



MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,  
*Chairwoman*

JOE WILSON, SOUTH CAROLINA  
GLENN THOMPSON, PENNSYLVANIA  
TIM WALBERG, MICHIGAN  
GLENN GROTHMAN, WISCONSIN  
ELISE M. STEFANIK, NEW YORK  
RICK W. ALLEN, GEORGIA  
JIM BANKS, INDIANA  
JAMES COMER, KENTUCKY  
LLOYD SMUCKER, PENNSYLVANIA  
BURGESS OWENS, UTAH  
BOB GOOD, VIRGINIA  
LISA C. MCCLAIN, MICHIGAN  
MARY E. MILLER, ILLINOIS  
MICHELLE STEEL, CALIFORNIA  
RON ESTES, KANSAS  
JULIA LETLOW, LOUISIANA  
KEVIN KILEY, CALIFORNIA  
AARON BEAN, FLORIDA  
ERIC BURLISON, MISSOURI  
NATHANIEL MORAN, TEXAS  
JOHN JAMES, MICHIGAN  
LORI CHAVEZ-DEREMER, OREGON  
BRANDON WILLIAMS, NEW YORK  
ERIN HOUGHIN, INDIANA

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,  
*Ranking Member*

RAÚL M. GRIJALVA, ARIZONA  
JOE COURTNEY, CONNECTICUT  
GREGORIO KIULI GAMACHO SABLÁN,  
NORTHERN MARIANA ISLANDS  
FREDERICA S. WILSON, FLORIDA  
SUZANNE BONAMICI, OREGON  
MARK TAKANO, CALIFORNIA  
ALMA S. ADAMS, NORTH CAROLINA  
MARK DESAULNIER, CALIFORNIA  
DONALD NORCROSS, NEW JERSEY  
PRAMILA JAYAPAL, WASHINGTON  
SUSAN WILD, PENNSYLVANIA  
LUCY MCBATH, GEORGIA  
JAHANA HAYES, CONNECTICUT  
ILHAN OMAR, MINNESOTA  
HALEY M. STEVENS, MICHIGAN  
TERESA LEGER FERNÁNDEZ,  
NEW MEXICO  
KATHY E. MANNING, NORTH CAROLINA  
FRANK J. MRVAN, INDIANA  
JAMAAL BOWMAN, NEW YORK

COMMITTEE ON  
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES  
2176 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

November 14, 2023

The Honorable Julie A. Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Re: RIN 1205—AC12, Improving Protections for Workers in Temporary Agricultural  
Employment in the United States

Dear Acting Secretary Su:

We write in opposition to the Department of Labor's (DOL) proposed rule titled "Improving Protections for Workers in Temporary Agricultural Employment in the United States."<sup>1</sup> The H-2A temporary agricultural worker program is crucial to thousands of employers across the nation, with 371,619 job positions certified by DOL in Fiscal Year 2022.<sup>2</sup> The proposed rule allows unprecedented access by organized labor to the property of farmers and makes other onerous changes to the H-2A program that will impose unnecessary burdens on American farmers, and it should be withdrawn.

### The Proposed Rule Advances a Big Labor Agenda

The Biden administration has threatened an "all-of-government" approach to empower labor unions.<sup>3</sup> It is disappointing but not surprising to see the administration inappropriately use the H-2A program to continue acting on this threat. The proposed rule puts its thumb on the scale to favor labor unions in several ways that exceed DOL's authority and are contrary to congressional intent.

In an unprecedented step, the proposed rule allows labor union representatives onto farms, which will likely interfere with the crucial work taking place there.<sup>4</sup> This provision may constitute an

<sup>1</sup> 88 Fed. Reg. 63,750 (proposed Sept. 15, 2023) [hereinafter Proposed Rule].

<sup>2</sup> [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A\\_Selected\\_Statistics\\_FY2022\\_Q4.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2022_Q4.pdf).

<sup>3</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/26/fact-sheet-executive-order-establishing-the-white-house-task-force-on-worker-organizing-and-empowerment/>.

