June 11, 2026

BY ELECTRONIC SUBMISSION

Honorable Andrew Rogers
Administrator
Department of Labor
Wage and Hour Division
200 Constitution Avenue NW
Washington, DC 20210

In re: Joint Employer Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act
Docket No. WHD-2026-0067; **RIN 1235-AA48**

Dear Administrator Rogers:

The National Council of Agricultural Employers ("NCAE") respectfully submits these comments in response to the Department of Labor's Notice of Proposed Rulemaking ("NPRM") regarding joint employer status under the Fair Labor Standards Act ("FLSA"), Family and Medical Leave Act ("FMLA"), and Migrant and Seasonal Agricultural Worker Protection Act ("MSPA").

Founded in 1964, NCAE is the only national trade association dedicated exclusively to representing the interests of agricultural employers on workforce and labor issues. NCAE's membership includes agricultural employers, agricultural associations, Farm Labor Contractors, agricultural service providers, and other stakeholders involved in the employment of agricultural workers throughout the United States. Collectively, NCAE members represent the overwhelming majority of employers participating in the H-2A temporary agricultural worker program and

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encompass virtually every major agricultural commodity, production region, and operational model utilizing H-2A labor.

NCAE supports the Department's efforts to provide greater clarity regarding joint employer determinations. Clear standards benefit workers, employers, regulators, and labor-service providers alike. Agricultural employers operate within one of the most heavily regulated labor environments in the American economy and require predictable standards that allow them to understand their obligations and structure their operations accordingly.

As the Department evaluates joint employer relationships within agriculture, however, it is important to recognize that the agricultural labor market has undergone a significant transformation during the past decade. The rapid expansion of the H-2A program has fundamentally changed how agricultural labor is recruited, transported, housed, administered, and managed. The H-2A program has evolved from a relatively limited seasonal labor program into an essential component of the workforce infrastructure supporting domestic agricultural production.

As the program has grown, a sophisticated network of participants has developed around it. Agricultural employers routinely interact with Farm Labor Contractors, housing providers, transportation providers, agricultural associations, compliance professionals, attorneys, state workforce agencies, federal agencies, and other entities involved in the administration of agricultural labor programs. These relationships often involve substantial coordination and shared compliance responsibilities that are unique to the H-2A program and modern agricultural operations.

The Department should therefore exercise caution in applying joint-employer principles developed in other industries without accounting for the realities of contemporary agricultural labor systems. Many interactions that may appear significant in other employment settings are often the product of regulatory obligations, agricultural production requirements, worker-protection standards, food-safety requirements, and compliance responsibilities that are inherent to the administration of the H-2A program.

NCAE respectfully submits that the final rule should recognize the distinction between shared compliance responsibilities and shared employer authority. Participation in a common regulatory framework, cooperation in satisfying legal obligations, and coordination necessary to facilitate agricultural production do not necessarily indicate that multiple entities exercise employer-level control over workers.

The agricultural industry has invested substantial resources in developing compliance systems, workforce-administration structures, educational programs, and professional support services designed to ensure adherence to federal labor standards and promote worker protections. The

Department should avoid interpretations that inadvertently discourage these compliance efforts or create uncertainty regarding relationships that have developed in response to increasingly complex regulatory obligations.

For these reasons, NCAE urges the Department to adopt a final rule that reflects the realities of the modern H-2A labor system, provides meaningful guidance regarding agricultural labor relationships, and preserves the distinction between legitimate compliance coordination and actual employer authority.

II. EXECUTIVE SUMMARY

The National Council of Agricultural Employers ("NCAE") supports the Department's effort to provide greater clarity regarding joint employer determinations under the Fair Labor Standards Act ("FLSA"), Family and Medical Leave Act ("FMLA"), and Migrant and Seasonal Agricultural Worker Protection Act ("MSPA"). Clear standards benefit workers, employers, workforce providers, regulators, and all participants in the agricultural labor system. As the Department finalizes this rulemaking, however, it is important to recognize that the agricultural labor market has undergone substantial changes during the past decade, particularly through the growth and expansion of the H-2A temporary agricultural worker program.

Today, the H-2A program serves as a critical component of the labor infrastructure supporting domestic agricultural production. Agricultural employers across virtually every commodity sector increasingly rely upon the program to address persistent labor shortages and maintain the workforce necessary to plant, cultivate, harvest, pack, and process agricultural commodities. As the program has expanded, a sophisticated workforce system has developed involving agricultural employers, Farm Labor Contractors, agricultural associations, housing providers, transportation providers, compliance professionals, attorneys, and numerous governmental entities.

The existence of this workforce infrastructure is not evidence of employer fragmentation or an attempt to avoid legal responsibilities. Rather, it reflects the increasing complexity of the regulatory framework governing agricultural labor and the substantial compliance obligations imposed upon program participants. The modern H-2A system requires extensive coordination among independent participants to satisfy housing requirements, transportation obligations, recruitment requirements, worker-protection standards, wage obligations, inspections, audits, and other regulatory requirements.

NCAE believes one of the most important principles that should guide the Department's final rule is the distinction between shared compliance responsibilities and shared employer authority. The H-2A program frequently requires multiple entities to participate in compliance-related activities. Housing administration, transportation coordination, safety initiatives, worker

disclosures, inspections, audits, and regulatory reporting often involve cooperation among multiple participants. These activities are undertaken to satisfy legal obligations and protect workers. They should not be confused with authority over the essential terms and conditions of employment.

