

## H-2A Rules Posted, Reaction In

With the posting of the new H-2A Federal Visa program changes for foreign-born agricultural workers in, the comments are flowing over the media outlets. Here are several, from California to Oregon to Arizona to Kansas to Pennsylvania, and submitted to you, the reader for your perusal.

First, three articles that intend to present the new rules as ones that need more assessment before pronouncing judgment. From *Capital Press* (the West's Ag Website) out of Oregon—the title of the article is, "*Ag employers see good, bad in new H-2A rules:*"

"Michael Gempler, president of the National Council of Agricultural Employers and executive director of the Washington Growers League, learned more about the changes when he attended one of two informative sessions held last week by the U.S. Department of Labor and Homeland Security.

"His overall impression is that some of the changes are very good and will benefit employers.

"But some of them are bad for employers," he said. "We'll have to learn more about them and find ways to deal with them."

... "Gempler said there's also more flexibility in transportation requirements. Instead of having to pay transportation costs for the foreign workers to come to this country from their "home villages" and then return home, ag employers will only have to pay for transportation from the U.S. Consulate in the worker's country, and back.

"Wage scales will be computed differently, and Gempler said some ag employers will have to pay higher wages than under the current rule, while others will pay less.

... "On the other side of the labor fence, farmworker advocates are blasting the overhauled H-2A rule, warning that the changes will lower farmworker wages and eliminate many of the protections workers have under the existing H-2A program. They also warn that the new rule will make it easier for growers to hire imported foreign farmworkers instead of U.S. farmworkers.

"These changes from President Bush ignore the real issue of providing a safe and reliable agricultural work force . . ." said Arturo S. Rodrigues, president of the United Farm Workers."<sup>1</sup>

At *ThePacker.com*, an industry leader in the fruit and vegetable industry, the news is similar:

"A final rule designed to streamline the H-2A process was published by the Department of Homeland Security on Dec. 18, but agriculture lobbyists said the changes to the guest worker program won't replace the need for comprehensive immigration reform.

"One labor union charged the final rule could depress farm wages.

"It's a mixed bag," said Frank Gasperini, executive vice president of the National Council of Agricultural Employers, Washington, D.C.

..."Their intent is a step in the right direction for the limited number of organizations that can effectively utilize the H-2A program," said Kam Quarles, vice president of government relations and legislative affairs for the Washington, D.C.-based United Fresh Produce Association, in an e-mail.

... "According to a summary of the rule published in the Federal Register, the final rule revises limitations on agricultural workers' length of stay. That includes extending the time a worker can remain in the U.S. after his or her employment has ended and shortening the time period that an agricultural worker whose H-2A nonimmigrant status has expired must wait before he or she is eligible to obtain that status again.

"This rule also provides for temporary employment authorization to agricultural workers seeking an extension of their H-2A nonimmigrant status through a different U.S. employer, provided that the employer is a registered user in good standing with the E-Verify employment eligibility verification program.

"The final rule also precludes the imposition of fees by employers or recruiters on prospective beneficiaries."<sup>2</sup>

At the California Farm Bureau, the reaction is exactly what one would expect of the most pro-immigration state in the union:

"With the goal of easing farm labor shortages, the Bush administration issued changes to the nation's agricultural H-2A guestworker program last week. The program establishes a process through which farmers hire temporary employees from other countries, and the administration said it intends the new rules to ease burdens on employers. But the state's largest agricultural organization says they will only have slight impacts and aren't the overall solution that is needed.

"The real substantive changes the administration makes to the H-2A program are probably helpful in a minor way, but there are still a lot of problems with the program that need to be addressed," said Bryan Little, California Farm Bureau Federation director of labor affairs. "The H-2A program requires a legislative fix to make it useful for California farmers."

"Little said Farm Bureau and other agricultural organizations will continue to press Congress to adopt a proposal called AgJOBS, legislation supported by both farm and labor groups that would reform the H-2A program. He said AgJOBS would provide flexibility that the current guestworker program lacks, even after the changes announced last week."<sup>3</sup>

At the *Pittsburg Tribune-Review*, they see it differently. (Or "different-only the same," as my old English Professor used to say). With the awful inflationary times upon us, (some would say 'depression' instead), they are taking a firmer stance against the amended version of the H-2A program changes, but for diametrically opposite reasons:

"In these very challenging economic times, with a growing number of Americans out of work, the Bush administration should not be making it easier for U.S. employers to hire foreigners.

