immigration to this country will likely not be increased," Smith said.

While much of the workforce devoted to harvesting labor-intensive crops such as fruits and vegetables ideally would be made up of American workers, "there may be a role for a guest worker program in those situations where domestic workers are not available," Smith said. He pointed out that the H-2A program "suffers from wide dissatisfaction in the agricultural community because of its complexity, sometimes unreasonable standards, and unreliability in ensuring that farmers get workers when they need them."

Regional Labor Shortages Cited

After the markup, Robert Smith, the bill's sponsor, countered the notion that the H-2A program is sufficient to address the regional labor shortfalls experienced in the agricultural sector. The program is unwieldy and complicated, Smith said in a statement, and requires farmers "to spend every waking moment filling out forms and traveling all over in the hopes of finding people to work their land."

Smith also pointed out that the labor force includes anywhere from 600,000 to 1.2 million illegal agricultural workers. "To say the current system works is like telling hospitals they don't need any source of legal pharmaceuticals because they can buy plenty of drugs on the street," he said.

Sen. Gordon Smith (R-Ore) introduced legislation (S 1563) similar to the House bill last November. That measure has yet to come up for a hearing.

As head of the House immigration panel, Smith of Texas wants to see what happens in the Senate before moving forward with the bill, his spokesman said.



By Deborah Billings

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Ingrid M. Schroeder
09/19/97 04:00:16 PM

.....

Record Type: Record

To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP, James C. Murr/OMB/EOP, Nancy J. Duykers/OMB/EOP, Paul W. Baker/OMB/EOP
Subject: LRM #IMS151 - LABOR Statement for the Record on HR2377 Temporary Agricultural Worker Act of 1997

Total Pages: _____

LRM ID: IMS151

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, September 19, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109
SUBJECT: LABOR Statement for the Record on HR2377 Temporary Agricultural Worker Act of 1997
DEADLINE: 3pm Monday, September 22, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Please note that the Department of Labor opposes the creation of a new agricultural guestworker program and opposes H.R. 2377.

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LRM ID: IMS151 **SUBJECT:** LABOR Statement for the Record on HR2377 Temporary Agricultural Worker Act of 1997

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet



091913F9.DO

Draft #5 (9/19/97)

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

before the

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE

September 24, 1997

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear again to discuss with you the Administration's views on proposals for a new agricultural guestworker program.

When I appeared before your Subcommittee about a year-and-a-half ago -- in December 1995 -- my testimony focused on the Administration's views on the idea of establishing a new agricultural guestworker program; there was no legislation then pending. Since then, such legislation has been considered, and resoundingly defeated in the House. The Subcommittee is now considering a similar bill, H.R. 2377, to amend the Immigration and Nationality Act to establish a new agricultural guestworker program in addition to the current H-2A temporary nonimmigrant agricultural worker program.

Mr. Chairman, before addressing H.R. 2377, a bill which the Administration strongly opposes, I would like to briefly recount the major points of my previous testimony which underlie the Administration's opposition to creating a new agricultural guestworker program. These points are more fully developed in my December 1995 testimony.

The President has been and remains opposed to establishing a new agricultural guestworker program. In June of 1995, agreeing strongly with the bi-partisan Commission on Immigration Reform's recommendation on this subject, the President said:

"I oppose efforts in the Congress to institute a new guestworker or 'bracero' program that seeks to bring thousands of foreign workers into the United States to provide temporary farm labor."

In explaining his position, the President said,

"A new guestworker program is unwarranted for several reasons:

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

The Congressionally-created, bipartisan Commission on Immigration Reform has examined this question and stated its conclusion: "The Commission believes that an agriculture guestworker program, sometimes referred to as a revisiting of the 'bracero agreement', is not in the national interest and unanimously and strongly agrees that such a program would be a grievous mistake."

Another Congressionally-created commission -- the bipartisan Commission on Agricultural Workers also had examined this issue and, in November 1992, stated its conclusion: ". . . [w]ith the existing agricultural labor supply, there is currently no need to supplement the farm work force with additional foreign workers beyond those authorized through the existing H-2A [temporary foreign agricultural worker nonimmigrant] program."

Most recently, the Binational Study on Migration -- a joint study by highly respected scholars from both Mexico and the U.S. -- again examined this question and in its report, issued earlier this month, stated its conclusions, which in part state: "....opening a legal channel for Mexican temporary workers would probably add to, rather than substitute for, unauthorized workers, perhaps depressing conditions for legal Mexican-born workers in the U.S. labor market Such [guestworker] programs may 'substitute legal for illegal workers,' but it is not in the interest of either country to codify easily exploitable labor exchanges."

Mr. Chairman, these reviews represent a great weight of thoughtful, scholarly and bi-partisan support for the President's position opposing a new agricultural guestworker program.

As the Subcommittee knows, the Administration has put in place comprehensive initiatives to reduce the number of illegal immigrants in the United States. These include a national Border Control strategy and enhanced resources to significantly expand the Justice and Labor Departments' efforts to curtail illegal migration and the illegal employment which is the primary lure for this migration. As H.R. 2377 demonstrates, there continues to be talk about another agricultural guestworker program should the Administration's efforts effectively reduce the flow of illegal migrant farmworkers across the border. Western growers in particular claim there will be future labor shortages and disdain the existing H-2A nonimmigrant agricultural worker program as unresponsive to their perceived needs. However, in his June 1995 statement, the President also said:

"If our crackdown on illegal immigration contributes to labor shortages -- especially for perishable crops that require large numbers of workers for short periods of time -- I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers."

Despite these assurances, and the absence of any credible evidence of farm labor shortages, some agricultural interests continue to cite the Administration's increased efforts to control illegal immigration to promote another agricultural guestworker program. We understand the perceived basis for yet another program is that these growers will risk being unable to harvest their crops without the illegal workforce that they have used in the past. However, the preponderance of the farm labor force is work-authorized and among this group, there is substantial underemployment. Furthermore, these agricultural growers have not even utilized the existing "safety valve" -- the H-2A agricultural guestworker program.

As in my December 1995 testimony, we continue to recommend examining the underlying need for any new agricultural guestworker program by addressing three questions:

- (1) Is there a problem, i.e., is there a shortage of farmworkers in the U.S.?
- (2) If there is a problem, is a new foreign guestworker program the best or only way to address it?
- (3) In a particular case where other approaches prove ineffective and a foreign guestworker program is seen as the only way to deal with supplying temporary labor to U.S. agriculture, is there something fundamentally wrong with the existing H-2A temporary farm labor program which already provides agricultural growers a "safety valve"?

Our careful analysis of the answer to each of these questions is an unambiguous "No," and still leads us to the unavoidable conclusion that such a program is simply not in the national interest of the United States.

There Is No Shortage of Farmworkers

With regard to the first question, the evidence is overwhelming -- and, to our knowledge, uniform -- that there is no overall shortage of farmworkers in the U.S., nor is there likely to be in the near future. All of the available data on labor supply indicate that overall there has been and continues to be an agricultural labor surplus.

The Immigration Reform and Control Act of 1986 (IRCA) not only provided for a generous legalization program for nearly 1.1 million agricultural workers but for a contingent Replenishment Agricultural Worker (RAW) Program as well. But for each of the four fiscal years that this program was in place (FY 1990-93), the joint USDA/DOL research showed that there was no shortage of agricultural workers in the United States (though during these years an average of about 17,000 nonimmigrant H-2A farmworkers were admitted each year to work on crops that they had been working on for several decades). The vast majority of these 1.1 million legal workers remain available for farm work.

Independently, the Congressionally-mandated, bi-partisan Commission on Agricultural Workers similarly concluded in its November 1992 report that the national supply of agricultural labor

was more than adequate and that there was no need to supplement the farm work force with additional foreign workers beyond those authorized through the existing H-2A program.

There is also no current evidence of a shortage of farmworkers or the likelihood of one developing. On the contrary, the National Agricultural Workers Survey (NAWS), which continues to collect detailed demographic and labor force data on the U.S. farm labor force, reveals a high degree of un- and under-employment among U.S. farmworkers and that a surplus of farmworkers has persisted, and may even be increasing. NAWS data have shown that even in the primary harvest months, a significant segment of U.S. farmworkers are not employed in farmwork. These data also show that a majority of all farmworkers have work authorization. Thus, the large supply of farmworkers who have work authorization provide a sufficient supply of legal, farm labor, given that even in the periods of peak demand, a significant segment of farmworkers are not employed in farmwork. If growers stopped hiring illegal workers (or if the supply of illegal farmworkers dried up tomorrow), the overall supply of legal, work-authorized farmworkers is great enough to meet demand even in peak harvest months (though localized shortages may still occur).

I would like to submit for the record the most recent NAWS data which support these conclusions, and update the same information provided in my December 1995 testimony.

