



Owner-Operator Independent Drivers Association, Inc.

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November 12, 2010

Mr. Thomas Dowd, Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW. Room N-5641
Washington, DC 20210

Re: Proposed Rule; request for comments. Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program

Dear Administrator,

The Owner-Operator Independent Drivers Association (OOIDA) as a representative of small-business motor carriers is responding to this Department of Labor (DOL) Notice of Proposed Rulemaking (NPRM) to reformulate the methodology used to calculate prevailing wages paid to workers in H-2B status. As noted in the NPRM published in the Federal Register on October 5, 2010, DOL estimates this rulemaking would increase by \$4.38 the weighted average hourly wage for H-2B workers.

The Owner-Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers and professional drivers. The more than 154,000 members of OOIDA are professional drivers and small-business men and women located in all 50 states and Canada. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States, and approximately 96 percent of active motor carriers operate 20 or fewer trucks.

While some commenters to the docket have suggested a lack of sophistication on the part of small-businesses to "fully assess the impact of DOL's proposal on their businesses," OOIDA does not share this concern. In fact, we are concerned that H-2B workers are abused by unscrupulous employers wishing to use the program in an effort to undercut prevailing wages to gain an economic advantage on their competitors in the marketplace.

OOIDA has previously supplied comments to the Department of Homeland Security (DHS) regarding the application process used for obtaining H-2B visas for foreign workers (*see: USCIS-2004-0011-0045*). While this particular rulemaking does not address the concerns we raised in that docket, our previous comments supplied are germane to this current rulemaking. Our interest in this current rulemaking is to ensure our members are not adversely impacted economically if the trucking industry were successful in accessing the H-2B program to "legally" recruit foreign workers.

The DOL has asked for comments on any specific alternatives for wage calculations. Since our area of expertise involves the trucking industry, we'd caution the DOL about any reliance on self-serving industry wage calculation methodologies and results from private surveys. Misclassifying employee status is a significant issue in the trucking industry and proffered methodology can have the deleterious effect of understating actual prevailing wages paid to employee truck drivers.

The trucking industry mostly pays employee drivers by the mile, not by the hour. Mileage compensation is usually computed via computer programs that discount the actual miles an employee truck driver operates by a significant percentage. Time they spend loading and unloading their conveyances is mostly uncompensated. As such, establishing any prevailing wage for this particular segment of industry is fraught with peril in adequately protecting U.S. workers from being adversely affected by the employment of H-2B workers.

This NPRM proposes to establish prevailing wage guidelines using an agreed upon collective bargaining agreement, a wage rate established under the Davis-Bacon Act, or via the McNamara-O'Hara Service Contract Act for the area of intended employment. The Bureau of Labor Statistics (BLS) would then, through its Occupational Employment Statistics wage survey (OES), establish the arithmetic mean wage rate for a particular occupation. The employer would then be required to pay the highest of the prevailing wage as determined by the National Processing Center (NPC).

OOIDA supports that proposed methodology and further supports the elimination of any private employer surveys.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Johnston', with a stylized flourish at the end.

JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association