



# An Analysis of Farm Labor Contracting in New Mexico

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# An Analysis of Farm Labor Contracting in New Mexico<sup>1</sup>

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Farm labor contracting has existed in southern New Mexico for more than a century, bringing migrants into the United States to work fields, providing them translation, housing or food services, and providing growers short-term labor on demand during specific periods of need in each growing season. Until 1964, when the first federal farm labor contractor (FLC) registration law was passed, the contracting process was largely unregulated. While some other states have added state-level oversight of contractors, New Mexico still relies only on federal law for FLC regulation. However, today, in addition to federal registration, contractors must also comply with the Migrant and Seasonal Agricultural Workers Protection Act,<sup>4</sup> the Immigration Reform and Control Act (IRCA)<sup>5</sup>, the New Hires Directory of New Mexico<sup>6</sup>, the Fair Labor Standards Act<sup>7</sup>, the Occupational Safety and Health Act<sup>8</sup> and the Workers Protection and Safety Act.<sup>9</sup>

Worker advocates, growers and regulators all express concern that, at best, FLCs are not adequately prepared to meet the challenges of the job. Honest, reliable contractors are of utmost importance to growers because growers may be held liable, jointly with contractors, for damages against farm workers or labor law violations such as minimum wage, tax withholding, field conditions, false promises, or failure to pay wages. Growers identify the main weaknesses of FLCs as their lack of assets (for civil monetary penalty liens), lack of education about the laws and poor record of tax law compliance.<sup>10</sup> Labor advocates also tend to be critical of contractors. While pointing



<sup>1</sup> This article was reviewed by Lois Stanford, associate professor, Department of Sociology and Anthropology, and Terry Crawford, college professor, Department of Agricultural Economics and Agricultural Business, New Mexico State University, Las Cruces; and Jim Seewald, Office of Economic Development, South Central Council of Governments, Mesilla, N.M. The New Mexico Chile Task Force supported this research.

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<sup>4</sup> This law requires disclosure of work conditions and terms, posting worker rights and safety posters, transport vehicle safety and insurance, adequate housing standards and employer record keeping and administration of pay stubs.

<sup>5</sup> This law requires filing I-9 forms on citizenship/work eligibility and filing copies of proof of identification.

<sup>6</sup> This law provides for garnishment of paychecks to cover delinquent child support.

<sup>7</sup> This law places age, time and task restrictions on child labor, as well as establishes minimum wages.

<sup>8</sup> This law requires contractors to provide access to water and sanitation facilities and to provide labor-saving devices.

<sup>9</sup> This law, passed in 1992, mandates pesticide education and safety practices.

<sup>10</sup> Personal interviews with four growers in southern New Mexico, conducted over two months, May and June 2004, at the respective offices of the interviewees, or over the telephone. The interview research was approved by NMSU's College of Agriculture and Home Economics Survey Review Committee and Institutional Review Board.

out the contractors' potential to negotiate good working conditions for laborers, they also point out labor contractor weaknesses that include paying insufficient wages to workers, hostility and inadequate legal training.<sup>11</sup> Regulators bemoan the FLCs' illiteracy and poor education, as this often impedes their ability to comply with regulations. Regulators say that contractors often report an inaccurate address on the registration application and/or disappear from the state, county or country at a moment's notice. Regulators do commend FLCs for their people and networking skills.<sup>12</sup>

The aim of this study was to explore the FLCs' current position in New Mexico, to look at labor contract regulation in other states and to establish a baseline of knowledge on the current farm labor contracting business environment, from which new regulations, standards and goals may be developed.

## Status of Farm Labor Contractors in New Mexico

Although there is extensive literature on the injustices visited on migrant fieldworkers and on the risks that growers face (Linder, 1992; Rothenberg, 1998), little research has focused on FLCs themselves. As of yet, few voices have emerged to present the farm labor contracting community's point of view (Stapleton, 2003, December 21). Clyde Eastman and Tom Bagwell (1994) surveyed FLCs in southern New Mexico in the mid-1990s and concluded that growers and farm workers would benefit from wiser contractors—ones who understood the rules, regulations and safety procedures required for legal compliance. They cited the propensity for inexperienced contractors to fail, most inconveniently, at mid-season. They recommended bonding and increased liability to cull poorly performing FLCs.

