

**“Michigan needs to do more to attract seasonal migrant laborers”
To Do List – July 21, 2014**

In the past decade, Michigan’s food and agriculture industry has grown 60 percent and is fast approaching \$100 billion in annual economic impact. This growth trajectory is inspirational and is indicative of an opportunity for more economic growth. Accordingly, Governor Snyder envisions 90,000 additional career jobs and a 10 percent increase in the food and agriculture workforce by 2015, thereby keeping the industry’s growth on pace.

A preliminary analysis of data emerging from a pilot study funded by the Michigan Department of Agriculture and Rural Development (MDARD) indicates a need for a comprehensive workforce capacity-building plan for Michigan's food and agriculture industry. The plan will integrate and align existing resources within and across the public, private, and independent sectors to supply the food and agriculture industry with an adequate number of appropriately-skilled workers. A key objective of the project is to look at this workforce in two tracks.

The first track is to identify gaps between current workforce, capacity-building activities, and the activities required to grow the industry. Central to this analysis is a shared understanding that training and education undergird workforce capacity building and are most valuable to the industry when the imparted knowledge and skills are relevant to the work at hand.

The second track is to recruit, retain, and schedule the migrant workforce. The whole of Michigan’s economy benefits from the strength and diversity of our agricultural sector. That strength and diversity is rooted in Michigan’s soils, climate, and farm families, but much of it also relies on the skill, speed, and stamina of a migrant workforce. This highly specialized workforce harvests, packs, and processes \$2.3 billion fresh market fruits and vegetables. Most travel all the way from Florida and Texas to do back-breaking work throughout the heat and humidity of our Michigan summer.

Purpose and Potential Impact:

The purpose of this project is to examine the nature of food and agriculture workforce capacity building in Michigan and submit recommendations to MDARD. Upon review of the recommendations, MDARD will explore ways to implement the recommendations as appropriate.

These aforementioned developments create an opportunity for Michigan to leverage its record of creativity, innovation, ingenuity in food, agriculture, and related industries to meet a growing global demand for a reliable food system that produces, processes, manufactures, and distributes safe, quality foods in greater quantity, and at an affordable cost to consumers, all while sustaining the industry’s business interests. The white paper will illustrate this opportunity.

While this project will look squarely and broadly at the food and agriculture landscape, we know that ensuring safe food is an ongoing priority that takes on greater urgency in light of recent social, economic, and political developments, including Governor Snyder's call for increased economic output, implementation of the Food Safety Modernization Act (FSMA), and the increasing globalization of the food supply system.

Content and Intent:

The following outline is designed to support discussion on issues which, if addressed, would improve the ability of agricultural producers in Michigan to attract labor with required skills and enhance our ability to retain and develop those resources. Proposed action items for the 2014 short-term, 2015 near-term, and long-term are included with an assessment of the likelihood of success. This initial draft is based on discussions with the Commodity Executives who have hand harvested crops, Michigan Farm Bureau, the Interagency Migrant Services Committee, and the Michigan Department of Civil Rights.

The intent is to:

- Brief Michigan Commission of Agriculture and Rural Development during their session on agriculture labor (July 22)
- Present a comprehensive workforce capacity plan through MDARD's Executive Office and the Office for New Americans to the Governor's Office by September 2014

1) Resolve conflict between USDA 514 and H-2A guest worker visa programs

- a) Allow H-2A workers to reside in USDA 514 housing
 - i) State Administrator's Order (Jim Turner)
 - ii) Federal policy change
 - iii) Legal challenge from growers
 - iv) Work with private lenders to refinance loans/clarify if restriction still holds

Action: MDARD will draft a letter from the Governor to USDA Director, Jim Turner requesting an exemption from the USDA/Rural Development 514 housing policy implementation.

Status:

- Letter for exception request to house H-2A workers was sent on May 28, 2014 from Governor Rick Snyder to Jim Turner, State Director of USDA Rural Development. The request was denied.
- Michigan Farm Bureau is gathering information on a plan to refinance existing USDA housing loans, which may eliminate the H-2A worker restriction.

