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New Adverse Effect Wage Rate (AEWR) Methodology for Temporary Employment of H-2A Nonimmigrants in the United States

Introduction

The H-2A visa program allows for the temporary admission of foreign workers to the United States to perform agricultural labor or services of a seasonal or temporary nature. (See CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues* for a discussion of the H-2A visa program.)

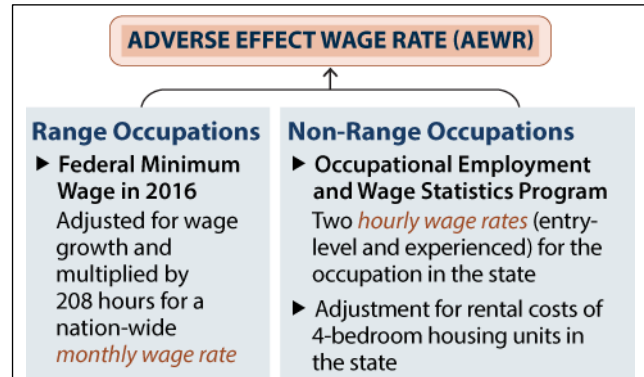
The Immigration and Nationality Act (INA) authorizes the H-2A program and requires that prospective H-2A employers apply to the Department of Labor (DOL) for labor certification. Per 8 U.S.C. §1188(a)(1), before approving a labor certification application, DOL must determine that

- there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services for which an employer desires to hire temporary foreign workers (H-2A workers); and
- the employment of the H-2A workers will not *adversely affect* the wages and working conditions of workers similarly employed in the United States.

The INA does not specify a method for the Secretary of Labor to make these two determinations. To ensure there are not sufficient U.S. workers who are qualified and available to perform the work, DOL requires employers to advertise and engage in positive recruitment of U.S. workers for the H-2A job opportunity, and to offer U.S. workers terms and working conditions that are not less favorable than those offered to H-2A workers. To guard against adverse effects on similarly employed U.S. workers, DOL also requires employers to offer wages at or above the highest of five wages levels: (1) the adverse effect wage rate (AEWR), (2) the applicable prevailing wage rate, (3) an agreed-upon collective bargaining wage rate, (4) the federal minimum wage rate, or (5) the applicable state minimum wage rate. DOL regulations govern the offered wage rate and provide the methodologies for determining AEWRs and prevailing wage rates.

For most H-2A workers, the applicable AEWR is a state-level, *hourly rate* based on average wage estimates. However, a *monthly AEWR* is used for certain positions—referred to as *range occupations*—that involve the herding or production of livestock on the range, under certain working conditions. For the purpose of H-2A labor certification, agricultural positions that do not meet these requirements are referred to as *non-range occupations*.

Figure 1. Sources of Wages for the H-2A Adverse Effect Wage Rate



Source: CRS presentation of information from 20 C.F.R. §§655.120 and 655.211 and 90 *Federal Register* 47914.

DOL AEWR Methodology: Range Occupations

DOL calculates a *monthly AEWR* for *range occupations*. For H-2A program purposes, range occupations involve the herding or production of livestock, performed on the range for more than 50% of the workdays in the work contract period, and generally require workers to be on-call 24 hours per day, 7 days per week. DOL provides a monthly AEWR for such positions given their unique nature, which makes recording work hours difficult.

The monthly rate for these positions was initially calculated in 2016 as \$7.25 per hour (i.e., the federal minimum wage) multiplied by 48 hours per week and 4.333 weeks per month. Since 2017, the monthly AEWR for range occupations has been adjusted annually based on growth in the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI) for private sector wages and salaries over the preceding September-to-September (12-month) period. Effective January 1, 2025, it is \$2,058.31 per month.

DOL AEWR Methodology: Non-Range Occupations

On October 2, 2025, DOL released an interim final rule (IFR) with a new methodology for calculating *hourly AEWRs* for *non-range occupations*. The new AEWR methodology in the IFR provides AEWRs at two experience/skill levels within each non-range occupation in each state or territory. These AEWRs are based on estimates of hourly wages from the BLS Occupational Employment and Wage Statistics (OEWS) program for each state or territory, with a deduction for the estimated value of employer-provided housing.

