January 31, 2022

Administrator Brian Pasternak
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: **Docket No. ETA-2021-0006**, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States

Dear Administrator Pasternak,

The California Farm Bureau Federation (CAFB) appreciates the opportunity to comment in response to the Employment and Training Administration's (ETA) proposed rule on altering the methodology for Adverse Effect Wage Rates (AEWR) for H-2A nonimmigrant workers in non-range occupations.

CAFB is a voluntary, non-profit organization made up of over 31,000 members across 53 counties and is the largest farm organization in the state. Established in 1919, we work for the betterment of family farmers and ranchers in California and help support up to 2.5 million jobs and over $56 billion in crop value. As a significant provider to hundreds of commodities distributed across the US and world, our members have always understood the important role farm laborers play in ensuring the overall health and safety of our nation's food supply industry and firmly believe they should be appropriately compensated for their strenuous and dedicated work.

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In December, the ETA published a notice of proposed rulemaking (NPRM) aimed at introducing a separate wage rate calculation for certain roles under the Standard Occupational Classification (SOC) system. These would be determined by via the Department of Labor's (DOL) Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) survey.

As the ETA and DOL are quite familiar, the H-2A program has grown significantly over the years. Since 2010, the number of availabilities has more than tripled to well over 300,000 seasonal farm jobs. This growth represents not just the increased demand for U.S.-grown

produce and livestock, but also the labor challenges associated with hiring from a shrinking portion of interested domestic workers. As the nation continues to compete with neighboring countries—many of whom typically provide significantly lower wages for workers—farmers and ranchers are often stretched to their limits in trying to successfully navigate the challenges inherent in the current labor market.

In looking at the ways in which these H-2A workers are paid, the ETA has sought to bifurcate the wage calculations in order to strike a balance between the "…competing goals of providing employers with an adequate legal supply of agricultural labor and protecting the wages and working conditions of workers in the United States similarly employed." However, in attempting to find this balance, CAFB believes the ETA has failed to accurately calculate the significant costs associated with such a proposed maneuver.

In research conducted by the American Farm Bureau Federation (AFBF), they found that the average wage rates for the most commonly referenced SOC OEWS wage-rates were far higher than the national AEWR. For example, heavy and tractor-trailer truck drivers have an average wage of $23.32 an hour, while construction laborers earn average of $20.67 an hour. These represent 166% and 148% increases over the 2020 national AEWR average. These rates climb up as high as 263% for agricultural and rancher managers.

As is currently stated in the NPRM, the determination for what defines a worker's occupation is merely on the total duties performed and does not take into consideration the amount of time performed in these various roles. For instance, if a laborer spends 95% of their time picking and harvesting during their typical visaed stay—and the remaining 5% in driving the produce in the bed of a pickup truck to a collection site—the NPRM would require such a worker to receive a "light truck driver" salary, which is 141% higher than the national AEWR average. Such an unfair and impractical change would lead to considerable labor cost increases for employers without subsequent changes.

Furthermore, another likely consequence would result in hiring managers needing to isolate roles more exclusively when utilizing the H-2A process. Such a worker described above would no longer be assigned truck-driving duties, no matter how minimal they might have previously been. This would mean a limited number of workers would need to be hired specifically for roles denoted in the NPRM. While potentially reasonable on paper, the reality is that employers would be required to focus even more time and attention on their H-2A hiring practices, which already require significant human and monetary capital to perform. Farming and ranching often requires workers to be flexible in their daily and weekly duties—particularly for those with smaller operations such as family farms. The NPRM fails to take into consideration the vast number of duties a worker might need to be called upon to perform.

Simply put, CAFB disagrees with the agency's interpretation that the proposed changes would be "economically insignificant." Rather, employers would experience substantial cost increases both in the form of unfairly assessed wage rates and the administrative human resources needed to adjust hiring practices to contour with the harmful impacts felt from this rule. The H-2A process is already a complicated and challenging system, one that is need of reform in order to meet the current-day demands of the agricultural industry. While we are grateful for the DOL's continued expansion of the program, we believe this NPRM could prove to be extremely damaging to existing farming and ranching operations.

Because of these reasons, CAFB strongly encourages ETA to reconsider their proposed changes to the wage-rate calculations for certain non-range H-2A workers. Although we believe that H-2A workers should be fairly compensated for their vital work, the agency has failed to accurately consider the unintended consequences and potential financial and administrative burdens placed on agricultural employers as a result of these changes. At a time when our nation's supply chains are under considerable stresses, we believe such a proposal could prove to be disastrous for farmers and ranchers in all corners of the country.

Regards,



Matthew Viohl
Associate Director, Federal Policy
California Farm Bureau Federation