Similarly, agriculture itself presents operational realities that differ significantly from many other industries. Agricultural production requires continuous coordination regarding weather conditions, crop maturity, food-safety requirements, irrigation schedules, harvest timing, and workforce deployment. These production decisions are necessary to grow and harvest crops efficiently and safely. They are fundamentally different from decisions regarding hiring, firing, discipline, compensation, payroll administration, or other core employment functions.

Finally, NCAE emphasizes the importance of regulatory predictability. Agricultural employers frequently make workforce, housing, transportation, and production decisions months before labor is needed. The ability to plan effectively depends upon a clear understanding of legal obligations and potential liability. A final rule that recognizes the realities of modern agricultural labor relationships will promote compliance, support workforce stability, and provide greater certainty for employers and workers alike.

For these reasons, NCAE respectfully urges the Department to adopt a final rule that recognizes the realities of the modern H-2A labor system, distinguishes shared compliance responsibilities from shared employer authority, and provides meaningful guidance regarding agricultural labor relationships.

III. THE H-2A PROGRAM HAS BECOME ESSENTIAL AGRICULTURAL INFRASTRUCTURE

Over the last decade, the H-2A temporary agricultural worker program has undergone a remarkable transformation. What was once utilized by a relatively limited segment of agricultural employers has evolved into a critical workforce program supporting agricultural production throughout the United States. The growth of the H-2A program reflects broader changes within the agricultural labor market, including persistent labor shortages, demographic changes within the domestic agricultural workforce, increasing production demands, and the need for employers to access a legal and reliable source of labor.

Department of Labor data demonstrates substantial growth in both the number of H-2A applications filed and the number of certified positions requested annually. The program has expanded beyond traditional regions and commodities and is now utilized by agricultural employers across virtually every major agricultural sector. Fruit and vegetable producers, nurseries, greenhouse operations, livestock producers, forestry operations, sugar producers, and

numerous other agricultural employers increasingly rely upon H-2A labor to maintain operations and meet production demands.

This growth has transformed the H-2A program from a supplemental labor source into an essential component of the agricultural workforce system. For many employers, access to H-2A workers is no longer merely beneficial—it is necessary to sustain agricultural production. The Department's analysis of agricultural labor relationships should recognize this reality.

Consequently, modern H-2A operations often involve multiple independent entities working within a common regulatory framework. Employers may rely upon Farm Labor Contractors, housing providers, transportation providers, legal counsel, compliance consultants, agricultural associations, and other professionals to assist with various aspects of program administration. The existence of these relationships reflects the complexity of the H-2A program and should not be viewed as unusual or suspect. Rather, it is evidence of a mature workforce system that has evolved to meet increasingly sophisticated regulatory obligations.

The Department should also recognize that the success of the H-2A program has been built upon substantial investments in compliance. Employers participating in the program routinely incur significant costs associated with recruitment, housing, transportation, wage obligations, regulatory compliance, inspections, and workforce administration. These investments demonstrate a commitment to operating within a lawful workforce system that provides important protections for workers while allowing agricultural employers to meet critical labor needs.

NCAE's membership reflects this reality. Across commodities and regions, agricultural employers have adapted their operations to comply with an increasingly detailed regulatory framework while continuing to provide the labor necessary to support domestic agricultural production. The Department's final rule should therefore be informed by the realities of the modern H-2A system rather than assumptions derived from labor arrangements that predate the program's current structure and scale.

Understanding the modern H-2A program is critical to understanding contemporary agricultural labor relationships. The workforce system that exists today is substantially different from that of previous decades. Any analysis of joint employment within agriculture should account for the growth of the program, the complexity of its regulatory requirements, and the network of independent participants that now support its administration.

IV. MODERN H-2A OPERATIONS DEPEND UPON A NETWORK OF INDEPENDENT PARTICIPANTS

The modern H-2A program is supported by a network of independent participants that collectively facilitate the recruitment, transportation, housing, administration, and management

of agricultural labor. As the program has expanded, employers have increasingly relied upon specialized entities to assist in meeting the extensive regulatory obligations associated with H-2A participation. These relationships reflect the complexity of the program and the practical realities of administering a nationwide agricultural workforce system.

At the center of this system are agricultural employers who bear responsibility for producing agricultural commodities and ensuring compliance with numerous federal labor requirements. At the same time, successful participation in the H-2A program frequently requires coordination with a variety of independent entities that provide specialized services necessary to support workforce administration.

For example, many employers utilize Farm Labor Contractors to assist with recruitment, workforce administration, transportation coordination, housing management, payroll administration, and regulatory compliance. Others rely upon housing providers to secure and maintain worker housing that satisfies applicable federal standards. Transportation providers assist with worker movement between housing locations, worksites, and other destinations. Attorneys, agents, and compliance professionals frequently provide guidance regarding regulatory obligations, government filings, audits, inspections, and evolving legal requirements.

Agricultural associations likewise play an important role within the H-2A system. Organizations such as NCAE provide educational programming, compliance resources, workforce-development information, legal and regulatory updates, and forums through which employers can better understand and comply with federal labor requirements. These activities help employers navigate an increasingly complex regulatory environment and promote greater compliance throughout the agricultural sector.

State workforce agencies and federal agencies also occupy critical roles within the administration of the program. Recruitment activities, housing inspections, prevailing-practice determinations, labor certification processing, enforcement activities, and numerous other program functions require interaction among employers and governmental entities throughout the agricultural season.

The existence of multiple participants within a common workforce system does not mean those participants function as a single employer. Modern H-2A operations often involve extensive communication, coordination, and cooperation among independent entities that possess different responsibilities and perform different functions. Such interactions are frequently necessary to satisfy regulatory requirements and facilitate agricultural production.

