DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocation Formula

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of Final Allocation Formula.

SUMMARY: On December 22, 1998, the Employment and Training Administration (ETA) published a notice in the **Federal Register** (63 FR 70795 (Dec. 22, 1998)) of a description of and rationale for a new allocation formula for the Job Training Partnership Act (JTPA), section 402 and the Workforce Investment Act (WIA), Section 167, migrant and seasonal farmworker program and presented preliminary State planning estimates derived therefrom for Program Year (PY) 1999 (July 1, 1999 through June 30, 2000). Public comments were requested at that time. The public comment period closed on February 5, 1999. This notice responds to the comments and publishes a new allocation formula.

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I. Introduction, Scope and Purpose of Notice

This notice is published pursuant to Section 162(d) of the JTPA, which states:

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under the Act, the Secretary shall, not less than 30 days prior to allotment or allocation, publish such formula in the **Federal Register** for comment along with the rationale for the formula and the proposed amount to be distributed to each State and area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the **Federal Register**.

Thus, this notice represents the second stage of a two-stage process. The first stage of the process involved the consideration of comments from the public regarding the notice which was published on December 22, 1998. As a result of these considerations, the Department of Labor (DOL) plans to make modifications to the proposed formula. In this second stage, the final allocation formula description is published in this notice. The resulting planning estimates are published herein and include data from updated sources. These data have been processed in accordance with the allocation formula methodology with adjustments as described herein.

The formula is developed for the purpose of distributing funds geographically by State service area, on the basis of each State service area's relative share of persons eligible for the program. Beginning with PY 1999, the revised allocation formula will be implemented which will improve and update the methodology for allocating funds among the States by using more relevant and current data on the distribution of the farmworker population.

The revised formula is the result of work done by an Interagency Task Force on Farmworker Population Data (Interagency Task Force) and the DOL's response to public comments received in response to a January 16, 1997 **Federal Register** notice of a proposed updated allocation formula for the JTPA, Section 402 program and a December 22, 1998 **Federal Register** notice of a proposed updated allocation formula for the JTPA, Section 402 and the WIA, Section 167 Migrant and Seasonal Farmworker (MSFW) program.

In developing an allocation formula for the MSFW Program, the DOL has a responsibility to use the most current and reliable data available. To do so, the DOL sought the advice of experts in agricultural economics. This process led to the development of a formula which combines data from the Census of Agriculture (COA), the Farm Labor Survey (FLS), the National Agricultural Workers Survey (NAWS), and the Census of Population (COP). As a result of our consideration of the public comments received pursuant to the December 22, 1998 notice, the DOL will incorporate Unemployment Insurance (UI) contributions data from the DOL Bureau of Labor Statistics (BLS) ES 202 report into the allocation formula.

Enumerating farmworkers and estimating their proportion among the States is a daunting task. Farmworkers migrate extensively—often traveling nearly the length or breadth of the United States during a single agricultural season—live in non-standard housing (even seasonal farmworkers and migrants who are at their home base), and supplement their agricultural wages with nonagricultural employment and unemployment insurance (when they are determined eligible). Moreover, many farmworkers, including citizens and noncitizens authorized to work in the United States, are wary of government. These factors and many more, severely complicate the task of allocating funds among the States in relationship to potentially eligible farmworkers.

The current JTPA, Section 402 allocation formula is based primarily on the 1980 COP. After passage of the Immigration Reform and Control Act (IRCA), the JTPA, Section 402 allocation formula was supplemented by incorporating data about the number and site of application for Special Agricultural Workers (SAW) whose status was adjusted as a result of IRCA. At this time, it is obvious that the 1980 COP and the IRCA-based SAW data are neither correct nor relevant.

From the time the current allocation formula was first introduced, it was the subject of concern. Concerns were expressed about the current allocation formula methodology because, among other reasons:

- It relied, at least initially, exclusively on the 1980 COP;
- The only means available to adjust the COP data for the JTPA, Section 402 program eligibility was in the inclusion of farmworkers employed in certain specifically eligible agricultural occupations who also met the Lower Living Standard Income Level (LLSIL) poverty guideline;
- The COP was not (and still is not) designed to allow for the identification of otherwise JTPA, Section 402/WIA, Section 167 eligible farmworkers who are either absent from the United States during the time the COP is taken, or who are engaged in nonagricultural activities or unemployed during the COP-reference week;
- The COP was not (and still is not) designed to identify persons living in difficult-to-find housing, ''back-of-the house'' residences and other non-standard dwellings and living arrangements; and,
- The COP did not (and still does not) accommodate consideration of other factors relevant to the JTPA, Section 402/WIA, Section 167 farmworker population such as specific program eligibility criteria.

Most experts, including officials from the Bureau of the Census at the Department of Commerce, acknowledge that the COP does not provide an effective enumeration of farmworkers. Consequently, reliance on the COP data should be subordinate to the application of other data sources that are recognized as providing greater reliability for this purpose.

While the ETA has been attentive to these concerns, data sources and

scholarship available when the current allocation formula was developed, did not offer nationally relevant alternatives. In developing this allocation formula, the DOL has sought to allocate MSFW program funds in a way that accounts nationally for:

- The identification of JTPA, Section 402-eligible farmworkers;
- The time and location of their activities (including the amount of time spent by eligible farmworkers doing farmwork versus non-farmwork); and
- Their turnover rates.

In developing the new allocation formula, the DOL has not operated in a vacuum. The DOL has sought the opinion of experts in the field, grantee representatives, and the general public. The DOL is pleased to have received comments, input and participation from individuals in seventeen States.

In an effort to ensure that the principals in every JTPA, Section 402 grantee organization had a thorough understanding of the proposed allocation formula and an opportunity to offer meaningful input, the Division of Seasonal Farmworker Programs (DSFP) sponsored four educational campaign conferences during the summer of 1998—including support for the travel and lodging expenses of every attendee. Also, throughout the educational campaign process, the DSFP has entertained questions and comments from JTPA, Section 402 grantee staff and other interested persons via telephone, e-mail and during grantee-sponsored and other conferences. This input was considered in the development of the proposed allocation formula that was published on December 22, 1998.

To achieve an equitable basis for an allocation formula, the DOL has sought to draw from a combination of data sources available on MSFW's. In devising the proposed allocation formula, the DOL is satisfied that the appropriate combination of the best choices of available sources of data on MSFW has been achieved.

The development of this allocation formula was guided by a Task Force convened by the ETA's DSFP in 1994. This Interagency Task Force included representatives from the DOL's Office of Policy and its Bureau of Labor Statistics. Representation from outside the DOL included the Bureau of the Census at the Commerce Department, the Economic Research Service at the Agriculture Department and the Executive Director of the Association of Farmworker Opportunity Programs—an association of MSFW Program grantees.

To satisfy our concern about the reasonableness and equity of this proposed allocation formula, ETA engaged Dr. Phillip Martin—a widely recognized expert in the field of agricultural economics—to review the formula proposal and its methodology. He is a Professor of Agricultural and Resource Economics at the University of California at Davis, and has published extensively on labor migration, economic development, and immigration policy issues.

In evaluating the proposed allocation formula and its methodology, Dr. Martin was asked to: (1) determine whether or not a single reliable source of data exists from which a count or distribution among grantee jurisdictions within the United States of MSFWs approximating the MSFW program eligibility criteria could be derived; and, (2) determine the adequacy of the proposed allocation formula for the distribution of MSFW program funds among grantee jurisdictions in a manner which approximates the distribution of farmworkers within the United States who meet the MSFW program eligibility criteria. Dr. Martin was also asked to provide recommendations, as applicable, for methods by which the allocation formula might be enhanced.

