

H-2A Reform Proposal

This proposal is for a NPRM in four parts. Part I would discuss the steps already taken by DOL to streamline the H-2A program. Part II would lay out the reforms that are being noticed for rulemaking. Part III would preview a proposed rule that is under development and would give a firm deadline for noticing that rule. Part IV would mention other areas where we are considering reform.

Part I

Actions accomplished

(by General Administrative Letter (GAL) directive)

- a. The Labor Department now requires “positive recruitment” of U.S. farmworkers only in areas where DOL finds that there are a significant number of qualified workers willing to make themselves available for employment at the time and place needed.
- b. The Labor Department now counts as “available” for employment only those U.S. workers who are identified by name, address and social security number.
- c. The Labor Department has submitted a reprogramming request to Congress that would allow for the provision of automated support for the labor certification process. Such automation could be implemented within six to eight months of the availability of funding.

This automation would affect both the goal of meeting the existing 7-day deadline after receipt of initial application to notify employer of deficiencies precluding adjudication of the application and the 20-day deadline -- prior to the employers’ “date of need” -- to issue approved certifications.

Part II

Rulemaking proposals -- Stage 1

- a. Require employers’ H-2A labor certification applications to be submitted 45 (rather than 60) days prior to the employers’ “date of need.”
- b. Reduce the deadline for employer-provided housing to be available for inspection from 30 to 15 days prior to the employers’ “date of need.”
- c. Growers will no longer be required to use a registered farm labor contractors (FLCs or “crew leaders”) as a source of U.S. workers if the FLC has a demonstrated history of employing illegal or unauthorized workers or of other labor abuses.
- d. Eliminate requirement that certified H-2A employers provide notice of H-2A workers’ departure for the place of employment.

Part III

Rulemaking proposal -- Stage 2

This notice would set a deadline (120 days?) for noticing a rule that effects this reform. This reform would likely require rulemaking by both DOJ and DOL.

- a. INS to delegate H-2A petition approval authority to DOL. Removing the INS adjudication step will result in a two-step (State -- DOL) process, rather than a three-step (State -- INS -- DOL) process. DOL will then provide simultaneous approval of H-2A certification and petition approval.

Part IV

Rulemaking proposal -- Stage 3

This notice would mention the following other reforms as possibilities for future rulemaking.

- a. Allow H-2A program applicant-employers to include a bonding requirement for FLCs they employ. This will help protect employers from risks such as the FLC employing unauthorized workers or failing to perform.
- b. The Wage & Hour division at the Labor Department will have the authority to temporarily debar employers who commit serious labor standards or H-2A program violations from future use of the H-2A program.

~~c.~~

INS (or DOL) will issue petition approval (I-797) for replacement of certified H-2A workers upon proof of the worker's repatriation.

- d. Simplify H-2A application and related documentation -- both job order applications and accompanying disclosure documentation -- for ease of integration with America's Job Bank (AJB). This simplification will accommodate electronic filing by employer-applicants and will further ease application information burden on previous program users found in compliance with program requirements.

not yet vetted through USDA

Farm safety education and research that addresses the special needs and concerns of farmworkers

Funding would be used to support competitive grants to Land-Grant Universities and community based organizations to implement a farmworker safety initiative. The initiative would have two foci; 1) farm safety education through a proposed master farmworker safety program, 2) applied research in ergonomics on commercial agricultural operations. The funding level required to support these education and research programs is provided in the following table.

Farmworker Safety Initiative

	(\$Millions)				
	FY 00	FY 01	FY 02	FY 03	Subsequent years
Education	\$4.0	\$4.5	\$5.0	\$5.0	\$5.0
Research	\$3.3	\$3.0	\$2.5	\$2.5	\$0
TOTAL	\$7.3	\$7.5	\$7.2	\$7.2	\$5.0

Through experience in developing programs for farmworkers, the Extension Educators have learned effective programs must be interactive, and be orally or visually communicated. This is particularly true for inexperienced farmworkers that may be functionally illiterate. Some farmworkers pretend they understand what is being communicated, even if they do not, out of fear of losing their job. Thus, interactive training by their peers that encourages them to demonstrate their understanding is most effective.

A proposed **Master Farmworker Farm Safety** program will recruit volunteer farmworkers and train them to conduct farm safety education for their peers, using a methodology similar the highly successful Master Gardener Program. This model allows for a great deal of flexibility in meeting safety training needs for farmworkers by accommodating cultural and geographic differences, and commodity and job specific priority hazards. Training emphasis will be placed on safety hazards that result in the highest occurrence of fatalities, injuries and occupational illnesses.

Non-fatal agricultural injury data from 1981-1990 in California, a state with a large farmworker population, showed sprains and strains predominate as major types of injury, accounting for 43% of all reported agricultural injuries, followed by lacerations (18%), contusions (12%), fractures (11%), illnesses (6%), foreign body-object in eye or embedded splinter (6%), burns (2%) and poisoning (1%). This data excludes forestry and fishing and includes only injuries serious enough to required the worker to miss a full day of work beyond the day of injury. Many of the tasks performed by farmworkers such as hand harvesting fruits and vegetables, pruning, and improper lifting place the farmworker at high risk of musculoskeletal injuries. Musculoskeletal injuries have become the leading compensable injury category. Insufficient research exists on agricultural ergonomic risk factors associated with these musculoskeletal injuries. There is little information to guide farmworkers and employers on practical engineering controls such as ergonomically correct hand tools and work modification to reduce these injuries.

The fruit, vegetable, and horticultural industry is by far the most labor intensive in the production agriculture sector and is highly dependent on farm worker labor to preserve the quality and value of the product. This research will result in increased information on risk factors for musculoskeletal injuries in agriculture and how to reduce risk factors and subsequent injuries. The results will be incorporated into education programs for farmworkers and employers to increase their knowledge of work practices and practical engineering controls to reduce injuries.

November 13, 1998

DRAFT ... DRAFT ... DRAFT

Some Statistical Facts about the Agricultural Economy

The following data on growers and farm workers was compiled by economists at CEA, DOL, and USDA. Wherever possible, the data focus on likely users of the H-2A program (those sectors of the agricultural economy that rely on pickers and other low-skilled workers), such as fruits, vegetables, nuts, and tobacco.

Farm Business

- Real farm income among fruit, nuts, vegetable, greenhouse, and nursery growers increased between 1993 and 1997 to about \$40,000 among all farms and to \$140,000 among larger farms in this sector real income has increased slightly since 1993 (see Figure 1a). In contrast, among all tobacco farms although larger tobacco farms experienced an overall decrease in real income (see Figure 1b).
- Among fruit, nuts, vegetable, greenhouse, and nursery growers, farm expenses labor inputs comprise the largest single farm expense, as contract and hired labor consistently account for about 35-40% of total expenses (see Figure 2a). Labor comprises a smaller share of expenses for tobacco farmers (about 20%) (see Figure 2b). Labor's share of production expenses is higher among growers most likely to use the H-2A program (vegetable, fruit, and tobacco farmers) than among all farms (see Figure 3).
- Among fresh fruits and vegetables, the import share of agricultural products used (i.e., consumption, feed, etc.) has risen steadily over the past 16 years. Among tobacco, the import share of domestic use has been fairly constant (see Figure 4).
- Fruit imports appear to have increased faster than fruit exports, however the ratio of imports to exports has been roughly constant over the past 25 years. Similarly, imports of vegetables are roughly equal to exports (see Figure 5).
- Although the data are noisy, it is likely that only farmers with at least \$100,000 in sales (only 21% of all farms) have a positive return on equity and have a positive ratio of net cash farm income to gross cash income. In addition, the value of assets is concentrated among the largest growers (see Table 1).
- The value of agricultural production (among selected sectors) has increased over the past 20 years (see Figures 6a and 6b).

Employment, Wages and Earnings

- There is a long term secular trend of declining agricultural employment and but rising real hourly wages. Since the mid-1970's real farm workers wages have either declined or

been flat (see Figure 7). (Note: Data for this sector is extremely limited and hence should be viewed with caution.)

- Since 1985, farm worker wages have been relatively flat in real terms but have risen relative to other low skilled workers wages and now even exceed those in eating and drinking places. Despite the upward trend farm workers remain among the lowest paid workers earning 90 percent or less of what workers in such industries as apparel and accessory stores, general merchandise stores, laundry, cleaning and garment services, and apparel and other textile products make (see Figure 8).

Employment and Unemployment

- Since the mid-1950's, unemployment among agricultural workers has generally been above that for non-agricultural workers. Since the 1970's the unemployment rate in agriculture has been rising relative to that in the nonfarm sector. In addition, unemployment in the agricultural sector is much more volatile, even using seasonally adjusted data, but generally shares the broad cyclical trends as the non-agriculture sector. The coefficient of variance of unemployment (.84) is almost twice as high in agriculture as in the nonfarm sector (.42). Finally, although the unemployment rate for agriculture workers has declined since 1993, it is still around 8 percent (see Figure 9).
- Although unemployment may be higher in the agricultural sector, the average duration of unemployment is shorter. Given the higher level of unemployment and the shorter duration of unemployment it appears that flows into and out of employment must be higher for agriculture workers. This may be explained by greater variance in demand, more homogenous wage offer distributions, or lower reservations wages due to liquidity constraints (low incomes generating less saving).

The duration of unemployment has trended down slightly since 1994, suggesting that agriculture workers are able find new jobs more quickly in this tighter labor market. Nonetheless, the current level is still above the level in 1990 and is much higher than the level in 1980, suggesting that the labor market is not tight by historical standards (see Figure 10).

Although unemployment has generally fallen in agricultural areas, unemployment remains substantially above the national or state averages (see Table 2).

- Farm workers are more likely to be engaged in agricultural activities in the spring through the fall; during the winter months they are more likely to be either abroad or not working while in the U.S. The proportion of farm workers who are employed doing non-farm work is fairly constant throughout the year (see Figure 11).

Other Facts about Farm Workers

- According to NAWS (1994-1995) 69 percent of farm workers are foreign born (almost all

from Mexico). Of the remaining 31 percent U.S. born workers, 18 percent are non-Hispanic white, 10 percent are Hispanic and two percent are non-Hispanic blacks.

The fact that agriculture workers are paid less than workers in other low skilled (wage) sectors, is consistent with a declining supply of domestic farm workers and an increased demand for foreign born legal and illegal agriculture workers.

- Over one-quarter of farm workers are 21 year old or younger, two thirds are younger than 35.
- The median personal income for farm workers was between \$5,000 and \$7,500 during this survey period. Twenty eight percent had personal incomes under \$2,500.
- The median earnings of foreign-born workers was higher than for U.S. born workers (\$5,000 - \$7,500 vs \$2,500 - \$5,000). Green card holders or legal permanent residents have the highest earnings (between \$7,500 and \$10,000).

Some Facts about the H-2A Program

- Among current users of the H-2A program, 80% are located in just 9 states. North Carolina is the heaviest user of the program (because of tobacco) followed by Virginia (with tobacco and apples), Kentucky (tobacco), and New York (apples) (see Figure 12).
- 62% of H-2A growers grow tobacco, 18% grow apples; the other users include sheepherders, custom combines (??), fruit and vegetable growers, and irrigation ??? (see Figure 13).

Lack of Facilities

There is a general lack of facilities suitable for child care centers in rural areas. Most child care programs do not provide funds for capital expenditures (block grant funds may be available for Head Start). Some child care programs have been successful in acquiring facilities from farmers but there is little incentive for a farm employer to do so because, under the Federal programs, they can not designate property for use by their own employees. The tax laws do not provide much incentive to such employers.

Funds are needed for the construction or renovation and refurbishing of child care facilities.

Special funding to build child care facilities in rural areas should be made available to programs with a proven track record of accountability.