The Department should therefore recognize that the presence of multiple entities within an H-2A operation is not unusual. Rather, it is a natural consequence of a mature workforce program that has evolved to meet increasingly complex labor, housing, transportation, and compliance

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obligations. Any analysis of joint employment within agriculture should account for these realities and avoid assumptions that routine participation in a common workforce system necessarily reflects shared employer authority.

V. THE GROWTH OF FARM LABOR CONTRACTORS REFLECTS THE EVOLUTION OF AGRICULTURAL LABOR COMPLIANCE

One of the most significant developments accompanying the growth of the H-2A program has been the increasing utilization of Farm Labor Contractors ("FLCs"). Department of Labor disclosure data demonstrates that FLC participation in the H-2A program has expanded substantially during the past decade and now represents a significant share of H-2A applications nationwide. In several major agricultural states, including Florida and California, FLCs account for an even greater percentage of H-2A participation.

This growth is frequently misunderstood. The increasing use of Farm Labor Contractors should not be viewed primarily as a change in labor sourcing. Rather, it reflects the evolution of agricultural labor compliance and the increasing complexity of administering a modern H-2A workforce.

Historically, Farm Labor Contractors were often viewed principally as labor suppliers. While recruitment remains an important component of many contractor operations, the modern Farm Labor Contractor frequently performs functions that extend far beyond worker recruitment. Today's FLCs often administer complex compliance programs involving worker transportation, housing management, payroll administration, onboarding, recordkeeping, regulatory reporting, workforce logistics, safety compliance, and coordination with multiple government agencies.

As these obligations have expanded, many agricultural employers have increasingly relied upon entities capable of administering these responsibilities. Farm Labor Contractors have emerged as one of the primary compliance-focused participants within the H-2A system. Their growth reflects the development of a specialized workforce-administration sector that assists employers in navigating a highly regulated labor environment.

Importantly, the growth of Farm Labor Contractors has generally strengthened compliance within the agricultural labor system. Many contractors employ personnel whose primary responsibilities involve regulatory compliance, housing administration, transportation management, payroll processing, worker communications, and government reporting. These resources frequently provide expertise that would be difficult or impractical for many employers—particularly small and mid-sized agricultural operations—to maintain independently.

NCAE's members have observed firsthand how these developments have contributed to the administration of the H-2A program. Across commodities and regions, employers have sought

specialized assistance not to avoid legal obligations, but to satisfy them. The growth of Farm Labor Contractors reflects this reality.

The Department should therefore avoid assumptions that the use of an FLC, standing alone, indicates the existence of a joint-employment relationship. The increasing presence of Farm Labor Contractors within the H-2A system is more appropriately understood as evidence of compliance specialization and professional workforce administration than as evidence of shared employer authority.

Recognizing this distinction is important to ensuring that the final rule accurately reflects the realities of the modern agricultural labor market and the workforce infrastructure that has developed around the H-2A program.

VI. SHARED COMPLIANCE RESPONSIBILITIES ARE NOT SHARED EMPLOYER AUTHORITY

One of the defining characteristics of the H-2A program is the extent to which compliance responsibilities are shared among multiple participants. Agricultural employers, Farm Labor Contractors, housing providers, transportation providers, agents, attorneys, consultants, and government agencies frequently interact throughout the H-2A process to satisfy the program's extensive regulatory requirements. These interactions are not unusual. They are an inherent feature of a workforce system that has been designed to provide significant protections for workers while allowing agricultural employers access to a lawful labor source.

As the Department evaluates joint-employment relationships within agriculture, it is important to distinguish between shared compliance responsibilities and shared employer authority. The fact that multiple entities participate in compliance activities does not necessarily indicate that multiple entities possess or exercise authority over the essential terms and conditions of employment.

The H-2A program itself provides numerous examples. Housing compliance often requires participation by employers, Farm Labor Contractors, housing operators, inspectors, state workforce agencies, and federal officials. Transportation obligations may involve employers, transportation providers, housing administrators, and workforce coordinators. Recruitment activities frequently require interaction among employers, agents, state workforce agencies, and federal agencies. Safety programs, worker disclosures, recordkeeping obligations, audits, investigations, and inspections similarly require cooperation among multiple participants.

These activities frequently involve communication, coordination, planning, and oversight. However, the purpose of these interactions is to satisfy regulatory obligations and protect workers—not to exercise employer authority. Treating such activities as evidence of joint employment risks conflating compliance with control.

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The distinction is particularly important because Congress and the Department have intentionally structured the H-2A program to require multiple layers of oversight and accountability. The program's worker-protection framework depends upon communication among employers, workforce providers, housing operators, transportation providers, regulators, and compliance professionals. The fact that these entities work together to satisfy legal requirements should not automatically suggest that they jointly employ workers.

The Department should also recognize that many activities associated with H-2A compliance are performed precisely because federal law requires them. Employers and workforce providers must coordinate worker arrivals, housing assignments, transportation schedules, safety training, regulatory disclosures, payroll obligations, inspections, and recordkeeping requirements. These activities often involve overlapping responsibilities, but overlapping responsibilities do not necessarily create overlapping employer authority.

Indeed, if routine compliance activities are viewed as evidence of joint employment, the result may be to discourage the very coordination that the H-2A program requires. Participants may become reluctant to communicate regarding compliance concerns, assist with worker-protection initiatives, participate in inspections, or engage in cooperative compliance efforts out of concern that such activities could later be characterized as evidence of employer status.

Such a result would be contrary to the interests of both workers and employers. The Department's regulatory framework should encourage compliance, cooperation, and worker protection—not create incentives for participants to limit their involvement in activities that improve compliance outcomes.

