November 10, 2023

Via E-Filing on Regulations.gov

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Re: Public Comment – Improving Protections for Workers in Temporary Agricultural Employment in the United States – DOL Docket No. ETA-2023-0003

Dear Administrator Vitelli, Administrator Pasternak, and Director DeBisschop:

Western Growers respectfully submits the following comments in response to the U.S. Department of Labor proposed rule referenced above.

Western Growers is an agricultural trade association headquartered in Irvine, California with members that grow, pack, and ship fruits, vegetables, and tree nuts from California, Arizona, New Mexico, and Colorado. Beyond our home states, Western Growers members produce in and directly contribute to the economies of more than 30 states and 25 countries. In total, Western Growers' members account for roughly half of the annual fresh produce and tree nuts grown in the United States, providing American families with healthy, nutritious food. In addition,

Western Growers serves as an agent on behalf of its members, and as such, Western Growers staff is intimately familiar with the technical aspects of the H-2A application process and associated challenges and costs.

As you are aware, few domestic workers apply for available agricultural positions, and given the relatively low unemployment rate, H-2A workers continue to be a vital part in protecting American agriculture lost crop due to a lack of sufficient domestic workforce. This lack of a sufficient domestic agricultural workforce willing to plant, harvest, and cultivate crops for American farmers and ranchers has steadily pushed employers to supplement their labor needs with temporary foreign workers under the H-2A program. The H-2A program itself, continues to be challenge-prone and expensive for employers to navigate. Regardless, many agricultural employers have no other choice but to use the program so that their legacy family operations can remain in business and continue feeding this great nation.

Agricultural employers greatly appreciate the hard work and dedication provided by their employees – both domestic and through the H-2A program. The spiteful rhetoric throughout this proposed rule is not an accurate representation of the American agricultural community and we encourage the Department to develop a trusted relationship with this historically significant sector that provides many job and career opportunities while delivering healthy foods to us all.

GENERAL COMMENT ON REQUESTED INPUT

We are concerned with the tone of the Department's requested evidence and information through public comment, which seems to assume that employers seek to use its legal, government sanctioned workforce as somehow trying to exploit workers. In this Notice of Proposed Rulemaking ("NPRM") it states, "the Department is most interested in comments that cite evidence of the need to remedy through this rulemaking ongoing violations, worker abuse or exploitation, coercion, employer or agent subterfuge to avoid the law . . .."[1]

The vast majority of employers who use the H-2A temporary agricultural worker program do so with an eye towards compliance. Experts in migration policy at the University of California Davis found that the top 5 percent of U.S. crop farms with labor violations accounted for 70 percent of labor violations detected by Wage and Hour Division ("WHD") and the top 5 percent of farm labor contractors with violations accounted for 65 percent of all violations found to be committed between 2005-2019.[2] Therefore, violations of the H-2A temporary agricultural worker program are concentrated among a very small number of employers, while the vast majority of employers are doing their level best to comply with the 209 H-2A rules the government has imposed on employers to hire a legal, government sanctioned, workforce.[3]

[1] 88 Fed. Reg. 63753 (Sept. 15, 2023).
[2] *The H-2A Program in 2022*, Rural Migration News, https://migration.ucdavis.edu/rmn/blog/post/?id=2720 (last visited Oct. 31, 2023).
[3] *H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers*, David J. Bier, Table C, March 10, 2020, https://www.cato.org/publications/immigration-research-policy-brief/h-2a-visas-agriculture-complex-process-farmers-hire (last visited October 31, 2023).

The Department has two imperatives imposed upon it by the Immigration and Nationality Act ("INA"), ensuring U.S. agricultural employers have the necessary access to a workforce when there is not enough able, willing, and qualified U.S. workers available at the time and place needed and that such employment will not adversely affect the wages and working conditions of U.S. workers.[4] As outlined below, some of the 209 current H-2A rules and the additional rules being proposed in this NPRM are frustrating the purpose of the INA and not only adversely affecting the wages and working conditions of the current U.S. agricultural workforce, but also hindering the ability of U.S. agricultural employers to even utilize the program. The INA requires the Department to balance the interest of U.S. agricultural employers and the U.S. agricultural worker, however this NPRM tips the balance too far against the U.S. agricultural employer trying to feed America. The Department should perhaps focus greater attention on the enforcement of current regulations which are sufficiently protective of both U.S. agricultural workers and foreign guest workers.

