



Chalmers R. Carr III

Current Status of H-2A Program & Immigration Reform

5 R.W. DuBose Road
Ridge Spring, South Carolina 29129

From the beginning...



Family Owned & Operated

- 1st Generation Farmers
- Largest peach grower on the East Coast
- Passionate about peaches
- Obsessed with quality



**Founded in 1999 by Chalmers & Lori Anne Carr...
Modern farming...old fashioned values...
...we put quality on your table.**



Who is Titan Farms?



We are the premier grower, packer and processor of *peaches* and *vegetables* in the Eastern United States!



Peaches – 6,200+ acres



Bell Peppers – 600 acres



Broccoli – 1,000 acres

The largest producer in South Carolina of Peaches, Bell Pepper, and Broccoli.



The ONLY vertically integrated peach farming operation in the east!!

Distribution across the United States



Secure Legal Labor Force (H-2A)



Secure legal labor force fosters unity within our farming family

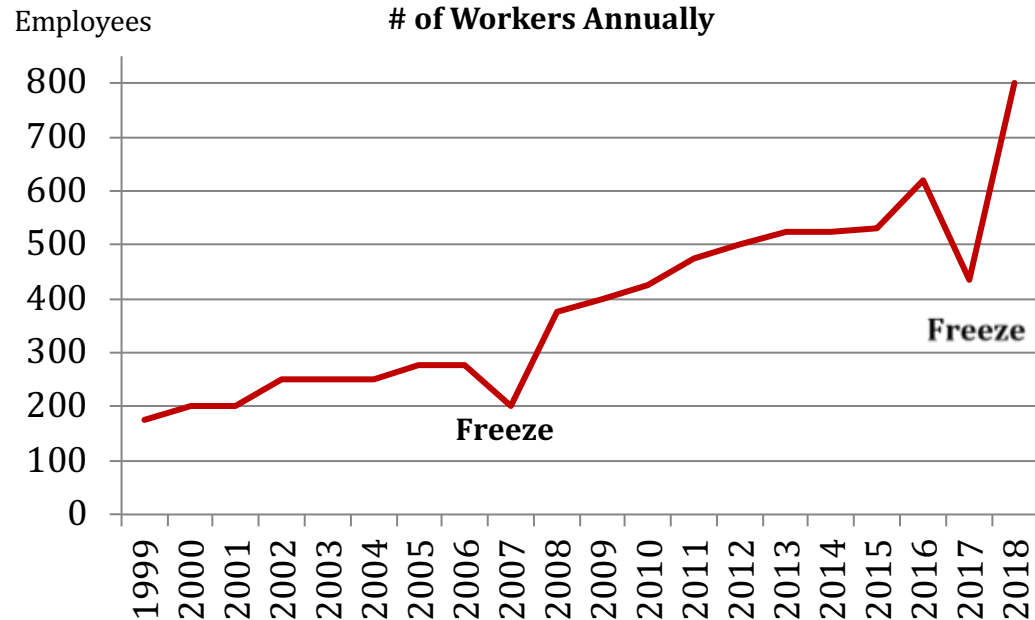
- One of Nation's largest H-2A Private Employers crossing 800+ workers annually
- Participating in program for **20 years**
- 98% retention rate among employees

**20
Years!**

The best advice Chalmers has ever received was "If you go to the H-2A program you will spend less time worrying about labor and more time on building your business!"



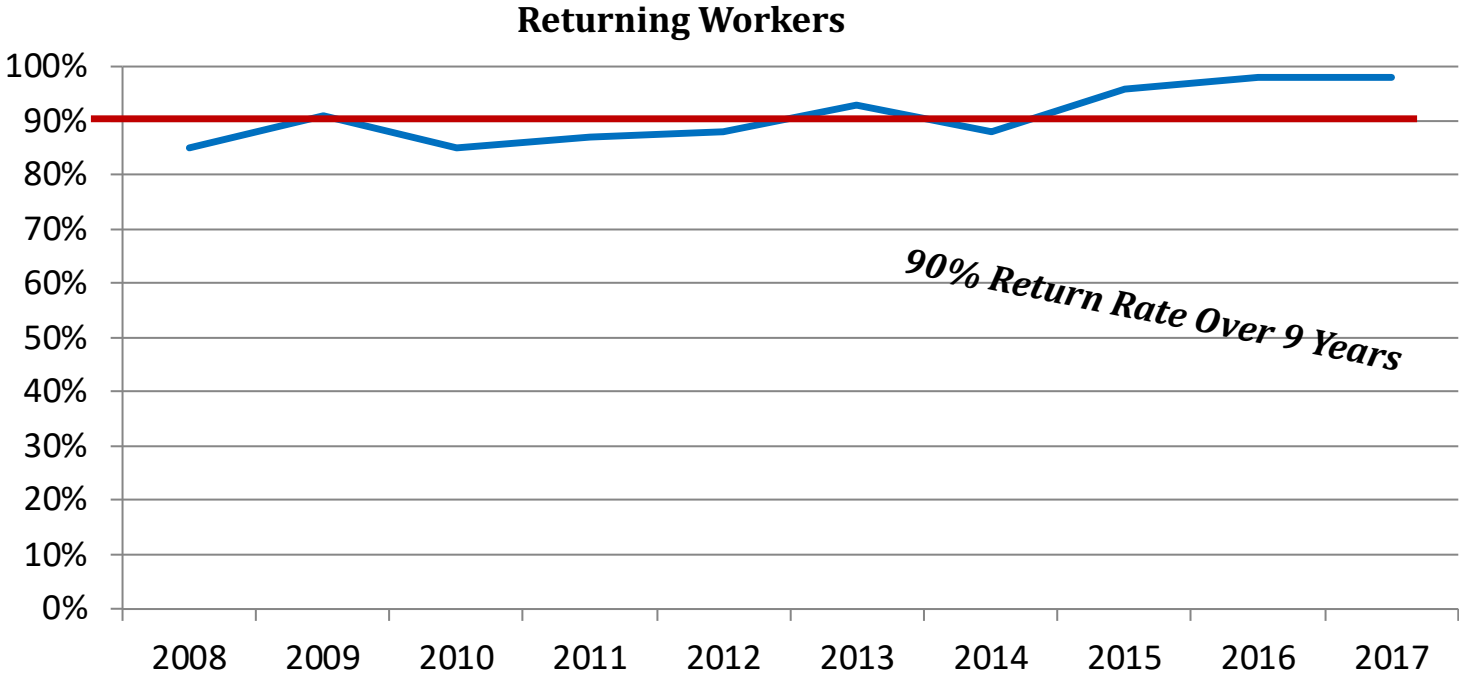
Titan H-2A Workers (1999 - 2018)