As a result of his review, Dr. Martin concluded that there is no better allocation formula available, essentially because the proposed allocation formula is better than the current formula, represents the best combination of available data sources and satisfies the major requirements for allocation formulae of accuracy, transparency (it is understandable), and reliance on published data.

The DOL knows of no single data source that purports to be the definitive and comprehensive count of MSFW's in the United States. While the DOL is not in a position to make a definitive statement about the total number of farmworkers in the United States, the proposed allocation formula provides the most accurate means currently available to estimate the relative proportion of eligible farmworkers among the States.

II. Response to Public Comments

A total of 66 timely comments were received. Of those, 7 were generally supportive and 59 generally expressed opposition to some part or all of the allocation formula. Twenty-five letters were received after the February 5, 1999 deadline. They were not considered. However, the proportions of these letters in terms of factors such as the degree of support, the sector represented by the author and the message were roughly similar to those of the letters that were received prior to the deadline.

The following is an analysis of the public comments received and ETA's response.

A. General Comments

1. Impact of the Allocation Formula and Reduced Funding on Existing Programs

Almost all individuals commenting about or on behalf of program jurisdictions where the amount of funding would be reduced as a result of the application of this allocation formula, expressed concern about the impact of the allocation formula and funding reductions on the program in place. A few individuals questioned the validity of the proposed allocation formula based on the difference between the results of the current and proposed allocation formula.

The DOL is also concerned about the impact of the allocation formula on jurisdictions where funding amounts would be reduced as a result of the application of this formula. Accordingly, the implementation of this allocation formula incorporates a hold-harmless provision to provide for an orderly phase-in to full implementation. Similarly, DOL is also concerned about the impact of continuing to use an allocation formula based on data, portions of which, are almost twenty years old.

Initially, the DOL had planned to phase in the implementation of the allocation formula over a three year period. In doing so (assuming future funding as at least equal to PY 1998 levels), states would receive no less than 90, 70 and 50 percent, respectively, of PY 1998 funding during the three program years following implementation. The formula would then be fully implemented during the fourth year. Since the total amount of funds available to Alaska, Hawaii and Puerto Rico are based solely on those jurisdictions' share of LLSIL farmworker as reported in the 1990 COP, as applicable, the hold harmless provision will be applied to those jurisdictions to the extent practicable. To minimize disruption, the DOL has decided to phase in the implementation of this allocation formula over a four year period. In doing so (assuming future funding as at least equal to PY 1998 levels), states would receive no less than 95, 90, 85 and 80 percent, respectively, of PY 1998 funding during the four program years following implementation. In 2003, it is expected that updated information will be available from most of the data sources used in this formula.

The current allocation data is based on the 1980 COP and IRCA SAW data

which are almost 20 and 13 years old, respectively. Unlike the current formula, this revised formula does not simply rely on a static, one-time snap-shot of the population. The methodology employed in this revised formula takes more factors that are specifically relevant to the MSFW population into account, such as program eligibility, time and location of activity and turnover. In the current formula, the only adjustment factor available was for LLSIL poverty for eligible farmworker occupations identified in the COP. While it is likely that most IRCA SAW applicants met LLSIL poverty guidelines, data was not available to make that determination or to screen for other relevant eligibility factors.

2. Allocation Formula Results Differ From Results of Locally Available Scientific and Survey Research Data and Other Administrative Data Sources

Several individuals commented that local State sources of survey research data on farmwork, agricultural industry, National and local-level administrative data sources on farmworkers and other locally available information tended to support different conclusions as to the appropriate allocation percentage for their State. In a few instances, individuals offered JTPA, Section 402 participant characteristics or other sources of data, usually resulting from significant outreach efforts, as evidence of their claim. Some individuals argued that, for this reason, the data sources used in the allocation formula should be reconsidered.

For the purposes of a nationally applicable MSFW funding formula, there are several problems with using national or locally developed administrative data resulting from program outreach or service delivery. Administrative data based on outreach or service delivery are often influenced by available services; program biases, resources, capabilities and operating methods; and other factors. Statistically valid conclusions about the universe of farmworkers cannot be developed from a sample drawn from such data. Typically, such data is not derived from random sampling or other techniques designed to ensure that the sample is representative of the population. Statistically sound locally available State data, to be useful, must be nationally available. Accordingly, the use of such data would not provide a consistent basis, across jurisdictions, for allocating program funds. According to Dr. Martin—the independent consultant engaged by the DOL to review the allocation formula—one of the positive qualities of the allocation formula is its reliance on published data.

3. Impact of Section 182 of WIA on Allocation Formula

Several commenters expressed their belief that Section 182 of the WIA requires that this allocation formula be based either exclusively or significantly on the COP. In recognition of the deficiencies associated with the use of the COP as a primary ingredient in the development of the allocation formula, some have recommended that the DOL seek a technical amendment from the Congress to remove any doubt about Congressional intent. Others suggest that the DOL base the allocation exclusively on the COP.

By its own terms, WIA sec. 182(a) applies only to formula ''allotments to States and grants to outlying areas'' and does not apply to grants made under sec. 167. Moreover, even if sec. 182(a) were applicable to sec. 167 grants, it does not mandate that the allocation formula derive exclusively from Census data. Instead, the statute requires that data relating to disadvantaged adults and disadvantaged youth be based on the most recent *satisfactory* Census data available. The formula set forth in this notice is indeed based in part on Census data. However, as discussed in this notice and in the December 22, 1998 notice proposing the formula, Census data alone is not a satisfactory means to accurately determine the number of migrant and seasonal farmworkers in an area. Because of this, it is appropriate and necessary for DOL to supplement the Census data with more accurate data sources. The use of Census data supplemented by other accurate data sources in this formula not only complies with WIA sec. 182(a) it also allocates funds in the most rational manner.

4. Modular Nature of Formula Components

Several individuals commented favorably about the use of the COA and the NAWS and the ability to revise the allocation as these data sources are updated. It was also recommended that the DOL use the 1997 COA as soon as it is available.

One of the characteristics of the revised allocation formula, designed to promote continued currency, is the ability to incorporate revised data from the allocation formula data sources as they are updated. In this regard, the DOL concurs with the recommendation and will use the 1997 COA data for hired and contract crop and livestock workers for the PY 1999 allocation. As other allocation formula data sources are updated and revised, the DOL plans to incorporate that data as well.

5. Supportive Comments

Those who favored the revised allocation formula expressed their support, agreed with the conclusion by the DOL contractor (who conducted the independent evaluation about the adequacy of the allocation formula) that there is no better allocation formula available, stated their opposition to the continued use of a formula based on 1980 COP data, and recommended the implementation of the formula for PY 1999 with a hold harmless provision.

Other supportive comments acknowledged that the revised formula is an improvement over the current formula and can be easily updated. In addition, the DOL's use of an Interagency Task Force and an independent review was praised.

One comment urged the DOL and the MSFW Employment and Training Advisory Committee to use the development of this allocation formula as an opportunity to redefine the size and needs of the customer base. This recommendation will be submitted to the Advisory Committee.

B. Allocation Formula Methodology

1. Differential Treatment of Alaska, Hawaii and Puerto Rico

In the design of the allocation formula, DOL used a different method for allocating funds to Alaska, Hawaii and Puerto Rico than was used in the 48 contiguous States. As described in the December 22, 1998 issuance, this differential treatment was due to the fact that all of the data sources applied to the formula for the contiguous 48 States were not available for those jurisdictions.

