

# SAW employment data and the need for RAWs

Howard R. Rosenberg

***The 1986 immigration reform act allows "replenishment agricultural workers" to obtain legal resident status beginning October 1989, if farm labor shortages are projected. Federal agencies have to decide how many RAWs to admit and who they will be. Rules recently developed by the Departments of Labor, Agriculture, and Justice to generate data for these determinations hold great significance for employers, workers, and researchers.***

One of the major questions arising from the Immigration Reform and Control Act of 1986 (IRCA) is how many of the workers who have acquired legal status in the United States as "special agricultural workers" (SAWs) will remain in agricultural employment. Both farm management adjustments and further regulatory decisions depend on the answer. The IRCA statute, elaborated in regulations issued last fall by the Department of Labor (DOL), provides for collection of data on the continuing need for and participation of SAWs in the farm labor market.

Starting October 1, 1988, farmers employing workers who acquired legal status under the 1986 law are required to keep detailed records and submit quarterly reports about such employment. The penalty for noncompliance is \$1,000 per occurrence.

Federal officials will use this information in deciding how many "replenishment agricultural workers" (RAWs) will be allowed to enter the United States during each of four fiscal years, beginning October 1, 1989.

## **Replenishing the labor supply**

IRCA has provisions for three programs—SAW, RAW, and H-2A—designed to prevent or lessen disruptions that its hiring rules might cause in agriculture. None of the three assures farmers of an ample work force, but all may increase the total supply of recruitable labor. The H-2A program differs from the other two in that it allows workers to stay in the United States only as long as they are performing specifi-

cally designated jobs. It gives employers who meet stringent conditions the right to hire nonimmigrants abroad for temporary agricultural work.

Probably best known of the three farm labor supply provisions is the SAW program. To qualify, applicants must have performed 90 or more "man-days" of "field work" in "fruits, vegetables, or other perishable commodities" from May 1, 1985, to May 1, 1986. Special agricultural workers are free to live anywhere in the nation and work in any job.

Through the SAW program, an estimated 850,000 aliens are becoming legal U.S. residents—initially with temporary status, later adjustable to permanent. Immigration and Naturalization Service (INS, U.S. Department of Justice) action on the 1.3 million SAW applications filed by the November 30, 1988, deadline may not be completed until January 1990. Approvals had been given in 342,825 of the 366,000 cases decided by mid-February. This high success rate (94%) is unlikely to be sustained on applications still pending.

If enough SAWs or other workers leave agriculture so that the Secretaries of Labor and Agriculture foresee a national shortage of labor to perform "seasonal agricultural services" (SAS), additional workers may enter the United States through the replenishment agricultural worker program. RAWs, like SAWs, will enjoy broad freedom of choice, but to maintain their temporary legal resident status, they will have to work at least 90 man-days per year for 3 years in seasonal agricultural services. They can then become permanent legal residents without performing any more farm work. To become eligible for citizenship, a RAW will have to work 90 days in SAS for each of an additional 2 years. As used in the IRCA statute, "seasonal agricultural services" consist of the same kind of work ("field work") in the same crops ("fruits, vegetables, and other perishable commodities") that helped qualify SAWs for legal residence.

## **RAW program implementation**

Federal agencies administering IRCA have to make two critical determinations:

(1) how many replenishment workers, if any, to admit each year, and (2) how to allocate any available RAW visas among immigrant workers who want to obtain them. IRCA indicates that aliens will have to petition to obtain RAW visas but does not specify any process or criteria for soliciting and prioritizing petitions. The law does, however, describe in detail a procedure for deciding how many RAWs to admit.

IRCA directs the Secretaries of Labor and Agriculture to work through two formulas before each of the 4 years of the RAW program. The number of aliens admissible as RAWs in a given year is the lower of the results of two calculations—the "annual numerical limitation" and the "shortage number." Both depend partly on information from employer reports required by the September DOL regulation.

The annual numerical limitation is a percentage (95% for fiscal 1990) of the number of aliens legalized under the SAW program, minus the SAWs (and RAWs, for 1991-93) who worked at least 15 days in seasonal agricultural services at any time during the previous fiscal year, plus any decrease (or minus any increase) in the number of workers hired through the H-2A program. Thus, if H-2A activity remained constant, no RAWs would be allowed unless more than 5% of SAWs left (worked at most 14 days in SAS).

