

December 2, 2024

The Honorable José Javier Rodríguez
Assistant Secretary of Employment and Training
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Employment and Training Administration
Department of Labor
200 Constitution Avenue NW
Room N-5311
Washington, DC 20210

Re: Request for the Department to rescind *Improving Protections for Workers in Temporary Agricultural Employment in the United States*, 89 Fed. Reg. 33898 (April 29, 2024):

Dear Assistant Secretary Rodríguez and Administrator Pasternak:

The undersigned organizations respectfully request that you rescind the final rule *Improving Protections for Workers in Temporary Agricultural Employment in the United States*, 89 Fed. Reg. 33898 (April 29, 2024) (hereinafter “Final Rule”) following several federal court decisions that call into question its legality. As a result of the Final Rule being enjoined by numerous courts, and the Department attempting to apply different rules to different H-2A applicants and employers, farmers are now facing an uneven and unclear regulatory process that renders the rule unworkable.

The H-2A temporary agricultural worker program is critical to the American economy and national security. A country that cannot feed itself cannot defend itself and the H-2A temporary agricultural worker program ensures that American farmers are able hire sufficient labor to plant, cultivate and harvest crops where there are insufficient numbers of willing, able and available American workers to fill those positions.

In August 2024, a court in Georgia enjoined the Final Rule for 17 states, an agricultural association, and a Georgia farm. *See State of Kansas et al. v. United States Department of Labor et al.* Following that decision, the Department of Labor created separate application and compliance systems for employers seeking to utilize the H-2A system, one for those in the impacted states and an entirely separate one for those outside of them. This unequal system created confusion for agricultural employers seeking to comply with the Final Rule.

Now, two additional courts have determined the Final Rule is illegal. A federal court in Kentucky determined major portions of the Final Rule are illegal and the Department’s efforts to establish separate application systems resulted in an impossible compliance burden on employers. *See Barton et al. v. United States Department of Labor et al.* In addition, a federal

court in Mississippi also found major portions of the Final Rule illegal and issued a nationwide stay prohibiting the Department from implementing or enforcing those elements. *See International Fresh Produce Association et al. v. United States Department of Labor et al.* And, of course, there is a fourth challenge to the Final Rule currently pending in federal court in North Carolina.

These numerous federal court decisions determining the Final Rule is illegal mean that the Department cannot fairly implement or enforce the Final Rule without causing further confusion and uncertainty for American farmers and the agricultural economy. In the wake of these infirmities identified by numerous courts around the country, the Department is left with a patchwork of regulations creating numerous conflicts among the regulations applicable to different employers within a single state or region.

Given this untenable compliance and enforcement situation, the Department must rescind the Final Rule immediately and revert to the previous regulations in place in order to provide rationality and certainty in the H-2A program. Time is of the essence as farmers are already filing H-2A temporary labor applications for the upcoming season and are unsure about which regulations will ultimately govern their applications and H-2A employment.

We implore the Department take action immediately to rescind the Final Rule and provide certainty to America's farmers and ranchers.

Sincerely,

American Farm Bureau Federation
AmericanHort
Florida Fruit & Vegetable Association
International Fresh Produce Association
Northwest Horticultural Council
North American Blueberry Council
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Potato Council
USA Farmers
US Apple Association
Western Growers