NCAE therefore respectfully urges the Department to clarify that participation in activities undertaken to satisfy H-2A obligations, including housing administration, transportation coordination, recruitment compliance, worker-protection initiatives, inspections, audits, investigations, recordkeeping, and regulatory reporting, should not be viewed as evidence of joint-employer status absent separate evidence demonstrating meaningful authority over the essential terms and conditions of employment.

The relevant inquiry should remain whether an entity possesses and exercises actual authority over hiring, firing, discipline, compensation, scheduling, supervision, payroll administration, or other core employment functions. Shared compliance responsibilities, standing alone, should not be confused with shared employer authority.

Recognizing this distinction would better reflect the realities of the H-2A program, promote continued compliance with federal labor standards, and provide agricultural employers with greater certainty regarding their obligations under the final rule.

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VII. AGRICULTURAL PRODUCTION REQUIRES COORDINATION THAT SHOULD NOT BE CONFUSED WITH EMPLOYER CONTROL

Agricultural production differs from most other industries in ways that are directly relevant to the Department's joint-employer analysis. Farming is governed by biological processes, environmental conditions, food-safety requirements, and seasonal production cycles that frequently require immediate operational decisions and continuous communication among multiple participants. These realities make coordination unavoidable, but they do not transform all participants in the agricultural process into employers.

Unlike many industries where production schedules can be adjusted according to business preferences, agricultural operations are often dictated by factors beyond the control of any employer. Crop maturity, weather events, irrigation schedules, disease pressures, pest infestations, market demands, and food-safety considerations frequently require rapid changes in production activities. These conditions may require growers and workforce providers to communicate regarding labor needs, worksite locations, harvest priorities, transportation logistics, and operational adjustments throughout a season.

For example, a grower may determine that a particular field must be harvested immediately due to weather conditions or crop maturity. A harvesting schedule may change because excessive rainfall has delayed field access. Workers may need to be moved to another location because a crop has reached peak harvest conditions sooner than anticipated. Food-safety concerns may require temporary work stoppages, changes in harvesting practices, or additional sanitation measures. These decisions are common throughout agriculture and are necessary to preserve crop quality, maintain food-safety standards, and prevent economic loss.

Importantly, these are agricultural production decisions—not employment decisions.

The fact that a grower determines which field should be harvested, when harvesting should occur, or how agricultural work should be performed does not necessarily indicate authority over hiring, firing, discipline, compensation, payroll administration, benefits, or other core terms and conditions of employment. Rather, these decisions reflect the grower's responsibility for agricultural production and the practical realities of farming.

The Department should be cautious not to conflate operational direction necessary to produce agricultural commodities with authority over the employment relationship. Agriculture requires constant communication among growers, Farm Labor Contractors, workforce coordinators, transportation providers, housing operators, and others involved in the production process. Such communication is often essential to ensuring that crops are planted, cultivated, harvested, packed, and delivered in a timely manner.

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This distinction becomes particularly important within the H-2A program. Employers participating in the program frequently coordinate labor resources across changing production conditions while simultaneously satisfying housing, transportation, safety, and worker-protection obligations. The resulting communications may appear extensive, but they are often driven by agricultural necessity rather than the exercise of employer authority.

NCAE's members routinely encounter circumstances in which operational decisions must be made quickly to respond to changing field conditions. Weather forecasts, crop conditions, irrigation schedules, disease concerns, labor availability, transportation logistics, and food-safety requirements all require real-time adjustments that affect how work is organized and where labor resources are deployed. These activities are fundamental aspects of agricultural production and should not be viewed as evidence of joint employment absent meaningful authority over the essential terms and conditions of employment.

The Department should therefore distinguish between coordination necessary to facilitate agricultural production and authority over employment matters. While the latter may be relevant to a joint-employer analysis, the former is an unavoidable feature of modern agriculture and should not independently establish joint-employer status.

Recognizing this distinction will help ensure that the final rule reflects the realities of agricultural production while preserving the Department's ability to identify circumstances in which multiple entities genuinely exercise employer authority over workers.

VIII. FOOD SAFETY, TRACEABILITY, AND QUALITY ASSURANCE REQUIREMENTS ARE NOT INDICIA OF EMPLOYER AUTHORITY

Modern agricultural production operates within a regulatory environment that places extraordinary emphasis on food safety, traceability, product integrity, and quality assurance. Agricultural employers are subject to an expanding array of federal requirements, customer standards, third-party audit programs, and market-driven expectations designed to protect consumers and ensure the safety of the nation's food supply. Compliance with these requirements frequently necessitates oversight of agricultural operations that should not be confused with authority over the terms and conditions of employment.

Over the last two decades, food-safety obligations have become increasingly sophisticated. The Food Safety Modernization Act ("FSMA"), retailer audit requirements, Good Agricultural Practices ("GAP"), GlobalG.A.P. standards, PrimusGFS certification programs, customer-specific food-safety protocols, traceability initiatives, and quality-assurance programs all require agricultural employers to maintain oversight of production activities occurring in fields, packing facilities, transportation systems, and other points throughout the agricultural supply chain.

These obligations often require growers and production managers to establish detailed standards regarding harvesting practices, sanitation procedures, field-entry protocols, equipment use, contamination prevention, product handling, traceability procedures, and quality-control measures. Compliance frequently requires direct communication with workers and workforce providers regarding how agricultural activities are performed and how products are handled throughout the production process.

For example, growers may require workers to follow specific handwashing procedures, utilize designated harvesting containers, comply with sanitation requirements, segregate products for traceability purposes, or cease harvesting activities if contamination concerns arise. Product-quality standards may require particular harvesting methods, grading practices, packing procedures, or handling requirements. Traceability systems may require documentation regarding where products were harvested, transported, and processed.