PREAMBLE'S REFERENCE TO ARBITRATION AGREEMENTS

As an organization that represents many California-based agricultural employers, we felt the need to provide additional context and comment on the two federal California cases cited in the Department's preamble, specifically addressing arbitration agreements. *Martinez-Gonzalez* v. *Elkhorn Packing Co., LLC,* 25 F.4th 613 (9th Cir. 2022); *Magana-Muñoz* v. *West Coast Berry Farms, LLC,* No. 5:20–cv–02087, 2020 WL 3869188, at *5 (N.D. Cal. July 9, 2020). As the Ninth Circuit decided in *Martinez-Gonzalez* v. *Elkhorn Packing Co., an H-2A employee and employer may enter into a binding arbitration agreement not specifically disclosed in the H-2A Job Order. Nothing in the employee's H-2A status changes their individual ability to bargain and contract. In fact, such a regulation or practice would disparately impact the domestic workforce, where in appropriate circumstances, an arbitration agreement may be enforced. On Remand, the District Court did enforce the Arbitration Agreement at issue in Martinez-Gonzalez* v. *Elkhorn Packing Co., even though it was not specifically addressed in the employer's Job Order.*

The U.S. Supreme Court has held arbitration agreements in employment contracts are valid and enforceable under the Federal Arbitration Act ("FAA").[5] *The U.S. Supreme Court held that arbitration agreements in the employment context are valid and enforceable.*[6] *Likewise, arbitration agreements imposed as a mandatory condition of employment are not unlawful or unenforceable under the FAA.*[7] *Creating a murky preamble comment regarding arbitration agreements only would create confusion in the long-standing California and Federal precedent outlined above. We request the Department remove these comments from the Proposed Rule.*

[4] 8 U.S.C. § 1188(a).
[5] *Epic Systems Corp. v. Lewis (2018) 138 S.Ct. 1612, 1632 [employment arbitration agreements "must be enforced as written"]; ["We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context."]*
[6] *Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906, 1924-1925 [enforcing agreement to arbitrate individual PAGA claim that former employee executed upon hire by employer].*
[7] *Id. at p. 1924-1925 [enforcing mandatory arbitration agreement in employment context]; EEOC v. Luce, Forward, Hamilton & Scripps (9th Cir. 2003) 345 F.3d 742, 745 [compulsory agreement to arbitrate employment claims is valid and enforceable]; Gilmer v. Interstate/Johnson Lane Corp. (1991) 500 U.S. 20, 33 [rejecting Gilmer's claim that Supreme Court progeny precluded arbitration of employment claims].*

Further, these comments regarding the need to include Arbitration Agreement language in the Job Order are not included in the current Regulations, nor do they appear outside the preamble to the proposed Rule.

If the Department wants to review proposed Arbitration Agreements as part of an employer's Job Order, it may do so by defining it as a "material term and condition of employment" which are already outlined in the regulation.[8] Without definition or example, the preamble leaves no clarity for employers as to what the Department wants to review with respect to the arbitration agreement. Is an employer to submit the agreement (which may be a few pages) in English and the prospective recruitment area local language in its entirety? Is stating the employer has an arbitration agreement sufficient? This is a critical issue for employers, particularly in California where regardless of merit, a wage and hour collective action or action pursuant to the Private Attorneys General Act (PAGA) may bankrupt an agricultural employer in attorneys' fees alone.

We urge the Department to reconsider the new position with respect to arbitration agreements. This new policy would undermine long-standing case law in line with the FAA and in fact contravene the purpose of the FAA. Alternatively, if the Department wants to change its policy and require disclosure of an arbitration agreement as a "material term" in a job order, the Regulation should be updated to state that specifically, with a comment period.

CHANGES TO THE EMPLOYMENT SERVICES SYSTEM

Review and Creation of Debarment Lists

Utilization of the H-2A temporary agriculture worker program requires filing a clearance order with the State Employment Services system, often referred to as the State Workforce Agency ("SWA"). If employers are unable to file clearance orders with the SWA or to receive referrals of U.S. workers through that system, they are effectively precluded from using the H-2A program. The Department proposes that the SWA must look to the Office of Workforce Investment discontinuation of services list prior to placing any clearance order. If an employer appears to be on the list, the SWA will not place the order.

