



**National Association of State Departments of
Agriculture**

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December 1, 2025

U.S. Department of Labor
Employment and Training Administration
200 Constitution Avenue NW
Washington, DC 20210

Submitted via Regulations.gov

Re: Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, ETA-2025-0008.

Administrator Pasternak:

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to provide comments on the U.S. Department of Labor's (DOL) interim final rule (IFR) Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States.

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs, including conservation, environmental protection, food safety, plant and animal disease prevention, and fostering the economic vitality of our rural communities.

Importance of H-2A Reform

For years, NASDA has expressed severe concerns with the workability and affordability of the H-2A agricultural guestworker program. At a time when the U.S. agricultural economy is facing significant headwinds ranging from input prices to market volatility, U.S. producers – particularly specialty crop producers – should not also face artificial regulatory impediments to an available and skilled workforce.

NASDA would like to commend the efforts made by DOL in this IFR to remedy some of the structural contributors to the unsustainable growth of the Adverse Effect Wage Rates (AEWR) for H-2A workers in recent years. If properly implemented, this IFR has the potential to better align the AEWR with existing market forces while still maintaining the protections and benefits of the H-2A program that are essential to preserving the dignity of the guestworkers. NASDA echoes the remarks espoused by DOL in posting this IFR, "The H-2A program should be a viable legal pathway—not a regulatory dead end."

Transition to Occupational Employment and Wage Statistics Survey Data

NASDA appreciates DOL's justifications for switching to the Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) to establish state-level AEW R's for the five most common field and livestock worker Standard Occupational Classification (SOC) codes. This change will result in individual state-level AEW R's, which will reinforce state-specific wage policies while limiting their spillover impacts onto neighboring states.

DOL should take steps to ensure that the transition to OEWS survey data is smooth and does not result in the unnecessary burdening of farm employers, particularly considering the new July 1 effective date relative to the Farm Labor Survey's January 1 effective date. Furthermore, efforts to improve the functionality of OEWS to better capture all types of farm employers, including farm establishments, are important and should be undertaken in direct collaboration with agricultural stakeholders.

AEWR Methodology Changes

The decision to determine AEW R's at two distinct skill levels, if implemented in consultation with key stakeholders, should allow for meaningful AEW R reforms while still accounting for the technical skills and experience required to complete certain contracts. In addition, DOL's recognition that H-2A employers provide significant non-wage benefits and intent to account for those benefits in the form of the adverse compensation adjustment is pragmatic and should bolster the longevity of the H-2A program.

NASDA is cautiously optimistic about the IFR's proposal to determine the appropriate SOC codes based on the duties performed for the majority (over 50 percent) of the workdays during the contract period. While any efforts to mitigate the extreme impacts of wage disaggregation are appreciated, the IFR raises numerous questions about how this majority duties test will be implemented. As DOL seeks to provide clarity on how that test will be implemented, NASDA encourages robust consideration of stakeholder feedback on the many nuances of an agricultural workday.

Importance of Continued Consultation

In the case of the majority duties test and beyond, we strongly encourage DOL to continue to regularly consult with key users of the H-2A program – both in the form of public comments on this IFR and in follow-up dialogues - to ensure its implementation results in meaningful reforms. To that end, DOL should be willing to issue further guidance, implement delays or selective phase-ins for new H-2A contracts, and consider potential safeguards against unanticipated OEWS volatility.

Extensive consultation will be particularly important for the State Workforce Agencies and Office of Foreign Labor Certification Certifying Officers tasked with interpreting appropriate SOC codes, skill classifications, and other key factors. NASDA encourages DOL to consider input from key stakeholders regarding the level of these new AEW R's relative to state minimum

wages or prevailing wages – as agricultural employers are still obligated to pay the highest level available.

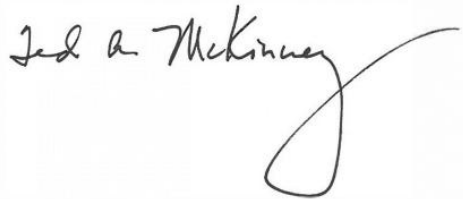
As State Workforce Commissions are tasked with critical responsibilities, NASDA encourages DOL to readily consider state departments of agriculture as a resource for understanding and interpreting on-the-ground agricultural practices in each state, particularly as the nuances of agricultural workdays and labor skillsets are assessed. NASDA stands ready to facilitate that coordination to ensure that implementation of this IFR is smooth and successful.

Conclusion

NASDA sincerely appreciates the opportunity to comment on this timely and thoughtful proposal to amend the H-2A AEWB methodology. U.S. farmers and ranchers urgently need a framework that provides for a legal, reliable workforce that supports the industry and treats workers with respect. We urge DOL to continue to consult with key users of the H-2A program to ensure implementation of this IFR achieves its intended goals. Should you have any questions please contact Patrick Wade, Director of Public Policy, at patrick.wade@nasda.org.

Thank you for considering on our comments on this critical issue.

Sincerely,

A handwritten signature in black ink, reading "Ted McKinney". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

Ted McKinney
Chief Executive Officer
NASDA