Tax incentives could be provided for employers who make available facilities for child care. There are some legislative proposals to provide tax incentives to stimulate child care provision.

Some child care should be designated for children of migrant farm workers since virtually all child care facilities already have waiting lists.

Teenage Pregnancy Now Increasing in Hispanic Farm Worker Families

Migrant Head Start could address teenage pregnancies in a culturally sensitive way utilizing the strengths of family values in this group.

Farm Labor Contractor Certification Program

Farm labor contractors (FLC's) are generally former farm workers who purchased a vehicle to transport workers in order to engage in job matching and supervisory services for workers and farmers. Frequently FLCs are inexperienced, undercapitalized, poorly educated, not aware of applicable laws and regulations, and lacking in business know-how. A certification program could establish minimum competency levels for FLCs knowledge of applicable laws and regulations and provide a mechanism for enhancing their business skills. To initiate a certification program Federal funding would be required to 1) establish certification criteria and 2) develop certification curriculum.

Given the applicable laws and regulations come from several agencies, the certification criteria should be established by a National FLC Certification Board comprised of representatives from these agencies (ia. DOL, INS, IRS, DOT, USDA, etc) and representatives from stakeholders (ia. FLCs, farm workers, farmers) and organizations that would develop the certification curriculum or provide training (ia. Cooperative Extension Service, certification consultants). A budget of \$70,000 for meeting expenses, travel, document preparation etc. would be required for this task.

Based on other certification programs it is estimated approximately 15 hour of curriculum will need to be developed for the initial certification. It is recommended this curriculum be developed through a competitive request for proposals based on the certification criteria established by the National FLC Certification Board. A budget of \$500,000 would be required for this initial curriculum development.

This funding does not include the cost of conducting the training, on-going operating expenses of the National Certification Board or enforcement/documentation of certification. Costs of training could be covered by a combination of user fee's, state, and Federal funds. The cost of 15 hours to train 12,000 FLC's would be approximately \$1.8 million or \$150/person.

(The following list does not purport to be a comprehensive list of all statutes that provide lesser treatment to farmworkers than to other workers.)

Fair Labor Standards Act:

1. Exemptions from minimum wage:

The FLSA contains a number of specific agriculture exemptions from the minimum wage requirement. The primary exemption applies to growers who **do not** use at least 500 man-days of agricultural labor in any calendar quarter during the previous calendar year. There are no reliable figures for the number of workers affected by this exemption or the number of workers who, even if subject to the exemption, are paid less than the minimum wage. But it is not uncommon for an employer to assert this exemption as a defense in minimum wage cases. This exemption is similar in intent—if not construction—to the FLSA's general "small business" exemption for firms that do not meet the enterprise coverage test (\$500,000 in annual gross sales or business). But unlike the agricultural 500 man-day exemption, employees of these small businesses may still be individually covered when they engage in activities involving interstate commerce—which virtually all agricultural employment does.

There are also exemptions for certain employees who are employed for less than 13 weeks in agriculture and work on a piece rate basis but it is less commonly asserted. Again, there is no reliable measure of the extent to which this exemption is asserted.

2. Exemption from overtime:

Most farmworkers are completely exempt from the FLSA overtime provisions. It is very common for farmworkers to work in excess of 40 hours during a workweek but they have no claim to overtime for those hours. Some states—such as California and Washington—provide limited overtime coverage to farmworkers.

3. Child labor protections:

Children may work at younger ages, in more hazardous task, and for longer hours than children in other industries. For instance, children over 16 years old can work in **any** task in agriculture whereas 16 and 17 year olds in other industries are prohibited in working in tasks deemed by DOL as too hazardous.

National Labor Relations Act

If the work is defined as "agricultural labor" under the FLSA, it is exempt from coverage under the National Labor Relations Act. Therefore, virtually all nonprocessing tasks in agriculture are outside the protections of the NLRA. Some States, notably California, have enacted protections for farmworkers seeking to organize but these states are in the distinct minority.

Study by NAS
last week
on child labor.
One recomm-
normalizing
child labor
standards
ag/nm-ag

—maybe Glickman/Horne

Keep
family farms
exemptions

Workplace health and safety:

OSHA protections for farmworkers are much less extensive than similar protections for other workers (for instance, ladder work is much less regulated in agriculture than other industries) and covers fewer employers. OSHA has been precluded since 1975 from regulating health and safety on farms that employ fewer than 11 on any day during the year. Many farms are therefore beyond the reach of any OSHA standard, including field sanitation.

Also, farm work is one of the few industries in which workers are not entitled to specific information about the use of toxic substances in the workplace. OSHA does not have statutory authority to require a hazardous communication standard for pesticides and the EPA—which has authority—has failed to issue a standard.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)--at least in part in recognition of the unequal treatment of agricultural workers under various health and safety standards—contain some safety and health protections specifically for farmworkers. For instance, MSPA temporary labor camp housing standards--that mirror the OSHA standards--may apply even if the OSHA housing standards do not apply because of the 10 or fewer employees exemption. In addition, MSPA imposes minimum standards for farmworker transportation safety, vehicle insurance, and driver licensure.

State workers' compensation:

Many major agricultural states--such as North Carolina, Georgia, and Texas--exclude farmworkers from workers' compensation coverage. The only recourse for an injured farmworker in these states is the slow, expensive, and uncertain tort law system. The consequence is that farmworkers are unable to get the immediate medical and rehabilitative care and wage replacement available under the State-administered workers compensation system.

Unemployment insurance:

Some states either exclude farmworkers from unemployment insurance coverage or impose such stringent requirements on coverage that farmworkers are effectively excluded.

transp. safety
disclosure
of terms &
conditions
(as a k)

states
set
standards

by nider

enforceable
promise?
DOL has
never enforced
a 100% guarantee
No complaints

H-2A HOUSING OBLIGATIONS: Vouchers and Housing Providers

H-2A statutory obligation to provide housing:

Most substantive worker protections under the H-2A program are derived from the broad statutory prohibition against the employment of aliens under conditions that would have an adverse affect on the wages and working conditions of U.S. workers. One exception to this general rule is Section 218(c)(4), the statutory provision governing H-2A housing. This section states that "employers shall furnish housing in accordance with the regulations." The statute goes on to state that the employer may "provide housing meeting applicable federal standards...or...secure housing which meets the local standards...." This statutory provision has been consistently construed to mean that the employer must either furnish housing owed or controlled by him or, in the alternative, provide housing that the employer has secured on the open rental market.

There is no authority for the employer to pass the responsibility to secure housing to the employee, even if a voucher covering the rental cost is provided. The obligation to locate housing is an obligation that must be borne by the employer and can not, under the statute, be shifted to the employee.

Housing standards for rental housing /public accommodations:

The Act is indifferent as to who owns the housing. If it is grower owned or controlled, the housing must meet federal standards governing temporary housing. If the grower provides housing on the rental and/or public accommodations market, the housing must meet local standards for such housing, if such standards exist. If there are no local standards, then the housing must meet state standards; if no state standards the housing must meet federal temporary labor camp standards.

Limited latitude (for pilots)
Stat lawg. says grower has to provide housing

Farm Labor Contractor New Entrant and Refresher Education Courses:

Farm labor contractors (or new applicants) would be required to satisfactorily complete a Wage and Hour administered course in the obligations they may incur as a farm labor contractor. Successful completion of the course would be a prerequisite to initial issuance of a FLC registration card or subsequent renewals. The course would include instruction on how to properly comply with MSPA, FLSA, H-2A, OSHA field sanitation, FICA, FUTA, EPA pesticide worker protection standard, and other labor standards as appropriate.

The training for new entrants would be conducted during a two-day session. Class size would be limited to 25 to allow for meaningful interaction between instructors and students. There would be two Wage and Hour instructors for each class. The classes and instructional materials would be offered in either English or Spanish. The refresher training would be a four-hour course and use the same instructional materials as the new entrant course.

The courses could not be realistically offered in all states. The courses should be offered in Florida, Georgia, Pennsylvania, Texas, Chicago, California, Arizona, Washington, Oregon, Colorado, and New Mexico. The direct cost to Wage and Hour of each new entrant class would be \$1,800 in personnel and related costs and \$250 for written material. The refresher course would cost \$450 for personnel and \$250 for written material. The costs assume that no Wage and Hour travel will be associated with the training.

Assuming the number of new entrants and renewals remain at current levels, there would be 120 new entrant and 360 refresher courses offered annually. The total annual cost for FLC education would be \$246,000 for new entrants and \$252,000 for refresher courses, for a total cost of \$498,000 per year.

could charge a fee.

FARMWORKER HARVESTING COOPERATIVES

Recommendation of National Commission on Small Farms

The Cooperative State Research, Education, and Extension Service and the Rural Business-Cooperative Service staff, along with the Farmworker Coordinator and farmworker organizations, should conduct a feasibility study to research and design "farmworker harvesting" cooperatives. Such a cooperative would be designed to match the job skills of agricultural workers with employers as an alternative to the system of farm labor contractors. The cooperative would serve the functions of recruitment, employment, and transportation of farmworkers. The cooperative could also provide job training programs for individuals interested in learning skilled agricultural techniques.

Farmworker
Harvesting Co-ops
(alt to FLCs)

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UNITED STATES

DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

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MESSAGE:

Comparison of Canadian and U.S. Temporary Programs for Agricultural Workers

Comparison of Canadian and U.S. Temporary Programs for Agricultural Workers		
Program Requirements	Canadian Program	H-2A Program
Basis for agricultural program	Intergovernmental administrative agreements between Canada and specific countries (Mexico and certain Caribbean nations)	U.S. law, specifically the Immigration and Nationality Act (INA)
Administering agencies	Canada: Human Resources Development - Canada; Commission on Employment and Immigration; Foreign Agricultural Resources Management Service (FARMS); Association of Enterprises Contracting Foreign Agricultural Labor. Mexico: Ministry of Foreign Relations.	Immigration and Nationality Service (INS); Department of State and the Department of Labor (DOL).
Effective date	Program in existence with Jamaica since 1966. Other Caribbean nations added in 1967 and 1976. Mexico joined program in 1974 and is currently covered under an MOU, effective from January 1995 to January 2000.	Program established in 1952.
Eligibility	For Mexico: Mexican nationals who are: experienced agricultural workers; 18 years or older, in good health; satisfying the immigration laws of Mexico and Canada; and part of the employment agreement of the MOU.	Temporary agricultural workers from any nationality.
Length of stay	Maximum 8 months, average 4 months.	Initial stay generally approved for less than 1 year; extensions authorized to permit stays of up to 3 years. After a total stay of 3 years, a mandatory 6-month absence is required.
Time frame	Employer applies 60 days before need	Same as Canadian program
Availability of domestic workers	HRDC takes 1 month to attempt to locate Canadian workers--locally, intra-provincially, and inter-provincially	Labor certification required that no U.S. workers are able, willing, qualified, and available.
Housing	Employers must provide housing which meets safety and health standards to the worker, without cost.	Same as Canadian program.

