



The Honorable Kimberly Vitelli  
Administrator, Office of Workforce Investment, Employment and Training  
Administration  
Department of Labor  
200 Constitution Avenue NW,  
Washington, DC 20210

The Honorable Brian Pasternak  
Administrator, Office of Foreign Labor Certification, Employment and Training  
Administration  
Department of Labor  
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The Honorable Daniel Navarrete  
Director of the Division of Regulations, Legislation, and Interpretation, Wage and  
Hour Division  
Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

September 2, 2025

*Via electronic submission to [www.regulations.gov](http://www.regulations.gov)*

Dear Administrator Vitelli, Administrator Pasternak, and Director Navarrete;

On behalf of the AmericanHort Board of Directors and our nationwide network of members, I submit this comment in strong support of the Department of Labor’s proposed rescission of the 2024 Final Rule entitled “Improving Protections for Workers in Temporary Agricultural Employment in the United States.” 89 Fed. Reg. 33898 (Apr. 29, 2024) (hereinafter “2024 Rule”). AmericanHort is the leading national trade association for the horticulture industry, representing 20,000 members and their affiliated businesses across the country. Our diverse membership includes greenhouse and nursery growers, breeders, garden retailers, interior and exterior landscape professionals, florists, educators, and suppliers. Collectively, our industry generates **\$346 billion in annual economic impact** and supports more than **2.3 million U.S. jobs**, which depend on sound public policy and strong collaboration with federal leaders.

## GENERAL COMMENT IN SUPPORT OF RESCISSION

The Department's proposed rescission is grounded in sound legal reasoning, reflects real-world operational concerns, and aligns with multiple federal court rulings. It also restores balance by preserving meaningful worker protections while avoiding unlawful overreach. We urge the Department to finalize the rescission promptly, providing certainty and stability to the agricultural sector, which remains vital to the U.S. economy and national food security.

The 2024 Rule imposed broad and legally questionable mandates that disrupted agricultural operations, imposed significant compliance costs, and created confusion and litigation nationwide. Farmers and ranchers already comply with extensive regulations under the H-2A program. The 2024 Rule went far beyond statutory authority, burdening agricultural employers with obligations not supported by the Immigration and Nationality Act or constitutional precedent.

Specific areas of concern in the 2024 Rule included:

1. One of the most problematic aspects of the rule was its **creation of expansive anti-retaliation protections** styled after the National Labor Relations Act ("NLRA"), despite the NLRA's explicit exclusion of agricultural workers. Courts in the Eastern District of Kentucky, the Northern District of Georgia, and the Western District of Louisiana all enjoined enforcement of the rule, concluding that the Department had likely exceeded its statutory authority. *See, e.g., Kentucky v. Su*, No. 24-cv-00065 (E.D. Ky. 2025); *Georgia Fruit & Vegetable Growers Ass'n v. Su*, No. 24-cv-00128 (N.D. Ga. 2025); *Louisiana Forestry Ass'n v. Su*, No. 24-cv-00501 (W.D. La. 2025) (granting injunctions against enforcement). These legal challenges demonstrate the necessity of rescission, as the rule attempted to grant protections Congress explicitly withheld, creating legal uncertainty and undermining the rule of law.
2. The rule's **mandatory progressive discipline policies also imposed unrealistic burdens** on agricultural employers. Unlike large corporations, most farms and ranches are small, family-run operations that lack formal Human Resources infrastructure. Forcing them to adopt multi-step disciplinary procedures and document every instance of workplace discipline increases the risk of technical violations without meaningfully improving outcomes for workers. Additionally, the 2024 Rule required employers to allow a representative to attend any meeting in which a worker "believes" they may receive discipline. This requirement came with no meaningful explanation for an employer to comply, and left many employers confused as to whether they could provide correction in the field without first having to wait for a representative to appear to represent the employee if asked.
3. The 2024 Rule's requirement that employers **allow third-party access to H-2A worker housing was particularly troubling**. These housing units are typically located on private property and are already subject to stringent DOL and OSHA inspection requirements. In many cases, this provision would have forced employers to grant access to legal advocates, organizers, or other non-residents. This is in direct conflict with the Supreme Court's decision in *Cedar Point Nursery*, where the Court struck

down a similar California access regulation as an unconstitutional taking of private property. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021). The Department’s attempt to mandate third-party access without regard for property rights ignored binding precedent and created serious safety, liability, and privacy concerns. Again, this section of the 2024 Rule was enjoined by several courts as a gross overstep of employer’s property rights.

