



March 27, 2009

Mr. Thomas Dowd
Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5641
Washington, DC 20210

RE: RIN 1205-AB55

Dear Mr. Dowd:

These comments are filed on behalf of the Washington Farm Bureau (WFB). WFB is Washington State's largest general farm organization and represents agricultural employers in every component of the agricultural sector.

Approximately 2,000 WFB members are enrolled in the WFB employer services membership group. Greater than fifty percent of the H-2A applications filed in 2008 were filed on behalf of WFB members, through an affiliated entity, Washington Farm Labor Source, LLC.

As of Friday, March 20, 2009, 18 H-2A applications had been filed in Washington State for 2009 (compared to 6 H-2A applications filed during this same time for 2008).¹ Of that total, 14 had been filed by Farm Bureau affiliate Washington Farm Labor Source.

These comments are filed in connection with the above-referenced proposed rule published in the Federal Register on March 17, 2009. That proposal would suspend a regulation published on December 18, 2008 and effective on January 17, 2009 that made changes to the H-2A temporary worker program for agricultural workers.

The March 17, 2009, proposed regulation is a reiteration of the H-2A regulation that was in place prior to January 17, 2009, and had proved virtually unworkable for the vast majority of agricultural employers. For employers in our state, it did not even answer the most basic questions – for example – how to resolve conflict between a federal regulation which requires employers to pay for workers' compensation insurance for all workers, and the Washington law, which requires workers to pay approximately 25 percent of the premium.

¹ Source: Oscar Trevino, Washington State Workforce H-2A Program coordinator, email sent Friday, March 20, 2009 at 11:40 am.

■ Direct: 360.357.9975, Toll Free: 800.331.3276

Postal address: PO Box 8690, Lacey, WA 98509

Street address: 975 Carpenter Road NE, Suite 301, Lacey, WA 98516

In these comments, the regulation published on December 18, 2008 and effective on January 17, 2009 is referred to as the “Current” regulation, and the regulation published on March 17, 2009 is referred to as the “Proposed ” regulation.

SECTION ONE: GENERAL COMMENTS

There are many examples of the failure of the Proposed H-2A regulation. Unfortunately, DOL is not seeking comments on the Proposed Regulation or the many issues that made it unworkable. Instead, DOL is only seeking written comments regarding “*whether the Department should suspend the December 18, 2008 final rule for further review and consideration of the issues that have arisen since the final rule’s publication.*”

The Administrative Procedures Act requires the agency to publish its proposed regulation **and take comments on its proposal**. By refusing to take comments on the Proposed regulation, the Department is in violation the Administrative Procedures Act.

The Department is further NOT seeking comments on the substance or merits of the Current rule. According to the notice, comments must be limited to two specific issues: first, should DOL suspend the Current Rule, and second, issues that have arisen since the rule’s publication last December.

I. Should the Department Suspend the Current Rule?

There are four reasons why the December 18, 2008 rule should be retained:

- The Current Rule is working. In Washington, 18 applications were filed as opposed to 6 at this time last year. More local workers are being hired, and there is a sense – for the first time – that it may be possible to obtain a legal and stable workforce using H-2A.
- The Current Rule should not be suspended because it will cause unequal treatment among the same class of employers. One farmer will be paying a government mandated wage rate that is fully 20% lower than a neighboring farmer. This is an intolerable situation.
- The third reason that the Current rule should not be suspended is that the Department has provided no factual basis or public policy arguments for its conclusion that “*there are issues with the rule.*”
- The last reason why the rule should not be suspended is that it is too late. Nearly fifty percent of the H-2A applications in Washington state have already been filed. Growers have spent hundreds of hours learning the new rules, and have made plans accordingly. It is well known that agricultural employers make plans and attend training sessions for the upcoming season in the winter – generally December through February. This is precisely when we were attending meetings and explaining the new system to our members.

In summary, the only fair course of action is to keep the rule in place for this season, collect comments on how it has worked, and if change is warranted, publish a proposed regulation with facts, not conjecture, on what has transpired.

