FFVA
FLORIDA FRUIT
& VEGETABLE ASSOCIATION

May 12, 2025

Russell T. Vought
Director, Office of Management and Budget
725 17th Street NW
Washington, D.C., 20503
Via electronic submission: http://www.regulations.gov

RE: Request for Information – Deregulation - OMB-2025-0003-0001

Dear Mr. Vought:

On behalf of the membership of the Florida Fruit & Vegetable Association (FFVA), I submit to you the following regulations to be considered for deregulation, pursuant to the request for information (RFI) noticed by the Office of Management and Budget on April 10, 2025.

FFVA is an agricultural organization whose grower-shipper membership represents the majority of fruit, vegetable, and other specialty crop production in Florida. On behalf of its members, FFVA serves as a voice for growers among policymakers and the general public, working to enhance the business and competitive environment for producing and marketing Florida specialty crops.

Specialty crop production in Florida is labor intensive due to the perishable nature of the variety of crops produced which include citrus, blueberries, strawberries, tomatoes, lettuce, peppers, sweet corn, avocados, and more. FFVA's members rely on large seasonal workforces to grow and harvest their crops.

FFVA members have become increasingly reliant on the H-2A agricultural guest worker program administered in part by the U.S Department of Labor. In the past few years, the Department has aggressively promulgated several rules which make the H-2A program more costly and burdensome to use. These regulations come at a time when growers struggle to secure a stable and legal workforce. So, they've had no choice but to turn to the H-2A program and its increasing regulatory burden.

I. U.S. Department of Labor, Employment and Training Administration

Title 20, Chapter V, Part 655, Subpart B, Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A Workers)
Agency Head: Secretary Lori Chavez-DeRemer
Agency Contact: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200

1. **Rescind the final rule "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States," 88 Fed. Reg. 12760 (Feb. 28, 2023).**

The AEWR Methodology rule, published on February 28, 2023, should be rescinded in its entirety.

The AEWR has long been a requirement of the H-2A program and is intended to protect U.S. workers' wages from being adversely affected by the employment of H-2A workers. But, as the shortage of available U.S. workers has worsened, the AEWR has become more volatile and serves to drive up wages rather than simply protect against an adverse effect.

Florida, the largest user of the H-2A program, has had its AEWR jump nearly 10% this year and 15% just two years ago. This artificial minimum wage in Florida has increased by $5 over the span of about five years.

The U.S. Department of Labor (DOL) determines the AEWR annually based on results from the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS). The FLS uses all wages paid to farmworkers – including the AEWR-based wages paid to H-2A workers and those in corresponding employment – to determine this average gross wage, and includes bonuses, incentive pay, and overtime in the calculation. This creates a self-inflating minimum wage (the AEWR) based on the prior year's gross wage, resulting in volatile wage spikes.

Pursuant to regulation, the annual AEWR adjustment becomes effective around January 1 each year, in the middle of Florida's harvesting season and long after growers' contracts have been set. Without the ability to plan for drastic cost increases, growers are left to absorb any unanticipated AEWR increase.

Two years ago, the labor department modified its process for determining the AEWR so that its not based solely on the Farm Labor Survey, but also on the Occupational Employment and Wage Statistics ("OEWS") survey, depending on the occupational code. This AEWR Methodology rule disaggregated wages and drastically increased costs to growers and exacerbating the agricultural labor crisis. These OEWS-based AEWRs also update annually but, instead of updating at the same time as the FLS-based AEWR, these update in July. This means that growers using the H-2A program must navigate wage increases every six (6) months.

During the notice and comment period, growers requested the Department to include a primary duties test in the new regulation which would have simplified the process and provided clarity to growers. The Department rejected proposal and instead made the rule as exacting as possible. As a result, growers often now file multiple H-2A labor certification applications for job opportunities where they used to only file one.

2. Rescind the final rule "Improving Protections for Workers in Temporary Agricultural Employment in the United States," 89 Fed. Reg. 33898 (April 29, 2024).

The H-2A Worker Protection rule, published on April 29, 2024, should be rescinded in its entirety.

The rule ventures more to illegally grant third party labor organizations rights and access to private agricultural properties and erode due process mechanisms for H-2A employers than it does to improve protections for workers. The rule, in part:

- Extends National Labor Relations Act-like provisions to H-2A workers despite being preempted by Congress.
- Restricts growers' abilities to exclude third parties from accessing private agricultural properties.
- Adopts a "single employer test" as a lower burden for the Department to determine whether two entities should be considered the same employer, despite that approach having been rebuffed by the Board of Alien Labor Certification Appeals.
- Requires that every H-2A labor certification application include the disclosure of the identities, locations,

and contact information for every owner and operator of an agricultural worksite and every manager or supervisor of an H-2A worker.
- Grants state agencies broad, unilateral authority to discontinue services for users of the federal H-2A program.

Portions of the rule have been found illegal and temporarily blocked by federal courts.

- ***"The Final Rule violates the NLRA because the DOL attempts to unconstitutionally create law."*** *Kansas v. Su,* No. 2:24-cv-76 at 19 (S.D. Ga. Aug. 26, 2024) (order granting preliminary injunction).
- ***"The best reading of the statute is that it does not delegate to DOL the authority to create the challenged amendments to the regulation."*** *Int'l Fresh Produce Ass'n v. USDOL,* No. 1:24-cv-309-HSO-BWR at 23 (S.D. Miss. Nov. 25, 2024) (motion granting Section 705 stay).
- ***"The final rule's requirement that H-2A workers be allowed to invite guests onto an employer's property constitutes an unconstitutional taking."*** *Barton v. USDOL,* 757 F. Supp. 3d, 766 at 789 (E.D. Ky. Nov. 25, 2024) (order granting injunctive relief).

The H-2A program is notoriously expensive and cumbersome for growers to navigate. If allowed to go into effect, this rule will infringe on growers' rights as property owners and will add additional burdensome regulations for growers to navigate.

CONCLUSION

Growers across the country are enduring a worsening shortage of domestic labor and have reluctantly turned to the H-2A program. Its many regulations are making the program too costly to use, forcing farmers to make tough operational decisions and jeopardizing the future of American agriculture and our nation's food security.

Rescinding these regulations is a simple but effective way to deliver much needed relief to American farmers. Thank you for your consideration.

Sincerely,

Jamie Fussell
Director of Labor Relations
Florida Fruit & Vegetable Association