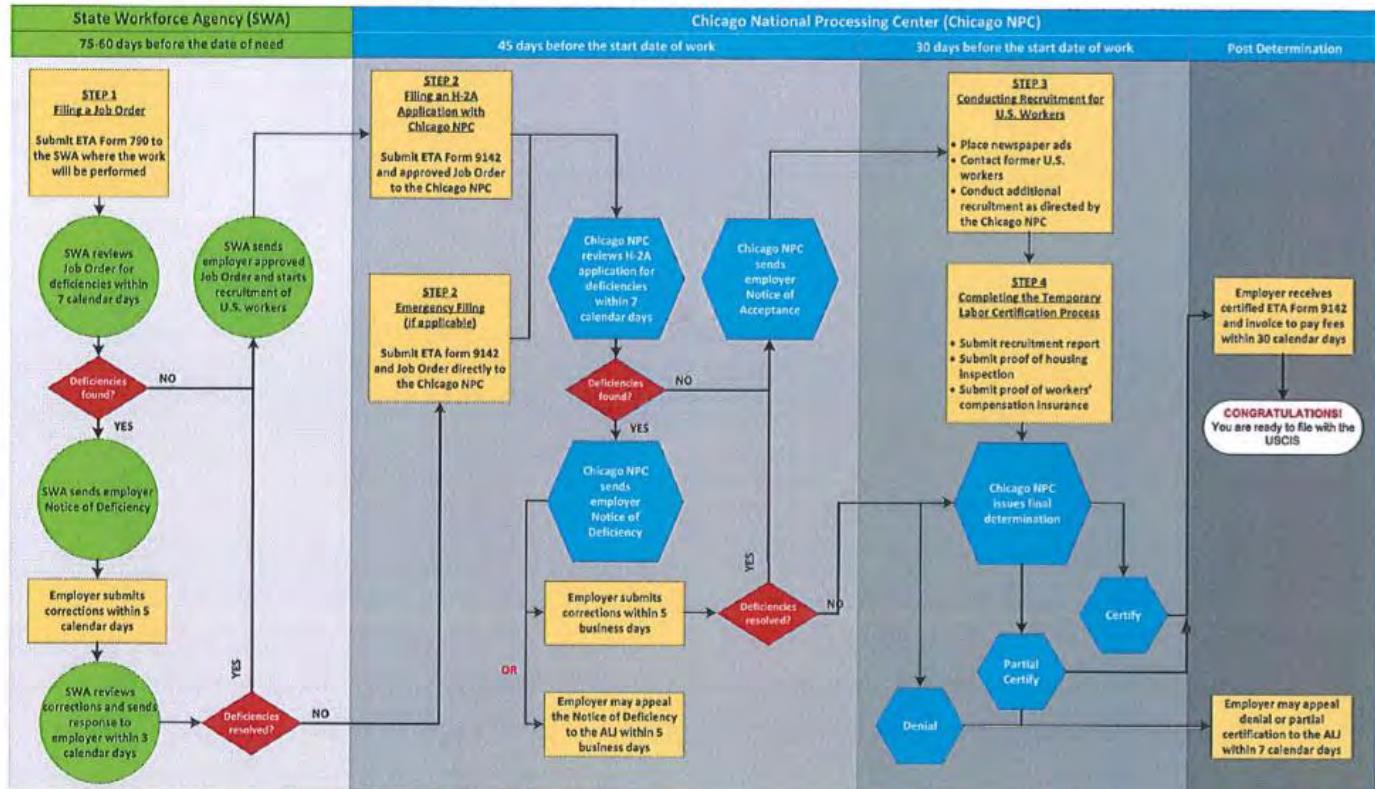


H-2A - 101

Temporary Agricultural Workers

Appendix C. H-2A Application Process Flow Chart



What is the H2A Program?

- The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. A U.S. employer, a U.S. agent as described in the regulations, or an association of U.S. agricultural producers named as a joint employer must file [Form I-129, Petition for Nonimmigrant Worker](#), on a prospective worker's behalf.