Meals	Employer must provide three meals a day, and may deduct up to \$6.50/day from worker's wages to cover the cost. (Alternatively, can provide cooking facilities at no cost to the worker.)	Employer must provide three meals a day, and may generally deduct up to \$7.60 /day from worker's wages to cover the cost. (Alternatively, can provide cooking facilities at no cost to the worker.)
Transportation to and from receiving country	Initially provided by employer. Worker agrees to repay employer at rate of 4% of gross pay. For Mexico, aggregate payment not less than \$150, or greater than \$425. If a worker was requested by name by the employer, and subsequently terminated, full cost of repatriation is paid by the employer.	Initially paid by workers, who are reimbursed by employer incoming transportation upon completion of 50% of the contract, and outgoing upon contract completion. (Alternatively, a worker coming from or continuing to another H-2A contract need only be compensated for actual transportation incurred.)
Wages	Employer must pay the higher of: (1) the prevailing wage for that type of agricultural work, (2) statutory minimum wage in the Province, or (3) the actual wage being paid to Canadian workers performing that type of agricultural work.	Employer must pay the higher of : (1) the prevailing wage for that type of agricultural work, (2) statutory minimum wage in the State, or (3) the adverse effect wage rate (AEWR).
Workers' compensation	Workers are entitled to (a) compensation in the case of work-related injuries or illnesses and (b) insurance to cover medical and hospital costs and benefits in case of death. If Provincial health system does not non-occupational medical insurance, employer recovers these premiums through deductions from worker's wages.	Employers must provide Workers' Compensation Insurance, as required by the States, or its equivalent.
International trade agreement considerations	In negotiating the General Agreement on Trade in Services (GATS) in the WTO, Canada took a "derogation" to allow for an exemption for these bilateral admissions programs	If the U.S. sought such a bilateral agreement, an exemption may first have to be negotiated under the GATS
Geographic coverage	5 Provinces: Alberta, Manitoba, Ontario, Quebec, and Nova Scotia	____ States have participated
Number of workers, 1997	12,482: Mexico 5,664 (45%) and Caribbean 6,818 (55%)	23,352 positions certified (Of the 9,635 H-2A workers admitted by INS in 1996, 9,103--94%--were citizens of Mexico)

Not a legal document.

In brief: The Canadian and the U.S. programs have many similarities in terms of benefits and worker protections. Some persons have speculated that the reasons for the "greater success" of the Canadian program (e.g., greater return rate) arise from such external factors as the cold winter climate of many sections of Canada, no large Mexican communities such as Los Angeles for the agricultural workers to seek other work in, and no common border between the two countries. U.S. agricultural employers may be less likely than their Canadian counterparts to utilize their country's existing agricultural worker programs because they view the unauthorized population as an attractive alternative in terms of lower wages and less labor protections.

Finally, such a country-to-country program for the U.S. would now require that we negotiate an exemption under the GATS, which is likely to be difficult to accomplish.

RURAL MIGRATION NEWS

OTHER

Volume 4, Number 4

October 1998

Canadian Guest Workers

Canada launched a program to admit temporary farm workers from the Caribbean on the basis of a government-to-government memo of understanding in 1966, and extended the program to Mexico in 1974. In the mid-1990s, about 5,000 Mexicans each year have been admitted to Canada to do farm work, with 80 percent employed on fruit, vegetable and tobacco farms in Ontario.

About 70 percent of the Mexicans who migrate to Canada for farm work come from four Mexican states near the capital, Tlaxcala, Guanajuato, Mexico, and Hidalgo, where interviews are conducted. These states are not major sources of migrants to US agriculture, but have evolved to become the major sources of workers for Canadian farms because of Mexican government policies and the evolution of networks--Canadian farmers can name the workers they want, and most do, so that many Mexicans have five to 10 years experience working on Canadian farms. Mexicans selected must be at least 25, and have experience doing farm work. Since workers go to Canada without their families, some say that married workers with children are preferred so that they are more likely to return.

As in the US, foreign farm workers in Canada are entitled to the higher of the minimum wage, the prevailing wage, or the wage paid Canadians for similar work. In 1997, Mexican workers were paid C\$6.90 to on fruit and vegetable farms in Ontario, and C\$8.23 on tobacco farms.

A study of the use of remittances from Canada to Mexico concluded that migrants often did not have substantial savings until their second year in the program, because they had to pay off loans used for medical exams, visa fees, etc. When they accumulated savings, migrants tended to buy land and build or improve housing, or invest in education for their children. There was remarkably little investment in improving farm land or equipment, with only 60 of 255 migrants reporting investments in agriculture.

The Ontario Fruit and Vegetable Growers Association, with 8,000 members, reports that 1,500 farmers employ nonimmigrant farm workers. Farmers pay an \$850 fee for each worker's transportation, visa and other fees, and must provide free housing and a minimum wage of C\$ 6.85 an hour. Many workers reportedly work 60 to 100 hours a week. In 1997, there were 4,558 temporary Mexican farm workers in Ontario; many workers return year after year.

An estimated 413,000 persons were employed on Canadian farms at the end of 1997.

Migration Dialogue Home
<http://migration.ucdavis.edu>



Previous Article



Next Article

Enhance America's Job Bank and America's Talent Bank; Include Eligibility Verification

This would:

- facilitate workers' movement from job to job and increase earnings by reducing out-of-work time.
- facilitate employers' recruitment of workers.
- provide workers an alternative to farm labor contractors (FLCs).
- replacing FLCs would enable substitution of higher wages for FLC commissions.
- reduce competition and wage depression by illegal aliens.
- provide employers with a source of legal, thus dependable, workers.
- eligibility verification would be strong incentive for employers' use of AJB and ATB.
- have large effect at minimal additional cost.

[OSHA - Occupational Safety and Health Administration]

[OSHA Regulations (Standards - 29 CFR) - Table of Contents] OSHA
Regulations (Standards - 29 CFR) - Table of Contents

- * Standard Number: 1910.142
- * Standard Title: Temporary labor camps.
- * SubPart Number: J
- * SubPart Title: General Environmental Controls

..1910.142(b)(7)

All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. **At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.**

This can be a problem for motel-type facilities designed for air conditioning.

(b)(8)

All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.

No trailers, few modular homes, and few motel-type facilities are constructed with screen doors.

..1910.142(d)(2)

Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

No trailers, few modular homes, few motel-type facilities, and not all residences can meet this standard.

..1910.142(g)

"Lighting." Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall

contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

Most motel-type facilities and many residences cannot meet this standard. Why not simply specify appropriate light levels as is done with toilets and storage rooms?

..1910.142(i)(2)

A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. **There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.**

Most motel-type facilities, trailers, and many residences cannot meet this standard.

[39 FR 23502, June 27, 1974, as amended at 47 FR 14696, Apr. 6, 1982; 49 FR 18295, Apr. 30, 1984; 61 FR 5507, Feb. 13, 1996; 61 FR 9227, March 7, 1996; 63 FR 33450, June 18, 1998]

H-2A

11/9/98

Comment period closes 12/2 (for DOL regs)
INS reg. is right behind that

OMB options

- ① AgNet ; ② authorization ; ③ housing voucher/
for pilots housing insurance fund.

is there anything
that we
can do to
make it
better.
(What about a proposal that does more to make the
program work better for growers and workers.

DOL - needs a credible way to talk about the
program.

talk about farmworkers generally
social justice

} rather than
responding to
them generally

(*) Mechanization

or research of mechanization

} not cheap
who pays for this (?)

Housing or transportation subsidies

OR
AgNet etc.
OR

is
budget

EK:

Our position hasn't changed
(in mtg. w/ Graham, Wyden &
L. Smith)

12pm Tues

Larry/Debra/Ceci/John F.

KH: where is Kennedy?

(willing to take them on?)

Q: How are G/W going to come to this issue.

Q1

OMB/Labor/Me/Ceci

clear AL/Linda Delgado
12 noon

If we were to put something in this budget, what would it include.

Don't filter too much

Put it down on paper (list of things)

Asst Labor Union

Q2

Who do we need to have conv. with

Kennedy, Wyden, Graham, Beersma, Berman, Feinstein.

DOL to contact re: where are they (pre-mtg.)

Q re: best strategic approach

① NO

② ~~NO~~ speak in new ways

re: our conversations

③ legislation

Paper next Monday

Next mtg. on Tuesday

<u>Reform Proposal</u>	<u>WH</u>	<u>USDA</u>	<u>DOL</u>
Worker Recruitment			
Require “positive recruitment” of U.S. farmworkers by growers only in areas where DOL finds that there are a significant number of qualified workers willing to make themselves available for employment at the time and place needed.	Y	okay	DOL implemented this administrative change.
Count as “available” for employment only those U.S. workers who are identified by name, address, and SSN	Y	okay	DOL implemented this administrative change.
Post employers’ H-2A job orders on America’s job bank	Y	USDA would not oppose.	DOL proposal; requires job order simplification.
Strengthen the MSPA program of registering farm labor contractors to require bonding; allow H-2A employers to require bonding as a condition of employing a farm labor contractor.	Y	DOL and USDA agree to support this.	
Allow H-2A growers to include a bonding requirement for FLCs they employ.	Y	DOL and USDA agree to support this (essentially the same as the previous proposal).	
Eliminate the requirement that farm labor contractors must be used by H-2A growers if the use is the prevailing practice in the area.	N	USDA generally wants more flexibility for growers, however they are unlikely to strongly oppose DOL’s opposition.	DOL strongly opposes because the goal is for the H-2A program to track prevailing practices in areas of labor protection.
Provide an exception from current program requirement to use FLCs for any FLC who has a demonstrated history of employing illegal workers or other serious labor abuses.	Y	USDA agrees.	DOL regulatory initiative.
Require use of FLCs as recruitment mechanism whenever use is “common” or “normal” (not prevailing) in an area.	N	USDA will likely oppose because grower regulations should involve the highest standard.	DOL generally supports prevailing practice. This is not likely an issue about which DOL will take a strong position.
Require payment of competitive rates for FLC services.			

Georgia growers

Employment Eligibility Verification			
DOL work with Congress and other affected agencies to develop a reliable means of verifying individual's authorization to work as they are hired.	Y	USDA would likely agree because of their goal to decrease growers' dependence on undocumented workers as long as growers had increased access to H-2A workers.	DOL agrees.
Create a national employment eligibility verification system so that employers can check on the legal status of domestic workers who are hired during the H-2A process.	Y	INS currently has a pilot program to do just that which we support and has encouraged growers to participate in the pilot.	
Require growers using the H-2A program to use INS pilot employment eligibility verification system.	Y	USDA would likely agree as part of an overall package.	DOL would likely agree.
S.2260 Growers only responsible for recruiting and hiring farm workers in the U.S. through the DOL-administered Registries (and contacting former employees); Registries are responsible -- and have only 14 days -- to locate, contact, verify employment eligibility, and refer U.S. workers to growers seeking foreign farm workers; failure to refer timely or to refer sufficient workers allows direct application for workers to Secy of State.	N	USDA likely supports this provision because it reduces the burden on employers.	DOL hates this provision because it leaves the burden of recruitment entirely to the Federal government.
S.2260 Secy of State authorizes additional H-2A workers if Registry-referred workers fail to report, are "not ready, willing, able, or qualified" to do the work; or, abandon or are terminated from employment.	N	USDA likely supports this provision because it provides growers with quick access to H-2A workers if they have cannot recruit U.S. workers through the registry.	DOL would likely hate this provision because, again, it centralizes all recruitment through the Registry and absolves growers of any additional recruitment before applying for H-2A workers.
Pilot test new Registry of available U.S. farm workers; growers share responsibility for positive recruitment of U.S. farm workers.	Y	USDA would likely support a pilot of a mechanism to facilitate the hiring of U.S. workers for growers.	DOL supports a pilot of such a registry (as long as growers continue to share part of the responsibility for recruitment).