One individual expressed opposition to the differential treatment of Alaska, Hawaii and Puerto Rico. Several other individuals offered evidence intended to demonstrate that anomalies in the data sources, as related to their program jurisdictions, were sufficient to justify treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico.

As much as the DOL would like to treat all jurisdictions exactly the same with respect to the data sources used to allocate funds, since all data sources used in the formula are not available for Alaska, Hawaii and Puerto Rico, it is not possible to accord those jurisdictions similar treatment. Conversely, all of the data sources used in the allocation formula are available for the 48 contiguous states. Furthermore, the DOL does not believe that any limitations in

the quality of the data available for the 48 contiguous states warrant treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico. As explained in the December 22, 1998 proposal, the DOL believes that the treatment for Alaska, Hawaii and Puerto Rico is a reasonable and equitable alternative.

2. Inclusion of the State of Oklahoma in Delta Southeast Agricultural Region

We received comments in opposition to ETA's decision to include the State of Oklahoma with the Delta Southeast (DSE) agricultural region for the purpose of this allocation formula. The State of Oklahoma is in the Southern Plains (SP) agricultural region. However, when the Interagency Task Force reviewed preliminary allocation formula data, some task force members expressed a concern that because of differences between Oklahoma and Texas in terms of the characteristics of farm laborers, that Oklahoma should be either treated as a separate agricultural region or included with an agricultural region with more similar agricultural labor patterns. Available data was not sufficient to treat Oklahoma as a separate agricultural region. Accordingly, the Task Force recommended, and ETA concurred, that Oklahoma should be included with the DSE agricultural region because of similarities in agricultural labor.

Commenters offered comparisons of crop, labor, harvesting, cultural, and weather patterns and practices between Oklahoma and the SP agricultural region versus Oklahoma and the DSE region to show that Oklahoma had more similarities with the SP region than the DSE region and should, as a result, be included with the SP agricultural region. The validity and applicability of some of the arguments provided was equivocal; however, ETA discussions with USDA and other private agricultural labor specialists suggest that while there are noticeable differences between the agricultural labor patterns in Oklahoma and Texas, there are more similarities between Oklahoma and SP than there are between Oklahoma and DSE. Moreover, since there is not overwhelming evidence to support the decision to include Oklahoma with DSE, the transparency of the allocation formula is enhanced and the principle of consistent treatment is reinforced by not making ad hoc alterations in the agricultural regions for the purpose of this formula. Accordingly, ETA has decided to revise the allocation formula to include Oklahoma within the SP agricultural region.

3. Complexity

Several individuals expressed concern about the complexity of the allocation formula. We acknowledge that the formula is complex. Primarily, this complexity is a result the nature of agricultural labor in the United States, the current status of scholarship on this topic and the lack of a single source of data on JTPA, Section 402/WIA, Section 167 eligible hired and contract farm labor that account for factors such as program eligibility, time and location of activity and turnover. The current approach and an earlier allocation formula proposal relied on a much simpler design. Critiques of both have focused on their lack of relevance to the population. As described earlier, to promote a greater understanding of the formula, DSFP sponsored a series of workshops for representatives of JTPA, Section 402 grantee organizations.

4. Equity and Validity

Another comment suggested that the allocation formula should not be used because it results in unfair allotments among recipients. However, no specific inequities were identified. A comment suggested that, since the number of eligible farmworkers cannot be known, the accuracy of the formula cannot be evaluated.

The DOL believes that, considering the status of scholarship on this topic and the availability of data, the proposed allocation formula is as fair and equitable as possible. The DOL plans to make several adjustments in the allocation formula based on comments from the public and follow-up research. The additional adjustments will enhance the precision and accuracy of the formula. Further, the DOL believes that this allocation formula is vastly superior to the one that is currently in place.

5. Future Consideration

One comment expressed disagreement with a recommendation by Dr. Martin, the DOL contractor who provided the independent evaluation of the allocation formula. Dr. Martin recommended that ''as UI coverage is extended to more farm workers, the DOL may want to consider using UI data on wages paid rather than COA data and thus avoid the issues related to payments made to family members and fringe benefits.'' The commenter objected to this recommendation because of concerns about limited availability of data at the State level and differences in UI coverage for MSFWs among the States. Dr. Martin and the DOL understand the current limitations associated with using UI data for wages paid rather than COA data. However, in the future, these limitations may be overcome. Accordingly, the DOL concurs with Dr. Martin's recommendation and will consider the appropriateness of using UI data as a component of the allocation formula in the future when such use is feasible.

C. Census of Agriculture

1. Appropriateness of Using COA Hired Farm and Contract Labor Farm Production Expense Data

A number of comments questioned the validity and/or appropriateness of using COA hired farm and contract labor farm production expense data for crop and livestock farmworkers as a proxy for wage data. Those commenting on this point raised a number of issues.

Many argued that COA hired and contract labor production expenses are not exclusively wages, and, therefore, include workers' compensation, unemployment insurance, other fringe benefits and payroll taxes, and the related salaries, fringe benefits and payroll costs of officers, managers and administrative personnel—which might tend to overstate the relative proportion of wages in some areas and understate them in others. Among those making this point, some suggested that these expenses were greater in Western States where the prevalence of large corporate agricultural establishments is more significant. Others suggested that farmworkers in other parts of the country—the East, Southeast and elsewhere—generally did not receive UI, workers' compensation and other employment benefits to the same degree as farmworkers in the Western States. Further, some commented that it was more likely that hired and contract labor production expenses associated with payments to officers, managers and administrative personnel would be more significant in States with larger agricultural establishments.

A number of recommendations were made. They included:

- Identification and subtraction of UI and workers' compensation payments by State—made on behalf of hired and contract crop and livestock workers from COA hired and contract labor farm production expenses.
- Collaboration with the U.S. Department of Agriculture to collect and use wage only data for crop and livestock workers.
- Use hired labor figures instead of production figures and work with USDA to obtain unduplicated count of hired labor.

It is possible to identify and extract UI payroll tax payments made on behalf of hired crop and livestock workers from COA data. The DOL intends to accomplish this by using 1996 BLS State-level ES–202 data for hired crop and livestock workers to determine the amount of UI payroll tax payments to be subtracted from the COA farm production expense totals for crop and livestock workers in each State.

A similar adjustment is not possible for contract workers because ES–202 data collection and reporting does not always associate UI tax payments made on behalf of contract crop workers with the State where the corresponding work is performed. The State or States where UI payroll tax is reported by labor contractors on behalf of their workers depends on many factors including where the labor contractors form their crews; when and where UI tax liability is established; when and where additional members are added to a crew; and whether or not, where and how often, the crew leader and members function as employees of an agricultural establishment.

The DOL also explored the feasibility of identifying and extracting workers' compensation insurance premiums from COA farm production expenses for crop and livestock hired and contract labor. Unlike with UI, there is no central workers' compensation insurance premium data collection apparatus at the federal level. Data on premiums paid or due is not available by SIC code in every State. Moreover, some agricultural establishments use liability insurance in lieu of workers' compensation. Those premium costs are even more elusive. (These non-workers' compensation insurance costs are also likely to be reported as labor expenses to the COA.) Inasmuch as workers' compensation insurance premiums paid on behalf of hired and contract crop and livestock workers cannot be identified in a uniform manner across the States, an adjustment based on workers compensation premiums will not be made.

