

Page Reference

Introduction to F.A.R.M.S.	2
Statement of Policy & Terms and Conditions For the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program (CC/MEXSAWP)	3 – 5
Policy Statement Regarding Access to and the Termination of Assistance to an Employer under The CC/MEXSAWP	6 – 8
Planning Your Labour Needs	9
Caribbean Premature Repatriation	10
Mexico Premature Repatriation	11
Statistics	12

INTRODUCTION TO F.A.R.M.S.

Foreign Agricultural Resource Management Services is non-profit, federally incorporated in 1987 to facilitate and coordinate the processing of requests for foreign seasonal agricultural workers. Authorized by Service Canada, F.A.R.M.S. performs an administrative role to the Caribbean and Mexican Seasonal Agricultural Workers Program.

F.A.R.M.S. is funded exclusively through a user-fee, collected from participating employers at the time their seasonal worker requests are approved for processing.

F.A.R.M.S. is a private sector run organization, governed by a Board of Directors, appointed from those commodity groups participating in the program.

F.A.R.M.S. membership passed a resolution at the 1992 annual general meeting authorizing the implementation for travel services to assist in the process of foreign seasonal agricultural workers. CanAg Travel Services Ltd., was formed and provides employer members with: uniformity of airfares, agency fees and payment schedules; and direct negotiations with the airlines.

Participating Countries

Barbados
Jamaica
Mexico
Republic of Trinidad and Tobago
OECS (Organization of the
Eastern Caribbean States)
Antigua and Barbuda
Commonwealth of Dominica
Grenada
Montserrat
St. Kitts-Nevis
St. Lucia
St. Vincent and The Grenadines

STATEMENT OF POLICY AND TERMS AND CONDITIONS FOR THE COMMONWEALTH CARIBBEAN AND MEXICAN SEASONAL AGRICULTURAL WORKERS PROGRAM

The policy of the Canadian government is to ensure that all employment opportunities for seasonal agricultural work in Canada are first made available to qualified Canadian citizens and permanent residents before recourse is made to either the Commonwealth Caribbean or Mexican Seasonal Agricultural Workers Program.

GENERAL PRINCIPLES and OPERATIONAL GUIDELINES

The programs are administered in accordance with the following general principles and operational guidelines:

- i.) foreign seasonal agricultural workers are to be authorized for employment for regionally approved commodity sectors during peak activity periods where the supply of Canadian workers is determined to be inadequate;
- ii.) the programs continue to operate on a seasonal basis; and ... "Seasonal basis" this term is understood to refer to both the worker and the work. Workers temporarily admitted to Canada under either program should not be given work terms exceeding 8 months duration. Employers can access the program from 01 January to 15 December. It is to be clearly understood, by ALL parties, that every worker is to be repatriated by 15 December.
- iii) the Caribbean and/or Mexican workers are to be provided with acceptable free accommodation, receive the prevailing rates of pay for the work involved, and are to be treated in a fair and equitable manner by the farm employers.

8 WEEKS NOTICE

1. Employers are requested to formally advise their local Service Canada Centre (SCC), AT LEAST EIGHT WEEKS IN ADVANCE, of their total agricultural labour requirements for which assistance is being sought, by providing adequate notice to their SCC, employers will be assured that worker requests will be processed in a timely manner.

NEW EMPLOYERS OR ADDITIONAL WORKERS

2. Requests from employers to specifically "name" and/or obtain up to the same number of foreign workers previously authorized should be approved by the Service Canada Centre Manager on a priority basis. Requests from such employers for access to additional foreign workers or requests from new employers will be approved, subject to the conditions stated in paragraph 3.

ASSESSMENT OF REQUESTS

3. SCC Staff will individually assess each employer's request for workers in relation to the adequacy of the job offer, the available supply of local workers, the availability of suitably qualified Canadian agricultural workers from other regions, and the employer's previous experience in attracting and maintaining workers.

TERMS AND CONDITIONS

4. The terms and conditions, as well as program operations governing these programs, have been negotiated by the Government of Canada, the participating foreign governments, and representatives of the Canadian Horticultural Council. Employer's request to participate in these programs are subject to their acceptance of conditions set out in the employer/employee agreement and, in some instances, to their payment of a user-fee to F.A.R.M.S. who have been appointed by the Commission to assume an administrative role in program delivery.

