

September 24, 2019

Adele Gagliardi
Administrator, Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: RIN 1205-AB89

Temporary Agricultural Employment of H-2A Nonimmigrants in the United States

Dear Ms. Gagliardi:

The undersigned forestry and forest products organizations submit the following comments for the Department of Labor's Notice of Proposed Rulemaking ("NPRM") in the H-2A program that was published on July 26, 2019. See 84 Fed. Reg. 36168.

GENERAL COMMENTS

The Department has, as part of the NPRM, proposed to move "reforestation activities" from the H-2B program to the H-2A program. As currently proposed, we are in opposition to the Department's recommendations to move forestry activities from the H-2B to the H-2A program. If the Department was to move forestry activities from the H-2B program to the H-2A program as it currently exists our view may be different. Beyond our general opposition to the Department's proposal, we offer some comments on specific elements of the proposal.

HOUSING REQUIREMENTS

We oppose the Department's proposal to change the H-2A housing standards and to apply those standards to reforestation. Even though the Department claims H-2B employers operating on an itinerary must provide housing to workers, the H-2A housing proposal would be unworkable in practice and lead to exorbitant cost increases of millions of dollars for employers. Many reforestation employers utilize motels and it is doubtful that these employers would be able to find suitable housing at any price for their workers under the Department's proposal. The Department's proposal to apply OSHA standards developed for temporary labor camps to a permanent commercial structure like a motel does not make sense.

Reforestation employers are constantly on the move, utilizing multiple motels, it would not be possible to determine at the time of application (well before staying in a motel) whether each potential motel along an itinerary would meet the temporary labor camp standards. A one-size-fits-all housing approach, as proposed by the Department, would be a massive cost burden on reforestation employers that do not operate on an itinerary, and therefore have no housing obligation under the H-2B program. The Department appears to assume that all reforestation employers operate the same way. Instead, the Department should consider the regulatory impact of these changes on different types of reforestation employers who implement the hiring of workers.

The Department should remove the proposed changes to the housing requirements and maintain the housing requirements that currently exist in the H-2A program. This change would allow

reforestation employers that utilize motels or other public housing only to submit the required business or occupancy licenses.

SEPARATE ITINERARIES

We have significant concerns regarding the Department's requirement that each reforestation crew to have a separate itinerary and for each itinerary to be submitted with a separate H-2A application. Although there was no regulatory text in the proposal that would establish such a requirement, some of the explanatory language suggested this was the Department's intent. *See, e.g.*, 84 Fed. Reg. 36224, 36234.

This proposal appears to reflect a misunderstanding by the Department of how reforestation employers operate. Requiring separate itineraries and applications would impose significant unwarranted cost burdens on reforestation employers. The proposal would also remove the flexibility that employers need to allocate workers in response to the inherent uncertainties associated with planting that include seedling availability, varying terrain and changing weather conditions.

The Department's estimate that this change would result in employers increasing the number of applications by a factor of two and cost employers just \$460 for each additional application is staggeringly low. The Department's estimate would not even cover the government application fees, not to mention the additional costs that most employers have to incur for the use of consultants, agents and attorneys due to the extreme complexity of the H-2A program.

Requiring separate itineraries and applications would impose significant unwarranted cost burdens on reforestation employers. The proposal would also remove the flexibility that employers need to allocate workers in response to the inherent uncertainties associated with planting that include seedling availability, varying terrain and changing weather conditions. The Department should drop its proposal that requires businesses to submit separate applications for each reforestation crew.

CONCLUSION

In closing, we oppose the Department's effort to move reforestation from the H-2B program to the H-2A program, as described in the NPRM. The changes proposed by the Department would lead to much greater costs and administrative burdens on employers than are present in the current H-2B program. There are many elements associated with the work of forestry-related employers that make it a good candidate for an agricultural guest worker program. In recent years, Congress has considered legislative proposals that would have included forestry in a streamlined agricultural guest worker program, such as H.R. 6417 (115th Congress), but this regulatory proposal by the Department of Labor offers none of the benefits found in those legislative proposals and it does not offer a viable alternative to the current H-2B program.

In close, the signatories on this letter urge the Department to change its proposal based on our comments provided above. Further, because some reforestation employers do not operate on an itinerary with a mobile workforce, the Department's housing proposal imposes crippling costs on them while other employers without a mobile workforce (e.g., landscaping, hotels) would not bear these costs. Therefore, the only equitable way to accommodate differently situated reforestation employers is to allow reforestation employers the individual option of whether to participate in the H-2A program or the H-2B program. Without that flexibility, the undersigned associations cannot support the Department's proposed changes.

Thank you for providing the opportunity to offer comments on this NPRM.

Sincerely,

1. Alabama Forestry Association
2. Arkansas Forestry Association
3. Decorative Hardwoods Association
4. Douglas Timber Operators
5. Federal Forest Resource Coalition
6. Florida Forestry Association
7. Forest Landowners Association
8. Forest Resources Association
9. Forestry Association of South Carolina
10. Georgia Forestry Association
11. Hawai'i Forest Industry Association
12. Kentucky Forest Industries Association
13. Louisiana Forestry Association
14. Maine Forest Products Council
15. Maple Flooring Manufacturers Association, Inc.
16. Michigan Forest Products Council
17. Minnesota Forest Industries
18. Minnesota Timber Producers Association
19. Mississippi Forestry Association
20. Missouri Forest Products Association
21. Montana Wood Products Association
22. National Alliance of Forest Owners
23. National Hardwood Lumber Association
24. North Carolina Forestry Association
25. Ohio Forestry Association
26. Oregon Forest and Industries Council
27. Oregon Women in Timber
28. Pennsylvania Forest Products Association
29. Pennsylvania Forestry Association
30. Railway Tie Association
31. Southeastern Lumber Manufacturer's Association, Inc.
32. Southern Loggers Cooperative
33. Tennessee Forestry Association
34. Texas Forestry Association
35. Treated Wood Council
36. Washington Contract Loggers Association, Inc.
37. Washington Forest Protection Association
38. Western Wood Preservers Institute