Require employers' "positive recruitment" to include: providing an 800 contact telephone number and accepting "collect" calls from worker job applicants; contacting other potential employers to link a series of job opportunities; and developing a long-term recruitment plan to reduce dependence on foreign guestworkers.	N	USDA would likely oppose such positive recruitment measures because it increases the costs to employers.	DOL would likely support these measures, but are unlikely to require that they be part of a final package.
S. 2260 H-2A workers covered by the MSPA, but disclosure only required at time of visa issuance.	N	USDA likely supports this measure.	DOL supports having H-2A workers covered by MSPA but likely believes that the workers should be informed of their rights when recruited rather than at the time of visa issuance (which could be after the worker has incurred significant costs).
DOL rulemaking regarding possible consolidation of agricultural job orders in the Interstate Clearance System.	Y	USDA agrees.	DOL agrees
Productivity Standards			
S. 2260 H-2A employers allowed to set minimum production standards after a "3-day break-in period."	?		
Employer-established productivity standards and quality requirements should be permitted only if they are the prevailing practice among non-H-2A employers, are bona fide, objective, justifiable, fully disclosed and implemented on a fair and equitable basis.		USDA generally opposes any additional regulations or restrictions on growers and would therefore likely oppose this idea.	DOL would likely support this idea as it is aimed at protecting U.S. workers.
Experience (and related) Requirements			
H-2A employers should be allowed to specify "agricultural experience" as a condition for hiring U.S. farm workers.		USDA would likely support because it ultimately gives the growers more flexibility in who they hire.	DOL would likely oppose arguing that it gives growers too much discretion for jobs that generally do not require substantial experience.

Disallow job qualifications, experience and reference requirements unless they are the prevailing practice among non-H-2A employers and are otherwise job-related and bona fide.		USDA would likely oppose for the same reasons that they would support specifying "agricultural experience."	DOL would likely support for the same reasons they would oppose specifying "agricultural experience."
Allow H-2A workers to move from one certified H-2A employer to another, with the final employer responsible for return transportation costs.	Y		According to DOL, this is current law.
Prohibit H-2A job orders that consolidate seasons and different crops.		USDA would likely oppose because consolidation would potentially decrease costs to growers by allowing them to group together and reduce the number of individual applications.	DOL would likely support because it protects U.S. farm workers by requiring growers to submit individual applications.
Prohibit use of the H-2A program in designated labor surplus areas.	N	USDA may not disagree in theory but would likely be concerned that the designation of a labor surplus areas would not necessarily reflect the short-term labor needs of particular growers with particular crops.	DOL would support this in theory, however it would likely have concerns about how areas are designated.
Wages and Costs			
Revise H-2A regulations regarding the 3/4 guarantee to remove incentives to growers to overestimate the contract period.	Y	Agrees.	Agrees.
Consider applying the 3/4 guarantee incrementally during the contract period.	N	Oppose.	Opposes.

Eliminate the 3/4 guarantee	N	Doesn't like the 3/4 guarantee b/c wants growers not to have to pay workers if their crop is disappointing (less work in fact than they anticipated). However, they understand that this is a <u>more</u> generous rule than under the MSPA (the statute that governs non-H2A farmworkers) and thus agrees that this reform is no good.	Opposes the elimination of the 3/4 guarantee (b/c protects farmworkers by ensuring that the work that they are promised in the contract is provided, thus allowing them to make fairer judgments when choosing between jobs). However, not sure that 3/4 is a magic number.
Modify the 3/4 guarantee to allow H-2A growers to limit the contract period to "duration of crop activity" and terminate the contract period offered due to changes in market conditions.	N	Agree that effectively eliminates the 3/4 guarantee.	Agree that effectively eliminates the 3/4 guarantee.
Eliminate AEW R and instead require payment of 105% of prevailing wage for crop in the area, where AEW R is higher than the prevailing wage.		Yes: They are in favor of eliminating the AEW R b/c it provides a wage higher than the prevailing wage for some H2A workers. USDA does not agree that the prevailing wage is depressed by the presence of illegals in the workforce, but does not object to a small sweetener to the prevailing wage to replace the AEW R (like the 105% proposed by Wyden)	No. The AEW R is calculated to compensate for the presence of illegals that depress the prevailing wage rate. It calculates the required wage as the state-wide average of all non-managerial farmworkers, thus dispersing the impact of illegals. If the wage is calculated based on 105% of prevailing, it will still be a depressed wage in those industries or areas where the presence of illegals is large. However, DOL agrees that the AEW R is a bit of an odd way to calculate, and that there is no magic to it. They want some way to calculate the wage that compensates both for the presence of illegals (wage depression) and for the fact that growers do not pay H2A workers FICA/FUDA (approx. 8%). AEW R may not be magic, but 105% of prevailing does not even get the wage = to that of non-H2A workers.

Eliminate AEW and require payment of the prevailing wage for the crop in the area.		USDA likes this option. They want the H2A wages to be the same as the prevailing wage in the crop and area. They dispute that wages are depressed b/c of the presence of illegals. In addition, they maintain that if the program requires a higher wage than what is being paid locally, the growers will not use the H2A program and will access the undocumented workforce.	Labor hates this idea, for the reasons above. The wage paid to H2A workers should be a fair wage – defined as one that compensates for the wage depression caused by the presence of illegals. Labor believes that growers should have to go to the U.S. market first, offer a fair wage and good conditions, and if not successful, access an H2A market that compels them to pay a fair wage under good conditions.
Only require payment of federal minimum wage (not AEW) as a “training wage” for inexperienced workers during a training period (in the K).		Another way to undercut the AEW that USDA likes.	Another way to undercut the AEW that Labor hates.
Require increases in piece rates to reflect increases in the AEW.	Y	USDA would likely not like. This would raise the total wage cost.	Labor would like. Most farmworkers are paid by the piece, so a conversion of the piece rate to the AEW is consistent with their desire to keep or strengthen the AEW.
Prohibit H-2A employers from increasing productivity requirements to offset increases in the AEW.	Y	USDA would likely not like b/c this would raise the total wage cost and require farmers to set productivity levels early in the season and not allow conditions to change expectations.	Labor would like this. It discourages the farmers from changing productivity levels in ways designed to keep the wage low.
Change AEW methodology to set at 90th percentile of local market wage or 80th percentile of regional market wage.		They are generally opposed to any change that would increase the overall wage cost. However, they may be open to setting the wage at some modest percentage higher than the local prevailing wage. Thus, though these numbers are high, there may be room to work here.	Labor is generally in favor of calculations that result in a higher wage, though they see no magic in the AEW. The conflict with USDA would be over how high to set the percentile.
Apply AEW to sheepherders.	?	Opposed. Sheepherders are different.	They want more for the sheepherders.

Disallow any wage deductions by H-2A employers that reduce earnings below the highest required wage.		USDA would favor changes along these lines. They want to consider total cost of employing an H2A worker and compare that to total cost of hiring a non-H2A worker (legal or illegal).	Oppose. Though Labor is open to discussions that take into account total cost to growers to use the program, they do not want the farmworker wages to be too low.
Prohibit H-2A employers from fixing uniform wage rates across large areas -- states or regions.	?		
Reforms to the 50% rule as recommended by OIG.	Y	USDA agrees.	Labor agrees.
Modify existing 50% rule to only require hiring of local workers (that reside within commuting distance) but extend this obligation to the entire period of the contract.	N	Oppose. Blocks out of state U.S. crews from work.	Oppose. same reason.
Eliminate 50% rule (except for workers referred through the registries) unless there are other substantially similar job opportunities in the area.	Y	Would agree to apply the 50% rule only where equivalent jobs are not available in the area. This is currently the rule where the association in the employer. Also agrees that the 50% rule is good for U.S. workers.	Agrees.
H-2A workers should be covered under the State Unemployment Insurance System	Y	This could increase grower cost, but unlikely that they would oppose this.	Likely favor, though there is a question of whether this would only apply where U.S. farmworkers are covered under state law.
H-2A employers expressly authorized to pay hourly wage, piece rate, task rate, or "other incentive payment method, including a group rate," irrespective of the prevailing payment method.	N	USDA might like this b/c it gives flexibility to growers	Labor will hate this, b/c they have asserted that the task rate is too variable to be susceptible to a prevailing wage determination. There are also likely problems with the "group rate."
H-2A employers are in compliance with the wage requirements if "the average of the hourly earnings of the workers, taken as a group," equals the required hourly wage.	N	USDA may like this, but fairness concerns weigh against it.	Labor will not like this b/c it allow the growers to pay some workers less than the required hourly wage.
Prohibit payment by "task rate" or other variable rate method of payment.	Y	May not like b/c like grower choice.	Would likely favor. Have spoken out against the task rate.
Protect earnings level when employers convert from a piece rate to an hourly rate.	Y	USDA likely would not oppose, b/c it only holds the rate the same.	Protecting wage rates would seem a good thing to Labor.

S. 2260

S. 2260

S. 2260

S. 2260

For employers converting from hourly rate to piece rate, set piece rate to assure earnings at least 30% above AEWR.		This is another way to sweeten the wage that USDA will likely oppose.	This is another way to sweeten the wage that DOL will like, but it is -- in a way -- difficult to defend (unless you assume that growers are setting piece rates at levels well below the AEWR conversion).
H-2A workers apply for transportation reimbursement to the government (rather than the employer).		This is a shift of cost from the grower to the government. USDA will like this.	Labor does not like, for the same reason. However, as long as the cost to the grower remains the same for a U.S. worker (working under fair wages and good conditions) and an H2A worker, DOL will not fight if some overall costs are picked up by the government (as long as the cost is not coming out of their budget!).
H-2A workers may apply to the employer for transportation reimbursement, but employer not obligated to provide such reimbursement.	N	USDA may like this, b/c lowers cost for the grower. However, growers are used to paying transportation costs in this program. This cost is just part of the overall cost, and thus would go into the overall cost calculation (which, according to USDA, determines whether a grower will participate or hire illegals).	DOL will oppose. They want H2A workers to have transportation paid for. However, as noted, they may be amenable to a system that has the government assume some of this cost.
H-2A workers not eligible for transportation reimbursement if distance traveled is less than 100 miles.	?	This is part of the cost calculation. USDA may think that this is a small step in the right direction.	Labor would likely oppose as eroding the transportation guarantee. Not likely a big issue for either side.
Pilot program for transportation advances for U.S. farmworkers.	Y	USDA would likely be open to this.	DOL would also likely be open to this (a <i>small</i> pilot).
Require H-2A employers to provide travel advances to U.S. farmworkers.			
Charge fee = FICA/FUDA taxes to finance certain program activities (housing; admin. costs; transportation)	Y	USDA is in favor. The question is how high is the fee.	Labor is not opposed to a fee that would fund certain activities. The question is how high is the fee (more than FICA/FUDA?)

S. 2260
(intended
to turn off
4 a user
fee?)

S. 2260
(as passed)

S. 2260

S. 2260

S. 2260

Impose user fees that reflect the cost of the H-2A program.		First, we are not sure how to calculate this cost (particularly, the cost of housing). Even if we could, USDA would be concerned that it would be too high (and thus cost prohibitive for growers to use). They are open, though, to a modest user fee.	As noted, Labor is also open to a user fee. However, it is not clear that they would want to push for a fee that was a total reimbursement (making it cost neutral for the government). That would surely make it too expensive for growers to use.
Allow H-2A workers to opt out of the employer-provided meal plans.		Unclear how they would react to this.	Labor would likely think this is o.k., b/c under the current system the cost of meals is deducted from the farmworker wages. However, there is some concern about making sure that workers don't opt out and then not have adequate food for the harvest.
Require first time H-2A employers to maintain wages and working conditions previously offered.		USDA would oppose this as restricting grower flexibility.	Labor would likely favor, but it could be hard to administer.
Housing			
Apply local or state (rather than federal) housing standards to housing provided by H-2A growers.		USDA would likely favor (local laws could give more flexibility) , but it is just a race to the bottom. They could be convinced that federal standards should apply in a federal program.	Labor would likely oppose. Would want federal standards to apply in this federal program. Also, would assume that federal standards are stricter.
S. 2260 H-2A employers permitted to charge workers up to fair market value for the cost of maintenance and utilities provided.		USDA likes as a way to reduce cost.	Labor hates as a way to erode wages.
H-2A employers can charge workers reasonable amounts (up to \$25 per week) for the cost of maintenance, utilities, repair and clean-up of housing provided.		Same	Same
S. 2260 H-2A employers can charge a security deposit (up to \$50) to protect against "gross negligence or willful destruction of property."	N	USDA likes as a way to share some costs with farmworkers and make them responsible for taking care of grower-provided housing.	Labor in general would not like, but likely some compromise could be struck on this one.