<sup>4</sup> Proposed Rule, *supra* note 1, at 63,825.

uncompensated taking of property in violation of the Constitution.<sup>5</sup> The proposed rule also imposes severe restrictions on employer speech when communicating with employees about labor unions.<sup>6</sup> These extraordinary provisions echo the more radical actions taken by DOL's Occupational Safety and Health Administration in its proposed union walkaround rule<sup>7</sup> and by the National Labor Relations Board's (NLRB) General Counsel in her memo on employer meetings with employees.<sup>8</sup> The Biden administration's efforts to tilt the playing field in favor of union bosses are blatant and unmistakable.

The proposed rule additionally requires employers to provide to a labor union a plethora of personal information on workers upon the union's request and allows only one week of response time to such a request. This information includes the workers' full names, dates of hire, job titles, work location addresses, personal email addresses, personal cellular telephone numbers, profile names for messaging applications, home country addresses, and home country telephone numbers.<sup>9</sup> In this way, the proposed rule is trying to enact part of the proposed *Protecting the Right to Organize Act* (PRO Act) (H.R. 20), which is nothing more than Big Labor's wish-list, without the formality of the bill passing Congress. The PRO Act provision, similar to the proposed rule, requires an employer to provide the union with employees' names, home addresses, work locations, shifts, job classifications, personal landline and mobile phone numbers, and work and personal email addresses.

What is most offensive about these provisions in the proposed rule is that Congress has given no authority to DOL to impose these mandates on H-2A employers. Such authority cannot be found in the *Immigration and Nationality Act* or the *Fair Labor Standards Act*. Congress has indeed granted authority over labor-management relations to the NLRB pursuant to the *National Labor Relations Act* (NLRA), but the NLRA explicitly exempts agricultural employees, leaving regulation of these employees to the states with respect to labor-management relations.<sup>10</sup> DOL certainly has no power over labor-management relations. The proposed rule exceeds DOL's authority, is contrary to congressional intent as expressed in these statutes, and must be revised or withdrawn for these reasons alone.

### **The Proposed Rule Endangers Workplace Safety and Operations**

The proposed rule adds six criteria that an employer must satisfy before terminating an H-2A worker for cause.<sup>11</sup> By complicating the definition of "for cause," the proposed rule adds red tape when an employer may need to terminate a worker who is endangering the safety of other workers or is disrupting a farm's operations. The proposed rule is thus overly burdensome to employers and may harm the interests of workers.

---

<sup>5</sup> See *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2080 (2021) ("The [California] access regulation grants labor organizations a right to invade the growers' property. It therefore constitutes a per se physical taking.").

<sup>6</sup> *Id.*

<sup>7</sup> Worker Walkaround Representative Designation Process, 88 Fed. Reg. 59,825 (proposed Aug. 30, 2023).

<sup>8</sup> Memorandum from Jennifer A. Abruzzo, Gen. Couns., NLRB, on "The Right to Refrain from Captive Audience and other Mandatory Meetings" (Apr. 7, 2022).

<sup>9</sup> Proposed Rule, *supra* note 1, at 63,825.

<sup>10</sup> 29 U.S.C. § 152(3).

<sup>11</sup> Proposed Rule, *supra* note 1, at 63,823.

### **The Proposed Rule Makes It Harder for Employers to Adjust Wages**

Under current regulations, an employer has 14 days to adjust wages in its payroll after DOL publishes the annual Adverse Effect Wage Rate (AEWR) in the Federal Register. The proposed rule eliminates this short payroll adjustment period and says wages must be adjusted immediately upon publication of the AEWR.<sup>12</sup> This is an unnecessary change that will be challenging, if not impossible, for employers to meet.

### **Conclusion**

This letter only covers a few of the many damaging changes included in the proposed rule, which also has new documentation and disclosure requirements littered throughout its provisions. The proposed rule exceeds DOL authority, is a giveaway to Big Labor, infringes on farmers' property rights, and is overly burdensome in numerous other ways. DOL needs to withdraw this proposed rule and go back to the drawing board.

Sincerely,



Virginia Foxx  
Chairwoman



Glenn "GT" Thompson  
Chairman  
Committee on Agriculture

---

<sup>12</sup> Proposed Rule, *supra* note 1, at 63,754.