

GROWERTALKS

JZ on D.C.

10/1/2024

Important H-2A Program Update!

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Earlier this year, 17 states and two organizations filed suit against the Department of Labor over the final H-2A rule titled Improving Protections for Workers in Temporary Agricultural Employment in the United States (Final Rule). The Final Rule was set to go into effect on Thursday, August 29, 2024.

Right before the deadline, a federal court found that the Final Rule violates the National Labor Relations Act (NLRA) as it attempts to unconstitutionally create law, infringing upon Congressional authority. It also found that DOL's actions were not deemed in "accordance with law" as required by the APA. While the DOL may assist Congress, it may not become Congress. The Court found that DOL has attempted to create rights that Congress has not legislated, such as a right to collective bargaining for agricultural workers.

Further, the Final Rule would cause financial harm to both the plaintiff states and plaintiff organizations, including increased administrative costs for state workforce agencies and employers, as DOL anticipates that changes to the annual effective date of new Adverse Effect Wage Rates could cost farms nationwide between \$12 and \$20 million over the next 10 years. These findings align with the Eleventh Circuit's ruling that "unrecoverable monetary loss is an irreparable harm."

Based on these findings, the Court ruled that the Final Rule violates the NLRA as it attempts to unconstitutionally create law, infringing upon Congressional authority. The DOL's actions were not deemed in "accordance with law" as required by the APA. However, the Court decided not to grant a nationwide injunction and the injunction applies only to the plaintiffs.

Since the ruling, DOL has put forward a statement announcing the delay in the Transition Schedule for Implementing the H-2A Application and Job Order Associated with the 2024 Farmworker Protection Final Rule.

The Court's ruling now prevents DOL from enforcing the Farmworker Protection Rule in the states that filed the suit: Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas and Virginia. Because of this injunction, DOL cannot enforce the Farmworker Protection Rule in the specified states and entities while the injunction is in place.

The FLAG (Foreign Language Application Gateway) system is not set up to identify and process applications differently based on which state the application originated. Consequently, the DOL has delayed updating the FLAG system (IN ALL STATES FOR THE TIME BEING) and will continue to process applications according to the previous forms.

“The Department of Labor’s delay in implementing the H-2A Worker Protection Rule, prompted by the recent Georgia case decision, highlights the concerns regarding the rule’s suitability and the perceived haste in its advancement,” said Matt Mika, AmericanHort’s VP of Advocacy & Government Affairs. “AmericanHort is committed to collaborating with the Department of Labor to develop an H-2A Rule and program that effectively serves current and prospective participants.”

For AmericanHort members, the organization has developed FAQs to summarize the court ruling and what it means for those members who participate in the H-2A program. AmericanHort has also been working with outside legal counsel Lynn Jacquez and Shawn Packer of JPH Law Firm. AmericanHort will continue to follow developments on the H-2A Final Rule closely with guidance from their outside counsel to ensure members have the tools and resources needed to remain compliant with federal rules and regulations as they’re issued.

(Reminder that AmericanHort premium members are eligible to receive initial legal opinions and compliance access to expert legal advice related to workforce issues from AmericanHort partner JPH Law. If you aren’t a premium member and would like to become one, visit AmericanHort.org to upgrade your membership.) —JZ

Senate Control at Stake: Key 2024 Races

Senate Democrats face a challenging battle in maintaining their 51-49 majority in 2024 as they defend 24 seats, many in purple and red states like Montana, West Virginia and Ohio.

The potential retirement of Sen. Joe Manchin (I-WV) is expected to favor Republicans, who need to flip just two seats to regain control of the Senate. Key races are unfolding in battleground states like Arizona, Michigan and Pennsylvania, with both parties pouring significant resources into these contests. Senator Bob Menendez (D-NJ) formally resigned in August in light of his conviction on bribery charges in July. New Jersey Governor Phil Murphy appointed George Samir Helmy to the empty Senate seat until a replacement is elected in November.

Democrats are running local campaigns focused on infrastructure and community investment, while Republicans emphasize national issues like immigration and inflation. Republican leaders are confident in their prospects, citing a favorable election map and vulnerabilities among Democratic incumbents.

—Rachel Pick, Senior Manager, Advocacy & Government Affairs—AmericanHort

Final Herbicide Strategy

EPA has released its final “Herbicide Strategy,” marking the first step in fulfilling its obligations under the Endangered Species Act. The strategy outlines the agency’s plan to protect threatened and endangered species and their habitats from herbicide exposure through spray drift, runoff or soil erosion that was due on August 30. When the EPA registers new herbicides and re-evaluates existing ones, this new strategy will be used to minimize herbicide exposure to these species. The final strategy includes measures such as cover crops, conservation tillage, windbreaks and adjuvants.

EPA developed a document detailing real-world examples of pesticide applicator mitigation strategies. A mitigation menu website is set to be released soon with updates periodically. A calculator will help applicators determine additional mitigation measures based on existing ones. The agency will also continue to develop educational and outreach materials to help applicators understand and apply these strategies effectively.

—Source: AmericanHort's Capitol Wire newsletter

New Bipartisan Legislation Aims to Shield Small Businesses from Burdensome CTA Requirements

In a recent legislative push, Congressman Zach Nunn (R-IA-3) introduced the Protect Small Businesses from Excessive Paperwork Act (H.R. 9278), aiming to delay the Corporate Transparency Act's (CTA) reporting requirements by a year. This bipartisan effort, supported by both Republican and Democratic representatives, highlights growing concerns about the burden these requirements impose on small businesses. The National Federation of Independent Business (NFIB) has voiced strong opposition through op-eds, warning of severe penalties and compliance challenges. Additionally, a study by CSC Global revealed significant anxiety among compliance executives regarding the CTA. As legal challenges continue, with seven currently pending nationwide, the countdown to the year-end filing deadline adds urgency to the debate.

—Source: AmericanHort's Capitol Wire newsletter

Agriculture Champion Rod Snyder Steps Down at EPA

Rod Snyder, the first director of EPA's Office of Agriculture & Rural Affairs, leaves the agency after nearly three years. A true champion for agriculture, Snyder's tenure at EPA ensured that farmers, ranchers and rural communities had a strong voice within the agency. Snyder's leadership led to the creation of the Office of Agriculture & Rural Affairs, which enhanced communication and collaboration between the EPA and the agricultural sector. His departure marks the end of a tenure characterized by a deep commitment to sustainable agriculture and rural engagement. —Rachel Pick

U.S. Agricultural Land Values Hit Record Highs Amid Rising Costs for Farmers

Agricultural land values have risen for the fourth consecutive year, with a 5% increase in 2024, bringing the average U.S. farm real estate value to \$4,170 per acre, according to the USDA. Cropland values reached a record \$5,570 per acre, though the growth rate slowed to 4.7% compared to the previous year.

Cash rent for cropland also hit new highs with a 3.2% increase to \$160 per acre. These rising land values and rents benefit landowners, but add financial pressure on farmers, who must cover escalating costs. Regional variations persist, with California, New Jersey and Florida holding the highest cropland values. —Source: AmericanHort's Capitol Wire newsletter

OFLC Releases Resources for 2024 Farmworker Protection Final Rule Webinar

In early August, the Department of Labor's Office of Foreign Labor Certification (OFLC) conducted a public webinar to inform stakeholders, program users and other interested parties about the changes introduced to the H-2A

program by the 2024 H-2A Farmworker Protection Final Rule. Attendees received valuable tips on the new forms, detailed filing instructions and an overview of the transition process. The Final Rule, which became effective on June 28, 2024, will apply to applications submitted starting August 29, 2024. View the webinar recording [HERE](#).

—JZ

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