

Congress of the United States
Washington, DC 20515

February 14, 2012

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis:

We are writing regarding the U.S. Department of Labor's (USDOL) H-2A program as it relates to our domestic agricultural workforce. For essential public food security and as a matter of national security, access to a safe and reliable food supply is critical for the United States. However, without a quality and adequately trained workforce, such access to American-made food cannot be guaranteed. Therefore, it is vital that we encourage and facilitate farmers' right to an effective, qualified workforce, while simultaneously preventing unnecessary barriers.

Pennsylvania's Department of Agriculture (PDA) has informed us of certain difficulties some of our farmers have encountered with the H-2A program. Specifically, some farmers throughout the Commonwealth have raised concerns that many recent applications for the program have been unfairly denied. The effect of this directly contributes to a reduction in potential employees on the farm, and comes at a time when farm employees are often difficult to hire and retain. These farmers continue to indicate that such rejection occurs when certain requirements are included on their submitted applications, even though applications with similar criteria have been regularly approved in recent years.

One common requirement that leads to a rejection of an H-2A application is when the employer requests information on the prospective employee's work history. Secondly, some are receiving rejection notices when they request drug testing and/or background tests. This is basic information that most every other employer would routinely request of an applicant who is a current U.S. citizen. Furthermore, background checks and drug testing is a reasonable method of providing safety in the workplace, while simultaneously allowing for the hiring of the best possible employees. Access to this kind of information is commonsense and should NOT be grounds for dismissal of H-2A program applications.

According to the Pennsylvania Department of Agriculture, the USDOL is rejecting these applications as a result of a survey of agricultural producers, per the Pennsylvania Department of Labor & Industry. As Secretary Greig's letter articulates, there were only eighteen (18)

respondents to this survey of the possible 2,600 Pennsylvania producers. But despite this small number of respondents, DOL is interpreting these producers as an adequate sampling of industry practices.

Therefore, we have several questions for DOL:

- Why are some farmers experiencing this increased number of H-2A application rejections?
- What effect has the Pennsylvania Department of Labor & Industry's survey had on the H-2A application approval process at the DOL?
- And finally, has there been any change in the review process and/or criteria for approval of the H-2A program? If so, what specifically has changed?

Once again, agriculture is critically important to the nation; particularly in Pennsylvania, where the industry represents the largest single contributor to our home state's economy. Employers having access to the most qualified and best trained workforce is essential for maintaining and creating jobs, as well as ensuring our nation's food supply and food security. As such, it is once again critical that farmers not be subject to unnecessary rejections of these needed H-2A applications which strive to accomplish this important goal.

Although already sent to you directly by Secretary Greig, we have included a copy of his letter for your reference. We look forward to your attention to this serious matter and a timely response.

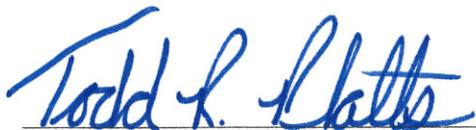
Sincerely,



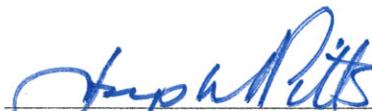
Glenn 'GT' Thompson
Member of Congress



Tim Holden
Member of Congress



Todd Platts
Member of Congress



Joseph R. Pitts
Member of Congress



Mike Kelly
Member of Congress



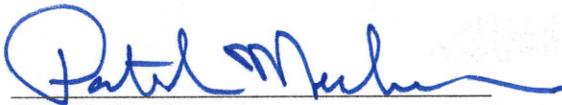
Tom Marino
Member of Congress



Jim Gerlach
Member of Congress



Lou Barletta
Member of Congress



Patrick Meehan
Member of Congress

CC: The Honorable Tom Vilsack, Secretary U.S. Department of Agriculture



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE

February 2, 2012

The Honorable Stephen Purcell, Chief Judge
Office of the Administrative Law Judges
U.S. Department of Labor
800 K Street NW, Suite 400N
Washington, DC 20001-8002

Dear Chief Judge:

I have been asked by a number of Pennsylvania agricultural employers who participate in the federal H-2A program to comment on whether it is a 'normal and accepted practice' among Pennsylvania commercial/wholesale nurseries and other agricultural businesses to require successful applicants for these jobs to have prior work experience, as well as on the industry practices relative to drug testing.

Agriculture, which encompasses commercial/wholesale nurseries, is a major industry in the Commonwealth of Pennsylvania. Pennsylvania's 63,000 farm families farm more than 7.7 million acres of farmland in the state. With \$6.1 billion in cash receipts annually from production agriculture, Pennsylvania farmers and agribusinesses are the leading economic driver in our state.

In addition to production agriculture, agriculture also raises revenue and creates jobs through support services such as food processing, marketing, transportation and farm equipment. In total, production agriculture and agribusiness contribute nearly \$61 billion to Pennsylvania's economy.

I write in my capacity as Secretary of Agriculture to offer professional observations about Pennsylvania growers' labor practices, especially as they pertain to the health and safety of farming operations and their employees.

I understand that the Pennsylvania Department of Labor and Industry performed what it terms a "prevailing practice survey" to assess industry requirements related to previous experience and drug testing. I believe that this survey included only eighteen (18) respondents out of the more than 2,600 Pennsylvania commercial/wholesale nurseries registered by the Pennsylvania Department of Agriculture. This is too small a response to be a reliable reflection of industry practices.

I believe that it is a 'normal and accepted practice' for Pennsylvania growers and landscape and nursery employers to require successful job applicants to have work experience, and to require drug testing and background checks. Among the key reasons employers seek to hire experienced workers are such considerations as:

- *Technical* -- Tasks such as proper plant identification, grading, trimming, propagating, proper digging techniques, grafting and loading trucks require skills which are gained only through work experience;
- *Safety* -- Mechanized equipment and irrigation systems used in nursery/greenhouse and agricultural production is expensive and complicated to use. Prior experience operating this equipment is critical to ensuring worker safety and maximum production yields;
- *Health* -- Working with agricultural chemicals can be dangerous unless a person has previous experience and training in chemical/pesticide handling.

Inexperienced workers can be a threat to themselves as well as co-workers in all three areas. While it would be inaccurate to claim that all workers on all Pennsylvania farms and nurseries have previous experience, growers obviously prefer to hire workers with past experience. If the job involves any equipment operation, such as tractors, forklifts or skid steers, for example (or any job involving the ability to propagate and identify plant varieties), it is certain that a grower would be obliged to hire workers with experience out of safety and production concerns.

As for the issue of drug testing, in the very competitive environment of the fruit/vegetable and nursery/greenhouse industries, a large proportion of employers frequently require job applicants to agree to drug testing out of concern for the general well-being of the workforce. Drug users represent a threat to themselves and their co-workers due to impaired judgment.

In conclusion, as Pennsylvania's agricultural industry has become increasingly reliant on mechanization and chemicals, it has become common industry practice among Pennsylvania growers to require successful job applicants to possess some amount of prior work experience, and to agree to be tested for controlled substances. These are tools utilized by Pennsylvania agricultural employers as good management practices. I urge you to approve applications for the H2A program which include these qualifications.

Sincerely,



George D. Greig
Secretary of Agriculture