

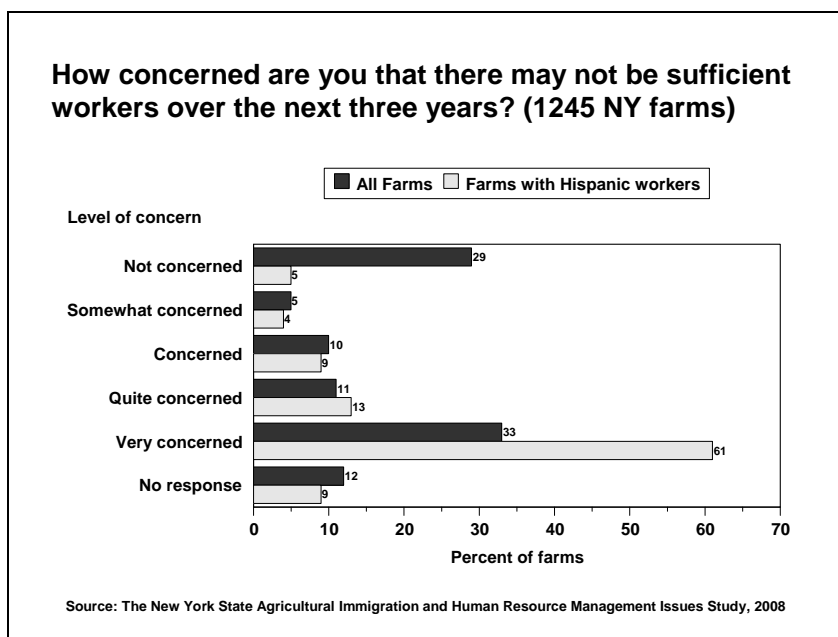
# Chapter 8: Labor Outlook for New York Agriculture 2009

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## Overview

New York State farm owners and agricultural representatives generally report that labor supplies were adequate in 2008 and in some cases farm managers had more applicants looking for work than they had jobs to fill. However, there continues to be considerable uncertainty over agricultural labor supplies largely due to persistent immigration enforcement activities. The presence of unauthorized workers on New York State farms is exacerbated by the fact that immigrants can easily purchase Social Security cards and present these fraudulent documents to their employers at the time of hire. Many farm managers fear that an immigration raid would substantially disrupt business during critical work periods. These concerns are compounded by the perceived scarcity of skilled agricultural labor. In late 2007 the New York State Department of Agriculture and Markets and New York State Agricultural Statistics Service collaborated with Cornell University to survey 1245 fruit, vegetable and dairy farmers in New York State on agricultural labor issues. Farm owners were asked how concerned they were about labor supplies over the next three years. Figure 8-1 shows the high level of concern among those surveyed and a particularly high level of concern among those farm owners who employ Hispanic workers.

FIGURE 8-1. FARM OWNER VIEWS ON LABOR AVAILABILITY, NEXT THREE YEARS



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When considering the general outlook for agricultural labor in New York State it is also important to recognize that the economy is slowing and unemployment is increasing making more workers potentially available in various parts of the state. This appears to be particularly true in western New York. However, it is unclear if the newly unemployed will be willing and able to do farm work. Agricultural employers also express concern about the investment required to train workers who are unfamiliar with the physical demands of agricultural labor.

### **Agricultural Labor Supply Uncertainty Due to Immigration Enforcement**

While agricultural labor supplies appear adequate or better, there remains a great deal of uncertainty and anxiety over increasing immigration enforcement activities. The PEW Hispanic center in 2006 reported that 4% of the unauthorized workers in the United States worked in agriculture (Passel 2006). Other sectors such as construction, service industries, hospitality and others employ an even greater percentage of the unauthorized workforce nationwide.

The detention and deportation of agricultural workers in New York State appears to have increased in 2008 as indicated by farm manager reports, farm worker reports and media coverage. Perhaps the biggest reason for the perceived high level of enforcement activity is that New York is a border state and therefore has a higher number of immigration enforcement officials than non-border states. In addition, the Buffalo Federal Detention Center in Batavia, New York houses a 500+ bed facility for housing detained immigrants. Ongoing immigration raids, detention activities and deportation have been reported in western as well as northern New York over the past year.