<https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers>




The Need for H2A

- Offer a job that is temporary or seasonal in nature
- Demonstrate that there are not enough U.S. workers
- Show that employing H2A workers will not adversely affect the wages and working conditions of similarly employed U.S. worker

Employer Responsibilities

- Employer submits temporary labor certification application to the USDOL
 - Includes evidence of having actively advertised positions and placed jobs with state workforce development agency
- Employer submits Form I-129 to USCIS



The image shows the front page of Form I-129, 'Petition for a Nonimmigrant Worker', from the Department of Homeland Security, U.S. Citizenship and Immigration Services. The form includes a header with the USCIS logo and title, and a table with columns for 'Receipt', 'Partial Approval (explain)', and 'Action Block'. Below the table are fields for 'Class', 'No. of Workers', 'Job Code', 'Validity Dates', and 'To:'. There are also checkboxes for 'Classification Approved', 'Consulate/POE/PFI Notified', 'Extension Granted', and 'COS Extension Granted'. A section titled 'Part 1. Petitioner Information' contains instructions and numbered fields for 'Legal Name of Individual Petitioner', 'Company or Organization Name', and 'Mailing Address of Individual, Company or Organization'.

Petition for a Nonimmigrant Worker
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

For USCIS Use Only	Receipt	Partial Approval (explain)	Action Block
Class: _____ No. of Workers: _____ Job Code: _____ Validity Dates: _____ From: _____ To: _____		<input type="checkbox"/> Classification Approved <input type="checkbox"/> Consulate/POE/PFI Notified At: _____ <input type="checkbox"/> Extension Granted <input type="checkbox"/> COS Extension Granted	

▶ **START HERE - Type or print in black ink.**

Part 1. Petitioner Information

If you are an individual filing this petition, complete Item Number 1. If you are a company or an organization filing this petition, complete Item Number 2.

1. **Legal Name of Individual Petitioner**

Family Name (Last Name) _____ Given Name (First Name) _____ Middle Name _____

2. **Company or Organization Name**

3. **Mailing Address of Individual, Company or Organization**

In Care Of Name _____

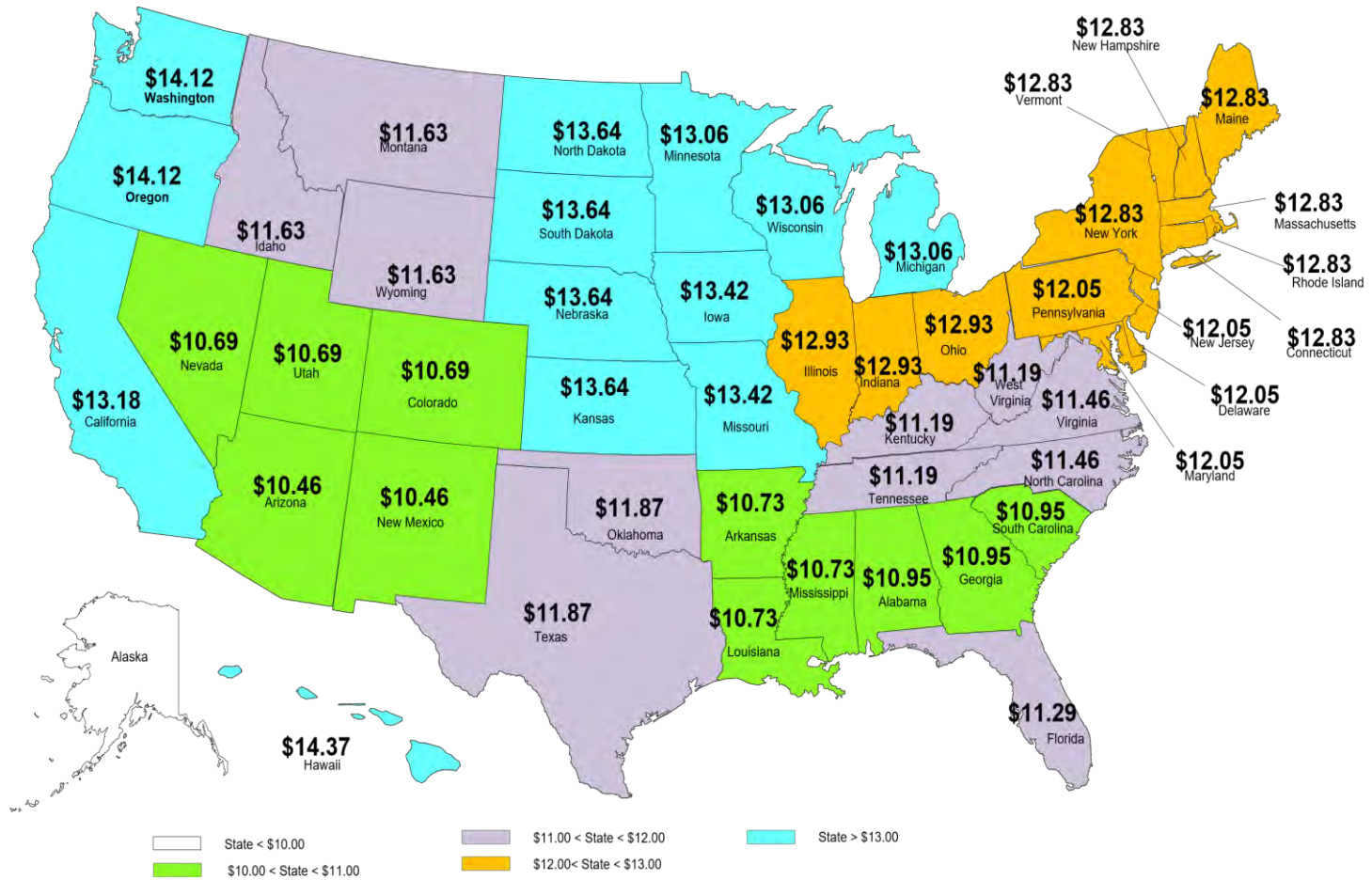
Street Number and Name _____ Apt. Ste. Flr. Number _____