## Initial Survey

To follow up on Eastman and Bagwell's work, an initial survey of FLCs operating in southern New Mexico was conducted on March 4, 2004, during an agricultural employers' training workshop, organized by the New Mexico Chile Task Force in Las Cruces, N.M. Survey questions were drawn, in part, from a survey conducted by the California Employment Development Division in 1992. Workshop organizers suggested that the survey be short enough for respondents to complete in 15 minutes, due to limited time available on the workshop agenda. The survey instrument was developed using a modified Dillman (1978, 2000) method. The survey was approved

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<sup>11</sup> Personal interviews with five labor advocates in southern New Mexico, conducted over two months, May and June 2004, at the respective offices of the interviewees, or over the telephone. The interview research was approved by NMSU's College of Agriculture and Home Economics Survey Review Committee and Institutional Review Board.

<sup>12</sup> Interviews conducted with three representatives of regulatory agencies operating in southern New Mexico, conducted over two months, May and June 2004, at the respective offices of the interviewees, or over the telephone. The interview research was approved by NMSU's College of Agriculture and Home Economics Survey Review Committee and Institutional Review Board.

by the College of Agriculture and Home Economics' Survey Review Committee and the New Mexico State University Institutional Review Board. The survey instrument was translated into Spanish and offered to participants in both English and Spanish. A copy of the instrument is presented in Wood (2004). A total of sixteen completed questionnaires were received. This included a FLC employee and at least one grower who functioned as his own contractor.

The survey instrument was designed to gather information about FLCs' experience and scope of work, their ability to comply with legal regulations, and any business and educational weaknesses they may wish to rectify. Identifying information was not kept with the surveys. Subjects wrote their responses on the survey instrument, which was collected by the end of the seminar. The responses were entered into Excel™ and alpha entries were recoded numerically (a=1, b=2, etc.). Frequencies of responses were computed using the frequency array functions. Most questions were multiple choice; however, several questions offered an "other" category or were open-ended. Survey questions and responses are summarized in table 1.

Based on their personal experiences, the research team had expected certain answers. However, responses to several questions belied expectations. For example, more FLCs than expected indicated they were comfortable with computer technology. Accepting the response bias of this particular group, who would be the most law-conscious (as evidenced by their attendance at the seminar), there was a higher level of knowledge of laws than anticipated. This also was demonstrated by their participation in question-and-answer sessions at the seminar. A high level of regulation compliance was reported, as expected, as was a high level of interest in further education. However, the high level of reported compliance could actually be a response bias due to respondents' massaging of their answers to appear legal. Similarly, the survey population might exhibit some bias toward education, displaying more interest than non-attendees. Question five asked for a list of suggested topics for further training. One contractor expressed interest in information about unemployment insurance, two for piece-rate regulations and two more for pesticide safety.

Question seven asked if there were crops or tasks for which the FLC would not contract. Responses included lettuce and/or spinach (three responses), wheat/grain (one response), depends on situation (one response), only on major crops in Mesilla Valley (one response) and tractor work (one response). In addition, two FLCs reported that they would not contract for hourly wages. The crop and task responses were expected, the wage response was not. Question eight asked if the FLC had sought additional information on operating procedures; 11 respondents indicated they had consulted with government agencies – federal or state was not clarified. The Texas Employment Commission and the Department of Labor were the government agencies reported as most frequently consulted.