The shortage number to be computed annually is the difference between projected man-days that will be needed and that will be supplied the following year, divided by a factor that translates man-days into people. While the numerical limitation formula considers mainly SAWs and RAWs, the shortage number computation takes into account labor supplied by all persons working in or available for seasonal agricultural services.

The projected SAS need, projected supply, and man-day-per-worker factor are all subjects of major data-gathering efforts.

**SAS need.** The U.S. Department of Agriculture (USDA) will use information obtained through its quarterly (January, April, July, October) agricultural labor survey, somewhat expanded for this purpose, to project the anticipated need for SAS workers. This estimate is based on work in SAS during the previous fiscal year (man-days), plus the additional days that would have been needed to avoid any crop loss due to labor shortage that year, plus or minus projected adjustments in need due to farmers' changes in crop production, technology, and personnel management.

**SAS supply.** The U.S. Department of Labor is responsible for forecasting the supply of labor available for seasonal agricultural services. The prescribed base is the USDA estimate of SAS work performed in the previous year, adjusted for expected

exits from and entries to the SAS work force. Anticipated labor supply is defined as man-days used in SAS during the previous year, minus man-days to be lost due to retirements and other movement of workers from SAS, plus the additional days that farm workers or other able persons are expected to make available for SAS. IRCA advises the Secretaries to consider: (1) possible effects of improved wages and working conditions and of enhanced recruitment efforts; (2) numbers of workers who apply for SAS jobs listed with state employment services; and (3) economic competitiveness of the perishable agricultural industry.

DOL has commissioned a set of 4-year surveys of farm workers and "potential agricultural workers" to develop information for estimating and projecting changes in the SAS labor supply. SAW/RAW employment data obtained under the new reporting requirement will also be used to help monitor the SAS work force.

**Man-days per worker.** The Bureau of the Census is to determine the "man-day-per-worker factor," the average number of days that RAWs can be expected to work in SAS. The factor for each year is based on the previous year's employment of SAWs and RAWs, as reported by farm employers. For fiscal 1990, it is the total SAS man-days worked in fiscal 1989 (October 1988 through September 1989) by SAWs who put in 15 or more such days, divided by the number of SAWs employed in SAS for 15 or more days.

The shortage number is very sensitive to differences in this factor. If, for example, anticipated demand for labor exceeds supply by 400 man-days, and the average special agricultural worker performs SAS for 200 days in a year, only two RAWs (400/200) would be admissible. If, however, the factor is 20 days per year, 20 RAWs (400/20) would be needed.

### New reporting requirements

Representative samples of the farm employer population are asked to respond to the USDA and DOL farm labor surveys. While these projects are integral to the determination of the shortage number, participating in them as a respondent is entirely voluntary.

Not so for providing the SAW and RAW employment data needed to calculate the annual numerical limitation and the man-day-per-worker factor. The IRCA statute explicitly requires employers to report quarterly the days worked in SAS by every SAW/RAW they hire. It directs the Census Bureau to consolidate the individual reports and develop summary statistics from them.

The DOL regulation issued in September 1988 details two tasks for employers in fiscal 1989:

(1) Record-keeping. Create and maintain for each "reportable worker" who performs seasonal agricultural services a legible record containing: (a) name in full, INS Alien Registration Number, and Social Security Account Number; (b) local address and permanent address (if different); (c) crop(s) worked and task(s) performed; and (d) hours worked each day.

(2) Reporting to the government. Complete, certify by signature, and mail a Work-Day Report (Form ESA-92) by January 16, April 17, July 17, and October 16 (each covering activity in the previous three whole months) to the Committee for Employment Information on Special Agricultural Workers. Complete a line on the form for each reportable worker containing: (a) name in full and INS Alien Registration Number; and (b) number of days worked four hours or more in SAS.

A "reportable worker" is any resident alien employed in seasonal agricultural services who has an INS Alien Registration Number in the A9 series ("A9," followed by seven digits). Reportable workers thus include not only SAWs and RAWs but also aliens legalized under IRCA's General Legalization provisions.

