
POLICY AMENDMENT FORM

2
3 Amendment to: Section 10 Agriculture Infrastructure
4 (Policy Title)

5
6 Section Number /Title to Be Amended: all sections under consideration

7
8
9 Subject of Amendment: Agriculture Infrastructure

RD-2

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12 Submitted By_ Commissioner Roger Johnson
13 (Name)

North Dakota
(State)

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16 Amendment Text (Please write legibly):

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19 See attachment – Section 10 Agriculture Infrastructure

20
21
22 Also See Policy Revisions Key

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27 Signature submitted electronically

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1 **10. Agriculture Infrastructure**
2 Last updated: January 25, 2007

3 • 10.1 Introduction

4 Labor management problems, transportation inadequacies, and the increasing concentration
5 among suppliers can have adverse effects on the agriculture industry. NASDA believes in
6 maintaining fairness and equity within the agriculture community through the development of a
7 strong agriculture infrastructure.

8 The twentieth century was “America’s century,” and the success of our agricultural sector was
9 critical to the nation’s preeminence. Infrastructure investments made in the nineteenth and
10 twentieth century led our country into prosperity. Railroads, highways, electricity,
11 communications and education — ~~linking rural areas with urban, and the world, both physically~~
12 ~~and socially, provided rural areas with physical and social connections to the urban and world~~
13 ~~communities. were costly~~ Although expensive, but these necessary investments that enabled the
14 people of the United States to become the best fed at the lowest price of any people in history.
15 That infrastructure is crumbling however as we begin a new century.

16 ~~With N~~ nearly half of our agricultural production is exported, and a large factor in our
17 competitiveness in the world marketplace has largely been resulted from the efficiency of our
18 transportation system. Without a substantial investment in our infrastructure, we cannot hold our
19 preeminent position in food production.

20 • 10.2 Agricultural Labor

21 For decades, the most labor-intensive sectors of American agriculture have been dependent on
22 alien workers to meet basic workforce needs. In recent years, almost all sectors have dealt with
23 labor shortages by employing alien workers. Regulatory efforts to protect this segment of the
24 workforce from unfair treatment and exploitation while striving to avoid the displacement of
25 U.S. workers by underpaid immigrant labor have exacerbated the ills they were designed to
26 cure. By using their authority to make it extremely difficult for agricultural employers to utilize
27 legal temporary worker programs, governments have enhanced the economic incentives that
28 underpin a thriving traffic in illegal workers.

29 ~~The present situation — characterized by a~~ A predominance of workers whose right to work in
30 the United States is supported by documentation of dubious veracity or no documentation at all
31 is untenable ~~in the long run. However, The short-term consequence of an immediate expulsion~~
32 of this segment of the workforce would cause a production crisis in a wide range of field and
33 orchard crops, ~~and in the livestock industry.~~ This would leave the United States no alternative
34 but to import many food products from poorer countries that have surplus farm labor. Any
35 workable solution to the current, unstable situation must deal with the rights of both foreign and
36 U.S. workers, with the status of alien workers now employed in the U.S. agricultural sector, and
37 with the conditions under which foreign workers may be employed in the future.

1 The U.S. agriculture industry upholds a high standard of humanitarian and basic rights for all
2 workers in all nations. All nations should implement uniform standards regarding workers
3 rights, labor laws, housing, and environmental laws.

4 • Rights of Agricultural Workers

5 Legal ~~A~~alien workers should receive the same wages, benefits, and protections as U.S. citizens
6 working in the same jobs. The wage standard for agricultural labor should be the prevailing
7 local wage rate, subject to applicable state and federal minimum wage legislation. Alien workers
8 should not be permitted to fill positions vacant as the result of a strike, lockout, or work stoppage
9 ~~as a resulting of from~~ a labor dispute. Laws and regulations should be crafted in such a way as to
10 discourage litigation and facilitate rapid dispute resolution. Alien workers should have the right
11 to return to their homes and families during vacations and gaps in legal employment without
12 jeopardizing their right to return to that employment.

