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The Honorable Lori Chavez-DeRemer  
Secretary  
United States Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Re: Request for Public Comment Regarding Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States; Docket No. ETA-2025-0008

Dear Secretary Chavez-DeRemer,

The National Pork Producers Council (NPPC), which represents 42 affiliated state associations and their pork producing members, submits the following comments to the U.S. Department of Labor (DOL) in response to its request for public comments on the interim final rule to amend the regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H-2A nonimmigration status.

**Background on NPPC and the U.S. Pork Industry**

The U.S. pork industry has undergone significant changes over the past 30 years, transforming from a commodity-orientated sector that relied mainly on family labor to a more capital-intensive, technology-heavy, and science-driven industry. Over time, the pork industry has also moved from an industry consisting of hundreds of thousands of small operations that sold pigs in cash markets by truck or trailer loads to one that now has more than 60,000 hog farms marketing their animals directly to the packer, or in some cases, to the consumer.

The U.S. pork industry is a major contributor to both the agricultural and overall U.S. economy and provides a range of products that are a staple of daily meals and the centerpiece of family celebrations. In 2023, U.S. pork producers marketed more than 149 million hogs valued at over \$27 billion while supporting more than 573,000 U.S. jobs and supplying consumers with nutritional products that are raised safely and humanely.

The United States is also a global supplier of pork, with exports to high-value markets accounting for more than a quarter of annual pork production and supporting more than 140,000 U.S. jobs. To produce those hogs, pork producers use roughly 1.7 billion bushels of corn and the soybean meal from 462 million bushels of soybeans.

**Decrease in Available Workforce**

The U.S. pork industry is dependent on a hardworking and dedicated workforce on farms and in processing plants. Because pork production is not seasonal, the industry relies on a committed workforce 365 days a year to maintain the high standards that promote animal health, environmental

stewardship, food safety, and optimal production to reliably meet the nutritional needs of Americans. From 2021 to 2024, hog farm employment fell by 7% despite growing workforce needs and rising average weekly wages, which increased by 20%. Furthermore, 7 in 10 of the top hog-producing states have unemployment rates below the national unemployment rate of 4.1%, causing there to be no slack in the rural workforce markets.

A 2018 study by economists at Iowa State University,<sup>1</sup> updated in 2021, outlines the demographic shifts in nonmetro populations that have exacerbated workforce shortages on farms and in packing plants. Using U.S. Census data, the study identified a decline in the rural county workforce from 2014 to 2019, as well as a decline in the population and workforce level of 20-to-44-year-olds, a population where participation rates were near or above 80% in rural counties of top hog producing states.

More recently, a 2024 report by USDA's Economic Research Service<sup>2</sup> found that the working age population between 15 and 64 years old has declined in rural counties since 2010, while the 65+ population has increased. Rural counties also currently have a greater share of the 65+ population when compared to metro counties and a relatively small share of people in the "prime working age" group of 25 to 54.

As the pork industry has evolved in recent decades, this has caused a significant uptick in demand for hiring full-time skilled and unskilled workers. The Iowa State University study found U.S. citizens and residents do not currently and will not in the future offset the need for foreign-born workers

### **NPPC Supports Changes to H-2A Program**

Pork production is a year-round industry, and therefore, is not eligible to use the H-2A visa program to fill roles that require year-round employment. However, producers can use the program for other temporary and seasonal roles on their farms. NPPC appreciates the updated methodology in calculating the hourly Adverse Effect Wage Rates (AEWR).

### ***General Comments on AEWR Methodology***

Overall, NPPC supports the DOL's modifications to the AEWR methodology and its recognition that the current AEWR methodology and rates were gravely impacting U.S. farmers without any proven protection against an adverse effect of similarly employed domestic farmworkers. DOL has vast authority in determining if an AEWR is required and, if so, how the AEWR should be calculated. NPPC members have raised concerns about a survey-based wage rate and inherent flaws within the past methodology. We are hopeful that the shift to the Occupational and Employment Wage Survey (OEWS), while not perfect, will provide a more complete data set to better reflect market wages. We also support the inclusion of farm enterprises in data collection. We focus our remaining comments on specific changes that uniquely impact the pork industry.