2) Improve Workforce Development Agency (WDA) and Agricultural Employment Specialists (AES) services to agriculture employers

- a) Work with WDA to request updated interpretation of program restrictions and requirements from DOL Regional Administrator
- b) Modernized WDA AES and State Labor Exchange System
 - i) Allow telephone referrals
 - ii) Find ways to actively recruit within and outside of the U.S.
 - iii) Facilitate commodity job templates for harvested or processed crops
 - iv) Support videoconference-based interviews, search, and selection
 - v) Require active recruitment by supply states in interstate clearance orders
 - vi) Expand allowable commute times associated with local job orders

Action:

- MDARD will facilitate a meeting with state, local, and federal partners to discuss the impediments and possible improvements needed to meet agriculture labor needs in Michigan
- Request updated interpretation of AES restrictions from Regional DOL Administrator
- Discuss options for establishing “prevailing wages” in conjunction with Michigan Ag Statistics Service survey efforts

Status: We have completed a number of meetings with state, local and industry partners to improve the process of connecting workers and farmers. The questions we asked and the responses from the Workforce Development Agency are included below:

Questions Regarding the Agricultural Recruiting System

1. We have workers calling us asking who has jobs available. We hear that local employers are asking WDA offices for help filling jobs.

- a. What can we do to get these two groups together?

The current Migrant, Immigrant, Seasonal Worker Services Division (MISWSD) procedure has the Agricultural Employment Specialist (AES) that receives these calls refer the caller to their nearest One-Stop. An e-mail is generated to that state’s Monitor Advocate which provides him/her the caller’s telephone number, name and city they called from. No other information is provided.

As of Monday, July 14, 2014, all calls from out of state agricultural job seekers will be referred to Gerardo Aranda, the MI State Monitor Advocate office (SMA). The SMA will ask the caller the following questions:

Caller name
Telephone number
City, State calling from
Number of people in family/group
Number of workers
Type of farmwork performed in the past
How long they plan to stay in MI
Whether they have worked in MI before

Upon gathering this information, the SMA office will distribute the caller information to all Michigan AES. The AES will contact agricultural employers in their area that are in need of labor, if the employer is interested in the family/group he/she will be assisted by the AES and the SMA office to process/finalize the Interstate Clearance Order (ICO) within 72 hours, to bring the family/group to MI via ICO.

2. While WDA appears to be prohibited from promoting employment in other states without an ICO in place, MDARD and Commodity Executives are not.

- a. What would we need to do to use radio advertisements to feed potential employees into Agricultural Recruitment System (ARS)?

Radio ads can be used with approved ARS/ICO's. The majority of migrant farmworkers come to Michigan from south Texas and Florida. Target radio stations/programs, formatted in Spanish, in those areas use the WDA/MISWSD radio program as a job announcement tool, advertise all agricultural job opportunities in Spanish bilingual fashion.

- b. What services can ARS provide based on a phone call from someone interested in working in Michigan?

Inform the caller of the positions available via ARS. Provide them a list of jobs and make referral arrangements with their nearest One-Stop.

- c. What other communications venues would help foster linkages between workers and employers either inside or outside of ARS?

Spanish language newspapers, Facebook, Spanish radio stations/shows either in Michigan or supply states depending on the nature of the ICO.

3. What doors open up to us when we have an ICO in place? Michigan used to send a group to Texas in late winter to talk about housing, migrant services, and Michigan agricultural opportunities. This was eventually seen as “recruitment” and discontinued.

- a. What would the potential impact be if Commodity Executives did active recruitment or could they cover MDARD or WDA staff costs to promote Michigan Ag on their behalf?

“Active Recruitment” is the responsibility of the labor supply state. The promotional trips were very beneficial to the state, migrant farmworkers already coming to Michigan were targeted, and they generally brought newcomers to the meetings with them. Services, such as daycare, medical, educational, amongst other services were provided at the meetings.

- b. Like 2b above – what could ARS do for workers calling in and asking about opportunities?

See 1. a. reply.

- c. Can we utilize video conferencing to hire and / or negotiate with potential employees?

Interviews can be conducted via video conferencing, Face time or Skype could be used.

4. We understand the ARS includes regional and labor supply state review and approval.

- a. Do we have any way of knowing what if anything a labor “source” state has done to help us fill and ICO?

When an ICO is cleared in a labor supply state recruiting workers to fill the ICO positions is their responsibility. There is no way for the order holding state to know if recruitment is conducted. The calls received from workers in the supply states are vital to the success of recruiting workers to fill ICOs.

- b. Is there anything we can do to promote active recruitment and let the worker decide what jobs to take?

Once an ICO has been approved the order holding state should take an active role in the recruiting by placing newspaper and radio ads in those states that have accepted the ICOs.

5. With regard to local job orders we've heard from a number of employers about massive attrition rates. Out of 100 local referrals 50% don't show for the first day, <20% stay for a full day, only a handful stay for the season. By this time a good portion of the 6-8 week window for ARS has passed or the number of H-2A workers approved has been decreased by a good portion of that 100 local workers.

- a. Commodity specific job templates seem to be a good first step as long as they include non-harvest tasks for fill in. The clear expectations should filter out individuals with no intention of doing difficult work. What could we do to expedite ICOs or H-2A?