S. 2260	H-2A employers may require reimbursement (wage deduction) from responsible worker of reasonable cost of repairing damage to housing provided that is "not the result of normal wear and tear."	Y	According to DOL and USDA, this is <u>current</u> law.	
S. 2260	Reduced user fee to H-2A growers providing housing.		This is just another way to think about total cost to growers. If we have a user fee, we have to think about what we want it to pay for.	
S. 2260	H-2A employers may provide a "minimum housing allowance" in lieu of housing, unless (no earlier than 8 years after enactment) a state Governor certifies that there is not adequate farm worker housing available.		USDA would like as a cheaper way to meet the housing requirement.	Labor hates this. First, there is a shortage of affordable housing generally (which is particularly acute in rural areas). Second, it is unreasonable to expect a migrant worker from another country to be able to rent any housing on his own with a federal voucher.
	H-2A employers may provide a "minimum housing allowance" in lieu of housing, but must also arrange for decent housing at the allowance level.		USDA would like this as affording choice to the grower on how to comply with the housing requirement.	This is better than above, but does not address the fact of great shortages of decent, affordable housing in rural areas. Under this system, what happens if housing is not available?
	Require growers to provide free housing to all U.S. farm workers (including local workers).		USDA would not like this additional cost burden on the growers.	Labor would like as an ideal, but unrealistic to add this additional burden on growers (unless heavily subsidized by the federal government).
	Require H-2A growers to make their housing available for U.S. workers who arrive early.		Can't see the objection to this one.	Labor likely is in favor.
	Enforcement			
	Extend to Wage & Hour the authority to debar violating employers who commit serious labor standards or H-2A program violations.	Y	USDA and DOL agreed to this during our earlier process. Will be part of upcoming rulemaking.	
	Issue final H-2A regulations.	Y	DOL has agreed to this.	

S. 2260	Narrow DOL enforcement to only allow investigations only pursuant to a complaint.	N	USDA may like this, but not sure. It would be difficult for them to argue in favor of less enforcement, when there is so little already.	DOL would hate this. They need more not less enforcement money and tools.
	Institute a 12-mo. statute of limitations on complaints		USDA likely would favor.	DOL may think this is o.k.
	Provide a "reasonable cause" threshold for investigations.		USDA would likely favor.	DOL may want to reserve the right to do random inspections.
	Limit penalties to certain types of violations.		Unclear what this recommendation means.	
S. 2260	Institute a three-year and permanent debarment period for repeat violations.		USDA would likely favor.	DOL would likely favor, unless this is substantially less than current law.
	Require hiring of former H-2A workers (where allowed) to offset disincentives to complain about labor violations.		USDA would oppose. This too greatly limits grower flexibility in hiring.	Not sure if DOL would see this as an effective tool to offset disincentives to complain about labor violations.
	Require disclosure of terms and conditions of employment to be given to workers in their native language in plain language.		Can't imagine opposition, unless it costs a lot.	Labor would likely favor.
	More timely initiation and completion of DOL enforcement actions.		We are all in favor of timeliness.	
S. 2260	Assoc. not responsible for members' violations and vice versa			
	Immigration Management			
S. 2260	H2A worker ineligible for continued participation in the program if, during the prior 5 years, the worker violates the terms of admission to the U.S.		USDA would not likely have an opposition to this in theory.	DOL would not likely have an opposition to this in theory.
S. 2260	H2A workers admitted to the U.S. have 14 days after termination of employment contract to search for other legal work in the U.S.	Y	USDA would not likely have an objection.	DOL would not likely have an objection.
S. 2260	H2A workers admitted must be issued fraud-resistant identification/work authorization documents.	Y	USDA would not likely have an objection.	DOL would not likely have an objection.

S. 2260 An employer may file for extension of stay to employ an H2A worker already in the country and may legally employ such a worker from the date application is made.		USDA would likely support this idea because it provides growers with easy and quick access to H-2A workers.	DOL would likely oppose this idea because it would allow growers to get around the recruitment requirement.
S. 2260 AG study whether H2A workers timely depart the U.S. after period of authorized employment.	Y		
S. 2260 Legalization for H2A workers who complete at least 6 months employment in the U.S. under the H2A program for 4 consecutive years in compliance with program requirements.	N	USDA would not likely oppose this idea. However, it does not advance their goals because they believe that growers need a ready supply of foreign workers to meet short-term labor needs. Once legalized these foreign farmer workers would likely move into other sectors of the labor market.	DOL is opposed because it a) it gives the employers additional leverage over the workers by empowering them to hold the promise of a green card out to the foreign worker and b) it undercuts our immigration policy.
S. 2260 Require withholding of percentage of H2A workers wages, deposited in accounts reclaimable within limited time period in home country, as incentive to repatriate.	N	USDA supports incentives to repatriate and if they believed that if this would work they would support it.	DOL would likely oppose this because 1) there is no guarantee that the workers would actually receive these wages and 2) there is no evidence that this amount of money would be an incentive to repatriate.
User fee offsetting FICA/FUDA advantage used as repatriation incentive	N	Same position as above.	Same position as above.
Require entry-exit control system for all H2A workers.	Y	If this were possible, USDA and DOL would support it. However, at this time INS is unable to operate an effective exit and entry control system on the land borders.	
Other issues			
S. 2260 Expand scope of the H2A program to include agricultural -- meat/poultry -- processing employment.			

Feinstein
amend to
S. 2260
S. 2260
(same)

Secretary authorized to establish cap on number of H2A visas issued pursuant to application from "independent contractors, agricultural associations and such similar entities."	Y	USDA would likely support this as long as it was a high cap.	DOL supports this provision since 80% of all H-2A applications are from independent contractors or agricultural associations.
Comprehensive report by AG and Secretaries of Labor and Agriculture.	Y		
All H2A employers non-wage practices and benefits should be subject to prevailing practice standards.		USDA will want more flexibility for growers.	DOL would likely favor tying all practices and benefits to prevailing practice standards.
Assure that U.S. and H2A workers are truly allowed to choose their employer			
Cap the number of visas available under the H2A program.		See above.	See above.
Administrative Processes			
Consolidate DOL certification and INS petition approval into one process administered by DOL	Y		
Consolidate responsibility within DOL in Wage & Hour for post-application examination and enforcement of employer compliance with H2A program requirements.	Y		
Government -- not employer -- responsible for reimbursing transportation costs of eligible workers.	Y		
Require employers' H2A labor certification applications to be submitted 45 (rather than 60) days before the employer "date of need."	Y		
Reduce lead time for employer applications to 30 (rather than 60) days before "date of need."	Y		

Consistently meet 7 day deadline -- after initial receipt of employer's labor certification application -- to give written notification to the employer of deficiencies precluding adjudication of the application.	Y		
Consistently meet existing 20 day deadline -- prior to employer's date of need -- to issue approved certifications	Y		
After consolidation of certification and petition adjudication process in DOL, change the law to set deadline for DOL approval of employers' application to 7 days before date of need.	Y		
Reduce the deadline for employer-provided housing to be available for inspection to 15 (rather than 30) days before the date of need.	Y		
Change the current labor certification to one based on employers' attestations to comply with program requirements.	?	Unsure how this changes employer obligations.	

MEMORANDUM FOR ELENA KAGAN AND SALLY KATZEN

FROM: JULIE FERNANDES AND CECILIA ROUSE

SUBJECT: ASSESSMENT OF H-2A "IDEAS INVENTORY"

DATE: September 11, 1998

Attached is our assessment of the positions of USDA and DOL regarding the proposals put forth in DOL's "ideas inventory." The shaded boxes indicate important proposals for which there is agency disagreement and thus should be discussed at today's meeting. We have also attached a list of the current program requirements that includes definitions of the most important terms.

In order to better understand the agencies' positions, it is useful to understand the underlying policy tensions. Growers see themselves as having a choice between three categories of workers: legal U.S. workers, illegal workers, and H-2A workers. Which category they draw from is almost exclusively determined by total cost. For example, if the total cost of hiring a U.S. worker (including wages, taxes, housing, etc.) is higher than the total cost of hiring an H-2A worker, the grower will hire the H-2A worker. Therefore, the total compensation offered by the H-2A program becomes the effective total compensation ceiling for U.S. workers. In addition, the presence of large numbers of illegal farmworkers distorts the labor market such that the growers' response to an inability to find sufficient legal U.S. workers is to hire illegal workers, rather than increase wages or improve working conditions. Thus, though we may want to require fair wages and working conditions in the H-2A program, if the cost of using the program is too high, the growers will hire undocumented workers.

USDA's goal is to provide a steady, reliable source of farmworkers for U.S. growers. USDA believes that the domestic labor force can never completely satisfy the labor needs of agriculture, particularly during peak times, and therefore there will always be a need for temporary foreign agricultural workers. In a world in which the INS is increasingly cracking down on the employment of undocumented workers, the USDA (and the growers) would prefer that the foreign workers that they employ be authorized to work. Their goal is thus to set a wage (or total compensation) floor that is low enough that growers will readily use the H-2A program (rather than hire undocumented workers), but that is high enough to continue to attract existing U.S. farmworkers. However, they believe that an H-2A program that would set the wage (or total compensation) floor high enough to attract many more U.S. workers would drive growers into the illegal labor market.

DOL is concerned that a low wage (or total compensation) floor becomes a low ceiling for U.S. workers and therefore hurts these already impoverished workers. They are not as convinced that the domestic labor force could never satisfy growers needs at a reasonable wage; rather, they argue that agricultural wages have been kept artificially low because of the large presence of undocumented workers. Labor believes that if agricultural wages were allowed to rise, additional

U.S. workers would be willing to work in agriculture. They also assert that we can do a better job of facilitating matches between workers and employers that would give domestic farm workers more stable employment and growers access to a steady supply of workers.

As you read through the following list of proposals, you will notice that in many areas (e.g., wages, housing, transportation) the issue is whether the proposal increases the total cost to the employer or shifts those costs to the government or the farmworker. USDA generally opposes reforms that would increase grower costs. The Labor Department generally opposes reforms that transfer costs to the government or the farmworker, and favors reforms that aim at improving labor conditions or wages for U.S. and foreign farmworkers. Because the focus is on total costs (with wages and housing being the most significant areas of concern) we cannot decide on individual reform components in isolation.

