



The H-2A Guest Worker Program

The seasonal and temporary nature of the demand for farm labor combined with the fact that the farm wage rate¹ is lower than that of the non-farm wage – not to mention its high physical demands – makes it often less attractive to domestic workers who may have comparable or better opportunities in the non-farm sector. The shortage of a domestic labor supply becomes even more acute for farmers engaged in the production of labor-intensive commodities such as tobacco. In fact, the Tobacco Survey conducted by the Center for Tobacco Grower Research (CTGR) at the University of Tennessee indicated that 55 percent of the tobacco growers in 2007 and 41 percent in 2008 reported having trouble finding enough labor for their tobacco farms, especially during peak season. As a result, some tobacco growers opt to hire foreign temporary farm workers through the guest worker program called H-2A. This issue of *The Tobacco Grower* will explain what the H-2A program is, who administers it, and how it works.

What is the H-2A guest worker program?

The H-2A program is a guest worker program allowing U.S. farm employers to bring temporary foreign workers into the country to perform seasonal agricultural work. It was authorized for agricultural work as part of the Immigration Reform and Control Act (IRCA) of 1986 pursuant to the amendment of the H-2 temporary guest worker program that was earlier established in the Immigration and Nationality Act of 1952. Three federal agencies are involved in managing the H-2A program in terms of labor certifications and oversight of compliance with labor laws (Department of Labor), review and adjudication of petitions and approval of admission in H-2A classification (Department of Homeland Security), and approval of visas for entry to the country, if required (State Department).

How does it work?

Applying to participate as an employer in the H-2A program involves compliance with many regulations and requirements. This section will provide a broad overview, but not an exhaustive list of the guidelines, that employers must follow. To learn more details please visit the DOL website dedicated to foreign labor certification: www.foreignlaborcert.doleta.gov/h-2a.cfm.

1. Farm employers anticipating a shortage of farm labor during a certain period of the year apply for a labor certification with the Department of Labor (DOL) in

Chicago, Illinois. An authorized agent such as a H-2A Labor Contractor (H-2ALC) may file an application on behalf of an employer. The H-2ALC will then serve as the employer's agent through the entire process, filing all the necessary paperwork with the DOL.

2. After receiving the approved labor certification, employers file petitions requesting H-2A workers with the Citizenship and Immigration Services of the Department of Homeland Security.
3. If the petitions are approved, the prospective temporary workers have to apply to a U.S. embassy for an entry visa, which allows them to travel to the U.S. port of entry (airport, seaport or land border crossing) at which point they apply with the Customs and Border Protection of the Department of Homeland Security for admission to the country under H-2A classification.
4. If the Customs and Border Protection approves the admission, they are issued an admission ticket known as I-94 card (also known as the Arrival/Departure Record) stamped with a date indicating the length of time they are allowed to stay in the country as per the approved petition.

The Application

In their application to the DOL for labor certification, farm employers have to establish that the wage rate and working conditions of similarly employed domestic workers will not be adversely affected. Furthermore, they have to attest that there are neither sufficient nor comparable domestic workers available for the intended job and specified period of time. Employers of H-2A workers cannot simply attest that they tried to find American workers. They have to follow the DOL requirements of recruitment including:

- Placing an advertisement on two (2) separate days, which may be consecutive, one of which must be on a Sunday in a newspaper of general circulation serving the area of intended employment and is appropriate to the occupation and the workers likely to apply for the job opportunity. Recruitment efforts may also have to be made in no more than three additional states where the Department of Labor determines as "traditional or expected labor supply states".
- Contacting, by mail or other effective means, any former U.S. workers employed by them in the occupation at the place of employment during the previous year and solicit their return to the job.
- Preparing, signing, and dating a written recruitment report containing the following information:
 - the name of each recruitment source;
 - the name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the recruitment report, and the disposition of each worker;

- proof that former U.S. employees were contacted and by what means; and
- if applicable, for each U.S. worker who applied for the position but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker.
- Maintaining the recruitment report throughout the entire period of recruitment that ends 30 days after the first date the employer requires the services of the H-2a workers.

Employer Requirements

The DOL also sets specific requirements for what H-2A employers must provide for their H-2A workers. Since wages cannot “adversely effect” US workers, employers are required to pay the “adverse effect wage rate” set by DOL for each state. They are also required to reimburse workers for the cost of transportation from their home country to the place of employment and back, upon completion of a specified portion of the contract. Employers must also provide:

- Free housing that complies with Occupational Safety & Health Administration (OSHA) standards.
- All tools, supplies, and equipment required to perform the duties assigned free of charge.
- Three meals a day if the employer has centralized cooking and eating facilities designed to feed workers. When such facilities are not available, the employer either shall provide each worker with three meals a day or shall furnish free and convenient cooking and kitchen facilities to the workers, which will enable the workers to prepare their own meals. If the employer provides the meals, the job offer shall state the charge (set by DOL), if any, to the worker for such meals.
- Workers’ compensation for job-related injuries and illnesses.
- A “three-quarters guarantee,” meaning that the employer must provide at least $\frac{3}{4}$ of the hours he or she has offered for the contract period.