Currently, the COA does not include a question that requires agricultural establishments to report only the wages of crop and livestock hired and contract laborers. It is theoretically possible to add a question to the COA requesting agricultural establishments to provide the wages of their hired workers.

Obtaining the wages of contract workers through a question posed to agricultural establishments would present a significant challenge, since owners of agricultural establishments would only have access to their cost of procuring contract labor and not the wages paid by the contractor to the crew. As such, the value of data resulting from such a question would be limited.

Obtaining wage-only information for hired farmworkers could be done by adding the question to a future sample survey of agricultural producers or adding the question to the 2002 COA. The costs associated with adding a wage question to a future sample survey or the next COA is prohibitive given the size of the appropriation for this program. However, the USDA could decide to add such a question in the future if that action was consistent with its research interest or if the addition of such a question satisfied a significant public interest. At this point, wage-only data is not available and the DOL is not prepared to defer the implementation of this allocation formula pending the possible future availability of this data.

It was also suggested that the DOL consider using the number of hired farm labor workers reported in the COA who worked less than 150 days in lieu of using farm production expenses. This suggestion was considered and rejected, since the suggested data are actually the number of job slots that were filled for less than 150 days. It is not reasonable to use this figure as a count of farmworkers as it is rife with duplication. Further, these data exclude contract labor. Another comment suggested that the DOL work with USDA to eliminate the duplication from the hired farm labor worker figure. This is a daunting task and no one consulted by the DOL had a clear idea of how it could be accomplished in an economically reasonable fashion.

Some of those commenting expressed a concern about piece rate wages relative to hourly wages because of potential under-reporting of hours by employers in order to mask potential wage and hour violations. The DOL is not aware of any data available to adjust COA production expense data for hired and contract labor which can account for under-reporting of labor hours worked paid at piece rate wages. In addition, the severity of this problem varies from region to region. The DOL is not aware of any data which allows adjustments to the geographic variances in the under-reporting of piece rate labor hours.

Some of those commenting expressed concerns about the use of COA production expense data for hired and contract labor because it is based on a 25 percent sample of agricultural employers. Despite these concerns, the COA sample size is adequate to produce statistically valid production expense data for hired and contract labor.

Many individuals expressed concerns that COA hired and contract labor expense data may not include:

- Sharecroppers, farmworkers paid for their agricultural labor in cash, farmworkers paid for their agricultural labor with commodities and services, and other individuals who perform farmwork through unspecified informal arrangements;
- Farmworkers employed by third-party harvesters (processing firms and packing houses) and independent buyers (pinhookers), intermediaries (bird dogs), crew leaders, and other similar agricultural entrepreneurs; and
- Farmwork performed by homeless individuals.

With respect to the requirement to report the production expense costs associated with the labor of crop workers hired by third-party harvesters and independent buyers in the COA, the following has been learned. Where the employer is a third-party harvester or independent buyer and also operates an agricultural establishment, the production expenses associated with the crop workers employed to do harvesting, are includable in that harvester's or buyer's COA survey. Where the employer is an independent buyer, who does not operate an agricultural establishment but purchases the crops harvested by the producer, labor costs are reportable by the producer.

The DOL is not aware of any data that could be used to adjust the COA hired or contract labor production expense data to account for the degree to which owners of agricultural establishments might fail to report or inaccurately report production expenses for farm labor costs in the COA for some types of workers. Similarly, the DOL is not aware of any scientific data which would provide a basis for adjustment for crop or livestock workers who are paid in cash or through other informal means. Therefore, while this is a valid concern, we are unable to perform a statistically valid adjustment to account for this kind of labor practice.

D. National Agricultural Workers Survey

Generally, comments received pertaining to the NAWS can be grouped in two categories: (1) methodology and limitations, and (2) applicability to the allocation formula. Comments pertaining to the NAWS and DOL's response are described below.

1. National Agricultural Workers Survey Methodology and Limitations

(a) Lack of Public Access to the NAWS Raw Data

Some comments expressed concerns about the lack of public access to the NAWS raw data. The NAWS raw data is protected by privacy restrictions, and therefore cannot be provided.

(b) Scope of the NAWS

Some of those providing comments argue that the NAWS was designed to develop a National estimate of demographic earnings and mobility patterns, etc. and was never intended to count farmworkers or provide State and local labor market information.

Some commenters expressed concerns about using the NAWS in the allocation formula because the NAWS surveys were not done in every State within every agricultural region. Generally, those comments questioned the validity of the result of the NAWS-based adjustments because they do not agree that agricultural labor and cultural practices within their State and/or among the States in their respective agricultural regions are sufficiently homogeneous to support the use of the methodology employed in this allocation formula. Related to this concern, one commenter suggested that, because of the limited scope of the NAWS, the eligibility adjustment should only be used as a temporary measure until the quality of the survey data are verified as reasonable and consistent across States.

In response to this concern, the DOL will provide information on the statistical validity of the NAWS adjustments at the time the PY 1999 preliminary state planning estimates are published.

(c) Inclusiveness of the NAWS Data

Some of those commenting suggest that the NAWS does not include dependents of farmworkers, misidentifies female farmworkers, and fails to include fruit packinghouse workers. A few of those noted that they based this conclusion on a comparison of the characteristics of JTPA, Section 402 participants served by their program and the NAWS survey results. Contrary to these concerns, the NAWS survey does include farmworkers who may also be dependents, properly identifies females and includes fruit packinghouse workers. The NAWS also includes information on family size and composition. It should be noted, however, that the DOL made the determination not to explicitly include dependents, other than those who also are identified consequent to their own farmwork status.

It is not surprising that the results from the NAWS would tend to be different from JTPA, Section 402 administrative records. The NAWS is a scientifically drawn sample of the universe of MSFW. Conversely, administrative records of participants served are not a representative sample of the population and as such cannot be used to draw valid conclusions about the composition of the universe.

(d) Expansion of the NAWS to Include Livestock and Other Workers

One individual recommended that the NAWS be expanded to incorporate livestock and other workers. This recommendation was provided to the DOL economist responsible for the NAWS.

2. Use of the National Agricultural Workers Survey in This Allocation Formula

(a) NAWS-Based Adjustment Factors

A substantial number of comments were received about the DOL's use of the NAWS data in the allocation formula to make adjustments for program eligibility, time and location of activity, and turnover. One comment suggested that the use of the NAWS data for adjustment purposes is a weakness in the formula. Some recommended that the DOL should not use the NAWS in the allocation formula. A number of people suggested that the NAWS should only be used to adjust to COA data for program eligibility and not for migration and turnover—which were characterized by some as so-called *policy-driven* adjustments.

Some of those commenting believe Florida is penalized by these adjustments because of its long growing season and internal migration. Some advocate that a special adjustment be made for Florida. Some advocate that Florida should be treated in the same manner as Alaska, Hawaii and Puerto Rico. Others advocate either that all adjustments or adjustments 2 and 3 only, not be applied to COA data for Florida. Other comments suggested that the result of adjustment 2 and 3 was to place a higher value on migrants.

Adjustment 2 (time and location of activity or ''downtime'') accounts for time spent by eligible crop workers in a particular region while they are engaged in non-agricultural employment or are not working. This adjustment is relevant to an allocation formula related to the distribution of resources for a migrant and seasonal farmworker program because these farmworkers are JTPA 402/WIA 167 eligible when not doing farmwork. Unlike a more single-point-in-time or snap-shot type data source such as the COP, this NAWS-based adjustment accounts for the time an eligible farmworker spends in a region while he or she is not engaged in agriculture.