Titan Farms Returning Workers



Percentage of Returning Workers



Immigration Background



National Leader Supporting the Agriculture Industry & Immigration Reform

- President of USA Farmers: National H-2A Employer Association
- Founding member of AWC
- 2006 White House Represented Ag
- AFBF Labor Committee
- State and National Ag. organization
- Testified before Congress:
 - 2004
 - 2011
 - 2013
- 1986 IRCA
 - Processed 200 Hispanic workers



“I have dedicated myself to Immigration Reform for the last 20 years.”

Who is USAF?



- ❑ Only National Organization representing H-2A employers in advocacy for guest worker reform
- ❑ Founded in 2010
- ❑ Leadership is comprised of H-2A employers and associations representing 16 states

1,440 Farmer Members
Representing 44 States

Forces Joining Together



2011 - USA Farmers joined forces with other like minded organizations for immigration reform



- Brings together organizations representing the diverse needs of agricultural employers across the country.
- Serves as the unified voice of agriculture in an effort to ensure America's farmers, ranchers and growers have access to a stable and secure workforce.



Founding Members of AWC



Background – Immigration Reform



1986 - Immigration Reform and Control Act of 1986 (IRCA)

- Birth of present H2A program

1996 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996

1998 – Birth of **AgJOBS**

2006 – Bush Administration engages Immigration Reform

2007 – Agriculture split on reform needs

Senate Passed AgJOBS – House DID NOT

2008 – Bush regulation changes to H-2A

2009 – AFBF pulled away from AgJOBS

2010 – Obama change to H-2A regulations

2011 – Agriculture Workforce Coalition was founded

2013 – Senate Passes Comprehensive Immigration Reform- **S744 – House DID NOT**

2013 – HR 1773 Approved in Committee only



2018 ?? – 20 Years with No Relief



**WHAT IS HAPPENING NOW?
WHAT IS THE H-2C PROGRAM??**

National Guard to US-Mexico Border



Trump said last week he wants to send 2,000 to 4,000 National Guard members to the border, issuing a proclamation citing “the lawlessness that continues at our southern border.”

Trump administration officials have said that rising numbers of people being caught at the southern border, while in line with seasonal trends in recent years, require an immediate response.

Immigration and Customs Enforcementsays it is only getting started



Immigration

ICE raids meatpacking plant in rural Tennessee; 97 immigrants arrested

By [Maria Sacchetti](#) April 6 [Email the author](#)

Federal officials arrested 97 immigrants at a meat-processing plant in rural Tennessee on Thursday in what civil rights organizations said was the largest single workplace raid in a decade and a sign that the Trump administration is carrying out its plan to aggressively ramp up enforcement this year.

Ten people were arrested on federal immigration charges, one person was arrested on state charges and 86 immigrants were detained for being in the country illegally, Tammy Spicer, a spokeswoman for Immigration and Customs Enforcement, said in a statement Friday. All of those arrested are suspected of being in the country illegally, she said. Immigration advocates said most were from Mexico.

The raid on Southeastern Provision in Bean Station, Tenn., follows arrests at 7-Eleven stores and other workplaces nationwide. Last year, the nation's top immigration official said he had ordered agents to increase the number of work-site inspections and operations by "four or five times" this year, to turn off the job "magnets" that attract immigrants who are in the country illegally and punish employers who hire them.


The National Immigration Law Center and other immigrant advocates said the Tennessee raid was the largest since the George W. Bush administration and deployed many of the tactics of that era, with a surprise blitz of the factory and streets blocked by state and local authorities. ICE officials would not say where the

Trump is getting tough on enforcement

514 Housing



- A change was included in the Government funding bill passed a couple of weeks ago. Housing built with USDA “Section 514” funds can be used to house H-2A workers. Previously, the law required that only US or Green Card holders could reside in this housing.

 **USDA Farm Labor Housing Loans and Grants**
(Sections 514/516)
Housing Assistance Council June 2008

The Section 514/516 Farm Labor Housing (FLH) program provides loans and grants for the development of on-farm and off-farm housing. The program is operated by the U.S. Department of Agriculture's Rural Development Housing and Community Facilities Programs office (RD).

Purpose
Section 514 loans and Section 516 grants are provided to buy, build, improve, or repair housing for farm laborers. The range of eligible tenants was expanded in the 2008 Farm Bill to include not only persons whose income is earned in aquaculture (fish and oyster farms) and agriculture, and those engaged in on-farm processing, but also those who process agricultural or aquacultural commodities off-farm. RD is developing regulations to implement the processing worker provision.

Funds can be used to purchase a site or a leasehold interest in a site; to construct or repair housing, day care facilities, or community rooms; to pay fees to purchase durable household furnishings; and to pay construction loan interest.

Eligibility
Owner: Loans (Section 514) are made to farmers, associations of farmers, family farm corporations, Indian tribes, nonprofit organizations, public agencies, associations of farmworkers, and limited partnerships in which the general partner is a nonprofit entity. Typically, loan applicants are unable to obtain credit elsewhere but, in some instances, farmers able to get credit elsewhere may obtain loans at a rate of interest based on the cost of federal borrowing. Grants (Section 516) are made to farmworker associations, nonprofit organizations, Indian tribes, and public agencies. Funds may be

Tenants: Eligible tenants are domestic farm laborers who receive a substantial portion of their income from farm labor and are citizens or legally admitted for permanent residence. Legally admitted temporary laborers, such as H-2A workers, are not eligible. Retired or disabled farm laborers may remain as tenants if initially eligible.

