

DRAFT

workers are not required to have visas. These H-2A workers are represented by the West Indies Central Labour Organisation (WICLO), which organizes their entry into, stay in, and exit, from the United States. To apply for Caribbean workers, an H-2A employer goes through the same process with Labor and INS as he or she would for workers from other countries. However, for Caribbean workers, INS keeps the I-129 petition, rather than sending it to the consulate where a visa would be issued. Instead, these workers enter the United States through Miami with a valid travel document provided by their home governments and are not required to have a passport or H-2A visa. This travel identification document is approved by INS (in addition to the already approved I-129 petition). INS gives the workers an I-94 form, stamped "H-2A." Once the workers enter the country, they typically travel to various employers along the east coast, with transportation arranged by an employer or employer group. When the workers leave, they submit their I-94 and WICLO oversees their departure.

Most H-2A Visa Applications Filed in Groups

Officials at both consulates reported that they require appointments for applications for groups of H-2A workers. Most of the petitions are initiated by a single employer or "handler" on behalf of multiple applicants; very few petitions are filed for individual applicants. The employer or handler (a representative of the employer who recruits and/or organizes the workers) generally selects which consulate to use and schedules the appointment. According to H-2A workers and advocates, handlers may charge a fee to each individual worker within the group. The consulates are not obliged to notify the petitioner that the approved petition has arrived, but they sometimes do so. The employer or handler usually keeps in touch with the consulates to find out, among other things, when the INS visa approval arrives. Consulate officers also reported that H-2A handlers and employers are usually repeat applicants, familiar with the process and consular staff.

All H-2A applicants must submit a valid passport and Nonimmigrant Visa Application (form OF-156), and pay a \$20 processing fee. At Monterrey, this fee is paid before the

DRAFT

visit through a local bank designated by the State Department. Monterrey consulate officials told us that the applicant must have a receipt from the bank in order to be admitted into the consulate.

Once the paperwork and processing fee are submitted, the consular officer begins the process of adjudication, leading to either approval or denial of the petition. First the consulate official checks to make sure that there is a valid labor certification and INS petition approval. Consulate officials told us that the officer is also responsible for assuring that the alien has a residence abroad and that the applicant intends to return home. To do this the officer may interview the applicant and review the paperwork and record of previous trips, if any, and determine the nature of ties with family and friends in the homeland. At Hermosillo, consular staff interview applicants individually, in a group, or on a spot-check basis. Because Monterrey gets so many H-2A applicants, such interviews take place only if a problem arises. The officer is required to run the name of each applicant through the Consular Lookout and Support System (CLASS), a database of individuals known or believed to be ineligible for visas to enter the United States, to ensure that the applicant is not barred from entering the country.

Although applicants can be rejected if, for example, they cannot document their residence, this happens infrequently. The Hermosillo consulate issued 709 H-2A visas in fiscal year 1996 and rejected an estimated 5 petitions, or less than 1 percent. Monterrey issued 9,568 H-2A visas that year and rejected 38 petitions, also less than 1 percent.

If there are no "hits" in the CLASS review and all paperwork is in order, State approves the petition and the applicant pays a visa fee, which differs by visa category. The consulates do not track the processing times for approving petitions and issuing visas, but both consulates reported that visas are usually issued the same day the applicant visits the consulate to apply for it. It may take days or weeks, however, from the time the consulate receives the I-129 petition until the visa is issued, if an applicant delays scheduling an appointment or visiting the consulate. Officials at the consulates stated that current

DRAFT

resources allow them to process all the H-2A visas they receive, although the Monterrey consulate had to turn away an estimated 40,000 tourist visa applicants in fiscal year 1996 due to resource constraints. If one consulate did set a limit on the number of visas it could process in a day, however, the applicant could choose to apply for a visa at the other consulate.

INS Makes Final Determination At Border

Once the visa is issued, the H-2A worker is not guaranteed entry into the United States but is subject to inspection at the port of entry by immigration officials, who can deny admission. At the port of entry, an INS official validates the form I-94, Record of Arrival-Departure, which notes the length of stay permitted. The worker is admitted to the United States for the "validity period" of the petition--that is, until the labor certification expires. H-2A visa holders can be admitted to the United States 7 days before the beginning of the validity period and stay 10 days after it ends.

Data on the Number of Farmworkers

Who Overstay Their Visas Are Not Available

Officials at INS, which has the responsibility of monitoring whether or not visitors overstay the visas, told us that there are no reliable data on the number of H-2A workers who overstay their visas. As we reported in 1995, the task of estimating overstays presents a difficult challenge.³⁶ INS procedures require that visitors return the I-94 when they leave the country. It has a data system for tracking the dates when individual foreign visitors arrive in and depart from the United States. However, the agency cannot assume that all persons whom the system does not record as having left have, in fact, overstayed their lawful periods of entry because according to INS officials, about 70 percent of I-94s are not returned. This is especially true of nonimmigrants who leave the United States by

³⁶See Illegal Immigration: INS Overstay Estimation Methods Need Improvement (GAO/PEMD-95-20, Sept. 26, 1995.)

DRAFT

surface transportation such as automobile or bus, which would include most H-2A workers. Because no INS employees are inspecting traffic exiting the country at land border crossings, there is no assurance that the I-94's are being submitted.³⁷

INVOLVEMENT OF MULTIPLE LEVELS OF GOVERNMENT AND AGENCIES MAY RESULT IN REDUNDANT OVERSIGHT ACTIVITIES AND PARTICIPANT CONFUSION

Because the H-2A program involves multiple agencies at various levels of government, oversight activities sometimes overlap, resulting in duplication and confusion among both the agencies and the employers. Employers, advocates, and agency officials repeatedly expressed frustration about the lack of information on various segments of the H-2A process which they needed to obtain, or assist others in obtaining, foreign guestworkers. As mandated by IRCA, Labor produced a handbook on the H-2A Labor certification process in 1988. The 325-page handbook provides detailed information on application requirements, including relevant sections of the Federal Register and Code of Federal Regulations. However, some of the information provided relates to provisions that are no longer applicable, it is not presented in a user-friendly manner, and Labor officials agreed that it includes little information about the process after certification by Labor.

Multiple Agencies Can Create Confusion Among Agricultural Employers

Employers we interviewed were frequently confused by the multiple agencies and levels of government involved in the H-2A program. Discerning how to comply with regulations can be difficult because of overlapping responsibilities for inspection and the resulting conflicting administrative procedures and regulations. Complying with housing requirements is a case in point. Federal regulations require that H-2A employers provide

³⁷The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires INS to take measures to address this problem

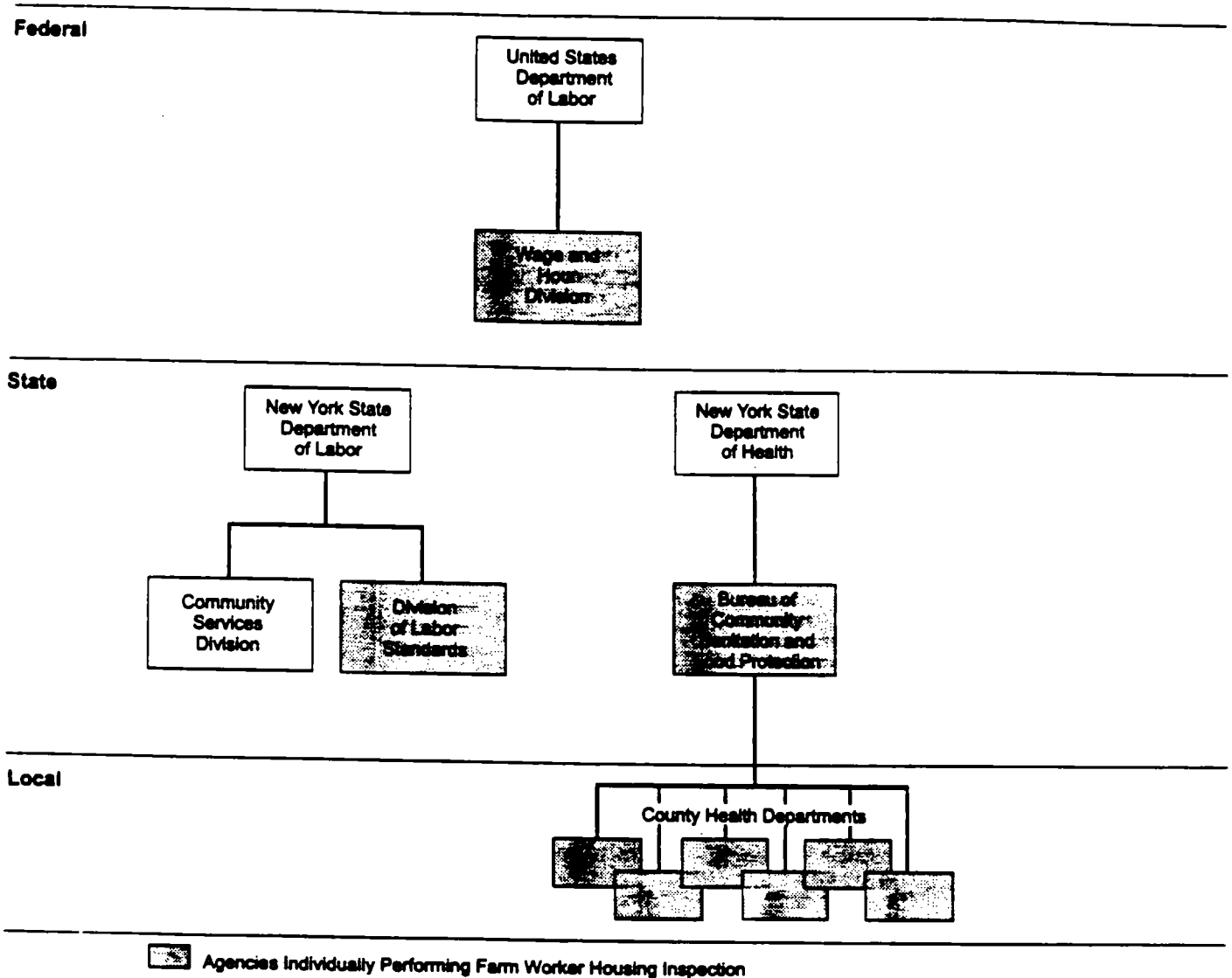
DRAFT

worker housing and that such housing meets health and safety standards before and during occupancy. The housing must also be inspected and approved 30 days before the employer's date of need. In some locations, state and local regulations also apply. In some of the states we reviewed H-2A housing was also subject to state and local housing regulations and inspected by multiple agencies.