A New Guestworker Program Is Not In The National Interest

As to the second question, our analysis leads us to conclude -- like the several other prestigious, independent and bi-partisan analysts already cited -- that a new foreign guestworker program is not the best or only way to address shortages of farmworkers in the U.S. Creation of such a program would likely result in many more -- and more significant -- problems than it might conceivably address.

Some of the principal reasons we draw this conclusion are as follows:

The first is this country's negative historical experience with the Bracero Program, which was terminated by Congress in 1964 on the basis of its adverse impact on the wages and working conditions of U.S. farm workers. The Bracero Program also caused recurring tensions in U.S.-Mexican relations, as Mexico continually accused U.S. employers of mistreating Mexican nationals working in U.S. agriculture. Any new guestworker program could be expected to raise similar bilateral issues, as clearly indicated in the recently released Binational Study on Migration.

Second, there is little reason to believe that offering and promoting yet another avenue for legal entry and employment in the U.S. will lure certain employers and entire employment sectors away from their reliance on illegal workers. IRCA's history in the agricultural sector has shown this not to be the case.

Third, a new foreign guestworker program will not necessarily reduce the flow of illegal workers into the U.S. or reduce the number of illegal visa overstayers -- in effect, by converting the illegal flow into a legal one. On the contrary, historical experience in the U.S. and Europe indicates that

guestworker programs establish migratory networks and paths that most commonly exacerbate illegal migration rather than reducing it.

Fourth, once temporary worker programs are established, they soon become entrenched and extremely difficult to terminate. In effect, such programs can transform temporary labor shortages into structural workforce problems, as evidenced by some usage of the H-2A program over the years. The experience of other countries also shows that reliance on temporary worker programs often delays, and may prevent, structural adjustments in the economy. History also shows that guestworker programs, because they create structural workforce problems, can create pressures for legalization and conversion to permanent residency.

Fifth, the use of guestworkers commonly moderates market-driven incentives to improve productivity and raise wages to levels at which the jobs would be more attractive to domestic workers. A new agricultural guestworker program would encourage more nonimmigrant employment in agriculture, where workers are among the most vulnerable and, thus, where U.S. workers are most likely to suffer unfair competition, displacement, and other forms of harm, building structural labor supply problems. Guestworker programs can also create and institutionalize a two-tier workforce with the guestworker population being extremely vulnerable, not only to workplace exploitation but to a host of civil and human rights abuses consequent to their second-class status and their indenture to one employer or even industry.

The H-2A Program

Our answer to the third question is that, based on experience with the current H-2A program, it can work to meet localized agricultural labor shortages.

✓ Over the past four decades, the H-2A program, and its predecessor H-2 program, have provided a safety valve for agricultural growers to ensure that their crops can be harvested. The program works well when utilized. While the Department's statutory focus on making every effort to find ~~U.S. workers for H-2A jobs~~ may have inconvenienced some employers, there is scant evidence that the Department has denied legitimate requests for nonimmigrant farmworkers. In fact, a high percentage of growers who seek workers under the H-2A program -- even in the face of the substantial oversupply of domestic farmworkers already mentioned -- are granted approval to bring in foreign workers. Further, there are provisions in the H-2A program to accommodate agricultural employers filing emergency requests if there is good and substantial reason, such as unforeseen changes in market conditions. While relatively few such requests have been received, the Department has consistently accommodated growers with legitimate emergency needs.

✓ However, nearly all H-2A workers are used on the East Coast, not in the West. Western growers, if they have a need, have not tried to use the present system. If utilization of the H-2A program increased, more agricultural employers would be offering U.S. workers job opportunities superior to those otherwise available for a particular commodity in an area. This, in turn, would enable the employment service to place available U.S. workers in these jobs. Combined with enhanced illegal immigration control, this would have the effect of replacing unauthorized workers with U.S. or nonimmigrant workers.

Any resort to yet another, untested foreign agricultural guestworker program raises anew the specter of the dreadful outcomes of the Bracero Program. Ironically, it appears that the impetus for creating a totally new agricultural guestworker program comes primarily from those who have not even tried the existing H-2A program and, rather, continue to rely on attracting illegal migrants to meet their workforce needs.

Views on H.R. 2377

These reasons explain the Administration's strong opposition to a new agricultural guestworker program like that defeated last year in the House and like H.R. 2377 that you are now considering. But, Mr. Chairman, let me also explain the Administration's opposition to H.R. 2377 in particular by posing and answering four questions that we would urge the Subcommittee to carefully consider.

First, will H.R. 2377 provide growers the stable labor supply they seek? H.R. 2377 would permit admission of up to 25,000 foreign agricultural guestworkers without any independent DOL determination of shortage. This is a larger number than growers have been requesting under the H-2A program. So the answer to this question may be "yes" for some growers. Those growers currently using the H-2A program would likely move over to the new program under H.R. 2377 because unquestionably their labor costs would be lower. And other growers may want to use the program as well. But at what price 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 and wages and working conditions of U.S. farm workers, and increase -- not reduce -- the opportunity for abuse of foreign agricultural workers. The bottom line is that these consequences are too great a price to pay. This is especially true given the fact that the H-2A program can provide growers the supply of workers they need while moderating the risk of these harmful side effects.

The second question is whether H.R. 2377 will protect U.S. agricultural workers from unfair competition? It will not. H.R. 2377 will severely weaken the protections provided by the existing H-2A program. For example, the bill contains no requirement for employers to develop and implement an affirmative or effective domestic farm worker recruitment plan, and qualified U.S. workers who seek employment could be discriminated against and rejected before the work is to begin (as well as after work starts). The result, we believe, would inevitably be to discourage the hiring of U.S. farm workers and undermine their wages and working conditions.

The third question is whether H.R. 2377 will adequately protect foreign agricultural workers from abuse? Again, the answer is clearly "No." Foreign farmworkers would be entitled to a limited Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosure of terms and conditions of employment, but only when the visa is issued. This means that workers could face having to decide about whether to take the employment when recruited without knowing the terms and conditions of employment, or perhaps based on false information. They could then find themselves at the border seeking a visa when they learn what the real terms and conditions of employment are. These foreign workers could be brought into the country at their own

expense -- their employers would have no obligations to pay or reimburse transportation cost into or out of the U.S. -- and without any housing (unless the provision of housing is the locally prevailing practice). And even the starkly limited worker protections provided under this bill could not be effectively enforced. The Department could only enforce pursuant to a complaint alleging violation -- unlikely from foreign workers unaware of their legal rights and effectively bonded to and entirely dependent upon their U.S. employer -- and would have no authority to pursue court action on behalf of the workers to obtain compliance with the required terms and conditions of employment.

Finally, we must consider how H.R. 2377 will affect illegal immigration to the U.S.? As I noted, and the Binational Study also suggests, experience shows 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. 2377 would be no different -- it would make it easier for foreign agricultural workers admitted under the program to become illegal workers by overstaying in this country. Under current law, in addition to paying return transportation costs, H-2A employers must post a bond to assure the return of workers to their country of origin. H.R. 2377, however, would put the employer under no obligation to ensure the workers it imported leave the U.S. upon completion of the work. Rather, H.R. 2377 addresses this issue by requiring that a substantial portion of the foreign workers' wages be withheld until the workers return to their home country. Not only does this approach shift the financial burden to the workers, but it is highly questionable that even such an extreme measure as this would provide sufficient incentive for many workers from Mexico to leave the U.S. given the overall wage differential between the U.S. and Mexico. And further exacerbating the bill's potential adverse impact on illegal immigration is the fact that it would also allow guestworkers to remain in the U.S. for a period of time between jobs, giving them better opportunity and more time than under the current system to disappear into the underground economy. (In this regard, it should also be noted that H.R. 2377 would have the foreign workers -- not their employers -- pay, at least in part, for the Federal government's administration of the program which primarily benefits the employers.)

Conclusion

Mr. Chairman, the President has assured American agriculture that if current efforts to stop illegal immigration contribute to agriculture labor shortages, he will direct the Secretaries of Labor and Agriculture to improve and enhance existing programs to meet agricultural labor needs. To date we see no evidence of a shortage of domestic agricultural workers. However, through our NAWS and other sources we will continue to closely monitor agricultural labor supply and, if we find that there are real labor shortages in agriculture, we will work with the USDA, growers and workers to take effective remedial measures.

The Administration agrees with the bi-partisan Commissions on Agricultural Workers and Immigration Reform in strongly recommending that Congress not establish any new agricultural guestworker program, which would simply not be in the national interest. And if Congress chooses to disregard this advice, H.R. 2377 is -- for all of the reasons I have outlined -- certainly

not an acceptable measure.

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.