These requirements are not employment decisions. They are food-safety, consumer-protection, and agricultural-production requirements.

The purpose of such oversight is to ensure compliance with regulatory obligations, maintain access to commercial markets, protect consumers, and preserve the integrity of agricultural products. These activities are fundamentally different from decisions concerning hiring, firing, discipline, compensation, scheduling, payroll administration, benefits, or other essential terms and conditions of employment.

The Department should recognize that food-safety oversight frequently requires direct observation of work activities and communication regarding production practices. Such interactions are often unavoidable because food-safety obligations attach to the agricultural product itself. Agricultural employers bear responsibility for ensuring that products entering the food supply satisfy applicable standards regardless of the workforce model utilized to perform the work.

Similarly, quality-control programs frequently require employers to monitor harvesting techniques, evaluate product quality, inspect work practices, and communicate corrective measures necessary to satisfy customer specifications. These activities are undertaken to ensure product quality and regulatory compliance, not to exercise employer authority over workers.

NCAE's members operate across virtually every major agricultural commodity and routinely encounter food-safety and quality-assurance obligations that require oversight of production activities. These requirements have become an essential component of modern agricultural operations and are increasingly demanded by regulators, retailers, processors, and consumers alike.

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The Department should therefore distinguish between oversight undertaken to satisfy food-safety, traceability, quality-assurance, and consumer-protection obligations and authority over the employment relationship itself. The former reflects responsibilities imposed by law, commercial necessity, and public-health considerations. The latter concerns the exercise of employer authority over workers.

Failure to recognize this distinction could create substantial uncertainty throughout the agricultural sector and potentially discourage activities that improve food safety and regulatory compliance. Agricultural employers should not be placed in a position where efforts to satisfy food-safety obligations are later characterized as evidence of joint-employer status.

Accordingly, NCAE respectfully urges the Department to clarify that communications, inspections, directives, and oversight activities undertaken for the purpose of ensuring food safety, product quality, traceability, sanitation, regulatory compliance, or customer-specification compliance do not, standing alone, establish joint-employer status.

IX. NCAE'S ROLE IN PROMOTING COMPLIANCE, EDUCATION, AND WORKER PROTECTIONS

For more than six decades, NCAE has served as a national resource for agricultural employers seeking to understand and comply with federal and state labor requirements. NCAE's mission is rooted in promoting lawful workforce practices, educating employers regarding their obligations, and facilitating constructive engagement among employers, regulators, policymakers, and other stakeholders involved in agricultural labor.

As the H-2A program has expanded and regulatory obligations have become increasingly complex, NCAE has devoted substantial resources to compliance education and workforce-development initiatives designed to help employers understand and satisfy their legal responsibilities. Through conferences, educational programs, webinars, regulatory updates, industry publications, and other outreach efforts, NCAE provides employers with practical guidance regarding evolving labor standards, worker protections, and compliance obligations.

Among NCAE's most significant educational initiatives is its annual Ag Employer Labor Forum, which brings together agricultural employers, government officials, attorneys, labor specialists, compliance professionals, and other stakeholders to discuss developments affecting agricultural labor and workforce programs. The Labor Forum has become one of the premier educational events focused on agricultural labor issues and serves as an important venue for promoting compliance and sharing best practices throughout the industry.

NCAE also conducts educational programming throughout the year addressing topics such as H-2A compliance, labor-law developments, workforce-management issues, housing obligations, transportation requirements, worker protections, enforcement trends, and regulatory changes.

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These programs are designed to help employers understand complex legal requirements and implement practices that promote compliance with federal labor laws.

Importantly, these educational efforts benefit workers as well as employers. Employers who understand their obligations are better positioned to provide housing that meets applicable standards, administer transportation programs safely, comply with wage requirements, satisfy worker-disclosure obligations, and respond appropriately to changing regulatory requirements. Compliance education is therefore an important component of the broader worker-protection framework established by Congress and the Department.

X. REGULATORY PREDICTABILITY IS ESSENTIAL TO AGRICULTURAL PLANNING AND WORKFORCE STABILITY

Agricultural employers operate within production cycles that require significant advance planning. Unlike many industries where staffing decisions can be adjusted on relatively short notice, agricultural employers frequently make workforce, housing, transportation, and production decisions months before labor is needed. These decisions often occur before crops are planted, before housing is prepared, and before recruitment activities begin.

The H-2A program further amplifies the importance of regulatory certainty. Employers must anticipate labor needs well in advance, submit applications within prescribed filing windows, arrange for housing inspections, coordinate transportation logistics, conduct required recruitment activities, and satisfy numerous other obligations before workers arrive. Successful participation in the program depends upon an employer's ability to understand and predict its responsibilities under federal law.

For this reason, regulatory predictability is not merely a matter of administrative convenience. It is an essential component of workforce planning and agricultural production. Employers need clear standards regarding the relationships they may establish with workforce providers, housing operators, transportation providers, agricultural associations, and other participants in the H-2A system. Uncertainty regarding potential liability can make planning more difficult and discourage the use of compliance resources that improve program administration.

This concern is particularly significant given the increasingly specialized nature of agricultural labor compliance. As discussed throughout these comments, many employers rely upon independent entities that provide expertise in housing administration, transportation coordination, recruitment, payroll administration, regulatory compliance, and workforce management. Employers should be able to utilize these resources without uncertainty regarding whether routine interactions necessary to satisfy program obligations will later be characterized as evidence of joint-employer status.

