



441 G St. N.W.
Washington, DC 20548

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December 2, 2025

The Honorable Chuck Grassley
Chairman
The Honorable Richard J. Durbin
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Labor, Employment and Training Administration: Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (DOL), Employment and Training Administration entitled "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States" (RIN: 1205-AC24). We received the rule on September 30, 2025. It was published in the *Federal Register* on October 2, 2025. 90 Fed. Reg. 47914. The effective date of the rule is October 2, 2025.

According to DOL, this rule amends regulations governing the certification of agricultural labor or services to be performed by temporary foreign workers in H-2A nonimmigrant status. DOL stated that this rule revises the methodology for determining the hourly Adverse Effect Wage Rates (AEWRs) for non-range occupations by using wage data reported for each U.S. state and territory by the Department's Bureau of Labor Statistics Occupational Employment and Wage Statistics survey.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date does not apply, however, if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding and a brief statement of its reasons in the rule. 5 U.S.C. §§ 553(b)(B), 808(2). Here, DOL did not specifically mention CRA's delayed effective date requirement in the rule but stated in its submission to us that the good cause exception applied. In addition, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons in the rule. 90 Fed. Reg. at 47919–26. Specifically, DOL stated that the lack of a

reasonable and viable AEWB methodology, when combined with the current and imminent labor shortage exacerbated by the near total cessation of the inflow of illegal aliens, increased enforcement of existing immigration law, and global competitiveness pressures, presents a sufficient risk of supply shock-induced food shortages to justify immediate implementation of this rule. *Id.* at 47920. Additionally, DOL stated that it has good cause to forgo notice-and-comment procedures under the “impracticability” prong due to the U.S. Department of Agriculture’s decision to discontinue certain statistical surveys, including the Farm Labor Survey, creating a regulatory gap for establishing the AEWBs under the H-2A program that this rule will immediately fill. *Id.*

Enclosed is our assessment of DOL’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Will Shakely, Acting Assistant General Counsel, at (202) 512-3363.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Marek Laco
Deputy Assistant Secretary
Employment and Training Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION
ENTITLED
“ADVERSE EFFECT WAGE RATE METHODOLOGY FOR THE TEMPORARY EMPLOYMENT
OF H-2A NONIMMIGRANTS IN NON-RANGE OCCUPATIONS IN THE UNITED STATES”
(RIN: 1205-AC24)

(i) Cost-benefit analysis

The Department of Labor (DOL), Employment and Training Administration, prepared an analysis of the costs and benefits of this rule. See 90 Fed. Reg. 47914, 47952 (Oct. 2, 2025). DOL stated that it expects the rule to generate significant economic benefits well in excess of familiarization costs. DOL estimated the rule will impose an annualized cost of \$0.78 million and generate annualized transfers from H-2A workers to H-2A employers of \$2.46 billion. Additionally, DOL estimated the rule's lower Adverse Effect Wage Rates (AEWRs) would lead farmers to hire approximately 119,000 additional H-2A workers producing \$0.2 billion in annual economic benefits resulting from new, mutually beneficial transactions that otherwise would not have occurred. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOL stated that because public notice was not required for this rule, DOL was not obligated to prepare a regulatory flexibility analysis. Nonetheless, DOL conducted an analysis on the rule's effect on small entities and determined that the rule will have a significant economic impact on small farms that employ H-2A workers. 90 Fed. Reg. at 47959.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOL stated that the Act does not apply to rules issued without notice and comment. Accordingly, DOL stated that the requirements of the Act are not applicable to this rule. 90 Fed. Reg. at 47962.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The Act's notice-and-comment requirements do not apply if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding and a brief statement of its reasons in the rule. 5 U.S.C. § 553(b)(B). DOL invoked the good cause exception for this rule, determining that notice-and-comment would be contrary to the public interest because the lack of a reasonable and viable AEWR methodology; when combined with the current and imminent labor shortage exacerbated by the near total cessation of the inflow of illegal aliens, increased enforcement of existing immigration law, and global competitiveness pressures; presents a

sufficient risk of supply shock-induced food shortages to justify immediate implementation. 90 Fed. Reg. at 47920. Additionally, DOL determined that notice-and-comment rulemaking would be impracticable due to the U.S. Department of Agriculture's decision to discontinue certain statistical surveys, including the Farm Labor Survey, creating a regulatory gap for establishing AEWRs under the H-2A program that this rule would immediately fill. *Id.*

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOL determined that the changes adopted in this rule will not result in changes to the information collection covered under the H-2A Temporary Agricultural Labor Certification Program, OMB Control Number 1205-0466. 90 Fed. Reg. at 47962.

Statutory authorization for the rule

DOL promulgated this rule pursuant to section 1188 of title 8, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOL stated that the Office of Management and Budget determined that this rule is a significant regulatory action under the Order. See 90 Fed. Reg. at 47961.

Executive Order No. 13132 (Federalism)

DOL determined that this rule does not have federalism implications. See 90 Fed. Reg. at 47962.