



September 12, 2024

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, and Minority Leader Jeffries:

We are writing on behalf of over 100 agricultural entities and associations to ask that Section 119 of the FY25 Labor, Health and Human Services, Education, and Related Agencies (“LHHS”) Appropriations bill as passed in Committee precluding implementation of a Department of Labor (“DOL”) rule governing the H-2A temporary agricultural worker program be included in the Continuing Resolution now under consideration. It is absolutely imperative that relief be provided to America’s farmers now given recent legal developments.

On April 29, 2024, the DOL published a final rule entitled Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33,898 (Apr. 29, 2024) (“Final Rule”). This Final Rule contains numerous troubling provisions, including providing National Labor Relations Act (“NLRA”) type protections for H-2A workers and some U.S. agricultural workers (despite Congress excluding ag workers from NLRA coverage), imposing onerous personal information collection and sharing requirements on farmers, providing access to private property of a farmer without permission, and many other misguided “protections” that exceed DOL’s statutory authority and will seriously impact the agriculture industry. Agricultural producers sought the “no such sums” language included in the FY25 LHHS House bill to address this statutory overreach while also pursuing legal challenges.

In June, 17 State Attorneys General, a Georgia agricultural association, and a Georgia farm sued DOL in the United States District Court for the Southern District of Georgia challenging the Final Rule under the Administrative Procedure Act and seeking a preliminary injunction.¹ On August 26, 2024, just three days before the Final Rule was to go into effect, the judge issued a decision enjoining the Final Rule (“Order”). However, instead of entering a nationwide injunction halting the Final Rule, the judge entered a narrower injunction restricting DOL from

¹ The preliminary injunction specifically prohibits DOL from enforcing the Final Rule in the states of Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia.

enforcing the Final Rule in only the 17 states that were plaintiffs to the suit. Late on August 28, 2024, DOL temporarily postponed its transition to the Final Rule to assess “various options to comply with the Order.”

However, on September 10, 2024, DOL announced that it was proceeding to implement the Final Rule in the 33 states not covered by the Order, giving agricultural producers in those states only one day’s notice before having to comply with the Final Rule’s new filing requirements. As it stands, American farms relying on the H-2A program to meet their labor needs are subject to different H-2A program regulations depending on their location, causing greater confusion and potential compliance issues, because DOL insists on enforcing the Final Rule already deemed illegal by a federal judge.

We are calling on you to correct this injustice immediately by including in the CR Section 119 of the FY25 LHHS bill or, at a minimum, include language instructing DOL to apply the injunction issued in the Southern District of Georgia nationwide during the pendency of the litigation. This would simply provide a level playing field for all of America’s farmers and ranchers and provide much needed clarification about the enforceability of the DOL Final Rule nationwide.

Thank you for prompt attention to this important matter to American agricultural producers.

Sincerely,

American Farm Bureau Federation
AmericanHort
Florida Fruit & Vegetable Association
International Fresh Produce Association
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Farmers Union
National Milk Producers Federation
National Potato Council
USA Farmers
U.S. Apple Association
Western Growers Association