As of July 14, 2014, WDA will shift the ARS to the State Monitor Advocate unit, the assistant State Monitor Advocate will work hand in hand with the AES to expedite ICOs, and a 72 hour timeframe goal for recruitment of workers outside reasonable commuting distance has been set.

- b. How do we get to a 7 day turnaround time between need for workers identified and jobs being filled with folks that have the skill, speed, and stamina needed to do them for the full season?

Job descriptions must identify the physical demands, the outdoor work environment and the expectation the worker is needed for a specified length of time.

6. Asparagus season starts in late April. A 6-8 week lead is needed to use ARS. That means the employer needs to predict in February if they'll need labor and what their start date will be. We're losing millions of pounds of asparagus each year and growers are not replanting with better yielding varieties because of a lack of labor.

- a. What can we do to increase flexibility for start date and number of workers?

Filing early will secure workers, use approximate start date language, depending on weather and crop maturity. There's a 10 day grace period for adjusting the start date. Growers must decide what is an acceptable risk under the ARS

Status: MFB is preparing a postcard to be distributed in addition to the Radio PSA's that have been running, we have agreed to add a 800# to the postcard so the calls from out of state agricultural job seekers will be referred to Gerardo Aranda, the MI State Monitor Advocate office (SMA).

- 3) **Promote establishment of a “Preferred Employer” program as an alternative to AES that meets employers’ needs for recruitment services, training, legal aid, and control of financial risks. This would be a public/private partnership established between MDARD and the Commodity Groups. The group would develop and test nimble recruitment procedures for future adoption by AES or codification into a Michigan alternative to AES.**
- a) Build on Michigan Farm Bureau employer training on housing, I-9, wage and hour, field sanitation, and safety issues
 - b) Recognize trained growers with licensed or registered housing as Preferred Employers; this could build off of the model provided by certified pesticide applicators. Offer both core training on critical items and continuing education options for advanced employer/employee relations; this is needed to demonstrate protections for agriculture workers are in place
 - c) Build in-season cooperatives within the group with early season growers referring workers to later-season growers
 - d) This group would serve as a logistical hub for employers and provide a target for recruitment public service announcements and advertisements
 - e) Facilitate retention and return in subsequent years with bonuses, respectful treatment, and quality housing
 - f) Establish multi-lingual website allowing Preferred Employers to connect with potential labor
 - i) Map job locations
 - ii) Use icons showing the crop and employment availability
 - iii) Clicking on an active icon would provide information on the employer and job specifics based on AES template
 - iv) Include ability to highlight critical worker needs in the event expected workers do not show up for agreed upon employment
 - v) Preferred Employers would operate the system and/or share Farm Labor Contractor services if needed to meet DOL requirements
 - g) Share cost of recruitment trips out of Michigan and the U.S. for labor markets
 - h) State support of Preferred Employers in the event of federal enforcement actions
 - i) Immigration
 - ii) I-9 and E-Verify
 - iii) DOL Wage and Hour Housing Inspections
 - i) Push for improved transparency in distributor contracts with specific emphasis on
 - i) Youth labor
 - ii) Hot goods provisions

- j) Potentially include an agriculture labor training track; this would build on vocational programs targeting technology, food safety, and food processing
- k) Test procedures to open, close, and reopen public assistance programs for those who would work in agriculture if that work didn't decrease or degrade the timeliness of the public assistance they receive
- l) Should it prove useful, potentially spread the cost of AES use across participants and provide guidance on how to expedite requests

Action:

- Use lessons learned to modernize AES or legislatively establish an agriculture employment system for Michigan
- Potentially leverage support of Future Family Farms Foundation (John Bakker) or 232 Commodity Group funds for continuing support of this employment partnership

Status: A grant agreement is in process between MDARD and Kimberly Clarke from Varnum Law, to research and develop options for H-2A services entity structure. This is to be completed by September, 2014.

4) Improve on communications networks that attract agriculture labor to Michigan

- a) Short-term: MDARD and Commodity Executives distribution of Public Service Announcements/Marketing campaign in Spanish for Florida, Texas, and California radio markets
- b) Long-term: Develop Marketing Strategy
 - i) Designed to attract migrant labor markets within the U.S. – in Spanish
 - ii) Look at the promotional possibilities of using the Pure Michigan Program
 - iii) Resident attitudes toward agriculture workers – respect for skill, speed, and stamina
- c) Coordinate communication activities with all relevant partners
- d) Special Message on Agriculture Labor from Governor's Office to set a welcoming stage?

