November 15, 2021

The Honorable Marty Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh:

We are writing today to express our serious concerns about the unprecedented processing delays of Farm Labor Contractor (FLC) certificates and Farm Labor Contractor Employee (FLCE) certificates by the Department of Labor (DOL) and specifically, the DOL Wage and Hour Division (WHD) office in San Francisco. These extreme delays are harming agricultural and forestry employers' ability to operate their businesses, support their U.S. employees, grow and harvest crops, and contribute to the U.S. economic recovery in the rural communities in which we operate.

An FLC cannot legally operate without an FLC certificate issued by DOL, and most FLCs also need to obtain several FLCE certificates from DOL for their employees each year. We understand that several years ago, while claiming to improve efficiency in processing FLC certificates, DOL ended FLC and FLCE certificate processing by multiple DOL offices and consolidated all processing in its San Francisco WHD Office. That office used to regularly approve FLC and FLCE certificate applications in 30 days or less. But now, the San Francisco WHD office is telling employers inquiring about the status of their application that processing will take four to six months.

As a result, employers and the agricultural and forestry markets they support are stalled and unable to drive the economic recovery that our rural communities desperately need. These delays are particularly serious because the planting and harvesting of crops and trees is time-sensitive and weather-dependent. While employer applications languish, the clock is ticking. When the weather changes, the opportunity to plant or harvest is lost for that season and cannot be recovered.

In recent years, the continually tightening labor market and lack of available U.S. workers has resulted in more and more landowners relying on FLCs to provide temporary and seasonal labor. These employers have been applying for FLC and FLCE certificates assuming that, as in prior years, their paperwork will be quickly processed. But that is not happening, and the processing delays keep getting worse. Just this fall, countless employers have been delayed from operating for weeks and even months as a result of these delays.

These delays have been especially catastrophic for employers that utilize temporary foreign workers. As you know, agriculture depends on the H-2A program, and forestry relies on the H-2B program to supplement their U.S. workforce. The delays in issuing FLC and FLCE certificates have, in turn, resulted in numerous agricultural and forestry employers being unable to obtain timely approval of their H-2A or H-2B applications because the DOL agency that processes H-2A and H-

2B applications refused to act until the San Francisco WHD office issued the employer's FLC or FLCE certificate.

For employers currently in possession of an FLC or FLCE certificate and seeking a renewal, there should be no delay whatsoever in their H-2A or H-2B applications due to processing delays by the San Francisco WHD office. Federal law specifies that a timely-filed renewal application continues the validity of the FLC or FLCE certificate. *See* 29 U.S.C. § 1814(b)(1)(B) ("a certificate may be temporarily extended by the filing of an application with the Secretary at least thirty days prior to its expiration date"). Thus, we do not understand why the DOL office processing an H-2A or H-2B application would require a copy of the new FLC or FLCE certificate before processing an employer's H-2A or H-2B application, especially when that office already had evidence that the employer timely filed their renewal.

Following our prior complaints about this process and inquiries from Members of Congress, we understand that DOL may be changing this practice. We hope that is the case and that employers do not face these same difficulties going forward. We remain concerned, however, about the extreme processing backlog for FLC and FLCE approvals. Further delays in issuing these certificates will continue to cause serious downstream effects for employers and the American economy.

Agricultural employers are already planning their staffing needs for the Spring, and this issue must be quickly resolved to avoid a repeat of the disastrous delays this year. We urge immediate action to end these processing delays. DOL has successfully processed FLCs and FLCEs in a timely manner in the past. We hope the Department will institute a streamlined approach to clear the backlog and return to the timely and efficient process for approving FLC and FLCE certificates so that America's farms and forests can contribute to the American economic recovery.

Sincerely,

1. AgWorks
2. Alabama Forestry Association
3. American Farm Bureau Federation
4. American Sugar Cane League
5. Arizona Farm Bureau
6. Arkansas Forestry Association
7. Arkansas Timber Producers Association
8. Associated Oregon Loggers, Inc
9. Association of Consulting Foresters
10. 3 B's Forestry, Inc.
11. California Farm Bureau
12. Colorado Farm Bureau
13. Cutting Edge Forestry
14. D&L Forestry Services, LLC
15. Earth Industries, Inc.
16. E.H. Contracting Services, LLC

17. Falcon Forestry
18. Florida Farm Bureau Federation
19. Florida Forestry Association
20. Florida Strawberry Growers Association
21. Florida Sugar Cane League
22. Forestall Company, Inc.
23. Forest Resources Association
24. Forestry Association of South Carolina
25. Forrester and Associates, LLC
26. GE Forestry, Inc.
27. Georgia Farm Bureau
28. Highlanders Forest LLC
29. IB Reforestation
30. Idaho Farm Bureau Federation
31. Illinois Farm Bureau
32. Imperial Forestry, Inc.
33. Indiana Farm Bureau
34. J. Cota Forestry
35. Ledesma Forestry Services, LLC
36. LG Forestry, Inc.
37. Louisiana Farm Bureau Federation
38. Maryland Farm Bureau
39. Maryland Forests Association
40. Massachusetts Forest Alliance
41. Michigan Farm Bureau
42. Minnesota Forest Industries
43. Mississippi Farm Bureau Federation
44. Molpus Woodlands Group, LLC
45. Napieralski Forestry Enterprise, Inc.
46. National Alliance of Forest Owners
47. National Cotton Council
48. National Woodland Owners Association
49. Nevada Farm Bureau
50. New Mexico Farm and Livestock Bureau
51. New York Farm Bureau
52. North Carolina Forestry Association
53. OC Forestry, Inc.
54. Ohio Farm Bureau.
55. Ohio Forestry Association, Inc.
56. Oregon Women in Timber
57. Pacific Coast Contracting, Inc.
58. Palmetto Right of Way Management
59. Pennsylvania Forestry Association
60. PNW Forestry, LLC

61. R&E Forestry, Inc.
62. R. Franco Restoration
63. Rain Drop Reforestation
64. RGZ Forestry, LLC
65. Rye Tree Service, Inc.
66. South Carolina Timber Producers Association
67. Southern Loggers Cooperative
68. Stone Forestry Services, Inc.
69. Strongwood Forestry, Inc.
70. Tennessee Farm Bureau Federation
71. Texas Forestry Association
72. Treated Wood Council
73. Vargas Forest All, LLC
74. Virginia Farm Bureau
75. Virginia Forestry Association
76. Washington Farm Bureau

cc: The Honorable Tom Vilsack, USDA Secretary