



August 31, 2021

Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

In re: *Inquiry Regarding Department Processes and Procedures Relative to the Farm Labor Survey (FLS) Used to Establish Adverse Effect Wage Rates (AEWRs) in the H-2A Temporary Agricultural Worker Program*

Dear Secretary Vilsack:

The National Council of Agricultural Employers (NCAE) is the national association focusing exclusively on agricultural labor issues from the Agricultural Employer's viewpoint. We represent the interests of agricultural employers, growers, associations, and others whose business interests revolve around labor-intensive agriculture. Our membership represents about 85% of the U. S. farmers and ranchers who utilize the H-2A program.

Our members have become increasingly alarmed by what appears to be an ever deepening disconnect from the market for agricultural labor and the results of the FLS used by the Department of Labor (DOL) to establish the AEWRs, which farmers and ranchers must pay under the H-2A nonimmigrant visa program to H-2A visa holders and workers in corresponding employment. Alarm over this disconnect has also been expressed by cooperative extension specialists, agricultural lenders, agricultural economists, and others with expertise in analysis of labor markets.

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Unfortunately, the impact of this disconnect between the FLS results and U. S. labor markets is hindering U. S. agricultural production. The disconnect is creating new opportunities for foreign competitors to expand their displacement of U. S. produced agricultural products in the market, as today over one-half of the fresh fruit and more than one-third of the fresh vegetables consumed in America are produced in another country.

Further, this unfortunate circumstance is making U. S. agriculture less sustainable in global markets. For example, becoming ever more reliant upon foreign producers has the potential to reduce the nation's access to safe and healthy produce, particularly during times of national crisis such as pandemics or armed conflicts. As you well know, forfeiting America's food production capability to foreign nations jeopardizes U. S. national security.

NCAE has repeatedly petitioned the DOL to make the determination required by statute as to whether an adverse effect is visited upon domestic workers due to the employment of Temporary H-2A Agricultural Workers necessitating the imposition of AEWRs. The DOL has failed to entertain the petitioned for determination to the peril of U. S. agriculture.

The federal minimum wage is \$7.25 per hour. The average 2021 FLS determined AEWR mandates a minimum wage more than twice the federal minimum wage (\$14.62). For example, a farmer in rural Nebraska unable to find an adequate number of domestic workers to seasonally harvest their vegetable crop on their legacy farming operation and having to turn to the H-2A program for temporary labor, is required to pay a 2021 minimum wage of \$15.89 to those workers and any domestic workers they can find to help. This is why you find bell peppers from Canada at the supermarket in Des Moines or tomatoes grown in Mexico in Cheyenne.

The economists, statisticians, and their teammates employed by the USDA's National Agricultural Statistics Service (NASS) are very talented and always professional. They share the passion and commitment of our organization for U. S. agriculture and the people who feed us. We are grateful for their expertise.

We have a number of questions regarding the FLS that we request NASS address. The responses may provide insight as to how we might better understand the perilous disconnect between the FLS and the market for agricultural labor in the U. S. and allow us to seek solutions that will sustain U. S. agricultural production.

1. Cooperative extension specialists have expressed concern that completing the survey correctly may be challenging for agricultural employers absent expensive, specific farm accounting software.

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- a. What is the nature of any pre-survey educational outreach performed by NASS?
 - i. Does this outreach occur in all production areas?
 - ii. Does USDA/NASS employ outreach efforts with university cooperative extensions to assist in this educational effort?
 - iii. What resources are provided to extension specialists to assist in this education?
 - iv. If extension specialists are not used in this educational process, why not?
- b. Has NASS coordinated the survey input requests with agricultural software developers?
 - i. If so, which developers?
 - ii. Are there additional NASS resources provided to farmers and ranchers to assist in compiling data from software systems not coordinated with the survey? If so, what is the nature of those additional resources?
- c. What is the data input error rate in the FLS calculated by NASS?
 - i. How is the rate determined?
 - ii. What audit process does the NASS undertake to ascertain the accuracy of the data submitted in the FLS?
 1. What is the sample size selected for audit and how is that determined?
 2. Does the audit process tie survey responses back to the payroll records?
 - a. If not, what other methods are used to determine response accuracy?
 3. How many U. S. farms were selected in FY 2020 (from whence the 2021 AEWRs were determined) to be examined by NASS to trace the survey responses back to the farm's payroll records?
 - a. What was the observed error rate in these examinations?
 - b. How often did the audited farms properly segregate job codes, bonuses, piece rates, and overtime?
 - c. How many audited surveys incorrectly failed to segregate job codes, bonuses, piece rates and overtime?
 - d. Has the magnitude of the impact of such errors on the final reported FLS statistics been determined? If yes, how large is the impact? If not determined, why not?
 - e. Are FLS results adjusted to account for any errors identified in the NASS audit process? If so, how? If not, why not?
 4. The survey requests data segregated by job code. How does NASS audit the appropriateness of the job code reported in the surveys?

- a. What is the error rate observed in the segregation of workers by the job codes?
 - b. Are the FLS results adjusted to account for any errors observed? If so, how? If not, why not?
2. H-2A wages are included in the FLS results. What is the statistical impact of any echo effect from the inclusion of those H-2A wages on the average results?
 - a. How was that echo effect calculated?
 - b. In how many observations in FY 2020 did USDA determine that the farm reported not having H-2A workers but did in fact employ H-2A workers?
 - i. How did NASS make that determination?
 - ii. What was the impact of these errors on the survey results and how was that determined?
 - iii. Are the FLS results adjusted to account for these errors? If so, how? If not, why not?
3. What warnings does NASS provide to farmers and ranchers regarding potential future financial dangers to their operations of incorrect data submitted in returned surveys?
4. Are farmers well informed by NASS that survey errors may ultimately result in the loss of their agricultural business financial viability due to the use of the FLS averages in establishing DOL's adverse effect wage rates?
 - a. If so, how are they informed?
 - b. If they are not informed, why not?

Thank you for your time and attention to this matter and for your commitment to the success of America's farmers and ranchers.

Very truly yours,



Michael Marsh
President and CEO

CC: Hubert Hamer, Administrator, National Agricultural Statistics Service