Terms
Loans are for 33 years at 1 percent interest, except as noted under "Eligibility." Grants may cover up to 90 percent of development cost. The balance may be (and usually is) a Section 514 loan. RD Section 521 Rental Assistance (RA) subsidy can be used to limit tenant payments to 30 percent of their income. The law allows RA to be used as an operating subsidy for projects or units with Section 516 funding that serve migrants, but RD has not yet issued regulations implementing this provision. It is RD policy to attempt to use less than a 90 percent grant when RA is utilized.

Standards
The standards for Section 514/516 are essentially the same as those for Section 515 rental housing: RD siting criteria, CABO Model Energy Code, and voluntary national model building codes apply. When moderate rehabilitation is involved, a separate RD standard is used. Davis-Bacon wage rates apply when Section 516 grants are utilized.

The square footages of individual units are limited according to bedroom size. Projects must be designed to have two or more units per building. Exceptions are granted to housing occupied less than year-round. Housing occupied less than year-round, but more than six months per year, need only be in "substantial conformance" to the applicable code, provided it can be converted to Section 515.



H-2A Program

Double Digit Growth



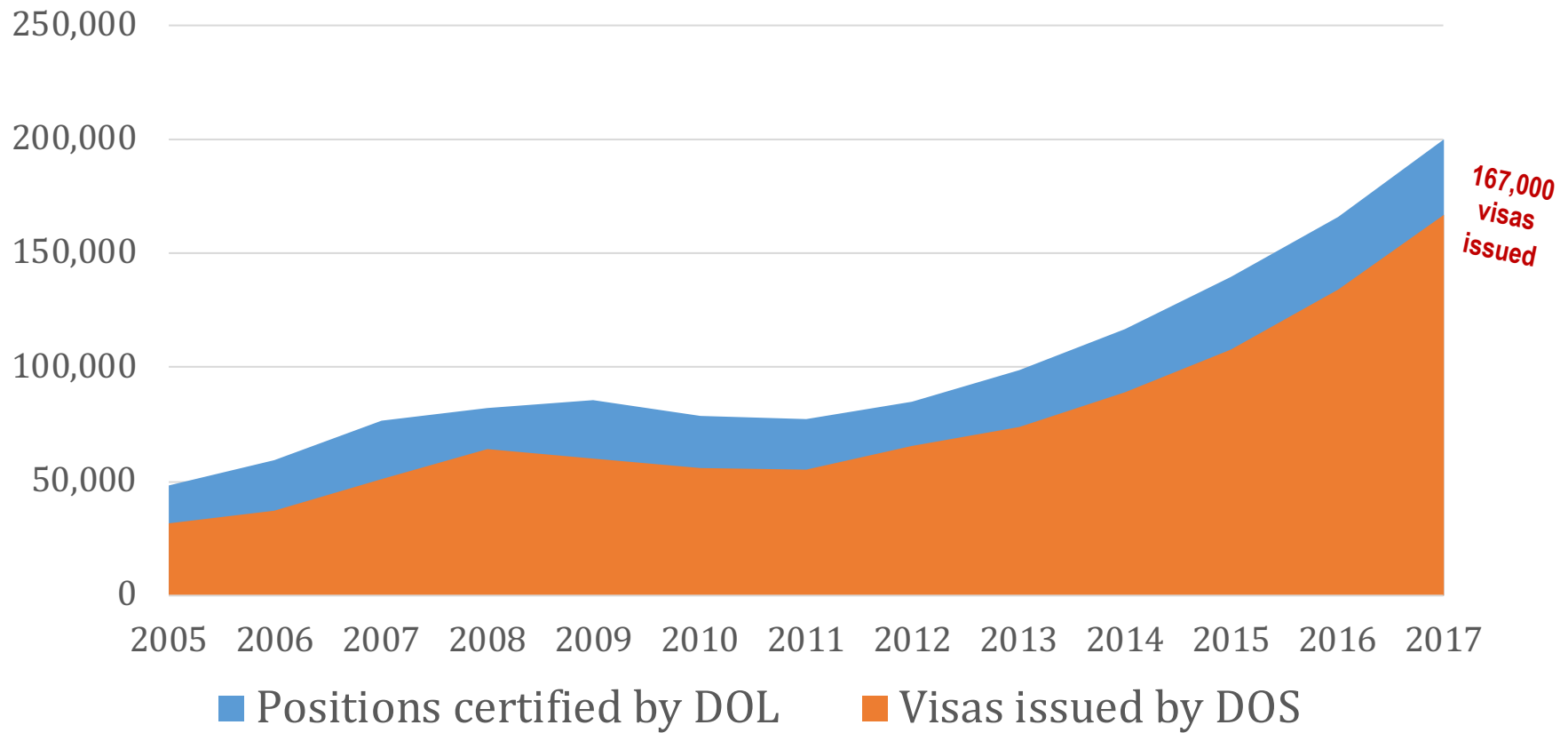
Introduction in 1986:

The Immigration and Nationality Act of 1952 introduced a temporary unskilled worker category, the H-2 category. The Immigration Reform and Control Act of 1986 subdivided this category into two subcategories: the H-2A and H-2B

The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring non-immigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.