13 • Temporary Agricultural Workers

14 ~~The history of the U.S. agricultural labor market, particularly in the last half century, suggests~~
15 ~~that there will probably never be a time that there is an adequate supply of native born workers~~
16 ~~willing to perform entry level work in labor intensive segments of the agricultural industry.~~
17 ~~Laws and regulations that pretend that this is not the case—or that imply that the industry can~~
18 ~~pay wages far higher than state and federal minimum wages and still compete with imports—will~~
19 ~~assure the persistence of a large underground agricultural labor force. A workable temporary or~~
20 ~~guest worker program is urgently needed. A reform of the current H2A visa program designed~~
21 ~~to simplify the application procedure, decrease paperwork, and expedite approvals, is a good~~
22 ~~starting point. The burden of proof that a labor shortage exists, as well as an adverse impact~~
23 ~~wage formula designed to augment rather than protect prevailing wage rates, are two reasons~~
24 ~~why the current program covers only a small percentage of the alien agricultural workforce~~
25 ~~currently employed.~~

26 Due to the diversity, scale, and nature of agriculture in this country, there is not currently an
27 inadequate number of U.S. workers to fill the labor pool needed by this industry. The very
28 nature of agriculture ~~dietates that it~~ does not ~~have~~ allow the luxury of downsizing or cutting back
29 when workers are scarce. ~~In order t~~ To continue providing the supply of food, and fiber and fuel
30 that this country has come to expect ~~from our farmers and ranchers~~, immigration reform
31 legislation must include a usable and affordable guest worker program. ~~This type of program~~
32 should be implemented in conjunction with a Any revisions to current immigration law and
33 should include an adequate transition period. Without this critical transition period, ~~we run~~ the
34 risk of ~~having~~ prolonged and costly disruptions to agriculture and agri-business production and
35 could jeopardize the nation's safe and abundant food supply.

36 • Identification of Agricultural Workers

37 NASDA encourages the federal government to develop an identification system that will provide
38 the United States reassurance that its national security is not being compromised while
39 facilitating the availability of migrant farm workers to our agricultural producers.

1 • Adjustment of Status

2 ~~A workable means of regularizing the status of current agricultural workers is a critical element~~
3 ~~of any long term solution to the temporary worker problem, since it will take some time to get~~
4 ~~the kinks out of a reformed guest worker program. Policies should allow workers already~~
5 ~~employed in agriculture and willing to commit to future employment in the industry to have their~~
6 ~~de facto position in the labor force recognized, and should remove sanctions that preclude their~~
7 ~~ever participating in the workforce on a legal basis. This will help the agricultural industry meet~~
8 ~~its immediate labor requirements without knowingly or unknowing violating current immigration~~
9 ~~laws, while placing current alien workers under the protections that all participants in the U.S.~~
10 ~~agricultural workforce are guaranteed.~~

11 A workable means of regularizing the status of current experienced agricultural workers is a
12 critical element of any long-term agricultural labor solution. Policies should allow workers
13 already employed in agriculture and willing to commit to future agricultural employment to have
14 their position in the labor force recognized, and should remove sanctions that preclude their
15 participating in the workforce on a legal basis. Earned adjustment of status provisions will
16 stabilize the labor force and facilitate an orderly transition to wider reliance on legal foreign
17 workers as needed capacity is built at U.S. consulates and on the farm.

18 NASDA supports the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS) and
19 believes the legislation is critical in securing a legal work force for agriculture as well as
20 regularizing the status of current agricultural workers

21 • Federal Agencies

22 The vast majority of all agricultural producers are in full compliance with all state and federal
23 laws and regulations regarding the treatment of farmworkers. NASDA urges the U.S.
24 Department of Agriculture, U.S. Department of Labor, U.S. Department of Justice, and the U.S.
25 Department of State to enforce existing immigration, labor, worker safety and border patrol
26 laws. In addition, NASDA further urges these agencies to increase education and outreach
27 efforts with producers to ensure they have the information necessary to comply with these
28 relevant laws. These agencies should assist NASDA in disseminating information that
29 accurately depicts the current treatment of farmworkers by agricultural producers.

30 • Fair Labor Standards Act

31 Although the Christmas tree industry has changed considerably over the years to its current
32 agricultural state, it is sometimes still classified as non-agricultural. Most state departments of
33 agriculture, the Internal Revenue Service, U.S. Department of Agriculture, and the U.S. Office of
34 Management and Budget have defined agricultural commodities to include Christmas trees, ~~H~~
35 H However, the U.S. Department of Labor has interpreted the Fair Labor Standards Act of 1938 to
36 exclude Christmas tree farming from its agricultural definition. This poses significant confusion
37 and regulatory challenges for U.S. Christmas tree producers.

