

March 26, 2009

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Employment and Training Administration
U.S. Department of Labor
Room N-5641
200 Constitution Avenue, NW
Washington, DC 20210

**RE: Comment to Docket: ETZ-2008-1001
Regulatory Information Number (RIN) 1205-AB55.**

**Proposed suspension of the Labor Certification Process for
Temporary Agricultural Employment in the United States (H-2A.)**

The United Fresh Produce Association (United Fresh) submits comments on behalf of our members regarding the notice and request for comments published in the Federal Register on March 17, 2009 by the Department of Labor (DOL) concerning suspension of reforms for the temporary agricultural employment (H-2A guest worker) program.

United Fresh includes some 1,200 member companies that distribute and market the large majority of fresh produce sold in the United States. The association is a vertically integrated national trade organization that represents growers, shippers, fresh-cut processors, brokers, wholesalers and distributors of produce, working together with their customers at retail and foodservice, suppliers throughout the distribution chain, and international partners.

As an association, we have several members who participate in this program, both veteran users as well as some new participants. We believe the final regulations that were published in December, 2008 for implementation in January, 2009, while not perfect, have some positive reforms for the program.

Listed below are some general items of concern about DOL's notice to suspend these reforms;

1. Participants in the program are already making steps to comply with the reforms, including entering into formal contracts that are governed in part by the new regulations. Backtracking now, through this suspension, will add confusion and cost to those sincere efforts to comply with the federal government's mandate.

2. We are unclear as to the standard that DOL is applying to each of the three criteria in the notice that triggered the need to suspend the reforms.

Criteria 1 is the threat of pending legal action against the reforms.

However, since a court has not ruled on this matter it is premature for DOL to suspend a final rule based simply upon the possibility of a future legal development. Doing so creates a conflict between two branches of government. In effect, the executive branch is predetermining an outcome in the legislative branch. Therefore, this rationale does not appear to meet a reasonable standard that would mandate suspending a final rule.

Criteria 2 is the lack of resources at DOL to efficiently implement the reforms.

It is unclear what standard DOL is using to determine that this deficiency exists. The availability of resources should have been part of the process during the evaluation of the proposed rule prior to its finalization. We are unaware of issues being cited by DOL during that process which cast doubt on the availability of those resources. Indeed the finalization of the rule, on its face, indicates that no significant issues were identified.

Additionally, we are unaware of significant issues with the current process that is already underway in Florida, Georgia and North Carolina. These states, some of the largest that currently use the H-2A program, should be good indicators of whether adequate resources are in place to implement the new rule.

Criteria 3 is a disagreement with the previous Administration over the need for the reforms.

While we are respectful of policymaking differences, it is our understanding that they should be addressed through an entirely new rulemaking process, if revisions are warranted. This suspension effectively shortcuts that process. In particular, the ten-day comment period on this suspension is unusually abbreviated compared to a full formal rulemaking. Therefore, we do not believe that this suspension is consistent with the Administrative Procedures Act.

For the aforementioned reasons, the United Fresh Produce Association strongly urges the Department of Labor to set-aside their notice of suspension on the H2A reforms.