Having numerous standards and procedures can be inefficient and create confusion about compliance requirements. For example, although New York, a state with heavy H-2A participation, took action to streamline its housing inspection process, it continues to require multiple inspections. To formalize a working relationship, federal and state agencies responsible for enforcing "employee protection legislation to guard against the exploitation of farmworkers" developed a memorandum of understanding, including an agreement to exchange information on housing inspections, and coordinate inspections and notification of violations. (See figure 3.5)

DRAFT

Figure 3.5: Multiple Agencies Enforce Farmworker Protections in New York



Officials in the New York State Department of Labor's Community Services' Division told us that housing inspections can be conducted as many as three times: once by federal Labor, once by the Rural Labor Services within the Division of Labor Standards of the New York Department of Labor, and once by the New York State Health Department. The Director of The Bureau of Community Sanitation and Food Protection, which is responsible for enforcing the State Sanitary Code relating to migrant worker housing, told

DRAFT

DRAFT

us that his department is still uncertain as to the role of the agencies that signed the memorandum of understanding. He stated that federal Labor carries out some inspections but "picks and chooses" and does not keep track of the sites, so the health department does not know which sites have been inspected. As a result, the health department ends up inspecting all housing facilities in the state every year.

Virginia, another state with heavy H-2A participation, has a similar problem with its housing inspection operations. While the Virginia Health Department and the Virginia Employment Commission developed a memorandum of agreement in 1986 to avoid duplication of effort, H-2A housing in the state continues to be inspected twice, once by the Employment Commission and once by the Health Department, in contrast to non-H-2A housing that is inspected only by the Health Department. A state official complained about the redundancy in H-2A inspections.

Other states have tried to address this problem of redundancy. For example, North Carolina has developed a system to remedy its problems with multiple agency oversight that has elicited praise from the various stakeholders. To avoid duplication and reduce confusion, in 1993, the state employment commission, the state health department, and the federal ETA signed a memorandum of agreement stating that the state health department would conduct all housing inspections using county health departments' water and septic system certifications. If the state health department gets backlogged and cannot inspect the housing before the workers arrive, employers not using H-2A workers can notify the employment commission, which will allow the employers to house workers until the housing is inspected. Federal regulation requires employers using H-2A workers to have housing certified prior to occupancy. Health department officials told us that they prioritize inspections for H-2A employers because H-2A requires the inspection 30 days prior to the date of need.

Confusing and redundant housing inspections may result in misinterpretations or misunderstandings of the regulations by program participants. Employers, particularly

DRAFT

those in California, told us that the difficulty of providing and maintaining housing that complies with regulations would prevent them from participating in the H-2A program in the event of a labor shortage. However, some of the housing standards employers described as preventing them from providing housing were not required for participation in H-2A. For example, in California, employers and advocates for employers and labor told us that using tents for farmworker housing was prohibited because employers are required to provide heating and air conditioning, which are difficult to provide in a tent. However, California state housing officials told us that tents have been certified in the past and are still acceptable, as long as they meet certain specifications, and that federal housing regulations also permit such arrangements. They also said that air conditioning is not required because there are no maximum temperature requirements for temporary housing to be used for fewer than 180 days. Moreover, federal migrant farmworker housing regulations have no maximum temperature requirements, and both federal and state regulations establish minimum standards for heating only if the outside temperature falls below 60 degrees. Furthermore, in California, local housing standards, including those for heating and cooling, are preempted by state standards.

Using Temporary Structures May Address

Community Opposition to Permanent

Farm Labor Housing

Correcting misunderstandings about H-2A program housing requirements may also address agricultural employers' concerns about community opposition and local zoning laws that some have encountered when they attempted to build more permanent farmworker housing. Federal and state labor officials agreed that employers have reason to be concerned about "not in my backyard" community opposition to farmworker housing and restrictive zoning laws because they limit the availability of low-income housing generally and make it difficult for farm employers to build housing. A representative of a California company that grows apples and cherries told us that it had tried to build housing at an estimated cost of \$1.5 million for 240 temporary farmworkers in a sparsely

populated community. The planned housing project would have been used about 10 months a year and would have included recreation rooms, security guards, and parking. Community residents strenuously objected, fearing the project would bring crime and other problems into the area. The company official told us that they ended up abandoning efforts to construct permanent farmworker housing and withdrawing the company's H-2A petition.

Officials in New York described a similar problem on the eastern end of Long Island, where residential development has overtaken farm land and where community opposition has grown to employers' attempts to build housing for farmworkers. It is difficult, said one state housing official, for agricultural employers to build housing "unless the grower has a lot of land and the neighbors cooperate." Another official in New York observed that zoning boards have not approved any new housing: some growers who wanted to put substantial investments into new farmworker housing (\$100,000 in one case) were barred from doing so by the local zoning board.

Worker Protection Provisions Under H-2A Program Hard To Enforce

It is difficult to determine the effectiveness of worker protections in the H-2A program because enforcement actions are almost exclusively complaint-driven, and H-2A guestworkers may be less aware of U.S. laws and protections than domestic workers. In addition, WHD faces inherent obstacles in enforcing existing protections when the worker is legally in the country only at the behest of the employer and must leave the country soon after separating from employment. Our analysis of state and federal enforcement data and data from a major H-2A employer do, however, raise concerns about the effectiveness of several H-2A program's worker protection provisions, in particular, positive recruitment, and wage guarantees including guaranteed wages for three-quarters of the contract and the first week of the contract.

Positive Recruitment Requirement

Providing Few Jobs for Domestic Workers

H-2A provisions require that prior to Labor's certification of a labor shortage, an employer must engage in an active effort or "positive recruitment" to find domestic workers for H-2A job openings, including newspaper and radio advertising in areas of expected labor supply. The purpose of this requirement is to protect the employment opportunities of domestic workers by giving them the initial choice of accepting this work, if qualified. Filling job vacancies with domestic workers would reduce the number of H-2A workers to be imported.

The positive recruitment requirement appears to result in few job placements of domestic workers. An employer is required to hire all qualified workers referred by state job services. However, we found that state job services may refer only a few workers for H-2A job openings, even when they make many referrals and placements in agriculture as a whole. The North Carolina Employment Security Commission record of referrals of agricultural workers for 1996 shows 27,461 potential workers referred and 15,886 workers placed with non-H-2A employers. In contrast, even though North Carolina employers asked for more than 5,000 workers, almost a third of all H-2A workers requested nationwide, the Commission referred only 13 potential workers to H-2A employers. Our analysis of ETA data shows the same limited SESA referrals in other states. SESA officials in other states told us that they rarely refer agricultural workers for H-2A job orders because of concerns about H-2A employers' willingness to hire the workers. H-2A employers we spoke with told us that they offer domestic workers jobs but that they either do not show up or they quit before the harvest ends. While several H-2A employers told us that positive recruitment was a waste of time and money because no domestic workers were willing to accept the work, non-H-2A employers joined others in asking why one agricultural employer would be unable to find a single domestic worker, while a neighbor could find all they needed.

DRAFT

Federal and state Labor officials expressed concern that the increasing role of agricultural employer associations in accessing the H-2A program for individual employers may pose problems for positive recruitment. The number of workers requested by associations has grown from 3,000 in 1991 to 10,000 in 1997, almost 65% of workers requested, and the number of associations that filed applications has grown from 5 to 14. In filing an H-2A application, an association may file in one of three ways: as an agent, a sole employer, or a joint employer. In a joint employer relationship, ETA grants the certification jointly to the association and its specified employer members, and the association assumes the liabilities and obligations of an employer. Associations make it easier for smaller employers to access the H-2A program in that they normally prepare and file the appropriate Labor and INS forms covering individual employers, advertise for domestic workers, and, in some cases, recruit the foreign H-2A workers. Such a relationship also increases flexibility in that associations are allowed to transfer workers among individual growers as the workload dictates. However, officials in both federal and state agencies told us that when associations represent employers from a large geographic area, (e.g., an entire state), domestic workers may be less likely to accept job offers for H-2A openings and, when hired, exhibit high turnover.

Several reasons have been suggested to explain the failure of those who are referred to the association to accept or stay at work. One possible reason is that the job description may not accurately reflect the actual work involved, and the worker is unable or unwilling to perform the work required. Another possible reason is that, unlike most individual agricultural employers, a joint employer association may offer jobs at a worksite far from the worker's home, and the worker may be unable to accept the job because of transportation and housing requirements. Although current law requires that employers provide transportation and housing for workers recruited from outside an area, they do not require that these be provided for locally recruited workers, even though the local recruitment may be hundreds of miles from the actual worksite. Labor's Inspector General has undertaken a review of H-2A positive recruitment provisions and expects to issue a report in the spring of 1998.

Although explanations for the lack of success of positive recruitment with associations is largely anecdotal rather than empirical. Our analysis did confirm a significant number of domestic workers refusing work. Of the 220 domestic workers who applied to one major H-2A in 1996, 70 percent refused employment or did not show up for work. This employer was an association which filed "master job orders" with ETA allowing it to place workers all over a large state. SESA officials in one state told us that they had recently obtained commitments from associations to place domestically recruited workers at worksites close to their homes. However, it is unclear how such commitments will be monitored and enforced.

Multiple Factors Make the Three-Quarters Guarantee Hard to Enforce

Under the H-2A program's three-quarter wage guarantee, an employer must offer each worker employment for at least three-fourths of the workdays in the work contract period and any extensions. If the employer provides less employment, the employer must pay the amount the worker would have earned had the worker been employed the guaranteed number of days. This provision is intended to ensure that employers make honest assessments of both the number of workers needed and the time that they will be employed, and that prospective workers have some guarantee about the total wages and duration of employment to be accepted.