Employer Responsibilities

Rates of Pay

- Hourly: needs to be at least Adverse Effect Wage Rate (AEWR), minimum wage or contracted rate, whichever is highest
- Piece Rate: cannot be less than Adverse Effect Wage Rate (AEWR), minimum wage or contracted rate, whichever is highest

2018 Adverse Effect Wage Rates



Employer Responsibilities

Written Disclosure of Terms

- Beginning and ending dates
- Conditions of employment
- Hours per day/days per week
- Crops and job(s) to be performed
- Tools required (no charge)
- Worker's Compensation
- Deductions – ex. meals
- Guarantee 75% of the work



Employer Responsibilities

Transportation Expenses

- Pay in advance or reimburse transportation, housing and meal costs to get to the operation
- Costs to return, with completed contract
- Costs to obtain visa, including transportation, housing and meals
- Daily transport to and from worksite with insured, licensed drivers

Employer Responsibilities

Housing and Meal Expenses

- Provide housing at no expense to workers
- Provide laundry facilities at no expense to workers
- Provide free and convenient cooking facility
OR
- Provide three meals each day
 - May deduct from pay, must disclose in conditions, daily limit of \$12.07

Employer Responsibilities

Treatment of Domestic Workers

- Treat existing US workers the same as H-2A workers if they are performing the same job duties: **Corresponding Employees**
- Recruit and hire domestic workers through first 50% of contract period



Most Common USDOL Citations Current H2A Program

Rejections of U.S. workers

- Not hiring a domestic worker who is able, willing and qualified to work on an H2A job opportunity.

Preferential Treatment of Foreign Workers

- Providing higher wages, more hours, better working conditions or housing to the foreign workers than U.S. workers in corresponding employment.

Most Common USDOL Citations Current H2A Program

Wages

- Not paying the highest applicable wage rate
- Misclassification of a corresponding worker
- Not paying for all hours worked

Housing

- Housing not maintained in a safe and sanitary condition
- Not providing adequate cooking facility
- Not providing 3 meals when there are no cooking facilities



Most Common USDOL Citations Current H2A Program

Transportation

- Unsafe vehicle
- Unlicensed driver
- Not reimbursing the H2A worker the correct amount of inbound and subsistence
- Not reimbursing the H2A workers the correct amount of outbound and subsistence