“Entry-level” (Skill Level I) wage rates are determined as the average hourly wage paid to the lowest-paid third of workers in the occupation in the state or territory (roughly the 17th percentile of the wage distribution). “Experienced” (Skill Level II) wage rates are determined as the average hourly wage rate paid to all workers in the occupation in the state or territory.

DOL groups five agricultural occupations together as “Field and Livestock Workers (Combined),” with AEWRs specified for these occupations as a group. All other non-range occupations have occupation-specific AEWRs.

Housing Cost Adjustments

Per 8 U.S.C. §1188(c)(4), employers must provide H-2A workers with housing. The 2025 IFR includes a new housing cost adjustment in the AEWR. This adjustment is based on the weighted average of Fair Market Rents for four-bedroom housing units in the state or territory, as published by the Department of Housing and Urban Development. This monthly rent is then divided by eight (assuming eight workers per housing unit) and spread over an assumed 173.9 hours worked per month. The housing adjustment may not exceed 30% of the hourly AEWR. These adjustments in 2025 range from -\$0.71 (Puerto Rico) to -\$3.18 (Hawaii).

Field and Livestock Workers (Combined)

DOL states “the vast majority of certified H-2A job opportunities are concentrated in the five field and livestock worker (combined) occupation[s].” These five occupations have the following Standard Occupational Classification (SOC) codes and titles:

- 45-2041 Graders and Sorters, Agricultural Products;
- 45-2091 Agricultural Equipment Operators;
- 45-2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse;
- 45-2093 Farmworkers, Farm, Ranch, and Aquacultural Animals; and
- 53-7064 Packers and Packagers, Hand.

Per the IFR methodology effective October 2, 2025, AEWRs for non-range occupations in the Field and Livestock Workers (Combined) group ranged from \$7.35 per hour (Guam) to \$14.83 (DC) in entry-level positions and from \$8.54 per hour (Guam) to \$21.16 (DC) in experienced positions. Among states, entry-level AEWRs for these occupations ranged from \$8.24 (Louisiana) to \$14.35 (Vermont) and experienced AEWRs ranged from \$12.77 (Florida) to \$18.11 (Alaska).

Other Non-Range Occupations

Farm supervisors or managers, heavy truck drivers, and logging workers are examples of agricultural occupations not included in the Field and Livestock Workers (Combined) category. For these occupations, the AEWR is based on the state- or territory-wide OEWS wage estimate for the individual occupation at the appropriate experience/skill level. If the OEWS program does not publish state or territory-wide wage estimates for the occupation, the AEWR is based on the national OEWS

wage for the occupation at the appropriate experience/skill level.

Classification of H-2A Job Opportunities

As part of labor certification, employers identify the tasks, duties, and requirements associated with work to be performed by H-2A workers. DOL uses this information to determine the occupation or occupations and the experience/skill level for the H-2A job. Descriptions of the definitions, skill requirements, and tasks typically performed by workers in each occupation are available from the Occupational Information Network (O*NET) website at <https://www.onetonline.org/>.

Some H-2A jobs cannot be classified within a single occupation. If the DOL-assigned occupations have *different* AEWRs, then the wage rate applies for the occupation in which the worker spends the majority of workdays.

Coverage and Publication Schedule

The OEWS program collects wage data from all states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. OEWS does not collect data from—and consequently AEWRs are not available for—American Samoa or the Commonwealth of the Northern Mariana Islands. DOL publishes notices of AEWR adjustments in the *Federal Register* on or about July 1 each year.

Recent Regulatory History

DOL’s previous final rule on the methodology for determining hourly AEWRs for non-range agricultural occupations took effect March 30, 2023. It used the Farm Labor Survey (FLS) of the National Agricultural Statistics Service (NASS) to determine the AEWR for field and livestock occupations and the OEWS to determine the AEWR for other occupations and for geographic areas without FLS data. It set the AEWR for positions spanning multiple occupations using the highest applicable AEWR. Multiple groups of agricultural employers sued to block the 2023 AEWR final rule, arguing aspects of it were arbitrary and capricious. On August 25, 2025, the U.S. District Court for the Western District of Louisiana vacated the rule. This meant AEWRs were set according to a 2010 rule that relied only on the FLS. On August 28, 2025, NASS announced the cancellation of the FLS, leaving a regulatory gap.