It is difficult to determine the extent to which the 3/4 guarantee is being complied with or violated. Most labor standards investigations involving farmworkers generally are complaint-driven, yet agency officials and worker advocates report that H-2A workers are unlikely to complain about worker protection violations, including the 3/4 guarantee, because they fear that they will lose their jobs or will not be accepted by the employer or association in future years. This concern was raised by H-2A workers we spoke with, and WHD officials report that most complaints about the 3/4 guarantee come from other employers, not workers or other sources. For example, in 1997, ranchers employing

shepherders failed to pay them the proper wages under the 3/4 guarantee but no complaint had been filed with WHD. WHD only became aware of the situation because one of the shepherders was assaulted and a local newspaper publicized the attack. The employers admitted that they failed to pay the appropriate wages to their shepherd employee. In another example, ESA officials told us they were aware that some employers may have imported Jamaican H-2A workers without paying them wages in compliance with the 3/4 guarantee, but said they were too understaffed to investigate the matter. According to an ESA official, in fiscal year 1996, the agency received no complaints from workers employed by H-2A employers. ESA data from fiscal year 1995 showed that the majority of complaints--82 percent--came from SESAs or were targeted investigations; 18 % came from third parties, such as Legal Services or workers.

The three-quarters guarantee is particularly difficult to enforce because the provision is only applicable at the end of the contract period. Because H-2A workers must leave the country within 10 days of the end of the contract, there is only a small window of opportunity to interview the workers in the United States. Regional and district WHD officials said they could not monitor the application of 3/4 guarantee effectively because they cannot interview workers after they return to Mexico to confirm their work hours and earnings. Similarly, it is hard to prove retaliation against workers who complain about such violations because there is no way to obtain and corroborate information.

These enforcement difficulties also create an incentive for less scrupulous employers to request contract periods longer than necessary: if workers leave the worksite before the contract period ends, the employer is not obligated to pay the 3/4 guarantee or their transportation home. If this occurs, however, it is almost impossible to determine if these workers have left the country or are taking jobs from domestic workers. Data from a major employer showed that almost half of their H-2A workers (1,800 workers) left prior to the end of the contract, losing their right to both the three-quarters guarantee and transportation home. This development raises concerns about whether the employer accurately estimated the ending date of need. Discussions with H-2A program officials

suggest that, at least with associations, contract periods have been lengthening in duration in recent years. More importantly, the three-quarters guarantee does not provide incentives to ensure that the employer makes the worker stay through the end of the contract period.

H-2A Workers Do Not Receive Same Guarantee

For Wages Provided to Domestic Workers

Migrant and seasonal farmworker regulations provide a guarantee of first week wages for domestic workers: if an employer fails to provide adequate notification in amending an incorrect date of need, the employer must pay workers referred by the job service in the first week when they were present and available for work and no work was provided. The H-2A program's equivalent treatment provision, sometimes referred to as "disparate" treatment, requires that the employer offer domestic workers at least the same opportunities, wages, benefits and working conditions as those offered to foreign H-2A workers. However, officials at the state and federal levels do not apply this provision to foreign workers, even though they joined worker advocates in expressing concern about the community impact when foreign workers arrived in their areas without work or money to support themselves. In one state, an association of churches reported having to raise money to house and feed foreign H-2A workers hired by local employers who had incorrectly estimated the date of need such that when the H-2A workers arrived at the worksite there was no work or wages for several weeks.

Questions About Location of

Enforcement Responsibility Within Labor

ETA has the authority to sanction employers by denying certifications to employers who have committed substantial violations of the terms or conditions of a temporary alien agricultural labor certification. ETA must notify an employer who has committed a substantial violation that certification will not be granted for a certain period of time.

DRAFT

depending on the number and kind of violations. However, ETA is not responsible for enforcing H-2A work contract provisions or other labor violations; WHD has this responsibility. WHD has authority and responsibility for: conducting investigations and inspections regarding matters such as the payment of required wages, transportation, and housing; reporting violations to ETA; and invoking penalties, such as recovery of unpaid wages, assessment of civil monetary penalties, and seeking injunctive relief against the employer. ETA officials told us that they try to coordinate with WHD but that they have never denied certification for labor law violations although they typically use the authority as leverage in obtaining voluntary compliance. However, because WHD is the agency that enforces the labor laws, it is the agency that most needs this leverage. WHD field officials expressed concern about the difficulties of ensuring that abusive employers do not participate in the H-2A program where they believe the potential for abuse is much greater.

SUSTAINED INCREASE IN DEMAND FOR GUESTWORKERS WOULD REQUIRE ADDITIONAL AGENCY RESOURCES

Although a national farm labor shortage currently appears unlikely, Labor, INS, State, and state employment service officials who implement the H-2A program stated that they could handle unanticipated, moderate short term program workload increases by shifting staff resources, or as in the case of State, prioritizing the types of visas to be processed. However, officials from the federal agencies all agreed that any massive (e.g., a tenfold increase to 150,000 per year) sustained national increase in the demand for agricultural guestworkers could not be effectively processed without additional resources. Labor and State officials also emphasized that the additional staff necessary to process large, sustained workload increases would have to be added over the course of a year, given the need to train and relocate personnel. In contrast, state SESA officials stated that, in general, additional resources would not be required because the steps that they take to recruit workers are not significantly more resource-intensive to meet the demands from a few employers as for many.

Discussions with officials at State, Labor, and Agriculture noted that the administration is aware of the potential problems facing agricultural employers and the processing agencies if the H-2A program was faced with a major, sustained workload increase. Officials from Labor, INS, Agriculture, and State have met in the administration's Domestic Policy Council to discuss the potential for significant increases in the demand for H-2A guestworkers to occur and to develop an appropriate response, if necessary. Officials in Labor and Agriculture that we spoke to said that such discussions continue and that several proposed options continue to be discussed but that they are not yet available for review.³⁸

³⁸We were unable to obtain employers' and labor advocates' perspectives on the feasibility of implementing plans that were not yet available for discussion.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Given the current condition of the agricultural farm labor market and INS's current enforcement resources and policies, the likelihood of significant labor shortages and, therefore, massive increases in the demand for H-2A guestworkers appears small.

Although a large percentage of farmworkers are not legally authorized to work in the United States, INS's current enforcement efforts are unlikely to cause a major disruption in U.S. agricultural production or generate a major increase in the number of guestworkers.

However, the potential for localized labor shortages on a specific crop or geographic basis remains. The H-2A program is currently providing guestworkers for the small percentage of agricultural employers who request them on either a regular or emergency basis.

Labor and INS deny or disapprove applications from few agricultural employers, State denies visas to few prospective guestworkers, and INS detains few of these workers at the border.

Although successfully providing workers regardless of their skill level, the program often operates as if it were a black box, requiring agricultural employers to interact with a multiplicity of agencies at different levels of government that can seem very confusing and difficult to access. There currently is no centralized source of information that clearly explains the entire H-2A application and labor procurement process. Information provided in Labor's handbook relates to provisions that are no longer applicable, is not presented in a user-friendly manner, and includes little information about the process at INS and State.

This "black box" perspective also extends to Labor's oversight of the program. Labor currently collects limited data to facilitate oversight of the program's day to day

operations. Labor was generally unable to determine the extent to which its regional offices were in compliance with statutory and regulatory deadlines governing the H-2A program. Our review found significant noncompliance with these mandated deadlines.

Our work also suggests some procedural changes that could improve the program's ability to meet the needs of agricultural employers. We found that processing times under the current program are unnecessarily extended through the inclusion of the requirement that INS approve all non-Caribbean Labor certifications before transmitting the request for workers to State. H-2A visa petitions are unlike those in any other category in that they rarely identify individual workers. This leaves INS in the position of "rubber stamping" the work of others, burdening the employer with unnecessary paperwork and fees and often adding two to three weeks time to the entire H-2A application process. Reducing INS's role by delegating the authority to approve H-2A visa petitions to Labor could reduce the bureaucratic maze of rules and paperwork that agricultural employers now face. This transfer would need to be accompanied by revisions in regulations such as accommodating visa extensions where no new Labor certification is required and ensuring that appeals procedures are changed to ensure employers's right to due process.

Such a transfer could also significantly reduce total application processing time. Many agricultural employers have reported that the current requirement of filing an application at least 60 days before the date of need is difficult given the uncertainties inherent in agricultural production. A shorter period could eliminate some of this risk. By reducing INS's role in the H-2A program, total application processing times could probably be reduced by several weeks. This would permit Labor to modify the existing administrative requirement that applications be submitted at least 60 days to 45 days prior to the date of need. However, to ensure that sufficient time is available for agricultural employers to positively recruit for domestic workers, obtain inspections of farmworker housing, and show proof of workers' compensation coverage, it will also be necessary for the Congress to modify the statutory requirement that applications be approved 20 days before the date of need to seven days. Without modifying this requirement, employers will not have

DRAFT

sufficient time to meet their duties as required by the program and domestic workers will not have ample opportunity to compete for agricultural employment.

Obtaining workers through the current H-2A program requires agricultural employers to interact with multiple agencies at different levels of government. Given the often time-critical needs of agricultural employers, the multiplicity of agencies can seem confusing and difficult to access. Current written information that Labor provides to prospective employers is incomplete, hard to understand, and in some instances, outdated. These weaknesses contribute to a general perception that the program is too complex to be accessed by employers who may require its services.

Our review also identified several weaknesses regarding the protections afforded to both domestic and foreign workers. In general, Labor's Wage and Hour Division is the primary agency for the enforcement of existing H-2A contracts and other labor standard provisions, while the Employment and Training Administration administers the H-2A program, working with state job services and agricultural employers to facilitate the application process. However, under current law, ETA exercises Labor's current authority to suspend an employer's participation in the H-2A program in the event that this employer has committed a serious labor standard or contract violation and WHD, when conducting an enforcement action, must request that ETA consider using this authority. Given the overall separation of program functions between WHD and ETA, residing this suspension authority in ETA seems incongruent. We believe, and Labor officials agreed, that consolidating this suspension authority in WHD would permit ETA to concentrate more effectively on the H-2A program's crucial administrative duties and possibly increase the effectiveness of WHD enforcement.