**Table 1. Summary of Initial Survey Responses**

Question	Response(s)	Number of Responses	Percent of Total Responses
1 I am comfortable using computers to run my farm labor contracting business.	Strongly Agree	9	56%
	Other	3	19%
2 I know enough to operate legally as a FLC, in compliance with all state and federal laws.	Strongly Agree	13	81%
	Agree	2	13%
	Neutral	1	6%
3 As a FLC, I do a better job complying with state and federal laws than other contractors.	Strongly Agree	7	44%
	Agree	9	56%
4 It is impossible to completely comply with all the farm labor contracting regulations with which I am expected to comply.	Strongly Agree	8	50%
	Agree	6	38%
	Disagree	2	13%
5 I am interested in additional training or continuing education about farm labor contracting.	Strongly Agree	1	6%
	Agree	15	94%
6 How many years have you been a FLC?	1-6 years	5	31%
	10-14 years	4	25%
	17-20 years	4	25%
7 Are there crops or agricultural jobs for which you will not contract?	Yes	11	69%
	No	5	31%
8 Where do you get information about operating your farm labor contracting business?	Government agencies (federal or state, not differentiated)	11	69%
9 What government agencies have you contacted for farm labor contracting information or assistance in the past five years?	Texas Employment Commission	2	13%
	Department of Labor (federal or state, not differentiated)	3	19%
10 Using the scale below, please rank today's Agricultural Employers' Training Seminar.	Very useful	8	50%
	Useful	8	50%
11 What topic was most informative to you?	Labor inspections	4	25%
	Transportation	1	6%
	FLC Capacities	2	13%
	All themes	3	19%
12 May we contact you in the future to ask more questions about farm labor contracting?	Yes	15	94%

## Detailed survey

During summer 2004, a more detailed survey of FLCs was conducted. The longer instrument incorporated questions from the 1992 California survey, as well as questions suggested by members of the local agricultural community. The survey instrument was developed using Dillman's (1978, 2000) methods. It was approved by the College of Agriculture and Home Economics' Survey Review Committee and the New Mexico State University Institutional Review Board. The survey instrument was translated into Spanish before administration. A copy of the long instrument is presented in Wood (2004).

The population frame for the large survey was the 160 FLCs currently registered with the United States Department of Labor's New Mexico/West Texas Office in El Paso, Texas. On July 9, 2004, surveys were sent to a random sample of 60 FLCs, drawn from the population frame. Surveys were sent to all those in the sampling frame with Las Cruces addresses (seven, total) even if their names were not included in the random sample. To assure confidentiality of responses, the surveys were not numbered in any way.

Subjects were sent an introductory letter, with necessary legal disclosures, and a 53-question survey instrument. The letter suggested that the process would require approximately 45 minutes, assuming some answers would be skipped. In an effort to maximize the response, researchers gave respondents the option of completing the survey over the telephone or during a personal interview. A phone number was included in the letter that accompanied the questionnaire. Reminder postcards were sent on July 16, 2004. Phone numbers for surveyed subjects were sought online through Dexonline.com, with some success. These numbers were called as an additional reminder.

## Results

A total of seven surveys were successfully completed (three by mail, four by phone), for a response rate of less than 10 percent. Of the three responses received by mail, one FLC was employed by the U.S. Forest Service and his responses, in general, are not incorporated into the data summary. Two of the telephone respondents self-identified as "drivers only" (information that was not provided by the sampling frame), and thus would be designated as farm labor contractor employees (FLC-Es). The responses from FLC-Es are interesting because public perception is that few drivers are licensed. An additional respondent requested a personal interview for free-form discussion of the situation instead of limiting himself to survey's questions. His responses are discussed separately. All of the surveys returned were completed in Spanish.

Survey questions were grouped by general topic: demographics; the FLC-grower relationship; FLC business practices; FLC contact with government agencies; compliance issues and FLC opinions about farm labor contracting and farm labor.

## Demographics

The first seven survey questions (questions 1-7) addressed demographics and general information about the FLCs. Respondents were born in Mexico but claimed proficiency in English. Their ages ranged from 34 to 73, averaging 54 years of age. On average, they had been FLCs for 8.2 years, ranging from one year to 15 years. They spent six to seven months each year working as FLCs. One worked for 40 growers, the rest for only one or two. Respondents hired from 20 to 70 workers, for an average of 44 workers. Three respondents reported six years of education, one reported nine years and another reported three.

