

**Statement of Carol House
On behalf of the
National Council of Agricultural Employers**

**House Education and the Workforce Committee
Subcommittee on Workforce Protections
Hearing on
“Workforce Challenges Facing the Agriculture Industry”**

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My name is Carol House. I am a consultant specializing in agricultural statistics. I retired from the U S Department of Agriculture in 2010 after 34 years of experience at the National Agricultural Statistics Service (NASS). When I retired, I was Chairperson of the Agricultural Statistics Board and the Deputy Administrator for Programs and Products. In these dual positions I was responsible for the formulation and execution of all programs and product delivery, and had direct responsibility for 500 annual statistical releases of NASS plus the Census of Agriculture. I was responsible for the quality of the estimates and the security under which these estimates were developed. I was the primary senior contact for users of NASS statistical data, and met regularly with producers, agricultural associations, agricultural business leaders, senior USDA leadership, and others to understand emerging data needs and issues. I am an elected Fellow of the American Statistical Association and an invited member of the International Statistical Institute. I currently hold a part time position (Senior Program Officer) with the National Academies of Science, Committee on National Statistics, where I direct studies to improve Federal statistics. My testimony here is unrelated to my position at the National Academies.

In February, 2011, I was approached by the National Council of Agricultural Employers (NCAE) for assistance. Its members had expressed concerns that the H-2A program was not adequately meeting the needs of U.S. agricultural producers as they struggle to obtain a legal, timely workforce. I spoke initially with Frank Gasperini, Executive Vice President of NCAE. Mr. Gasperini indicated that NCAE had many members throughout the United States that have participated in the H-2A program for a number of years. He indicated that while his members had always found the program challenging to use, in the past several years, during which the rules had changed two times, his members have found the program unworkable. Mr. Gasperini indicated that NCAE was interested in determining on a national basis the experience of current H-2A program participants beyond NCAE's membership. He further indicated that if NCAE were to seek an alternative to the H-2A program, it needed more than anecdotal stories from its membership. Mr. Gasperini asked whether I would provide assistance in developing a national statistically based survey of H-2A program participants to measure the effectiveness of the program as a source of legally authorized alien workers from the viewpoint of those participants. I agreed to design and oversee this project.

I spoke at some length with Mr. Gasperini and NCAE members participating in the H-2A program to understand the application and certification processes, the program concerns expressed by other H-2A participants, and the types of information that would be helpful in discussions to improve the program. I also read background documents to further familiarize myself with the H-2A procedures and issues. Based on my reading and the discussions with NCAE, I developed a draft questionnaire for the survey. I took special care to ensure that all questions were worded objectively. I vetted this draft questionnaire with Mr. Gasperini and members of the NCAE executive committee to make sure that it covered the areas in which they wanted information. Mr. Gasperini and I subsequently tested the questionnaire on several producers to see if the wording was understandable and that these producers were able to supply the requested information. We made several changes based on those tests and finalized the questionnaire. A copy is provided with this statement.

The sampling frame for the survey was obtained from the Department of Labor's Foreign Labor Certification Data Center, website <http://www.flcdatacenter.com/CaseData.aspx>. This website contains files, by year, of H-2A applications that were received and entered into the Department of Labor (DOL) tracking system. I used the file for 2010, the most recent available at that time. The file contained application level information, including the name and address of the applicant (employer), the number of workers requested, the timeframe that work was required and a description of the type of work that would be performed. The file also included information supplied by DOL on its decision, including the date the application was received, the date DOL made a final decision, and the result of that decision. I have attached the DOL description of the 2010 file to this testimony.

The 2010 file contained 7424 records, each a separate H-2A application. Three of these records erroneously had the "alien work state" as a Canadian province. I eliminated those 3 records from the sampling frame. I stratified the remaining 7421 records into 12 sampling strata, sorted the records within each stratum by region and "number of workers requested", and selected a systematic sample of size 1444.

It was not uncommon for a grower to file more than one H-2A application in 2010, which resulted in the situation that some producers were selected for the survey more than once. I did not want a producer to receive more than one questionnaire, so I examined the 1444 sampled applications for duplicate producers. When I found a duplicate, I kept one application in the sample, eliminated the other application from the sample, and selected a replacement application from the file which was in the same strata, same state, and which had requested approximately the same number of workers.

I suggested that we approach a survey center at a Land Grant University to conduct the survey. Such a center would have experience in conducting surveys related to agriculture, and would bring overall credibility to the process. NCAE agreed. I approached the Social & Economic Science Research Center at Washington State University (WSU). It is the largest university-based survey research center in the

Pacific Northwest and has over 35 years of professional experience in survey research. NCAE subsequently signed a contract with that organization.