The equivalent treatment provision of the H-2A program, commonly referred to as the "disparate" treatment provision, generally requires that the employer treat domestic and foreign workers equally in terms of opportunities, wages, benefits, and working condition. For example, if an employer hires H-2A workers at a particular wage, the same wage

must be paid to any domestic workers performing the same work in his or her employ. However, we also found the anomaly that while current Labor regulations guarantee wages for the first week of work to domestic workers who are referred to agricultural employers through the interstate clearance system of the Employment Service, even if they are unable to work during that period, comparable wage protection is not afforded to foreign workers. This disparity appears inconsistent with Labor's general application of the H-2A equivalent treatment provision and could cause needless personal hardship for some foreign workers.

Our review also raises concerns about some of the existing protections afforded to workers under the H-2A program. Current program provisions requiring that H-2A workers receive wages at least equal to three quarters of the contract period were implemented to protect foreign workers from exploitation and provide some certainty to both workers and employers as to the potential amount of work available, the costs of the program, and the ability to return to the home country. On one hand, the few complaints registered about this provision suggest compliance. However, some H-2A workers may be unaware of their rights or how to exercise them in the United States. Further, our findings concerning the increasing length in the average contract period for H-2A workers and indications that a significant number of H-2A workers may be separating from employment before the end of the contract period, invalidating the guarantee, also suggests that this protection may not always be working as intended and that some employers could "game" the system to avoid the payment of wages and transportation owed to H-2A workers.

One solution to this vulnerability is to apply the three quarters guarantee incrementally to smaller periods of time throughout the duration of the contract. For example, requiring that workers receive either three quarters of the full time wage rate or the wages for the actual hours worked, whichever was larger, payable at the end of every two or three week period of the contract, could provide additional protection for H-2A workers. However, the length of the pay increment should consider that the contract period does not always correspond to the period of time the H-2A worker spends at one worksite. As associations

move the worker from one worksite to another during the same contract, the worker receives wages from different employers. It is important that any modification of the three quarters guarantee be implemented in a manner that both protects workers but also avoids increasing the administrative complexity of the program.

RECOMMENDATIONS

To simplify the H-2A application process and reduce the cost and burden on agricultural employers, we recommend that the Attorney General:

- delegate authority for approval of H-2A visa petitions from the INS to the Secretary of Labor or his or her designee and revise corresponding regulations as necessary to implement and facilitate such an agreement including a revision of visa extension and appeals procedures.

If the Attorney General delegates this authority, we recommend that two other actions be taken.

After the Attorney General has delegated INS's role in petition approval to Labor, to reduce total application processing time and facilitate better accuracy in estimating the date workers will be needed, we recommend that the Secretary of Labor:

- amend the regulations to allow H-2A applications to be submitted up to 45. rather than 60 days before the date of need so long as INS does not have a role in the petition approval process.

To protect work opportunities for domestic workers by ensuring that sufficient time is available for agricultural employers to positively recruit domestic workers while reducing the total processing time, we recommend that Congress:

- amend the Immigration and Nationality Act so that, as long as the authority for approval of H-2A visa petitions remains with Labor, Labor would be required to complete all applications at least 7 days before the date of need, rather than 20 days.

To better protect both domestic and H-2A workers, we recommend that the Secretary of Labor:

- transfer the authority to suspend employers with serious labor standard or H-2A contract violations from the Employment and Training Administration to the Wage and Hour Division of the Employment Standards Administration, and
- revise its regulations to require agricultural employers to guarantee H-2A workers wages for the first week after the date of need and to pay workers those wages no later than seven days after the date of need, and.
- revise regulations to apply the three quarters guarantee incrementally during the duration of the H-2A contract in a manner which would improve the protection afforded to H-2A workers but also minimizes any additional administrative burdens on agricultural employers.

To improve service to both employers and workers, we also recommend that the Secretary of Labor:

- regularly collect data on its performance in meeting H-2A regulatory and statutory deadlines for processing H-2A applications, and use these data to monitor and improve its performance, and
- update and revise the H-2A handbook to include the procedures for all agencies involved and key contact points, both in Labor and other agencies.

AGENCY COMMENTS

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PRIMARY CONGRESSIONAL CONTACTS
IN ADDITION TO REPORT ADDRESSES

HOUSE OF REPRESENTATIVES

The Honorable Howard L. Berman
The Honorable Susan Collins
The Honorable Elton Gallegly
The Honorable Bob Goodlatte
The Honorable Henry LaFalce
The Honorable Steven C. LaTourette
The Honorable Richard W. Pombo
The Honorable Lamar Smith

UNITED STATES SENATE

The Honorable Larry E. Craig
The Honorable Lauch Faircloth
The Honorable Jon Kyl
The Honorable Frank R. Lautenberg
The Honorable Jack Reed
The Honorable Jay Rockefeller
The Honorable Ron Wyden
The Honorable Slade Gorton

OBJECTIVES, SCOPE AND METHODOLOGY

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Omnibus Appropriations Act of 1996 mandated that GAO review various aspects of the H-2A nonimmigrant guestworker program. In discussions with congressional staff, we agreed to combine the two mandates and restate the questions. The restated questions were distributed to the relevant committees and key congressional contacts in the terms of work which are reprinted below. The terms of work include codes in brackets after each question --e.g., [M1] and [M2] to provide a link to the questions to the specific requests in the IIRIRA mandate.

For reporting purposes, we combined these questions into two broad reporting questions: evaluate (1) the likelihood of an agricultural labor shortage and its impact on the need for foreign guestworkers, and (2) the H-2A program's ability to meet the needs of agricultural employers while protecting domestic and foreign agricultural workers, both at present and should a significant number of foreign guestworkers be needed in the future.

TERMS OF THE WORK

Objectives/Key Questions

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 directs GAO to review the H-2A nonimmigrant guestworker program "to ensure that the program provides a sufficient supply of agricultural labor in the event of future shortages of domestic workers." Specifically, we were directed to review the program to determine the following:

- "1. whether the program ensures that an adequate supply of qualified United States workers is available at the time and place needed for employers seeking such workers after the date of enactment of this Act; [M1]

DRAFT

Appendix II

Appendix II

2. whether the program ensures that there is timely approval of applications for temporary foreign workers under the program in the event of shortages of United States workers after the date of the enactment of this Act; [M2]
3. whether the program ensures that implementation of this program is not displacing United States agricultural workers or diminishing the terms and conditions of employment of United State agricultural workers; [M3]
4. if, and to what extent, the program is contributing to the problem of illegal immigration; [M4] and
5. that the program adequately meets the needs of agricultural employers for all types of temporary foreign agricultural workers, including higher-skilled workers in occupations which require a level of specific vocational preparation of 4 or higher (as described in the 4th edition of the Dictionary of Occupational Titles, published by the Department of Labor)." [M5]

The law required us to report to the appropriate committees of the Congress no later than December 31, 1996, or 3 months after the enactment of the act, whichever was earlier. In our discussions with staff of the primary congressional contacts on this assignment, however, we agreed that a later date would be acceptable to allow time for responding to the full range of agreed upon questions.

For clarity in designing and conducting the study, we restated the mandated questions as shown below. The codes in brackets after each question link the questions to the specific requests as stated in the mandate.

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Appendix II

Appendix II

1. How do federal and state agencies administer the H-2A program to respond to temporary, seasonal agricultural labor shortages? [M1, M2, M3, M4, M5]

1.1 What procedures does Labor use to certify employers for the H-2A program in a timely manner, including confirming employers' efforts to identify and recruit U.S. workers? [M1, M2, M5]

1.2 What procedures do the Immigration and Naturalization Service (INS) and the Department of State use to approve and issue visas for H-2A workers in a timely manner, including current safeguards to ensure workers' departure upon completion of employment? [M2, M4, M5]

1.3 On the basis of our analysis of agency data, to what extent do agencies certify employers in a timely manner, including employers with expedited applications? [M1, M2]

1.4 What H-2A procedures do Labor, INS, State, the Department of Agriculture, and state job service agencies use to protect the wages and working conditions of H-2A and non-H-2A farmworkers, including ensuring that H-2A workers do not displace qualified domestic workers? [M3]

1.5 What procedures are available to employers as well as H-2A and non-H-2A workers to obtain redress in a dispute? [M2, M3]

2. What are the characteristics of employers and workers participating and not participating in the H-2A program and how have these characteristics changed over time? [M1, M2, M3, M4, M5]

DRAFT

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Appendix II

Appendix II

2.1 What are the characteristics of H-2A and non-H-2A employers by size, geography, and agricultural commodity? [M1, M2, M5]

2.2 What are the characteristics of H-2A and non-H-2A workers by nationality, gender, age, skill level, and--for non-H-2A workers--immigration status? [M1, M2, M3, M4, M5]

2.3 How have these characteristics changed since the 1980s, and what factors may have contributed to these changes? [M1, M2, M3, M4, M5]

3. What problems, if any, did we identify in the current H-2A program? [M1, M2, M3, M4, M5]

3.1 What are the problems, if any, with the procedures Labor uses to certify employers for the H-2A program? [M1, M2, M5]

3.2 What are the problems, if any, with the procedures used by INS to approve and State to issue visas to H-2A workers to meet certified employers' needs, including current safeguards to ensure workers' departure upon completion of employment? [M2, M4, M5]

3.3 What are the problems, if any, with procedures to protect the wages and working conditions of H-2A and non-H-2A workers and the employment security of domestic workers? [M3]

3.4 What are the problems, if any, with the procedures available to employers as well as H-2A and non-H-2A workers to obtain redress in the event of a dispute? [M2, M3]

DRAFT

3.5 What problems, if any, prevent the current program from meeting the needs of agricultural employers for skilled workers? [M5]

4. What is the likelihood of an agricultural labor shortage in the near future? [M1, M2]

4.1 On the basis of our analysis of recent studies and available data, what is the approximate percentage of illegal workers in the agricultural workforce? [M1]

4.2 To what extent are INS' planned enforcement efforts likely to affect the availability of agricultural workers? [M1]

4.3 To what extent would domestic workers be available to fill job openings created by INS enforcement activities? [M1, M2]

5. What would be the potential difficulty, if any, in expanding the current H-2A program in response to a significant labor shortage? [M1, M2, M3, M4, M5]

5.1 What are Labor's, INS', and State's plans to respond, if necessary, to an agricultural labor shortage, and how do these plans change depending on the magnitude or geographic location of the shortage? [M1, M2, M3, M4, M5]

5.2 What are employers' and labor advocates' perspectives on the feasibility of successfully implementing these plans? [M1, M2, M3, M4, M5]

5.3 What are employers' and labor advocates' perspectives on the likely effect of these contingency plans, if implemented, on

- ensuring an adequate supply of farm labor,
- maintaining labor protections currently afforded to H-2A and non-H-2A

agricultural workers, and

-- preventing an increase in illegal immigration? [M1, M2, M3, M4, M5]

METHODOLOGY

To address these questions, we (1) conducted interviews with federal and state officials, and non-governmental persons such as representatives of agricultural associations, labor advocates or academic experts, (2) collected documents from federal and state agencies as well as private sources (3) analyzed qualitative and quantitative data from federal and state agencies and private employers, (4) reviewed published studies and (5) conducted a legal review of the statutory and regulatory requirements of the H-2A program.