II. Issues that have arisen since the Final Rule’s Publication

When the Current Rule was published, we began sending information about it to members, attended meetings, and made preparations to use it during this season. Unfortunately, the

Proposed Rule throws that into question, causing us to expend hundreds of hours trying to comply with another change.

Apparently, the principal issue for farm worker advocates with the Current Rule is the wage. Alone among the non-immigrant industry programs, farmers have been denied the ability to pay the prevailing wage. In Washington, the Adverse Effect Wage Rate for 2008 was fully 20 percent higher than the prevailing wage, according to surveys by the state Labor Market, and Economic Analysis office.

The Department is proposing a return to the Adverse Effect Wage Rate. The Department must therefore explain to farmers and the American public why it is fair to force the agriculture community to pay a government mandated wage to use this program that is fully 20% higher than the prevailing wage in the industry, when no other non-immigrant guest worker program is forced to do so. As an example, the H-2B program covers workers in non-agricultural seasonal positions such as the landscape industry. Why is that companies who are searching for landscape workers in the urban areas of our state are paying a lower government mandated wage than farmers who use the H-2A program, when in fact the prevailing wage in agricultural is comparable to, or lower than the prevailing wage in the landscape industry?

Since the Current Rule has been adopted, seasonal agricultural hiring and real wages have risen. As detailed in the January and February Agricultural Workforce reports, seasonal employment has risen dramatically – 20 percent in January 2009 and 10 percent in February 2009 – compared to comparable figures from 2008.² While overall employment is down in the agriculture sector, this is not the case for seasonal workers – the subject of the H-2A rule.

The Agricultural Workforce report states that real (inflation adjusted) wages for seasonal agricultural workers are growing by two – four percent³ since adoption of the Current Rule. The actual statistics for seasonal agricultural employment and wages are in marked contrast to the overall economy and the vague references to “economic factors” in the Department’s Proposed Rule, which leads to the last point: There is no factual basis for the Department’s assertion that issues have arisen since publication of the Current rule which require it to be rescinded.

Finally, if the rule is suspended, the Department must resolve one issue specific to Washington state: the payment of a portion of the workers’ compensation premium by the worker that is **required by state law**.

RCW 51.16.140, “Premium Liability of Worker,” provides, in relevant part: “Every employer who is not a self-insurer **shall deduct** from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. . .”

Please see:

<http://apps.leg.wa.gov/RCW/default.aspx?cite=51.16.140>

² Washington State Agriculture Labor and Wage Report, is published monthly by the Washington Labor Market and Economic Analysis division located at: www.workforceexplorer.com.

³ Id. In January real wages for seasonal agricultural workers increased by 2.5% compared to the previous year, while in February the figure was 4.0%.

Since Washington is the only state with such requirement, and all employers (who are not large enough to self insure) must use the state industrial insurance system, any proposed regulation must make clear, as the Current regulation does, that **workers' compensation premiums must be deducted from both foreign and domestic workers.**

SECTION TWO: SPECIFIC COMMENTS

The Department states that a suspension “*would provide the Department with an opportunity to review and reconsider the new requirements in light of issues that have arisen since the publication of the H-2A Final Rule, while minimizing the disruption to the Department.*” (Federal Register, page 11408)

What issues? Consider this comment from a person familiar with the program:

“My name is Jon Warling. As an orchardist in Othello, Washington, I grow 160 acres of apples. I am also the general manager of Washington Farm Labor Source, LLC, a company that assists farmers in filing H-2A applications. I attended the H-2A training session in Denver in December 2008, and I have overseen the filing of 14 applications thus far this year. Several have completed the process, with visas issued in a timely manner. I was impressed with how smoothly the system worked.”

And this from a newcomer to the program.