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<sup>1</sup> <https://nppc.org/wp-content/uploads/2022/10/August-2021-Labor-Study.pdf>

<sup>2</sup> <https://www.ers.usda.gov/publications/pub-details?pubid=110350>

### *Majority Duties Doctrine*

NPPC strongly supports the change to assign a Standard Occupational Classification (SOC) code and determine the AEWR for an employer's job based on actual duties performed during the contract period. This is a welcome change from the previous method that arbitrarily assigned a job classification, along with a heightened wage rate, based on minor tasks performed during the contract period. Farm jobs encompass multiple tasks, varying by the day or hour, depending on factors often outside the employer's control, including weather or commodity conditions. Previously, when an employer had a job opportunity that required the operation of a heavy truck, the contract was assigned an SOC code and subsequent higher AEWR for that of a commercial long-haul trucker, regardless of how little the employee may be expected to drive a heavy truck. It is a reasonable and commonsense approach to apply an occupational code that encompasses the majority of the work performed by the individual and allows the AEWR to more accurately reflect the duties performed during the contract.

However, since DOL chose to apply a "majority duties test" rather than a "primary duties test," this raises implementation questions that need to be addressed in the Final Rule. For example, if a worker performs a task every day of the contract period, but that task is done less than the majority of the time on any given day, how would that be classified? Will DOL simply consider the number of days the tasks are performed? Or, will the duration of time spent doing a particular task within a job order be taken into account? For instance, what SOC would apply if an individual drives a truck under SOC 53-3032 every day of a contract but it encompasses only a small percentage of work hours each day? This is particularly relevant to pork producers who are able to seasonally hire H-2A drivers to haul feed and animals. However, they also perform other seasonal tasks on the farm. It is imperative that the SOC classification accurately reflect the primary duties required in the job order.

### *Housing Downward Adjustment*

NPPC strongly supports the establishment of a standard downward adjustment factor to the hourly AEWR that accounts for the non-wage compensation in the form of free housing. The offering of housing is a major benefit to H-2A workers and is also a major cost to employers seeking to use the program. By including a downward housing adjustment, it ensures that the benefit of housing to H-2A workers does not adversely affect similarly employed U.S. workers. Additionally, NPPC supports the use of Department of Housing and Urban Development Fair Market Rents and believes it is a reasonable calculation.

### *Skill Level*

The new concept of setting wages by skill level is encouraging but also raises concerns about the additional complexity it creates. We anticipate that challenges will arise from this delineation and therefore encourage DOL to address implementation questions in additional detail in the Final Rule. For example, can a single job order include multiple skill level employees? How are corresponding workers treated if a Skill Level 2 H-2A worker also performs Skill Level 1 jobs (e.g., a supervisor assisting)? Would Skill Level 1 or Skill Level 2 apply where a job requires less than three months of experience and is entry level based on the industry standard, yet employers will provide additional on the job training or certification?

Additionally, NPPC disagrees with requiring up to two months of experience for Skill Level 1 and three months for Skill Level 2. This is contrary to DOL's historical view and conflicts with the SOC descriptions on O\*NET, which generally states that 0-3 months is the default experience level for an agricultural job. We encourage DOL to follow O\*NET guidelines that state the default experience for an agricultural job as 0-3 months.

### **Removal of Temporary or Seasonal Requirement**

NPPC appreciates the improvements made to the H-2A program in the interim final rule. NPPC asks that DOL consider maximum flexibility under the statute to expand the definitions of seasonal or temporary to better account for all agricultural needs, including many opportunities offered by pork producers. Pork producers are not unique in their need to find a reliable workforce as rural communities continue to become smaller, but they do face increased challenges without access to the H-2A program to fill roles that are by necessity year-round.

Furthermore, changing business practices to develop temporary or seasonal workforce needs for the purposes of using the H-2A program would drastically reduce efficiency in pork production. At any given time, producers have sows (mother pigs) and weaned pigs at all stages of production. A portion of sows are gestating (pregnant), while others are farrowing (giving birth) and then nursing. After weaning, pigs that were born around the same time are moved to the nursery together. Following the nursery, pigs are moved to a finishing barn until they reach market weight. It would be extremely difficult for every pig to be in the same stage of growth or reproduction at the same time. Barns would have to be bigger, the workforce would have to increase, and the market would have to accommodate for market hogs coming in waves rather than steadily throughout the year.

Pork production should not have to fundamentally change to access an adequate workforce. The H-2A program should evolve to fit the needs of modern agriculture and allow producers to continue to supply consumers with affordable and nutritious pork products while providing significant benefits to the U.S. economy and local communities across America. DOL should maximize its interpretation of seasonal or temporary to include any job less than 12 months, in line with DHS regulations.

Thank you for the opportunity to comment on the interim final rule to amend the regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H-2A nonimmigrant status. Please contact us with any questions or clarifications.

Sincerely,



Bryan Humphreys  
CEO  
National Pork Producers Council