



NATIONAL
COUNCIL OF
AGRICULTURAL
EMPLOYERS

“It [H-2A] is the only method of acquiring a legal workforce. If [the government] wants fruit and vegetables grown in this country, it must stop attempting to destroy the program that legislators put in effect.”



Why Domestic Agriculture Needs New, Workable Farm Labor Alternatives Now

KEY MESSAGES FROM NCAE'S 2010 SURVEY OF H-2A EMPLOYERS

The H-2A program is an example of governmental regulatory abuse of small business causing economic harm to employers (farmers) seeking a legal workforce; threatening the jobs of their local year round U.S. workers and rural and urban economies.

1. THE H-2A PROGRAM DOES NOT SERVE GROWER NEEDS

Employers of different size depend on the H-2A program, including smaller employers:

16% with gross sales less than \$250,000 [USDA definition of a small farm]

28% with gross sales between \$250,000 and \$499,999

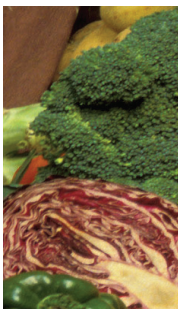
20% with gross sales between \$500,000 and \$999,999

36% with gross sales \$1 million or greater

47% of employers were **“not at all satisfied”** or only **“slightly satisfied”** with the H-2A program. Only 14% of employers were “very satisfied” or “completely satisfied” with the program.

Growers who do not plan to use the program in 2012 – many (42%) will not participate because it is *“too administratively burdensome or costly.”* (The most commonly reason reported for not using the program in 2012)

Many (54%) growers have **complained to their Senator or Representative** about H-2A problems.





2. GROWERS SEEKING ACCESS TO A LEGAL WORKFORCE SUFFER ECONOMIC HARM DUE TO H-2A PROGRAM RULES AND ADMINISTRATION.

\$320,000,000 Economic Loss

Employers reported \$150,408,000 of **economic loss** due to the **inability to get the workers** they needed in 2010.

Employers reported an additional \$169,763,000 of **loss** because the workers they did get were **not available at the time they were needed**.

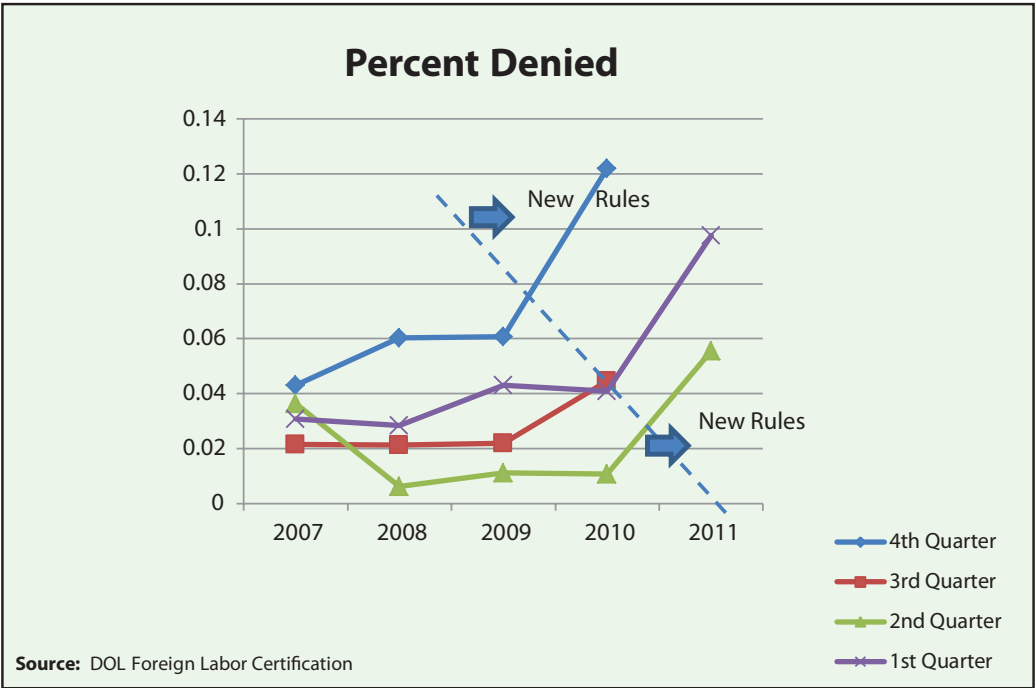
3. GROWERS ARE NEVER SURE IF THEY WILL GET THE WORKERS THEY NEED IN TIME.