Regulatory predictability is especially important for small and medium-sized agricultural employers. Unlike large corporations, many agricultural operations lack dedicated legal departments, human resources personnel, or compliance staffs. These employers often depend upon professional advisors, agricultural associations, educational programs, and specialized service providers to understand and satisfy complex regulatory requirements. Clear guidance regarding the distinction between compliance coordination and employer authority is therefore essential.

The Department should also recognize that uncertainty affects more than employers. Farm Labor Contractors, housing providers, transportation companies, agricultural associations, and other participants in the H-2A system similarly benefit from predictable standards that allow them to understand their responsibilities and structure their operations accordingly. A clear regulatory framework promotes compliance by providing all participants with a better understanding of the boundaries of their respective roles.

The Department's efforts to provide greater clarity regarding joint-employer status are therefore welcome. NCAE supports the goal of establishing standards that are transparent, understandable, and capable of consistent application. However, those standards should account for the realities of modern agricultural labor programs and recognize that extensive coordination among independent participants is often necessary to satisfy legal obligations and facilitate agricultural production.

A final rule that provides clear guidance while recognizing the unique characteristics of agricultural employment relationships will benefit employers, workers, regulators, and service providers alike. Regulatory certainty promotes compliance, encourages investment in lawful workforce programs, and supports the continued stability of the agricultural labor system.

XI. AGRICULTURAL WORKFORCE STABILITY SUPPORTS DOMESTIC FOOD PRODUCTION AND AGRICULTURAL COMPETITIVENESS

The H-2A program today serves a function that extends beyond the workforce needs of individual agricultural employers. The program has become an important component of the labor infrastructure that supports domestic agricultural production, food supply chains, and the economic vitality of rural communities throughout the United States.

Agricultural production depends upon the availability of a stable workforce capable of performing work that is often seasonal, physically demanding, and highly time sensitive. Unlike many industries, agricultural production is tied to biological cycles that cannot be postponed indefinitely while labor shortages are resolved. Crops must be planted, cultivated, harvested, packed, and shipped within relatively narrow windows dictated by weather, crop maturity, market demands, and food-safety considerations.

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The H-2A program has increasingly enabled agricultural employers to meet these workforce needs while operating within a legal framework that provides significant protections for workers. The program's continued success depends upon the ability of employers and workforce providers to navigate a complex regulatory environment with a reasonable degree of certainty regarding their obligations and responsibilities.

NCAE's members represent agricultural employers operating across a broad range of commodities, production systems, and geographic regions. While these operations vary considerably in size and structure, they share a common reliance on workforce stability and regulatory predictability. Employers cannot make long-term investments in crops, housing, transportation infrastructure, and workforce development without confidence that the legal framework governing their operations will be applied consistently and predictably.

The Department should recognize that uncertainty regarding joint-employer status has implications beyond individual employment relationships. Regulatory uncertainty can affect decisions regarding workforce planning, housing investments, transportation arrangements, compliance initiatives, and participation in lawful labor programs. It can also discourage employers from utilizing specialized compliance resources and professional service providers that often improve adherence to federal labor standards.

A predictable regulatory framework benefits workers as well. Stable workforce systems facilitate compliance with housing requirements, transportation obligations, wage protections, recruitment requirements, safety standards, and other worker-protection measures established by Congress and the Department. Employers who understand their obligations are better positioned to invest in systems that support compliance and provide workers with the protections contemplated by federal law.

The Department should also consider the broader economic significance of agricultural workforce stability. Agricultural production supports food processors, distributors, retailers, exporters, transportation companies, equipment suppliers, and numerous other businesses that depend upon a reliable agricultural workforce. Rural communities throughout the country likewise depend upon the economic activity generated by successful agricultural operations.

NCAE does not suggest that workforce concerns should override worker protections or diminish the Department's enforcement responsibilities. Rather, NCAE submits that worker protections, regulatory compliance, and workforce stability are complementary objectives. A clear and predictable regulatory framework advances all three goals by providing participants in the agricultural labor system with a better understanding of their obligations and responsibilities.

As the Department finalizes its joint-employer framework, it should recognize the important role that the H-2A program plays in supporting domestic agricultural production and the workforce

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infrastructure that has developed around it. The final rule should provide standards that preserve worker protections while recognizing the operational realities of modern agricultural labor programs and the importance of workforce stability to the nation's food supply.

XII. AGRICULTURE-SPECIFIC CLARIFICATIONS WOULD IMPROVE THE FINAL RULE

NCAE supports the Department's effort to provide a clearer and more predictable framework for evaluating joint-employer relationships. The agricultural sector would particularly benefit from additional guidance recognizing the unique characteristics of the H-2A program and modern agricultural operations. Because many activities commonly performed within agricultural labor systems involve extensive communication and coordination among multiple independent participants, additional clarification would help employers, workforce providers, workers, and regulators better understand how the final rule applies in practice.

First, the Department should clarify that agricultural production decisions do not, standing alone, establish employer authority. Agricultural employers routinely determine when crops should be planted, cultivated, irrigated, harvested, packed, or removed from production. Growers must also make decisions regarding harvest timing, field assignments, work priorities, and responses to weather events, pest pressures, disease concerns, and market conditions. These decisions are inherent aspects of agricultural production and reflect responsibility for crop management rather than authority over the terms and conditions of employment.

Second, the Department should clarify that activities undertaken to satisfy food-safety, traceability, quality-assurance, and customer-specification requirements do not independently establish joint-employer status. As discussed above, agricultural employers are frequently required to communicate harvesting procedures, sanitation requirements, contamination-prevention measures, traceability protocols, and product-quality standards to workers and workforce providers. These requirements are imposed by regulatory obligations, food-safety standards, and commercial expectations and should not be treated as evidence of employer authority absent additional indicia of control over employment conditions.

