AmericanHort

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The Honorable Brian Pasternak
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The Honorable Daniel Navarrete
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Via electronic submission to www.regulations.gov

Dear Secretary Chavez-DeRemer, Administrator Vitelli, Administrator Pasternak, and Director Navarrete,

On behalf of greenhouse, nursery, and other ornamental horticulture businesses that lawfully rely on the H-2A program to meet critical seasonal labor needs, we appreciate the opportunity to comment on the Department of Labor's (Department or DOL) proposed rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations* (the Proposed Rule), 90 Fed. Reg. 47914 (Oct. 2, 2025).

AmericanHort is the leading national trade association for the horticulture industry, representing 20,000 members and their affiliated businesses across the country. Our diverse membership includes greenhouse and nursery growers, breeders, garden retailers, interior and exterior landscape professionals, florists, educators, and suppliers. Collectively, our industry generates over $500 billion in annual economic impact and supports approximately three million U.S. jobs,

which depend on sound public policy and strong collaboration with federal leaders.

Our industry is committed to providing fair wages and strong working conditions for both domestic and foreign workers while ensuring that H-2A program administration remains practical, transparent, and consistent with the governing statute. We appreciate the Department's efforts to reestablish a workable wage methodology following the termination of USDA's Farm Labor Survey (FLS) and offer the following observations and recommendations.

A. OEWS Methodology Represents a Necessary and Cautious Transition

We appreciate the Department's decision to replace the discontinued FLS with the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) data. This change was both necessary and timely. On September 3, 2025, USDA's National Agricultural Statistics Service (NASS) published in the *Federal Register* a notice of discontinuance for the FLS, concluding that the survey could no longer be maintained as a statistically reliable source due to declining response rates and methodological challenges. As a result, the long-standing dataset that previously underpinned AEWR determinations is no longer available.

While the OEWS is a statistically robust and transparent federal dataset, it was not originally designed to capture the labor realities of greenhouse, nursery, and floriculture operations, including the seasonal, skill-based, and regionally distinct nature of horticultural work. For that reason, employers in the ornamental horticulture sector view this transition with cautious optimism. The Department's selection of OEWS data provides needed continuity in AEWR determinations, but our industry remains concerned that the dataset may not fully represent the wage structure and workforce characteristics unique to horticultural production.

We encourage the Department to continue collaborating with BLS to develop an agriculture-specific OEWS component that incorporates direct on-farm and controlled-environment sampling. Ensuring that horticultural establishments are accurately represented will be essential to producing AEWR determinations that reflect real labor market conditions and uphold Congress's intent for the H-2A program.

B. The Two-Level Wage Structure Improves Occupational Accuracy

We recognize the Department's decision to establish two wage levels (Level I and Level II) within each Standard Occupational Classification (SOC) code as a measured effort to improve accuracy in AEWR determinations. Employment within the ornamental horticulture sector encompasses a wide spectrum of duties: from essential tasks such as potting, spacing, pruning, irrigation support, and general nursery or greenhouse maintenance, to more advanced

responsibilities including skilled equipment operation, integrated pest management, environmental control system operation, and crew leadership. A single AEWR rate, as previously used, could not account for these meaningful distinctions. The proposed two-level framework introduces needed precision by aligning wage determinations with the complexity, skill, and responsibility associated with specific horticultural roles.

Other visa programs, such as H-2B, rely on a single-wage OEWS system. The Department's decision to depart from that model for H-2A reflects the diverse nature of agricultural and horticultural work, where duties and skill levels vary significantly even within a single SOC code. The two-level structure, therefore, provides a more appropriate framework, so long as it is implemented with clear, consistent criteria nationwide. We encourage the Department to issue guidance clarifying how State Workforce Agencies (SWAs) and Certifying Officers (COs) should classify positions when job duties blend entry-level and more advanced tasks. In the horticulture context, Level I should correspond to entry-level positions performing basic manual labor under direct supervision, such as general nursery work, standard greenhouse production tasks, or routine handling and propagation activities. Level II should apply to positions requiring prior experience, independent judgment, specialized equipment or technology use, or supervisory responsibilities.

Employers within the horticulture industry have noted significant inconsistencies among SWAs regarding the experience needed to justify a Level II wage. Some states classify any experience above zero months as Level II, while others require a minimum of three months before assigning the higher rate. These disparities create uncertainty and result in uneven wage determinations for identical horticultural positions across states. To promote uniformity, we respectfully recommend that the Department clarify that more than three months of relevant agricultural or horticultural experience should be required to meet the threshold for a Level II classification. A consistent federal standard would improve predictability, ensure equitable application, and support accurate job matching across the country.

Finally, the two-level structure supports the statutory goal of preventing adverse effect on U.S. workers under 8 U.S.C. § 1188(a)(1)(B) while preserving economic viability for greenhouse, nursery, and floriculture employers. Differentiated wage levels help prevent wage compression, recognize experience and skill progression, and promote upward mobility within the horticultural workforce—without imposing a single inflated wage that distorts local labor markets or undermines the sustainability of seasonal operations.