In recent years, both the number of H-2A workers and the AEWR have increased. DOL says in the new IFR that

the high costs to participate in the H-2A program—including the mandatory AEWRs on top of other non-wage costs such as housing, transportation, and fees—have become increasingly burdensome ... immediate reform to the H-2A program’s minimum wage policy, or the AEWRs, is necessary to avoid imminent widespread disruption across the U.S. agricultural sector.

The new IFR adds a lower, “entry-level” skill AEWR and subtracts a housing cost adjustment from all AEWRs. Both changes are expected to result in lower employer costs.

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Concise History of Wage Regulations for the H-2A Agricultural Worker Visa

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Concise History of Wage Regulations for the H-2A Agricultural Worker Visa

The H-2A visa program is unique among temporary work visa programs in that it allows U.S. employers to bring in an unlimited number of foreign workers, but specifies the terms and conditions of their employment. Among these terms and conditions are that workers on H-2A visas may only perform agricultural work, and their employers must provide them with housing, transportation, and pay them wage rates at or above those specified in U.S. Department of Labor (DOL) regulations.

This report summarizes all the changes in these wage regulations since the H-2A program began in 1987. Since June 1, 1987, these DOL regulations have required that H-2A workers be paid the highest of four wage rates: the Adverse Effect Wage Rate (AEWR), the prevailing wage in a local agricultural labor market, the federal minimum wage, or the state statutory minimum wage. In 2010, a fifth wage rate, the agreed upon collectively bargained wage, was added to these four wage rates. For most H-2A workers, the AEWR has historically been the highest applicable wage rate.

There are separate AEWRs for range and non-range H-2A positions. Range positions involve work without a regular workday or workweek, such as the production of sheep or other livestock on the range. The AEWR for range positions is determined based on a 2015 rule.

For most non-range H-2A positions, AEWRs were based from 1987 to 2025 (except during part of 2009) on agricultural wage surveys from the U.S. Department of Agriculture (USDA) known as the *Farm Labor Survey* (FLS). USDA attempted to cancel this survey in 2011, 2020, and 2025. The 2011 FLS cancellation was reversed via funding from DOL, leaving the AEWR calculation methodology for non-range H-2A positions unchanged. The 2020 FLS cancellation was reversed by a court order, after DOL issued a new non-range AEWR methodology that did not rely on the FLS (this methodology was also reversed by a court order). The 2025 FLS cancellation has not been reversed.

An interim final rule (IFR) for the non-range AEWR methodology was published in October 2025. This rule filled the regulatory vacuum created by (1) a judicial ruling in August 2025, vacating the 2023 non-range AEWR methodology; and (2) the USDA cancellation of the FLS, which the previous non-range AEWR methodology relied upon.

The 2025 IFR changes the non-range AEWR methodology in four ways. First, it relies on wage statistics from the Bureau of Labor Statistics' (BLS') Occupational Employment and Wage Statistics (OEWS) program, rather than the FLS. Second, it sets non-range AEWRs separately by occupation and skill level. Third, it downwardly adjusts the non-range AEWR by an "Adverse Compensation Adjustment" for the cost of employer-provided housing. Fourth, it sets the non-range AEWR for positions that span multiple occupations using the AEWR for the occupation at which workers are expected to spend the majority of their workdays. The first two of these changes have some precedent in H-2A wage regulations issued in 2009 and 2023. The third change does not have any precedent in H-2A wage regulations. Litigation over this IFR began shortly after it was released.