4. While the Department clarified that older vehicles not originally manufactured with seat belts were exempt from retrofitting requirements, **the seatbelt provision nonetheless created confusion**. Many employers rely on older but safe vehicles in rural areas, and determining compliance under the new rule would have required unnecessary legal and logistical expenditures. Moreover, the provision overlapped with existing DOT and state transportation laws, leading to regulatory redundancy and potential conflict. Employers were left confused as to whether they must stop vehicles if workers took off their seatbelts, lest they be faced with fines by the Department for non-compliance. H-2A workers are adults and should be treated as such, although they are often transported on school buses, we are not talking about school children we are talking about adults.
5. The **expanded wage disclosure provisions were similarly unworkable**. Requiring detailed, individualized wage projections for both hourly and piece-rate work ignored the realities of agricultural work. Many farms do not have access to affordable payroll or forecasting software capable of generating these estimates, particularly when wages depend on crop yield, weather, and worker productivity. In operations using piece-rate pay, these projections are speculative at best. There are also valid business reasons for using hourly pay instead of piece rates. For example, in high-heat conditions, growers often prefer hourly pay to encourage workers to take breaks and avoid heat-related illness. Similarly, when harvesting fragile crops like berries or other specialty crops, working too quickly can damage the product. Hourly compensation allows for careful handling, benefiting both workers and consumers. Imposing a rigid wage disclosure requirement in these cases would penalize legitimate, safety-driven business practices.
6. In addition, the 2024 Rule **changed a year’s long practice of allowing for a 14-day period to adjust payroll to newly announced Adverse Effect Wage Rates (“AEWR”)**. In the rescission announcement proposes to revert to the practice allowing the grace period between announcement of a new AEWR and requirement to pay the new AEWR. The Department should implement this change, as it was Department practice for many years to allow employers to update payroll software at the beginning of the next pay period after the announcement. This was a reasonable accommodation for employers to ensure they are paying the correct wage without putting a large burden on employers during potentially harvest season.
7. Lastly, AmericanHort has **concerns with proposal to retain the broader definition of “successor-in-interest”** to include any entity that is “...controlling and carrying on the business of a previous employer, agent, or farm labor contractor, regardless of

whether such successor in interest has succeeded to all the rights and liabilities of the predecessor entity.”

As growers become H-2A employers because of a lack of availability of domestic workers to grow and harvest their crop, debarment from the H-2A program will most likely leave the grower unable to continue operations – leaving the grower with few options other than selling or leasing their farms. In these cases, the purchasing or leasing farmer would be completely unassociated with the business decisions made by the debarred employer and unaware of the underlying violations causing debarment. As these are usually sudden business decisions, it is routine for the new owner/lessee to hire most of the same full-time staff at least initially, and/or use equipment of the debarred employer, so that farm operations are not disrupted. While it should be obvious, it is worth noting for the record, that the subsequent owner/lessee would also be using the same fields as the debarred employer. Plain reading of the proposed expansion of the successor-in-interest definition implies that that subsequent employer would be considered a successor-in-interest despite having no connection to the debarred employer other than to purchase or lease their land. While AmericanHort recognizes DOL’s intent to prevent unscrupulous employers, agents, or farm labor contractors from creating a new business entity to continue operation and avoid penalties, we request that DOL revise this definition to clarify that purchasing or leasing entities with no connection with the debarred entity should not be considered successors-in-interest.

AmericanHort and our members are grateful for the Department’s consideration of these concerns and for your leadership in seeking a balanced, lawful approach to agricultural labor policy. We especially appreciate the Administration and the Department of Labor for the steps already taken to support the horticulture industry and for efforts to reduce unnecessary red tape that can hinder farm and business operations. We value the opportunity to collaborate with the Department of Labor to ensure that the H-2A program continues to provide meaningful protections for workers while also supporting the viability of American farms and horticultural businesses. We look forward to continued dialogue and partnership as this process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Mika". The signature is fluid and cursive, with the first name "Matt" and last name "Mika" clearly distinguishable.

Matt Mika  
Vice President, Advocacy & Government Affairs  
AmericanHort