### **The Impact of the H-2A Program**

The H-2A program is a national program providing seasonal workers for agricultural jobs. The program used primarily by fruit and vegetable growers was initiated in 1952. Table 8.1 shows the number of H-2A workers in New York over the past 6 years.

TABLE 8-1. NUMBER OF H-2A WORKERS IN NEW YORK 2002-2007

<b>H-2A Workers in New York at Peak Season</b>	
<b>Year</b>	<b>Number of Workers</b>
2002	1,413
2003	1,704
2004	1,825
2005	1,742
2006	2,105
2007	2,491

*Source: Reports of Domestic Migrant-Seasonal Foreign Hired Agricultural Workers 1999-2006, New York State Department of Labor, 2007 Annual Report New York State Dept of Labor*

It is important to note the increases in the number of H-2A workers hired in New York over the last several years. As immigration enforcement has increased some farm employers have turned to H-2A to ensure that their workers are legal and will be available at critical production and harvest periods.

Still, H-2A workers represent only a small percentage of the seasonal workers in New York agriculture. In the past many farm managers were reluctant to use the program for three

reasons. First, the wage rate is generally set at a level considerably higher than the minimum wage. In 2008 the wage rate was set at \$9.70 per hour. Second, farm employers often feel there is too much paperwork and bureaucracy in the program adding to administrative overhead and sometimes delaying workers' arrival. Third, current regulations require the employer to provide housing for H-2A employees. This can be difficult in areas of the state where housing is scarce, and employer provided housing adds an additional expense to using the program. Despite these challenges, participation by New York State farmers is likely to continue to increase as long as immigration enforcement activities persist.

In recent years there have been numerous legislative proposals to change the H-2A program and make it easier to use. The most notable example is Title II of the AgJOBS Bill. It is also important to note that the most recent version of the AgJOBS bill includes dairy farms in the H-2A program for the first time. If the bill were passed into law this would be a significant benefit to dairy farmers providing some currently unauthorized workers with temporary visas permitting them to continue their work in the dairy industry and creating an optional path to citizenship. The change would also allow dairy employers to hire immigrants under the H-2A program.

Since the H-2A program has a longstanding history, future immigration reform proposals for agriculture are very likely to include a revised and updated version of H-2A rather than eliminate the program all-together. This could come in the form of a bill to simply revise the current program as some legislative proposals have done in the past. A revised program could also come in a more comprehensive bill for agriculture (like AgJOBS) or as part of comprehensive reform.

### **Immigration Policy Issues Facing Agricultural Employers**

Over the past four years Congress has tried and failed to enact comprehensive immigration reform. While separate immigration bills have passed in the House and the Senate, legislators are divided on a workable solution for dealing with the estimated 12 million unauthorized immigrants currently living in the United States. On December 16, 2005 the House of Representatives passed the Border Protection Anti-terrorism and Illegal Immigration Control Act. (HR-4437). The bill proposed multiple enforcement approaches to dealing with unauthorized workers including making illegal presence in the United States a felony. On May 25, 2006 the Senate passed the Comprehensive Immigration Reform Act of 2006 ( S-2611). The Senate bill would have provided a path to citizenship and a guest worker program for immigrant workers. Neither of these approaches gained political support and a comprehensive approach to solving the immigration problem is currently stalled.

Several versions of the AgJOBS bill have been reintroduced in Congress over the last 10 years. The bill covers only agricultural employers and would provide important options for agriculture. Title I provides a path to citizenship for immigrants who can demonstrate they worked in agriculture over a specified number of days and years. Title II provides for revisions in the H-2A program. Title II of the bill would streamline the H-2A program and provide a new method for calculating the wage rate, effectively lowering it.