EMPLOYMENT AGREEMENT

5. The terms and conditions governing the employment of foreign seasonal agricultural workers are specified in an employment agreement signed by each employer, worker and the Government Agent. The agreement provides for employment of not less than 240 hours in a period of six weeks or less **NO MORE THAN EIGHT MONTHS** within the peak demand time frames identified by the Regional Agricultural Program Coordinator for the approved commodity sectors. In the case of workers who are transferred to another farm following completion of their contract, no minimum hours of work are guaranteed.

EMERGENCIES

When an emergency situation has been determined to exist by the local Service Canada Centres, and subject to the agreement by the supplying Foreign Government, provision exists to bring in foreign workers for a period of employment of not less than 160 hours.

PERIODS OF EMPLOYMENT

6. All participating commodities will have the following term of employment for 2002:

01 January To 15 December

It is understood that no individual worker will be permitted to be employed in Ontario for more than eight months during the calendar year. It is also understood that all participating employers must exercise timely and responsible human resource management, including ensuring that reliable Canadian workers will continue to be considered first. At the same time, SCC staff will consider the local labour market conditions, and the human resource management practices while treating all employers on a consistent basis.

OBLIGATIONS OF EACH PARTY

7. The employment agreement signed by each Employer, Worker and Government Agent also stipulates the obligations of each party with respect to the provision of free provincially/municipally inspected and approved seasonal housing, transportation costs, wages, meals, repatriation, etc.

WAGES

8. Employers are required to pay the greatest of :
- the minimum agricultural or provincial wage rate;
 - the prevailing rate as determined by the SC; or,
 - the rate being paid by the employer involved to Canadian workers doing the same work.

SELECT COUNTRY

9. Employers accepted into these programs are responsible for selecting the supply country from those designated by Canada to service their region.

REQUESTS FOR FEMALE WORKERS

10. Although most workers entering Canada under these programs have been men, all countries have requested to supply female agricultural workers, provided acceptable accommodation arrangements are available.

REQUESTS FOR TRANSFERS

11. Employers may request transfer workers who, if available, are about to complete a first term of employment with another employer. In such cases Service Canada approval must be obtained and appropriate documentation completed **PRIOR** to the request being forwarded to the foreign liaison service for approval. In the case of transfers the original maximum period of employment (8 months) must not be exceeded.

POLICY STATEMENT REGARDING ACCESS TO AND THE TERMINATION OF ASSISTANCE TO AN EMPLOYER UNDER THE COMMONWEALTH CARIBBEAN AND MEXICAN SEASONAL AGRICULTURAL WORKERS PROGRAM

Purpose

The purpose of this Policy Statement is to inform employers participating in the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program (the “Program”) of the policy of the Department of Service Canada (SC) regarding access to these unique programs. To advise program participants of the Department’s position regarding the termination of assistance under the Program who breach the terms and conditions of the Program.

Background

International Agreements and Employer Agreements establish arrangements for:

- (a) the recruitment, selection and documentation of seasonal agricultural workers by the foreign government concerned in response to requests by Canadian employers for such workers, which have been approved by SC and transmitted to the foreign government by SC or by an organization approved by SC for this purpose (i.e. F.A.R.M.S. in Ontario or, for employers in Quebec, FERME), and
- (b) the facilitation by Citizenship & Immigration of the immigration processing of the foreign workers.

They also establish operational guidelines and a mechanism for securing the fair and safe treatment of the foreign workers by their Canadian employers, and in particular, for securing the payment of fair wages and working conditions, the provision of insurance coverage for illness or injury, and the assumption by employers of responsibility for worker travel and in certain cases premature repatriation costs.

The arrangements also address concerns by Canada about possible abuses of the Program by employers, particularly in the area of non-compliance with Canada’s immigration laws by both employers and the foreign workers – in particular, the prohibitions against foreign workers engaging in unauthorized employment while in Canada and, in the case of employers, prohibitions against persons knowingly aiding, abetting or inducing foreign workers to engage in such unauthorized employment.

Unauthorized Employment of Foreign Workers

This is the main area where, from time to time, abuses in the Program have been encountered with some employers. In this regard, foreign workers have, from time to time, been or transferred to other employers without prior approval of the worker, Service Canada and the representative of the government of the country from which the worker came. This gives rise to a number of concerns.