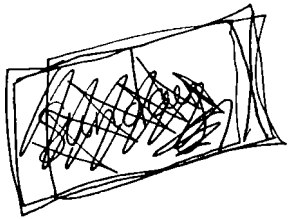
Requirements (and Definitions) under the Current H-2A Program

- **Recruitment:** The agricultural employer must engage in independent positive (i.e., active) recruitment of U.S. workers, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers to secure U.S. workers.
- **Wages:** Employers must pay H-2A workers the “**adverse effect wage rate**” (AEWR), the applicable prevailing wage rate, or the statutory minimum wage rate, whichever is higher. The AEWRs are the minimum wage rates which the DOL has determined must be offered and paid to U.S. and H-2A workers, and they are established for each state. The region- or state-wide AEWR for all agricultural employment for which H-2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the USDA.¹ The AEWRs are designed to prevent the employment of these nonimmigrant alien workers from adversely affecting the wages of similarly employed U.S. agricultural workers.
- **Housing:** The employer must provide free and approved housing to all workers, both foreign and domestic, who are not able to return to their residences the same day.
- **Meals:** The employer must provide either three meals a day to each worker or furnish free and convenient cooking/kitchen facilities. If meals are provided, then the employer may charge each worker a certain amount per day for these meals.
- **Transportation:** The employer is responsible for the following types of transportation for workers: 1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work; 2) The employer must provide free transportation between any required housing site and the work site for any worker who is eligible for such housing; 3) Upon completion of the work contract, the employer must pay return transportation to the worker’s prior residence or transportation to the next job.
- **Workers’ Compensation Insurance:** The employer must provide Workers’ Compensation or equivalent insurance for all workers, both foreign and domestic.
- **Three-fourths Guarantee:** The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract and any extensions. In applying this guarantee and determining any additional wages due, the following facts must be established: 1) The beginning and ending dates of employment; 2) The number of workdays between the established beginning and ending dates of the

¹Some 1998 AEWRs: California, \$6.87; Florida, \$6.77; Georgia, \$6.30; Hawaii, \$8.83; Kentucky, \$5.92; and Ohio, \$7.18.

guarantee period; and 3) The hours of worktime for the guarantee. The guarantee is then established by computing seventy-five percent of the established total hours of work time in the contract period. Note that the employer may not count any hours offered on such days in which the worker refused or failed to work.

- **Fifty Percent Rule:** The employer must employ any qualified U.S. worker who applies for an available job until fifty percent of the contract period has elapsed.
- **Tools and Supplies:** The employer must furnish at no cost to the worker all necessary tools and supplies, unless it is common practice for the worker to provide certain items.
- **Labor Dispute:** The employer must ensure that the available job for which the employer is requesting H-2A certification is not vacant due to a strike or lockout.
- **Certification Fee:** A fee will be charged to an employer granted temporary alien agricultural labor certification. The fee is \$100, plus \$10 for each available job certified, up to a maximum fee of \$1,000 for each certification granted.
- **Farm Labor Contractors (Crewleaders):** A farm labor contractor is an organization or entity that either supervises, recruits, transports, houses, or solicits farm labor other than the owner of the work site. Bona fide registered farm labor contractors may be eligible to apply for and receive H-2A certification, although they generally deal with domestic laborers. Farm labor contractors would be required, as employers, to provide all the minimum benefits specified by the H-2A regulations, including the three-fourths guarantee and the fifty percent rule.



- ① Prep for Deputy's mtg -
on Mon.
- ② Draft EB memo for
Monday

H2A info into system
~~on time.~~ on time.



Debra J. Bond

09/11/98 06:49:42 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc: Larry R. Matlack/OMB/EOP

Subject: H2A Information

Per our earlier conversation, this outlines what I have learned from DOL on the possibility of applying the "joint-employment" concept to the hiring of illegal workers. According to DOL, this could be done administratively (through rulemaking), but would be cleaner by making a statutory change to the INA.

Key Sections of INA.

Section 274A(a)(1) states that it is illegal to hire, or recruit or refer for a fee, an alien knowing the alien is unauthorized to work.

Section 274A(a)(4) discusses use of labor through a contract (i.e. FLC) and states that if the employer knows the alien is unauthorized then the employer is considered to have hired the alien.

Preliminary View.

INS (Bach) pointed out to us earlier today that INS has had a problem with establishing the employer's knowledge of the workers illegal status. This may be overcome by establishing a link between the grower and FLC that establishes joint-employment. If joint-employment is established one could argue that the grower has an independent obligation to verify employment eligibility because they are also essentially hiring the worker. Therefore, the grower is required to have knowledge and could be held liable for violations. Interestingly enough, a DOL Training Manual from 1988 (when DOL started doing I-9 investigations) states that both the grower and the FLC should have I-9 documents. It appears that someone may have been thinking joint-employment in this context earlier although DOL has not enforced it this way.

This option will not go unnoticed by the growers. They will adamantly oppose being held jointly liable for employment verification. Therefore as one member of DOL's staff stated it would likely create a "firestorm." However, DOL does currently hold growers jointly-labile for many things in this industry; for example, wages. Also there is established case law on the use of joint-employment in agriculture.

As you requested, I called DOL and INS (Bach) and requested that agency lawyers look more closely at this issue (given the above description is a preliminary cut). I will keep you posted on any information I learn.

P.S. I will get back to you on DOL housing regulations later this weekend.

July 31, 1998 (9:48am)

POSSIBLE RESOURCES FOR MIGRANT HOUSING AND TRANSPORTATION

I. Housing

Department of Housing and Urban Development (HUD). There are many resources in HUD that may be promising for aiding growers with their obligation to provide housing.

--Community Development Block Grant (CDBG). This program provides flexible funds to States and cities to address their community development needs. The use of CDBG funds must meet program requirements, including the national objective of benefiting low- and moderate-income persons, eliminating slum or blight, or meeting urgent needs posing an immediate threat to the health or welfare of a community where other financial resources are not available. The President's Budget requests \$4.725 billion for this program. The Senate version of the VA-HUD bill provides \$4.750 billion; and the House version provides \$4.725 billion.

-- Set-asides within CDBG. This program includes several set-asides. One option for funding needs for migrant housing would be to create another set-aside program within the CDBG appropriation. In 1998, CDBG included \$480 million in funding for set-aside programs, and allocated \$4.195 billion to States and cities by formula. The 1999 Budget reduced the number and funding for set-asides, thus increasing the amount of funds available for distribution to States and cities by \$238 million, to \$4.43 billion.

Both House and Senate versions of the VA-HUD bill include more set-asides than the President's Budget, but still increase funding available to distribute to States and cities slightly over 1998 enacted (the House provides about \$4.39 billion and the Senate about \$4.37 billion in formula funding -- rough estimates). In general, HUD argues to decrease the amount of set-asides within this program and in the HOME program (see description below). Still, this is an option for both CDBG and HOME.

--CDBG loan guarantee component. The Section 108 program allows States and cities to borrow 5 times their latest CDBG allocation for community development projects. The 1999 Budget proposed a similar component for the HOME program; under the HOME Loan Guarantee program, HUD would guarantee private loans to jurisdictions of up to five times their most recent HOME allocation for large-scale affordable housing developments in distressed communities. Section 108 receives about \$30 million in discretionary appropriations annually. For 1999, neither chamber has provided funding for the HOME Loan Guarantee program.

*set-aside?
any way to
make it a more
attractive option?*

--HOME. This program makes funds available to States and localities to increase the supply and affordability of housing and home ownership for low-income families. States and localities have the flexibility to use HOME funds for a wide range of activities; and could decide to address housing needs related to migrant farm workers with these funds if the proposed activities were eligible. The President's Budget requested \$1.550 billion for this program. The Senate version of the VA-HUD bill provides \$1.550 billion; and the House version provides \$1.6 billion.

--Office of Rural Housing and Economic Development. Within the 1999 appropriations, the Senate provided \$35 million for an Office of Rural Housing and Economic Development within HUD; the House did not fund this initiative. This was NOT a Presidential request. Of these funds: \$10 million would be used to establish a clearinghouse of ideas for innovative strategies for rural housing and economic development, \$5 million would be provided as seed money to Indian tribes and community development corporations in states which have limited capacity in rural areas; and \$20 million would go to state housing finance agencies and Indian tribes to support innovative community development initiatives in rural communities.

--HUD Colonias Initiative. Of HUD's FY 1998 funds, \$5 million is currently available and has been targeted to support assistance to organizations administering projects to address the housing needs of colonia residents in rural areas. A colonia is any identifiable community that is within the border region and meets certain requirements. Of the total amount available, HUD anticipates making grants totaling \$4 to \$5 million to address housing needs in the four border states where colonias are found (California, Arizona, New Mexico, and Texas.); and providing up to \$1 million to one or more intermediary organizations that would provide capacity building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. Funds will be distributed on a competitive basis and applications are due August 14th, 1998.

United States Department of Agriculture.

--Rural Housing Service. The FY 1999 Budget includes \$45 million in farm labor housing program level funding (\$32 million in loans and \$13 million in grants), which is an increase of \$20 million over FY 1998. This is split into two different areas: (1) loans to growers which provides 100% rental assistance to the migrant worker, and (2) grants to the farmer used to lower their mortgage payments. The House and Senate loan levels, \$20 million and \$16 million, respectively, are more than the FY 1998 funding loan level of \$15 million. If the program received the House level of \$20 million, this would roughly equate into 100 more housing units (estimated 400-600 more migrants housed depending on the type of unit--family or single).

Department of Defense. It is doubtful that housing will be available from base closures. The Base Realignment and Closure process requires many steps prior to a building being made available including whether the military needs the property for something else, whether another federal agency wants it, whether the homeless need it (under the McKinney Act). If the answer

to each of these is no, it can then be sold (or sometimes conveyed) to a private party or to the local reuse authority. The majority of this process is managed at the local level. Unfortunately many of the facilities are in poor condition and are not safe for habitation. Information on precise number of housing units still habitable is decentralized and will take some time to consolidate. It may be possible to locate a few buildings if there was a list of specific areas of the country that would be useful (for example California, Florida, Texas, North Carolina, etc..).

Federal Emergency Management Agency (FEMA). Section 408 of the Stafford Act provides FEMA with the authority to provide temporary housing to disaster victims - this includes providing mobile homes. FEMA also has the authority to "sell or otherwise make available temporary housing units directly to States, other government entities, and voluntary organizations." However, the law indicates that the transfer or sale of temporary housing units can only be completed if the use of these units by the recipients (States or other government entities) is limited to the "purposes of providing temporary housing for disaster victims in major disasters or emergencies."* FEMA is also limited to providing temporary housing to victims of Presidentially declared areas.

*There was not enough time to look into the legal interpretation of this section.

Other Departments. The Department of Education, General Services Administration, and Department of Justice had nothing to offer.

II. Transportation.

Department of Transportation.

--Access to Jobs. This program provides transportation for moving people from welfare to work. It is a new discretionary grant program. It may be possible to stretch this program for use of transporting migrants. However, some groups will likely protest this idea given it was not within the initial purpose of the program and it is meant to be a local transit program.

--Formula Program for Other than Urban Areas. This program provides funds to localities for rural transportation. It is a formula grant program distributed according to a legislative formula. The Federal government cannot tell the localities how to direct the funds. It is unlikely that localities would want to use these funds for migrant transportation.

* 5-4610 Steve Redburn

9/11/98

talky about this
where sources of funds.
Getting HUD proposal on migrant farmworker housing ^{this afternoon}
Sources of \$ to build more migrant farmworker
housing. (from Steve Redburn @ OMB)

① 30% of CDBG \$ (\$4.5 billion) goes to
states for non-metropolitan areas.

② 40% of HOME block grant (\$1.5 billion)
goes to states for non-metro areas.

They will think about non-monetary incentives
to states to use the \$ in this way.

Caution: don't authorize a large new grant
program for this. HUD is overwhelmed
w/ current responsibilities.

(Contact: Mark Weatherly @ OMB
re: USDA & farmworker housing program)

Mark Weatherly

USDA

program provides loans to non-profits or large farmers themselves.

to finance building

⊕ rental assistance (goes to the project owner)
combined w/

Loans — \$15 million per year.

Requested doubled this year. (\$32 million)

might get \$20-\$25 this year.

Budget authority is about 1/2

Provide loans @ 1% interest

⊕ guaranteed rental income through
subsidies.

Rental assistance:

Subsidies on new units ⊕ outstanding
(5 yr. rental contract)

Demand is a bit higher

Need info on size of backlog

⊕
IHTC

Jennifer C. Wagner 09/23/98 06:12:01 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP
cc: Mark A. Weatherly/OMB/EOP
Subject: USDA's Farm Labor Housing Info.