“My name is Ted Andrews. I am the president of Herbco International, Inc. We were founded in 1991 as an organic herb farm, and have now grown to the largest such company in the nation, with \$30 million in sales nationwide, primarily selling fresh-cut culinary herbs to grocery stores. The 225-acre farm approximately twenty miles northeast of downtown Seattle currently employs 127, one of the few bright spots on an otherwise bleak agricultural landscape in this area. I contacted the Washington Farm Bureau and Washington Farm Labor Source, LLC in the summer of 2008 because it has become increasingly difficult to obtain a workforce, and I am troubled by statistics that indicate a large number of fraudulently documented workers are employed in seasonal agricultural positions. I filed an H-2A application on January 19th, the first day applications were allowed under the Current Regulation. The process went smoothly, and I received my labor certification approximately 30 days prior to the date when workers were needed.”

The Department next states:

As we move forward with implementing the Final Rule, however, it is rapidly becoming evident that the Department and the SWAs may lack sufficient resources to effectively and efficiently implement the H-2A Final Rule. This has already resulted in processing delays; the delays will become even greater as applications for the upcoming growing season are now being filed with the Department. The Department has been unable to implement the sequence of operational events required to avoid confusion and application processing delays. These include developing an automated review system before the H-2A Final Rule went into effect, and training program users, State Workforce Agency staff, and Federal agency staff. Without such an automated system the Department must process each application manually, which already is causing a significant strain on the timely review and approval of

H-2A applications. The Department believes that it has a responsibility to employers, workers, SWAs, and the public to ensure that a new regulatory regime has a sound basis and is capable of effective implementation. Suspending the new H-2A Final Rule and reinstating the prior rule on an interim basis will allow this examination to occur while maintaining the previous status quo.

This statement is factually inaccurate. The undisputed fact is that the Current Rule requires *less* involvement by state and federal regulators (not including initial training of a new system). In the 14 applications that Washington Farm Bureau members have filed, we have not received a single complaint or issue with the system, until the week that the Proposed regulation was filed. Again, Washington Farm Labor Source's Warling:

“The current regulations require more recruiting by the employer, but less involvement with the state workforce agency. Other than our most recent experience which is detailed below, we have pretty much filed the application, had it approved, performed the recruiting, and received the certifications exactly as explained in the training. We spend more time and energy advertising and contacting former workers, and less time working with the SWA and federal regulators.”

Warling also stated:

“The process seemed to be running more smoothly than it has in recent years, until the new proposed regulation was announced on March 13, 2009.”

Stanley Dickey is the owner of Dickey Farms, Inc. who is in his third year of using the H-2A program and states:

“My name is Stanley Dickey. I am a fifth generation farmer. Dickey Farms is a 240 acre farm that was homesteaded in 1867, and I run it along with the sixth and seventh generation of our family (my son and granddaughter). Our farm is located near Bingen, Washington, in a rural area of the state. I farm diversified row crop for the Seattle and Portland markets, and labor is crucial to our operation. Despite our best efforts, we cannot find a sufficient legally documented local workforce, and therefore I use the H-2A program. I filed an H-2A application on January 26, 2009 and immediately began recruiting domestic workers. My application was immediately approved for consideration without delay. After filing the necessary recruitment reports to certify my recruitment efforts, I received my labor certification from DOL on March 9th, twenty four days prior to the date that I need workers.

Dickey also states:

“I expect the foreign workers to arrive at the beginning of April, depending on weather. I will also hire all of the available domestic workers, and the two sources (domestic and foreign) should provide a sufficient workforce.”

The application of Carpinito Brothers Farms proceeded exactly as the Current Regulation describes it. Here is a portion of the declaration of Mike Carpinito.

“My name is Mike Carpinito. Carpinito Brothers farms is located approximately 20 miles south of Seattle, and we provide produce for the Seattle market. It is extremely difficult to

obtain workers, and I am concerned with statistics that indicate large numbers of workers are not properly documented. I therefore contacted Farm Bureau for assistance with the H-2A program two years ago. The process was not easy.

“This year, I filed my H-2A application on February 4th. My application was immediately accepted for consideration and I received my labor certification on March 2nd, precisely 30 days prior to my date of need. The program manager from Washington Farm Labor Source told us that our application process worked smoothly and without any hitch. Despite the recession, there were no local workers who were qualified for the job.”

These declarations are factual proof that the regulation is working. We challenge the Department to provide proof from farmers to the contrary.