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REVISED DRAFT - 4/9/96 - REVISED DRAFTH-2A Program "Streamlining"

✓ already done

1. BASILINE CHANGESAdmin.NPRM

- Reduce lead time
 - ▶ For applications, from 60 to 45 days before date of need
 - ▶ For pre-occupancy housing inspection, from 30 to 15 days before date of need; authorize waiver
- Reduce paperwork
 - ▶ Simplify job order
 - ▶ Simplify H-2A application and related documentation
 - ▶ Simplify disclosure document - Fact Sheet for U.S. farmworkers referred
 - ▶ Accommodate electronic filing of job order and application
 - ▶ Simplified renewal application for compliant employers
 - ▶ Eliminate required notice of H-2A workers' departure
 - ✓ ▶ Eliminate need for continuing "positive recruitment" which produced no U.S. workers in previous years
- Facilitate U.S. farmworker recruitment
 - ✓ ▶ Post job order information on America's *NYS pilot* Job Bank (AJB)
 - ▶ Simplify job order (as above)
 - ▶ Simplify disclosure document - Fact Sheet for U.S. farmworkers referred (as above)
 - ✓ ▶ Count as "available" only U.S. farmworkers identified by name and SSN
- *Fla transportation pilot* Compensation/Enforcement
 - ▶ Improve timeliness of prevailing wage determinations
 - ▶ Education/outreach program for new users
 - ▶ Target H-2A enforcement at most serious violators and sample of new users
- Repatriation
 - ▶ Enhance sponsor accountability for H-2A workers' departure [INS/State]

9/1/96

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9/1/96

7/1/96

1/1/97

10/1/96

10/1/96

??????

¹ As State's come on-line on AJB.

	<u>Admin.</u>	<u>NPRM</u>
2. <u>USDA PILOT (Baseline, plus):</u>		
• Job Order filed 45 days before date of need, with <i>estimated</i> period of employment		9/1/96
• H-2A application filed after period of positive recruitment, at least 5 days before petition and visa application filing date		9/1/96
• Notification to U.S. farmworkers of any change in final period of employment		9/1/96
• For petition and visa application, reduce lead time from 20 to ~~7777~~ days [INS/State]		??????
○ WHERE > >		
3. <u>DOL PILOT (Baseline, plus):</u>		
• Facilitate U.S. farmworker recruitment – reward increased use of U.S. farmworkers		
▶ Special provisions for employers increasing utilization of U.S. farmworkers (reducing dependence on H-2A workers):		
○ Reduce prior filing deadline to 30 days before date of need		9/1/96
○ Eliminate requirement for "positive recruitment" beyond using AJB and advertising		9/1/96
○ Change 50 percent rule to a maximum of 25 percent of work contract period		9/1/96
▶ Early certification for new (first year) users meeting a pre-set target for hiring of U.S. farmworkers		9/1/96
▶ Early certification for users seeking non-modifiable certification for at least 10 percent fewer H-2A workers		9/1/96
▶ For petition and visa application, reduce lead time from 20 to ~~7777~~ days [INS/State]		??????
○ WHERE > >		

DRAFT

DRAFT--7/30/96--DRAFT

Temporary Nonimmigrant Agricultural Worker (H-2A) Program Streamlining

CONCEPT PAPER

Background

Coordinated by the Domestic Policy Council, the Departments of Labor, Agriculture, State and Justice's Immigration and Naturalization Service (INS) have developed a proposal for streamlining and simplifying the current temporary nonimmigrant agricultural worker -- or "H-2A" -- program that allows U.S. farmers to import foreign farmworkers to meet agricultural labor needs. This proposal follows up on the President's commitment in announcing his opposition to new agricultural guestworker legislation in this Congress:

If our crackdown on illegal immigration contributes to labor shortages -- especially for perishable crops that require large numbers of workers for short periods of time -- I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers.

While there is no evidence that any such agricultural labor shortages have developed, including for the reason cited in the President's statement, the agencies have undertaken a cooperative effort to identify opportunities to streamline the existing H-2A temporary foreign farmworker program in order to both:

- Make the program more accessible to growers faced with real agricultural labor shortages, and
- At the same time, improve the effectiveness of recruiting and placing U.S. farmworkers in the jobs for which agricultural employers seek foreign workers.

Proposal

The agencies' proposal consists of two parts. First, we propose to implement both administrative and regulatory changes to the program which would:

- ▶ significantly reduce the lead-time for employers' applications,
- ▶ reduce the paperwork associated with the application process,
- ▶ facilitate U.S. farmworker recruitment,
- ▶ address certain grower concerns regarding worker compensation and program enforcement, and
- ▶ enhance foreign farmworker repatriation upon completion of their temporary employment in the U.S.

Notice-and-comment rulemaking changes would be needed in both Labor and INS regulations, and can be proposed within 90 days of a decision to proceed with this initiative. These changes would reduce the lead-time for employer applications by one-third, from the current 60 days to 40 days prior to the grower's date of need for workers,¹ and the lead-time for pre-occupancy housing inspection by one-half, from 30 to 15 days before the date of need. In addition, we would propose to substantially simplify renewal applications for those growers found to be in compliance with program requirements, and eliminate a current process step requiring notification by the grower when foreign workers depart their home country for the job.

In addition to these regulatory changes, we propose to proceed with a number of program changes that can be effected administratively. These include: simplifying the H-2A application and related job order; simplifying the disclosure statement (terms and conditions of employment) that growers must provide to workers being recruited, and also making it more useful to workers; accommodating electronic filing of applications; posting job orders electronically on America's Job Bank; changing the method of determining when U.S. farmworkers are available for employment; facilitating employer interviews of U.S. farmworkers referred for employment; and, improving the timeliness of prevailing wage determinations. We would also undertake a review by Labor's Employment Service to identify any procedural barriers to more effective U.S. worker recruitment and referral for employment. We propose as well to implement an education/outreach program for new users of the program, and target enforcement at most serious violators and a sample of new users of the H-2A program. Finally, we propose to enhance grower accountability for the repatriation of the foreign temporary workers they import to the U.S. by TBD. Many of these changes can be implemented within 30 days of a decision to proceed, but other, more complex elements may take up to 180 days to be fully implemented.

The second part of our proposal contemplates pilot-testing two additional sets of changes, both of which must also be implemented through notice-and-comment rulemaking. These changes are proposed to be pilot-tested for a limited (two year) period to evaluate their effectiveness in promoting U.S. worker recruitment for the jobs for which growers seek foreign farmworkers.

The first of these pilots would test a procedure whereby the H-2A application process follows a grower's "positive recruitment" efforts rather than preceding it, as under the current system. This approach could provide an incentive for growers to recruit U.S. farmworkers under the enhanced compensation and employment guarantees required for H-2A workers. Successful U.S. worker recruitment would enable the grower to avoid becoming an H-2A employer and the responsibility for guaranteeing employment for three-fourths of the expected period of employment. However, if sufficient U.S. farmworkers are unavailable or

¹ This reduction in application lead-time can be achieved, in part, by INS delegating authority to the Labor Department for the decision to admit H-2A workers, thereby eliminating an entire step -- the petition process -- from the overall admission process.

recruited workers fail to report for work, the employer would be assured of timely access to the H-2A program to meet its labor needs. Under this pilot program, an employer would place a job order identical to that of an H-2A grower-applicant except that in lieu of the three-quarter guarantee the grower would state that the three-quarter guarantee would apply only if the grower subsequently became an H-2A employer (because of failing to recruit sufficient U.S. workers). The period of employment to which the three-quarter guarantee would apply would be established if and when the employer submitted an H-2A application. In order to be eligible for H-2A workers, the employer must have engaged in positive recruitment, including recruiting remotely where the Employment Service finds that there are qualified U.S. workers available. Since the adequacy of the employer's job order will have been determined at the beginning of the positive recruitment period, a labor market test will have occurred, and the employer's H-2A program eligibility can be monitored throughout the positive recruitment period, both the employer and the Labor Department will know in advance of any H-2A application whether approval is in order and the application can be adjudicated promptly.

The second proposed pilot would test another approach intended to improve the effectiveness of U.S. farmworker recruitment for these jobs by, in effect, rewarding growers which are increasing their use of U.S. farmworkers and reducing their reliance on foreign farmworkers. Under this pilot, special provisions would apply to those program users which are increasing use of U.S. farmworkers and reducing dependence on H-2A workers, including: further reducing the application lead-time to 20 days before the date of need; eliminating positive recruitment requirements beyond posting the jobs on America's Job Bank and advertizing; and reducing -- from 50 to 25 percent -- the work contract period during which the grower is obligated to hire any U.S. farmworkers which report for work. In addition, early application approval would be available for new (first year) users meeting a pre-set target for hiring U.S. farmworkers and for those program users seeking non-modifiable approval to import at least 10 percent fewer H-2A workers than in the prior year.

As noted, these two pilots would be authorized to operate for a two year period during which their impact on the effectiveness of recruiting U.S. farmworkers would be evaluated as the basis for determining whether to establish these changes on a permanent basis.

Next Steps

Approval (or refinement) of these concepts should be followed by informal consultations with interested parties -- both grower organizations and farmworker advocates -- to identify potential concerns and additional ideas for program changes.

