

Congress of the United States
Washington, DC 20515

December 9, 2009

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Solis:

The recent U.S. Department of Labor's Notice of Proposed Rule Making regarding the H-2A agriculture guest worker program, 74 Fed. Reg. 45906, published on September 4, 2009, is causing concern in the State of Georgia. The proposed rule provides significant changes in regulations that have been in effect less than nine months and, if implemented, will have a negative impact on many farm families in our State. We urge you to carefully consider the comments submitted by farm families and agricultural organizations as you continue the rule making process.

Agriculture is the largest industry contributor to the State of Georgia. Fruit and vegetable production is Georgia's largest combined plant crop sector generating a farm gate value of more than \$1.1 billion. More than 90% of Georgia's fruit and vegetable production is for the fresh market requiring very labor intensive production practices.

The H-2A program is a critical labor resource that a large number of our farmers depend on when they are unable to secure enough U.S. workers to fill their seasonal job openings. Currently over 60 Georgia farmers employ about 6,000 H-2A workers. These growers produce every fruit and vegetable grown in this region, as well as pine seedlings, trees and vegetable plant sets. Several of these growers use more than 300 workers per season and others are small farmers who use 10 or less H-2A workers. These farmers are dependent on the U.S. Department of Labor for a legal and reliable work force.

Like the Department, we want a viable H-2A program and we want that program to be fair to U.S. workers, legal visa holders, and employers. However, workers and employers need consistency in order to plan ahead. Despite decades of stability in the H-2A program, the Department's proposed rule marks the third attempt to change the H-2A program in less than two years. In late 2008, the Department promulgated the first update of the program since its inception in 1987.

Growers relied on these new regulations as they prepared their budgets and made business plans for the 2009 growing season. The Department's recent actions, first an attempt to suspend the new regulations, and now to completely rewrite them, have created a tremendous amount of uncertainty and confusion about the program and its future. Our farmers are frustrated with the regulatory process.

Growers did not have the time to fully assess every proposed change, but many have weighed in on specific parts of the proposed changes. We have heard their concerns that the newest proposed rule would increase the costs and burdens of participating in the H-2A program. For example, the proposed regulations and the Department's recent withdrawal of a previous FLSA interpretation could increase the cost per worker by more than \$486.

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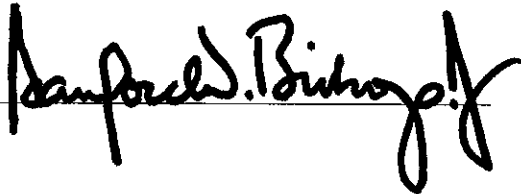
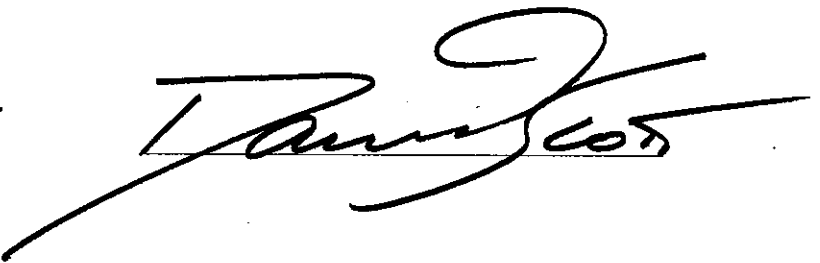
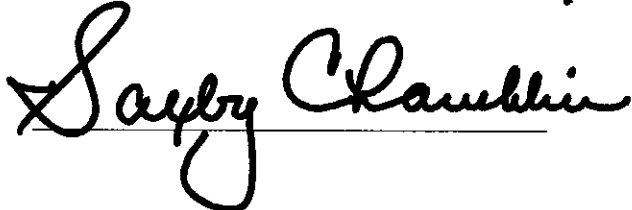
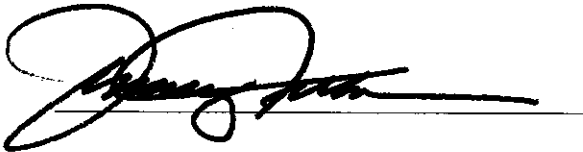
This adds almost \$3 million to Georgia growers' cost of using the H-2A program. This is in addition to the increase in mandatory wages from \$7.25/hour to an estimated \$9.26/hour. Using an example of 6,000 H2A workers, working 40 hours a week for 6 months (a conservative length of season estimate given Georgia's growing season), and the additional cost to Georgia growers using legal workers would be more than \$11 million.

We know that you will carefully consider all of the comments that you have received. The final regulations must not hinder the ability of farmers to obtain legal workers. Any rule that makes it more costly or cumbersome to participate, without delivering measurable benefits to employer and employee alike, will discourage the use of the H-2A program. Some users might choose to skirt the law and hire undocumented labor. Some users may choose to grow different crops while others get out of farming altogether. We are certain that you share our concern about the impact on agriculture and Georgia's economy.

The H-2A program is an important tool that enables the farm families we represent to grow their high quality products. The program is designed to balance the legitimate needs of U.S. workers, seasonal immigrant H-2A farm workers, and employers. Unfortunately, the most recent proposed rule appears to be crafted in a manner that does not truly reflect the needs of both the employee and the producer. As you continue to work on this matter, we strongly urge you to take the views and recommendations of producers who have submitted comments into account and implement many of the changes they have suggested.

With warmest personal regards, we remain

Sincerely,

Tammy Lee

John Bauer

~~Lynette~~

Hank Leher

Nathan Deal

Jack Kingston