H-2A Use Nationwide 2005-2017



Top 10 Crops that use H-2A



Top 10 Crops that use H-2A	
1.	Berries
2.	Tobacco
3.	General Farm Workers
4.	Fruits and Vegetables
5.	Melons
6.	Corn
7.	Apples
8.	Hay and Straw
9.	Nursery and Greenhouse Workers
10.	Lettuce

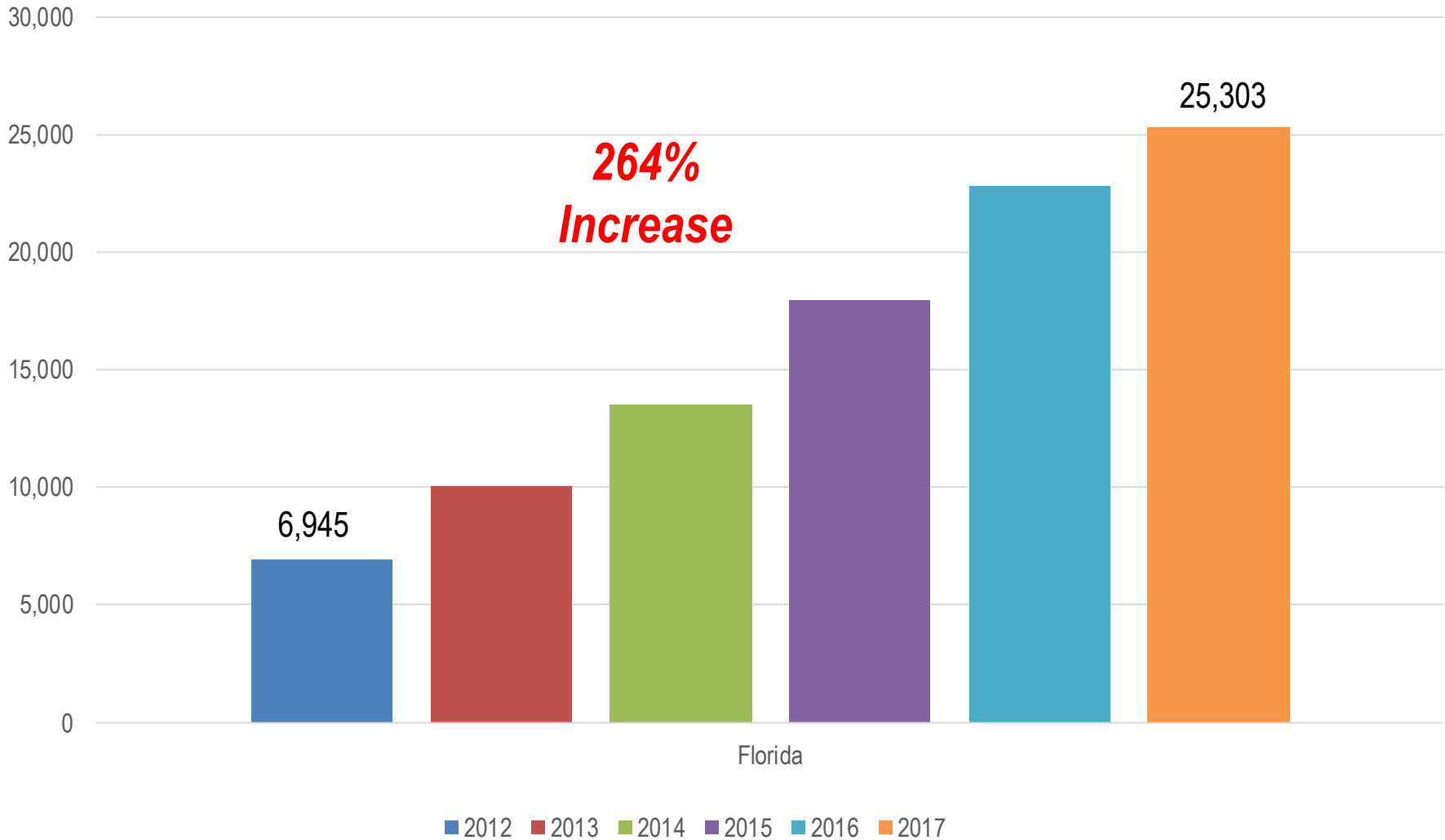


Top 10 States for H-2A

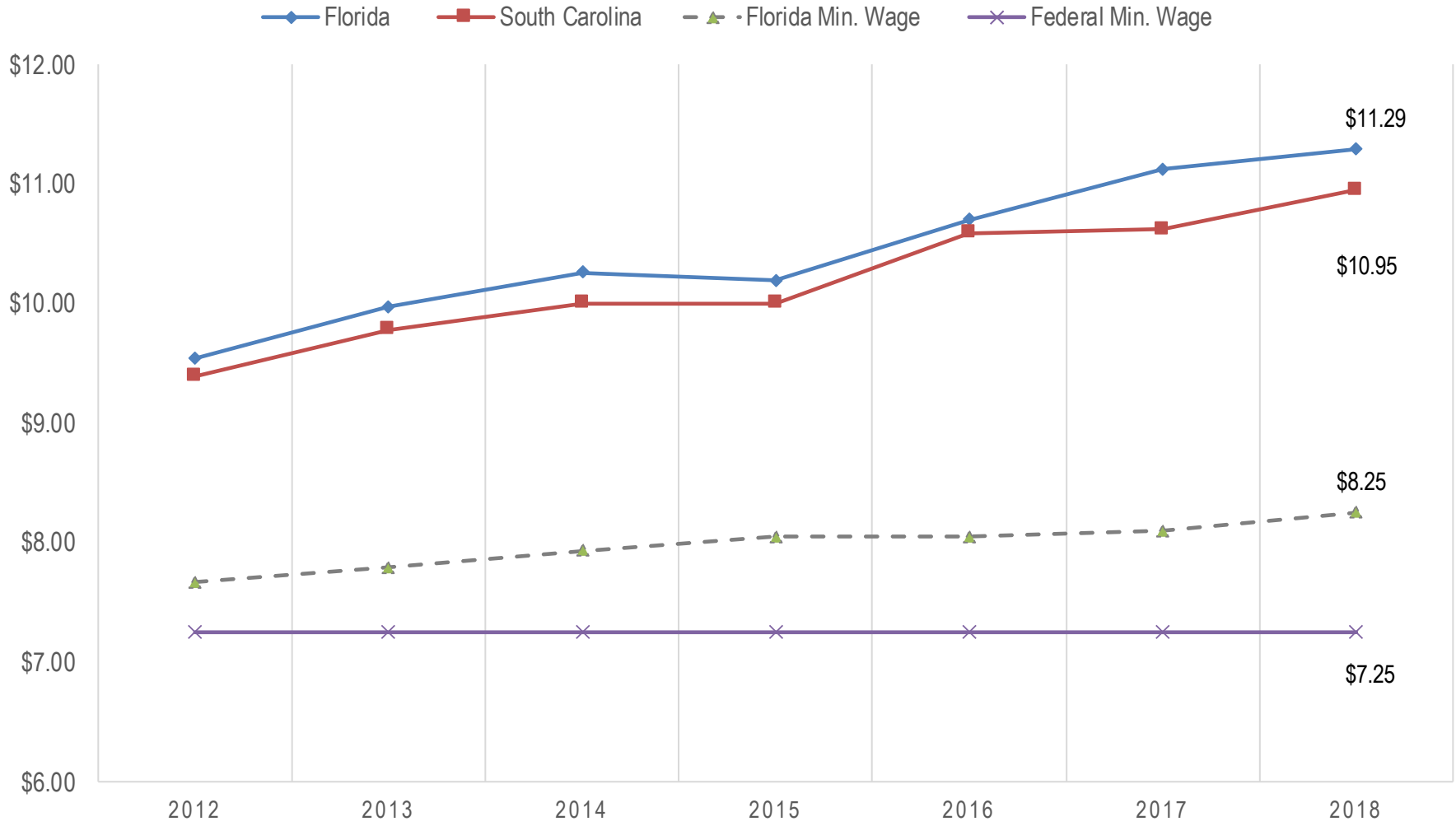


	2017	2014	2011
1.	Florida	North Carolina	North Carolina
2.	Georgia	Florida	Louisiana
3.	North Carolina	Georgia	Georgia
4.	Washington	Washington	Florida
5.	California	Louisiana	Kentucky
6.	Louisiana	Kentucky	New York
7.	Kentucky	California	Washington
8.	New York	New York	Virginia
9.	Michigan	Arizona	South Carolina
10.	Arizona	Virginia	Arkansas

Total Number of H-2A Petitions Certified (Florida)



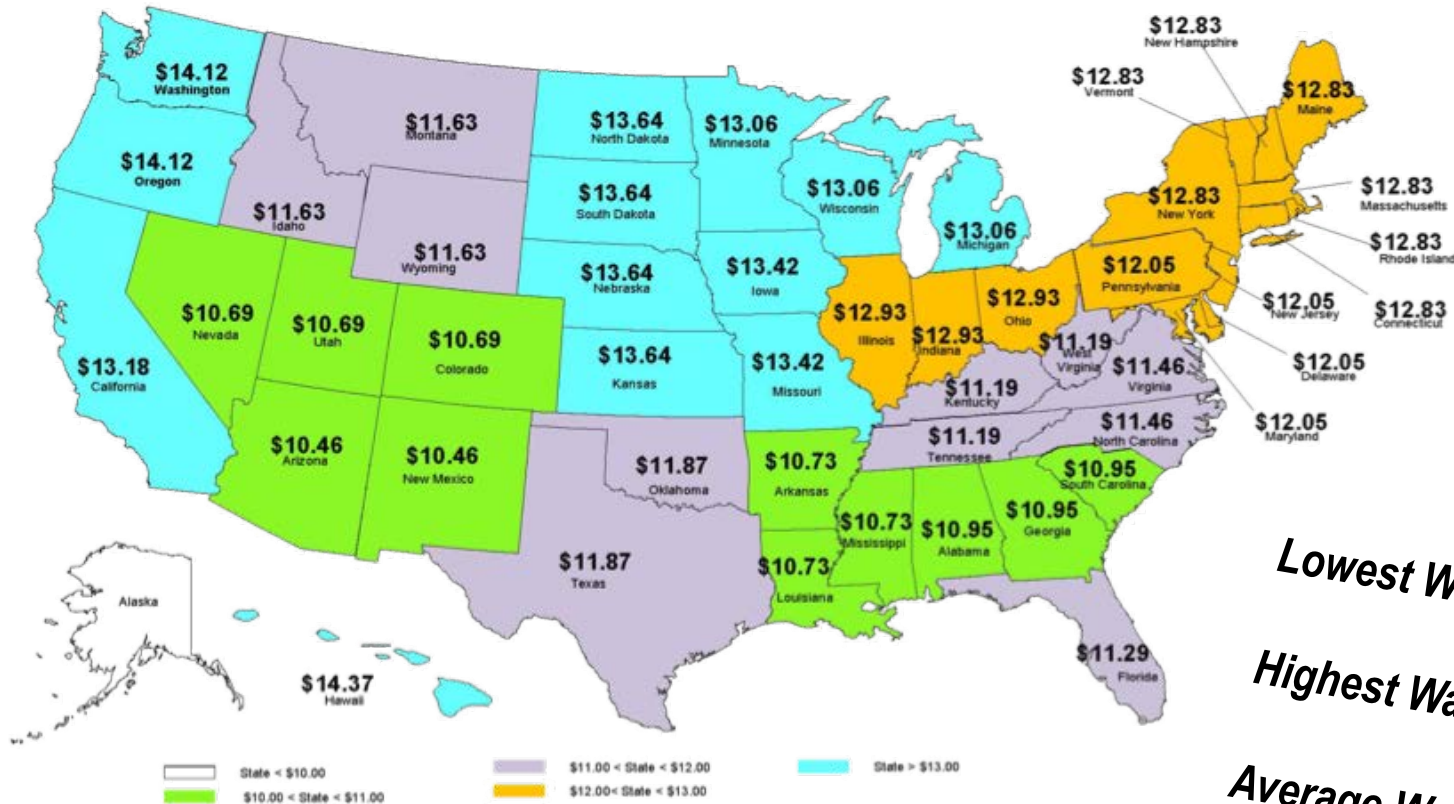
H-2A AEWR Growth (Florida)



2018 AEW - #1 Complaint with program



FY 2018 Adverse Effect Wage Rates



Lowest Wage: \$10.46
 Highest Wage: \$14.37
 Average Wage: \$12.41
Florida: \$11.29

Facts about the U.S. Market for Agricultural Labor



- In the most recent farm labor survey:
 - There were **879,000** hired farm workers on the job in the survey week of July 9-15, 2017.
 - The average wage (combined field and livestock workers) was **\$12.32**
 - The average wage is up **30%** in the past decade, **14%** in the past five years



Four Pillars for immigration reform:

1. Path to citizenship for 1.8 million immigrants brought to the U.S. as undocumented children
2. Increased border enforcement
3. Termination of the visa lottery
4. End to “chain migration”



“It is time to reform these outdated immigration rules and finally bring our immigration system into the 21st century. These four pillars represent a down-the-middle compromise, and one that will create a safe, modern and lawful immigration system.”

