

## **December 20, 2024. The Department of Labor Announces Additional Guidance Based on the Court Orders Issued on November 25, 2024, by the Eastern District of Kentucky and Southern District of Mississippi Associated with Implementation of the 2024 Farmworker Protection Final Rule**

### **Background**

On April 29, 2024, the U.S. Department of Labor (Department) published the final rule, [“Improving Protections for Workers in Temporary Agricultural Employment in the United States”](#) (“The Farmworker Protection Rule”). On August 26, 2024, the United States District Court for the Southern District of Georgia issued a preliminary injunction in the case *Kansas, et al. v. U.S. Department of Labor*, No. 2:24-cv-00076-LGW-BWC (S.D. Ga., Aug. 26, 2024) (“*Kansas*”), prohibiting the Department from enforcing the Farmworker Protection Rule in certain states and with respect to certain entities. Please refer to the Department’s August 28, 2024, and September 10, 2024, announcements for more information regarding the scope and applicability of the *Kansas* order.

On November 25, 2024, the United States District Court for the Eastern District of Kentucky issued a preliminary injunction in the case of *Barton, et al. v. U.S. Department of Labor, et al.*, No. 5:24-cv-249-DCR (E.D. Ky., Nov. 25, 2024) (“*Barton*”), enjoining and restraining the Department from implementing, enacting, enforcing, or taking any action in any manner to enforce certain provisions of the Farmworker Protection Rule in certain states and with respect to certain entities. Also on November 25, 2024, the United States District Court for the Southern District of Mississippi issued a Section 705 stay in *International Fresh Produce Association, et al. v. U.S. Department of Labor, et al.*, No. 1:24-cv-309-HSO-BWR (S.D. Miss., Nov. 25, 2024) (“*IFPA*”), staying the effective date of 20 C.F.R. § 655.135(h)(2) and (m) in the Farmworker Protection Rule nationwide until the conclusion of proceedings in the case, including any appellate proceedings. Please refer to the Department’s November 27, 2024, announcement for more information regarding the scope and applicability of the *Barton* and *IFPA* orders.

On November 27, 2024, the Department directed employers (or an employer’s authorized attorney or agent) to prepare and submit H-2A job orders and *Applications for Temporary Employment Certification* on the Foreign Labor Application Gateway (FLAG) System using the forms applicable under the version of [20 CFR part 655, subpart B](#) in effect on June 27, 2024. The Department announced that it would issue additional information and guidance on its ongoing compliance and implementation of these orders as soon as possible.

After further consideration and in light of these court orders, the Department has concluded that utilization of the current forms associated with the Farmworker Protection Rule is infeasible in the short term, including during the current peak H-2A filing season. As a result, the Department will utilize the forms applicable under the version of 20 CFR part 655, subpart B in effect on June 27, 2024.

## Implementation Procedures and Technical Assistance

**Group 1**     ***Employers who had initiated, but not yet submitted (i.e., “unsubmitted”), H-2A job orders and applications as of November 27, 2024, and employers intending to initiate future H-2A job orders and applications.***

- On November 27, 2024, all initiated, but unsubmitted, H-2A job orders and completed *Applications for Temporary Employment Certification* in FLAG using the forms associated with the Farmworker Protection Rule (i.e., under the version of [20 CFR part 655, subpart B](#) in effect as of June 28, 2024) were deleted to help prevent accidental submittals using incorrect versions of the forms and ensure DOL compliance with the court orders.
- Additionally, the preliminary “Yes/No” question put in place by the Department to comply with the *Kansas Order* has been removed from the FLAG System, and all employers seeking to prepare and submit H-2A job orders and *Applications for Temporary Employment Certification* must use forms applicable under the version of [20 CFR part 655, subpart B](#) in effect on June 27, 2024.

**Group 2**     ***Employers who submitted H-2A job orders and applications on or before November 27, 2024, using the revised forms applicable under the Farmworker Protection Rule and for whom those orders/applications are pending issuance of a final determination under 20 CFR 655.160.***

- To ensure compliance with the court orders, OFLC has ceased further processing of all pending H-2A job orders and *Applications for Temporary Employment Certification* using the revised forms applicable under the Farmworker Protection rule (forms in effect on June 28, 2024).

In accordance with 20 CFR 655.124 and 655.136, employers under this Group 2 category with pending job orders/applications have the option of requesting withdrawal of their pending H-2A job order or *Application for Temporary Employment Certification* using either the FLAG System online withdrawal function or submitting a request in writing to the OFLC at [tlc.chicago@dol.gov](mailto:tlc.chicago@dol.gov) and identifying the unique FLAG H-2A job order or *Application for Temporary Employment Certification* case number in the subject line of the email. Consistent with 20 CFR 655.134(a), the NPC CO will grant a waiver of the regulatory time period for filing new H-2A job orders and *Applications for Temporary Employment Certification* using the forms applicable under the version of [20 CFR part 655, subpart B](#) in effect on June 27, 2024, for those employers impacted by DOL’s cessation of processing as a result of these court orders, but this waiver does not extend to certified applications that are withdrawn and refiled.