Conduct Interviews

To obtain information about each of the assignment's objectives we conducted interviews with pertinent Labor officials at ETA, including those at the U.S. Employment Service and those responsible for overseeing the H-2A program, officials at OSHA, WHD, the Office of the Solicitor and the Directorate of Policy. We also held discussions with regional Labor officials, including program monitor advocates and WHD staff.³⁹ Throughout the assignment, we coordinated our efforts with staff from Labor's Office of the Inspector General (IG), who are currently conducting a review of the U.S. Employment Service role in facilitating the H-2A Guestworker program.⁴⁰ We also held discussions with state job

³⁹ Under a 1974 district court decision (*NAACP v Labor*), Labor's Employment Service was required to create a group of monitor advocates--individuals charged with monitoring the treatment of farmworkers by state job services to ensure equitable treatment as well as to advocate for the improvement in the employment and working conditions of farmworkers generally. These monitor advocates were assigned to each of Labor 10 regions throughout the country and each state job service was to provide for a network of such advocates throughout the agency.

⁴⁰ Among other issues, the IG is reviewing Labor's adherence to agency procedures regarding the H-2A program's statutory and regulatory affirmative recruitment requirements. The IG expects to complete its work by April 1998. We coordinated our efforts with the IG's office to minimize duplication in our data collection efforts and to reduce any administrative burden on federal and state agencies and private employers by our reviews.

DRAFT

Appendix II

Appendix II

service and health department officials, state program monitor advocates and officials who conduct the H-2A program housing inspections.

We conducted discussions with officials at the Departments of Agriculture and State, including officials at several consulate offices located in Mexico, and officials from INS's Investigations Offices and the Border Patrol. To assess the potential of serious labor shortages occurring from enhanced INS and border patrol enforcement efforts at agricultural worksites, we met with INS officials from their Office of Statistics and Office of Enforcement, regional offices and at INS processing centers and border patrol officials at headquarters and in the regions to identify their official enforcement targeting priorities, and the current level of enforcement resources directed to agriculture. We also observed a typical INS enforcement operation at a worksite in Woodstock, Virginia.

We met with a wide variety of agricultural employers, workers, and advocates. We interviewed 12 H-2A growers distributed across six states and 35 non H-2A growers distributed regionally across 9 states. These growers represented a wide variety of agricultural activities including fruit, tree nut, vegetable, tobacco, and tree nursery production, and sheep ranching. We also interviewed officials from 28 agricultural employer associations throughout the country, including the National Council of Agricultural Employers, the national office and selected state chapters of the American Farm Bureau Federation, and regional organizations like the Florida Fruit and Vegetable Association and the Nisei League. We also met with agricultural associations that file H-2A applications as joint employers, including the North Carolina Growers Association, the Virginia Agricultural Growers Association, the New England Apple Council and other groups. We interviewed over 30 farmworkers, both foreign and domestic and visited numerous agricultural worksites. We held discussions with 15 farm labor advocates from 10 states throughout the country, including representatives of the Farmworker Justice Fund, unions such as the United Farm Workers, church groups and community organization

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We conferred with a number of experts on farm labor and immigration issues, including economists, legal experts, research methodologists from academia and researchers and officials associated with the 1992 Commission on Agricultural Workers and the U.S. Commission on Immigration Reform. We consulted with several of these experts throughout the assignment to facilitate our understanding of the program's operation and other key issues.

Reviewed Documents

We collected and reviewed documents on the H-2A program's procedures, including its application forms and requirements, implementing regulations and procedures for filing appeals of adverse rulings. We obtained documents from ETA specifying those counties and other jurisdictions of the country that had been designated as "labor surplus" areas and the criteria used for such designations. We collected documents from INS on its enforcement priorities and its procedures for approving H-2A applications. We obtained resource data from Labor on the H-2A program and from INS on its enforcement efforts and H-2A related activities. We also obtained information on areas of the country that had received waivers from the Secretary of Agriculture from the modifications in food stamp eligibility as specified in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.⁴¹

⁴¹ Section 6(o) of the Food Stamp Act, as amended by section 824 of the Personal Responsibility and Work Opportunity Act provides that, among other criteria, an individual shall be ineligible for the program if he or she previously received benefits but did not work an average of 20 hours per week for at least a three month period. However, the provision also provides, that on the request of a state agency, the Secretary of Agriculture may waive these provisions for any group of individuals in the state if the Secretary determines that the area in which the individual reside has an unemployment rate of over 10 percent or does not have sufficient numbers of jobs to provide employment for the individuals.

Analyzed data

We collected and analyzed data from a number of different sources:

- Labor's National Agricultural Workers Survey (NAWS) - Since 1988, NAWS has collected detailed information on the basic demographics, legal status, education, family size and household composition, wages and working conditions of domestic seasonal agricultural services workers, including their participation in the non-agricultural U.S. labor force.⁴² The NAWS also collects information on hourly and piece rate wage rates, farm labor housing, health care and many other aspects of field labor working conditions.
- Agriculture's National Agricultural Statistics Service (NASS) - We collected and analyzed data on hourly and piece rate wage rates, and total employment for field and all hired agricultural workers from the late 1980s to July, 1997, the most recent period available. We also analyzed data on various characteristics of U.S. farms, including the total number of agricultural employers, their distribution by the amount of annual sales and acreage, and time series data on total acreage, value of production and tonnage for fruits, tree nuts, vegetables and floracultural production. We also analyzed data on the total value of production in fruits, tree nuts,

⁴²Three times annually, a random sample of about 2,500 of the nation's crop farmworkers are surveyed. To ensure regional coverage, the NAWS uses site area sampling to obtain a nationally representative cross section of field workers. To incorporate seasonal sensitivities, three six to eight week survey cycles are conducted, in January, May and September of each year. Site selection and interview allocations are proportional to seasonal payroll size. Employer names are obtained from various government sources and a random sample of agricultural employers is generated for each of the selected sites. NAWS representatives contact selected employers to obtain access to the work site. Interviewers visit the worksite and ask a random sample of workers to participate. Interviews occur at workers home or at worker selected locations. See A Profile of U.S. Farmworkers: Demographics, Household Composition, Income and Use of Services, U.S. Department of Labor, Office of the Assistant Secretary For Policy, April 1997.

DRAFT

Appendix II

Appendix II

vegetables nurseries and greenhouse production for the 100 counties with the largest dollar value of production in each of these areas.

- Labor's Bureau of Labor Statistics (BLS) - We analyzed BLS data on monthly and annual unemployment rates for 20 counties with large fruits, tree nut and vegetable production as measured in dollars, for states and the nation, for 1994 through June 1997. We also collected and reviewed annual and monthly unemployment rates for agricultural wage and salary workers from January, 1948 - September, 1997.
- Justice's INS Enforcement Action Data - We analyzed data on all INS enforcement actions conducted since 1994 to determine the number of actions targeted to agricultural worksites and how that number has changed over time. We also analyzed INS data regarding the number of H-2A program participants who overstayed their contract period for 1994 - 1996.
- Labor's H-2A Program Certification Processing Data - We analyzed data on all H-2A applications processed by each of Labor's regional offices, including the number of workers requested, the date of application and certification, the number of the petitioning grower associations and individual growers they represent, and other information. We analyzed this data to determine the percent of all certifications which did not meet all statutory and regulatory time requirements. For those applications determined to be tardy, we contacted the individual regional office to identify and analyze the reasons for the delay. We also obtained data from H-2A program officials at headquarters on the number of applications and employers by crop, by state and by number of workers requested.
- Association Data - We analyzed detailed data obtained from Labor's IG on the operations of a large provider of H-2A workers. This data includes details on the

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employers who obtain workers from the association, and both domestic and H-2A workers for the 1996 season.

Reviewed Literature

To address issues concerning the status of the national agricultural labor market and the potential for a national labor shortage, we reviewed pertinent literature on the definition and measurement of labor shortages generally, consulted with economists familiar with local and national agricultural labor markets and conducted interviews with officials from Labor and Agriculture, farm labor advocates, agricultural employer associations and individual growers. We also reviewed the literature on the history and role of guestworkers in American agriculture and the implications of such programs for national immigration policy.

Performed Legal Analysis

We reviewed existing statutory and regulatory requirements to identify any potential impediments that could constrain the H-2A program from expanding or operating quickly in an emergency situation. We also conducted a legal review of the program's general certification process, its appeals procedure, and the rights and remedies available to H-2A and non-H-2A workers.

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ECONOMIC DATA ON U.S. FARMWORKERS
AND AGRICULTURAL PRODUCTION

This appendix contains data on various economic characteristics of U.S. farmworkers and agricultural production, including total employment levels, average hourly and piece rate wages, annual and monthly unemployment rates for the nation and selected states and counties, total acreage, and the value of types of agricultural production. We also present information on selected areas of the country that received waivers from the Department of Agriculture from recently enacted legislative changes in food stamp eligibility.