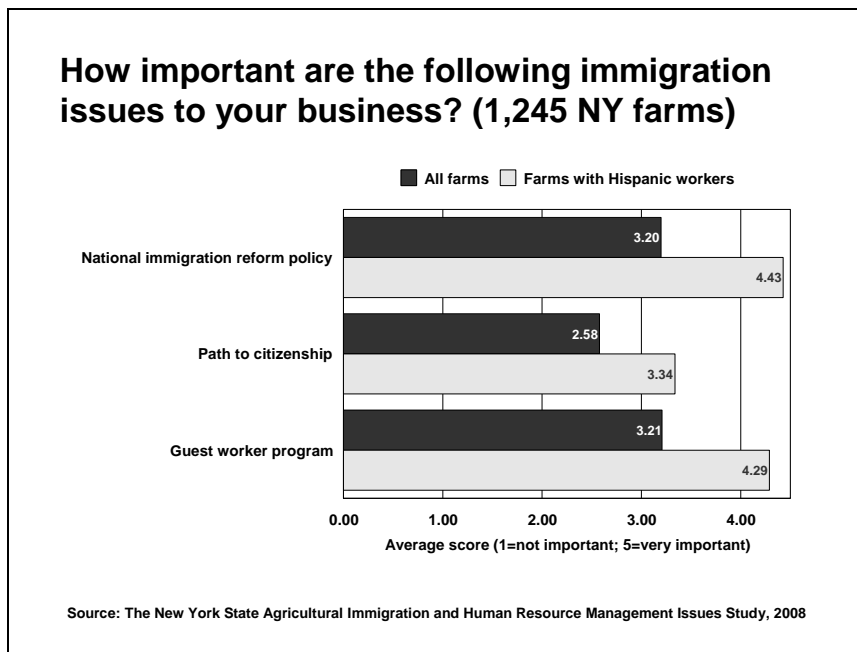
Beginning in August 2007 the Department of Homeland Security attempted to implement new rules for dealing with employee Social Security numbers that do not show up in the social security database. Under the proposed rules an employee must provide verifiably legitimate work authorization documents to the employer within 90 days of receiving the letter. If they fail to do

so the employer must terminate them. Penalties for non-compliance can range up to \$11,000 per infraction. These new rules have been delayed from going into effect as a result of court action.

### **Farm Manager Views Regarding Immigration Reform**

In the previously cited survey farm operators were also asked the level of importance they placed on three aspects of immigration reform. Figure 8-2 indicates that farm manager's rated national immigration reform and access to a guest worker program as very high in importance. Less important but still rated highly was a path to citizenship for immigrant workers that are already working on New York State farms.

FIGURE 8-2. RESPONDENT'S VIEWS ON NATIONAL IMMIGRATION



Farm managers generally feel the agricultural workforce would be much more stable if immigration reform were implemented. Reflecting the concerns of farm managers, farm organizations across the state have taken strong immigration policy positions. Many New York State farm organizations provide financial support for the Agriculture Coalition for Immigration Reform (ACIR). ACIR is a Washington, DC based coalition of farm organizations that support immigration reform in agriculture. They have worked very hard on developing and supporting AgJOBS legislation as well as other related legislative initiatives. New York Farm Bureau has also actively supported immigration reform proposals for agriculture.

### **Immigration Issues Facing Farmworkers**

Interviews conducted by the Cornell Farmworker Program with 50 farmworkers from June 2007-August 2008 illustrate the perceived negative influence of the current immigration enforcement environment on farmworkers. The farmworkers surveyed identified immigration reform and information on immigrants' legal rights as their highest priority. Immigrant farmworkers described the substantial challenges related to their unauthorized status and the detrimental influence of those challenges on their physical and mental health and well-being. The

workers reported that they did not feel safe leaving the farm or their home for any reason for fear of being detained or deported. In light of this fear they expressed their inability to independently meet their basic needs or fully function in their new community. The interviews highlight the generalized sense of fear and loss of control among the farmworker population. Most farmworkers interviewed mentioned that since they do not have legally recognized drivers licenses, they rely on others for their transportation needs. Year round unauthorized workers stressed their strong reliance on employers or others to transport them for medical care, grocery and clothes shopping, banking, and to attend social events or religious services. Farmworkers expressed their fear of leaving the farm to seek opportunities for social interactions, English classes, or other activities that could improve their quality of life. Several farmworkers said they primarily limit their off-farm activities to locally organized soccer games that require no transportation and occasional attendance at religious services.