Adjustment 3 (turnover rate) accounts for the difference in length of employment by crop farmworkers. This adjustment is relevant to an allocation formula related to the distribution of funds for a migrant and seasonal farmworker program because not all farmwork jobs are for the same duration of time and the number of farmworkers employed for a unit of time varies by agricultural region. This adjustment allows the formula to determine the relative number of eligible workers in each region as opposed to total time spent by eligible workers in the region. As with Adjustment 2, a snap-shot data source, such as the COP, is not capable of accounting for this variance.

Using data from the COA alone, such adjustments would not be possible. If any of the three NAWS-based adjustments were eliminated from the allocation formula methodology, there would be far less relationship between the resulting allocations and the distribution of the farmworker population in terms of MSFW program eligibility, migration patterns, and regional/State characteristics of agricultural employment.

Florida is not penalized by the adjustments because of its long growing season or internal migration pattern. A major influence on Florida's allocation is based on the tendency of Florida farmworkers to leave the State immediately after their agricultural employment. Moreover, the data show that a relatively high percentage of Florida farmworkers do not meet program eligibility. Furthermore, the DOL does not believe that any limitations in the quality of the data available for the 48 contiguous states warrant treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico.

(b) Work Authorization

Some comments expressed concerns about the high percentage of crop workers in their respective region who, according to the NAWS data, lack work authorization.

Statistically valid conclusions pertaining to work authorization and other related factors can be drawn from the NAWS data. The statistical validity of the NAWS findings related to their use in this allocation formula are

presented in Section II. D1 (b) of this notice.

(c) Relationship Between the NAWS Data and JTPA, Section 402/WIA, Section 167 Eligibility

Some comments expressed concern with the use of the NAWS data for eligibility adjustment purposes because the NAWS data does not exactly match the JTPA, Section 402 eligibility criteria.

Available NAWS data does not exactly match the JTPA, Section 402/WIA, Section 167 eligibility criteria. Under JTPA, Section 402/WIA, Section 167, a determination of qualifying farmwork can include any consecutive 12 month period out of the 24-month period prior to enrollment.[1] The NAWS respondent work history only includes the 12-month period prior to the conduct of the survey interview. Further, under JTPA, Section 402/WIA, Section 167, to be considered a farmworker, an individual would have to have earned at least $400 from farmwork. The NAWS can determine if someone earned at least $500 from farmwork.

The NAWS is the only relevant, statistically valid, national source of demographic and socio-economic information on the farmworker population. Since there is no source of data specifically designed to enumerate JTPA, Section 402/WIA, Section 167 eligible farmworkers, it is not surprising that there would not be an exact match between data source elements and MSFW eligibility criteria. The DOL is aware of the differences between the NAWS data elements and MSFW program eligibility. The differences are considered to be minor and insignificant.

(d) Other NAWS Use Issues

Some comments challenge the validity of the allocation formula based on a comparison of the relative geographical sizes of States. No component of this allocation formula is based on the relationship among States in terms of geographical size. The relevant issue is a State's proportional share of the relative number of eligible farmworkers and not the size of an area.

Another comment expressed a concern about a NAWS finding that the DSE agricultural region has a higher than average wage rate. However, the finding question was not derived from the NAWS. The finding results from FLS and COA data.

E. Other Farmworkers

One individual recommended the elimination of forestry and fishery workers from the allocation formula and that the weight assigned to crop and livestock workers be redistributed excluding other workers. The individual argued that forestry and fishery workers are not farmworkers. Including forestry and fishery workers as farmworkers would confuse the definition of farmwork and stretch its credibility.

The DOL concurs with this comment. Accordingly, the final allocation formula will not include forestry and fishery workers. The weight assigned to crop workers and livestock workers in the final allocation will be based on the relative share of COP LLSIL crop and livestock workers only.

F. Minimum Funding Provision

Several individuals commented that the DOL should continue the use of the minimum funding level. Using arguments based on economy of scale and the practices of other funding sources, those commenting on this issue suggested that the minimum funding amount be increased from $120,000 to between $240,000 and $300,000.

This allocation formula is designed to allocate funds based on the DOL's best assessment of the relative distribution of MSFW's among the States. If the existing $120,000 minimum funding allocation strategy were used, based on the results of the allocation formula, some States would receive funding in excess of twice the amount of their formula-based allocation. In situations where the allocation for a particular area would be insufficient to qualify it for a separate grant, the DOL does not believe that reasonable combinations of geographically-contiguous jurisdictions would compromise the provision of high quality workforce investment activities benefitting farmworkers.

III. Final Allocation Formula—Detailed Description

A detailed description of the proposed JTPA, Section 402/WIA, Section 167 allocation formula follows:

A. Standardized or Adjusted Hours of Farmwork by State

The standardized or adjusted hours of farmwork by State involves determining the relative number of hours worked by Crop Workers and by Livestock Workers in each State.

1. Establish The Total Wage[2] Bill for Each State for Crop and Livestock Work

Data from the 1997 Census of Agriculture[3] provide the total agricultural labor production expenses (SICs 01 and 02) by State, and the total crop labor (SIC 01) production expenses, by State. The livestock labor (SIC 02) production expenses are calculated by subtracting the crop labor production expenses from the total labor production expenses.[4]

COA production expense data is used as a proxy for agricultural wages as data on wages paid to hired and contract agricultural crop and livestock workers is not available on a National basis. It has been argued that agricultural production expense data include elements that are not applied on a uniform basis to all crop and livestock worker wages. Since it is possible to identify unemployment insurance contributions paid on behalf of hired crop and livestock workers by State, with a strong degree of precision, Unemployment Insurance payments made on behalf of hired crop and livestock workers will be subtracted from the State production expense totals.

2. Calculate the Hours Worked in Crop Work and in Livestock Work for Each State

The Farm Labor Survey (FLS) as reported in USDA's Farm Labor provides information by region on the average hourly wage, separately, for crop workers and livestock workers. To calculate an approximate number of hours worked by crop workers and livestock workers, the total production expense for each State is divided by the hourly wage for that State's region. These calculations were made for both crop workers and livestock workers. This calculation was done for all States except for Alaska and Hawaii.[5]

[1] Under certain circumstances (military service, hospitalization, incapacitation, incarceration, etc.), the period in which the 12-month eligibility determination is made may be extended beyond two years.

[2] Hired and contract labor agricultural production expenses for crop and livestock farmworkers are used as a proxy for wages as wage only is not available.

[3] Data from the 1997 Census of Agriculture was not available when the allocation formula proposal was published.

[4] This reported data includes hired and contract labor. The contract labor data includes the contractor's management expenses.

[5] In the design of the allocation formula, DOL used a different method for allocating funds to Alaska, Hawaii and Puerto Rico than was used in the 48 contiguous States because all of the data sources applied to the formula for the contiguous 48 States were not available for those jurisdictions.

$$\text{State crop labor hours} = \frac{\text{State total crop payroll}}{\text{Average hourly Regional}^{6}\text{ wage rate}}$$

$$\text{State livestock labor hours} = \frac{\text{State total livestock payroll}}{\text{Average hourly Regional wage rate}}$$

3. Determination of the Relative Share of Labor Hours for Each State

The percentage of labor hours (for crop work, and for livestock work) that each State contributes to the United States' total was calculated. This is done by dividing each State's total for crop labor bill by the State's average for crop wages and each State's total for livestock labor bill by the State's average for livestock wages. The percentage for crop and livestock hours of each State is calculated by dividing the State's hours for each into the total for all States for each.