The Department next states, again without a scintilla of proof, that there is “increasing evidence” that the Current Regulation must be scrapped:

In addition, DOL has increasing evidence that undertaking implementation of a complex new regulatory program applicable to the temporary employment of nonimmigrant workers in agricultural occupations before additional examination of the relevant legal and economic concerns is proving unnecessarily disruptive and confusing to the Department’s administration of the H–2A program, SWAs, agricultural employers, and domestic and foreign workers. It is particularly important to avoid such disruption, if possible, in light of the severe economic conditions the country is now facing.

(Federal Register, page 11409)

The department first mentions “increasing evidence” of some problem, without mentioning the problem, and then makes reference to “the severe economic conditions the nation is facing.” Although it is indisputable that the general economic condition of the country is not good, the subject of this rulemaking is seasonal agricultural employment, not the overall economy. In Washington, **statewide seasonal agricultural employment increased 10.5 percent from February 2008 until February 2009.**⁴ And while the total agricultural workforce in Washington state declined by 6.5 percent comparing January 2008 to January 2009, the **seasonal agricultural workforce** increased by a **formidable 20.5 percent** comparing January 2008 to January 2009.⁵

Are these large increases in year to year seasonal employment attributable to the fact that 2008 was just a poor labor market for seasonal agriculture, a down year in Washington? Hardly. In fact, 2009 was one of the best years for Washington agriculture, with record exports of \$15 billion, an increase of 60 percent as compared to 2007, and third highest among the states.⁶ More facts: The first H-2A application approved in Washington state during 2009 was for T&L Nursery. T&L filed its application under the rules that the Department is seeking to reinstate, and there were no local referrals. T&L Nursery is located approximately ten miles from Herbco International, Inc., which was previously noted to be the state’s first H-2A application under the new rules, and was filed several weeks after T&L. Herbco International was likewise unable to

⁴ February 2009 Washington State Agriculture Labor and Wage Report, Executive Summary http://www.workforceexplorer.com/admin/uploadedPublications/9568_AgMonth_Feb2009.pdf

⁵ January 2009 Washington State Agriculture Labor and Wage Report, Executive Summary http://www.workforceexplorer.com/admin/uploadedPublications/9510_AgMonth_Jan2009.pdf

⁶ Washington Department of Agriculture, <http://www.agr.wa.gov/news/2009/09-06.aspx>

attract any domestic workers. However, due to the increased advertising and recruiting required by the Current Regulation, Herbco attracted several workers from the Oregon area.⁷

The conclusion of the Washington Farm Bureau, based on facts, is that the Current Regulation is producing **more employment for domestic workers** in similarly situated operations in the state. Washington is second only to California in the size of its agricultural workforce, but otherwise, the facts are not unique to this state. The Department has chosen not to investigate or produce one fact relevant to its proposal, and has not allowed Farm Bureau sufficient time to make this inquiry. The only conclusion: the Proposed Regulation cannot be adopted.

Later in its proposal, the Department makes this assertion:

Furthermore, development of the H-2A Final Rule was based in part on policy positions of the prior Administration with which the current Administration may differ. Relatedly, the Department may wish to reconsider these policy positions in light of the rising unemployment among U.S. workers and their availability for these jobs, and continuing economic problems in this country.

With what policy positions from the prior Administration does the Department differ? We are left to guess. This is stealth rulemaking.

Perhaps the policy that the Department objects to is the one which has resulted in **a tripling in the number of H-2A applications filed** between January 1 and March 20, 2009 in Washington, from six in 2008 to 18 in the same period this year, as reported by Oscar Trevino, the Washington state H-2A program coordinator. This statistic is probably repeated throughout the country, but the Department has chosen to ignore it.

The Legislature in the state of Washington is alarmed at the number of fraudulently documented workers in the state and because the H-2A program does not work well, is considering a state sponsored guest worker program. According to a finding in proposed legislation currently before the Washington legislature, greater than 200,000 fraudulently documented workers are toiling in Washington.⁸ What policy does the Proposed Regulation foster that would impact this statistic? Since the Department is abandoning the requirement that the SWA verify the employment documents of domestic workers, is the policy that the Department is attempting to pursue one in which employers who enroll in the H-2A program are encouraged to hire fraudulently documented workers?