Table III.1: Annual and Monthly Unemployment Rates for 20 Counties With Significant Production in Fruits, Tree Nuts, and Vegetables, 1994-96 and June 1997

Rates in percent

Geographic area	Average annual unemployment rate			Monthly unemployment rate
County ^a	1994	1995	1996	June 1997
Fresno County, CA	13.8	14.1	13	12.4
Imperial County, CA	26.2	29.3	29.4	24.6
Kern County, CA	14.7	13.9	12.7	11.4
Madera County, CA	14.8	15	14.1	13.4
Merced County, CA	15.5	17.1	16.2	14.1
Monterey County, CA	12.1	12.4	11	7.2
Riverside County, Calif.	10.5	9.5	8.2	7.2
San Diego County, Calif.	7	6.4	5.3	4.4
San Joaquin County, Calif.	12.6	12.3	11.2	10.8
Santa Barbara County, Calif.	7.2	6.7	5.7	4.1
Stanislaus County, Calif.	15.7	15.5	14	13.5

DRAFT

Appendix III

Appendix III

Tulare County, Calif.	16	16.8	15.9	13.9
Ventura County, Calif.	7.8	7.5	7.1	5.9
Collier County, Fla.	8.2	7	5.8	5.9
Dade County, Fla.	8.4	7.4	7.3	7.8
Hendry County, Fla.	16.7	15.1	13.9	19.5
Palm Beach County, Fla.	8.8	7.2	6.7	6.9
St Lucie County, Fla.	14.3	12.4	12.2	11.6
Yuma County, Ariz.	32.1	29	31	32.7
Yakima County, Wash.	11.7	12.6	13.4	8.1
State				
California	8.6	7.8	7.2	6.3
Florida	6.6	5.5	5.1	5.2
Arizona	6.4	7.8	5.5	4.9
Washington	6.4	6.4	6.5	4.7
Country				
United States	6.1	5.6	5.4	5.2

^a As of 1992, the latest year for which data are available from the Department of Agriculture, these 20 counties accounted for over 50 percent of the dollar value of all fruit and tree nut production in the U.S; 47 percent of the dollar value of all vegetables; and 16 percent of the total national dollar value of nursery and greenhouse production.

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Appendix III

Appendix III

Table III.2: Food Stamp Waiver and Labor Surplus Area Designations for 20 Counties With Significant Production in Fruits, Tree Nuts and Vegetables, 1997

County ^a	Scope of food stamp eligibility waiver ^b	Reason for USDA waiver ^c	Scope of labor surplus area designation ^d fiscal year 1997
Fresno County, CA	Entire county	Over 10 percent unemployment rate	Entire county
Imperial County, CA	Entire county	Over 10 percent unemployment rate	Entire county
Kern , CA	Entire county	Over 10 percent unemployment rate	Entire county
Madera County, CA	Entire county	Over 10 percent unemployment rate	Entire county
Merced County, CA	Entire county	Over 10 percent unemployment rate	Entire county
Monterey County, CA	Entire county	Over 10 percent unemployment rate	Excludes cities of Monterey and Salinas
Riverside County, CA	Entire county	Insufficient jobs	Excludes city of Palm Desert
San Diego County, CA	Cities of Chula Vista, El Cajon, Imperial Beach, Lemon Grove, National City, Oceanside, and Vista	Insufficient jobs	Not designated as labor surplus area
San Joaquin County, CA	Entire county	Over 10 percent unemployment rate	Entire county
Santa Barbara County, CA	Lompoc City, Santa Maria	Insufficient jobs	Not designated as labor surplus area
Stanislaus County, Ca	Entire county	Over 10 percent unemployment rate	Entire county
Tulare County, CA	Entire county	Over 10 percent unemployment rate	Entire county

DRAFT

Appendix III

Appendix III

Ventura County, CA	Entire county	Insufficient jobs	Excludes cities of Camarillo, Moorpark, Simi Valley, Thousand Oaks and Ventura
Collier County, Fla.	Entire county	Insufficient jobs	Entire county
Dade County, Fla.	Entire county	Insufficient jobs	Excludes entire county except for cities of North Miami, Hialeah, Homestead, Miami Beach, and Miami
Hendry County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Palm Beach County, Fla.	Entire county	Insufficient jobs	Excludes cities of Boca Raton, Jupiter, and Palm Beach Gardens only
St Lucie County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Yuma County, Ariz.	Entire county	Over 10 percent unemployment rate	Entire county
Yakima County, Wash.	Entire county	Over 10 percent unemployment rate	Entire county

^a These 20 counties accounted for about half of the total national value of production in fruits, tree nuts, and vegetables in 1992, the latest year for which data was available.

^b Section 6 (o) of the Food Stamp Act, as amended by section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act, provides that, among other criteria, a person shall be ineligible for the program if he or she previously received benefits but did not work at least 20 hours per week for at least a 3-month period. However, the provisions also provide, that on the request of a state agency, the Secretary of Agriculture may waive these provisions for specified persons in the state. Agriculture issued most of the waivers to the designated counties during early 1997.

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Appendix III

Appendix III

"The Secretary of Agriculture may waive current Food Stamp eligibility provisions if he determines that the area in which the persons reside has an unemployment rate of over 10 percent or has an insufficient number of jobs to provide employment for program participants. Among other evidence, designation of an area by Labor as a labor surplus area can be considered as evidence by the Secretary that an insufficient number of jobs are available.

^dLabor classifies a civil jurisdiction as a labor surplus area when that jurisdiction's average unemployment rate is at least 20 percent above the average national unemployment rate during the previous 2 calendar years. During periods of high unemployment an area can be classified as a labor surplus area if it has unemployment rates of 10 percent or more during the previous 2 calendar years. Labor may also designate areas if an area had unemployment rates of at least 7.1 percent for each of the three most recent months or projected unemployment of at least 7.1 percent for each of the next 12 months or has documentation that this has already occurred. Labor designates labor surplus areas on a fiscal year basis. Designated labor surplus areas are eligible for preference in bidding on federal procurement contracts.

Source: Department of Agriculture and Department of Labor

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Table III.3: Average Hourly Wages of Agricultural Workers, 1989-96

Year	NASS ^a average annual hourly wage rate for field workers	NASS average hourly wages for field workers ^b in constant 1996 dollars	NAWS ^c average annual hourly farm rates, all crop workers	NAWS average hourly farm wages, all crop workers, in constant 1996 dollars
1989	\$5.12	\$6.48	\$5.24	\$6.63
1990	5.23	6.28	5.23	6.28
1991	5.49	6.32	5.56	6.41
1992	5.69	6.36	5.33	5.96
1993	5.90	6.41	5.45	5.92
1994	6.02	6.37	5.54	5.87
1995	6.13	6.31	5.89	6.06
1996	6.34	6.34	Not available	Not available
Percent change 1989-95	19.73	-2.7	12.40	-8.54

^aNational Agricultural Statistics Service, USDA

^bWages in constant 1996 dollars are calculated using the Consumer Product Index for all urban consumers, (1982-84=100) modified to 1996 as the base year. See Economic Report of the President, table B-58, p. 365. NASS defines a field worker as an employee engaged in planting, tending, and harvesting crops, including operation of farm machinery on a crop farm. The NAWS definition of crop worker is comparable to NASS's definition of field worker.

^cData is obtained from the National Agricultural Workers Survey 1989-95, Department of Labor.

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Table III.4: Average Hourly Piece Rate Wages of Agricultural Workers, 1989-95

Year	NASS ^a average annual hourly piece rate wages, all hired workers	NASS average annual piece rate wages, all hired workers, in constant 1996 dollars	NAWS ^b average hourly wages, crop workers receiving piece rate compensation only	NAWS average hourly wage rates, crop workers receiving piece rate compensation only, in constant 1996 dollars
1989	\$6.65	\$8.41	\$6.86	\$8.68
1990	6.55	7.86	6.82	8.19
1991	6.43	7.41	7.52	8.66
1992	6.43	7.19	6.19	6.92
1993	6.42	6.97	6.81	7.39
1994	7.02	7.43	6.55	6.93
1995	7.03	7.24	7.01	7.22
Percent change 1989-1995	5.71	-13.99	2.19	-16.86

^aNational Agricultural Statistics Service, USDA. NASS defines all hired workers as anyone other than an agricultural service worker who is paid for at least one hour of agricultural work on a farm or ranch. NASS defines a fieldworker as an employee engaged in planting, tending, and harvesting crops, including operation of farm machinery on a crop farm. Average annual hourly piece rates are those wages paid to employees in a piece rate form of compensation. NAWS definition of "crop" is similar to NASS definition of field worker.

^bUnpublished data from the National Agricultural Workers Survey, Department of Labor, October 1997.

^cWages in constant 1996 dollars are calculated using the Consumer Price Index for All Urban Consumers (1982-84=100) modified to 1996 as the base year.

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Appendix III

Appendix III

Table III.5: Total Annual Acreage, Tonnage and Dollar Value of National Fruit and Vegetable Production and Agricultural Employment, 1986-95

Acres, short tons, and number of worker in thousands; dollars in millions

Year	Total acreage	Total production (short tons)	Total value of production	Total peak employment all hired workers ^a
1986	5,752	46,712	9,983	Not available
1987	5,905	51,268	10,905	1,270
1988	5,953	51,465	12,330	1,200
1989	6,096	55,996	13,240	1,197
1990	6,139	53,971	12,649	1,106
1991	6,097	54,711	13,576	1,113
1992	6,071	55,808	13,890	1,032
1993	6,044	57,815	13,921	1,062
1994	6,282	61,846	14,025	1,047
1995	6,307	60,805	15,141	1,066
1996	Not available	Not available	Not available	1,015
1997	Not available	Not available	Not available	1,068
Percent change				
1986-95	9.64	30.17	51.67	
1987-97				-15.90

^aNumber of hired workers as of July of each year.