B. Crop Hours Adjustments

The crop hours adjustment accounts for JTPA, Section 402/WIA, Section 167 program eligibility, time and location of activity by eligible farmworkers and turnover rate.

1. Adjustment 1—Eligibility for JTPA, Section 402/WIA, Section 167 Program

Adjustment 1 applies JTPA, Section 402/WIA, Section 167 eligibility criteria to the NAWS information for the purpose of adjusting the crop worker figures for JTPA, Section 402/WIA, Section 167 eligibility.

(a) Primary Employment in Agriculture: 50 Percent of Income Derived From Crop Farmwork

Eligibility for the JTPA, Section 402 program requires that at least 50 percent of a farmworker's income be derived from agricultural employment. For the WIA, Section 167 program, the comparable requirement calls for primary employment in agriculture. For the purpose of this allocation formula, deriving at least 50 percent of income from crop farmwork, is being used as the basis for this facet of the adjustment.

The NAWS collects information from all respondents regarding their total personal income, including their income derived exclusively from agricultural employment. In lieu of specifying an exact dollar amount, the NAWS respondents are asked to choose from among a number of stated ranges within which he or she believes his/her total family income falls (most ranges cover a span of $2,500).

To determine the percentage of a farmworker's income that is derived from agricultural employment, reported agricultural income was divided by total earned income. A result of 50 percent or greater indicates that half or more of the farmworker's income came from agricultural employment.

In order to formulate a number that could be used in such an equation, the midpoint of the income range was assigned as the dollar value of the farmworker's income. For example, a respondent indicates that his total income for the previous year fell in the range of $10,000 to $12,499, and his income from agricultural employment fell within the $7,500 to $9,999 range. The dollar value assigned as the respondent's total income would be the midpoint of $10,000 to $12,499, or $11,250, and the dollar value assigned as the respondent's agricultural income would be the midpoint of the $7,500 to $9,999 range, or $8,750. The percentage of total income that came from agricultural income would be calculated using the two mid-point figures by dividing the agricultural income figure of $8,750 by the total income figure of $11,250. The result in this example being 78 percent, would qualify the hypothetical farmworker as meeting this eligibility criterion.

The LLSIL poverty criteria values used are the highest national (except Alaska, Hawaii and Puerto Rico) non-metro limit for each family size. The calculation uses the higher of the Health and Human Services or LLSIL values. For example, for family sizes of 1 to 6, the values applied, are as follows: $7,360, $10,520, $14,440, $17,820, $21,030, and $24,600.

(b) Primary Employment in Agriculture: 25 Days or $400 of Crop Farmwork in Previous 24 Months

To be eligible for the JTPA, Section 402 program, a farmworker must be employed at least 25 days in farmwork for any consecutive 12-month period within the 24 months preceding application for enrollment, or have earned $400 in farmwork and have been primarily employed in farmwork on a seasonal basis. For the WIA, Section 167 program, the comparable requirement calls for primary employment in agricultural labor characterized by chronic unemployment or underemployment (seasonal employment). For the purpose of this allocation formula, working at least 25 days in crop agriculture or earning at least $400 from crop agriculture during the previous 12 months, is being used as the basis for this facet of the adjustment.

The NAWS collects information on farmworkers' periods of employment and non-employment for the twelve months prior to the interview. From this information, one is able to construct the number of days during these twelve months that the NAWS respondent worked in farmwork.

For months 13 through 24 prior to the interview, the respondent is asked to estimate the number of months in which he or she worked in farmwork; one day or more worked per month equals one month. A NAWS respondent who stated that he/she had worked for two or more months in farmwork during the 13 through 24 month period is considered to have worked 25 days in agricultural employment.

As mentioned previously, the NAWS collects information on farmworkers' income from agricultural employment from the previous year. As the responses to this question are categorical (as discussed above), the NAWS does not have exact amounts earned by farmworkers. The lowest category is ''under $500.'' Thus, $500 is used as the minimum amount earned from farmwork (rather than $400). Income information is available only for the one year period preceding the NAWS interview.

To satisfy this criterion for eligibility for the JTPA, Section 402/WIA, Section 167 program, a farmworker must fulfill one of the three standards elaborated above: either he/she worked 25 days or more in the 12 months prior to the interview; or he/she worked two months during the 13 through 24 month period prior to the interview; or he/she earned $500 or more from farmwork in the past year.

(c) Below the LLSIL Poverty Line

Eligibility for the JTPA, Section 402/WIA, Section 167 program requires that a crop farmworker and his/her family fall below the LLSIL poverty line. Because the NAWS collects information

[6] Data organized under the US Department of Agriculture Regions.

on the number of members in a farmworker's household as well as the farmworker's total family income, the NAWS is able to estimate whether the income of the farmworker's family places the family below the LLSIL poverty line. A family was determined to fall within the LLSIL poverty line when the family income fell within an income category below the one in which the LLSIL poverty line fell. For example, the LLSIL poverty line for a family of 4 individuals was $18,740. This amount falls in the income range of $17,500 to $19,999. Thus, a family of 4 individuals whose family income falls below this range was considered to satisfy the criterion of falling below the LLSIL poverty line.[7]

(d) Legal or Pending Status

The NAWS collects information on crop farmworkers' citizenship and work authorization status. A farmworker was considered to satisfy the criterion of legal status for the JTPA, Section 402/WIA, Section 167 program if he/she was determined to be a citizen or a legal permanent resident, or if he/she held a valid form of work authorization. A farmworker who was determined to be undocumented was not considered to fulfill this eligibility criterion.

Individuals who met all four of the criteria stated above were coded as eligible for the JTPA, Section 402/WIA, Section 167 program.

In summary, adjustment 1 (the JTPA, Section 402/WIA, Section 167 eligibility ratio) is a ratio which adjusts total crop hours worked to account for hours worked by JTPA, Section 402/WIA, Section 167 eligible farmworkers. This ratio is the total number of farmwork days (as measured in the NAWS) worked by JTPA, Section 402/WIA, Section 167 eligible crop workers divided by the total number of farmwork days worked by all crop workers. This ratio is always less than one, and it is multiplied by the hours worked by all crop workers to produce the estimated hours worked by JTPA, Section 402/WIA, Section 167 eligible farmworkers for each region.

$$\text{JTPA, Section 402/WIA, Section 167 eligibility ratio} = \frac{\text{eligible crop days}}{\text{total crop days}}$$

2. Adjustment 2—Time and Location of Activities

For all the NAWS respondents, the following data are collected separately by geographic location:

the number of days that respondents spent doing crop farmwork and doing the other activities reported under the NAWS, consisting of non-farmwork, not working, or living abroad.

These data permit adjusting for State-to-State movements of crop workers during a 12 month period. For each of these items except living abroad, the days were accumulated under the regions[8] in which the respondents indicated they occurred. These regions are the regions used for the wages in the previous step.