While we appreciate the attempt to prevent employers who have violated labor laws in one state from doing so in other states, we caution the Department to place safeguards to ensure that innocent operations do not inadvertently suffer irreparable harm due to the SWA mistaking the H-2A applicant having a similar name as an employer who appears on the discontinuation of services list, for instance. The NPRM lacks sufficient due process safeguards or any appeal process to afford redress should such a likely and foreseeable event occur. We have similar concerns with the requirement of the SWA to consult the Office of Foreign Labor Certification ("OFLC") and Wage and Hour Division ("WHD") H-2A and H-2B debarment lists and there must be safeguards in place for the applicant to prove that it is in fact not the employer appearing on these lists. The H-2A program is already a cumbersome process for employers and even a seemingly minor delay can result in diminished crop yield and monetary loss.

[8] *See 20 CFR part 653.501*(c)(1)(iv) and (3)(viii).

Proposed Changes to the Discontinuation of Services Process

The Department proposes to provide additional clarity and instruction to SWAs regarding the process to discontinue services to an employer, citing the lack of discontinuation of services from Program Year ("PY") 2012 to PY 2019 and the "glaring disparity between the number of violations found by WHD and the actual discontinuation of services by the SWA during the same time period . . . .[9] The Department further cites that in order for an employer to participate in the H-2A program they "must first file a clearance order through the [Employment Service System] . . . ."[10] Granting authority to a SWA to effectively debar an employer when WHD provides notification of a violation when WHD also seeks to debar seems logical. However, if WHD upon further investigation decides that debarment is not necessary, the SWA should not be allowed to then debar an employer by discontinuing services. The Department should clarify to ensure that duplicative efforts are not wasting taxpayer resources and SWAs recognize WHD determinations rather than independently seek their own.

The Department notes that "… SWAs have made errors regarding citing applicable bases to discontinue services under § 658.501(a), describing necessary facts to justify the discontinuation, and notifying employers of their right to a hearing."[11] It should come as no surprise that instructing a SWA to initiate a discontinuation of services in § 658.501(a)(1) because an employer refuses to "correct" terms and conditions the SWA believes to be contrary to employment-related laws is of great concern.[12] Many employers face issues where a SWA erroneously interprets an employment related law. The Department's regulations contemplate these disputes and allows employers to file directly with the Department when such disputes cannot be resolved.[13] The Department should provide clarity as to the procedure where a SWA who attempts to discontinue services and an employer follows the regulations by filing an emergency application directly with the Department, for instance. If the employer disagrees with the SWA and files an emergency application with the Department while the SWA initiates a discontinuation of services, this increases cost and confusion in participating with the H-2A program.

Based on confusion within this NPRM, employers, agents, attorneys, agricultural associations, joint employers, farm labor contractors, and wrongfully declared successors in interest are likely to receive many more notices of intent to discontinue services. As such, we recommend the Department provide clear instruction to the SWAs as to what information must be included in these notices. We also ask that the Department not remove the ability to request a pre-discontinuation hearing to allow employers due process to present facts and refute the SWAs contentions. Further, the Department should provide clarity as to what repeatedly causes the initiation of discontinuation of services under § 658.501(a)(8).

[9] 88 Fed. Reg. 63761.
[10] *Id*.
[11] *Id*. at 63761.
[12] *Id*. at 63762.
[13] 20 C.F.R. § 655.121(e)(3).

The Department also requested input on the redesignation of § 658.501(c) to § 658.501(b) and "whether it would be appropriate to limit the scope of previous labor certifications or potential violations of a labor certification to a particular time period."[14] As employers in the H-2A and H-2B program are only required to maintain records under the programs for 3 years, we feel it appropriate to limit the time period to 3 years from the date of certification. Any longer period would frustrate the purpose of the investigation as employers may no longer have records that are not required to be maintained under the law. Additionally, WHD limits its H-2 investigations to 3 years as well, ostensibly because of the records requirement, but also because the Fair Labor Standards Act ("FLSA") has a statute of limitations of 3 years for willful violations and 2 years for all other violations.

CHANGES TO THE DEPARMENT'S H-2A REGULATIONS

Single Employer Test

The Department's proposal to define the term "single employer" is in-line with "its long-standing approach to determining if multiple nominally separate employers are operating as one employer for the purposes of the H-2A program."[15] The Department has attempted to make this their approach but has been rebuffed by the Board of Alien Labor Certification Appeals ("BALCA") on a regular basis as the term employer and joint employer is defined in the regulations. Those tests are used to determine who has an employment relationship under the common law of agency with an employee. The current proposal is a significant change from the long-standing practice of using the common law of agency to determine when two employers jointly employ an employee.

