



Statement of the New York Farm Bureau

**To the House Committee on Oversight and Government
Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight
and Government Spending**

**“Regulatory Impediments to Job Creation in the Northeast”
Complications with the H-2A Program**

**Presented by Cathy Martin
New York Farm Bureau**

Wednesday, April 20, 2011

Thank you for the opportunity to testify before you today; I appreciate your time and consideration on these important matters. My name is Cathy Martin and I am the Office Administrator for John B. Martin and Sons Farms, Inc. We are a 3000 acre fruit and vegetable farm and have a small on-farm processing operation for cabbage and winter squash. Both our cabbage and squash operations are labor intensive and we require approximately 100 employees on a seasonal basis and 40 full time employees. My job has oversight of all aspects of office procedures for the efficient day to day running of our farm. In the past few years the most difficult and time consuming aspect of my job has been working to acquire legal employees through the Federal H2A program.

I am here before you today to discuss the regulatory impediments to job creation in the northeast. New York has become one of the most heavily taxed and regulated states in the US and many farms are struggling to stay in business. With all the complications that are currently endured - short growing seasons, extreme and unpredictable weather, and labor shortages - it continues to become more difficult to keep a farm in business with the constant addition of new regulations.

Among these regulatory impediments is that of the H-2A program; the Agricultural Guestworker Visa Program. This program is intended to supplement farms with foreign labor when there is a domestic labor shortage is endured. However, the complications with the program have largely increased - growing to a level that is causing the program to become unusable.

The H-2A program was created in 1987 and was not updated until 2008 when the Bush administration made changes that helped growers by streamlining the application process and making the program easier for farmers to use. However, with a new administration coming forward in 2009, these changes were quickly reversed and an even harsher environment for using the program was created, with excessive time delays and paperwork burdens. While immigration issues have become a growing concern across the nation, agriculture still needs access to a reliable, stable, legal workforce through a federal guest worker program.

It is vital to my farm that when my application is submitted for use of the H-2A program that there is consistency, accuracy and timeliness in execution of the program and process. At this point, there are different interpretations of the program rules and this has made compliance increasingly difficult.

While I understand there must be proper paperwork and documentation in this process, when I specify a date of need for my workers on the application it is often overlooked and not met by the US Department of Labor. These extreme delays have caused a loss in my crops as workers have not been available to plant, pick, or do essential work on the farm that is crucial to staying in business.

Processing problems have repeatedly occurred at the National Processing Center in Chicago. Within the past year there has been an abnormally large number of deficiencies and denials of H-2A certifications. Many of the deficiencies and denials have involved requests for experienced workers within specific employee classifications of a job order, reference requirements, temporary and seasonal work and a differing interpretation based on prevailing practices (surveys that are conducted by the State Department of Labor with inconsistent results). These difficulties cause delays in the process and force farmers, in desperate need of workers, to engage in costly, stressful, and time consuming administrative appeals. This is a huge burden on the farmer, especially when most of these appeals have been ruled in favor of the farmer.

Employee Classifications Under a Job Order:

When an employer is filing their H-2A job order there are sections that include a description of the employee's job duties. Also included is a section stating the level of experience required to be able to sufficiently complete the job description. These types of employee requirements can vary from farm to farm depending on numerous factors:

1. The farm is able to provide more training, therefore they are able to lower the amount of experience required by the worker.
2. Different modes of production vary from farm to farm and not all requirements are the same. For example, when apples are picked for fresh market it requires more experience and delicacy than when apples are picked for processing.
3. As similar to other job qualifications outside of farming, there are times when a job description may have different requirements from year to year - job expectations can change and farms should be allowed to determine what is necessary on their farm.

However, when applications are sent through, the regulatory requirements of this program force farms into a "one size fits all" scheme. This makes it

extremely difficult for my farm to fulfill requirements for the application process, and ensure that we will have access to labor that will accurately and safely complete the job order.

Reference/Recruiting Requirements:

Farmers must advertise for workers in three separate states to demonstrate that they cannot find domestic labor. Advertisements in newspapers must be for a specific number of days and on specific days of the week. This advertising adds expense and time to the application process. Farmers seldom recruit domestic workers through this process – and almost never from further away than the local area – even given recent high rates of unemployment.

While I understand that need of foreign workers must be demonstrated to access the program, these advertising requirements must be adjusted to be a procedure that actual employers would reasonably undertake with an ability to recruit potential domestic workers. At its current level, the recruitment requirements are unrealistic.