Adjustment 2 (time and location of activity) accounts for the time spent by crop workers in non-agricultural employment and time not employed to provide a percentage of JTPA, Section 402/WIA, Section 167 eligible non-crop work time in each region. This is a ratio always greater than 1 that is calculated for each USDA region by dividing the sum of the number of days JTPA, Section 402/WIA, Section 167 eligible respondents reported working as crop workers, not working and working in nonagricultural work by the total number of days reported working as crop workers.

$$\text{nonfarm adjustment ratio} = \frac{\text{eligible farm and nonfarm days in the region}}{\text{eligible farm days in the region}}$$

To compute the total time that crop workers spent in each State, the number of hours worked by JTPA, Section 402/WIA, Section 167 eligible crop workers (the result of applying adjustment 1) is multiplied by Adjustment 2 to provide the time spent in each State by eligible crop workers.

$$\text{time and location computation} = (\text{adjustment } 1 \times \text{adjustment } 2)$$

3. Adjustment 3—Annual Crop Employment

To this point, the figures are aggregations that could be converted into annual units of eligible hours for each State, but such units do not translate directly into the numbers of jobs or of farmworkers. This is due to regional variations in the seasonal, short-term nature of farmwork employment and the high probability of farmworkers holding multiple farmwork jobs during each agricultural season. The number of workers needed to make up the eligible worker hours in an annualized unit (e.g., 2,000 hrs.) varies from region to region. Although a number of workers are represented in an annualized unit (i.e., a year's worth of hours), due to the regional differences in crop agriculture, there are fractional differences in every 1,000 hours of eligible crop work represented for each region/State. As already stated, the NAWS records have the total number of eligible farmworkers in each region and the total number of days worked annually (in agriculture and non-agricultural employment) and the total number of days present, but not working by the eligible farmworkers. These data provide the total sum of time eligible crop workers are present in each region/

[7] The LLSIL consists of differing metropolitan and rural levels reflective of varying costs-of-living among differing metropolitan and rural regions. However, to facilitate the application of the NAWS data to this formula, and since many farmworkers earn income in more than one State, a single national standard is applied for each family size that is the highest rural level for each family size. For a family size of one, however, the HHS poverty level was used, as it is higher than the LLSIL.

[8] The Regions were used because there were some States with few or no observations and the data is not reliable below the regional level. Alaska and Hawaii, each single State regions, were not included in this calculation.

State. The ratio of the total number of these farmworkers to the total number of days present in each region/State jurisdiction is an expression of the annual average number of days worked per farmworker in crop work. Differences among the regions that are due to the geographic differences in employment and residency/presence in the jurisdiction, are accounted for by the application of this ratio.

Adjustment 3 (annual crop employment) accounts for relative differences in the length of time engaged in crop employment and other eligible activities by eligible workers annually. This is the ratio of the number of eligible workers divided by the number of eligible days. The longer the annual number of days worked in crops, the lower the ratio and the fewer the number of workers represented by every time unit, such as 10,000 hours or an estimated annualized unit. (The reciprocal produces an estimated annual number of days worked in crops, or present in other eligible activities, per eligible farm worker.) Adjustment 3 converts the final COA/FLS numbers into a people denominated index.

C. Livestock Adjustments

Livestock adjustments involve determining the State relative share of livestock workers expressed as percentages.

The State relative share of livestock hours from the *Standardized or Adjusted Hours of Farmwork*, described above, is adjusted by the COP data for economically disadvantaged criteria. The number of economically disadvantaged (LLSIL) livestock workers is divided by the total number of livestock workers in each State. This JTPA, Section 402/WIA, Section 167-eligibility rate for livestock workers in each State is multiplied by the State's percentage share of livestock worker hours. This product expresses the share of livestock worker hours performed by those living below the LLSIL. The products of these calculations for each State are adjusted to sum to 100 so that they express the percentage each State's JTPA, Section 402/WIA, Section 167-eligible livestock workers comprise of the national total.

D. Combining the State Distributions of the Farm Occupations

The formula computes the ratio of JTPA, Section 402/WIA, Section 167-eligible crop workers to livestock workers. Because differing approaches are used for determining each State's relative shares of crop workers and livestock workers, it is necessary to weight the relative relationship of the two groups of data. The COP counts crop and livestock workers, thus it is used to determine the relative distribution of the two, as follows. Using COP data on farmworkers meeting the LLSIL criteria, the formula computes the percentage that the US total of economically disadvantaged (LLSIL) crop workers comprise of total (LLSIL) farmworkers. Similarly, the percentage that LLSIL livestock workers comprise of total LLSIL farmworkers and that the other LLSIL farmworkers comprise of total LLSIL farmworkers is computed. The sum of the State percentages is the relative weight of each group, expressed as the percentage the group represents of the total. The sum of the two national percentages equals 100 percent.

E. Alaska, Hawaii and Puerto Rico

FLS (QALS) data on Alaska, Hawaii and Puerto Rico are either incomplete or nonexistent. The COA is not taken in Puerto Rico and the NAWS data are not available for Alaska, Hawaii, and Puerto Rico, where Census data must be relied on for measuring the populations of crop and livestock workers as well as other farmworkers. The basic objection to the Census, its failure to adequately locate and count migratory farmworkers, would not appear to be as significant an issue for the two island jurisdictions where, relative to conditions found on the mainland, the farmworker population tend to live at fixed addresses. However, there is a potential bias of Census under-count that remains for those areas, but at present the Department has no data with which to address this deficiency. Consequently, the necessity of relying on Census data for determining the numbers of combined crop and livestock workers in these two jurisdictions is considered to be the best alternative to complement the approach in the contiguous 48 States.

F. Special Tabulation of COP Data

To collect data for the COP portion of the proposed formula the DOL used a special tabulation of 1990 COP data from the Bureau of the Census in the form of a selection of Standard Occupational Classification (SOC) and Standard Industrial Classification (SIC) codes for farmworkers falling below 70 percent of the LLSIL poverty guidelines.

G. SOC and SIC Codes

COP equivalents were used to capture individuals in the following Standard Occupational Classification codes:

477—supervisors, farm workers
479—farm workers
484—nursery workers
485—supervisors, related agricultural occupations
488—graders and sorters, agricultural products
489—inspectors, agricultural products

COP equivalents were used to capture individuals in the following Standard Industrial Classification codes:

001—agricultural production, crops
002—agricultural production, livestock
007—agricultural services

IV. Description of the Hold-Harmless Provision

For Program Years 1999, 2000, 2001 and 2002 the DOL intends to apply a hold-harmless provision to the allocation formula in order to allow a staged transition from the application of the old formula to the new one. Since the total amount of funds available to Alaska, Hawaii and Puerto Rico are based solely on those jurisdictions' share of LLSIL farmworker as reported in the 1990 COP, as applicable, the hold harmless provision will be applied to those jurisdictions to the extent practicable. The staged transition of the hold-harmless provision will be implemented as follows:

(1) In PY 1999, each State service area will receive an amount equal to at least 95 percent of their PY 1998 allotments, as applied to the PY 1999 formula funds available. In the event the total amount available for PY 1999 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 95 percent of what they would have received had the PY 1998 allotment been equal to the PY 1999 allotment.

(2) In PY 2000, each State service area will receive an amount equal to at least 90 percent of their PY 1998 allotments, as applied to the PY 2000 formula funds available. In the event the total amount available for PY 2000 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 90 percent of what they would have received had the PY 1998 allotment been equal to the PY 2000 allotment.

(3) In PY 2001, each State service area will receive an amount equal to at least 85 percent of their PY 1998 allotments as applied to the PY 2001 formula funds available. In the event the total amount available for PY 2001 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 85 percent of what they would have received had the PY 1998 allotment been equal to the PY 2001 allotment.