USDA's Rural Housing Service operates a loan and grant program (Sections 514 and 516) to build rental housing for year round and migrant farm workers. This program provides affordable housing to domestic farm workers, including those who work year-round in the communities, those who work seasonally in agriculture, and those who migrate to perform seasonal farm work. Currently, the grants are used in conjunction with the loans. The grant is used to lower the operating cost of a farm worker facility by reducing the loan to be amortized, making rents affordable to farm workers.

Direct loans are available for farm owners*, public bodies and non-profit associations to provide living quarters, furnishings, and related facilities for domestic farm laborers. The Section 514 loans have a 1 percent interest rate and a maximum term of 33 years. The Section 516 grants are used in conjunction with the loans to finance off-farm rental housing which will be affordable for low-wage farm workers. Grants are only available to a governmental or non-profit organizations and may not exceed 90% of the total project cost. Typically, the new farm labor housing multifamily complexes are 100% rental assisted with USDA's Section 521 rental assistance (RA) grants. RA payments are made directly to the owners of the projects under contracts specifying that the RA beneficiaries will pay no more than 30% of their income for rent. 514/516 tenants must be either US Citizens or legal residents.

There is enormous demand among farm workers for decent housing. According to a recent report by the Housing Assistance Council, farm workers experience some of the worst housing and poverty conditions for any group in the rural United States. Over half of the farm workers are estimated to have incomes below the poverty level, making them the poorest of the working poor. In addition, housing for migrant farm workers is often not available, turning them virtually into a migrant homeless population. RHS's current backlog is in excess of \$174 million.

Of the of the \$23 million in program funds and the 17 States participating in the program for 1997, 86% of the funds were utilized by 4 States: California(37%), Oregon(21%), Florida(18%) and Virginia(10%). The other States participating in the program were, Illinois, Arizona, Arkansas, Vermont, Wisconsin, Mississippi, Nebraska, Colorado, Delaware, New Mexico, New York, North Carolina and New Hampshire.

The FY 1999 Budget includes \$45 million in farm labor housing program level (\$32 million in loans and \$13 million in grants), which is an increase of 80 percent over FY 1998. The increase is in response to recommendations made by USDA's Civil Rights Action Team, which pointed out that this program benefits Hispanics and African-Americans almost 100% by providing decent safe affordable housing for migrant farm labor.

The House and Senate loan levels, \$20 million and \$16 million, respectively, are more than 35 percent below the Administration's request and would mean that at least 230 fewer housing units would be build compared with the request. The House and Senate farm labor housing grants of

\$10 million are \$3 million below the request. The Administration has urged that the Congress increase funding to assist these needy members of our society.

*As is standard with the majority of RHS housing programs, the borrower is subject to a "can't get credit elsewhere test" (the wealthiest farm owners would not qualify). Thus, 90-95 percent of the program goes to non-profit or local housing groups rather than private growers.



Executive Office of the President of the United States
Office of Management and Budget
Human Resources Division
Labor Branch
New Executive Office Building
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Washington, D.C. 20503

FAX TRANSMITTAL

DATE: 9-13-98
TO: Julia Fernandes - DPC

FROM: Debra Bond

FAX: 202/395-1596 VOICE: 202/395-3262

Total number of pages (Including Transmittal Sheet): 3

Recipient's Fax Number: 6-5581

Recipient's Telephone Number: 6-6558

Comments: H2A Housing Standard per my
email.

ance with paragraphs (d)(3)(ii) through (v) of this section.

(ii) One shower shall be provided for each 10 employees of each sex, or numerical fraction thereof, who are required to shower during the same shift.

(iii) Body soap or other appropriate cleansing agents convenient to the showers shall be provided as specified in paragraph (d)(2)(iii) of this section.

(iv) Showers shall be provided with hot and cold water feeding a common discharge line.

(v) Employees who use showers shall be provided with individual clean towels.

(e) *Change rooms.* Whenever employees are required by a particular standard to wear protective clothing because of the possibility of contamination with toxic materials, change rooms equipped with storage facilities for street clothes and separate storage facilities for the protective clothing shall be provided.

(f) *Clothes drying facilities.* Where working clothes are provided by the employer and become wet or are washed between shifts, provision shall be made to insure that such clothing is dry before reuse.

(g) *Consumption of food and beverages on the premises—(1) Application.* This paragraph shall apply only where employees are permitted to consume food or beverages, or both, on the premises.

(2) *Eating and drinking areas.* No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

(3) *Waste disposal containers.* Receptacles constructed of smooth, corrosion resistant, easily cleanable, or disposable materials, shall be provided and used for the disposal of waste food. The number, size, and location of such receptacles shall encourage their use and not result in overfilling. They shall be emptied not less frequently than once each working day, unless unused, and shall be maintained in a clean and sanitary condition. Receptacles shall be provided with a solid tight-fitting cover unless sanitary conditions can be maintained without use of a cover.

(4) *Sanitary storage.* No food or beverages shall be stored in toilet rooms

or in an area exposed to a toxic material.

(h) *Food handling.* All employee food service facilities and operations shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination.

[39 FR 23502, June 27, 1974, as amended at 40 FR 18446, April 28, 1975; 40 FR 23073, May 21, 1975; 43 FR 49748, Oct. 24, 1978]

§ 1910.142 Temporary labor camps.

(a) *Site.* (1) All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

(2) All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.

(3) The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

(4) Whenever the camp is closed for the season or permanently, all garbage, manure, and other refuse shall be collected and so disposed of as to prevent nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, they shall be locked or otherwise secured to prevent entrance.

(b) *Shelter.* (1) Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.

(2) Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

(3) Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.

(4) The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.

(5) All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.

(6) Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.

(7) All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.

(8) All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.

(9) In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.

(10) In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.

(11) All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

(c) *Water supply.* (1) An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

(2) A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2½ times the average hourly demand.

(3) The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.

(4) Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. The construction of drinking fountains shall comply with ANSI Standard Specifications for Drinking Fountains, Z4.2-1942. Common drinking cups are prohibited.

(d) *Toilet facilities.* (1) Toilet facilities adequate for the capacity of the camp shall be provided.

(2) Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

(3) A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.

(4) Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex.

§ 1910.142

These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.

(5) Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.

(6) Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.

(7) Every water closet installed on or after August 31, 1971, shall be located in a toilet room.

(8) Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.

(9) An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

(10) Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.

(e) *Sewage disposal facilities.* In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.

(f) *Laundry, handwashing, and bathing facilities.* (1) Laundry, handwashing, and bathing facilities shall be provided in the following ratio:

(i) Handwash basin per family shelter or per six persons in shared facilities.

(ii) Shower b 1 for every 10 persons.

29 CFR Ch. XVII (7-1-95 Edition)

(iii) Laundry tray or tub for every 30 persons.

(iv) Slop sink in each building used for laundry, hand washing, and bathing.

(2) Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

(3) An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.

(4) Every service building shall be provided with equipment capable of maintaining a temperature of at least 70° F. during cold weather.

(5) Facilities for drying clothes shall be provided.

(6) All service buildings shall be kept clean.

(g) *Lighting.* Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

(h) *Refuse disposal.* (1) Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

(2) Garbage containers shall be kept clean.

(3) Garbage containers shall be emptied when full, but not less than twice a week.

Occupational Safety and Health Admin., Labor

§ 1910.145

(i) *Construction and operation of kitchens, dining hall, and feeding facilities.* (1) In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

(2) A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.

(3) No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

(j) *Insect and rodent control.* Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

(k) *First aid.* (1) Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.

(2) Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

(l) *Reporting communicable disease.* (1) It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.

(2) Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the

outbreak to the health authority by telegram or telephone.

(Approved by the Office of Management and Budget under control number 1218-0096)

[39 FR 23502, June 27, 1974, as amended at 49 FR 14696, Apr. 6, 1984; 49 FR 18235, Apr. 30, 1984]

§ 1910.143 Nonwater carriage disposal systems. (Reserved)

§ 1910.144 Safety color code for marking physical hazards.

(a) *Color identification.*—(1) *Red.* Red shall be the basic color for the identification of:

(i) *Fire protection equipment and apparatus.* [Reserved]

(ii) *Danger.* Safety cans or other portable containers of flammable liquids having a flash point at or below 80° F. table containers of flammable liquids (open cup tester), excluding shipping containers, shall be painted red with some additional clearly visible identification either in the form of a yellow band around the can or the name of the contents conspicuously stenciled or painted on the can in yellow. Red lights shall be provided at barricades and at temporary obstructions, as specified in ANSI Safety Code for Building Construction, A10.2-1944. Danger signs shall be painted red.

(iii) *Stop.* Emergency stop bars on hazardous machines such as rubber mills, wire blocks, flat work ironers, etc., shall be red. Stop buttons or electrical switches which letters or other markings appear, used for emergency stopping of machinery shall be red.

(2) [Reserved]

(3) *Yellow.* Yellow shall be the basic color for designating caution and for marking physical hazards such as: Striking against, stumbling, falling, tripping, and "caught in between."

[39 FR 23502, June 27, 1974, as amended at 49 FR 49748, Oct. 24, 1978; 49 FR 5322, Feb. 10, 1984]

§ 1910.145 Specifications for accident prevention signs and tags.

(a) *Scope.* (1) These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar

RECRUITMENT PROPOSAL

“AMERICA’S AGRICULTURAL LABOR NETWORK (AGNET)”

Problem -- Federal government recruitment assistance.

Growers are required under the H-2A program to conduct positive recruitment efforts prior to applying for foreign workers. One aspect of this requirement is to post the job opportunity with the local Employment Service office.

Unfortunately, less than 2% of agricultural job placements are through the local Employment Service office. Between June 1995 and July 1996, about 190,000 migrant and seasonal farm workers sought employment through the U.S. Employment Service State offices and only about 65,000 were actually placed in agricultural jobs. (This method of placement has become increasingly ineffective for this industry which has become more reliant on using private sector intermediary labor brokers -- farm labor contractors.)The Federal government should re-target its resources to more effectively aid growers and workers in finding labor and employment.

Proposal -- America’s Agricultural Labor Network (AgNet).

The majority of farm workers find employment through a kinship/friendship network. One problem with this method is that it spawns and reinforces illegal migration to the U.S.; another is that it is highly inefficient in a geographically diffuse labor market. Workers spend time trying to locate employment when they could be earning money. The Federal government could serve as an information broker by developing a system that allows growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.). This would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities.

Model -- America’s Job Bank

America’s Job Bank (AJB) is a partnership between the U.S. Department of Labor and the state-operated public Employment Service. AJB links these state offices electronically through an Internet web site. There is no charge to employers or job seekers to use this service.

- For job seekers, AJB provides a nationwide listing of job opportunities and allows them to file a resume that enables employers to find them.
- For employers, AJB provides a quick way to list job openings, national exposure, and an easily accessible applicant pool.

Approximately 900,000 jobs are listed in AJB on an average day.¹ It takes about 72 hours to register with AJB and about 24 hours to list a job vacancy. These times will improve over the coming year as the software is updated.

America's Agricultural Labor Network (AgNet).

What is AgNet? America's Agricultural Labor Network (AgNet) would be an information system devoted to the agriculture industry which would contain job opportunities and worker resumes. AgNet would be based on AJB, but would be a separate web site. The two sites would be linked so basic information in AgNet is automatically placed in AJB.

The State Employment Service would serve a similar function, as in AJB, to scan listings for obvious problems prior to posting on the Internet. This provides some basic quality control. However, this is not a process for verifying an applicant's immigration status.

What information will be available in AgNet? The job listing would provide the conditions of employment including location, crop, duration of employment, wages, skills requested, and whether housing and/or transportation is provided. In addition, it would include information on how to contact the employer and the required worker disclosures. The worker resumes would include, among other things, qualifications, desired location and crop, and information on how to be contacted. The contact and hiring arrangement is between the grower, or FLC, and the worker, not the government. Examples from AJB are attached. The specific information included in the system would be modified to reflect the agriculture industry.