Business planning requires predictability, the H-2A program is increasingly seen by growers as unpredictable and unreliable.

Denials of H-2A applications have **increased dramatically**.

(Source: DOL Foreign Labor Certification Data Center)

Excessive deficiency notices and requests for evidence (RFE) cause serious delays. **72 % of growers reported that workers arrived after the “date of need”, on average 22 days late.** Even a day or two can mean the difference between annual profit and loss!

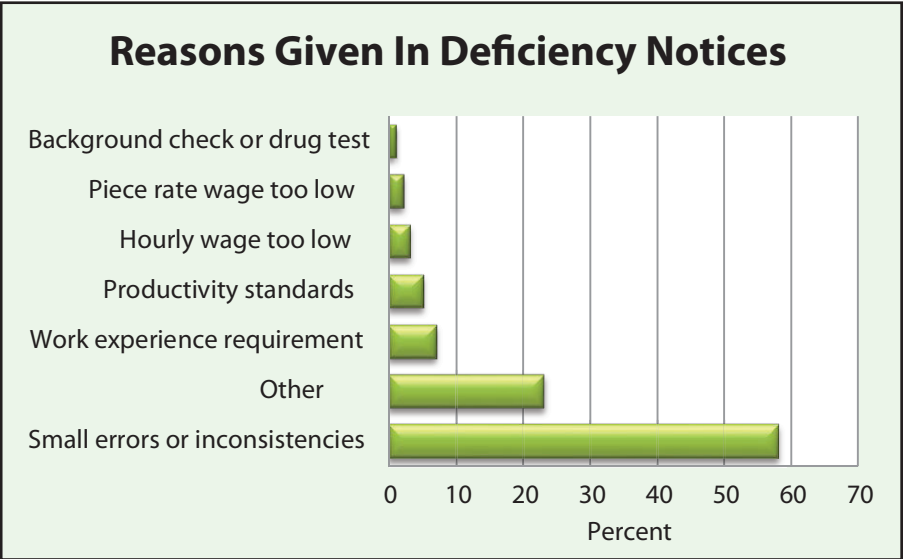




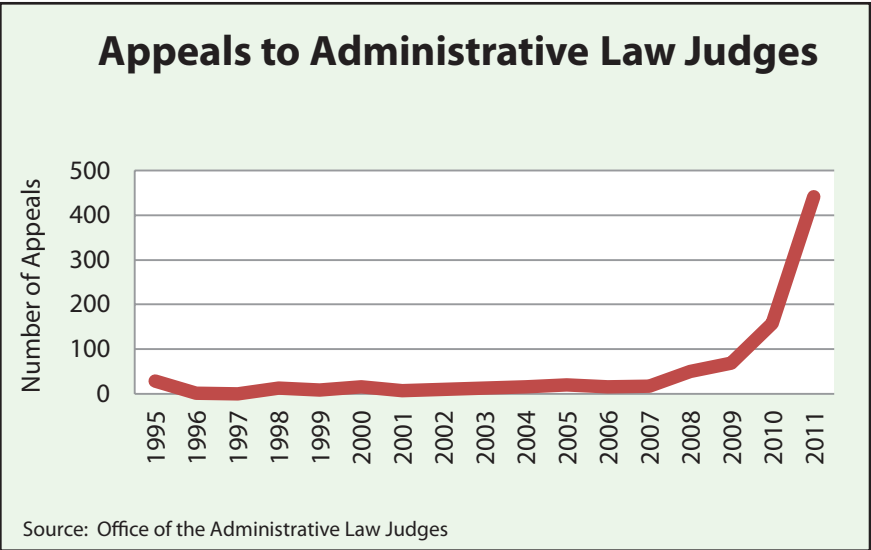
4. DEFICIENCY NOTICES AND H-2A REGULATIONS USURP A GROWER'S ABILITY TO MANAGE ITS OWN BUSINESS

Deficiency notices limit employer management discretion.

Time consuming DOL inquiries and application deficiency notices cause serious delays in obtaining workers, but **most deficiencies (58%) are given for small errors and inconsistencies** in the application.