(4) In PY 2002, each State service area will receive an amount equal to at least 80 percent of their PY 1998 allotments

as applied to the PY 2002 formula funds available. In the event the total amount available for PY 2002 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 80 percent of what they would have received had the PY 1998 allotment been equal to the PY 2002 allotment.

Thereafter, allocations to each State service area would be for an amount resulting from a direct allocation of the proposed funding formula without adjustment.

V. Minimum Funding Provisions

A State area which would receive less than $60,000 by application of the formula will, at the option of the DOL, receive no allocation or, if practical, be combined with another adjacent State area. Funding below $60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a State jurisdiction which would receive less than $60,000 would be combined with another adjacent State area.

VI. Program Year 1999 Preliminary State Planning Estimates

The state allotments set fourth in the Table appended to this notice reflect the distribution resulting from the allocation formula described above. For PY 1998, $71,017,000 was appropriated for JTPA, Section 402 migrant and seasonal farmworker programs, of which $67,123,818 was allocated on the basis of the old formula. The remaining $3,893,182 of the PY 1998 JTPA, Section 402 appropriation was retained in the JTPA, Section 402 national account to fund the farmworker housing program; the Hope, Arkansas Migrant Rest Center; Training and Technical Assistance Mini-Grants; and other training and technical assistance projects and initiatives. The figures in the first numerical column show the actual PY 1998 formula allocations to State service areas. The next column shows the percentage of each allocation.

For PY 1999, $71,571,000 was appropriated for the JTPA, Section 402 migrant and seasonal farmworker program, of which $67,596,408 will be allocated. The remaining $3,974,592 will be retained in the National account for farmworker housing ($3,000,000) and other training and technical assistance projects and initiatives ($974,592). For purposes of illustrating the effects of the proposed allocation formula, the third column of the Table shows the allocations based on the proposed formula without the application of the hold-harmless or minimum funding provisions. The percentages are reported in column 4. The State service area allocations with the application of the first-year (95 percent) hold-harmless and minimum funding provisions, followed by the percentages, are shown in columns 5 and 6.

Signed at Washington, D.C., this 14th day of May, 1999.

Raymond Bramucci,

Assistant Secretary of Labor.

BILLING CODE 4510–30–P

U.S. Department of Labor
Employment and Training Administration
Migrant and Seasonal Farmworker Program
Impact of Proposed PY 1999 Formula Allotments To States

	PY 1998		PY 1999			
	Allotment	Percentage Share	With hold harmless		Without hold harmless	
			Allocation	Percentage Share	Allocation	Percentage Share
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	791,835	1.23853	752,243	1.16482	437,632	0.67766
Arizona	1,519,645	2.37692	1,595,288	2.47025	1,719,287	2.66226
Arkansas	1,167,409	1.82598	1,109,039	1.71731	724,893	1.12247
California	14,591,138	22.82241	15,474,045	23.96107	20,067,526	31.07393
Colorado	805,523	1.25994	849,188	1.31494	992,449	1.53678
Connecticut	206,024	0.32225	219,385	0.33971	303,689	0.47025
Delaware	118,334	0.18509	123,873	0.19181	125,899	0.19495
District of Columbia	0	0.00000	0	0.00000	0	0.00000
Florida	4,631,415	7.24413	4,399,844	6.81302	2,465,700	3.81806
Georgia	1,711,615	2.67719	1,626,034	2.51786	876,499	1.35723
Idaho	877,438	1.37243	924,919	1.43221	1,079,184	1.67108
Illinois	1,425,808	2.23015	1,424,912	2.20643	1,424,912	2.20643
Indiana	781,615	1.22255	822,409	1.27347	927,202	1.43574
Iowa	1,314,394	2.05588	1,248,674	1.93353	1,078,955	1.67073
Kansas	697,839	1.09151	745,302	1.15408	1,078,783	1.67046
Kentucky	1,352,613	2.11566	1,284,982	1.98975	1,043,179	1.61533
Louisiana	796,032	1.24510	756,230	1.17100	484,907	0.75086
Maine	327,397	0.51209	311,027	0.48162	174,702	0.27052
Maryland	306,291	0.47908	322,297	0.49907	363,789	0.56332
Massachusetts	351,027	0.54905	333,476	0.51638	298,012	0.46146
Michigan	878,641	1.37431	920,193	1.42489	944,430	1.46242
Minnesota	1,274,775	1.99391	1,211,036	1.87525	879,095	1.36125
Mississippi	1,449,044	2.26649	1,376,592	2.13161	571,321	0.88467
Missouri	1,094,524	1.71198	1,039,798	1.61009	976,379	1.51189
Montana	667,189	1.04357	633,830	0.98147	461,861	0.71518
Nebraska	774,884	1.21202	822,946	1.27431	1,092,397	1.69154
Nevada	200,795	0.31407	190,755	0.29538	159,091	0.24635

	PY 1998		PY 1999			
	Allotment	Percentage Share	With hold harmless		Without hold harmless	
			Allocation	Percentage Share	Allocation	Percentage Share
	(1)	(2)	(3)	(4)	(5)	(6)
New Hampshire	112,600	0.17612	106,970	0.16564	100,958	0.15633
New Jersey	400,038	0.62571	430,772	0.66704	698,545	1.08167
New Mexico	598,720	0.93647	639,856	0.99080	934,978	1.44778
New York	1,850,667	2.89468	1,758,134	2.72241	1,088,774	1.68593
North Carolina	3,006,003	4.70177	2,855,703	4.42197	1,897,104	2.93761
North Dakota	468,362	0.73258	495,178	0.76677	609,496	0.94379
Ohio	904,951	1.41546	960,585	1.48744	1,264,492	1.95803
Oklahoma	608,145	0.95122	664,324	1.02868	1,276,891	1.97723
Oregon	1,087,697	1.70130	1,151,594	1.78321	1,452,311	2.24886
Pennsylvania	1,221,441	1.91049	1,289,635	1.99696	1,549,985	2.40010
Rhode Island	0	0.00000	1,709	0.00265	38,832	0.06013
South Carolina	1,080,106	1.68942	1,026,101	1.58888	391,046	0.60552
South Dakota	692,869	1.08374	658,226	1.01924	456,831	0.70739
Tennessee	957,799	1.49812	909,909	1.40897	720,217	1.11523
Texas	5,979,800	9.35317	6,274,480	9.71583	6,697,752	10.37126
Utah	245,354	0.38377	258,030	0.39955	288,106	0.44612
Vermont	213,134	0.33337	202,477	0.31353	105,217	0.16293
Virginia	1,036,441	1.62113	984,619	1.52465	708,789	1.09754
Washington	1,705,576	2.66774	1,805,106	2.79515	2,262,216	3.50297
West Virginia	219,325	0.34305	208,359	0.32264	100,275	0.15527
Wisconsin	1,229,201	1.92263	1,167,741	1.80821	953,157	1.47593
Wyoming	201,911	0.31581	212,127	0.32847	232,207	0.35957
Continental U.S.	63,933,384	100.00000	64,579,952	100.00000	64,579,952	100.00000
Alaska	0	0.00000	0	0.00000	0	0.00000
Hawaii	251,607	7.88629	224,571	7.44486	204,254	6.77132
Puerto Rico	2,938,827	92.11371	2,791,885	92.55514	2,812,202	93.22868
Non-Continental U.S.	3,190,434	100.00000	3,016,456	100.00000	3,016,456	100.00000
Total	67,123,818	----------	67,596,408	----------	67,596,408	----------

[FR Doc. 99–12554 Filed 5–18–99; 8:45 am]
BILLING CODE 4510–30–C