The final issue presented by these rules is what to do with applications that are filed after the Current rule is invalidated by the Department. In Washington, many employers use the H-2A program for harvest jobs beginning in late summer – mid August or later. Since the current rule prohibits an application more than 120 days prior to the date of need, these farmers may be unable to submit an application before the Current Rule is invalidated. According to Warling:

“When the Proposed rule was announced last week, I was contacted by more than one farmer who asked if he could file an application early, in order to qualify for the Current

⁷ Declaration of Jon Warling, General Manager, Washington Farm Labor Source, LLC, is attached.

⁸ Washington State Legislature, House Bill 1896, 2009, <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20Bills/1896.pdf>. This figure was obtained from a study by the Perryman Group concerning the economic impact of fraudulently documented workers, April 2008, www.perryman.com

rule. The regulation sets a maximum of 120 days prior to the date of need for the application. Furthermore, since it is impractical to begin recruiting greater than 90 days prior to the date of need, we decided not to accept these applications, and so these growers will probably have a different set of conditions than some of their neighbor farms.”

This is a totally avoidable result. The sensible alternative is for the Department to retain the current rule and examine it in an orderly way. When the Department has accumulated reasonable amounts of factual data, can articulate a policy, and is able to demonstrate how that policy will be furthered by a regulation, the regulation should be published. And of course, we hope that the Department will provide commentators a reasonable amount of time to respond.

Declarations of Farm Bureau members are appended hereto. Links are provided to the publications from the Washington Labor Markets, and Economic Analysis division and Washington laws referenced herein, and they are also available on Washington state’s website, www.access.wa.gov.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Fazio". The signature is fluid and cursive, with a prominent initial "D" and "F".

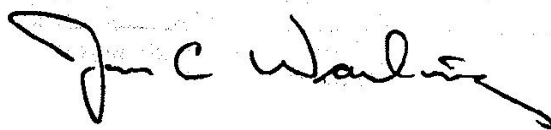
Dan Fazio
Director of Employer Services
Washington Farm Bureau
Direct: 360.528.2917
dfazio@wsfb.com

Washington Farm Bureau Comments
RIN 1205-AB55
Declaration of Jon Warling

1. My name is Jon Warling. As an orchardist in Othello, Washington, I grow 160 acres of apples. I am also the general manager of Washington Farm Labor Source, LLC, a company that assists farmers in filing H-2A applications.
2. I attended the H-2A training session in Denver in December 2008, and I have overseen the filing of 14 applications thus far this year. Several have completed the process, with visas issued in a timely manner. I was impressed with how smoothly the system worked.
3. The current regulations require more recruiting by the employer, but less involvement with the state workforce agency. Other than our most recent experience which is detailed below, we have pretty much filed the application, had it approved, performed the recruiting, and received the certifications exactly as explained in the training. We spend more time and energy advertising and contacting former workers, and less time working with the SWA and federal regulators.
4. I had occasion to compare two applications from farms located within ten miles of one another. The first T&L Nursery, was filed late in 2008 under the "old" regulation that the Department seeks to reinstate. The next, Herbco International, Inc. was filed one month later, under the old application.
5. The Herbco application required more recruiting of domestic workers, and several have been hired. The T&L Nursery application required less recruiting, and resulted in no domestic hires. Why does the Department seek to scrap the regulation that works better for domestic workers?
6. The process seemed to be running smoothly than it has in recent weeks, until the new proposed regulation was announced on March 13, 2009.
7. As soon as the proposed regulation was issued, the Department of Labor National Processing Center began rejecting applications. These applications contained precisely the same language that we and others have used on all the other applications that were filed this year and in years past.
8. The issue is piece rate productivity standards. It is the prevailing practice in the industry to pay a piece rate. As the government mandated rates increase, some workers, particularly the new workers, produce less on a piece rate basis than is earned by the hourly government mandated rate. The hourly rate in effect becomes a training wage.
9. When the government mandated wage is the state minimum wage, this is not an issue, because the workers who can only produce at the minimum wage quickly leave. Most workers are able, through the piece rate system, to earn 150 percent of the minimum wage, and the top performers earn more than 200 percent of the minimum wage.
10. Farmers who use the H-2A program were previously forced to offer a government mandated wage called the Adverse Effect Wage Rate, which has generally been 20 percent higher than the Washington state minimum wage. The Washington minimum wage is currently \$8.55 per hour, the highest in the nation.
11. Farmers noticed that poor performers who could not produce to the Adverse Effect Wage Rate would not leave, but rather would stay, produce substantially less than other