C. Inflated Wage Floors Distort Labor Markets and Undermine Statutory Objectives

The two-level wage structure will also help correct a longstanding distortion created when a single, inflated AEWR was applied across all agricultural occupations, including those within greenhouse, nursery, and floriculture production. Under the former system, AEWRs often rose far above real labor-market conditions because of methodological limitations in the discontinued FLS. When mandated wages significantly outpace local norms, the result is not improved fairness but economic displacement. Excessively high wage floors compress legitimate pay differences between entry-level horticultural tasks and more advanced or technical roles. Employers unable to absorb sudden wage spikes reduce hiring, shorten seasonal contracts, eliminate positions, or accelerate automation and production consolidation. These pressures reduce employment opportunities for both U.S. and H-2A workers, and they fall especially hard on small and mid-sized horticulture operations with limited margins. In some cases, inflated AEWRs have forced greenhouse and nursery employers to leave the program altogether, reducing lawful job opportunities and worsening labor shortages.

These outcomes conflict with Congress's intent under 8 U.S.C. § 1188(a)(1)(B), which requires the Department to certify that hiring H-2A workers "will not adversely affect the wages and working conditions of workers in the United States similarly employed." The AEWR was never intended to artificially raise wage floors, equalize compensation across regions, or impose wage rates detached from productivity or skill. Its purpose is to prevent downward pressure on domestic workers' earnings – not to function as a price control. When AEWRs are inflated far beyond prevailing rates, they undermine this statutory objective and destabilize horticultural labor markets. By introducing two wage levels, the Department moves toward restoring a better balance between wage protection and economic reality. The two-level system upholds the statutory mandate to prevent adverse effect while avoiding overcorrection that threatens employment stability, competitiveness, and the long-term viability of horticultural employers.

D. The Two-Level Structure Reflects Reasoned Decision Making Under the Administrative Procedure Act

The Department's proposed two-level AEWR framework represents a rational and data-driven correction to a longstanding methodological flaw. Under the Administrative Procedure Act (APA), agency action must be grounded in reasoned analysis and a clear connection between evidence and policy outcomes. The two-level approach satisfies this standard. For many years, the single AEWR produced results that were misaligned with actual labor conditions in greenhouse, nursery, and floriculture operations and failed to distinguish between entry-level horticultural roles and advanced, skill-based positions. Following USDA's discontinuation of the FLS in September, the Department faced both statutory

and practical necessity to adopt a new methodology. In doing so, it evaluated the available data, identified deficiencies in the prior system, and proposed a structure that better reflects the range of work performed across the horticulture sector.

The Department has also recognized the importance of transparency and predictability for employers and workers. By explaining the rationale for replacing a single-rate AEWR with two wage levels, and by detailing how this approach reduces distortions created under the old system, the Department meets its obligation to act based on reasoned analysis rather than policy preference alone. This clarity will strengthen the final rule against misinterpretation and instill greater confidence among horticultural employers and workers that the AEWR is fulfilling its intended purpose to protect U.S. workers while preserving a functional and competitive labor market for specialty crop and ornamental production.

Taken together, the Department's abandonment of the discontinued FLS, its adoption of OEWS data, and its establishment of a two-level AEWR constitute a deliberate, though cautious, modernization. These steps address both statutory necessity and longstanding evidence that a single inflated AEWR distorted agricultural and horticultural labor markets. At the same time, prudence remains warranted. The OEWS was not designed to measure on-farm or controlled-environment wages, and its outputs should be interpreted carefully until direct agricultural and horticultural sampling is incorporated. The Department's responsibility now is to implement this framework transparently and consistently with 8 U.S.C. § 1188(a)(1)(B), preventing adverse effect without creating new distortions.

This same balance between statutory purpose and practical implementation underlies the Department's proposed recognition of employer-provided housing through the Adverse Compensation Credit (ACA). Just as the two-level AEWR ties wages to the nature and skill level of the work performed, the ACA ties compensation to the tangible non-cash benefits greenhouse, nursery, and floriculture employers are legally required to provide.

F. Employer Housing as a Long-Standing Statutory Requirement

We appreciate the Department's acknowledgment that employer-provided housing is a long-standing statutory requirement and a meaningful component of overall worker compensation. The ACA does not reduce wages; rather, it recognizes the real economic value of the housing that employers are required to provide under 8 U.S.C. § 1188 and 20 C.F.R. § 655.122(d). Greenhouse, nursery, and floriculture employers must furnish, at no cost to the worker, housing that meets all federal and state standards for any employee –domestic or H-2A – who cannot reasonably return to their permanent residence each day. This is not a discretionary benefit; it is a mandated obligation that carries substantial operational cost for horticultural businesses and provides significant economic

benefit to workers. Acknowledging this value within the AEWR structure increases transparency around total compensation and ensures wage determinations more accurately reflect the realities of seasonal horticultural employment.