Firstly, from the Immigration Act perspective, depending upon the terms of the foreign worker's employment authorization (i.e. it might limit the worker to employment with a named employer or it might limit it more generally to employment with employers approved under the Program), the employment of the foreign worker by another employer may constitute a breach of the foreign worker's employment authorization, which is an offence under the Immigration Act and may expose the foreign worker to prosecution. It is also an offence under the Immigration Act for a person to knowingly aid, induce or abet the foreign worker to contravene the Act and the employer who loans or transfers the worker may also be subject to prosecution. Lastly, the employer to whom the foreign worker is loaned or transferred may also be subject to prosecution for the offence of knowingly engaging in any employment any person who is not authorized under the Immigration Act to engage in that employment.

Secondly, it may put the foreign worker at risk in terms of ensuring that: if he/she is injured or become ill while working for the other employer, the insurance coverage arrangements made for the foreign worker will apply; proper deductions from the workers wages are made and remitted to the foreign government in accordance with the employment agreement signed by the employer; proper payroll records are maintained in accordance with the employment agreement; and, generally, that the obligations of the employer with regard to fair wages and working conditions and to living accommodations are respected.

Thirdly, the loaning or transfer of the foreign workers to other employers without the prior approval of SC is of concern to SC from the point of view of its effect on the employment opportunities of Canadians, The admission of the foreign workers was allowed in the first place to help the employer meet a temporary seasonal demand for agricultural workers which could not be met from the supply of Canadian workers

Depending upon where the foreign workers are transferred or loaned and for what kind of worker they do for the other employer, the employment opportunities of Canadians maybe adversely affected if the supply of Canadian workers from which the other employer could reasonably be expected to draw his workers is adequate to meet the demand.

For all of these reasons, non-compliance by employers under the Program with the terms and conditions of the Program is viewed seriously by SC.

Policy

Where an employer does not respect the terms and conditions of the Program (in particular, the terms of the agreement he/she has signed regarding the employment of the foreign worker), SC and the foreign governments concerned have agreed that the provision of the further assistance to that employer in facilitating the inter country movement of seasonal agricultural workers may be terminated. In deciding whether to terminate their assistance, SC and the foreign governments concerned will take into account the nature, circumstances, extent and gravity of the breach, and the willfulness or intent of the employer and the employer's history of prior breaches.

Where termination occurs, employers should be aware that they will, in future, be left to make their own arrangements to obtain temporary foreign workers to meet their needs.

Procedure

Where SC becomes aware of a breach by an employer of the terms and conditions of the Program and where it considers the breach to be of a serious nature and that, taking into account the factors outlined above, it is an appropriate case to warrant termination of future assistance under the Program to the employer, SC will, with the agreement of the foreign government concerned, notify the employer of the alleged breach and of their intention to terminate the provision of assistance to the employer under the Program. SC will provide the employer with an opportunity to make representations with respect to their proposed action.

At the end of the time given to make representations, SC will consider the information and representations, if any, provided by the employer and advise the employer of its decision. Under arrangements with the foreign governments, the final decision will be left to SC. Based on the representations and information, it may decide to terminate the provision of future assistance or to issue a warning instead.

It is hoped that this Policy Statement will serve as a timely reminder to employers of the importance of respecting the terms and conditions of the Program and of not abusing it. Employers who do abuse the Program jeopardize the availability of it for the others. It is in the interests of all parties involved in the program to make it a success.

THIS DOCUMENT IS A CONDENSED FORMAT

PLANNING YOUR LABOUR NEEDS

WHEN SHOULD YOU PLACE YOUR LABOUR REQUEST?

Employers are requested to formally advise the local Service Canada office, at least eight weeks prior to job start date, of their total agricultural labour requirements. By providing adequate advance notice the employers will be assured that failing to source Canadian labour the request for workers under the SAWP will be processed in a timely manner.

The completion of the 'Human Resources Activities Record' is a requirement of the local Service Canada (SC) office at the time of placing a request for seasonal labour. Contained on this form is information that will assist the local SC counselor to quickly determine the availability of Canadians to fill the job vacancies or to determine whether foreign workers should be requested.

WHAT IS THE TERM OF EMPLOYMENT?