workers, and expect to receive the government mandated wage. Workers who could not produce up to the state minimum wage left non-H-2A farms that paid the state minimum wage, and migrated to H-2A farms that paid the Adverse Effect Wage Rate.

12. Farmers approached the state workforce agency with this problem, and the state workforce agency suggested that a sensible productivity standard would be the state minimum wage, since it applied to all farms, H-2A and non H-2A. In other words, workers who could not produce, using the prevailing piece rate formula, enough to justify the state minimum wage, could be terminated.
13. The state agency agreed that this language was proper. The state also conducted a survey of approximately 500 farms, and asked if this is the prevailing practice. Since greater than 90 percent of the farms in the survey did not use the H-2A program, it was not an issue. For these farms, workers who do not produce the minimum wage quickly depart. According to the SWA, only 35 percent of those surveyed identified the state minimum wage as the piece rate productivity standard that they used.
14. Beginning on March 13, when the current proposed regulation was announced, the H-2A National Processing Center has begun rejecting applications from Washington state that contain piece rate productivity standards.
15. No employer can offer employment without a productivity standard of some kind. This is particularly true in the apple industry, where the largest producer of apples is China, and wages are a fraction of what is paid in Washington state.
16. The timing of this decision may be coincidental, but the message is not. It appears that the Department is no longer willing to work with the SWA and farmers who seek a stable and legal workforce.
17. Instead of working with farmers and the SWA on real issues with the H-2A program as I have identified here, and making it a program that can work for farmers, the Department is proposing to abandon the current regulation, but has not identified issues it sees as a problem.
18. There is one final issue. When the Proposed rule was announced last week, I was contacted by more than one farmer who asked if he could file an application early, in order to qualify for the Current rule. The regulation sets a maximum of 120 days prior to the date of need for the application. Furthermore, since it is impractical to begin recruiting greater than 90 days prior to the date of need, we decided not to accept these applications, and so these growers will probably have a different set of conditions than some of their neighbor farms.
19. I urge you to abandon this rulemaking and work with stakeholders like myself on making it easier for farmers to obtain a legal and stable workforce.



Jon Warling
General Manager, Washington Farm Labor Source, LLC

Washington Farm Bureau Comments
RIN 1205-AB55
Declaration of Ted Andrews.

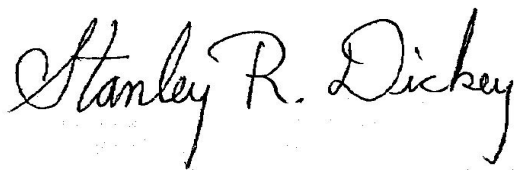
1. My name is Ted Andrews. I am the president of Herbco Interational, Inc. (Herbco). We were founded in 1991 as an organic herb farm, and have now grown to the largest such company in the nation, with \$30 million in sales nationwide, primarily selling fresh-cut culinary herbs to grocery stores. The 225-acre farm approximately twenty miles northeast of downtown Seattle currently employs 127, one of the few bright spots on an otherwise bleak agricultural landscape in this area.
2. I contacted the Washington Farm Bureau and Washington Farm Labor Source, LLC in the summer of 2008 because it has become increasing difficult to obtain a workforce, and I am troubled by statistics that indicate a large number of fraudulently documented workers are employed in seasonal agricultural positions.
3. I filed an H-2A application on January 19th, the first day applications were allowed under the Current Regulation. The process went smoothly, and I received my labor certification approximately 30 days prior to the date when workers were needed.
4. I would strongly recommend that you delay implementing a new rule until you are able to collect information from people like myself about how the December 2008 rule is working. From my standpoint, it is working well.
5. I was unable to find any domestic workers who were interested in performing the job, and therefore I received a visa for twenty foreign workers. I have hired several workers from neighboring states. Under the old regulation these workers would not have been hired. I am unsure if any of these workers will in fact work out, but it is too soon to tell.
6. It would be a mistake to withdraw the current regulation until you can figure out how it is working. I am therefore adamantly opposed to your proposed regulation and ask that it be withdrawn.
7. Washington Farm Bureau tells me that they are unsure whether the wage rates that I agreed to under the rule that was in effect at the time I submitted my application will stay in place. As a matter of substantive due process, I believe that retroactive application of any wage standard should be avoided.



