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Gulf Seafood Institute  
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International Association of Fairs and Expositions  
International Franchise Association  
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Small & Seasonal Business Legal Center  
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Tree Care Industry Association  
U.S. Apple Association  
U.S. Chamber of Commerce  
Utility Sprayer Alliance

May 1, 2015

### Statement on the New H-2B Regulations

The H-2B Workforce Coalition is dismayed that the two H-2B regulations released by the Departments of Homeland Security and Labor (DHS and DOL) on April 29 are simply a continuation of the Administration's policy to make the H-2B program more costly and complicated for law-abiding small and seasonal businesses that turn to the H-2B program after exhausting efforts to hire American workers. Seasonal industries that use the H-2B program include seafood processing, horse training, hospitality and amusement parks, forestry, landscaping, circuses, carnivals, food concessionaires, swimming pool maintenance, and stone quarries. The costs that will be imposed by these rules are substantial in nature and their negative impacts will be felt by both H-2B employers and their American workers alike. Many small businesses cannot simply absorb these costs and cannot often pass them along to their customers without losing significant business.

Without access to the H-2B program, many seasonal employers would not be able to retain their year-round American workforce or provide goods and services to their local communities. For H-2B workers, the program provides them with well-paying seasonal jobs that allow them to provide for their families and still maintain their homes in their native countries.

Sadly, the program has become increasingly costly and unpredictable over the past few years. In 2011, the DOL issued a final H-2B wage methodology rule that would have artificially increased H-2B hourly wages by more than 50%. The rule was so egregious that Congress blocked it on a bipartisan basis from 2011 – 2014. DOL then issued an interim final wage rule in April 2013 that included the same basic methodology for setting wages, but at least recognized that wage surveys are important tools in making fair wage determinations. In some cases, DOL does not have wage data for certain jobs. In other cases, wage surveys provide a more accurate representation of wages for a given occupation in a given geographic area than the use of the mean wage from the DOL database. The final wage methodology rule issued by DHS and DOL this week only allows for a very limited and restrictive use of wage surveys. It also does not allow various experience and skill levels to be taken into account when determining H-2B wages.

The interim final program rule promulgated by DHS and DOL this week makes the H-2B program exceedingly expensive and complicated. In issuing the interim final rule, DHS could have used the opportunity to incorporate common sense reforms into regulation. Instead, DHS chose to jointly issue a regulation with DOL that is virtually identical to the Labor Department's 2012 H-2B program rule that has been blocked by a federal court since its release. The lengthy rule creates additional obstacles for employers who use the program. These new regulations are in addition to existing requirements for employers to work with four government agencies,

undertake extensive recruitment to find American workers, and pay a premium wage.

These new regulations came out at a time when many seasonal employers are struggling to keep their businesses afloat after being shut out of the program due to a 66,000 cap on the number of H-2B workers that can enter the country each fiscal year. The cap for the first half of the fiscal 2015 was reached on January 26 and the second-half cap was reached on March 26, leaving many seasonal employers in the lurch.

The cap limitations and these new burdensome regulations make it imperative that Congress immediately pass legislation to ensure that the H-2B program will once again be a viable option for seasonal small businesses that are committed to maintaining a legal workforce. Legislation must re-instate an expired provision of law that exempted H-2B returning workers from the cap, a methodology for setting H-2B wages that is reflective of economic realities and other measures to create a predictable and reliable H-2B program.