The system must meet the challenges of helping workers gain access to it and connecting English-speaking growers with many Spanish-speaking workers. The system will initially be in English but to address this concern will eventually be designed in Spanish as well.

Who can use it? This system would be accessible to the public generally including growers, workers, farm labor contractors, community based organizations² (CBOs), and unions. Browsing the system is anonymous. CBOs could serve as a point of contact for workers or growers. The system could be designed to have "counselor/broker accounts" to allow an organization to search for jobs for multiple workers or list jobs for multiple growers. Such a design change would likely not be available until later in 1999.

How will workers and growers gain access to the system? Given this is a low-wage industry,

¹ Very few of these listings are for agricultural jobs, with only 479 such listings nationwide on October 5, 1998.

² Community based organizations include churches, farm labor organizations, and agricultural grower organizations.

gaining access to AgNet will be a challenge. Some places that may be able to provide access include local libraries, CBOs, unions, State Employment Service offices, and U.S. Department of Agriculture extension offices.

What are the benefits of AgNet? AgNet would be a free service provided to workers and growers. Ideally, workers would be able to plan their entire employment cycle using this system. For example, the worker could line-up jobs from Florida up to New York. This would provide more control and stability for the worker.

Growers would benefit by gaining access to a two-sided recruitment system. Now, growers file requests for workers with the Employment Service and wait for referrals -- a one-sided system. Under this system, growers would be able to search for, identify, and contact qualified, available workers in addition to listing their job openings. Also, the grower would gain exposure to a national audience of workers. With electronic posting, the grower would have complete control of his/her job postings and would be expected to suspend them once his/her jobs had been filled.

Who will own AgNet? AgNet will be owned and operated by a partnership. The partnership will consist of farm worker and grower organizations, supported by the U.S. Department of Labor and U.S. Department of Agriculture. The partnership will determine the final design of the system. Due to the time it would take to establish a partnership, initial implementation of the system will be through the current AJB partnership between the State Employment Service and the U.S. Department of Labor.

How will growers and workers learn about the system? The critical link to the success of this system is buy-in by the farm worker and grower organizations. Given most workers find jobs through word of mouth, the partnership will have to conduct extensive outreach. In addition to fliers and newspaper ads, public service announcements on Spanish radio could serve as a good median. The Federal government could also conduct outreach efforts through its programs including the U.S. Department of Agriculture extension offices.

How long will it take to set up AgNet? The system could be activated in approximately one month after initial design modifications are made. It will take additional time to implement further design changes, requested by the partnership, that reflect this industry's needs. The goal would be to have xx,000 job opportunities in AgNet by the end of January, 1999.

Who will pay for AgNet? The Federal government will provide this service through a grant to the partnership. Initial funding will be provided to the State Employment Service until the partnership is formed. Given the software for the labor network has already been developed, it will cost a minimal amount of money to activate this system. Additional customizing of the system (e.g., Spanish language version or adding the "counselor/broker" features) will cost a relatively small amount of money. There will be a separate cost for training and outreach to the various CBOs and unions.

Preliminary estimates:

Year 1:	\$	25,000 (annual system costs)
	\$	150,000 (design changes)
	\$	??? (training and outreach) *
Year 2:	\$	25,000 (annual system costs)
	\$	100,000 (additional design changes)
	\$	??? (training and outreach) *
Year 3:	\$	25,000 (annual system costs)
and out-years	\$	??? (national outreach)

* This funding level would provide:

- grants to CBOs and unions for equipment and advertising;
- funds for computer related training of CBOs and unions; and,
- national outreach to workers and growers.



Job Seeker Registration Update



Please complete the form below and click 'Update Registration' to update your registration.

⇒ Last Name:	
⇒ First Name:	
	M.I.:
⇒ Street Address 1:	
Street Address 2 / P.O. Box:	
⇒ City:	
⇒ State:	
⇒ Zip/Postal:	
⇒ Country:	United States
⇒ Primary Phone:	
123-456-7890x123	
Alt. Phone:	
123-456-7890x123	
Fax:	
123-456-7890	
Email:	
⇒ U.S. Military Veteran Status	Not A Veteran
⇒ Are you a U.S. Citizen (or authorized to work in the U.S.)?	☒ Yes ☐ No
<i>Only enter data in the password fields if you wish to change your password</i>	
⇒ Password:	
⇒ Verify Password:	

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Job Referral Information

Applicants will be instructed to address referrals as you indicate below to the address, phone and/or fax number entered below. Please choose at least one form of contact information and make any changes that are needed to the default referral information taken from your company profile.

Company☐ **Mail**Address City State Zip Code Country Contact Name ☐ **Phone**Phone Number
123-456-7890x123

Speak With

☐ **Fax**Fax Number
123-456-7890

Deliver To

☐ **Email**☐*Company Resume Builder / Online Application*

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Job Order Entry

The following information is necessary to allow us to enter your job into our on-line search system. Please complete the form below and click 'Submit Job' when you are done.

Title			
Location	City	State	Zip
Country	United States		

☐ If this job is a regional, statewide, or country-wide job, click this checkbox and complete as much information as possible above.

Number of positions available

Number of hours per week

Months of experience required

Salary should be entered in the following format ###,###.##. Comma is optional. Do not use decimal unless cents are really part of the salary (i.e. 15.50 per hour). Do not use alpha characters (i.e. 50K per year). Salary/Pay Unit should not exceed the equivalent of \$500/hour (i.e. \$1.04 million/year).

If you do not enter a salary, your job will not be considered when a job seeker does a search using salary as a search criteria.

Salary Range \$ to \$ per

Duration

Required Education

Required Degree or Formal Training

Required License, Certificate, or Registration

Company URL

If your company has a World Wide Web home page, you can include a link to it here by entering your company URL.

Job Description

Please list the job skills and experience requirements, as well as any other information applicants should know. The most important skills and experience should be listed first so applicants can quickly determine if they are qualified. Please use plain text without HTML formatting tags.



Background on H-2A guestworker reform

1. H-2A — in general

Agricultural “guestworkers” are admitted on H-2A visas for temporary jobs. In order to be allowed H-2A workers, an employer must prove to the DOL that (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers. Employers also are required to provide free housing to workers outside the commuting area; reimburse workers’ inbound transportation if they complete half the contract, outbound also if they complete the contract; guarantee 3/4 of the hours of the contract (the 3/4 guarantee); and hire any qualified U.S. worker who applies during the first half of the work contract (the 50% rule). There is no cap on the number of H-2A visas granted. In FY 1996, H-2A admissions totaled 9,635.

2. Recent legislative efforts

In June 1995, in response to efforts in Congress to pass legislation that would create a new guestworker program (without the worker protections present in the existing program) and agreeing with the recommendation of the Commission on Immigration Reform, the President stated his opposition to a “new guestworker program.” However, he also stated that if the crackdown on illegal immigration contributes to labor shortages, he would direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance the existing H-2A program.

On March 12th of this year, the House Judiciary Subcommittee on Immigration approved legislation, sponsored by Rep. Robert Smith (R-Ore), that provides for a new pilot guestworker program. This legislation establishes a 24-month pilot program to test new procedures for companies to secure approval to employ temporary foreign agricultural workers. The bill proposes the elimination of many of the worker protections in the existing H-2A program, including the housing requirement (only requires the provision of housing if that is the “prevailing practice in the occupation and area”), transportation allotment, and the use of the adverse effect wage rate.¹ The bill further eliminates the requirement that the Department of Labor determine that there are not sufficient legal U.S. workers available at the time and place of need. Rather, the bill would require only that the grower file a “labor condition attestation” with the office of the state job service. The attestation would be deemed accepted within 7 days, unless the agency finds that it is “incomplete or obviously inaccurate.” In a March 12, 1998 letter to Chairman Lamar Smith, Secretary Herman stated that if this legislation were presented to the President, she would recommend a veto.

¹ The Department of Labor determines the minimum rate to be paid by employers of H-2A workers, based on wage surveys conducted by USDA. This so-called “adverse effect wage rate” is designed to mitigate any negative effect employment of these workers may have on domestic workers similarly employed.

In recent weeks, Senators Wyden and Graham have asked the Department of Labor to support their efforts to legislatively reform the existing H2A program, in ways similar to the Smith proposal.

3. A new guestworker program?

Grower advocates argue that they continue to experience difficulties in finding domestic farmworkers and that the H-2A program is slow, cumbersome, and expensive. However, a recent (December 1997) GAO study concluded that agribusiness does not now and will not soon face an agricultural labor shortage. The GAO's finding of a labor surplus echoes the conclusions of the U.S. Commission on Agricultural Workers (1992), and the U.S. Commission on Immigration Reform reports (1995 and 1997). While the GAO report suggested that there could develop localized labor shortages, it noted the widespread belief that employers should respond to the market place by increasing wages, improving recruitment and modernizing their labor practices. Further, the GAO report cited a study which concluded that substantial wage increases would have little effect on consumer produce prices or international competitiveness.

Many growers blame the INS's recent crackdown on undocumented farmworkers for the shortages of domestic farmworkers and their need to rely on a dysfunctional H-2A program.

4. The Administration's recent efforts

Our goal is to reform the H-2A program so that it works more effectively to provide temporary foreign workers when shortages exist. However, we also want the program's current regulations to be enforced and to explore reforms that would ensure that the program isn't being used to displace U.S. workers.

Earlier this month, the Administration put forth a proposal to streamline the H-2A program (OIRA is close to completing its review of the proposed rule). These reforms are targeted at improving how H-2A applications are processed and reducing paperwork and delay. However, there remain several substantive aspects of the program that are need of reform: wage requirements, housing, and the requirement of positive domestic recruitment by growers.

5. The Labor Department's position and the current legislative picture

Though the Labor Department understands and supports our position in opposition to legislation that would create a new guestworker program, they have asked us on a couple of occasions whether they could send a letter to Wyden and Graham that generally supports their efforts to enact new guestworker legislation. They have said that because Wyden and Graham are Democrats, we should respond in a generally positive way to what they are doing. We (DPC/NEC) have strongly opposed the Administration giving any indication of support for the Wyden/Graham legislation. Also, because there is little to no chance of the Wyden/Graham legislation going anywhere this year, we see no need to weigh in at this time.

6. Our next steps

Despite not wanting to in any way indicate support for any of the current legislative efforts to reform the H-2A program, we continue to want to engage in a process with the DOL, USDA and other agencies to find solutions to some of the difficult issues presented by this program, such as how to better guarantee fair wages for farmworkers; the issue of the lack of safe and decent housing for migrant farmworkers; and whether we need to develop better ways of ensuring that growers are making good faith efforts to access the domestic labor market.

We are recommending a meeting with DOL and USDA in order to make sure that we are all on the same page. Though the USDA agrees with our position, their career staff (who deal regularly with the program) has been pressing hard for ways to make the program cheaper and more efficient for growers. It is likely that USDA staff has been working with some Senators (like Wyden and Graham or Smith) in the development of alternative legislative proposals. Though the Labor Department would like to see increased worker protections, improved conditions, and wage reform, they are somewhat afraid of the bloody battle that would be pitched by the growers if any movement is made in that direction. They also seem eager to please Senator Coverdell (who has a hold on two of their nominations and wants lots of pro-grower reform to the H-2A program) and Senators Wyden and Graham (they say, because they are Democrats).

Thus, it is important that we reiterate to DOL and USDA that we do not and will not support any of the current legislative efforts, but that we are committed to cautiously proceeding with a process that looks at the most difficult issues, including wages, housing and enforcement of current regulations that protect U.S. workers, with the hope of proposing a new set of substantive reforms in the next couple of months.