## FLC/grower relationship

The next nine questions (questions 8-16) solicited information about the FLC's relationship with the grower-client. In addition to providing labor to growers, all respondents reported that they provided payroll services. One or two indicated that they also provided supervision, bookkeeping, or product processing services. All respondents indicated that they felt they were hired by growers in 2003 to assume responsibility for paperwork requirements and for their ability to speak "clearly and directly" with their workers. They also perceived that they were hired because of their access to available labor and/or because their relationships with the growers was "status quo." Most respondents reported that they had oral contracts with their grower-clients; one reported no use of any type of contract. Their contracts only applied to wages, although the respondent with no contracts reported that he discussed other services with the clients.

All but one respondent reported a Department of Labor visit in 2003. Four had been inspected by the Bureau of Citizenship and Immigration Services (formerly the Immigration and Naturalization Service).

## FLC practices

The next set of nine questions (questions 17-25) asked about FLC business practices, including recruitment and management of workers. None of the respondents provided transportation, housing or food to employees. One respondent reported providing check-cashing services. Half of the respondents reported that they expected workers to know safety and quality procedures and new regulations. The other half explained these in field meetings or in transit to fields. Only one respondent reported use of oral contracts with workers. The remainder reported that they implemented no contracts with workers, either written or oral. When asked if there were any crops or agricultural jobs for which they would refuse to contract, one respondent cited that he would refuse to clean ("limpia") chile, cotton, onion and lettuce fields. The wage reported paid by the surveyed FLCs was \$5.15 per hour. Only one responded that he occasionally paid piece rate. Half reported that

they paid different wages to different workers for the job when different growers paid on different scales or growers paid differently for various crops. The Forest Service contractor paid \$10 per hour plus \$2.50 cash fringe. Because he operated for the federal government he was required to provide workers' compensation and unemployment insurance.

## Agency contacts

The next three questions (questions 26-28) were designed to obtain information about FLC contact with government agencies. Some reported receiving operating information from the New Mexico Department of Agriculture (NMDA) (three responses) and government agencies, but they also reported receiving their operating information from growers and other FLCs. One stated that he had contacted New Mexico's Department of Labor (NMDL) for such information. Three reported that they had been inspected by the Bureau of Citizenship and Immigration Services (BCIS) and one by the U.S. Department of Labor (USDL).

## Compliance issues

The next eight questions (questions 29-36) asked about farm labor contracting in general, the difficulty in complying with regulation and problems that contractors encounter. Respondents reported that it was easiest to comply with sign posting regulations (three responses), transportation regulations (one response) and disclosure laws (one response). They cited that the most difficult laws with which to comply were housing, transportation insurance, disclosure and archiving. The laws reported as most often broken were proper deductions, transportation insurance, field sanitation and housing.

In an "open-ended" question about what regulations respondents would like to have modified, they cited USDL visits, minimum wage laws, and the burden of penalties. To survive in the competitive farm labor market, FLCs reported that they aimed to provide higher quality work and/or specialize in specific crops.

Half the respondents found that alcohol/drug abuse limited the available labor pool. One respondent reported neither alcohol/drug consumption in his fields nor that substance abuse affected work quality. The rest reported one or more instances of unsatisfactory work due to chemical influence.

## FLC opinions/attitudes

The final section of the survey was aimed at determining FLC's opinions about various aspects of farm labor contracting and farm labor, as well as their use of business technology and bookkeeping practices. Concerning their ability to operate as FLCs, all respondents felt confident. However, two respondents indicated that they planned in their budgets for civil monetary penalties for noncompliance, indicating

that they considered it difficult to be in compliance with all regulations. Three respondents indicated that they do not budget for fines/penalties. One claimed to have contested penalties in the past. No interest was expressed in contesting future fines. Half were interested in additional education and training in farm labor contracting. Concerning required paperwork and regulations, no one expressed discontent with the amount of paperwork required. There was much more discontent with the burden of the FLC registration process. Half of the respondents wanted to increase the difficulty of registration. Despite their answers in the previous section about their personal experience with drug or alcohol use by laborers in the field, all agreed, strongly, that alcohol/drug abuse is a problem among farm workers, and that it lowers the quality of field work. Concerning business technology and bookkeeping practices, most said they were comfortable using computers and could afford to use one, or showed interest in federal assistance to purchase such technology. All respondents said they provided their registration number to growers, half to employees as well. Only half said they provided pay stubs or written statements of deductions to growers or workers, although the law requires that they do so.