Action:

- MDARD has already recorded a public service announcement and is working with Commodity Executives on paid distributions
- MDARD would work with MEDC on developing the Pure Michigan marketing concepts and evaluation for 2015
- Potentially use information gained in item 9 to improve communications and recruitment efforts

Status: The PSA has been completed and is in distribution.

5) Coordinate agency efforts to create a welcoming environment for migrant and seasonal labor in Michigan

- a) Secretary of State reestablish residency as the basis for issuance of a Michigan driver's license
- b) State Police provision of policy document and training on ethnic profiling/harassment
- c) Civil Rights active investigation of harassment through zoning, issuance of marriage licenses, police targeting, and posted hostility
- d) Civil Rights hosting of additional listening sessions for at-risk labor pools; how people are treated in commercial kitchens, construction, and any difficult and low-paying job will impact people's willingness to come to Michigan

Action: Request Director Goei's office to facilitate briefings with other state offices:

- Secretary of State on the pros and cons of residency-based driver's licenses
- The State Police and local law enforcement on ethnic profiling and harassment
- The Department of Civil Rights on confronting hostile treatment of agriculture workers

Status: A meeting between Grace Ueberroth at the Michigan Department of State, Mark Swartz and Mike DiBernardo is scheduled for July 28th.

6) Improve living conditions for potentially 68,000 not residing in housing licensed by MDARD

- a) Create a registry of employment-conditional housing
 - i) Push training and outreach materials to housing providers
 - ii) Conduct spot checks for compliance with existing MiOSHA Part 511 standards
 - iii) Provide compliance assistance for non-critical violations
 - iv) Prevent hiding behind federal exemptions/level playing field for critical violations

Action: This would require legislative action, but existing infrastructure could be utilized for implementation. Move this responsibility to the MDARD Licensing and Inspection Program.

- b) Establish a new Farm Labor Contractor registration program or update existing authority to:
 - i) Register individuals operating as farm labor contractors
 - ii) State-level training, potentially in conjunction with Premium Employers program
 - iii) Require bond for property damages and unpaid wages
 - iv) Farm Labor Contractors must register housing locations for all workers
 - v) Harsh penalties for operating without being registered

Action: This would require legislative action. Act 234 of 1966 could be updated or new legislation could be drafted. This has a strong potential for integration with the Preferred Employer training, increasing administrative efficiency. In conjunction with 4) a), this would have a substantial near-term 2015 impact on overcrowding and unsafe living conditions experienced by agriculture labor.

7) Improve in-field working conditions

- a) Establish risk reduction practices for operation of portable toilets and hand washing stations
- b) Train producers on risk reduction practices
- c) Resolve conflict with NREAP Part 117 for producers using reduced-risk practices legislatively
- d) Conduct spot inspections for compliance with MiOSHA Part 500 and food safety standards funded with registration fees and fines for critical violations
- e) Provide compliance assistance for non-critical violations and level the playing field for critical violations
- f) Promote compliance with requirements as part of Preferred Employers and through the Commodity Executives

Action: MDARD is working with partners on developing a funding proposal to develop risk reduction practices. Legislative action needed to amend Part 117 creating the exemption. An MOU with MiOSHA would be developed allowing MDARD to perform field sanitation inspections on a compliance assistance basis. MDARD staff will already be in the vicinity conducting in-season occupancy inspections at licensed housing, reducing the marginal cost of the additional work.

Status: MDARD, USDOL & MiOSHA Joint inspection

During the week of 7/21/14 - 7/25/14 MLHP staff will join USDOL and MiOSHA staff to conduct joint inspections at select hotels and motels suspected of housing migrant workers in the Three Rivers and Sturgis area. The objectives of the joint inspections are to:

- 1. Gather information on the housing conditions in these facilities**
- 2. Determine whether these workers are in fact migrant workers employed in agricultural/ farm related work**
- 3. Gather information on who is responsible for controlling and paying for this housing**
- 4. Gather information on the magnitude and prevalence of this issue**
- 5. Determine whether the “Inn Keepers”* clause is applicable in these situations**
- 6. Determine the applicability of state and federal standards and whether there is a need for licensing under Part 124 of Act 368**
- 7. Understand the interplay between the Farm Labor Contractor (FLC), the housing provider (hotel/ motel owners and operators) and the employer**

(growers) in these situations and determine the applicability of state and federal rules in accordance to how this relation is established

8. Increase awareness of the need of licensing under Part 124 when 5 or more migrant workers are housed regardless of the duration of this housing

9. Understand the interplay between migrant workers living in Michigan but working across the border in Indiana and vice versa

8) Decrease the cost of providing quality housing

- a) Finalize updates to model housing designs (Habitat for Humanity, DOL, MiOSHA)
 - i) Competitive design optimization with SIP, Truss, and modular housing manufacturers
 - ii) Potential for Prison Built/National Guard coordination
- b) Work with MSHDA, Food Processors, and specialty crop producers on seasonally integrated housing cooperatives and associated transportation; new housing/rural development worker pool shared by producers and processors

Action: MDARD continue to work with partners to coordinate existing resources. An amendment to the Correctional Industry Act would be required to implement the Prison Built concept. There has been some discussion of creating a housing construction incentive program.