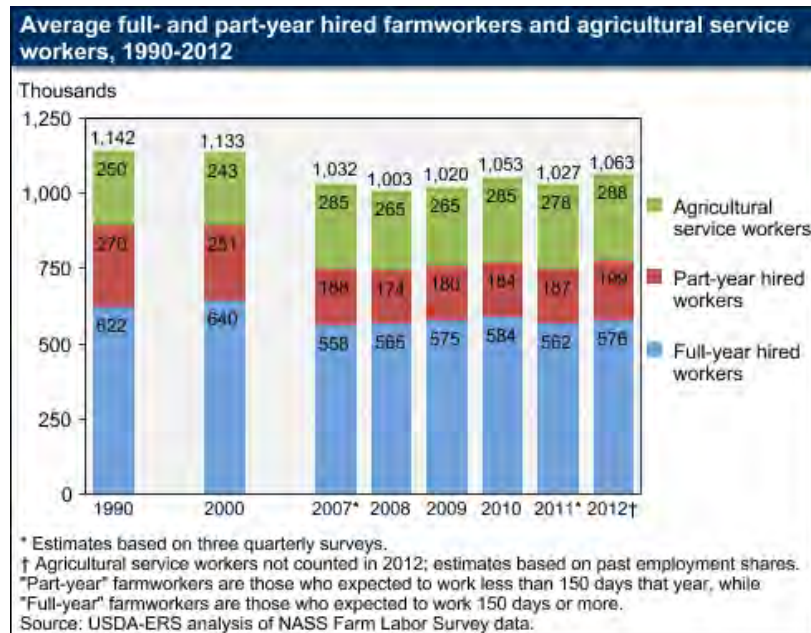


Ag Labor

Our Current Legal Workforce

Current Agricultural Workforce

2012 USDA Census
1,063,000 workers

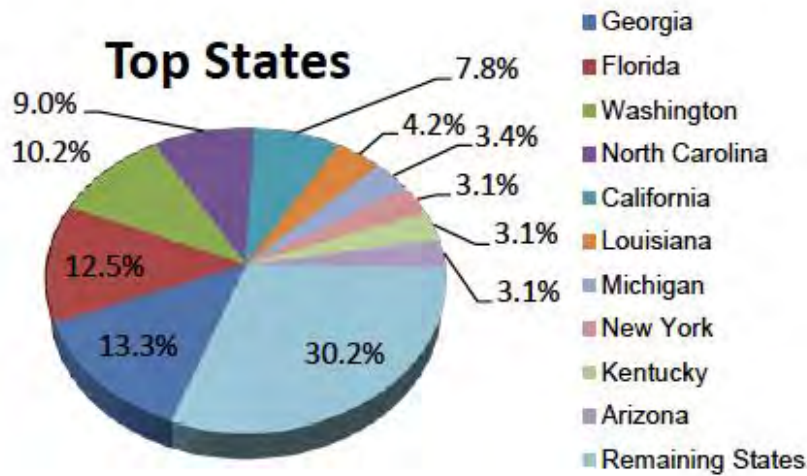


2016 USDOL Estimates
2,500,000 workers
53% illegal

H2A Program FY 2018

10/1/17 – 9/30/18

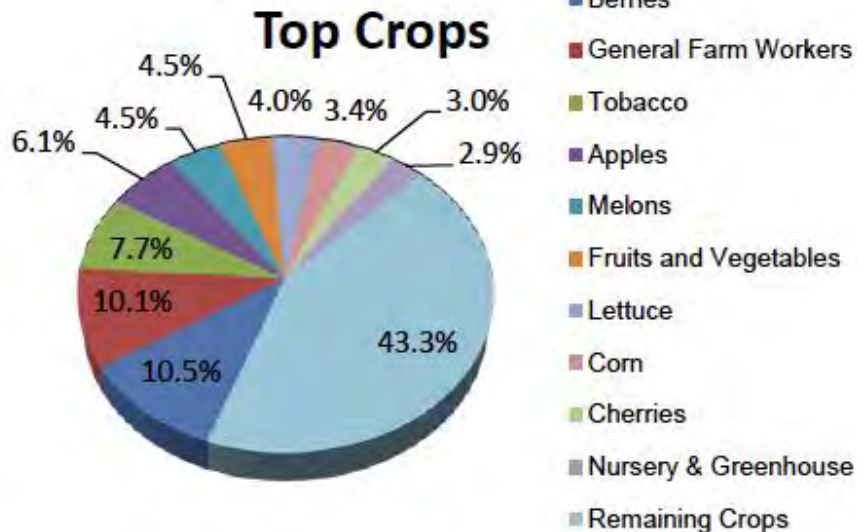
Top 10 States			
Georgia	32,364	13.3%	
Florida	30,462	12.5%	
Washington	24,862	10.2%	
North Carolina	21,794	9.0%	
California	18,908	7.8%	
Louisiana	10,079	4.2%	
Michigan	8,359	3.4%	
New York	7,634	3.1%	
Kentucky	7,604	3.1%	
Arizona	7,497	3.1%	



H2A Program FY 2018

10/1/17 – 9/30/18

Top 10 Crops/ Occupations	Berries ³	25,424	10.5%
	General Farm Workers	24,414	10.1%
	Tobacco ⁴	18,652	7.7%
	Apples ⁵	14,920	6.1%
	Melons ⁶	11,026	4.5%
	Fruits and Vegetables	10,858	4.5%
	Lettuce ⁷	9,758	4.0%
	Corn ⁸	8,254	3.4%
	Cherries ⁹	7,245	3.0%
	Nursery and Greenhouse Workers	7,117	2.9%



