

GROWERTALKS

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USCIS Reaches H-2B Visa Cap or First Half of FY 2025

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U.S. Citizenship and Immigration Services (USCIS) announced it has reached the congressionally mandated cap for H-2B visas for temporary nonagricultural workers for the first half of fiscal year 2025. September 18, 2024, was the final date for accepting new cap-subject H-2B petitions with employment start dates before April 1, 2025. Any petitions received after this date will be rejected if they request employment before April 1, 2025. However, petitions exempt from the cap, such as those for current H-2B workers extending their stay or changing employers, are still being accepted. The annual H-2B cap is set at 66,000, with 33,000 visas allocated for each half of the fiscal year.

—Source: *AmericanHort's Capitol Wire newsletter*

SBA Hosts Roundtable on OSHA Heat Rule

The Small Business Administration's Office of Advocacy hosted a roundtable in September to discuss the Occupational Safety and Health Administration's (OSHA) proposed Heat Injury and Illness Prevention rule. Featured speakers included representatives from OSHA and from the private sector to identify standards within the proposed rule and concerns about the proposed rule itself.

In summary, OSHA at the Department of Labor has proposed a new standard, titled "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings" to address heat hazards across various industries, including general industry, construction, maritime and agriculture, with some exceptions. The programmatic standard will require employers to develop a comprehensive plan to evaluate signs of heat exposure (both indoor and outdoor) when temps reach 80F or higher and manage heat-related risks in their workplaces.

Key aspects of the proposed rule include:

- The standard applies to all employers in covered sectors where OSHA has jurisdiction, except for specific exceptions outlined in the rule.
- Employers will need to create a plan that identifies heat hazards and implements controls to protect workers.
- The standard aims to provide clearer guidelines on the necessary measures to safeguard employees from heat-related injuries and illnesses.

- There is currently a 120-day comment period ending on December 28.

You can watch a video on the proposed rule [HERE](#).

Legal experts suggested the biggest concern about the proposed rule is the data supporting their justification for the rule itself: OSHA is using aggregated data on heat-related illness and injury instead of individual cases with supporting details.

—Source: AmericanHort's Capitol Wire newsletter

2024 Farm Bill Update

Following the August Recess, Members of Congress returned to Washington, D.C., with a renewed interest in completing a bipartisan Farm Bill before the end of the 118th Congress. Both Representatives and Senators received strong feedback from constituents during the August Recess, and USDA's September 2024 farm income forecast highlighting a challenging year for American farmers, ranchers and growers and has emphasized the need for new bipartisan policy changes.

House and Senate Agriculture Committee leadership have encouraged Committee staff to work across the aisle in a renewed attempt to craft a farm bill that appeases both chambers of Congress and the ag industry. AmericanHort partnered closely with congressional offices to gather signatures from Democrats and Republicans expressing the need for a bipartisan Farm Bill. Additionally, AmericanHort continues to advocate for the industry's Farm Bill priorities, namely crop insurance disaster programs for specialty crops and increased funding for specialty crop research programs.

—Matt Mika & Rachel Pick, AmericanHort

Members of Congress Send Letter to USDA's Under Secretary Requesting IR-4 Funding

Friends of the horticulture industry—Rep. Jimmy Panetta (D-CA-19), Rep. Jack Bergman (R-MI-01), Rep. Zoe Lofgren (D-CA-18) and Rep. Lauri Chavez-DeRemer (R-OR-05)—spearheaded a letter to USDA Under Secretary for Research, Education & Economics Dr. Chavonda Jacobs-Young requesting that USDA dedicate and prioritize continued IR-4 Project funding.

For over 60 years, specialty crop producers have relied on the collaborations between USDA ARS and the IR-4 Project for the data and lab analyses necessary to provide access to critical crop protection tools. The IR-4 Project is critical to finding solutions to pest problems, integrated solutions for biopesticides and developing new pest management tools. Furthermore, a loss of funding could hinder the development of innovative pest management solutions like biopesticides, which are safer for the environment, farmworkers and agricultural communities, and support sustainable farming for producers and farmers.

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

Lawsuit Filed Against U.S. DOL Regarding Recent H-2A Rule

In October, nine co-plaintiffs filed a lawsuit contesting what they believe is the U.S. Department of Labor (DOL)'s

unconstitutional regulatory overreach and limitations on the freedom of speech of farmers who employ temporary workers. The plaintiffs are: American Farm Bureau Federation; AmericanHort; Florida Fruit & Vegetable Association; International Fresh Produce Association (IFPA); Mississippi Farm Bureau Federation; North American Blueberry Council; State of Mississippi; Stone County Farm Bureau; Texas International Produce Association; and the U.S. Chamber of Commerce.

The lawsuit argues that DOL's recently finalized H-2A rule, already enjoined in 17 states, illegally gives temporary agriculture workers collective bargaining rights, restricts the First Amendment rights of farmers who employ H-2A workers, and creates additional onerous burdens for employers and state governments. Taken separately and together, they say these effects are causing, and will continue to cause, irreparable harm to the carefully balanced and essential American agriculture industry.

"DOL is exacerbating an already enormously challenging labor crisis for growers and agriculture employers across the country. This lawsuit challenges the unauthorized process through which DOL passed this rule, and the unlawful and unconstitutional impacts it has on American agriculture employers," said IFPA CEO Cathy Burns.

The lawsuit, filed in the Southern District of Mississippi with representation from McDermott, Will & Emery, requests a permanent injunction of DOL's Improving Protections for Workers in Temporary Agricultural Employment in the United States ruling. In August, the court in *Kansas v. U.S. Department of Labor*—a similar case in the 11th Circuit brought by 17 state attorneys general, the Georgia Fruit and Vegetable Growers Association, and Miles Berry Farm—found the rule unconstitutional and enjoined DOL from enforcing it within the 17 states.

That ruling bolsters the plaintiffs' position in this case and creates the current untenable situation in which employers in the agriculture industry must abide by different regulations and meet different requirements depending solely on the states in which they are located.

"The Department of Labor's rule changes the scope and function of the H-2A temporary guestworker program and imposes new obligations on agricultural employers. Years of regulatory burden coupled with congressional gridlock preventing legislative reform of the underlying H-2A statute have created an untenable situation for growers and producers of fresh produce who rely on legal foreign labor," said Zippy Duvall, president of the American Farm Bureau Federation.

"The DOL rule represents a regulatory overreach that ignores both legislative and judicial precedent. It imposes serious limitations on farm employers' abilities to run their businesses while erecting barriers for those same employers to communicate with their employees," said Ken Fisher, president & CEO of AmericanHort. "Our members depend on a reliable, legal workforce and they deserve access to the H-2A program without facing excessive costs and red tape."

"The Labor Department's onerous H-2A rule will make it difficult for American farmers and ranchers to meet their critical workforce needs," said Jon Baseline, VP of immigration policy at the U.S. Chamber of Commerce. "It does so by violating the free speech rights of American employers and the legal framework set by Congress decades ago." —JZ

News, views, commentary and event coverage about the policies and legislation that directly affect our industry. Share your thoughts, opinions and news with me: jzurko@ballpublishing.com.