Other requirements of the DOL September regulation, relating only to the employment of replenishment workers, are to: (1) give to every RAW each pay period a written report of the number of days worked in SAS during that period; (2) not knowingly provide false or misleading information to a RAW; (3) not discriminate in any manner against a RAW who is exercising legal rights; and (4) offer to all other workers transportation assistance comparable to any provided to a RAW. These requirements are not effective until at least October 1989, since no RAW can be issued a visa and employed until then.

### Link to eligibility verification

Identification of reportable workers is connected to the process of verifying employment eligibility. An alien's "A number" should be found on the top portion of the completed employment eligibility verification (I-9) form. Noncitizens are required to provide their A numbers in part 1 of the I-9 form, even if they do not show their alien registration cards as proof of eligibility to work (they may use any of several documents listed in the INS Employer Handbook).

This use of I-9 forms during the first reporting period was complicated by the deferment of sanctions against agricultural employers failing to verify eligibility of workers in SAS. Since the INS agreed to not penalize such growers until December 1, 1988, many had not completed I-9s on reportable workers no longer on the payroll

after November. For this group of otherwise reportable workers (employed in SAS during October or November but not in December, and not verified as employable on an I-9 form) in this period only, the DOL reporting requirement does not apply. For all other reportable workers, regardless of when their I-9s are completed, all SAS work-days during the entire quarter (including any work performed in October and November) are supposed to be reported.

The reportability of certain work-days is also clouded by challenges to the USDA definition of "seasonal agricultural services." Though not so considered in the original definition, cotton was declared a fruit in a February 1988 Texas court order and is now treated as an SAS commodity under IRCA. Inclusion of sod and sugarcane are being litigated. Until final determinations are made, field work in these crops is to be separately reported on Form ESA-92.

### Selection of RAWs

Neither IRCA nor the September DOL regulation indicates any basis for selecting from among prospective RAWs. On March 3, 1989, the INS published a proposed rule concerning who can become a RAW in fiscal year 1990 and how. The INS will consider comments on this proposal before issuing the final regulation, probably in May. The March rule is very different from the earlier "preliminary working draft," which had called for a one-time worldwide solicitation of interest in becoming a RAW, acceptance of an unlimited number of applications, and primary preference for family members of aliens already legalized under IRCA.

The proposed rule states five basic eligibility criteria for RAW status: (1) minimum age of 18 by October 1, 1989; (2) having performed at least 20 man-days of any (not necessarily SAS) agricultural work in the United States during any 12 consecutive months from May 1, 1985, through November 30, 1988; (3) general admissibility as an immigrant to the United States; (4) certification of ability and intent to perform the 90 days per year of SAS required to maintain RAW status; and (5) having not entered the United States illegally after November 6, 1986, when IRCA became law.

Selection would be in two steps: (1) registration (application) and (2) petitioning. Registration would begin if and when a shortage is announced or formally estimated by the Departments of Agriculture and Labor. Standards for acceptance of applications will be geared to the size of the shortage. INS will generate a top-priority registration list composed of aliens who were rejected for SAW status but who meet the basic RAW criteria. Only if the number of persons on this list appeared unlikely to

meet the shortage number would additional registration be announced. If the top-priority group were from 1 to 50,000 smaller than the shortage number, applications would be accepted only from aliens currently residing in the United States whose qualifying agricultural work was in SAS. If the difference were greater than 50,000, all eligible aliens residing in the United States could apply. At a difference greater than 200,000, registration would be extended to all eligible aliens, including those living outside the United States.

The lists of denied SAW applicants and additional registrants would be randomly ordered, except that spouses and unmarried children of aliens legalized under IRCA would have priority within each group. Aliens would be invited to interview and petition for RAW status in the order in which they appeared on the resulting master list. If the proposed registration priority is sustained in the final rule, RAW-eligible aliens who have remained illegally in the United States will be higher on the list, ironically, than those who left when they became ineligible for employment.

### Conclusion

For the first two years of IRCA implementation, the new legalization programs and hiring rules diverted most attention from the law's other major provisions affecting farm labor supply. With possible admission of replenishment agricultural workers only a few months away, farm employers and government administrators are facing the formidable task of gearing up for the RAW program. They are generating and processing a tremendous amount of labor market information.