Following these consultations, the agencies' proposals -- perhaps modified -- would be presented for decision to proceed with implementation steps.

FILE h2377.jh

HR 2377/IH

105th CONGRESS

1st Session

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

IN THE HOUSE OF REPRESENTATIVES

August 1, 1997

Mr. SMITH of Oregon (for himself, Mr. CHAMBLISS, Mr. POMBO, Mr. BOEHNER, Mr. BISHOP, Mr. GALLEGLY, Mr. DREIER, Mr. SOLOMON, Mr. PAXON, Mr. PARKER, Mr. RADANOVICH, Mr. HASTINGS of Washington, Mr. LATOURETTE, Mr. LEWIS of Kentucky, Mr. DOOLITTLE, Mr. WHITFIELD, Mr. NORWOOD, Mr. HILLEARY, Mr. BONO, and Mr. COMBEST) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Temporary Agricultural Worker Act of 1997'.

SEC. 2. NEW NONIMMIGRANT CATEGORY FOR PILOT PROGRAM TEMPORARY

AND

SEASONAL AGRICULTURAL WORKERS.

(a) ESTABLISHMENT OF NEW CLASSIFICATION- Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended--

(1) by striking 'or (b)' and inserting '(b)'; and

(2) by adding at the end the following:

' or (c) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States pursuant to section 218A to perform such agricultural labor or services of a temporary or seasonal nature;'

(b) NO FAMILY MEMBERS PERMITTED- Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is

amended by striking 'specified in this paragraph' and inserting 'specified in this subparagraph (other than in clause (ii)(c))'.

SEC. 3. PILOT PROGRAM FOR ALTERNATIVE AGRICULTURAL TEMPORARY WORKER

PROCESS USING ATTESTATION.

(a) IN GENERAL- The Immigration and Nationality Act is amended by inserting after section 218 the following:

'ALTERNATIVE AGRICULTURAL TEMPORARY WORKER PROGRAM
'SEC. 218A. (a) CONDITION FOR EMPLOYMENT OF PILOT PROGRAM ALIENS-

'(1) ESTABLISHMENT OF PILOT PROGRAM; RESTRICTION OF
ADMISSIONS TO PILOT PROGRAM PERIOD-

'(A) IN GENERAL- The Attorney General shall establish a pilot program for the admission of aliens classified as a nonimmigrant under section 101(a)(15)(H)(ii)(c) to perform temporary or seasonal agricultural services pursuant to a labor condition attestation filed by an employer or an association for the occupation in which the alien will be employed. No alien may be admitted or provided status as a pilot program alien under this section after the last day of the pilot program period specified in subparagraph (B).

'(B) PILOT PROGRAM PERIOD- The pilot program period under this subparagraph is the 24-month period beginning 6 months after the date of the enactment of the Temporary Agricultural Worker Act of 1997.

'(2) ADMISSION OF ALIENS- No alien may be admitted to the United States or provided status as a pilot program alien (as defined in subsection (n)(4)) unless--

'(A) the employment of the alien is covered by a currently valid labor condition attestation which--

'(i) is filed by the employer, or by an association on behalf of the employer, for the occupation in which the alien will be employed;

'(ii) has been accepted by the State employment security agency having jurisdiction over the area of intended employment; and

'(iii) states each of the items described in paragraph (2) and includes information identifying the employer or association and agricultural job opportunities involved;

'(B) the employer is not disqualified from employing pilot program aliens pursuant to subsection (h); and

'(C) the employer has not, during the pilot program period, been found by the Attorney

General to have employed any aliens in violation of section 274A(a) or this section.

`(3) CONTENTS OF LABOR CONDITION ATTESTATION- Each labor condition attestation filed by or on behalf of, an employer shall state the following:

`(A) WAGE RATE- The employer will pay pilot program aliens and all other workers in the occupation not less than the prevailing wage for similarly employed workers in the area of employment, and not less than the applicable Federal, State or local statutory minimum wage.

`(B) WORKING CONDITIONS- The employment of pilot program aliens will not adversely affect the working conditions of similarly employed workers in the area of employment.

`(C) LIMITATION ON EMPLOYMENT- A pilot program alien will not be employed in any job opportunity which is not temporary or seasonal, and will not be employed by the employer in any job opportunity for more than 10 months in any 12-consecutive-month period.

`(D) NO LABOR DISPUTE- No pilot program alien will be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout or work stoppage in the course of a labor dispute in the occupation at the place of employment.

`(E) NOTICE- The employer, at the time of filing the attestation, has provided notice of the attestation to its workers employed in the occupation in which, and at the place of employment where, pilot program aliens will be employed.

`(F) JOB ORDERS- The employer will file one or more job orders for the occupation (or occupations) covered by the attestation with the State employment security agency no later than the day on which the employer first employs any pilot program aliens in the occupation.

`(G) PREFERENCE TO DOMESTIC WORKERS- The employer will give preference to able, willing and qualified United States workers who apply to the employer and are available at the time and place needed, for the first 25 days after the filing of the job order in an occupation or until 5 days before the date employment of workers in the occupation begins, whichever occurs later.

`(4) LIMITATION ON NUMBER OF VISAS- In no case may the number of aliens who are admitted or provided status as a pilot program alien in a fiscal year exceed 25,000.

`(5) OPERATION OF PROGRAM IN NOT LESS THAN 5 AREAS- Alien admissions under this section shall be allocated equally to employers in not less than 5 geographically and agriculturally diverse areas designated by the Secretary of Agriculture. The

entire United States shall be encompassed within such areas.

`(6) GENERAL ACCOUNTING OFFICE REPORT- Not later than 90 days after the termination of the pilot program period specified in paragraph (1)(B), the Comptroller General shall prepare and transmit to the Congress a report describing the results of a review of the implementation and enforcement of this section during such period, for the purpose of determining if--

`(A) the program has ensured an adequate and timely supply of qualified, eligible workers at the time and place needed for employers;

`(B) the program has ensured that pilot program aliens are employed only in authorized employment and that they timely depart the United States when their authorized stay ends;

`(C) the program has ensured that implementation of the program is not displacing United States agricultural workers or diminishing the terms and conditions of employment of United States agricultural workers; and

`(D) an unnecessary regulatory burden has been created for employers hiring workers admitted under this section.

`(b) FILING A LABOR CONDITION ATTESTATION-

`(1) FILING BY EMPLOYERS--Any employer in the United States is eligible to file a labor condition attestation.

`(2) FILING BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS- An agricultural association may file a labor condition attestation as an agent on behalf of its members. Such an attestation filed by an agricultural association acting as an agent for its members, when accepted, shall apply to those employer members of the association that the association certifies to the State employment security agency are members of the association and have agreed

in writing to comply with the requirements of this section.

`(3) PERIOD OF VALIDITY- A labor condition attestation is valid from the date on which it is accepted by the State employment security agency for the period of time requested by the employer, but not to exceed 12 months.

`(4) WHERE TO FILE- A labor condition attestation shall be filed with the State employment security agency having jurisdiction over the area of intended employment of the workers covered by the attestation. If an employer, or the members of an association of employers, will be employing workers in an area or areas covered by more than one such agency, the attestation shall be filed with each such agency having jurisdiction over an area where the workers will be employed.

`(5) DEADLINE FOR FILING- A labor condition attestation may be filed at any time up to 12 months prior to the date of the employer's anticipated need for workers in the occupation (or occupations) covered by the attestation.

`(6) FILING FOR MULTIPLE OCCUPATIONS- A labor condition attestation may be filed for one or more occupations and cover one or more periods of employment.

`(7) MAINTAINING REQUIRED DOCUMENTATION-

`(A) BY EMPLOYERS- Each employer covered by an accepted labor condition attestation must maintain a file of the documentation required in subsection (c) for each occupation included in an accepted attestation covering the employer. The documentation shall be retained for a period of one year following the expiration of an accepted attestation. The employer shall make the documentation available to representatives of the Secretary during normal business hours.

`(B) BY ASSOCIATIONS- In complying with subparagraph (A), documentation maintained by an association filing a labor condition attestation on behalf of an employer shall be deemed to be maintained by the employer.

`(8) WITHDRAWAL-

`(A) COMPLIANCE WITH ATTESTATION OBLIGATIONS- An employer covered by an accepted labor condition attestation for an occupation shall comply with the terms and conditions of the attestation from the date the attestation is accepted and continuing throughout the period any persons are employed in an occupation covered by such an accepted attestation, whether or not pilot program aliens are employed in the occupation, unless the attestation is withdrawn.

