



December 1, 2025

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Susan Frazier
Acting Assistant Secretary for Employment and Training
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Brian Pasternak
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Office of Foreign Labor Certification
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RE: RIN 1205-AC24 Adverse Effect Wage Rate Methodology for the Temporary
Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States
(Federal Register 90 FR 47914-47963)
Docket No. ETA 2025-0008

Dear Secretary Chavez-DeRemer, Acting Assistant Secretary Frazier, and Administrator
Pasternak:

On behalf of the members of the North American Blueberry Council (NABC) who lawfully rely
on the H-2A program to meet seasonal labor needs, we appreciate the opportunity to comment on
the Department of Labor's (Department) Interim Final Rule (IFR), *Adverse Effect Wage Rate
Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range
Occupations*, 90 Fed. Reg. 47914 (Oct. 2, 2025).

NABC serves as the united voice, advocate, and resource serving the interests of highbush blueberry growers, distributors, suppliers and allied industry partners across North America.

Our members are committed to providing fair wages and working conditions for both domestic and foreign agricultural workers, while also ensuring that the H-2A program remains administratively practical, transparent, and aligned with the governing statute. NABC generally supports the IFR and appreciates the Department's work to reestablish a functional wage methodology following the discontinuation of the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS). In that spirit, we offer the following observations and recommendations.

A. The OEWS Methodology is a Necessary and Cautious Transition

The Department's decision to replace the discontinued FLS with the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) data is both necessary and timely. On September 3, 2025, USDA's National Agricultural Statistics Service (NASS) published a Federal Register notice formally discontinuing the FLS, concluding that the survey could no longer be maintained as a statistically reliable source due to declining response rates and methodological challenges. As a result, the long-standing FLS dataset that had historically guided AEWR determinations is no longer available.

While the OEWS is a statistically robust and transparent federal dataset, it is not designed to capture on-farm employment or the seasonal and regional nuances of agricultural work – a limitation the Department addresses in the IFR. For that reason, we view this transition with cautious optimism. The use of the OEWS preserves continuity in AEWR determinations, but it may not fully reflect the wage structure of actual farm operations. We therefore encourage the Department to continue working with BLS to develop an agriculture-specific OEWS component that includes direct on-farm sampling. Incorporating such data will be essential to ensuring that future AEWR determinations accurately reflect the labor markets Congress intended the program to measure.

B. The Two-Level Wage Structure Improves Occupational Accuracy

The Department's decision to establish two wage levels (Level I and Level II) within each Standard Occupational Classification (SOC) code is a measured effort to improve accuracy in AEWR determinations. Agricultural jobs span a continuum of duties—from basic hand-labor tasks such as planting, pruning, and harvesting to more skilled or technical functions such as machinery operation, irrigation management, and crew supervision. A single AEWR rate, as used in prior years, does not account for these distinctions. The proposed two-level framework ensures that AEWR determinations correspond most accurately to the complexity of the work

performed. This approach reflects the long-standing federal principle that wage levels should correspond to skill, training, and responsibility within a given occupation.

Other visa programs, such as H-2B, rely on a single-wage equal to the mean OEWS wage for each occupation. The Department's departure from that model in the IFR underscores the diversity of agricultural work, where duties and skill levels vary even within a single SOC. The two-level system therefore offers a more appropriate framework, provided it is implemented with clear and uniform criteria.

For consistency, the Department should issue guidance explaining how State Workforce Agencies (SWA) and Certifying Officers (COs) will determine which level applies when positions involve mixed duties or varying degrees of skill. Level I should capture entry-level agricultural roles involving basic manual labor performed under supervision—such as general field work, standard harvesting, or nursery maintenance. Level II should apply to positions requiring demonstrated experience, independent judgment, specialized equipment use, or supervisory responsibility.

There should be no disparities among SWAs regarding the amount of experience needed to justify a Level II wage. Such inconsistency creates uncertainty and uneven wage determinations for identical positions across states. We respectfully recommend that the Department clarify that *more* than three months of relevant agricultural experience should be required to meet the threshold for a Level II classification. Establishing a uniform federal standard would promote consistency, predictability, and equitable application nationwide.