Determinations of how many RAWs to admit each year, from fiscal 1990 through 1993, will rely heavily on data provided by employers to the USDA, DOL, and Committee for Employment Information on Special Agricultural Workers. Even imperfect compliance with the new reporting obligation and uneven participation in the voluntary surveys will greatly enrich the stock of information about farm employment and the influence of legal status on occupational choice. As concern mounts about future farm labor supplies and the impact of IRCA on California agriculture, data collected for RAW program administration will hold great interest for agricultural employer and labor groups as well as the research community.

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Howard R. Rosenberg is Cooperative Extension Specialist, Agricultural Labor Management, Department of Agricultural and Resource Economics, University of California, Berkeley.

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differences in grading. Water penetration was shallowest in the wheel track positions, and intermediate at the interrow center position.

### Conclusions

The increases in infiltration quantity and water penetration depth resulting from all of the calcium-added treatments were encouraging, but certainly not of great magnitude and less than we had hoped for in this experiment. We had hoped for 100% increases. Two related factors may have contributed to the lack of a greater difference between control and calcium treatments. One is the relatively steep grade, 0.4%, of the border checks, and the other is the length of set, 14 hours. A gentler grade and a longer set, allowing a longer opportunity time for infiltration, perhaps would have magnified the difference between control and calcium treatments. Even with the 0.4% grade, a cutback of water application at some point and extension of the length of set might have provided more infiltration and deeper penetration, particularly at the lower end of the checks.

Among the calcium treatments, the surface-spread gypsum surprised us by remaining effective for several irrigations after it had apparently all been dissolved. This finding implies that high concentrations in the early irrigations are not as wasteful as it would first appear. They may have a favorable effect on soil structure that deteriorates only slowly after the gypsum is gone, as long as the soil surface remains undisturbed.

The gypsum-dissolving machine worked well in adding approximately 3 milliequivalents per liter to the irrigation water. The calcium nitrate solution was easily prepared and applied, but more research is needed to determine if this substantial nitrate addition (180 pounds nitrogen per acre) is equivalent to conventional fertilization. Runoff flows should be recycled to prevent environmental pollution by nitrate.

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William E. Wildman is Extension Soils Specialist, Emeritus, Department of Land, Air and Water Resources, University of California, Davis; William H. Krueger is Farm Advisor, UC Cooperative Extension, Glenn County; and Richard E. Pelton is Staff Research Associate, LAWR Soil Extension, UC Davis.

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However, calculation of costs and benefits for low-input systems not yet in full operation is much more difficult.

Consumer benefits of chemical use within the food system include (possibly) increased quality and quantity of food, lower prices, and increased availability of perishable foods over longer periods. An example is the health benefits of having a year-round supply of fruits and vegetables available in many parts of the world. Costs to society may include consumer health risks from residues on crops, exposure of farm workers to contaminants, degradation of underground aquifers and waterways. Quantification of these effects is difficult, since both market and nonmarket evaluations are involved.

Further, we need to understand what policies are appropriate when social benefits do not exceed or equal social costs. The impacts of any regulation usually extend far beyond its intended purpose. And conflicting regulations currently plague the food industry in the United States.

Increasingly, we are receiving signals that our high-technology, energy-intensive agricultural system has not only not sustained productivity, but is causing troublesome environmental problems and exerting pressure on the resource base. These concerns have not been translated into quick action and change. Legislation in the United States has been passed at the state and federal level aimed mainly at some of the environmental issues without consideration of the total problem. Many farmers express interest in adopting low-input practices, but so far change has not been widespread for a variety of reasons—lack of knowledge, risk of decreased profitability, fixity in existing investments. Farmers can't be expected to bear all the costs when they can claim only a share of the perceived environmental benefits.

In summary, there is considerable interest—even deep concern by some groups—and support is growing for action and change. Agricultural academic institutions and the U.S. Department of Agriculture are making a good beginning in researching sustainable agriculture. Every indication is that the pace will be accelerated in the near future. But we don't have sufficient information on farm, regional, or global impacts of the changes that will ensue. The current agricultural system evolved over considerable time, and with some "nudging and pulling," we can eventually tilt it in a different trajectory. However, the rhetoric vastly exceeds our knowledge at this time.

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Harold O. Carter is Director, Agricultural Issues Center, and Chair, Department of Agricultural Economics, University of California, Davis.