### **Additional interview**

An eighth respondent requested a personal interview, indicating he felt he could not properly answer the questions in writing. He labeled the farm labor system as “totally corrupt.” He alleged that the typical FLC was guilty of tax violations, that the inspection system was impotent, that there was utter absence of fear regarding U.S. Department of Labor visits, that the civil monetary penalties against FLCs were too small to be an effective regulatory strategy and that there exists an “ol’ boys” system of employment between growers and favored FLCs. He also alleged that some FLCs sold alcohol in the fields or allowed others into the fields to sell it and that unlicensed vendors were allowed to sell food. He suggested that farm workers should be required to bring their own lunches. He would like to see bonding or insuring of FLCs for wages and taxes and workers’ compensation.

Some of the results of this survey were consistent with the survey conducted in California in 1992 (Rosenberg et al., 1992). Most of the FLCs are Hispanic, from Mexico, 40 to 50 years of age, with three to six years of education. Written contracts are not a common business practice, and about 80 percent have been inspected by a government agency. California FLCs tended to operate far larger crews for many more growers. They approached insurance companies and local agriculture commissioners, as well as magazines and growers associations, for information on improving their businesses.

## Farm Labor Contracting in Other States

States with significant agricultural industries have varying degrees of labor contractor regulation over and above federal regulation (table 2). California and Florida are two of the more proactive states in agricultural labor law, but are at opposite ends of the farm labor contracting spectrum. California, a pro-union state, has been very proactive in regulating FLCs at the state level. Florida is a grower friendly state that has mostly relied on federal laws. Idaho and Washington have recently increased their expectations of FLCs. California, Florida, Idaho, Oregon, Maryland and Michigan all have some state regulation over and above federal regulation. Arizona and Texas, like New Mexico, have no state regulations over and above federal regulations. Colorado requires a state license, which requires proof of federal registration and proof of workers' compensation coverage. Colorado also has a non-financial agreement with the Internal Revenue Service to check the applicant's last three years' tax returns, which helps Colorado identify unfit applicants.

Florida's FLC operations are generally small, family-sized operations. Florida relies heavily on federal law to regulate FLCs and protect farm workers. The state's licensing exam is true-false; may be taken in English, Spanish or Haitian Creole, orally or written; passing requires 75 percent correct responses; there is no limit on the number of times the test may be attempted, and once passed, it need never be taken again. Florida's bonds are not large enough to cover legal fees to pursue lost wages. Florida's farm labor market continues to suffer the malfeasance of illicit or ignorant contractors (Stapleton, 2003, December 21).

California, on the other hand, has seen reforms in the past decade as a result of its accumulating regulation of farm labor contracting (Galvan, 2000; Pollock, 2002). California's exam is the longest state exam. It must be taken in writing, in English (or, for an additional fee, in Spanish), is multiple choice and true-false, requires a score of 85 percent to pass, and can only be attempted three times in a calendar year. It must be retaken every two years. California's bond requirement has three levels according to the FLC's payroll size (table 2), and wage bonds are large enough to cover several grieved workers if a contractor failed to pay wages owed. There is also a continuing education requirement for California's FLCs. California started out with laws similar to Florida's, but over the years, the grower groups, labor advocacy groups, and state legislature responded to the needs for change. In 1978 California also took the additional step of instituting an Agricultural Labor Relations Board to fill the gap left by the National Labor Relations Board (established in 1935 to mediate between organized workers and employers), which does not cover agriculture.