WSU staff formatted the questionnaire for a mail-out / mail-back survey and they also developed an online web version of the questionnaire. WSU included with the questionnaire packet, a letter endorsed by 18 producers' organizations explaining the importance of the survey. WSU also included its own cover letter soliciting response. WSU mailed the survey packet to the producers in the sample that I provided. They sent a post card reminder and mailed subsequent questionnaire packets to producers who did not respond to the initial mailing. During that time period NCAE and other endorsing organizations used their connections with producers to encourage participation in the survey. Following multiple mailings, WSU began the telephone non-response phase of the overall survey, attempting contacts with producers who had not responded to the mailed questionnaire. Overall 493 questionnaires were returned on the H-2A survey, a response rate of 34%. The resulting sample size is sufficient at the national level for estimating the types of items that are in this survey questionnaire, as long as there is a reasonable distribution of the sample across the country.

I examined the distribution of responses across geographic areas and commodity groupings. The purpose of this analysis was to investigate whether there were adequate responses geographically and from different commodity groupings to ensure that the tabulated responses were in fact representative of the nation. There was, in fact, a good distribution of responses across the U.S. Geographically, the response rates were over 40% in half of the geographic regions. The region with the smallest response rate (21%) still contributed 82 survey responses. Fruit and vegetable growers and nursery/greenhouse operations responded at the highest rates (over 40%), with the response from field crop and livestock operations at 31%. The "Other" commodity group, mostly tobacco growers from Virginia, North Carolina, Tennessee and Kentucky, had the lowest response at 20%. All of the survey responses were statistically weighted with their sampling weights, adjusted for non-response at the strata level.

I conclude that the summarized data from this survey is a statistically valid representation of H-2A participants across the U.S. and of their concerns with the program. WSU prepared a preliminary summary of results and is in the process of preparing a more extensive summary that will be available in October.

I have spent 30+ years serving U.S. agriculture by providing statistical information that will support a safe, sustainable, and affordable food supply. In that light, I find the following preliminary findings from this survey most compelling.

Agricultural producers do not think that the H-2A program, as currently administered, meets their needs.

- 47% of producers 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. (Question 67 of questionnaire.)
- 54% of those producers were concerned enough that they have contacted their Senators or Representatives for help. (Question 65 of questionnaire.)

The H-2A procedures, as currently administered, have made it harder to get legal foreign workers without helping to find domestic workers who are willing to take these agricultural jobs.

- More H-2A applications are being denied. The percent of H-2A applications that were denied in the 3rd and 4th quarters of 2009 doubled by the same quarters in 2010. (Source: Department of Labor’s Foreign Labor Certification Data Center)
- Appeals of these decisions have increased 800% since 2008. (Source: Office of the Administrative Law Judges)
- Producers indicate that it is harder to get agricultural workers through the H-2A program since June 2010. In fact, 68.7% of producers said that it is “substantially harder to get certified” or “somewhat harder to get certified” under the newer regulations. Only 2.4% of producers said that it was “substantially easier to get certified” or “somewhat easier to get certified.” (Question 60 of questionnaire.)
- Producers indicated that the newer regulations haven’t helped find qualified domestic workers. 72.5% of producers indicated that their ability to find qualified domestic workers is “about the same.” Less than 1% (0.8%) of producers thought the newer regulations made it “substantially easier to find qualified domestic workers” or “somewhat easier to find qualified domestic workers.” (Question 61 of questionnaire.)
- Producers reported that of the qualified domestic workers they found through the state workforce agencies, 68% did not accept the offered job, 7% accepted the job but didn’t start work, 20% started work but did not work through the entire contract period, and only 5% actually worked through the entire contract period. (Questions 30- 37 of questionnaire.)

The slow and uncertain nature of the H-2A certification process has created uncertainty and economic loss when producers cannot get the workers that they need when they are needed. Many of these are small farmers who may not have the financial resources to sustain losses.

- 16.1% of the H-2A participants meet the USDA definition of a small farm (\leq \$250,000 gross value of sales). (Question 69 of questionnaire.)

- 32% of H-2A participating producers suffered economic loss because they were unable to get the certified workers that they needed. The survey measured this loss at \$150,400,000 in 2010. (Question 48 of questionnaire.)
- Producers, on average, had only 23.6 days, following a decision by the DOL's Office of Foreign Labor Certification, to arrange for workers, get them through the immigration process and transported to the worksite. In contrast, OFLC took an average of 38 days to process the paperwork and make a decision. (Questions 18-28 of questionnaire.)
- Because of this 72% of producers indicate that their H-2A workers did not arrive at the worksite by the "start date of need". In the cases where the workers arrived late, on average they arrived 22 day late. (Questions 18-28 of questionnaire.)
- 37.6% of H-2A participating producers suffered economic loss because their H-2A workers arrived late. The survey measured this loss at \$169,700,000. (Question 49 of questionnaire.)
- The survey measured total loss at approximately \$320,000,000. This calculates to over \$2600 of loss per legal foreign worker employed through the program. If the H-2A program expands significantly in the future (perhaps due to a mandatory e-verify regulation) without fixing the problems that led to these losses, one could speculate that these losses would climb to the billions of dollars.

In conclusion, it is my professional opinion that the results for the 2010 H-2A Participants Survey, sponsored by the NCAE, provides new, important statistically based information about the performance of the H-2A program from the viewpoint of the program participants. This information should be very useful in considering future improvements to the program.