IT IS TO BE UNDERSTOOD that a worker is not permitted to be employed in Ontario for more than eight months (8) during the calendar year. F.A.R.M.S. monitors this activity and CanAg Travel will be instructed to advise the employer a flight booking will be made despite the employer not taking the initiative to do so. It is also understood that, all participating employers must exercise timely and responsible management of their labour needs, including ensuring that reliable Canadian workers will continue to be considered first. All approved commodities have the following term of employment:

01 January to 15 December

CARIBBEAN PREMATURE REPATRIATION

CONTRACT REFERENCE	REASON FOR TERMINATION	TRAVEL COST TO WORKER	TRAVEL COST TO EMPLOYER
	BREACH OF CONTRACT		
X 1. (I)	Non-compliance, refusal to work, or any other sufficient reason to terminate and ...		<input type="checkbox"/>
X1. (ii)	the worker was named		
X1. (iii)	the worker was un-named and 50% or more of the work was completed	<input type="checkbox"/>	
	the worker was un-named and less than 50% of the work was completed	<input type="checkbox"/> Round Trip	
	PERSONAL AND/OR DOMESTIC CIRCUMSTANCES		
X 2. (i)	the worker was named		<input type="checkbox"/>
X 2. (ii)	the worker was un-named and 50% or more of the work was completed		25% of Southbound cost
X 2. (iii)	the worker was un-named and less than 50% of the work was completed.	75% of Southbound cost <input type="checkbox"/>	
X 3.	MEDICAL		
	(Named and un-named Workers)		<input type="checkbox"/>
	Condition was present prior to the worker leaving Caribbean.	<input type="checkbox"/>	

Please note:

This breakdown is provided for quick reference only.

Refer to the original agreement for details

MEXICO PREMATURE REPATRIATION

CONTRACT REFERENCE	REASON FOR TERMINATION	TRAVEL COST TO WORKER	TRAVEL COST TO EMPLOYER
<p>X 1. (I)</p> <p>X1. (ii)</p> <p>X1. (iii)</p>	<p>BREACH OF CONTRACT</p> <p>Non-compliance, refusal to work, or any other sufficient reason to terminate and ...</p> <p>the worker was named</p> <p>the worker was un-named and 50% or more of the work was completed</p> <p>the worker was un-named and less than 50% of the work was completed</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p>Round Trip</p>	<p><input type="checkbox"/></p>
<p>X 2.</p>	<p>(Named and Un-named Workers)</p> <p>PERSONAL AND/OR DOMESTIC CIRUCMSTANCES</p> <p><i>* If it is the opinion of the Government Agent</i></p>	<p><input type="checkbox"/></p>	<p>* In some circumstances Gov't. Agent may allocate cost to employer</p>
<p>X 3.</p>	<p>MEDICAL</p> <p>(Named and Un-named Workers)</p> <p>Regardless of the length of employment unless condition was present prior to the worker leaving Mexico</p>		<p><input type="checkbox"/></p>
<p><i>Please note: This breakdown is provided for quick reference only.</i></p> <p><i>Refer to the original agreement for details</i></p>			

STATISTICS

2004/2005 ACTIVITY COMPARISON														
	Barbados		Eastern Caribbean		Jamaica		Trinidad / Tobago		Sub-total Caribbean		Mexico		Combined Total	
	2004	2005	2004	2005	2004	2005	2004	2005	2004	2005	2004	2005	2004	2005
Vacancies Approved	451	401	512	641	6358	6720	1725	1665	9046	9427	8378	8800	17424	18227
Cancellations	14	22	10	35	114	178	124	101	262	336	176	297	438	633
Total Worker Arrivals	389	348	452	579	5607	5736	1456	1419	7904	8082	7219	7341	15123	15423
Total Worker Transfers	48	31	50	27	637	806	145	145	880	1009	983	1162	1863	2171

VACANCIES FILLED BY CROP AND NUMBER OF EMPLOYERS INVOLVED					
COMMODITY	2004	2005	% Variance (Rounded)	EMPLOYERS INVOLVED	
				2004	2005
APPLES	1544	1740	13%	114	126
CANNING/FOOD PROCESSING	424	401	-5%	10	11
FARM WORKER BEE	0	3	***%	0	2
FARM WORKER FLOWERS	312	310	-1%	33	38
FARM WORKER FRUIT	3291	3092	-6%	297	283
FARM WORKER GREENHOUSE	2402	2994	25%	173	176
FARM WORKER NURSERY	819	934	14%	48	52
FARM WORKER SOD	4	5	25%	2	2
FARM WORKER TOBACCO	3829	3622	-5%	510	489
FARM WORKER VEGETABLE	3848	4060	6%	350	357
GINSENG	513	433	-16%	56	48
TOTALS	<u>16986</u>	<u>17594</u>	<u>4%</u>	<u>1533</u>	<u>1514</u>