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CHARACTERISTICS OF H-2A PARTICIPANTS

Table IV.1 provides information on the number of H-2A workers entering the country by country of origin from 1987 to 1996. In 1987, the majority of workers came from Jamaica. By 1996, the majority of workers came from Mexico. No data are available on the geographic distribution for actual H-2A workers employed. Table IV.2 shows the distribution of H-2A applications and workers requested across the country.

Although national data are available on the gender and age of H-2A workers, it is generally agreed that there are few, if any, female H-2A workers, while NAWS estimates that one in every five domestic workers is female. In addition, although it is illegal to refuse to hire a domestic farm worker because he or she has a family and MSPA requires that employers provide housing for families of domestic farmworkers when it is the prevailing practice in the area, employers must provide family housing for farmworkers. Data on the age of all H-2A workers are unavailable. However, an analysis of data from the largest importer of H-2A workers into the Southeast shows that most of their 4,500 H-2A workers in fiscal year 1996 were younger than 32 years of age (see table IV.3). This is comparable to the age distribution of all farmworkers as estimated by NAWS.

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Table IV.1: H-2A Workers Entering the United States By Country Of Origin, Fiscal Years 1987-96

Country	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	Rate in percent for 1996	Total by country
Total--Africa				1		2	4	14	3	2	.01	26
Total--Asia		8	14	19	140	15	27	7	5	3	.01	238
Great Britain and Northern Ireland	2	39	12	16	23	10	7	8	12	5	.03	134
Poland			16	15	37	53	10	11	18	31	.2	191
Other		62	72	38	23	12	9	10	19	19	.1	264
Total--Europe	2	101	100	69	83	75	26	29	49	55	.4	589
Barbados	416	321	263		60							1,060
Dominica	100	100	110		23							333
Dominican Republic			16	16	19	22	27	17	21	19	.1	157
Jamaica	11,414	12,609	12,051	13,881	10,815	8,355	6,099	5,697	4,483	4,231	27.8	89,635
Mexico		2,499	3,683	4,993	6,216	5,829	6,655	7,156	7,744	10,353	67.9	55,128
St. Lucia	562	565	580		209							1,916
St. Vincent	552	550	620		290							2,012
Other	67	29	38		81	23	16	34	9	14	.09	311
Total--North America	13,111	16,673	17,361	18,890	17,707	14,220	12,794	12,897	12,257	14,617	95.9	150,527
Australia			15	18	20	23	32	22	38	31	.2	199
New Zealand			7	8	68	103	74	98	97	74	.5	529
Total--Oceania			22	26	88	126	106	120	135	105	.7	728
Chile				53	53	81	73	57	72	70	.5	459
Peru			116	140	198	277	308	294	341	383	2.5	2,057
Other			1	1	4	2	4					12
Total--South America			117	194	255	360	385	351	413	453	3.0	2,528
Grand Total	13,113	16,782	17,614	19,199	18,273	14,798	13,342	13,418	12,862	15,235		154,637

Note: These data include both H-2A workers receiving visa from the Department of State and Caribbean H-2A workers organized by WICLO, entering without a visa.

Table IV.2: Number and Result of Applications for H-2A Certifications FY ETA Region, Fiscal Years 1994-1997

	1994	1995	1996	1997
Region I (Boston)				
Orders (Applications)	363	361	389	245
Workers Requested	2556	3364	3446	3115
Workers Certified	2518	2963	3129	2970
Region II (New York)				
Orders	143	0	162	101
Workers Requested	2324	0	2438	888
Workers Certified	2318	0	2415	888
Region III (Philadelphia)				
Orders	24	25	23	14
Workers Requested	1721	2999	3150	3101
Workers Certified	1690	2994	3134	3069
Region IV (Atlanta)				
Orders	118	158	271	469
Workers Requested	4507	4728	7180	10839
Workers Certified	2352	4531	5342	9029
Region V (Chicago)				
Orders	1	0	4	7
Workers Requested	200	0	368	400
Workers Certified	200	0	368	334
Region VI (Dallas)				
Orders	73	73	98	103
Workers Requested	523	490	828	889
Workers Certified	523	486	827	889
Region VII (Kansas City)				
Orders	10	21	14	18

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Appendix IV

Appendix IV

Workers Requested	51	157	128	182
Workers Certified	51	157	128	138
Region VIII (Denver)				
Orders	383	373	201	300
Workers Requested	928	902	769	1212
Workers Certified	905	898	752	1208
Region IX (San Francisco)				
Orders	485	471	397	339
Workers Requested	1058	1184	936	827
Workers Certified	998	1142	934	819
Region X (Seattle)				
Orders	167	291	254	291
Workers Requested	713	631	589	700
Workers Certified	618	538	508	600
TOTALS				
Orders	1767	1773	1813	1887
Workers Requested	14581	14455	19832	22153
Workers Certified	12173	13709	17537	19944

Note: Applications for fiscal year 1997 include only those filed through June 30, 1997 (the first nine months of the fiscal year), with the exception of Region X which includes applications through August 27, 1997.

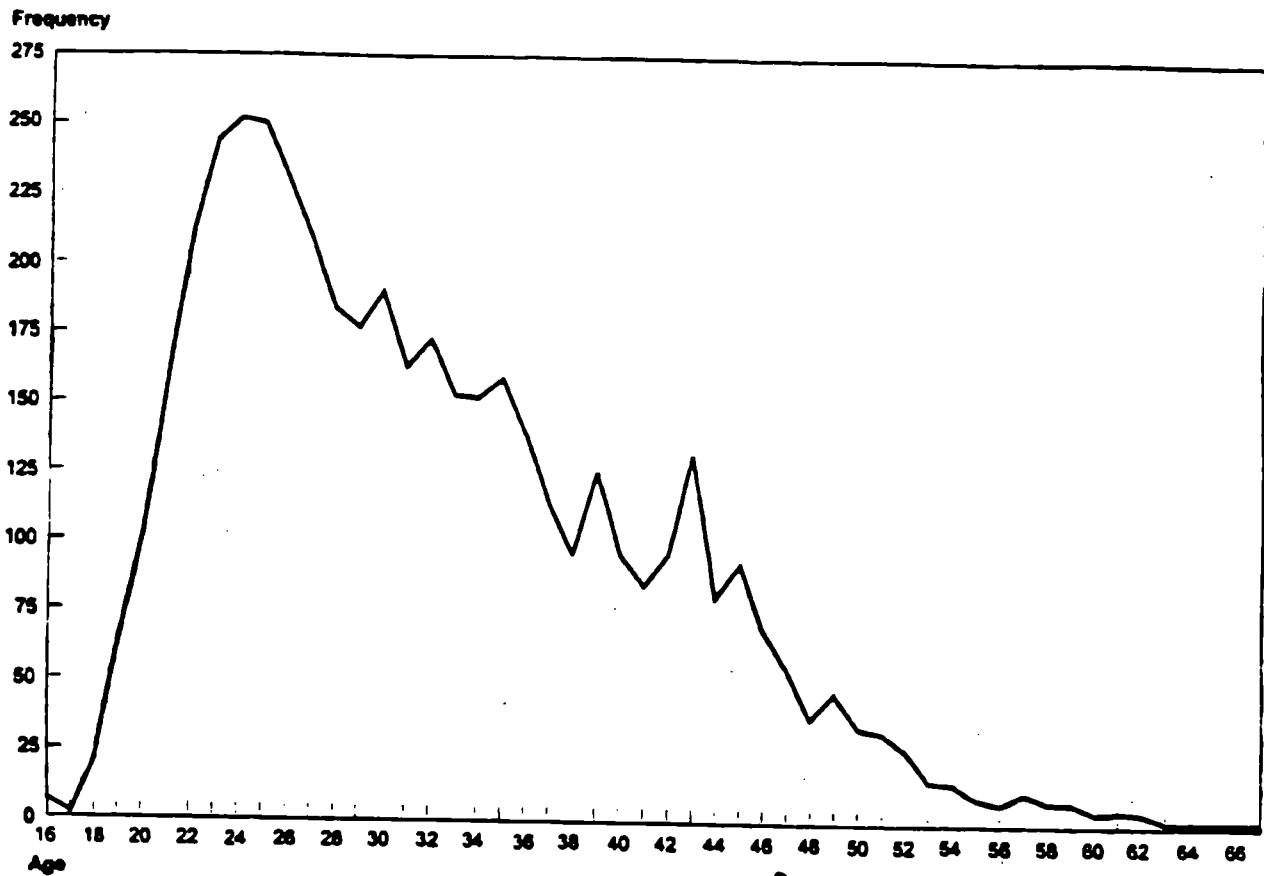
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Appendix IV