Third, the Department should recognize that many interactions occurring within the H-2A program are the direct result of regulatory requirements. Housing administration, transportation coordination, worker-arrival logistics, safety compliance, inspections, audits, recordkeeping obligations, worker disclosures, and numerous other activities require communication among employers, Farm Labor Contractors, housing providers, transportation providers, and government agencies. These activities are often necessary to satisfy federal requirements and should not independently support a finding of joint employment.

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Fourth, the Department should clarify that participation in compliance-related activities should not be confused with authority over workers. Employers, workforce providers, agricultural associations, attorneys, consultants, and other professionals frequently participate in compliance reviews, training programs, audits, inspections, investigations, and educational activities designed to improve adherence to federal labor standards. Such participation promotes worker protections and regulatory compliance and should be encouraged rather than treated as evidence of employer status.

Fifth, the Department should expressly recognize the increasingly specialized nature of agricultural labor administration. The modern H-2A system relies upon a variety of independent entities that provide housing services, transportation services, compliance assistance, workforce administration, educational resources, and other support functions. The fact that employers rely upon specialized expertise to satisfy complex regulatory obligations should not create a presumption that multiple entities function as joint employers.

The Department should likewise recognize that Farm Labor Contractors have evolved alongside the H-2A program itself. Many contractors now perform substantial workforce-administration and compliance functions that extend beyond traditional recruitment activities. Their role within the agricultural labor system should be evaluated based upon actual authority exercised over employment conditions rather than assumptions derived from historical labor models that may no longer reflect current realities.

NCAE further urges the Department to clarify that agricultural associations and educational organizations that provide compliance assistance, workforce training, legal updates, regulatory guidance, and technical support do not thereby assume employer responsibilities. Such organizations play an important role in promoting compliance throughout the agricultural sector and should not be discouraged from providing educational services that benefit both employers and workers.

Finally, the Department should reaffirm that the central focus of any joint-employer analysis remains actual authority over the essential terms and conditions of employment. The existence of communication, coordination, economic interdependence, regulatory compliance activities, or participation in a common workforce system should not substitute for evidence demonstrating meaningful authority over hiring, firing, discipline, compensation, scheduling, supervision, payroll administration, or other core employment functions.

Additional guidance addressing these common agricultural scenarios would improve predictability, encourage compliance, and better align the final rule with the operational realities of the modern H-2A labor system.

XIII. NCAE'S RECOMMENDATIONS FOR THE FINAL RULE

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Based upon its decades of experience representing agricultural employers and workforce stakeholders throughout the United States, NCAE respectfully recommends that the Department incorporate additional guidance recognizing the unique characteristics of modern agricultural labor programs and the H-2A system.

NCAE believes the Department can strengthen the final rule while preserving worker protections by clarifying that the existence of shared compliance responsibilities does not, standing alone, establish shared employer authority. Such clarification would improve predictability, encourage compliance, and better reflect the realities of contemporary agricultural labor relationships.

Accordingly, NCAE respectfully recommends that the Department clarify, either within the final rule, the preamble, or accompanying guidance, the following principles.

A. Agricultural Production Decisions Should Be Distinguished from Employment Decisions

The Department should clarify that decisions relating to crop production—including planting schedules, harvest timing, field assignments, irrigation activities, responses to weather events, pest-management decisions, and other operational determinations—are agricultural production decisions and do not independently establish employer authority over workers.

Agricultural employers necessarily direct the production process. Such direction is fundamentally different from exercising authority over hiring, firing, discipline, compensation, payroll administration, benefits, or other essential terms and conditions of employment.

B. Food-Safety and Quality-Assurance Activities Should Not Be Treated as Evidence of Joint Employment

The Department should clarify that oversight undertaken to satisfy food-safety requirements, traceability obligations, quality-assurance standards, sanitation protocols, customer specifications, and regulatory compliance requirements does not independently establish joint-employer status.

Agricultural employers must ensure that products entering the food supply satisfy applicable legal and commercial standards. Activities undertaken for that purpose should be distinguished from authority over employment conditions.

C. H-2A Compliance Activities Should Not Independently Establish Joint Employment

The Department should recognize that the H-2A program requires extensive coordination among multiple participants and that activities undertaken to satisfy program requirements should not independently support a finding of joint employment.

Examples include housing administration, transportation coordination, worker-arrival logistics, recruitment activities, government inspections, compliance audits, recordkeeping obligations,

worker disclosures, safety programs, and regulatory reporting. Such activities often involve multiple entities because federal law requires them to do so. Participation in these activities should not be mistaken for employer authority.

D. The Use of Farm Labor Contractors Should Not Create a Presumption of Joint Employment

The Department should expressly recognize that Farm Labor Contractors occupy an important and legitimate role within the modern H-2A system.

As discussed throughout these comments, many Farm Labor Contractors now perform significant workforce-administration and compliance functions that extend beyond traditional labor recruitment. Their utilization frequently reflects increasing compliance specialization rather than an effort to avoid employer responsibilities.

Accordingly, the existence of a contractual relationship between an agricultural employer and a licensed Farm Labor Contractor should not create any presumption that both entities function as joint employers.

E. Compliance Assistance and Educational Activities Should Not Establish Employer Status

Agricultural associations, educational organizations, compliance professionals, attorneys, consultants, and workforce-service providers frequently assist employers in understanding and complying with federal labor requirements.

These activities improve compliance and promote worker protections throughout the agricultural sector. The Department should clarify that providing educational resources, training opportunities, technical guidance, compliance assistance, or workforce-development support does not establish employer authority absent evidence of actual control over employment conditions.