Some migrant farmworkers are recruited by crew leaders and brought to New York. Interviews with workers employed under the crew leader system often reveal a sense of loss of control due to their reliance on crew leaders. Migrants interviewed stated that the crew leader controls almost every aspect of their lives including work assignments, hours, dismissals, housing assignments, paychecks, and off-farm transportation. Unauthorized migrants often mentioned that the crew leader used the threat of calling Immigration and Custom Enforcement to silence labor complaints and disputes about housing or transportation fees deducted from their paycheck. In some camps farmworkers also cited excessive use of physical force by crew leaders and an apparent lack of oversight by authorities.

A primary concern among farmworkers is that an immigration detention has the potential to separate family members. This is particularly important to those immigrant farmworkers who have children born in the United States. In their accounts of various arrests, they also noted that the detainees were not allowed to return to their homes to say goodbye to their family or friends, and they had no opportunity to collect the few belongings they own. They also reported the obstacles they encounter when trying to locate family and friends once they are detained. The Cornell Farmworker Program interviews also pointed to the generalized impression that immigrant farmworkers are pursued because they are from Mexico or Guatemala and are easily identified due to their race.

When asked what would make it possible to remain in agriculture in New York State, there was universal agreement among the respondents that in order to stay, immigration policy would have to change. Even those farmworkers who were in New York State on a guest worker visa made reference to the need to develop a more flexible program for entering and leaving the country, citing their concern over the assignment to a single employer with no option to pursue other opportunities in agriculture.

Farmworker service providers primarily from health and education professions were also interviewed. Service providers even more strongly emphasized the increased role of immigration enforcement on creating an environment of fear among the current farmworker population. They shared accounts of farmworkers afraid to leave their homes because of immigration enforcement and immigration officials waiting outside of churches, clinics, and stores in order to apprehend unauthorized immigrants. They also noted that farmworkers who desire or need to leave the state have few transportation options since immigration officials often detain immigrants at airports and bus and train stations. Several noted that farmworker participation in their services declined drastically as immigration enforcement increased over the last several years, and that on-farm services are often the only services that farmworkers are willing to use.

### **Farm Management Implication**

During the long legislative stalemate on immigration reform and the resulting period of uncertainty created by enforcement activity, New York State's fruit, vegetable and dairy producers have considered and implemented significant adjustments in their management practices and strategic plans for the future. These changes represent classic responses to risk and, depending on how the legislative and enforcement situation continues to unfold, could alter the agricultural economic landscape in New York and nationally in important ways.

With a new Congress and a new Administration in Washington, farm advocates will redouble their efforts to focus on changing the laws that govern labor availability in agriculture. In the meantime, farmers will continue to make major, as well as more routine decisions to keep their businesses viable under existing law.

It is important that farm managers consider a variety of means to alleviate the stress on their businesses caused by the uncertain availability of workers. For example, existing vehicles for documented workers to fill positions in other United States industries, such as the TN visa authorized in the North American Free Trade Agreement (NAFTA), might be adapted to match workers with appropriate skills to agricultural jobs. The serious downturn in the national economy could also present unexpected opportunities. Developing closer ties with regional workforce development agencies so that those agencies can better explain farm opportunities to local job seekers and modifying farm operations to accommodate job candidates from other sectors could also yield positive results.

Three additional options available to farm managers dealing with chronic seasonal and year-round labor supply uncertainty are:

- Substitution of capital for labor (robotics and mechanization)
- Shifting away from labor intensive crops to crops and enterprises less dependent on labor
- Shifting operations to locations where the labor supply is more certain

These alternatives are examined in more depth below.

#### *1. Capital and Labor*

Uncertainty about the availability of farmworkers has increased risk and effectively driven up the cost of labor for many of New York State's diverse agricultural enterprises. This has led farmers to consider and, in a growing number of cases, adopt labor saving technologies. Investment in automated systems can be expensive and carries its own set of risks with respect to the effective performance of farm production tasks and processes.