Appendix IV

Table IV.3: Age Distribution of 4,500 H-2A Workers in FY96



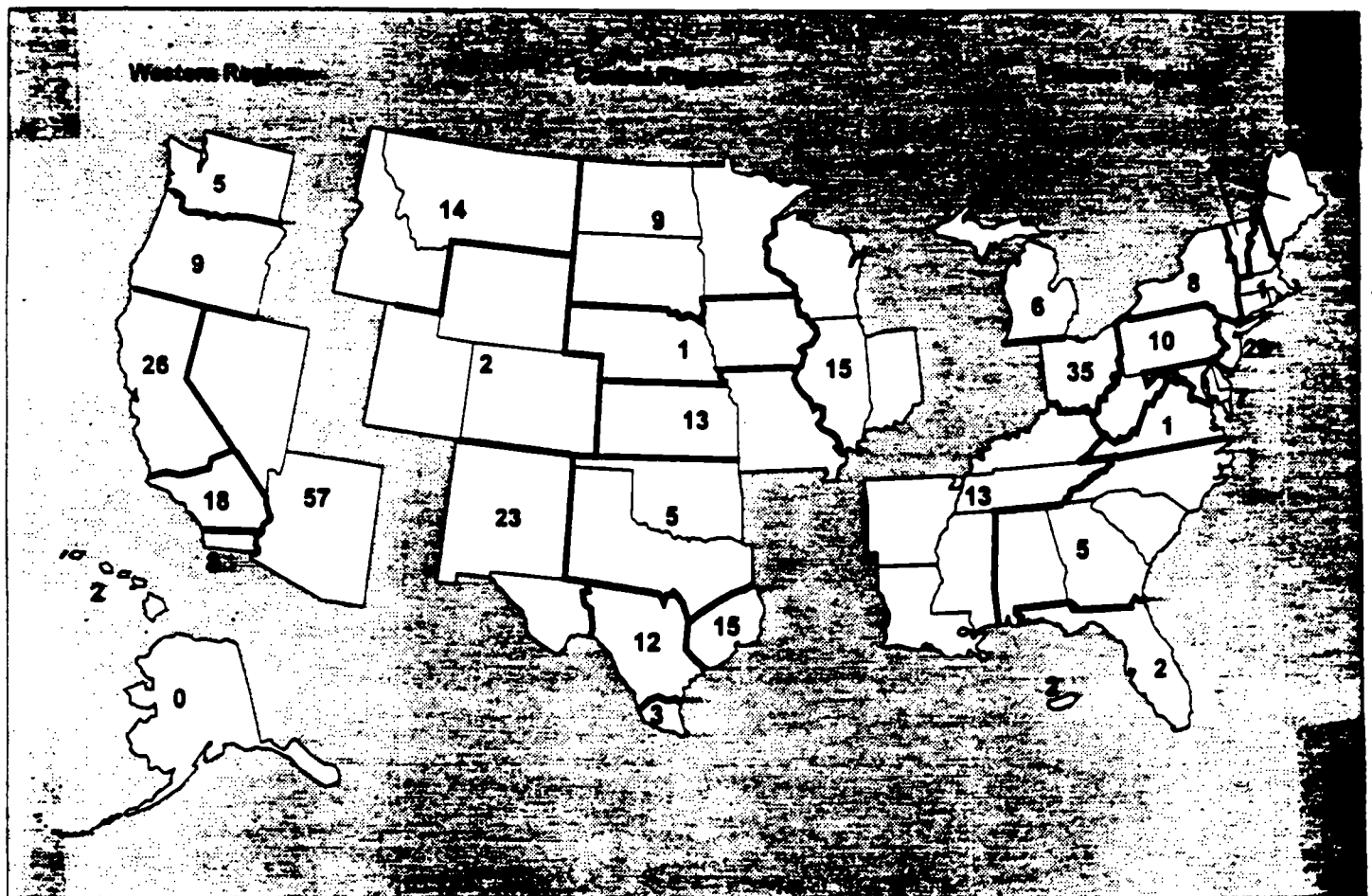
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INS Worksite Enforcement Activities, Fiscal Year 1996

Figure V.I shows the distribution of worksite enforcement cases involving agriculture-related employers identified as closed in INS' database of employer sanctions (worksite enforcement) cases by region and by district. These are based on the report generated on every completed employer sanctions case, including both lead-driven investigations and randomly selected compliance inspections.

Figure V.I: INS Worksite Enforcement Activities at Agriculture-Related Employers⁴³
Completed October 1996 through July 1997^{44 45}



⁴³Employers whose Standard Industrial Code began with 01 (Agricultural Production), 02 (Agricultural Production--Livestock), or 07 (Agricultural Services).

⁴⁴Does not include all cases completed during this time period. According to INS, there is a 2-3 month lag between when cases are completed and the reports are submitted and keyed into the Investigations database. This includes all cases in the database as of July 17, 1997.

⁴⁵Does not include the 39 cases closed by Border Patrol personnel.

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The Office of Field Operations oversees three Regional Offices that direct the activities of 33 districts and 21 Border Patrol sectors throughout the United States. The district offices are listed below.

<u>Office</u>	<u>Number of closed cases</u>
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Western Region, Laguna Niguel, CA

Anchorage, AK	0	
Honolulu, HI	2	
Los Angeles, CA	18	
Phoenix, AZ	57	
Portland, OR	9	
San Diego, CA	8	
San Francisco, CA	26	
Seattle, WA	5	

Central Region, Dallas, TX

Bloomington, MN	9	
Chicago, IL	15	
Dallas, TX	5	
Denver, CO	2	
El Paso, TX	23	
Harlingen, TX	3	
Helena, MT	14	
Houston, TX	15	
Kansas City, MO	13	
Omaha, NE	1	
San Antonio, TX	12	

Eastern Region, South Burlington, VT

Arlington, VA	1	
Atlanta, GA	5	
Baltimore, MD	7	
Boston, MA	1	
Buffalo, NY	8	
Cleveland, OH	35	
Detroit, MI	6	
Miami, FL	2	
Newark, NJ	0	
New Orleans, LA	13	
New York, NY	29	
Philadelphia, PA	10	

Portland, ME	3
San Juan, PR	2

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STAKEHOLDER PERSPECTIVES

Table VI.1: Stakeholder Perspectives on Worker Protection Requirements Under the H-2A Program

Issue	Requirements	Stakeholder Perspectives	GAO comments
50-percent rule	Employers must hire any qualified domestic worker who applies for a job until 50 percent of the contract period has elapsed.	Protects domestic workers from jobs displacement by foreign workers. Some growers stated that it is overly burdensome to hire domestic workers after certification is approved and the date of need has begun.	State SESA's reported that they did not send workers to H-2A employers after the contract period had begun. State and federal Labor officials stated that even when domestic worker are hired, enough work is available such that few, if any, H-2A workers were returned home as a result of the provision.
Adverse Effect Wage Rate (AEWR)	An employer must pay the same wage or rate of pay to U.S. workers and H-2A workers. The rate, set by Labor, must also be at least as high as the applicable AEWR or prevailing wage rate, whichever is higher.	The AEWR may help to protect the wages and employment opportunities of domestic farmworkers. Some state that the AEWR rate calculations inappropriately result in wage rates that are too high Others charge that it is too low to sufficiently protect domestic workers and acts as a "glass ceiling" for agricultural wages.	H-2A employers continue to participate—and most have done so for many years—despite AEWR rates. H-2A employers are not required to pay Social Security taxes and Unemployment Insurance.

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Housing	Employers must provide housing that is certified as meeting minimum health and safety standards free of charge to all H-2A workers .	Ensures workers a safe and healthy workplace and reduces burden on community. Some employers express concerns about difficulty in obtaining permission to construct permanent housing and about overly restrictive housing standards. Multiple levels of government result in conflicting and redundant housing inspections. Some workers express concerns about inadequacy of standards such as absence of a requirement to provide door locks on the building.	See Chapter 3 Providing temporary housing could reduce the cost and regulatory burden. Redundancy can needless regulatory burden on employers.
Transportation	Employers must: (1) reimburse workers for the cost of transportation and subsistence from the place of recruitment to the place of work after workers have completed 50 percent of the work contract period; (2) provide free transportation between any required housing site and the worksite; and (3) pay for workers' transportation home or to the next job site upon completion of the work contract.	Provides incentives for worker to remain with the employer. Provides incentives for and opportunity to monitor worker's return to country of origin. Worker advocates expressed concern about workers not being adequately reimbursed due to disagreements over the appropriate point of departure and mode of transportation.	As discussed in Chapter 3, compliance is difficult to monitor and enforce. In addition, reimbursement for transportation home requires the worker to complete the contract. This may be affected by the availability of work towards the end of the contract period.
Positive recruitment	Employers must actively try to recruit U.S. workers, including advertising in newspapers and on the radio, in areas of expected labor supply. Efforts must be equivalent to efforts of non-H-2A employers.	See Chapter 3 Labor IG report on this matter is to be issued in Spring, 1998 DRAFT	

Three-quarters guarantee	Employers must offer each worker employment for at least three-fourths of the workdays in the work contract period and any extensions.	See Chapter 3
Appeals	See table VI.2.	Because almost all certifications, visa petitions, and visas are approved the appeals procedures are largely unused.

APPEAL RIGHTS

Table VII.1: Appeal Rights During the H-2A Process

Point of appeal	Appeal rights
ETA rejects H-2A application for second time	An employer can send a request, along with a copy to ETA, for an expedited administrative review to the Chief Administrative Law Judge within 7 days of ETA's rejection notice. ETA must then send a copy of the case file to the judge within 24 hours. The judge must act on the employer's request within 5 days of receiving the case file.
ETA denies labor certification at least 20 days before date of need	An employer has the same rights as when an application is rejected.
INS denies petition requesting workers	Only the employer has appeal rights; no such rights exist for H-2A workers.
Department of State consular officer denies worker's request for visa	Decisions cannot be appealed through the courts. Applicant can appeal questions of fact to the chief consular officer at the consulate where the petition is denied which cannot be appealed. Questions on legal issues can be appealed to the State Department for a binding advisory decision.
INS denies worker entry into the United States at the border.	After an alien is initially refused permission to enter the United States, the case is referred to an immigration judge for a hearing. If dissatisfied with the judge's decision, an appeal may be made to the Board of Immigration Appeals. If the alien is unhappy with the Board's ruling, a request may be made to the Board to reopen or reconsider the case, but such decision is within the sole discretion of the Board.

AGENCY COMMENTS

Agriculture

Justice

Labor

State

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GAO CONTACTS AND STAFF ACKNOWLEDGMENTSGAO CONTACTS

Charles A. Jeszeck, Assistant Director, (202) 512-7036

Lise L. Levie, Evaluator-in-Charge, (202) 512-7030

STAFF ACKNOWLEDGMENTS

The following team members also made important contributions: Carolyn S. Blocker, Evaluator; Anu K. Mittal, Assistant Director, Resource, Community, and Economic Development Division; Robert D. Sampson, Senior Evaluator; Ronni Schwartz, Senior Evaluator; and Edward H. Tuchman, Evaluator.

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107

RELATED GAO PRODUCTS

Passports and Visas: Status of Efforts to Reduce Fraud (GAO/NSIAD-96-99, May 9, 1996).

Border Patrol: Staffing and Enforcement Activities (GAO/GGD-96-65, Mar. 11, 1996).

Illegal Aliens: National Net Cost Estimates Vary Widely (GAO/HEHS-95-133, July 25, 1995).

Border Patrol: Revised Strategy Is Showing Some Positive Results (GAO/GGD-95-30, Dec. 29, 1994).

Illegal Aliens: Assessing Estimates of Financial Burden on California (GAO/HEHS-95-22, Nov. 28, 1994).

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