California has seen the number of FLC licenses granted drop in the past few years either due to a saturation of the market after decades of growth or because only legal, educated operators can survive. California has seen the growth of FLC groups, such as Farm Labor Contractors for Safety and Compliance, the Labor Contractor

**Table 2. Summary of FLC regulation in several agricultural states**

	CA	FL	CO	NM	ID	WA	OR	AZ	TX	OK
Does FLC regulation rely mostly on federal law?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (unless workers pay a fee to FLC)
Has a state license?	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	
Are FLCs required to obtain a surety bond?	Yes \$25K if payroll < \$50,000 \$50K if payroll > \$50K, but < \$2 mil \$75K if payroll > \$2 mil									
Is there a state licensing test?	Yes	Yes on a 6th grade level	Yes, No	Yes	Yes	Yes	No	No	No	
Number of questions on test		60								
Type of questions	True/false Multiple choice	True/false, Guide available, with audio cassette								
Language options	Written only, Spanish version may be purchased	Written in English, Spanish, and Haitian Creole. Driver's license proof required								
Number of test retakes allowed	3 per year	Unlimited								
Re-up exam?	Every two years	Never								
Exam cost?	Yes, extra for Spanish									
Passing grade	85%	75%								

Sources: Stapleton (2003, December 9; 2003, December 21), "Bonding" (2002) and personal telephone communication.

Roundtable, the California Association of Farm Labor Contractors and a subgroup of the Western Growers Association.

States such as Idaho and Washington, with large timber industries, incorporate timber crews into their laws. States such as New Mexico, where agriculture provides a small amount of state income, have few if any state-level regulations. There are similar divisions based on population demographics: States with large minority populations, such as California and Florida, have more regulations than states with small minority populations, such as Maryland or Idaho. States farther from international borders have more concern for housing regulation than those states in which FLCs can operate day-haul crews.

As more labor laws are applied to agriculture, the incentives for growers to remove themselves from labor management actions will grow. California research (Krissman, 1995; Thilmany and Martin, 1995; Vaupel, 1992) has shown a surge in the quantity of FLCs hired in California, as well as the quantity of farm workers who work through FLCs. This trend coincided with the passage of IRCA and has risen along with the litigation that IRCA has spawned. An honest, compliant FLC will require a commission rate of 30 percent or more of the payroll to cover all wages, taxes and provisions, and retain a wage for his or her own work.

## Conclusion and Recommendations

Due to the low survey response rate, it is impossible to draw any major conclusions about farm labor contractors in New Mexico. Polopolous and Emerson (1991) found that FLCs are often difficult to survey due to the itinerant nature of their work, irregular work hours, language barriers and topics of interest to the researcher that FLCs may consider legally sensitive. This appeared to be true in the current study, and future research efforts will need to address this issue.

However, information gleaned from the FLCs surveyed, combined with that from interviews with southern New Mexico growers, labor advocates and regulatory personnel and from reported experiences of other states, points to some general areas that may be investigated as ways to improve the farm labor contracting process in New Mexico. These include:

1. Requiring FLC applicants to show proof of federal registration, transportation insurance, workers' compensation insurance and good tax payment history.
2. Requiring FLCs to submit their current state driver's licenses and records and submit to a cross-check to ensure that their families are not involved in criminal businesses.
3. Requiring growers to ascertain that their FLCs are operating legally, or face civil monetary penalties.
4. Standardizing the pay-stub form at the state or federal level.
5. Implementing a licensure exam.

6. Increasing the number of Department of Labor, Bureau of Citizenship and Immigration Services, Department of Health, and Internal Revenue Service agents to improve regulatory effectiveness and provide FLC education/training.

Resistance to reforming farm labor contracting is strong. The contractors themselves lack the capital, time or wisdom to understand or afford the potential benefits of regulation and education. Labor advocates do not want to expend time or energy on the contractors because they want contractors removed in toto, in exchange for full responsibility by farmers. Farmers do not want to lose their legal buffers. For farmers, the contractors provide mediation across cultures, in addition to management and translation. Regulators would welcome better-educated contractors who could be expected to comply with laws due to their elevated education.

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## New Mexico Chile Task Force Publication List

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