The Department should instead continue to determine who in fact has the employment relationship with the employee. Whether two entities share office space or an address does not necessarily make them a single entity for the purposes of the H-2A program or employment law in general. The fact that two entities are both agricultural producers, again does not make them a single entity for the purposes of the H-2A program or employment law in general. The key factor of an employer is whether it controls the wages and working conditions of the employee. The Department's proposed use of the single-employer test is flawed, and the Department has not sufficiently rationalized its reversal of its long-standing use of the common law of agency to determine if two employers are joint employers. The Department's conclusion that that *some* employers' use of creative corporate structure means that *all* employers employ this strategy is baseless and should be narrowed to target the abuse the Department has highlighted, not unnecessarily burden the entire industry.

Offered Wage Rate

The Department's established practice for requiring employers to update wages under the H-2A program has allowed a 14-day grace period from publication of those wages in the Federal

[14] 88 Fed. Reg. 63763.
[15] 88 Fed. Reg. 63768. *See Id.* at 63769 (citing that the Department only started attempting to apply the single employer analysis in 2015.) *See also Id.* at 63774 (citing that starting in January 2018, it was not a long-standing practice to provide a 14-day grace period for paying updated wages published in the Federal Register.).

Register. The valid reason for the grace period, which has been cited by the Department, is that this practice allows employers to update payroll systems to reflect the new rate at the beginning of the next pay period. The proposed change to require employers to update the wage immediately upon publication in the Federal Register is a departure from this long-standing practice, and the Department has failed to explain this departure, which it reestablished as recently as June 16, 2023.[16]

For many employers, updating payroll in the middle of a cycle is not straightforward; advanced notice and flexibility to allow for a streamlined change is necessary. For many growers, including those in warmer climates such as Yuma, Arizona, these changes may occur at the height of the growing and harvest season, adding another level to existing challenges. As an alternative, the Department should consider committing to dates certain each December and June when it will publish the new wage rates, allowing for expectations to be met, and a reasonable period of time to adjust payroll rates.

Offer, Advertise, and Pay the Highest Applicable Wage Rate

The Department's current language on offering, advertising, and paying the highest applicable wage is straightforward and sufficient to test the labor market and apprise workers of the wages they should expect to receive. The Department's new proposal, however, will make this simple requirement convoluted, leading to confusion by both employers and potential employees. The proposal is unclear in § 655.122(l)(2), where it states "the employer must calculate each worker's wages . . . using the highest wage rate for each unit of pay, and pay the worker the highest of these wages for that pay period. The wage actually paid cannot be lower than the wages that would result from the wage rate(s) guaranteed in the job offer." We recommend the Department provide further clarification on this description.

Such changes might incentivize employers to *not* pay piece rate wages—which are better for workers—when not required. In areas with a prevailing piece rate certified by the Department, the policy might drive employers away from planting crops that have a prevailing piece rate, potentially harming the domestic workforce. In short, agricultural employers need more clarity regarding the Department's intention on offering, advertising, and paying the highest wage.

Employer Provided Transportation

The Department's new seatbelt requirement is misguided and wrongfully assumes that employees are unable to make sound decisions regarding their own safety. An employer should not be put in a position where they are required to ensure every employee continues to wear a seatbelt throughout the entirety of a drive. While seatbelt use should be encouraged, employees should be allowed to make decisions and employers should not be penalized if an employee decides to not fasten a seatbelt.

[16] *See* 88 Fed. Reg. 39482 (June 16, 2023) (making the wage rates published on June 16th effective on July 1.).

Termination for Cause or Abandonment of Employment

All farms, regardless of size will be directly impacted by these changes. In the proposed rule, the Department would require agriculture employers to develop and maintain a human resources department that would rival large corporate companies. Most small to mid-size agricultural operations are not equipped for such a task and are likely without the resources to quickly develop such a protocol. Agricultural employers are often fortunate to employ hard-working individuals, but in situations where employees are challenging and disrupting workflow of others, the ability to terminate within reason must continue to exist. This proposed policy raises the burden on the employer without providing adequate justification and opens up many unique situational questions, causing confusion for both employer and employee.