Temporary and Seasonal Work:

The regulatory process of the H-2A program also creates problems with its restrictive definitions and limited use of the program for certain industries within agriculture. Dairy and other livestock farmers, who have a year-round, rather than seasonal need for labor, are not able to access the program because they are not included in the agricultural employment definition. However, they face the same challenges in recruiting reliable workers as fruit and vegetable farms.

Additionally, farmers cannot use H-2A workers for incidental employment. On my farm there are a large variety of tasks that must be done to keep the operation running. It is unrealistic to expect one worker to only complete one task throughout his or her entire employment period. Coupled with illnesses or days off for other employees, at times there are situations that require workers to pick up extra tasks to get the needed jobs done. Allowing H-2A workers to do these incidental tasks while employed by a farm would be extremely helpful and common sense. Expanding these definitions will allow for a stronger and more

efficient use of workers during their employment, while at the same time creating a stronger workforce on the farm.

Prevailing Practice Survey:

Prevailing Practice Surveys are distributed yearly by each state in the U.S. – as required by the H-2A program - to farmers based on their commodity, asking detailed questions about farm practices and labor experience. These surveys have caused complications at both the State and U.S. Departments of Labor as the survey develops a standard for employment and allows applications to be denied if farms deviate from the norm.

It is not appropriate to determine that all agricultural operations will have standard needs across an entire state. Every farm is unique and will have different requirements and job positions in its application depending on its needs.

All of these factors, including others, have caused great complication within the H-2A system through the past years, and specifically, over the past three years. The regulatory burdens that complicate this program have hindered job creation, not helped to create a usable workforce within agriculture. While farms utilize all attempts possible to bring in domestic workers, there comes a point when the H-2A program becomes crucial to gaining foreign workers.

If we don't have a reliable workforce in agriculture to plant, pick, cultivate, and tend to animals, then our farms will not survive and job creation throughout New York, and the US, will fail. For every one job on a farm, there is a ripple effect that creates three more jobs off the farm (manufacturing, mechanic, tourism, etc).

With coordination, these are problems that can be fixed to create a usable guestworker program for agriculture. As these problems are fixed, farms will be able to spend more time directly working with their employees and tending to the crops and animals. This opens up opportunities for a strong business environment and a successful workforce on my farm, and off the farm as well.

I look forward to working with the committee on these important issues. I truly appreciate the opportunity to express these concerns with you and hope to continue this dialog in the future. During a time of such economic concern, it is important to discuss the potential for a stronger, more reliable agricultural sector, which in turn, will create jobs in all parts of the economy and help our recovery.

Thank you for the time to discuss the regulatory impediments on job creation and potential solutions that could be addressed to lessen the burdens. I would be happy to take any questions you may have at this point.

Cathy S. Martin
John B. Martin and Sons Farms, Inc.
Brockport, NY 14420

I have been actively involved in the farming community since 1983 and have been employed on our farm, as Office Administrator, since 1985.

During that time I have travelled to Albany, New York and Washington, DC to discuss farm regulations with NY Legislators and Federal Congressmen/Congresswomen and Senators. At the Federal level I have personally spoken with Senator Clinton, Congressman Reynolds, Congressman Lee, Congressman LaFalce and Congresswoman Slaughter. Recently Congresswoman Slaughter sponsored a conference call with the US Department of Labor regarding the H2A Visa Program and I was invited to be a part of that call.

In the early 1980's I was contacted by Senator Moynihan's office and asked to attend a meeting in Senator D'Amato's office with people representing the United States Department of Labor, the United States Immigration and Naturalization Service and the United States Justice Department as well as the New York State Department of Labor. We attempted to come to a consensus on how to solve the problem of obtaining a legal workforce in the farming community.

I have given testimony before State Senator Aubertine (now NYS Commissioner of Agriculture and Markets) in Albany, NY regarding New York State Labor Regulations and the burdens agriculture faces in obtaining a skilled, legal workforce.

Committee on Oversight and Government Reform
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Cathy S. Martin

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

0

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

New York farm Bureau - member and Labor
Committee Representative
Monroe County farm Bureau - President
John B. Martin + Sons farms, Inc - Office Administrator

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

0

I certify that the above information is true and correct.

Signature:

Cathy Martin

Date:

4-18-2011