`(B) TERMINATION OF OBLIGATIONS- An employer may withdraw a labor condition attestation in total, or with respect to a particular occupation covered by the attestation. An association may withdraw such an attestation with respect to one or more of its members. To withdraw an attestation the employer or association must notify in writing the State employment security agency office with which the attestation was filed of the withdrawal of the attestation. An employer who withdraws an attestation, or on whose behalf an attestation is withdrawn by an association, is relieved of the obligations undertaken in the attestation with respect to the occupation (or occupations) with respect to which the attestation was withdrawn, upon acknowledgement by the appropriate State employment

security agency of receipt of the withdrawal notice. An attestation may not be withdrawn with respect to any occupation while any pilot program alien covered by that attestation is employed in the occupation.

`(C) OBLIGATIONS UNDER OTHER STATUTES- Any obligation incurred by the employer under any other law or regulation as a result of recruitment of United States workers under an offer of terms and conditions of employment required by the pilot program under this section is unaffected by withdrawal of a labor condition attestation.

`(c) EMPLOYER RESPONSIBILITIES AND REQUIREMENTS FOR EMPLOYING PILOT PROGRAM ALIENS-

`(1) REQUIREMENT TO PAY THE PREVAILING WAGE-

`(A) EFFECT OF THE ATTESTATION- Employers shall pay each worker in an occupation covered by an accepted labor condition attestation at least the prevailing wage in the occupation in the area of intended employment. The preceding sentence does not require employers to pay all workers in the occupation the same wage. The employer may, in the sole discretion of the employer, maintain pay differentials based on experience, tenure with the employer, skill, or any other work-related factor, if the differential is not based on a criterion for which discrimination is prohibited by the law and all workers in the covered occupation receive at least the prevailing wage.

`(B) PAYMENT OF STATE EMPLOYMENT SECURITY AGENCY DETERMINED WAGE SUFFICIENT- The employer may request and obtain a prevailing wage determination from the State employment security agency. If the employer requests such a determination, and pays the wage determined, such payment shall be considered sufficient to meet the requirement of this paragraph if the pilot program aliens--

`(i) are employed in the occupation for which the employer possesses an accepted labor condition attestation, and for which the employer or association possesses a prevailing wage determination by the State employment security agency, and

`(ii) are being paid at least the prevailing wage so determined.

`(C) RELIANCE ON WAGE SURVEY- In lieu of the procedures of subparagraph (B), an employer may rely on other information, such as an employer generated prevailing wage survey and determination, which meets criteria specified by the Secretary by regulation. In the event of a complaint that the employer has failed to pay the required wage,

the Secretary shall investigate to determine if the information upon which the employer relied complied with the criteria for prevailing wage determinations.

`(D) ALTERNATE METHODS OF PAYMENT PERMITTED-

`(i) IN GENERAL- A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate (described in clause (ii)), or other incentive pay system, including a group rate (described in clause (iii)). The requirement to pay at least the prevailing wage in the occupation and area of intended employment does not require an employer to pay by the method of pay in which the prevailing rate is expressed. However, if the employer adopts a method of pay other than the prevailing rate, the burden of proof is on the employer to demonstrate that the employer's method of pay is designed to produce earnings equivalent to the earnings that would result from payment of the prevailing rate.

`(ii) TASK RATE- For purposes of this subparagraph, a task rate is an incentive payment based on a unit of work performed such that the incentive rate varies with the level of effort required to perform individual units of work.

`(iii) GROUP RATE- For purposes of this subparagraph, a group rate is an incentive payment system in which the payment is shared among a group of workers working together to perform the task.

`(E) REQUIRED DOCUMENTATION- The employer or association shall document compliance with this paragraph by retaining on file the employer or association's request for a determination by a State employment security agency and the prevailing wage determination received from such agency or other information upon which the employer or association relied to assure compliance with the prevailing wage requirement.

`(2) REQUIREMENT TO PROVIDE HOUSING AND TRANSPORTATION-

`(A) EFFECT OF THE ATTESTATION- The employment of pilot program aliens shall not adversely affect the working conditions of United States workers similarly employed in the area of intended employment. The employer's obligation not to adversely affect working conditions shall continue for the duration of the period of employment by the employer of any pilot program aliens in the occupation and area of intended employment. An employer will be deemed to be in compliance with this attestation if the employer offers at least the benefits required by subparagraphs (B)

through (D). The previous sentence does not require an employer to offer more than such benefits.

`(B) HOUSING REQUIRED-

`(i) HOUSING OFFER- The employer must offer to pilot program aliens and United States workers recruited from beyond normal recruiting distance housing, or a housing allowance, if it is prevailing practice in the occupation and area of intended employment to offer housing or a housing allowance to workers who are recruited from beyond normal commuting distance.

`(ii) HOUSING STANDARDS- If the employer offers housing to such workers, the housing shall meet (at the option of the employer) applicable Federal farm labor housing standards or applicable local or State standards for rental, public accommodation, or other substantially similar class of habitation.

`(iii) CHARGES FOR HOUSING- An employer who offers housing to such workers may charge an amount equal to the fair market value (but not greater than the employer's actual cost) for utilities and maintenance, or such lesser amount as permitted by law.

`(iv) HOUSING ALLOWANCE AS ALTERNATIVE- In lieu of offering housing to such workers, at the employer's sole discretion on an individual basis, the employer may provide a reasonable housing allowance. An employer who offers a housing allowance to such a worker under this subparagraph shall not be deemed to be a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) merely by virtue of providing such housing allowance.

`(v) SECURITY DEPOSIT- The requirement, if any, to offer housing to such a worker under this subparagraph shall not preclude an employer from requiring a reasonable deposit to protect against gross negligence or willful destruction of property, as a condition for providing such housing.

`(vi) DAMAGES- An employer who offers housing to such a worker shall not be precluded from requiring a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

`(C) TRANSPORTATION- If the employer provides transportation arrangements or assistance to pilot program

aliens, the employer must offer to provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed by the employer in the occupation at the place of employment who were recruited from beyond normal commuting distance.

`(D) WORKERS' COMPENSATION- If the employment covered by a labor condition attestation is not covered by the State workers' compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the workers' employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

`(E) REQUIRED DOCUMENTATION-

`(i) HOUSING AND TRANSPORTATION- No specific documentation is required to be maintained to evidence compliance with the requirements of subparagraphs (B) and (C). In the event of a complaint alleging a failure to comply with such a requirement, the burden of proof shall be on the employer to show that the employer offered the required benefit to the complainant, or that the employer was not required by the terms of this paragraph to offer such benefit to the complainant.

`(ii) WORKERS' COMPENSATION- The employer shall maintain copies of certificates of insurance evidencing compliance with subparagraph (D) throughout the period of validity of the labor condition attestation.

`(3) REQUIREMENT TO EMPLOY ALIENS IN TEMPORARY OR SEASONAL AGRICULTURAL JOB OPPORTUNITIES-

`(A) LIMITATIONS-

`(i) IN GENERAL- The employer may employ pilot program aliens only in agricultural employment which is temporary or seasonal.

`(ii) SEASONAL BASIS- For purposes of this section, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.

`(iii) TEMPORARY BASIS- For purposes of this section, a worker is employed on a temporary basis where the employment is intended not to exceed 10 months.

`(B) REQUIRED DOCUMENTATION- No specific documentation is required to demonstrate compliance with the requirement of

subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the employment meets such requirement.

`(4) REQUIREMENT NOT TO EMPLOY ALIENS IN JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR DISPUTE-

`(A) IN GENERAL- No pilot program alien may be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.

`(B) REQUIRED DOCUMENTATION- No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the job opportunity in which the pilot program alien was employed was not vacant because the former occupant was on strike, locked out, or participating in a work stoppage in the course of a labor dispute in the occupation at the place of employment.

`(5) NOTICE OF FILING OF LABOR CONDITION ATTESTATION AND SUPPORTING DOCUMENTATION-

`(A) IN GENERAL- The employer shall--

`(i) provide notice of the filing of a labor condition attestation to the appropriate certified bargaining agent (if any) which represents workers of the employer in the occupation (or occupations) at the place of employment covered by the attestation; or

`(ii) in the case where no such bargaining agent exists, post notice of the filing of such an attestation in at least two conspicuous locations where applications for employment are accepted.

`(B) PERIOD FOR POSTING- The requirement for a posting under subparagraph (A)(ii) begins on the day the attestation is filed, and continues through the period during which the employer's job order is required to remain active pursuant to paragraph (6)(A).

`(C) REQUIRED DOCUMENTATION- The employer shall maintain a copy of the notice provided to the bargaining agent (if any), together with evidence that the notice was provided (such as a signed receipt of evidence of attempt to send the notice by certified or registered mail). In the case where no certified bargaining agent described in subparagraph (A)(i) exists, the employer shall retain a copy of the posted notice, together with information as to the dates and locations where the notice was displayed.