Disclosure of Employers, Owners, Operators, Managers, and Supervisor Information

The proposed requirement of additional information is yet another unwarranted burden on employers. It is logical for the Department to collect relevant information including that of owners of employers to ensure the employer has not restructured a company which was debarred. However, to propose to further informational requirements in an attempt to find an extremely finite number of debarred operations is incredible. In fact, there are only 32 employers and individuals in the entire country that are debarred from the H-2A program, when compared to rough estimates there are over 11,000 unique employers in the H-2A program, meaning debarred employers make up 0.00029% of the H-2A users.[17]

The Department's analysis of impact and burden on this information grab is extremely low. The Department claims that small businesses will be faced with a mere one-time cost of $54.00 to familiarize themselves with this rulemaking and only $108.00 to complete the new application with all owner, manager, and supervisor information.[18] In reality, however, with a proposed regulation that spans some 83 pages of the Federal Register, with a final rule likely similar in length, the time necessary to understand and comply with such a document is vastly understated for agricultural operations of all sizes.

THE DEPARTMENT'S ATTEMPT TO CIRCUMVENT NATIONAL LABOR RELATIONS ACT ("NLRA") PREEMPTION

The Department's proposal to provide NLRA-like protections to agricultural employees under the H-2A program is preempted by the NLRA. "It seems clear from the legislative history . . . that Congress meant to exclude agricultural laborers from the provisions of the Act. The Senate Report on the bill which became the original National Labor Relations Act, says that . . . 'the committee deemed it wise not to include under the bill agricultural laborers . . . .'"[19]

[17] *See* U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Program Debarments, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Debarment_List.pdf (last visited October 31, 2023). *See also* U.S. Citizenship and Immigration Service, H-2A Employer Data Hub, https://www.uscis.gov/tools/reports-and-studies/h-2a-employer-data-hub (last visited October 31, 2023).
[18] 88 Fed. Reg. 63816.
[19] *Di Giorgio Fruit Corp. v. NLRB*, 191 F.2d 642, 646 (1951).

Congressional intent plainly and explicitly exempts agricultural employees from the protections and penalties of the NLRA. The Department, meanwhile, purports this Congressional intent allows for the Department to provide those protections, and conversely not provide those penalties, which directly flies in the face of Congressional intent.

Self-Organization and Concerted Activity

In § 655.135(h)(2), the Department is proposing beyond its statutory authority under the INA. The Department itself stated, the INA requires it to protect the working conditions of those U.S. workers similarly employed.[20] However, similarly employed U.S. workers do not have this referenced protection the Department is proposing to provide to H-2A workers.[21] With this proposal, the Department is attempting to make job contracts under the H-2A program more attractive to U.S. farmworkers, which is outside of the allowable framework under the INA.[22] The Department cites a case that says agricultural workers are exempt from the provisions of the NLRA that protect employers from concerted activity, but workers who also joined in secondary boycotts that were not agricultural workers committed an unfair labor practice under the NLRA.[23] This proposed section fails to recognize another requirement of the Secretary under the INA, which is the availability of a workforce to the U.S. farmer when U.S. workers are not available. This provision is beyond the statutory authority given to the Department and should be removed from any final rule.

WORKER VOICE AND EMPOWERMENT

The Department has not fully developed an argument as to how union membership provides additional benefit or worker protection to H-2A workers, while only providing anecdotes of the extreme few H-2A employers that commit egregious violations of the program.[24] It is also worth repeating that this proposal may exceed the Department's authority under longstanding precedent by attempting to make H-2A jobs more attractive to U.S. workers by providing them NLRA type protections they are statutorily exempt from receiving unless they join an H-2A contract.[25] We ask that this provision be removed from any final rule prior to further justification.