The two-level structure also advances the broader statutory purpose of preventing adverse effect on U.S. workers under 8 U.S.C. § 1188(a)(1)(B) while maintaining economic viability for employers. Differentiated wage levels discourage wage compression, reward experience, and support upward mobility within the agricultural workforce. At the same time, they mitigate the risk that a single inflated wage rate will distort local labor markets or reduce opportunities for both domestic and foreign workers.

C. Inflated Wage Floors Distort Labor Markets and Undermine Statutory Objectives

The two-level wage structure also helps correct a longstanding distortion caused by applying a single, inflated AEWR to all agricultural occupations. Under the former system, AEWRs often exceeded actual market conditions because of methodological flaws in the FLS. When mandated wages substantially outpace local norms, the effect is not fairness but economic displacement. Excessively high wage floors compress legitimate pay differences across occupations and industries. Employers who cannot absorb sudden increases reduce hiring, shorten contracts, or invest in automation—decisions that ultimately reduce employment opportunities for both U.S. and H-2A workers. Smaller employers, lacking the financial flexibility of larger competitors,

face disproportionate hardship. In some cases, inflated AEWRs have forced employers to exit the program entirely, diminishing lawful job opportunities for domestic workers and exacerbating labor shortages.

These outcomes contradict the statutory purpose of 8 U.S.C. § 1188(a)(1)(B), which requires the Department to certify that the employment of H-2A workers “will not adversely affect the wages and working conditions of workers in the United States similarly employed.” The AEWR was never intended to artificially raise agricultural wage floors or equalize regional pay; its purpose is to prevent downward pressure on U.S. workers’ earnings. When AEWRs are inflated far beyond prevailing rates, they undermine that purpose, functioning instead as an administrative price control detached from productivity or market value. By introducing two wage levels, the Department moves toward restoring equilibrium between wage protection and market integrity. The two-level system preserves the statutory goal of preventing adverse effect without over-correcting in a way that undermines employment stability or agricultural competitiveness.

D. The Two-Level Structure Reflects Reasoned Decisionmaking Under the Administrative Procedure Act

The Department’s proposed two-level AEWR framework is a rational and data-driven correction to a long-standing methodological flaw. Under the Administrative Procedure Act (APA), agency action must reflect reasoned analysis and a clear connection between evidence and policy choice. The two-level approach meets this standard. A single AEWR is often inconsistent with regional labor conditions and fails to distinguish between entry-level and skilled work. Following USDA’s discontinuation of the FLS on September 3, 2025, the Department faced a statutory and practical necessity to adopt a new methodology.

We appreciate that the Department has recognized the importance of transparency and predictability for employers and workers alike. By clearly explaining the rationale for replacing the single-rate AEWR with two wage levels and articulating how this change will reduce distortions, the Department fulfills its obligation to act on reasoned analysis rather than policy preference alone. This clarity will strengthen the final rule against misinterpretation and foster confidence among stakeholders that the AEWR serves its intended purpose—protecting U.S. workers while maintaining a functional and competitive agricultural labor market.

Together, the Department’s abandonment of the terminated FLS, adoption of OEWS data, and establishment of a two-level AEWR constitute a deliberate, though cautious, modernization. These steps respond to both statutory necessity and longstanding evidence that a single inflated rate distorted agricultural labor markets.

Still, caution is warranted. The OEWS was not designed to measure on-farm wages, and its outputs should be interpreted carefully until agricultural data are integrated. The Department’s

responsibility now is to implement this framework transparently and consistent with 8 U.S.C. § 1188(a)(1)(B)—preventing adverse effect without creating new distortions.

This same balance between statutory obligation and practical implementation also underlies the Adverse Compensation Adjustment (ACA). Just as the two-level AEWR aligns wages with the nature of the work performed, the ACA aligns compensation with tangible non-cash benefits employers are legally required to provide.

F. Employer Housing as a Long-Standing Statutory Requirement

We appreciate the Department’s acknowledgment that employer-provided housing represents a long-standing statutory expectation and a material component of worker compensation.

Agricultural employers invest heavily in constructing, maintaining, and operating compliant worker housing. Those expenditures often reach thousands of dollars per worker per season, yet the AEWR has historically ignored this cost. Workers, in turn, receive tangible value—free, certified housing that increases their real income by covering a major living expense. The ACA is not a reduction in wages but a recognition of that value—acknowledging that the housing employers must furnish under 8 U.S.C. § 1188 and 20 C.F.R. § 655.122(d) provides substantial economic benefit to workers.

