



8/23/24

The Honorable Tom Vilsack
Secretary, U.S. Department of Agriculture
1400 Independence Ave, S.W.
Washington, DC 20250

The Honorable Julie Su
Acting Secretary, U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, DC 20210

Dear Secretary Vilsack and Acting Secretary Su,

In response to the open public comment period for the United States Department of Agriculture National Agricultural Statistics Service (USDA NASS) Farm Labor Survey (FLS) currently set to expire September 30th, 2024 (OMB Control Number 0535-0109), we would like to make you aware of the comments we plan on submitting for recommendation to improve the survey tool below. We are bringing this to the attention of leadership at both USDA and USDOL since the FLS is currently utilized to establish the annual Adverse Effect Wage Rates (AEWR) rate by the US Department of Labor (USDOL).

This USDA NASS farm labor survey and the data collected is used by USDOL under the current AEWR methodology to determine H-2A hourly wages for the upcoming year. The survey is intended to determine the living and working wages of US workers. This survey should not include any wages of H-2A workers or any other workers in corresponding employment.

The AEWR rate is determined annually and dictates the wage amount for most employees at a farm that utilizes the H-2A program to source labor that they are unable to hire domestically. Given the increasing challenges farmers face in finding domestic workers, increased utilization of the H-2A program and how the FLS is utilized by USDOL to establish the AEWR rates, we feel that it is critical for the survey to be revised to more accurate and relevant to today's agricultural production practices.

With the recommendations below, we believe these crucial changes will provide a more accurate reflection of farm wage rates and provide new information to make the FLS more relevant since it is used as the base for establishing the annual AEWR rate by USDOL. According to data published by the USDA Economic Research Service (USDA ERS), in 2020 labor expenses were almost 40 percent of all production expenses for specialty crop farms, so these improvements are desperately needed. North Carolina produces many specialty crops across the state that are highly dependent on H-2A workers to produce commodities. With annual AEWR increases of approximately 6% per year in North Carolina, labor continues to be one of the biggest challenges and expenses facing many of the farms in our state.

The recommendations below are being submitted by Legacy Labor, Inc., a Farm Labor Contractor, doing business in North Carolina and several other states.



Recommendation 1: Explicitly exclude capturing H-2A wages within the FLS.

The current USDA FLS captures data including H-2A workers who are employed under annually established AEWR rates. Subsequently, the USDOL utilizes the current AEWR rate to determine H-2A worker hourly rates the following year. Given that the FLS survey is intended to determine the living and working wages of U.S. workers only, language within the survey needs to be clarified to explicitly exclude H-2A worker salaries from the survey. Currently, there are no specific instructions to exclude H-2A workers, so some might be reported. This would inaccurately influence the data USDOL utilizes to calculate AEWR rates the following year.

Information collected within the FLS and utilized by USDOL as its methodology to calculate AEWR rates and this should be based only on non-H-2A wages paid for farm labor to accurately reflect domestic farm labor salary. It is imperative that the survey does not include any wages of H-2A workers or any other workers in corresponding employment to accurately reflect the survey's intention of determining the living and working wages of US workers.

Recommendation 2: Ask new questions on the USDA NASS FLS about contract labor wages.

Although the FLS surveys farmers specifically, current agricultural labor management includes the use of Farm Labor Contractors (FLCs) and other contract labor. Farmers responding to the survey will have a general idea if contract wage rates are lower, or different, than the direct hired wage rates currently collected by the survey questions. The FLS could ask farmers how much lower, or higher, are contract wage rates than direct hired wage rates in their area. Even if farmers do not know specific details of contract wages, they would be familiar enough with this process to answer this question.

Capturing data regarding contract labor wages would provide a more complete measure of farm labor expenses and serve as a guide for better aligning AEWR rates to current market conditions.

Recommendation 3: Request USDA NASS to provide analysis on the difference of annual average field and livestock wage rates between Virginia and North Carolina.

The assumption of the stakeholder group is that based on numerous factors, including cost of living, wage rates are higher in Virginia than North Carolina due to different crop and livestock portfolios. Currently USDOL utilizes the data from both states combined to calculate the annual AEWR. USDA NASS should provide an analysis on the difference between the two states. This would lead to more accurate data being utilized to support and improve the AEWR rate and more closely align it to market rates in the state. The current USDOL regional approach to AEWR rates could be inaccurately increasing labor wages annually. Virginia and North Carolina have very different types of farms; NASS data reflects that North Carolina is a large producer of high-labor crops including sweet potatoes, Christmas trees, fruits and vegetables, and tobacco, while Virginia produces other commodities that may not be as labor dependent.

Given the number of farms that are highly dependent on the H-2A program to source necessary labor, it is crucial that the FLS accurately reflects labor rates of domestic workers. If the actual summary by state is difficult to obtain, an analysis of the statistically significant difference in simple weighted average wage rates between the two states would provide enough information to verify that the wage rates are significantly different. While not under the



authority of USDA, we would like USDA to encourage USDOL to take any differences between North Carolina and Virginia into consideration when calculating AEWR rates.

Recommendation 4: Extend the reference period to thoroughly measure farm wage rates.

For example, collecting data for only one week in the spring (April) excludes the possibility of collecting wages for many commodities, including blueberries, which have substantial labor in North Carolina. Extending the data collection to either the entire year, or multiple weeks, would ensure that all types of agriculture would be represented in the FLS and truly capture labor rates.

On a related note, data collection should be done at a time when most farmers are not as actively engaged in crop production and have the time to accurately respond to the FLS to ensure the details regarding paid wages are being reported correctly.

While this might impact the current timing of DOL releasing the annual AEWR rate, this should be considered by both USDA and USDOL to ensure that farmers have the time to respond to the survey and accurately report the data. Current response rates to the FLS indicate that many farmers don't respond and return the survey during the current data collection periods.

Recommendation 5: USDA should develop an annual, department-wide promotional and education campaign to improve survey response rates and accuracy.

An intentional promotional and education campaign would help address some of the reasons why farmers currently don't respond to the survey such as being unsure if their reports are truly confidential, how the survey is used to establish the AEWR wage rates, and the fear that responding to the survey will hurt the farmers themselves. Farmers fear retaliation from the information provided.

This USDA outreach and education campaign should be done across all USDA agencies with collaboration from trusted agricultural partners such as the state departments of agriculture, Cooperative Extension Service, Land-grant Universities.

Recommendation 6: Add a question of farm income to measure the average size of farms in the survey.

Using standard NASS gross value of sales questions to measure the average gross value of sales of farms captured within the FLS would provide additional information about the importance of the survey and its impact to agriculture.

Currently this information is not being captured within the survey. Labor requirements and wages are being evaluated for all farms with \$1,000 or over in annual sales the same way. Agricultural operations vary greatly in size, labor requirements and commodities produced.

Capturing and reporting labor rates based on annual farm sales would more accurately reflect domestic hired labor rates on farms.



We thank you for your review and consideration of these recommendations. Extending the parameters of the survey as mentioned should provide a clearer, more accurate representation of the applicable wages in North Carolina.

As you are aware, North Carolina is currently experiencing drought conditions at the worst possible time for crop production. We are concerned that farm stress will be further compounded if adjustments to the FLS are not implemented given the direct correlation this data has with calculating annual AEWR rates.

We are all grateful for our American farmers and need to ensure they remain productive and financially viable well into the future.

Sincerely,

Justin Bartlett
Legacy Labor, Inc
Co-CEO

cc: Mr. Brian Pasternak, US Department of Labor, Office of Foreign Labor Certification
Administrator, Employment and Training Administration