9) Increase migrant labor recruitment and retention proficiency. Two parallel efforts are being considered – one for agriculture employers and another for agriculture labor

- a) Work with Commodity Executives and Interagency Migrant Services Committee (IMSC) to establish survey/focus group questions for:
 - i) Migrant and seasonal agricultural workers
 - ii) Agriculture employers with particular attention to those dependent on migrant labor
- b) Coordinate Michigan Agriculture Statistics Service (MASS) and bilingual enumerator efforts to conduct a statistically valid survey of migrant workers to include where they are from, where they are living while working in Michigan, how many employers they typically work for in a year, what brought them to Michigan, and what would make Michigan more attractive to them in future years
- c) Hold similar focus groups with agriculture employers to gauge the prevalence of practices that attract and deter migrant workers from returning in subsequent years; this could potentially incorporate establishment of “prevailing wages” as needed by AES
- d) Capture performance of domestic workforce for either recruitment purposes or to document the lack of availability supporting intrastate or interstate clearance order via AES
- e) Use this information to guide state policy and private efforts to attract and retain migrant, seasonal, and agriculture labor

Action: MDARD would expand the existing Telamon, Michigan State University College Assistance Migrant Program, and MASS partnership. Logistical details need to be developed to stay within MASS confidentiality requirements and human subject's practices for a sensitive group. Without additional resources, we would target 2015 for feasibility determination.

10) Michigan and other states with hand-harvested/specialty crops need a strong voice in federal immigration discussions and when State Labor Exchange/AES policy is being developed

- a) Priorities
 - i) Establish legal presence
 - ii) New guest worker program that meets agriculture's needs
 - iii) Don't wait for citizenship discussion
- b) What happens in the void between immigration reform and federal ability to implement new policy
 - i) Fruit and Vegetable industry goes overseas or
 - ii) Federal-state partnership allows states which need labor to obtain labor
- c) Potential synchronization of deportation, boarder security, and functional guest worker levels

Action: Office for New Americans to coordinate efforts of states with significant fruit and vegetable production at multiple levels: Governors' Offices, State Directors of Agriculture, and Farm Bureau?

11) Resolve conflicts between U.S. DOL Wage and Hour and Michigan Part 124 standards

- a) Continue working to resolve technical and interpretative differences between standards
 - i) Distribute informational sheets on how to comply with both standards
 - ii) Conduct joint training between agencies, raising awareness and building commonality
- b) Use in-season compliance assistance to improve compliance and reduce enforcement risks
- c) Potentially shift DOL efforts to off-farm housing if we do not want MDARD coverage of employment conditional housing

Action: Continue MDARD coordination efforts through 2015, engage Migrant Labor Housing (MLH) Advisory Council to draft desired standards changes, and request legislative assistance with standalone authorization for migrant labor housing. Alternatively, this could be done in conjunction with employment conditional housing and farm labor contractor registration legislation.

12) Throw the welcoming doors to Michigan wide open

- a) Coordinate federal, private, and foundation funding for a migrant resource center in southwest Michigan
 - i) Common delivery point for IMSC programming
 - ii) Home-based for Preferred Employer
- b) Identification of ethnic neighborhoods with census data
 - i) Sense of Place facilitation (MEDC/MiSHDA) Frankenmuth/Cedar Rapids
 - ii) Epcot Michigan as economic development engine
 - iii) Vertical integration/self-help Chaldean Community Foundation
- c) Continue with positive press on agriculture and associated labor with three to five harvest wrap-up press releases in conjunction with specific commodity groups; in 2014, talk about factors impacting the success of the asparagus harvest, a mid-season crop, and conclude with apples; highlight the importance of skill, speed, and stamina provided by migrant labor

Action: Points of discussion for MDARD and MEDC long-term rural development efforts.

Legislative Action List:

- a) The group will further break out the “To Do List” into separate legislative actions, the specifics of which will be verified and established upon later discussion
- b) Numbers 6, 7, and 8 of the “To Do List” all have pertinent legislative actions that will be identified at a later date