Ted Andrews, President,
Herbco International, Inc.

Washington Farm Bureau Comments
RIN 1205-AB55
Declaration of Stanley Dickey.

1. My name is Stanley Dickey. I am a fifth generation farmer. Dickey Farms is a 240 acre farm that was homesteaded in 1867, and I run it along with the sixth and seventh generation of our family (my son and granddaughter).
2. Our farm is located near Bingen, Washington, in a rural area of the state. I farm diversified row crop for the Seattle and Portland markets, and labor is crucial to our operation. Despite our best efforts, we cannot find a sufficient legally documented local workforce, and therefore I use the H-2A program.
3. I filed an H-2A application on January 26, 2009 and immediately began recruiting domestic workers. My application was approved for consideration without delay. After filing the necessary recruitment reports to certify my recruitment efforts, I received my labor certification from DOL on March 9th, twenty four days prior to the date that I need workers.
4. I have used the H-2A program for three years now and there is no question that it ran smoother this year under in the previous two years. The new system is more fair to both employers and domestic workers.
5. I expect the foreign workers to arrive at the beginning of April, depending on weather. I will also hire all of the available domestic workers, and the two sources (domestic and foreign) should provide a sufficient workforce.
6. Please do not rescind the current rule. It is working.
7. The H-2A program is administratively complex for small farmers like myself, and the new rule has made it less burdensome. It should not be rescinded.
8. There are many farmers who may be hiring fraudulently documented workers because these are the only workers who show up and are willing to work in agriculture. Instead of spending time rescinding these rules, you should be doing more to help farmers obtain a stable and legal workforce.



Stanley Dickey
Dickey Farms

Washington Farm Bureau Comments
RIN 1205-AB55
Declaration of Mike Carpinito

1. My name is Mike Carpinito. Carpinito Brothers farms is located approximately 20 miles south of Seattle, and we provide produce for the Seattle market.
2. It is extremely difficult to obtain workers, and I am concerned with statistics that indicate large numbers of workers are not properly documented. I therefore contacted Farm Bureau for assistance with the H-2A program two years ago. The process was not easy.
3. This year, we filed the H-2A application on February 4th. My application was immediately accepted for consideration and I received my labor certification on March 2nd, precisely 30 days prior to my date of need. The program manager from Washington Farm Labor Source told us that our application process worked smoothly and without any hitch. Despite the recession, there were no local workers who were qualified for the job.
4. In addition to local workers, we are recruiting in other states, and working with the state workforce agencies to identify qualified domestic workers. The changes in the system this year have been positive and have helped us identify domestic workers.
5. I am very concerned that too few farmers are using the system, and many are hiring undocumented workers. It is imperative that more farmers are encouraged to use this system, because many of the problems of the old H-2A program have been fixed.
6. When Farm Bureau told me that DOL is considering rescinding the new rule I was surprised, and I believe it would be unwise.
7. I urge you to keep the present system, and do more to encourage farmers to use it.
8. Farm Bureau also told me that the prevailing wage system I contracted under may be altered. I would consider this to be unfair.

A handwritten signature in black ink that reads "Mike Carpinito". The signature is written in a cursive, flowing style.

Mike Carpinito
Carpinito Brothers Farms