`(6) REQUIREMENT TO FILE A JOB ORDER-

`(A) EFFECT OF THE ATTESTATION- The employer, or an association acting as agent for its members, shall file the information necessary to complete a local job order for each occupation covered by an accepted labor condition attestation with the appropriate local office of the State employment security agency having jurisdiction over the area of intended employment, or with the State office of such an agency if workers will be employed in an area within the jurisdiction of more than one local office of such an agency. The job orders shall remain on file for 25 calendar days or until 5 calendar days before the anticipated date of need for workers in the occupation covered by the job order, whichever occurs later. The job order shall provide at least the minimum terms and conditions of employment required for participation in the pilot program.

`(B) DEADLINE FOR FILING- A job order shall be filed under subparagraph (A) no later than the date on which the employer files a petition with the Attorney General for admission or extension of stay for aliens to be employed in the occupation for which the order is filed.

`(C) REQUIRED DOCUMENTATION- The office of the State employment security agency which the employer or association provides with information necessary to file a local job order shall provide the employer with evidence that the information was provided in a timely manner as required by this paragraph, and the employer or association shall retain such evidence

for each occupation in which pilot program aliens are employed.

`(7) REQUIREMENT TO GIVE PREFERENCE TO QUALIFIED UNITED STATES WORKERS-

`(A) FILING 30 DAYS OR MORE BEFORE DATE OF NEED- If a job order is filed 30 days or more before the anticipated date of need for workers in an occupation covered by a labor condition attestation and for which the job order has been filed, the employer shall offer to employ able, willing, and qualified United States workers who apply to the employer and who will be available at the time and place needed for the job opportunities covered by the attestation until 5 calendar days before the anticipated date of need for workers in the occupation, or until the employer's job opportunities in the occupation are filled with qualified United States workers, if that occurs more than 5 days before the anticipated date of need for workers in the

occupation.

`(B) FILING FEWER THAN 30 DAYS BEFORE DATE OF NEED- If a job order is filed fewer than 30 days before the anticipated date of need for workers in an occupation covered by such an attestation and for which a job order has been filed, the employer shall offer to employ able, willing, and qualified United States workers who are or will be available at the time and place needed during the first 25 days after the job order is filed or until the employer's job opportunities in the occupation are filled with United States workers, regardless of whether any of the job opportunities may already be occupied by pilot program aliens.

`(C) FILING VACANCIES- An employer may fill a job opportunity in an occupation covered by an accepted labor condition attestation which remains or becomes vacant after expiration of the required preference period specified in subparagraph (A) or (B) of paragraph (6) without regard to such preference.

`(D) JOB-RELATED REQUIREMENTS- No employer shall be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful job-related standards of conduct and performance, including failure to meet minimum productivity standards after a 3-day break-in period.

`(E) REQUIRED DOCUMENTATION- No specific documentation is required to demonstrate compliance with the requirements of this paragraph. In the event of a complaint, the burden of proof shall be on the complainant to show that the complainant applied for the job and was available at the time and place needed. If the complainant makes such a showing, the burden of proof shall be on the employer to show that the complainant was not qualified or that the preference period had expired.

`(d) REQUIREMENTS OF NOTICE OF CERTAIN BREAKS IN EMPLOYMENT-

`(1) IN GENERAL- The employer (or the association acting as agent for the employer) shall notify the Attorney General within 7 days if a pilot program alien prematurely abandons the alien's employment.

`(2) OUT-OF-STATUS- A pilot program alien who abandons the alien's employment shall be considered to have failed to maintain nonimmigrant status as an alien described in section 101(a)(15)(H)(ii)(c) and shall leave the United States or be subject to removal under section 237(a)(1)(C)(i).

`(e) ACCEPTANCE BY STATE EMPLOYMENT SECURITY AGENCY- The State employment security agency shall review labor condition attestations submitted by employers or associations pursuant to this section only for completeness and obvious inaccuracies. Unless such an agency finds that the application is incomplete or obviously inaccurate, the agency shall accept the attestation within 7 days of the date of filing of the attestation, and return a copy to the applicant marked 'accepted'.

`(f) PUBLIC REGISTRY- The Secretary shall maintain a registry of all accepted labor condition attestations and make such registry available for public inspection.

`(g) RESPONSIBILITIES OF THE STATE EMPLOYMENT SECURITY AGENCIES-

`(1) DISSEMINATION OF LABOR MARKET INFORMATION- The Secretary shall direct State employment security agencies to disseminate non-employer-specific information about potential labor needs based on accepted attestations filed by employers. Such dissemination shall be separate from the clearance of job orders through the Interstate and Intrastate Clearance Systems, and shall create no obligations for employers except as provided in this section.

`(2) REFERRAL OF WORKERS ON STATE EMPLOYMENT SECURITY AGENCY

JOB ORDERS- Such agencies holding job orders filed by employers covered by approved labor condition attestations shall be authorized to refer any able, willing, and qualified eligible job applicant who will be available at the time and place needed and who is authorized to work in the United States, including pilot program aliens who are seeking additional work in the United States and whose eligibility to remain in the United States pursuant to subsection (i) has not expired, on job orders filed by holders of accepted attestations.

`(h) ENFORCEMENT AND PENALTIES-

`(1) ENFORCEMENT AUTHORITY-

`(A) INVESTIGATION OF COMPLAINTS- The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in subsection (a) or an employer's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organizations (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 2 years after the date of the failure or misrepresentation, respectively. The Secretary shall

conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

`(B) WRITTEN NOTICE OF FINDINGS AND OPPORTUNITY FOR APPEAL- After an investigation has been conducted, the Secretary shall issue a written determination as to whether or not any violation described in subparagraph (A) has been committed. The Secretary's determination shall be served on the complainant and the employer, and shall provide an opportunity for an appeal of the Secretary's decision to an administrative law judge, who may conduct a de novo hearing.

`(2) REMEDIES-

`(A) BACK WAGES- Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or pilot program alien employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

`(B) FAILURE TO PAY WAGES- Upon a final determination that the employer has failed to pay the wages required under this section, the Secretary may assess a civil money penalty up to \$1,000 for each failure, and may recommend to the Attorney General the disqualification of the employer from the employment of pilot program aliens for a period of time determined by the Secretary not to exceed 1 year.

`(C) OTHER VIOLATIONS- If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an accepted labor condition attestation has--

`(i) filed an attestation which misrepresents a material fact; or

`(ii) failed to meet a condition specified in subsection (a),

the Secretary may assess a civil money penalty not to exceed \$1,000 for each violation. In determining the amount of civil money penalty to be assessed, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, whether the employer obtained a financial gain from the violation, whether the violation was willful, and other relevant factors.

`(D) PROGRAM DISQUALIFICATION- Upon a second final

determination that an employer has failed to pay the wages required under this section, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from any subsequent employment of pilot program aliens.

(3) ROLE OF ASSOCIATIONS-

(A) VIOLATION BY AN ASSOCIATION- An employer on whose behalf a labor condition attestation is filed by an association acting as its agent is fully responsible for such attestation, and for complying with the terms and conditions of this section, as though the employer had filed the attestation itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer who committed the violation and not against the association or other members of the association.

(B) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER- If an association filing a labor condition attestation on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program under paragraph (2)(D), no individual member of such association may be the beneficiary of the services of a pilot program alien in an occupation in which such alien was employed by the association during the period such disqualification is in effect, unless such member files a labor condition attestation as an individual employer or such an attestation is filed on the employer's behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this section.

(i) PROCEDURE FOR ADMISSION OR EXTENSION OF PILOT PROGRAM ALIENS-

(1) ALIENS WHO ARE OUTSIDE THE UNITED STATES-

(A) PETITIONING FOR ADMISSION- An employer or an association acting as agent for its members who seeks the admission into the United States of pilot program aliens may file a petition with the District Director of the Immigration and Naturalization Service having jurisdiction over the location where the aliens will be employed. The petition shall be accompanied by an accepted and currently valid labor condition attestation covering the petitioner. The petition may be for named or unnamed individual or multiple beneficiaries.

(B) EXPEDITED ADJUDICATION BY DISTRICT DIRECTOR- If an

employer's petition for admission of pilot program aliens is correctly filled out, and the employer is not ineligible to employ pilot program aliens, the District Director (or the Director's designee) shall approve the petition within 3 working days of receipt of the petition and accepted labor condition attestation and immediately (by fax, cable, or other means assuring expedited delivery) transmit a copy of the approved petition to the petitioner and to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

`(C) UNNAMED BENEFICIARIES SELECTED BY PETITIONER- The petitioning employer or association or its representative shall approve the issuance of visas to beneficiaries who are unnamed on a petition for admission granted to the employer or association.

`(D) CRITERIA FOR ADMISSIBILITY-

`(i) IN GENERAL- An alien shall be admissible under this section if the alien is otherwise admissible under this Act and the alien is not debarred pursuant to the provisions of clause (ii).

