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For Immediate Release

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NCAE Challenges Adverse Effect Wage Rate Rule

(Washington, D.C.) The National Council of Agricultural Employers (NCAE) filed a Motion for Preliminary Injunction against the Department of Labor's (DOL) new Adverse Effect Wage Rate (AEWR) regulation, Friday evening, April 21, 2023. The lawsuit alleges that the Secretary's action in developing the regulation was arbitrary and capricious and an abuse of the Secretary's discretion.

"This regulation continues the DOL's abusive practice of mandating minimum wages farmers and ranchers must pay under the Temporary H-2A Agricultural Program completely disconnected from the market for agricultural labor anywhere on the planet," noted Michael Marsh, President and CEO of NCAE. "Not only does the rule continue to misuse the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS) to establish wage rates, but it also piles on farm and ranch families by requiring nonfarm wages drawn from the Bureau of Labor and Statistics (BLS) for simple, routine, on farm activities, jobs which have been performed on American farms and ranches for generations. Some farmworker wages will more than double under this new rule forcing family operations out of business. And, of course, these mandated minimum wages impact all farm wages, whether employers use the program or not."

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The DOL received comments on this rulemaking from family farms and ranches located across the country raising concerns regarding the madness of the Secretary's approach. Commenters pointed out that the DOL's regulations and its continued misuse of survey instruments not designed to capture actual agricultural wage rates were forcing America's food production to flee to overseas competitors. As a result of DOL's ignoring the pleas of U.S. legacy farming operations, today more than 60% of the fresh fruit and more than 35% of the fresh vegetables consumed in the U.S. are being produced by overseas competitors. Farm and ranch families, the Small Business Administration, economists, and others had warned the Secretary that such irresponsible action was putting America's food security at risk—a concern seemingly ignored by the Secretary.

“NCAE has repeatedly petitioned the Secretaries of Labor to make a determination of an adverse effect to the domestic workforce due to the employment of H-2A workers prior to mandating devastating AEWRs. Sadly, for America, the DOL has turned its back on commonsense and the American people. The economic evidence overwhelmingly supports our cause and the fact that DOL's estimates of cost impact are short by hundreds of millions, if not ultimately, billions of dollars! These are incredible errors,” said Marsh. “Having been slammed face first into the dirt by the Executive Branch, NCAE and our farm and ranch family members had no other choice than to turn to the Judiciary hoping the Court will hear and recognize the importance of our pleas for relief.”

The legal challenge is being brought in Federal District Court in Tampa, Florida, on behalf of NCAE and several named NCAE member plaintiffs.

NCAE is the national trade association focusing on agricultural labor issues from the employer's viewpoint.

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