F. Resource Sharing and Cooperative Agricultural Arrangements Should Not Independently Establish Joint Employment

The Department should recognize that agricultural employers frequently share resources and cooperate in ways that promote efficiency and compliance.

Examples may include shared transportation resources, shared housing facilities, joint training programs, safety initiatives, compliance assistance, administrative services, and other cooperative arrangements among independent agricultural operations.

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These arrangements are particularly important for small and mid-sized agricultural employers and should not independently establish joint-employer status absent evidence of actual authority over employment decisions.

In many rural communities, neighboring family farms frequently work together to address common operational challenges, share infrastructure, and reduce costs associated with regulatory compliance. These cooperative arrangements have long been a feature of American agriculture and often allow smaller operations to remain economically viable while continuing to provide employment opportunities and contribute to local food production. The Department should be careful not to adopt interpretations that discourage these collaborative practices where no actual employer authority exists.

G. MSPA Registration Requirements Should Not Alter the Joint-Employer Analysis Under H-2A

The Department should also recognize the unique interaction between the H-2A program and the Migrant and Seasonal Agricultural Worker Protection Act. Although H-2A workers are generally excluded from MSPA's definition of migrant and seasonal agricultural workers, Farm Labor Contractors participating in the H-2A program are nevertheless required to maintain MSPA registration.

As a result, many agricultural employers interact with MSPA-registered Farm Labor Contractors in circumstances where the registration requirement is imposed by federal regulation rather than by the nature of the workforce itself. The existence of MSPA registration, compliance activities undertaken pursuant to MSPA requirements, or interactions designed to ensure compliance with MSPA-related obligations should not independently support a finding of joint employment.

The Department should clarify that compliance activities associated with MSPA registration requirements are separate from the determination of whether an entity possesses and exercises authority over the essential terms and conditions of employment.

H. The Analysis Should Remain Focused on Actual Authority Over Employment Conditions

Most importantly, NCAE respectfully urges the Department to reaffirm that joint-employer determinations should focus upon whether an entity possesses and exercises meaningful authority over the essential terms and conditions of employment.

Economic interdependence, participation in a common workforce system, compliance coordination, operational integration, or routine communications among participants in agricultural labor programs should not substitute for evidence demonstrating actual authority

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over hiring, firing, discipline, compensation, scheduling, supervision, payroll administration, or other core employment functions.

Maintaining this distinction will provide greater clarity to employers, workers, regulators, and service providers while preserving the Department's ability to identify circumstances in which multiple entities genuinely function as employers.

XIV. CONCLUSION

NCAE appreciates the opportunity to provide comments on the Department's proposed joint-employer framework.

The agricultural labor market has changed dramatically during the past decade. The rapid growth of the H-2A program has transformed how agricultural labor is recruited, housed, transported, administered, and managed throughout the United States. In response, an increasingly sophisticated workforce infrastructure has developed involving agricultural employers, Farm Labor Contractors, housing providers, transportation providers, compliance professionals, agricultural associations, and numerous other participants who collectively support the administration of modern agricultural labor programs.

As the H-2A system has evolved, so too have the relationships among these participants. Extensive communication, coordination, and cooperation are now common features of agricultural workforce administration. Much of this interaction is driven by regulatory obligations, worker-protection requirements, food-safety standards, housing regulations, transportation requirements, and other responsibilities imposed by federal law.

NCAE respectfully submits that the existence of these interactions should not be confused with the existence of shared employer authority.

The central distinction underlying the Department's analysis should remain the distinction between shared compliance responsibilities and actual authority over the terms and conditions of employment. The modern H-2A system depends upon collaboration among multiple independent participants. Such collaboration often improves compliance, strengthens worker protections, and promotes more effective administration of agricultural workforce programs.

NCAE supports the Department's efforts to provide greater clarity regarding joint-employer status and believes the final rule presents an important opportunity to recognize the realities of contemporary agricultural labor systems. A framework that distinguishes compliance coordination from employer authority will provide greater certainty to employers, workers, and regulators while preserving the worker protections that Congress and the Department have sought to promote through the H-2A program.

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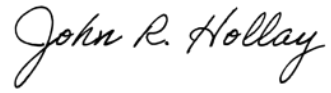
NCAE further believes that regulatory predictability is essential to workforce planning, agricultural production, and the continued success of lawful workforce programs. Employers must make significant investments in housing, transportation, recruitment, compliance systems, and workforce administration long before workers arrive. Clear standards regarding joint-employer status will support these investments and encourage continued participation in legal workforce programs that provide important protections for workers.

The Department should also recognize that the H-2A program has become an indispensable component of the labor infrastructure supporting domestic agricultural production. Across commodities and regions, agricultural employers increasingly depend upon the program to sustain operations, meet consumer demand, and contribute to the economic vitality of rural communities. A stable and predictable regulatory environment benefits not only employers and workers, but also the broader agricultural economy and the nation's food supply.

Finally, NCAE respectfully urges the Department to recognize that the continued success of the H-2A program has been built upon a robust compliance infrastructure involving employers, Farm Labor Contractors, agricultural associations, compliance professionals, housing providers, transportation providers, and government agencies. The final rule should encourage—not discourage—the cooperation and compliance efforts that have helped strengthen worker protections and improve program administration throughout the agricultural sector.

For these reasons, NCAE respectfully requests that the Department adopt a final rule that recognizes the operational realities of modern agricultural employment, distinguishes shared compliance responsibilities from shared employer authority, and provides the clarity necessary for agricultural employers and workforce participants to continue supporting the nation's food supply while complying with federal labor laws.

Sincerely,



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