`(ii) DISQUALIFICATION- An alien shall be debarred from admission or being provided status as a pilot program alien under this section if the alien has, at any time during the past 5 years--

`(I) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

`(II) otherwise violated a term or condition of admission to the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

`(E) PERIOD OF ADMISSION- The alien shall be admitted for the period requested by the petitioner not to exceed 10 months, or the remaining validity period of the petitioner's approved labor condition attestation, whichever is less, plus an additional period of 14 days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien's work authorization, the alien is not authorized to be employed unless the original petitioner or a subsequent petitioner has filed an extension of stay on behalf of the alien pursuant to paragraph (2).

`(F) ISSUANCE OF IDENTIFICATION AND EMPLOYMENT
ELIGIBILITY DOCUMENT-

`(i) IN GENERAL- The Attorney General shall cause to be issued to each pilot program alien a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

`(ii) DESIGN OF CARD- Each card issued pursuant to clause (i) shall be designed in such a manner and contain a photograph and other identifying information (such as date of birth, sex, and distinguishing marks) that would allow an employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual, and shall--

`(I) contain a fingerprint or other biometric identifying data (or both);

`(II) specify the date of the alien's authorization as a pilot program alien;

`(III) specify the expiration date of the alien's work authorization; and

`(IV) specify the alien's admission number or alien file number.

`(2) EXTENSION OF STAY-

`(A) APPLICATION FOR EXTENSION OF STAY- If a petitioner seeks to employ a pilot program alien already in the United States, the petitioner shall file with the Attorney General an application for an extension of the alien's stay. The application for extension of stay shall be accompanied by a currently valid labor condition attestation.

`(B) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY- An application may not be filed for an extension of an alien's stay for a period of more than 10 months, or later than a date which is 2 years from the date of the alien's last admission to the United States as a pilot program alien, whichever occurs first. An application for extension of stay may not be filed during the pendency of an alien's previous authorized period of employment, nor after the alien's authorized stay in the United States has expired.

`(C) WORK AUTHORIZATION UPON FILING AN APPLICATION FOR EXTENSION OF STAY- An employer may begin employing an alien already in the United States in pilot program alien status on the day the employer files its application for extension of stay. For the purpose of this requirement, the term 'filing' means sending the application by certified mail via the United States Postal Service, return receipt

requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of sending and receipt of the application. The employer shall provide a copy of the employer's application for extension of stay to the alien, who shall keep the application with the alien's identification and employment eligibility document as evidence that the extension has been filed and that the alien is authorized to work in the United States. Upon approval of an application for extension of stay, the Attorney General shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the application for extension of stay.

“(D) LIMITATION ON EMPLOYMENT AUTHORIZATION OF PILOT PROGRAM ALIENS WITHOUT VALID IDENTIFICATION AND

EMPLOYMENT

ELIGIBILITY CARD- An expired identification and employment eligibility document, together with a copy of an application for extension of stay, shall constitute a valid work authorization document for a period of not more than 60 days from the date of application for the extension of stay, after which time only a currently valid identification and employment eligibility document shall be acceptable.

“(3) LIMITATION ON AN INDIVIDUAL'S STAY IN PILOT PROGRAM STATUS- An alien having status as a pilot program alien may not have the status extended for a continuous period longer than 2 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which a nonimmigrant visa issued under section 101(a)(15)(H)(ii)(c) is valid. If the alien has resided in the United States 10 months or less, an absence breaks the continuity of the period if it lasts for at least 2 months. If the alien has resided in the United States 10 months or more, an absence breaks the continuity of the period if it lasts for at least one-fifth the duration of the stay.

“(j) TRUST FUND TO ASSURE WORKER RETURN-

“(1) ESTABLISHMENT- There is established in the Treasury of the United States a trust fund (in this section referred to as the “Trust Fund”) for the purpose of providing a monetary incentive for pilot program aliens to return to their country of origin upon expiration of their visas under this section.

“(2) WITHHOLDING OF WAGES; PAYMENT INTO THE TRUST FUND-

`(A) IN GENERAL- Employers of pilot program aliens shall--

- `(i) withhold from the wages of their pilot program alien workers an amount equivalent to 25 percent of the wages of each pilot program alien worker and pay such withheld amount into the Trust Fund in accordance with paragraph (3); and
- `(ii) pay to the Trust Fund an amount equivalent to the Federal tax on the wages paid to pilot program aliens that the employer would be obligated to pay under the Federal Unemployment Tax Act and the Federal Insurance Contributions Act.

Amounts withheld under clause (i) shall be maintained in such interest bearing account with such a financial institution as the Attorney General shall specify.

`(3) DISTRIBUTION OF FUNDS- Amounts paid into the Trust Fund on behalf of a worker, and held pursuant to paragraph (2)(A)(i) and interest earned thereon, shall be paid by the Attorney General to the worker if--

- `(A) the worker applies to the Attorney General (or the designee of the Attorney General) for payment within 30 days of the expiration of the alien's last authorized stay in the United States as a pilot program alien;
- `(B) in such application the worker establishes that the worker has complied with the terms and conditions of this section; and
- `(C) in connection with the application, the worker tenders the identification and employment authorization card issued to the worker pursuant to subsection (i)(1)(F) and establishes that the worker is identified as the person to whom the card was issued based on the biometric identification information contained on the card.

`(4) ADMINISTRATIVE EXPENSES- The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(ii), and interest earned thereon, shall be paid to the Attorney General, the Secretary of Labor, and the Secretary of State in amounts equivalent to the expenses incurred by such officials in the administration of section 101(a)(15)(H)(ii)(c) and this section.

`(5) REGULATIONS- The Attorney General shall prescribe regulations to carry out this subsection.

`(k) INVESTMENT OF TRUST FUND-

- `(1) IN GENERAL- It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed

as to both principal and interest by the United States. For such purpose, such obligations may be acquired--

`(A) on original issue at the price; or

`(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

`(2) SALE OF OBLIGATION- Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

`(3) CREDITS TO TRUST FUND- The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

`(4) REPORT TO CONGRESS- It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Attorney General) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

`(1) MISCELLANEOUS PROVISIONS-

`(1) APPLICABILITY OF LABOR LAWS- Except as provided in paragraphs (2), (3), and (4), all Federal, State, and local labor laws (including laws affecting migrant farm workers) applicable to United States workers shall also apply to pilot program aliens.

`(2) LIMITATION OF WRITTEN DISCLOSURE IMPOSED UPON RECRUITERS- Any disclosure required of recruiters under section of 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) need not be given to pilot program aliens prior to the time their visa is issued permitting entry into the United States.

`(3) EXEMPTION FROM FICA AND FUTA TAXES- The wages paid to pilot program aliens shall be excluded from wages subject to taxation under the Federal Unemployment Tax Act and under the Federal Insurance Contributions Act.

`(4) INELIGIBILITY FOR CERTAIN PUBLIC BENEFITS PROGRAMS-

`(A) IN GENERAL- Notwithstanding any other provision of law and except as provided in subparagraph (B), any alien provided status as a pilot program alien shall not be eligible for any Federal or State or local means-tested public benefit program.

`(B) EXCEPTIONS- Subparagraph (A) shall not apply to the following:

`(i) EMERGENCY MEDICAL SERVICES- The provision of emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services).

`(ii) PUBLIC HEALTH IMMUNIZATIONS- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment for communicable diseases.

`(iii) SHORT-TERM EMERGENCY DISASTER RELIEF- The provision of non-cash, in-kind, short-term emergency disaster relief.

`(m) REGULATIONS-

`(1) SELECTION OF AREAS- The Secretary of Agriculture shall select the areas under subsection (a)(4) not later than 60 days after the date of the enactment of the Temporary Agricultural Worker Act of 1997.

`(2) REGULATIONS OF THE SECRETARY- The Secretary shall consult with the Secretary of Agriculture, and the Attorney General shall approve, all regulations dealing with the approval of labor condition attestations for pilot program aliens and enforcement of the requirements for employing pilot program aliens under an approved attestation. The Secretary shall promulgate, and the Attorney General shall approve, such regulations not later than 90 days after the date of the enactment of the Temporary Agricultural Worker Act of 1997.

`(3) REGULATIONS OF THE ATTORNEY GENERAL- The Attorney General shall consult with the Secretary of Agriculture on all

regulations dealing with the approval of petitions for admission or extension of stay of pilot program aliens and the requirements for employing pilot program aliens and the enforcement of such requirements. The Attorney General shall promulgate such regulations not later than 90 days after the date of the enactment of the Temporary Agricultural Worker Act of 1997.

`(n) DEFINITIONS- For the purpose of this section:

`(1) AGRICULTURAL ASSOCIATION- The term 'agricultural association' means any nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any agricultural workers.

`(2) AGRICULTURAL EMPLOYMENT- The term 'agricultural employment' means any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1986 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

`(3) EMPLOYER- The term 'employer' means any person or entity, including any independent contractor and any agricultural association, that employs workers.

`(4) PILOT PROGRAM ALIEN- The term 'pilot program alien' means an alien admitted to the United States or provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(c).