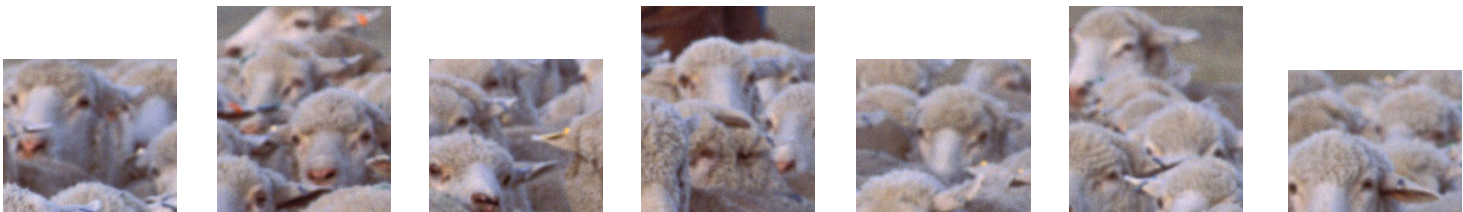
5. A HISTORIC NUMBER OF ADMINISTRATIVE APPEALS OF DENIALS CONTINUES TO IMPOSE DELAYS AND ADD LITIGATION COSTS ON GROWERS.



The number of appeals has reached **historic levels** and is still growing.

When growers appealed, many **(37%) hired a lawyer** to help with those appeals.

Growers who did not appeal, stated that **“it was too costly to appeal” (15%) or “there was insufficient time to appeal” (37%)**. Only 13% did not appeal because they were satisfied with the OFLC decision.



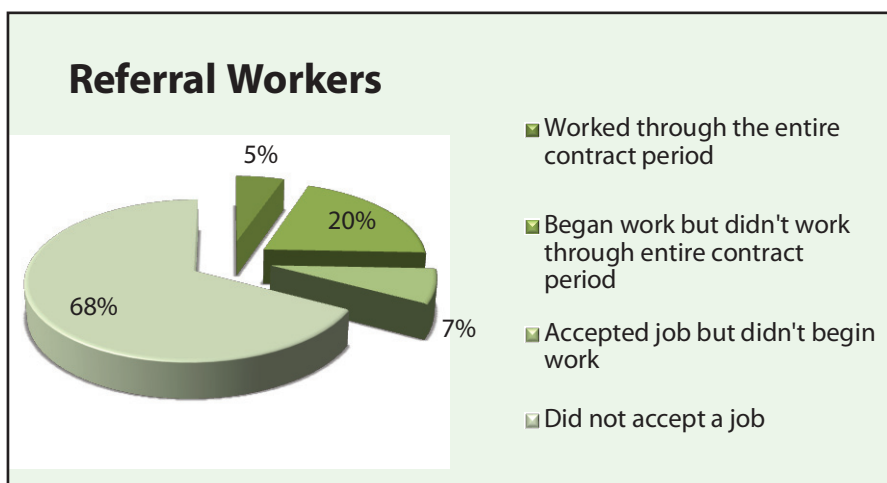


6. THE H-2A PROGRAM IMPOSES LARGE REGULATORY BURDENS AND COSTS ON GROWERS WITHOUT HELPING FIND U.S. WORKERS.

State work force agencies referred 36,000 domestic workers to H-2A employers. Only **5% worked through the contract period.**

Referrals are not screened for work authorization, thus adding to growers' regulatory compliance burden.

Of the 20% percent of domestic workers who began work but **did not work through the entire contract period**, 59% quit, 15% were terminated for cause, 7% failed to produce acceptable work authorization documents and 16% left for misc. Only 3% left because there was no more work to be performed.



7. DOL APPEARS TO TARGET GROWERS WHO USE THE LEGAL H-2A PROGRAM WITH WAGE & HOUR INVESTIGATIONS, LEAVING H-2A GROWERS AT COMPETITIVE DISADVANTAGE COMPARED WITH THOSE WHO DON'T.

National Council of Agricultural Employers (NCAE) is the **ONLY** national association focusing exclusively on Agricultural Labor issues from the Agricultural Employer's viewpoint. NCAE represents Agricultural Employer interests before Congress and Regulatory/Administrative bodies such as the Departments of Labor, Homeland Security, Agriculture, the Occupational Safety and Health Administration, and the Environmental Protection Agency. NCAE Members are growers, associations, and others whose business interests revolve around labor intensive agriculture.

Only a few (8%) employers report that they were audited before they participated in the H-2A program, **but many (35%) report being audited since entering the program.** H-2A employers, who have been audited, were audited twice on average.

"It is distressing that a federal program designed to assure American farmers sufficient and timely labor to plant, tend, and harvest seasonal and perishable crops; many of which feed the American people each day, has become so complicated, confusing, and unpredictable that farmers and even professional H-2A agents are routinely forced to hire lawyers to help them get through the process successfully. This is not what Congress intended when the program was instituted."

—Frank Gasperini, Executive Vice President, National Council of Agricultural Employers.

