



## H-2A Program Rewrite of Grave Concern To Nursery and Greenhouse Growers

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Washington, D.C. — As expected, the Department of Labor is substantially rewriting the H-2A temporary and seasonal agricultural worker program. A final rule is expected to be published in the *Federal Register* on February 12, and will take effect on March 15.

Significant efforts were made late in the Bush administration to improve the H-2A program. Changes took effect literally one day before the Bush administration ended. While the Bush rules were a mixed bag for employers, a number of the changes sought to make the program more accessible and efficient. In many cases, more streamlined procedures were paired up with much stiffer penalties for non-compliance – in essence, more carrots to use the program, but sticks to wield against violators.

The changes being made now reverse most of the Bush administration's process streamlining but retain the stiffer penalties that were a tradeoff. They add new recruiting obligations and other burdens. Furthermore, the rapid implementation and apparent lack of phase-in or transition provisions are likely to result in chaotic confusion just as the spring season starts for many growers.

"Growers are feeling whip-sawed by constantly changing rules," said Craig Regelbrugge, vice president of government relations for ANLA. He explained that part of the problem is that the H-2A program is a "regulatory beast" authorized by two lines of text in the Immigration and Nationality Act, but hundreds of pages of regulations and program guidance. "The lack of a clear statutory framework leaves the program – and users – vulnerable to shifting political priorities and ideologies."

Regelbrugge emphasizes that the best way forward is legislative reform. "Seventy five pages of the 100-page AgJOBS bill is statutory H-2A reform that would set a clear and fair framework for the H-2A program going forward," he added.

The H-2A program has long been seen by employers as costly, bureaucratic, and inflexible. As a result, farm workers on H-2A visas fill only about two to three percent of U.S. seasonal farm jobs mostly in the fruit, vegetable, nursery and Christmas tree sectors. In recent years H-2A has become more widely used by nursery and greenhouse growers. Some users have turned to the program as the only way to ensure a legal labor force, often in the aftermath of an immigration audit or other enforcement action.