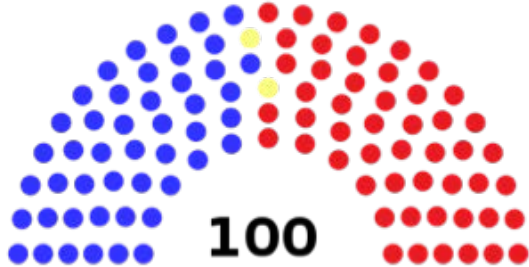
– President Trump

Where does agriculture fit in???

Composition of 115th Congress – Senate



- 51 Republicans
- 47 Democrats
- 2 Independent



***51 votes prevail rarely – often need 60 votes*

- Leader McConnell (KY)



- Minority Leader Schumer (NY)

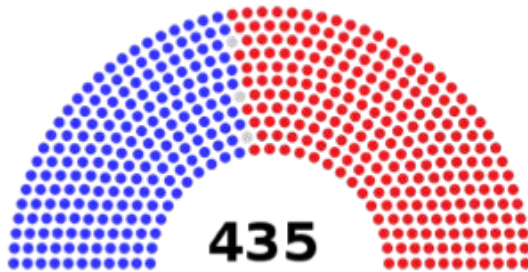


No action on Immigration Reform

Composition of 115th Congress – House of Representatives



- 237 Republicans
- 192 Democrats
- 6 vacancies as of April 2018



- ***218 votes to prevail*

- Speaker Ryan (WI)



- Minority Leader Pelosi (CA)



- Bob Goodlatte (VA)
- Passed the Ag. Act - HR 4092
- Champion for Agriculture
Immigration Reform

What is DACA??



Deferred Action for Childhood Arrivals (DACA) is an American immigration policy is an Obama era policy, that allows certain undocumented immigrants who entered the country before their 16th birthday and before June 2007 to receive a renewable two-year work permit and exemption from deportation. DACA does not provide a path to citizenship.

OBAMA - When was DACA passed: On **June 15, 2012**, President Obama created a new policy calling for deferred action for certain undocumented young people who came to the U.S. as children. Applications under the program which is called Deferred Action for Childhood Arrivals (“DACA”) began on **August 15, 2012**.

TRUMP – In September 2017 Donald Trump announced the DACA program would end March 5th, but encouraged Congress to provide protection legal status to the 787,580 DACA participants.

Federal court blocked effort to end the program.

DACA provides vehicle for Ag. Guestworker Reform

1. Timeline -???
2. Democrats want DACA
3. Republicans also want Border Security and Interior Enforcement including E-Verify
4. Both chambers understand impact of E-Verification on agriculture



***DACA is the only immigration legislation
with a chance to move.***

DACA Legislation: SENATE



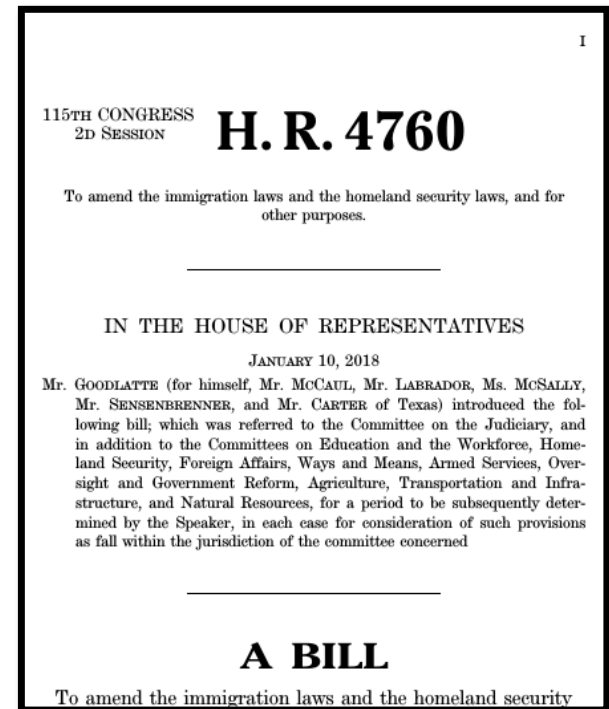
- White House meeting with Senators mid-January
- Week of February 12-16 devoted to debating DACA solutions
 - Lots of talk
 - No proposal received the required 60-vote minimum



DACA Legislation: HOUSE



- **Securing America's Future Act (H.R. 4760)** – reflects President's priorities – introduced by Rep. Goodlatte and Rep. McCaul
 - Legal status for those brought to the U.S. as children
 - Border Security
 - Interior Security/Enforcement – E-verify
 - End Diversity Visa Lottery
 - End Chain Migration
 - **Goodlatte's AG Act / H-2C program**



HR 4092- Agricultural Guestworker Act



- Congressman Bob Goodlatte (R-Va.), Chairman of the House Judiciary Committee, unveiled a bill to create a new, workable agricultural guestworker program for America's farmers and ranchers.

Overview

- Creates new H-2C guestworker program to eventually replace H-2A
- Allows current undocumented workforce to be eligible for H-2C program.

