



### **Illegal, Unfair and Counterproductive: The Bush Administration Proposal on the H-2A Guestworker Program**

Farmworker Justice collaborated with dozens of organizations around the country to criticize the Bush Administration's formal proposal to change the H-2A temporary foreign agricultural worker program. The H-2A guestworker program is intended to allow agricultural employers to hire temporary workers from abroad only if they can prove there is not a sufficient supply of U.S. workers – and they can't offer wages and working conditions so low that U.S. workers won't apply for the jobs. Because it is tempting for employers to replace their U.S. workers (who could demand higher wages and better working conditions) with temporary foreign labor (more vulnerable and easily abused), over a period of decades protections were gradually built into the program (not enough, but some).

Now, due to pressure from some growers, the Bush Administration is proposing an overhaul of the H-2A program regulations that would reduce or eliminate many of those longstanding protections. The public was given a short opportunity to comment on the extensive proposal before it is finalized by the U.S. Department of Labor (with some changes by the Department of Homeland Security).

DOL's proposal is far too detailed, complex and harmful to comment on completely here, but we did want to draw attention to a few particularly egregious examples of how the changes would harm workers.

- First, the DOL proposes to change the recruitment requirements so that **employers claiming a labor shortage would not have to engage in meaningful recruitment of U.S. farmworkers** and the state job service agencies would not be permitted to be effective in referring job applicants to H-2A employers.
- Second, the law requires an employer seeking to bring in temporary foreign labor to obtain from the DOL a certification that there is indeed a shortage of U.S. workers and that the employer offered competitive wages and working conditions. The proposed regulations would switch, without Congressional approval, from a labor certification process to a labor attestation process. This means that an employer simply promises that it has looked for U.S. workers and couldn't find any and that it will offer the required job terms. This **illegal reduction in government oversight invites abuse**. Workers' rights under the H-2A program are already routinely violated—greater enforcement is needed, not less.
- For the first time since the program's creation, **U.S. workers could be paid less and receive fewer benefits than the H-2A workers** with whom they work side-by-side, if the grower says they were hired before the H-2A workers. Allowing such disparate pay and benefits

would undermine the law's goal of ensuring that U.S. workers are not adversely affected by the presence of temporary foreign workers.

- All farmworkers would suffer from **lower wage rates**. Currently, DOL requires H-2A employers to offer workers at least the average regional hourly wage for farmworkers as determined by the USDA Farm Labor Survey, with one wage rate issued per state. Although this survey's results are low because of the presence of a large number of undocumented workers, DOL wants to lower the wage rates even further by switching to the Bureau of Labor Statistics' Occupational Employment Survey, which does not even survey farms, but surveys farm labor *contractors*, the lowest paying employers of farmworkers. DOL also would allow employers to choose from four "wage levels". Most employers would offer the lowest level, which is the average wage received by the lowest-paid one-third of farmworkers in a geographic area, (i.e., the 16<sup>th</sup> percentile). The only real floor would be the state or federal minimum wage even though many farmworkers already earn more.
- The DOL's proposal would **reduce minimum housing standards**. Employers could provide a housing "voucher" instead of actual housing—a voucher is essentially worthless as there is often no seasonal housing available for farmworkers. Under this proposal, many farmworkers would have no option but living in dangerous and substandard places, such as the fields they harvest.
- DOL said it is considering whether to continue the longstanding requirement that H-2A employers reimburse workers for in-bound transportation costs (after finishing half the season) and pay their travel costs back to their homes in the U.S. or abroad at the end of the season. Such payments are necessary for many reasons— to attract U.S. workers; to encourage employers to recruit only those workers needed; to help guarantee that workers are able to afford to travel home in safe vehicles.

Farmworkers' conditions are an embarrassment; they need to be improved not worsened.

The Administration essentially argues that the H-2A program should be made cheaper to use so that employers are less likely to hire undocumented workers. The answer to America's need for farmworkers is not to make wages and working conditions worse so that employers substitute low-paid exploitable guestworkers for low-paid, exploitable undocumented workers. The answer is to improve wages and working conditions to reduce employee turnover and poverty, increase productivity, and diminish the demand for new waves of exploitable foreign labor. Immigration enforcement should not be accomplished by lowering America's labor standards in any industry. If guestworkers are needed, they should be paid and housed decently so that employers do not have an incentive to displace U.S. workers or depress their wages. DOL should withdraw this proposal.

---

Farmworker Justice

1126 16th Street, NW, Suite 270 • Washington, DC 20036  
(202) 293-5420 • (202) 293-5427 (fax) • [www.farmworkerjustice.org](http://www.farmworkerjustice.org)

Please contact Bruce Goldstein ([bgoldstein@farmworkerjustice.org](mailto:bgoldstein@farmworkerjustice.org)) or  
Adrienne DerVartanian ([adervartanian@farmworkerjustice.org](mailto:adervartanian@farmworkerjustice.org)) with any questions.