Dairy farmers concerned about the availability of immigrant and local workers to milk cows and care for livestock have shown growing interest in automated, or robotic milking systems that could reduce dependence on labor. For some, this is a direct response to their belief that the likelihood of more immigration enforcement raids on farms will lead to the loss of a labor force needed for critical work in round-the-clock operations. In a broader sense, farmers assess further automation of milking systems as part of a perpetual effort to find the optimum balance of equipment, land and buildings, credit, labor, and new technology in order to increase farm profitability. Decisions to adopt and invest in robotic systems will depend on a host of factors,

including cost, adaptability to existing farm size and milking configuration, herd health considerations, reliability of the new technology, the expected life of new systems and the remaining useful life of milking parlors and equipment now in use, and farmers' ability to manage the new systems effectively. Robotic milking systems are popular in Europe where labor costs are high. Cornell engineers and dairy business specialists report that there are only six robotic milking systems on New York farms, with many other dairy farm operators closely watching and evaluating the performance and development of this technology.

Fruit and vegetable growers in New York State and nationwide face similar choices related to the mechanization of growing and harvesting their crops. Uncertain labor availability implies higher labor cost, which provides incentives to research, evaluate, and possibly invest in technology to reduce dependence on labor. Pressure to change the mix of inputs employed to produce fruit and vegetable crops and products appears to have increased during the long, unresolved debate over immigration reform.

Planting, pruning, thinning, harvesting, sorting and packing are tasks that lend themselves, with various degrees of difficulty, to change through labor-saving technology. Farm operators often invest in machinery and equipment to increase the productivity of their existing labor force, not to eliminate the need for hand labor. Sometimes innovative approaches to the tasks listed above result in reductions in workers needed for those tasks; but more often the goal is to make these tasks less onerous for workers, thus improving efficiency and working conditions. Increased adoption of mechanized harvest technologies for fruit and vegetable crops is sharply limited by consumer expectations of fresh market quality. Currently available mechanized harvesting systems can cause serious bruising and other product and value loss problems for crops (melons, peppers, squash, table grapes, apples, and salad tomatoes) destined for fresh produce markets.

If seasonal labor shortages and overall uncertainty in agricultural labor markets persist, demand will grow for more intensive research and development of mechanized systems and crop varieties that can be mechanically planted, cared for and harvested without diminishing the value of fresh produce in the marketplace.

## *2. Shifting the Mix of Crop Enterprises*

Early last spring, National Public Radio joined a variety of other media outlets to broadcast a story called, "Immigration's Fallout: Fewer Fresh Tomatoes?" The owner of the largest fresh market tomato growing operation in Pennsylvania withdrew from the business, started by his father in 1949, because he couldn't count on enough labor to harvest the crop. Keith Eckel decided not to risk the \$1.5-\$2.0 million annual investment in 2.3 million tomato plants, while ending production of pumpkins and cutting the farm's fresh sweet corn acreage in half. Field corn, easily harvested mechanically, now grows on the land once devoted to fresh market vegetables.

As New York State farm managers seek to adjust to the uncertainties created by immigration enforcement they too are making economically rational decisions to shift away from labor intensive crops. In Orleans County, sweet cherry trees that require hand pruning and harvest have been cut down and replaced by blueberry bushes and tart cherry orchards that can be managed with fewer hired workers. In Ontario County, growers have reduced labor intensive asparagus plantings in favor of more conventional crops. In a December 2006 New York Farm Viability Institute survey, cabbage growers cited "immigration issues relative to obtaining and keeping employees" as the greatest five-year threat to the success of their industry (NYFVI,

2006); and western New York State producers report significant reductions in acres planted to cabbage as a measure to limit risks associated with labor availability.

The anecdotal observations above suggest that, unless the immigration policy and enforcement environment changes, production of high-value, fresh market fruits and vegetables in New York State could decline. Such a trend could reduce gross farm receipts and limit the variety of locally grown specialty crops available to consumers.

### *3. Migration of Production Enterprises across Borders*

“We’ll either import the labor or import the food” is a conclusion many New York State growers and their counterparts nationally have drawn from their experiences with the current farm labor situation. The Western Growers Association reports that a few large farms with base operations in Arizona and California currently grow 84,000 acres of vegetables in Mexico. This small percentage shift in acreage from these important vegetable growing states has been driven by a variety of food safety and environmental regulations, as well as concerns about labor availability. In New York State, the option of moving production across the northern border to Ontario has received little consideration, despite some grower speculation about the comparative benefits of the Canadian immigration system and exchange rate advantages that have since disappeared.