Employee Contact Information

The proposal to require that employers provide employee contact information to a non-recognized union or a union supported by cards signed by less than a majority of the represented unit is not justified. The proposal asks that the list include each "worker's full name, date of hire, job title, work location address and ZIP code, and (if available to the employer) personal email, personal cellular number and/or profile name for a messaging application, home country address with postal code, and home country telephone number". This is clearly excessive beyond the

[20] 88 Fed. Reg. 63793.
[21] *See* 29 U.S.C. § 152(3)
[22] *Williams v. Usery*, 531 F.2d 305, 307 (5th Cir. 1976) ("Clearly, his authority to insure against a lowering of wages is hardly synonymous with the affirmative power to *raise wages* which Williams here proposes. Attractiveness is the wrong test for measuring the Secretary's determination.") (internal quotations omitted emphasis in the original).
[23] *Di Giorgio Fruit Corp. v. NLRB*, 191 F.2d 642, 643 (D.C. Cir. 1951).
[24] *See Supra* re discussion on the 32 employers debarred compared to the over 11,000 unique H-2A employers.
[25] *See Williams*, 531 F.2d at 307.

NLRB requirements for voter lists which at least requires a majority of bargaining unit signed union authorization cards to seek representation.[26] Under this proposal, any group claiming to be a labor organization, which is also broadly defined in the proposal to potentially include labor organizations that would not be eligible labor organizations under the NLRB rules, may request an employer provide such personal information.

The Department argues that due to the limited duration of H-2A contracts, there arises a need to organize earlier in the process than the normal NLRB process. Privacy concerns of employees must be taken into account, and it appears that the Department has not yet considered this aspect of the policy. Workers private information should not be shared without their permission to anyone not entitled to that information without their consent. Workers in New York and California have reported being harassed by union representatives and refuse to give their phone number and other private information to the employer for fear it will be turned over to the the union and used as part of a relentless campaign of harassment and intimidation. Further, the Department should not expand the definition of labor organization as it would not add worker protection, but simply cause more strain and confusion on employees and employers alike.

Right to Designate a Representative

As proposed, this NPRM would allow a government-authorized physical invasion of a person's or entity's property. Such actions have recently been described by the U.S. Supreme Court as a *per se* taking requiring just compensation.[27] "[T]he right to exclude falls within the category of interests that the Government cannot take without compensation."[28] "The fact that a right to take access is exercised only from time to time does not make it any less a physical taking."[29] It is clear under the *Cedar Point* analysis that as proposed this NPRM would amount to an uncompensated taking when restricting a property owner's right to exclude third-party individuals from their property.

Additionally, the agricultural industry puts food on the tables of American families. Employees and employers are trained in food safety measures to ensure best practices are maintained for safe food consumption. This is not something to be taken lightly, and allowing an individual who is potentially unaware of food safety protocols could interfere with an employer's adherence of the Food Safety Modernization Act and endanger the food supply chain.

Access to Worker Housing

The Department's proposal to require access to H-2A worker housing by invited guests of the H-2A workers while allowing reasonable restrictions to protect the health and safety of other workers in shared housing is reasonable. For clarity purposes, the Department should provide additional examples of what should be deemed "reasonable" to remove confusion and allow industry to provide meaningful comments.

[26] 88 Fed. Reg. 63798.
[27] *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2073 (2021)
[28] *Id*. (cleaned up and internal quotations omitted).
[29] *Id*. at 2075.

However, § 655.135(n)(2) goes too far, and the Court in *Cedar Point* articulated this very clearly, and would amount to the Department effectuating another taking under the fifth amendment.[30] Under § 655.135(n)(1) an H-2A worker could invite a union representative to the employer's property, and as an invited guest made by the free-choice of the H-2A worker it would not be a taking under the fifth amendment. However, allowing 10 hours per month for a labor organization representative to enter an employer's property at the labor organization's discretion, is clearly a taking under the fifth amendment. The Department should not expand this to other key service providers as it would also be a taking under the fifth amendment.

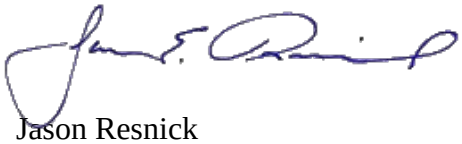
INTEGRITY MEASURES

The Department is misguided in its proposal to shorten the period for an employer to submit rebuttal evidence or appeal a Notice of Intent to Debar from 30 calendar days to just 14 calendar days. Employers must have sufficient time to secure counsel and gather rebuttal evidence, which the contemplated change would not allow.

CONCLUSION

We thank you for the opportunity to comment on this proposed regulation. We disagree with the Department on most of the substance of this proposed regulation but find it important to share our perspective on this important program. We look forward to your responses to these comments and to continuing the conversation toward a better H-2A program for all.

Respectfully submitted,



Jason Resnick
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Western Growers

[30] *See supra.*