G. ACA and State Minimum Wage

The Fair Labor Standards Act (FLSA) permits employers to include the "reasonable cost or fair value of board, lodging, or other facilities" in wages when those benefits primarily serve the employee. Employer-provided housing clearly benefits workers by eliminating rent and utilities costs, and its value can be objectively measured using HUD Fair Market Rent (FMR) data. Greenhouse, nursery, and floriculture employers make substantial investments to construct, maintain, and operate compliant housing – often totaling thousands of dollars per worker per season – yet the AEWR has historically ignored this cost. Workers, meanwhile, receive significant economic value through free, certified housing that enhances real income by covering one of the largest living expenses. The ACA formalizes recognition of that value, so total compensation is measured accurately.

However, the proposal is unclear about whether employers may apply the ACA credit in situations where a state minimum wage exceeds the issued AEWR. Employers in the horticulture industry need certainty on how the ACA interacts with the FLSA and state minimum-wage requirements. Under longstanding FLSA principles, the value of housing may be credited toward wage obligations when it primarily benefits the employee. This should remain true even in states where the minimum wage is higher than the AEWR. Employers will always pay at least the highest applicable cash wage, but the Department should confirm that recognition of employer-provided housing as compensation continues to apply regardless of state wage levels.

Absent such clarification, horticultural employers face uncertainty about whether they may account for the value of housing when the state minimum wage exceeds the federal AEWR, potentially resulting in duplicative compensation that is inconsistent with the total-wage framework Congress envisioned for the H-2A program.

H. Equal Application for Similarly Situated U.S. Workers

We respectfully urge the Department to extend this recognition to U.S. workers who also reside in employer-provided housing. In many greenhouse, nursery, and floriculture operations, domestic employees live in the same employer-furnished housing as H-2A workers because they cannot reasonably commute each day. The INA's equal-treatment provision requires that U.S. workers receive "no less than" the same terms, conditions, and benefits as H-2A workers. Applying the ACA's recognition of housing value to both groups ensures true parity and avoids unnecessary administrative complexity for employers.

Employer-provided housing has long been an expected condition of employment in seasonal horticultural operations under federal statute and regulation. Recognizing the value of this housing within the AEWR methodology does not reduce wages; rather, it provides an accurate and transparent accounting of total compensation. The ACA aligns federal wage-setting with both the INA's equal-treatment requirement and the FLSA's total-compensation principles, promoting fairness, consistency, and clarity across the horticultural labor market.

I. Clarification on SOC Code Determinations: "Primary Duties" and "Majority of Duties on the Majority of Days"

We support the Department's goal of improving occupational accuracy but remain concerned about applying a "majority of duties on the majority of days" standard to SOC classification. Work in greenhouse, nursery, and floriculture operations is inherently dynamic; employees frequently rotate among planting, spacing, pruning, irrigation support, pest management, harvesting, and general maintenance based on weather, production cycles, and operational needs. In many cases, no single task dominates across the entire contract period, making a rigid majority-of-days test impractical and inconsistent with real-world horticultural labor patterns.

The Department should clarify that *primary duties*—the principal or most significant work performed over the course of the contract—should govern SOC assignment. Ancillary or incidental tasks should not alter the classification when they are secondary to the position's core function. Employers should be permitted to demonstrate primary duties through job orders, written position descriptions, or supervisory attestations rather than daily task logs. Clear and uniform national guidance will promote consistency and predictability across greenhouse, nursery, and floriculture operations, workers, and SWAs.

To support consistent implementation, the Department should issue clear guidance or FAQs concurrent with the final rule addressing: (1) application of the primary-duties standard, and (2) proper treatment of mixed or rotating horticultural occupations. Accessible, standardized direction will reduce administrative disputes, ensure uniform interpretation, and strengthen program integrity across the H-2A program.

J. Conclusion

As the national trade association representing more than 20,000 horticulture businesses, AmericanHort commends the White House, USDA, and DOL for their collaboration in advancing the Interim Final Rule and for their continued engagement with stakeholders throughout this process. We appreciate the Department's effort to reestablish a workable AEWR methodology following USDA's termination of the FLS. The transition to OEWS-based data, the introduction of two wage levels, and the recognition of employer-provided

housing represent meaningful reforms that, if implemented carefully, can bring needed balance between statutory protections for U.S. workers and the practical realities facing greenhouse, nursery, and floriculture employers.

We respectfully recommend that the Department: continue coordinating with BLS to integrate on-farm and controlled-environment horticultural data into the OEWS survey frame; affirm that employer-provided housing is recognized as part of total compensation so the ACA may be applied in all situations; ensure the ACA applies equally to similarly situated U.S. workers; and confirm that SOC classification is based on primary duties rather than a mechanical "majority-of-days" test.

With these clarifications, the Department's final rule can provide stability, fairness, and predictability that horticultural employers – and the broader agricultural labor market – need, while remaining fully consistent with the statutory mandates of the INA and the analytical standards of the APA. AmericanHort remains committed to serving as a constructive partner as the Department finalizes and implements this important rulemaking.

Sincerely,

Ken Fisher
President and CEO
AmericanHort