

December 17, 2009

Via electronic filing
Mr. Thomas Dowd, Administrator
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW Room N-5641
Washington, DC 20210

**Re: National Alliance of Forest Owners' Comments on Interim Final Rule:
Temporary Agricultural Employment of H-2A Aliens in the United States,
RIN 1205-AB55**

Dear Mr. Dowd:

The National Alliance of Forest Owners ("NAFO") welcomes the opportunity to submit the following comments in response to the Interim Final Rule on Temporary Agricultural Employment of H-2A Aliens in the United States ("Rule"). NAFO represents forest landowners in the United States who own and manage over 75 million acres of forest land. Integral to their land management is reforestation after harvest.

The Rule calls for reforestation to be removed from the H-2B Non Agricultural Visa Program and placed into the H-2A Agriculture Visa Program. NAFO urges the Department to reconsider this approach and retain reforestation as part of the H-2B program. Failure to do this will negatively affect reforestation efforts and cause significant harm to the economic viability of long-term forest management.

Reforestation work differs significantly enough from annual agricultural crops that the mandates for the H-2A program don't fit reforestation. For example, because of the spatial arrangement of forests on the landscape and the decades-long growing cycle, work sites vary from year to year and may stretch across multiple states. Additionally, reforestation is much more susceptible to weather and other delays, including: too hot; snow; too wet; too dry; early or late seedling shipments; and the requirements of site preparation.

For the past 23 years, reforestation guest workers have been covered under the H-2B program, and this has worked well. Employers are required to pay a fair wage, pay overtime, and abide by the other fair labor standards and practices as should be expected. Employers have also complied with the Migrant and Seasonal Agricultural Worker Protection Act rules.

Reforestation work does not fit the mold of traditional, migrant agricultural work that the H-2A program is designed to manage. The H-2A program is unworkable for reforestation because:

- Employers cannot guarantee an average of 27-30 hours per week during the entire certification period because tree planting is subject to numerous weather and ground condition delays and stoppages.
- Because locations can vary widely year to year, local hotel and motel lodging for workers can change from year to year and often changes at the last minute because of the aforementioned delays. It is not financially feasible to build housing and have it inspected similar to housing that is used each year for annual crops. The other alternative, to have hotels and motels inspected at the time of certification, is also unworkable because it would have to be in place months beforehand and work schedule changes during the period of certification would prompt housing re-approval from the U.S. Department of Labor.
- Employers often work across multiple states because the reforestation work sites vary each year. Under H-2A, Employers have to be certified in each location of work that is outside the commuting area for an area of intended employment. This requires an entirely new and separate request for certification and a coordination of contracts months in advance. If the work changes after the certification or there is a lapse in continuity of the separate locations, the Employer would have to pay for the worker to return home and then return back to the United States.
- Smaller landowners will likely not have enough reforestation work for an Employer to have a separate and distinct H-2A certification period, making it difficult for them to reforest their forests.

Reforestation work is unique. In order to make it work under U.S. immigration laws, it should remain in the H-2B program so that our forests, both private and public, can be replenished after harvest and remain viable as forests over the long term.

We stand ready to assist you in any way to craft a guest-worker program that meets both the needs of forest owners and the program administration needs of the Department of Labor. Please do not hesitate to call upon our expertise.

Sincerely,

David P. Tenny
President and Chief Executive Officer