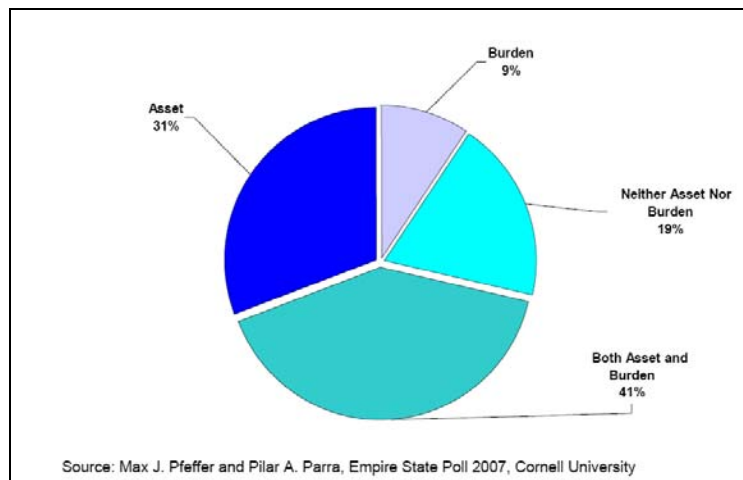
More important than the developments noted above is the fact that the value of fresh produce imports has grown almost threefold since 1994, reaching nearly \$9 billion in 2006, with Mexico shipping fresh produce valued at close to \$4 billion to the United States (Huang and Huang, 2007). Given strong and growing demand for year-round fresh fruit and vegetables, we are already “importing the food”, regardless of immigration and agricultural labor issues at home.

### **Public Perceptions**

Farmers’ impressions of the importance of immigration issues to their businesses were documented in “The New York State Agricultural Immigration and Human Resource Management Issues Study” (Maloney and Bills, 2008). The views of farmers notwithstanding, public perceptions of these issues, as expressed through the legislative process, will significantly influence potential changes to federal immigration policy. In a practical sense, non-farmers’ understanding of immigration and the contributions of immigrant workers to the economic prosperity of local communities will strongly affect the level of public scrutiny and the impact of immigration law enforcement actions on farms, farmworkers and agricultural production.

The Empire State Poll, 2007 (Pfeffer and Parra, 2007) provides a perhaps surprising indication of how fluid New Yorkers’ opinions regarding immigration might be. A key question in the survey asked questions about whether New Yorkers considered immigrants to be an “asset or a burden” to their communities, Figure 8-3.

FIGURE 8-3. PORTION OF NEW YORKERS WHO CONSIDER IMMIGRANTS TO BE AN ASSET OR A BURDEN



In this context, New Yorkers, as well as Americans in general, are likely to define “asset” and “burden” based on their views of other issues that fuel the immigration debate. Those who view immigrant workers as a burden associate crime, strained health care and educational resources, depressed wages and job competition. This outlook is tempered in the overall public view by the perception that immigrants, as community assets, comprise a reliable work force spend at least some of their income in local communities and contribute to the production of safe, locally-grown, affordable food.

The formation of public opinion regarding immigration in New York State is influenced by reporting and editorial opinion from a variety of media, advocates on both sides of the issue, political leaders, business associations, family, friends, church organizations, neighbors and co-workers. New York State is home to the “media capital of the world” and high quality information on agricultural immigration issues is readily available, from coverage by the New York Times to North Country Public Radio, the Rochester Democrat & Chronicle and many other print and broadcast media outlets across the state. Even in the national coverage of the immigration story, which often emanates from New York City, news outlets have focused on the importance of immigrant workers to New York State farms and the challenges workers and farmers alike face in the current environment.

Beyond the media, a multitude of farmworker advocacy groups, chambers of commerce and statewide associations, such as the New York State Business Council, share an interest in the welfare of workers and the prosperity of farm businesses and rural communities. These groups, while not traditional allies of one another, nor of farmers and farm organizations, have platforms from which to influence grassroots opinion on immigration issues. New coalitions among these groups will continue to grow in response to the current environment and as vehicles to effect changes in federal policy under a new Congress and Administration.

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