H2A Program FY 2018

Applications Received¹

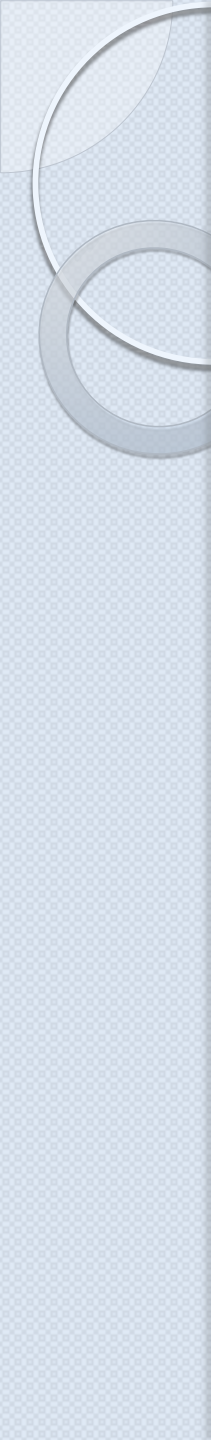
FY	Q1	Q2	Q3	Q4	% Change FY 2017
11,806	2,756	4,727	2,837	1,486	16.7%

Applications Processed

Determination	FY	Q1	Q2	Q3	Q4
Total Determinations	11,698	1,730	4,935	3,178	1,855
- Certified	11,319	1,625	4,850	3,078	1,766
- Denied	165	39	33	46	47
- Withdrawn	214	66	52	54	42
Positions Requested	251,679	33,605	81,414	85,022	51,638
Positions Certified	242,762	31,862	80,311	81,228	49,361
Processed Timely²	91.7%	96.8%	90.4%	90.1%	92.2%


Changes to H2A

- November 9, 2018
 - Federal Register posting by US DOL
 - Allow employers to solicit domestic workers using digital platforms versus newspapers
 - Comments due 12/10/18
- 2019 AEWB Released
 - National Council of Ag Employers submitted letter to Congress with 72 ag association partners
 - Delay implementation of 2019 AEWB to find a better method for determining
 - California increases to \$13.92/hour (up 5.6%) vs. Arizona increases to \$12.00/hour (up 14.7%)



I. Employers must demonstrate the need for specific number of H-2A workers by:

- A. Certify that there are not sufficient US workers qualified and available
- B. Contacting US workers
- C. Coordinate recruitment activities through state workforce agency
- D. All of the above



I. Employers must demonstrate the need for specific number of H-2A workers by:

- A. Certify that there are not sufficient US workers qualified and available
- B. Contacting US workers
- C. Coordinate recruitment activities through state workforce agency
- D. **All of the above**



2. Employers must pay ...

- A. The collective bargaining rate at least once a month
- B. The highest of the applicable wage rates at least twice a month
- C. The federal or state statutory minimum wage at least twice a month



2. Employers must pay ...

- A. The collective bargaining rate at least once a month
- B. The highest of the applicable wage rates at least twice a month**
- C. The federal or state statutory minimum wage at least twice a month



3. The written disclosure must describe:

- A. All of the terms and conditions of employment
- B. The job order
- C. Just the earnings and deductions
- D. All of the above



3. The written disclosure must describe:

- A. **All of the terms and conditions of employment**
- B. The job order
- C. Just the earnings and deductions
- D. All of the above

4. Each worker must be guaranteed?

- A. At least 80% of the workdays in the contract period
- B. 00% of the workdays in the contract period
- C. $\frac{3}{4}$ of the of the workdays in the contract period

4. Each worker must be guaranteed?

- A. At least 80% of the workdays in the contract period
- B. 00% of the workdays in the contract period
- C. **$\frac{3}{4}$ of the of the workdays in the contract period**

5. Transportation ...

- A. Is not the employer's obligation
- B. Must be provided daily, at no cost
- C. Must be provided daily at a reasonable cost

5. Transportation ...

- A. Is not the employer's obligation
- B. Must be provided daily, at no cost**
- C. Must be provided daily at a reasonable cost

Resources

https://www.dol.gov/whd/ag/ag_h-2a.htm

- How to register
- Compliance assistance
- Fact sheets (English/Spanish)
- Worker Rights Card (English/Spanish)
- WHD 1491 Poster (English/Spanish)
- Applicable Laws and Regulations

Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call toll-free information and helpline, available 8 a.m. to 5 p.m., 1-866-4US-WAGE (1-866-487-9243).

- Any Questions?
- Thank you for your participation.
- Further questions, call us at 209-526-4400
- www.agsafe.org