Employers must provide, at no cost, housing that meets DOL and state standards to any worker—domestic or foreign—who cannot reasonably return to their permanent residence daily. This is not a discretionary benefit but a statutory and regulatory obligation that carries significant cost for employers and significant value for workers. Recognizing that value within the AEWR framework brings transparency to total compensation and aligns wage determinations with reality.

G. ACA and State Minimum Wage

The Fair Labor Standards Act (FLSA) permits employers to include the “reasonable cost or fair value of board, lodging, or other facilities” in wages when provided primarily for the employee’s benefit. Employer-furnished housing clearly benefits the worker by eliminating rent and utilities costs, and its value can be objectively measured using HUD Fair Market Rent (FMR) data. Although the FLSA allows for the cost of housing to be included in wages, the IFR is unclear if employers can utilize the ACA when the state minimum wage is higher than the issued AEWR.

We request clarification regarding the interaction between the ACA and state minimum-wage laws. Under the FLSA, housing value may be credited toward wage obligations when primarily benefiting the employee. This principle should remain applicable even in states where the statutory minimum wage exceeds the AEWR. Employers will always pay at least the highest

applicable cash wage, but the Department should confirm that the recognition of housing as compensation persists regardless of state wage levels. Without such clarification, employers face uncertainty about whether they may account for housing value when the state minimum exceeds the federal AEWR—potentially resulting in duplicative compensation inconsistent with the total-wage framework Congress envisioned.

H. Equal Application of ACA for Similarly Situated U.S. Workers

Employer-provided housing has long been an expected condition of agricultural employment under statute and regulation. Recognizing its value within the AEWR methodology does not reduce pay but provides a complete accounting of total remuneration. The ACA appropriately aligns federal wage-setting with both the INA and the FLSA’s total-compensation principles, promoting fairness and transparency in agricultural labor markets.

We respectfully urge the Department to extend this recognition to U.S. workers who also reside in employer-provided housing. Some domestic employees live in the same housing as H-2A workers because they cannot reasonably commute daily. The INA’s equal-treatment provision requires that U.S. workers receive “no less than” the same terms, conditions, and benefits as H-2A workers. Applying the ACA’s recognition of housing value to both groups ensures parity and prevents unnecessary administrative complexity.

I. Clarification on SOC Code Determinations: “Primary Duties” and “Majority of Duties on the Majority of Days”

Agricultural employment is inherently dynamic. Workers often rotate between related tasks for a variety of reasons including weather and production schedules. No single duty may dominate across an entire contract, making a rigid majority-of-days test impractical.

While we support the Department’s intent to improve occupational accuracy, we are concerned about the use of a “majority of duties on the majority of days” standard for SOC classification.

The Department should clarify that primary duties—the principal or most significant work performed over the contract—govern SOC assignment. Ancillary or incidental duties should not change classification if secondary to the position’s core function. Employers should be allowed to document primary duties in job orders or supervisory attestations rather than daily logs.

To ensure consistent compliance, the Department should release clear implementation guidance or FAQs that address the application of the “primary duties” standard and treatment of mixed or rotating occupations. Consistent national guidance will strengthen program integrity by ensuring uniformity and predictability for employers, workers, and SWAs alike.

J. Conclusion

NABC appreciates the Department's effort to reestablish a functioning AEWR methodology after USDA's termination of the FLS. The transition to OEWS-based data, the introduction of two wage levels, and the recognition of employer-provided housing are significant reforms that, if implemented carefully, can promote balance between statutory protection and practical administration.

We respectfully recommend that the Department continue to coordinate with BLS to integrate on-farm data into the OEWS survey frame, affirm that employer-provided housing is recognized as part of total compensation to allow for the ACA to be applied in all situations, apply the ACA equally to similarly situated U.S. workers, and confirm that SOC classification relies on primary duties, not a mechanical "majority-of-days" test.

With these clarifications, the Department's final rule can provide the stability, fairness, and predictability the agricultural labor market requires while remaining faithful to the statutory mandate under the INA and the APA.

Please contact Alyssa Houtby at ahoutby@nabcblues.org or (916) 480-8020 for questions or follow up regarding these comments.

Sincerely,



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