1 NASDA supports legislation that would amend § 203(f) of the Fair Labor Standards Act to
2 include Christmas trees within the definition of agricultural or horticultural commodities.

3 • 10.3 Agricultural Transportation

4 The U.S. agriculture industry relies heavily on a consistent and dependable transportation system
5 including rivers, rail, and roadways. A collapse of any part of the current transportation system
6 will be a detriment to the survival of the agriculture industry.

7 • River Transportation

8 ~~Improvements in the U.S. waterway system are urgently needed. These aging structures can no~~
9 ~~longer accommodate the traffic volume or the physical size of today's carriers. The dependency~~
10 ~~that our Farmers and ranchers have an enormous dependence on the U.S. waterway system is~~
11 ~~enormous. According to USDA, data show barges typically account for transport about 50~~
12 ~~percent of the all U.S. grain exports movement of grains from the U.S. including around 68~~
13 ~~percent of Soybeans, utilize barge transportation for about 68 percent of exports, wheat about 58~~
14 ~~percent of wheat, and corn about 65 percent of corn. The reciprocal dependency between~~
15 ~~agriculture products and grain barges is evident reciprocal with waterborne transportation relying~~
16 ~~on field crops for 80 percent and agricultural inputs for 16 percent of its traffic and agricultural~~
17 ~~inputs for 16 percent.~~

18 Typical single unit tows on the Upper Mississippi River move about 22,500 tons as a ~~single unit,~~
19 which is equivalent to about 225 rail cars or 870 tractor-trailer units. ~~On the~~ The topography of the
20 Columbia-Snake system in the Pacific Northwest, the topography is steeper and there is
21 demands a greater need for dams and locks. Nonetheless, a single tow ~~there~~ of three barges
22 moves about 10,000 tons equivalent to 100 rail cars or nearly 400 trucks.

23 River transport of bulk and cargo containers of agricultural products is critical to many areas of
24 the country. In addition to the crucial role that dams and locks play in the transportation of
25 agricultural commodities, they are also critical in the nation's energy mix as a source of clean
26 energy. For example, in the Pacific Northwest, the Snake River and Columbia River dams
27 generate 40% percent of the hydropower in the United States.

28 Many rural and urban communities rely on the river systems, ports, reservoirs, irrigation, and
29 other structural components of dams. In recent years, significant investments have been made in
30 these systems to accommodate fish passage and other wildlife issues. Indeed, most salmon
31 recovery programs in the Northwest are financed by the Bonneville Power Administration,
32 which spends \$435 million a year on the effort. Ratepayers, including farmers and ranchers, are
33 financing these efforts. On-going efforts will continue to address conservation and wildlife
34 needs; but, the social fabric and economic reality of rural and urban areas rely on riverway
35 infrastructures.

36 Much of the nation's imported and exported agricultural products are transported through port
37 facilities linked to waterways and the nation's lakes and rivers. If we are unable to move
38 agricultural products in an efficient manner, the ~~United States~~ will become ~~less and less~~

1 competitive in export markets and we will lose domestic markets as well. Specifically, one of
2 the U.S.' biggest competitors, Argentina, has recently invested more than \$650 million in a
3 dredging project. ~~The effect of t~~ This project has ~~been a lowering of~~ ocean freight rates paid
4 by Argentine grain exporters. Furthermore, more dredging is planned. This, paired with
5 government economic reforms encouraging grain production, will ~~find more of~~ increase
6 Argentina's grain competitiveness in the world market ~~competing~~ and with U.S. product. China
7 is also rapidly improving its waterway system.

8 Improvements in the U.S. waterway system are urgently needed. These aging structures can no
9 longer accommodate the traffic volume or the physical size of today's carriers. NASDA
10 supports adequate funding and continued investment in these facilities for our nation's trade and
11 food security interests. NASDA supports efforts to fund lock and dam maintenance and
12 improvement programs necessary for the continued operation for safe and efficient commercial
13 navigation on the U.S. rivers and lakes.