- Former House Ag Committee Chair
- Retiring at the end of this session congress



Ag Act Fall of 2017 – Passed Committee



Judiciary Committee reported the bill as amended

*Oct. 25: Reported as amended by the
Yeas and Nays: 17 (R)-16 (D)*

- 1) Rep. Handel Amendment – Immediate touch back for unauthorized workers
- 2) Visa Cap – 450,000 visas
- 3) Agriculture worked with Goodlatte to modify problematic provisions



Outlook for DACA & Ag Labor Reform



- Will congress act if there is no threat of impending doom... original deadline to end DACA program
- The Senate was unable to agree on DACA bill in Feb.
- Ag is **not unified and some are not in support of** Goodlatte's Ag Act / H-2C Program
- President has tweeted "No more DACA deal"
 - But does he mean it? Will Congress act anyway?
- Increased Enforcement
 - Recent high-profile ICE activity
 - Central Valley in California
 - Meatpacking facility in Tennessee
- California Republican House member (Denham) trying a procedural maneuver to get all Ds and a few Rs together "to force" House to vote on various immigration bills



Agriculture is spilt once again...



“Until Agriculture gets UNITED and brings forth the same message they will never accomplish meaningful immigration reform.”

- Lindsey Graham

Why Ag is spilt once again??

- ❑ Current Workforce vs. Guestworker program reform & future flow
- ❑ The Ag Act is the best guest worker reform bill offered in the last 30 years.
- ❑ Goodlatte has worked with Agriculture to address problems in the bill
 - 1) Current Workforce – “Touch Back”
 - 2) Visa Cap
 - 3) Visa Term

Some in agriculture continue to ignore political reality

House will not pass amnesty



Changes this year in the Ag Act



Chairman Goodlatte has prepared the following changes addressing concerns with prior bill language

- Length of visa for seasonal work extended to 24 months (was 18)
- Current illegal workers obtain pre-approval for H-2C status while they are in the U.S. (no longer must touch-back first)
- Current illegal workers are provided with “advance parole” documentation readmitting them to the U.S. (guarantees readmission)
- Waiver of the current requirement to show “non-immigrant” intent in order to get a temporary work visa.

The difference (H-2A vs. H-2C)



- 1) Wages
- 2) Participation
- 3) Visa Term
- 4) Housing
- 5) Transportation to/from home
- 6) Lead Agency
- 7) Employment
- 8) Recruitment/ Advertisement
- 9) U.S. Referrals
- 10) Employment Guarantee
- 11) Employer Rights
- 12) Visa Cap
- 13) Current Workforce
- 14) Healthcare
- 15) Mediation and Arbitration
- 16) Legal Services

The
difference
is in the
detail

Wage Rate



H-2A

2017 AWER
\$10.46 - \$14.37

Example:

For South Carolina = \$10.95

Florida:
\$11.29

H-2C

Federal Minimum Wage
+ 15% = \$8.33

Or

State or local min. wage, which
ever is highest.



\$8.33 = 24% Lower (\$2.62)

Florida State Min. Wage: \$8.25

Participation



H-2A

Limited, Seasonal and
Temporary



H-2C

Year Round All Ag. Including
Processors



Visa Term



H-2A

Less than 10 months

H-2C

24 months for seasonal work
36 months for year-round
work

**EXPIRATION
DATE: - - - - -**



H-2A

H-2C

Employer must provide free housing

Housing not required



Transportation



H-2A

H-2C

To/From home –
employer must provide

Not required



Lead Agency



H-2A

H-2C

Department of Labor

United States Department of
Agriculture



Employment



H-2A

H-2C

Contracted

Contracted & At Will



H-2A

Must be hired through 50% contract point

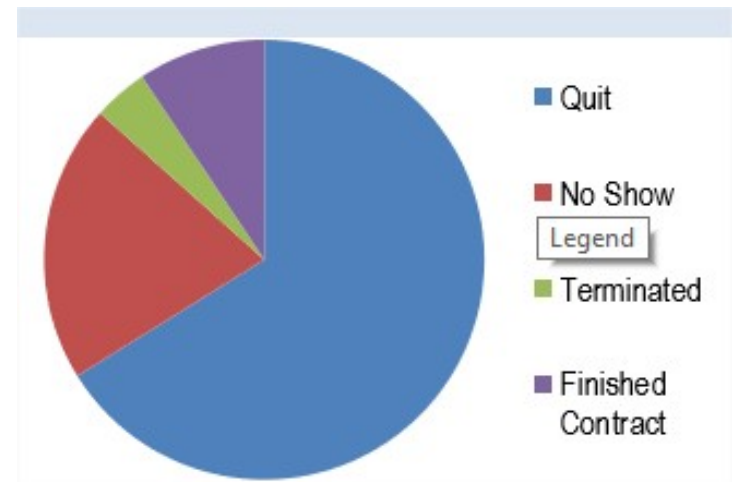
Recruitment through 50% of contract

5% of domestic workers actually fill H2A job offers

H-2C

Must be hired until first day of work

Ends on first day of work

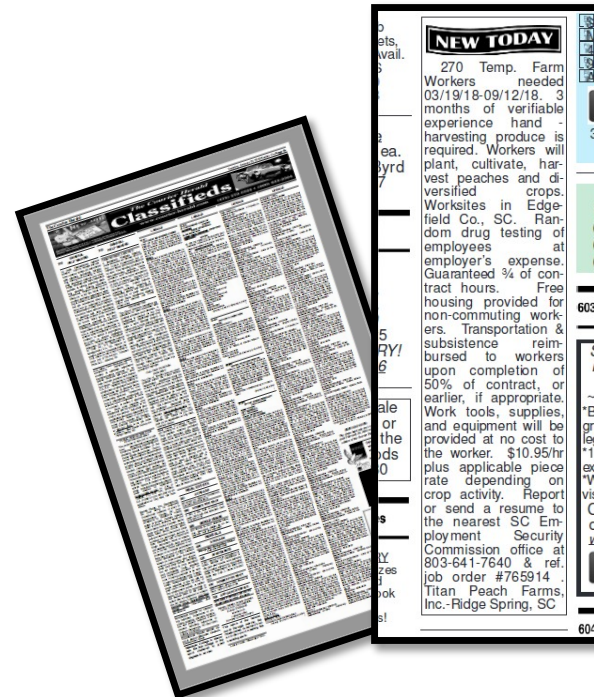


H-2A

- Job Order at SWA
- Local Advertisement – one that must be on a Sunday
- Newspaper advertisements in 3 states provided by DOL
- (Record keeping nightmare)