`(5) SECRETARY- The term 'Secretary' means the Secretary of Labor.

`(6) UNITED STATES WORKER- The term 'United States worker' means any worker, whether a United States citizen, a United States national, or an alien, who is legally permitted to work in the job opportunity within the United States other than an alien admitted pursuant to this section.'

(b) CLERICAL AMENDMENT- The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 218 the following new item:

'Sec. 218A. Alternative agricultural worker program.'

November 20, 1996

Mr. Stephen Warnath
Senior Policy Analyst
The White House
224 Old Executive Office Building
17th and Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Warnath:

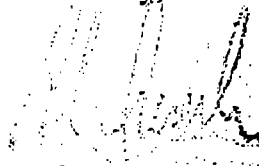
Since the final draft of the H-2A streamlining project concept paper has not been forthcoming, the Department of Agriculture (USDA) has attempted to draft the paper consistent with principles agreed upon by the working group and subsequent provisions of the Immigration Control and Financial Responsibility Act of 1996.

With the expectation of several personnel changes in contemplation of a new Administration, USDA believes it is important to submit this concept paper for White House approval within the next few days so that the work we have accomplished during the past two years can be approved by those who were involved in that work and, of course, the President's Chief of Staff.

The attached draft is consistent with the agreement of the working group except for the question of controlling visa overstays which, as of our last meeting, was still to be determined. To resolve this issue we have incorporated the automated entry-exit control system provision of the Immigration Control and Financial Responsibility Act of 1996, including the assessment of liquidated damages to employers and debarment of offending aliens. We believe that agreement within the working group can be reached with this statement.

May I suggest that a meeting of the working group be convened in the near future to finalize this concept paper. Meanwhile, any comments or suggestions regarding this draft may be distributed to the group by fax.

Sincerely,



Al French

Coordinator of Agricultural Labor Affairs

Enclosure: Concept Paper

cc: Jackie Bednarz, INS
Bob Bach, INS
John Fraser, DOL
Cornelius Scully, State

DRAFT:OCE:AFrench:vnt:720-4737:November 19, 1996
Doc. ID C:\ALF\Warnath.b96

(Enclosure: C:\ALF\HSTREAM.B96)

STREAMLINING THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

CONCEPT PAPER

Background:

At the direction of Chief of Staff Leon Panetta, the Domestic Policy Council is coordinating the efforts of the Departments of Labor (DOL), Agriculture, State, and Justice's Immigration and Naturalization Service (INS) to develop a proposal for streamlining and simplifying the current temporary nonimmigrant agricultural worker (H-2A) program that allows U.S. farmers to use foreign farm workers if necessary to meet agricultural labor needs. The agencies have undertaken this cooperative effort to identify opportunities for streamlining the existing H-2A temporary foreign farmworker program in order to both:

- Make the program more accessible to growers faced with real agricultural labor shortages, and
- At the same time, improve the effectiveness of recruiting and placing U.S. farmworkers in agricultural jobs.

This proposal will fulfill the President's commitment when his opposition to a new guestworker program by the 104th Congress was announced:

If our crackdown on illegal immigration contributes to labor shortages -- especially for perishable crops that require large numbers of workers for short periods of time -- I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers.

Although the crackdown on illegal immigration does not appear to have reduced the farm labor supply relative to the demand for farm labor, the agencies have undertaken a cooperative effort to fulfill the President's commitment. Their recommendations are described below.

Proposal:

The agencies' proposal consists of two parts. First, we would implement both administrative and regulatory changes to the H-2A program which would:

- significantly reduce the lead-time requirements for employers' applications,
- reduce the paperwork associated with the application process,
- facilitate U.S. farm worker recruitment,
- address certain grower concerns regarding worker compensation and program enforcement,

is this
still the
case?

did
DOL/INS
USDA
agree to
these?

- require positive recruitment where DOL finds there are a significant number of qualified workers willing to make themselves available at the time and place needed. (Recent fruitless recruiting efforts will be an indication that significant numbers are not available in an area).
- facilitate the admission of replacement workers, and,
- enhance alien repatriation upon completion of their temporary employment in the United States.

Regulatory changes

Implementation of these changes would require rulemaking by DOL and INS which could be proposed within 90 days of a decision to proceed with this initiative. These changes would place the deadline for applications 40 days rather than 60 days prior to the employer's date of need and reduce the lead-time required for pre-occupancy housing inspections from 30 days to 15 days. An entire step, the INS petition process, could be eliminated by INS delegating the authority to DOL to issue INS approvals (Form I-797) concurrently with DOL's certification of need; this would eliminate a 15 to 21 day delay in obtaining workers after an employer's application has been approved. In addition, we would propose to substantially simplify renewal applications for employers previously found to be in compliance with program requirements, and eliminate a current process step requiring notification by the employer when alien workers depart their home country for the job.

Administrative changes

In addition to these regulatory changes, we propose to proceed with a number of program changes that can be effected administratively. These include: simplifying the H-2A application and related job order; simplifying the disclosure statement (terms and conditions of employment) that employers must provide to workers when recruited and making it more useful to workers; accommodating electronic filing of applications; posting job orders electronically on America's Job Bank; counting U.S. workers as available only if their names, addresses, and social security numbers have been furnished to the employer; facilitating employer interviews with U.S. workers referred for employment; and, improving the timeliness of prevailing wage determinations. We would also undertake a review by DOL's Employment Service to identify any procedural barriers to more effective U.S. worker recruitment and referral for employment. We propose as well to implement an education/outreach program for new H-2A users, and target enforcement at most egregious violators of farm labor protections, but include a sampling of new H-2A program users. Finally, we propose to enhance the repatriation of temporary foreign workers by implementation of the automated entry-exit control system provision of the Immigration Control and Financial Responsibility Act of 1996 and the assessment of liquidated damages to employers and debarment of offending aliens. Many of these changes can be implemented within 30 days of a decision to proceed, but other, more complex elements, may take up to 180 days to be fully implemented.

Would take an incredibly long time.

The second part of our proposal contemplates pilot-testing two additional sets of changes, both of which would also require rulemaking. These changes are proposed to be pilot-tested for a limited (2 year) period to evaluate their effectiveness in promoting U.S.

worker recruitment for the jobs for which farm employers seek alien farm workers.

The first of these pilots would test a procedure whereby the H-2A application process follows an employer's positive recruitment efforts rather than preceding it as under the present system. This approach could provide an incentive for employers to recruit U.S. workers under the enhanced compensation and employment guarantees required for U.S. workers. Successful recruitment would enable the employer to avoid becoming an H-2A employer and the responsibility for guaranteeing employment for three-fourths of the expected period of employment. However, if sufficient U.S. workers are unavailable or recruited workers fail to report for work, the employer would be assured of timely access to the H-2A program to meet its labor needs. Under this pilot program, an employer would place a job order identical to that of an H-2A employer-applicant except that in lieu of the three-quarter guarantee the employer would state that the three-quarter guarantee would apply only if the employer subsequently became an H-2A employer (because of failing to recruit sufficient U.S. workers). The period of employment to which the three-quarter guarantee would apply would be established if and when the employer submitted an H-2A application. In order to be eligible for H-2A certification, the employer must have engaged in positive recruitment, including recruiting remotely where the Employment Service finds that there are qualified U.S. workers available. Since the adequacy of the employer's job order will have been determined at the beginning of the positive recruitment period, a labor market test will have occurred, and the employer's H-2A program eligibility can be monitored throughout the positive recruitment period, both the employer and DOL will know prior to any H-2A application whether approval is in order and the application can be adjudicated promptly.

The second proposed pilot would test another approach intended to improve the effectiveness of U.S. farm worker recruitment by, in effect, rewarding growers who are increasing their use of U.S. workers and reducing their reliance on foreign workers. Under this pilot, special provisions would apply to those program users who are increasing use of U.S. workers and reducing dependence on foreign workers, including: further reducing the application lead-time to 20 days before the date of need; eliminating positive recruitment requirements beyond posting the jobs on America's Job Bank and advertising; and reducing--from 50 to 25 percent--the work contract period during which the employer is obligated to hire any U.S. farm workers who report for work. In addition, early application approval would be available for first year users meeting a pre-set target for hiring U.S. farm workers and for those program users seeking non-modifiable approval to import at least ten percent fewer alien workers than in the prior year.

After two years of operation of these pilot programs, their impact and effectiveness would be evaluated to determine whether to establish these changes on a permanent basis.

Next Steps:

Approval (or refinement) of these concepts should be followed by informal consultations with interested parties--both farm employer organizations and farm worker advocates--to identify potential concerns and additional ideas for program changes. Following

these consultations, the agencies' proposals--perhaps modified--would be presented again for decision to proceed with implementation steps.

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To

Julie Fernandez 456-5581

From

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	Al French		Ginny Taylor
	Shirley Brown		Vacant

MESSAGE

Number of Pages (including cover sheet)