14 Under section 404(f) of the Clean Water Act, permits are not required for various activities, such
15 as normal silviculture, as long as certain conditions are met. Section 404, which regulates the
16 discharge of dredged and fill material into waters of the United States, is jointly administered by
17 the Corps of Engineers and the Environmental Protection Agency. The Corps has additional
18 authority to regulate obstructions, structures and activities under section 10 of the Rivers and
19 Harbors Act of 1899 that impede the course, condition and navigational capacity of navigable
20 waters. However, ongoing forestry operations in wetlands that qualify as "normal silviculture"
21 under section 404(f) of the Clean Water Act have not been subject to the permit requirement of
22 section 10 of the Rivers and Harbors Act. NASDA urges that ~~the discharge of dredged or fill~~
23 ~~material into waters of the United States from normal farming, silviculture, and ranching~~
24 ~~activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of~~
25 ~~food, fiber, and forest products and including the placement and use of temporary structures for~~
26 ~~soil and erosion control protection, or upland soil and water conservation practices;~~ remain
27 subject to section 404(f) of the Clean Water Act (33 U.S.C. 1344(f)), ~~but is not be~~ prohibited by
28 or otherwise subject to regulation under section 10 of the Rivers and Harbors Act (33 U.S.C.
29 403); ~~but shall remain subject to section 404(f) of the Clean Water Act (33 U.S.C. 1344(f)).~~

30 • Rail Transportation

31 Farmers and ranchers face unique challenges in the global market, and require a dependable and
32 affordable means of transportation for their product. Weather, market conditions, and mergers
33 have impacted the rail transportation industry causing grain car shortages, especially in the upper
34 Midwestern states. Farmers and ranchers already operate on exceedingly low profit margins—this
35 paired with dramatic fluctuations in world economies places them in a financially precarious
36 environment that Congress has taken a special interest in addressing. ~~Unreliable transportation~~
37 ~~or non-competitive shipping rates simply accelerates the downfall of~~ exacerbate an already
38 struggling farm economy. Many of these farmers and ranchers are captive rail customers who
39 have an irrevocable tie to the railroads because, in many cases, there are no without logical or
40 affordable alternative modes of transportation ~~which make logistical or economic sense.~~
41 Agricultural shippers in some parts of the United States are paying the highest rail freight rates
42 for, arguably, the most sporadic and unreliable service. ~~These~~ Agricultural producers need a
43 clearly defined means for securing reliable service at a reasonable rate.

1 A review of the past 20 years of regulatory precedent demonstrates that rail regulators, ~~when~~
2 ~~faced with the appearance of policy conflicts between the policies favoring~~ competition and
3 ~~policies focusing on ensuring the revenue adequacy of the railroad industry~~ revenue, invariably
4 gave the rail industry's bottom line preference. If Congress truly intended for competition to be
5 the regulator of choice — , among rail carriers as well as with other modes — , ~~the priorities of~~
6 ~~this policy needs~~ to be clarified legislatively, ~~and competition must be provided for.~~

7 ~~There are several causes of grain car shortages. One cause is the d~~ Dramatic increases in grain
8 export demands over a short delivery period. , ~~A second cause is the result of rail mergers.~~
9 ~~Another cause are the and~~ Commodity Credit Corporation's (CCC) loan requirements are a few
10 causes of grain car shortages. Most CCC loans are due at or near harvest time when great the
11 volumes of new crops are being transported already overtax the system. ~~When these CCC loans~~
12 ~~are also due it is typically~~ when grain prices are typically at their lowest point during the year.

13 To address rail transportation inadequacies, NASDA encourages USDA to consider moving
14 CCC grain under loan into the market at various intervals and over a longer period of time so as
15 to balance the shipping needs through out the year. ~~Finally, t~~ The Secretary of Agriculture
16 should also be provided the discretionary authority to extend Commodity Credit Corporation
17 (CCC) loans for up to six months for economic or other emergency reasons including economic
18 or other emergency situations. We believe this increased flexibility in loan maturity ~~will~~
19 encourage could facilitate more orderly shipments of grain.

20 We also believe ~~that~~ monthly rail shipper survey information should be published and that the
21 Surface Transportation Board's National Grain Car Council should implement a mechanism that
22 permits shippers to seek nonperformance arbitration.

23 Congress should require rail carriers, upon request, to quote a rate between any two points on the
24 system where traffic originates, terminates or may reasonably be interchanged without regard to
25 whether the rate is for only part of the total movement. Also, upon request, small, captive
26 agricultural shippers should be provided with a simple benchmark test for rate and service cases.