"The U.S. Citizenship and Immigration Services recently announced changes to the H-2A regulations that will streamline the hiring process of the roughly 75,000 temporary and seasonal agricultural guest workers who obtain visas annually under the program.

... "But a shortage of American workers seems very unlikely in these recessionary times. The number of Americans filing first-time claims for unemployment benefits has surged to its highest level in more than 25 years.

"Presumably the California agriculture industry should not have too much trouble finding American farm workers willing to labor for the current \$9.72 hourly H-2A wage in the Golden State.

"Unemployed Americans are much more likely to find work when the U.S. government doesn't make aliens more employable."<sup>4</sup>

Then, there are states that are more heavily dependant on migrant workers for their agricultural needs, like Arizona. Not surprisingly, then, here is a source from that harvest-rich state. The source—*The Arizona Daily Star*, and the article entitled: "*Feds do right by easing rules on temp visas:*"

"The federal government is to be commended for making long-overdue changes to a visa program for seasonal workers that should streamline the process and allow American companies to get more of the labor they need.

"On Thursday, U.S. Citizenship and Immigration Services announced several reforms in the H-2A visa system, which allows farmers to hire foreigners for field work that Americans are unwilling to do.

"Among the changes:

- Relaxing limitations on H-2A employers to petition for multiple, unnamed agricultural workers.
- Extending from 10 days to 30 days the time a temporary or seasonal agricultural worker may remain in the country following the expiration of his or her temporary H-2A stay.
- Reducing from six months to three months the time an H-2A worker who has spent three years in the United States must be outside the country before he or she is allowed to re-obtain H-2A status.
- Allowing easier transfers of H-2A workers from one H-2A employer to another.
- Prohibiting H-2A employers and recruiters from imposing certain fees on prospective H-2A workers as a condition of employment.

"These changes should provide immigrant workers with more legal protections and may keep even more farming operations from heading abroad, particularly to Mexico.

... "The farming industry and other groups that use H-2A workers often complain about the government's onerous H-2A requirements. Well, now that the government has eased the rules, it will be interesting to see if those industries will actually make use of the program to bring in more legal foreign workers.

"If they don't, their complaints might be seen as a smokescreen to obscure a desire for no requirements or restrictions on seasonal workers.

"The government has taken a positive step, now it's up to farmers and other industries to invest in the workers."<sup>5</sup>

<sup>1</sup> Cookson Beecher, "Ag employers see good, bad in new H-2A rules," 12-18-08. Website at: <http://www.capitalpress.info/main.asp?SectionID=67&SubSectionID=619&ArticleID=47222&TM=71227.13> (accessed 12-20-08)

<sup>2</sup> Tom Karst, "New H-2A rule issued by DHS to uneven reviews," 12-19-08. Website at: <http://thepacker.com/icms/ dtaa2/content/wrapper.asp?alink=2008-144739-600.asp&stype=webexclusive&fb=> (accessed 12-20-08)

<sup>3</sup> Christine Souza, "Farm groups assess changes to H-2A immigration rules," 12-17-08. Website at: <http://www.cfbf.com/agalert/AgAlertStory.cfm?ID=1196&ck=9ADEF82FFFB5444E81FA0CE8AD8AFE7A> (accessed 12-20-08)

<sup>4</sup> Editorial, *Pittsburg Tribune-Review*, "Aid Americans," 12-20-08. Website at: [http://www.pittsburghlive.com/x/pittsburghtrib/opinion/archive/s\\_603709.html](http://www.pittsburghlive.com/x/pittsburghtrib/opinion/archive/s_603709.html) (accessed 12-20-08)

<sup>5</sup> Opinion, "Feds do right by easing rules on temp visas," 12-15-08. Website at: <http://www.azstarnet.com/allheadlines/271448> (accessed 12-20-08)