



# Florida Farm Bureau Issue Briefs

## Agricultural Policy Division

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## Proposed H-2A Regulations

February 6, 2008

### **Issue: DOL Unveiling New H-2A Regulations To Streamline Processing, Protect Workers**

For the first time in 20 years the Department of Labor is amending its regulations regarding employment of aliens under the H-2A temporary agriculture system to streamline processing and increase protections for workers.

### **Background:**

The H-2A temporary agricultural worker program is the only program that allows foreign agricultural workers to legally work on U.S. farms. The program only addresses temporary or seasonal employment and doesn't apply to year round jobs.

### **Attestation-based Applications**

A major change included in the proposed regulations is the switch to attestation-based applications. Currently the H-2A program is a certification program where recruitment, wage rates, and other elements must be certified by DOL.

DOL is proposing instituting an application that would similarly require employers to attest to their adherence to their obligations under the H-2A program, according to the proposed rule. Those employer obligations include attempting to recruit U.S. workers and obtaining appropriate worker housing.

Employers still would be required to comply with all of the H-2A program's requirements, and they would document their compliance through formal attestations.

DOL anticipates the shift to an attestation-based program will "harmonize the program with the unique needs of the agricultural sector, enabling more employers to utilize the program."

### **Updated Wage Calculations, Streamlined Processing**

One common complaint by users of the current H-2A system is that the "adverse effect wage rates," or the rates employers are required to pay H-2A workers, are not reflective of actual market wages. To address this problem the regulations would revise how the wage rate is calculated.

Currently, the rate is calculated using U.S. Department of Agriculture quarterly farm labor survey data. The data determine wage rates in 15 regions and three additional states, and average the wages of several different kinds of agricultural workers.

Under the proposed regulations, DOL would begin using Bureau of Labor Statistics Occupational Employment Survey data instead. According to DOL these data are more detailed, with wage data for approximately 530 geographic locations and a variety of agricultural occupations and skill levels and will be "like using a scalpel, not a sledgehammer" and will result in more accurate wage rates,

### **Processing Applications**

In addition to the updated wage calculations, the proposed regulations would streamline the processing of H-2A applications by eliminating duplicative steps taken by state workforce agencies. The proposed regulations would focus adjudication procedures with DOL and recruitment activities with state workforce agencies.

The regulations would grant greater authority to DOL to audit H-2A applications. DOL would be able to audit randomly or for cause. Additionally, the regulations would grant DOL the ability to revoke H-2A certifications that already have been approved if fraud or other problems are discovered, and they would provide additional debarment authority to the Wage and Hour Division.

One of the top reasons for delayed applications is a backup in housing inspections carried out by state workforce agencies investigating whether the farmworkers are provided with adequate housing. The proposed regulations would grant state workforce agencies a longer period of time for the housing inspections, and would allow H-2A applications to move forward without completed housing inspections so long as a request for such an inspection has been made.

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### **Action:**

The proposed regulations will be posted Feb. 6 on DOL's Employment and Training Administration Web site, <http://www.doleta.gov>, and will be published in the Federal Register next week. Comments on the proposed regulations will be accepted for 45 days after publication in the Federal Register.

Please review the regulations and provide comment to DOL.