27 NASDA urges all railroads to charge reasonable rates; and offer fair, ~~and~~ consistent and
28 equitable rate spreads, ~~and~~ service ~~to all shippers~~, and treatment to all shippers equitably.
29 NASDA also encourages railroads to offer co-loading of trains, and to have reasonable loading
30 policies that hold both shippers and railroads responsible for moving equipment promptly.
31 NASDA believes that Congress and the federal government should substantially increase
32 oversight of railroads, including rates and services, where competition is not present.

33 ~~Finally, the Secretary of Agriculture should be provided the discretionary authority to extend~~
34 ~~Commodity Credit Corporation (CCC) loans for up to six months for reasons including~~
35 ~~economic or other emergency situations. We believe this increased flexibility in loan maturity~~
36 ~~will encourage more orderly shipments of grain.~~

37 • ~~Transportation of Hazardous Materials~~

1 The U.S. Department of Transportation has approved a new rule, effective September 25, 2003,
2 requiring security plans when transporting any material in quantities that requires the shipment to
3 be placarded. Currently only diesel fuel is required to be placarded by farmers. The new rule
4 expands the placarding requirements to a number of agricultural inputs. As a result, security
5 plans must be approved for materials such as pesticides, fertilizers, anhydrous ammonia, diesel
6 fuel, etc. in excess of 119 gallons or 1000 pounds. According to the Department of
7 Transportation, this rule does not nor will not provide an exemption to farmers and ranchers
8 when transporting these products from the place of purchase to the end use site. Approval of the
9 security plans and the enforcement of the rules are to be done at the state level without additional
10 funding to the proper enforcement agency. These requirements will affect many farmers across
11 the U.S. NASDA does not support application of this rule to farmers and ranchers and urges the
12 Department of Transportation and Congress to provide an exemption for agricultural producers.

13 • 10.4 Weights and Measure - National Measurement System

14 NASDA recognizes the need for a nationally uniform and effective weights and measures
15 system. A sound weights and measures system is critical to national and international commerce
16 ~~in the national and international marketplace~~. Measurement standards are essential for fair
17 competition, promoting good business practices and protecting consumers. The individual states,
18 territories and local jurisdictions conduct weights and measures enforcement in the United
19 States.

20 ~~NASDA recognizes the value of the national measurement system and the various organizations~~
21 ~~involved in weights and measures~~. States, industry representatives and the National Institute of
22 Standards and Technology (NIST) join together under the National Conference of Weights and
23 Measures (NCWM) to promulgate regulations ~~on a consensus basis~~ in the form of national
24 handbooks. The handbooks are commonly adopted by the individual states as regulations or are
25 used as models to develop regulations with the intent of providing a nationally uniform
26 measurement system. The ~~National Institute of Standards and Technology (NIST)~~, a branch of
27 the Department of Commerce, provides expert guidance on technical matters, interpretations of
28 the national handbooks, training on measurement topics and accreditation of state metrology
29 laboratories.

30 Decreased funding by states, increased operating costs and ~~the resulting~~ variations in state
31 program ~~operations~~ administration have led to a lack of uniformity in weights and measures
32 laws, ~~in regulations and methods of inspection, and is causing an erosion of buyer and seller~~
33 ~~confidence in the market place~~. Lack of uniform enforcement exposes businesses and consumers
34 to the potential of fraud and erodes buyer and seller confidence in marketplace measurements.
35 Non-uniformity also subjects marketers to a patchwork of state and local requirements, which
36 ~~becomes a seriously~~ impediments to efficient and effective commercial distribution systems and
37 may lead to reduced government tax revenues. ~~Lack of uniform inspection and enforcement~~
38 ~~capabilities can result in buyer and seller being cheated, government tax payments avoided and a~~
39 ~~general distrust in market place measurements~~.

40 NASDA recommends A federal grant program to help states restore and strengthen the weights
41 and measures system ~~should be approved by Congress~~. ~~The grant, a~~ Administered by NIST,

1 ~~would provide assistance to the states in restoring and upgrading their capabilities and capacity.~~
2 ~~¶ the grant program would provide a method by which funding for the states, federal~~
3 ~~government, and NCWM could work in partnership to establish programs to improve uniformity~~
4 ~~and strengthen weights and measures programs, thereby restoring confidence in our national~~
5 ~~measurement system.~~

6
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