H-2C

- Job order at SWA



Employment Guarantee



H-2A

$\frac{3}{4}$ of all hours offered in contract

H-2C

50% of all hours offered in contract



H-2A

Uncapped



H-2C

Capped at 450,000 with 40,000 for meat processing, plus automatic escalator of 10% if cap reached in any year, which carries over to the next year

Current H-2A/H-2B workers when continuing employment with the same employer; all current undocumented workers who adjust to H-2C status (does not count toward the cap)

Because the visa is for 2 years - visa-doubles cap to 820,000
Estimated 1.5 – 2 million workers eligible for H2C program

Current Undocumented Workforce



H-2A

- Banned for 3-10 Years

H-2C

- Apply for H-2C program
- Return home to get visa
- Waiver on 3-10 bar
- Waiver with intent to immigrate



H-2A

No requirement

H-2C

Worker is required to obtain catastrophic health insurance



Mediation and Arbitration



H-2A

Not required

H-2C

Requires mediation before action taken, employer can require binding arbitration



H-2A

Workers eligible for legal services

H-2C

Workers are not eligible for federal funded legal services





Let's bring out the tally sheet!

	H-2A	H-2C
1) Wages		✓
2) Participation		✓
3) Visa Term		✓
4) Housing		✓
5) Transportation to/from home		✓
6) Lead Agency		✓
7) Employment		✓
8) Recruitment/ Advertisement		✓
9) U.S. Referrals		✓
10) Employment Guarantee		✓
11) Employer Rights		✓
12) Visa Cap	✓	✓
13) Current Workforce		
14) Healthcare	✓	
15) Mediation and Arbitration		✓
16) Legal Services		✓

If nothing else...

can we get H-2A Regulator Reform?

History of Department of Labor's H-2A Regulations

- 1987 - Original H-2A Regulations
 - Remained largely unchanged for 20 years
- 2008 – Regulations updated in Bush Administration
 - Streamlined bureaucracy
 - Increased penalties
 - In effect for two seasons
- 2010 – Regulations changed in Obama Administration
 - Basically returned to 1987-era regulations
 - Revived bureaucratic approach to program
- 2018 – Trump is all about Government Regulation Reform



Reg Reform is Not Permanent!



H-2A Regulation Reforms being sought by USA Farmers and Others

1. Application/DOL Certification Process
2. Wage Rate/Methodology
3. 50% Rule of Recruitment
4. Duration of Employment
5. Housing
6. Transportation (cost)
7. Staggered Entry of Workers
8. Employer/Joint Employer
9. Penalties

	H-2A	S. 744 (2013 Senate bill)	H-2C (2018 House bill)
Lead Agency	DOL	DOL	USDA
Participation	seasonal or temporary agriculture	agriculture as defined in MSPA without regard to temporary or seasonal	seasonal or year-round agriculture; ag processing; broad definition of ag (seafood, nurseries, forestry)
Visa Cap	None	112,333; after 5 years cap set by USDA based on various factors; USDA to estab emergency procedures for raising cap if labor shortage; workers who adjust are exempt	450,000 (up to 40,000 for meat processing); auto 10% escalator if cap reached, which becomes new baseline; current workers who adjust are cap exempt + all former H2A or H2B with same employer
Visa Term	10 months	3 years; after 2 terms must be absent 90 days before readmission	24 months for seasonal; 36 months for non-seasonal (initial visa) with departure of 1/12 of period in US or 45 days, whichever is less
Application process	apply to DOL 60 to 75 days in advance; petition to DHS	attestation petition to DHS not more than 45 days in advance	attestation petition to DHS not more than 28 days in advance
recruitment/advertisement	job order to SWA 60 to 75 days in advance through 50% period + ads + 3 add'l states	post job opportunity with SWA for at least 45 days beginning 60 days prior to date of need	post job opportunity with SWA for at least 30 days prior to date of need; job posted nationwide online
U.S. Referrals	until 50% point of contract	until 45-day job posting ends	until first day of contract
Wages	state/local min wage, fed min wage, or AEW, whichever is higher 2018 AEW=\$10.46 to \$14.37	set by job category with automatic inflation of 1.5 to 2.5% each year. Largest ag job category was \$9.64 in 2016. With inflation increase: 2018 = \$10.10	higher of: state/local min wage; fed min wage + 15% (\$8.33); or actual wage employer pays others doing same job
Housing	required	required; housing allowance avail. for at-will workers; available for contract workers if Governor certifies housing available	not required
Transp to/from home country	required	inbound paid by first employer; outbound paid by last employer if worker completes 27 months	not required
Employment	contract	contract or at-will	contract or at-will
Employment Guarantee	75% of work days in contract	75% of work days in contract	50% of work hours in contract
Current Illegal Workforce	Not eligible	legal status through "blue card" and legal permanent residence	legal work status through H-2C
Healthcare	workers comp; nothing add'l required	workers comp; nothing additional required	workers comp; H-2C worker req'd to maintain catastrophic coverage
MSPA	does not apply to H-2A	applies to workers	does not apply to H-2C
Lawsuit Reform	none - H-2A workers eligible for federally-funded legal services	none - creates private right of action to sue; workers elig. for federally-funded legal services; Fed. Mediation Service available to ag on voluntary basis; creates DOL complaint process	required mediation before filing lawsuit; employers can require arbitration; H-2C workers not eligible for federally-funded legal services; farm visitors req'd to sign in at farm office
Deadline to issue regs	first day of 7th month after law passed (Nov 6, 1986); DOL issued regs June 1, 1987	for visa program, 6 months after law passed; for blue card program, one year after law passed	first day of 7th month after law passed



Thank You!