

Advocacy Comments on Labor Department's Proposal to Revise H-2A Visa Wage Methodology

On December 1, 2021, the U.S. Department of Labor's (DOL) Employment and Training Administration published a proposed rulemaking to revise the wage methodology governing the labor certification of temporary agricultural foreign workers in the H-2A visa program. DOL determines the Adverse Effect Wage Rate (AEWR) or the rate that will not adversely affect the wages and working conditions of workers in the United States. On January 31, 2022, the Office of Advocacy (Advocacy) submitted the following comments:

- The proposed rule creates a bifurcated AEWR or wage methodology for H-2A workers. This rule creates a single wage for field and livestock workers based on the Farm Labor Survey (FLS) survey, and higher wage- and occupation-specific wages for other job opportunities not listed in the FLS survey based on the Occupational Employment Wage Statistics (OEWS) survey. Affected categories include truck drivers, farm supervisors and managers, construction workers, and many other occupations in contract employment.
- This rule is costly for affected small businesses, as it significantly raises the wages for certain jobs like truck driving by \$5-\$11 per hour. The substantially higher H-2A wages in this rule may make small U.S. farms less competitive and may increase foreign agricultural imports. Advocacy is concerned that DOL's analysis underestimates the wage costs and omits administrative costs from extra petitions for the multiple job categories. DOL's certification that the rule will not have a significant economic impact on a substantial number of small entities is improper and lacks an adequate factual basis.
- Under the rule, employers would pay the highest wage of the two wage rates to workers if the opportunity can be classified within more than one occupation, like field work and truck driving. This rule will disrupt the management of farms, as employers will have to segregate H-2A workers into independent jobs. This rule may be unworkable for affected small farms, who have fewer employees that can be dedicated to tasks like truck driving.
- Advocacy recommended that DOL prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that adequately assesses the small business compliance costs from this regulation and considers significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts to small entities. Small businesses recommended that DOL determine the wage rate by looking at the "primary duty" of an employee, where they spend more than 50 percent of their time.

A complete copy of Advocacy's letter to DOL is available [here](#). For more information, please contact Janis Reyes, Assistant Chief Counsel, Janis.Reyes@sba.gov.