Adverse effect wage rate

Recent changes to the H-2A program included the return of the Adverse Effect Wage Rate (AEWR) being based on the result of the USDA Farm Labor Survey instead of the Occupational Employment Statistics Survey that was used in 2008. The AEWR shall be equal to the highest of the prevailing wage rates, the minimum federal or state wage rate or the annual weighted average hourly wage rate for field and livestock workers, combined, for the region. The DOL determines and announces the AEWR annually. The purpose is to minimize the adverse effect on the wage rate of domestic workers, as well as that of the guest workers.

The latest AEWR, effective March 15, 2010, ranges from \$9.10 to \$11.45 per hour compared to \$8.77 to \$11.06 in 2009, indicating that the maximum and the minimum State-level AEWR has increased by 3.5 to 3.8 percent from last year. Table 1 presents

the AEW in the six major tobacco-growing states. Among these states, the AEW increased by 2.7 in NC and VA to 3.9 percent in GA and SC between 2009 and 2010. The increase is in large part due to the fact that the DOL has now been using the USDA Farm Labor Survey data instead of the Occupational Employment Statistics Survey data.

Table 1: AEW in major tobacco growing states, 2009 and 2010

State	2009	2010	Change (%)
GA	\$8.77	\$9.11	3.9
KY	\$9.41	\$9.71	3.2
NC	\$9.34	\$9.59	2.7
SC	\$8.77	\$9.11	3.9
TN	\$9.41	\$9.71	3.2
VA	\$9.34	\$9.59	2.7

Source: Federal Register/Vol. 74, No. 102, May, 2009 and Federal Register/Vol. 75, No. 32, Feb., 2010

In Conclusion

While the H-2A guest worker program is considered a steady source of labor supply, employers of the H-2A labor account for a smaller fraction of the users of hired farm labor. As a result, the number of temporary farm workers admitted to the country annually under the H-2A program accounts for a small fraction of the total agricultural labor opportunities. For instance, in FY 2009, 8,150 labor petitions were filed, requesting the certification of 103,955 H-2A workers. The DOL approved 94 percent of the petitions, allowing the entry of 86,014 foreign migrants to the U.S.², representing only 3.3 percent of workers employed on U.S. farms. In contrast, under the Bracero program³, some 4.6 million Mexican farm workers were admitted to the country over the 22-year period between 1942 and 1964⁴, peaking to 445,200 in 1956 and averaging to more than 200,000 temporary farm workers annually.

The possible explanations for the small percentage of growers using the H-2A program are the cumbersome recruitment process and additional costs associated with some of the regulatory requirements such as provision of free housing and transportation as well as the adverse effect wage rate. The regulations associated with housing, meals and other related issues increase the cost to many farm employers who import foreign workers. For example, one of the requirements in the H-2A program is the “75 percent guarantee” which requires employers to agree to provide each worker an offer of employment for at least 75 percent of the workdays in the contract period. However, given that a large percentage of the tobacco growers operate small farms, they may not require that much labor or be able to afford the H-2A labor in the presence of the

logistical costs mentioned above. The next issue of *The Tobacco Grower* will discuss more results of CTGR's Tobacco Surveys in regards to who uses the H-2A program.

Authors

Shiferaw Tesfaye Feleke

Post-Doctorate Research Associate
Center for Tobacco Grower Research

Jane Howell Starnes

Director
Center for Tobacco Grower Research

Harwood David Schaffer

Research Associate
Center for Tobacco Grower Research

¹ Based on USDA data available at

http://www.nass.usda.gov/Charts_and_Maps/graphics/data/fl_allwg.txt farm wage rate is three-fifths of the non-farm wage over the past decade.

² U.S. Department of Labor. *News Release*. Accessed on 26 April, 2010, from

<http://www.dol.gov/opa/media/press/eta/eta20100198.htm>.

³ The Bracero Program was an agreement (1942-64) between the U.S. and Mexico for the importation of temporary guest workers from Mexico to the U.S.

⁴ Martin, P. *Promise Unfulfilled: Unions, Immigration, and Farm Workers*. Ithaca, Cornell University Press, 2003.