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Introduction

The H-2A visa program allows for the temporary admission of foreign workers to the United States to perform agricultural labor or services of a seasonal or temporary nature. This program is uncapped, meaning it permits temporary entry of an unlimited number of foreign workers into the United States, provided that all program requirements are met. More information about H-2A visas and their non-wage requirements can be found in CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

The Immigration and Nationality Act (INA; P.L. 82-414), as originally enacted in 1952, authorized an H-2 nonimmigrant visa category for foreign agricultural and nonagricultural workers coming temporarily to the United States to perform temporary services (other than those of an exceptional nature requiring distinguished merit and ability) or labor. The 1986 Immigration Reform and Control Act (IRCA; P.L. 99-603), in Section 301,¹ amended the INA to subdivide the H-2 program into the current H-2A agricultural worker and H-2B nonagricultural worker programs. The INA also details the admissions process for H-2A workers. The H-2A program is administered by the U.S. Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor's (DOL's) Employment and Training Administration (ETA).

Employers interested in hiring H-2A workers must first apply to DOL for labor certification. Before approving a labor certification application, the Secretary of Labor must determine that

- there are not a sufficient number of U.S. workers who are able, willing, and qualified and will be available at the time and place needed to perform the agricultural labor or services for which an employer desires to hire temporary foreign workers; and
- the employment of the H-2A workers will not adversely affect the wages and working conditions of workers similarly employed in the United States.

Statute does not specify a method for the Secretary of Labor to make these two determinations. To ensure there are not a sufficient number of U.S. workers who are qualified and available to perform the work, DOL requires employers to engage in recruitment of U.S. workers for the H-2A job opportunity. To guard against adverse effects on similarly employed U.S. workers, DOL requires employers to offer wages at or above certain levels, and to offer U.S. workers terms and working conditions that are not less favorable than those offered to H-2A workers. After receiving labor certification, a prospective H-2A employer may submit an application, known as a petition, to DHS to bring in foreign workers.

This report details the DOL regulations regarding wage requirements for labor certification and how these regulations have changed since the IRCA became law on November 6, 1986.

The Adverse Effect Wage Rate (AEWR)

As DOL noted in the first proposed regulations for the H-2A program in 1987:

DOL, through its own knowledge, informed experience, and judgment, has found for many years that the presence of alien workers in agriculture depresses the wages of similarly employed U.S. workers. In order to ensure that the wages of similarly employed U.S. workers are not adversely affected, DOL is continuing in these H-2A regulations its past

¹ This is now codified at 8 U.S.C. §1188(a)(1).

policy and practice of requiring covered agricultural employers to offer and pay their U.S. and H-2A workers no less than the applicable hourly adverse effect wage rate (AEWR)... [A] worker in employment under the H-2A program must be paid at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the Federal or State statutory minimum wage.²

AEWRs previously existed under the H-2 program, although their geographic specificity and the method of determining them changed over time.³ In 1968, DOL began determining AEWRs for the H-2 program in each state using hourly farm wage rates reported in the 1959 Census of Agriculture⁴ and “adjusting the previous year’s Statewide AEWR by the same percentage as the percentage change in the Statewide annual average wage rates for field and livestock workers, as surveyed by the United States Department of Agriculture (USDA).”⁵

Available Wage Estimates for Setting the AEWR

Agricultural wage surveys from the U.S. Department of Agriculture (USDA) (sometimes known as the *Farm Labor Survey* [FLS]) have existed since the 1930s, and provided quarterly or annual average agricultural worker wage estimates at the state or multi-state region level of geography.

In the 1990s, a second source of agricultural wage data became available from the Bureau of Labor Statistics (BLS): the Occupational Employment and Wage Statistics (OEWS) program.⁶ Except for a brief period in 2011,⁷ the OEWS has surveyed only non-farm employers,⁸ but an October 2025 interim final rule (IFR) indicates that starting in FY2026, the OEWS will be expanded to collect data from farms as well as non-farm business establishments.⁹

² U.S. Department of Labor (DOL), Employment and Training Administration (ETA), “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16774, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=9.

³ A description of the AEWR from 1952 through 1964 is provided in Howard N. Dellon, “Foreign Agricultural Workers and the Prevention of Adverse Effect”, 17 *Labor Law Journal* 739 (1966). State-level AEWRs were first effective in 1963. The H-2 program included both agricultural and non-agricultural jobs, but AEWRs applied only to agricultural jobs. H-2 labor certification for non-agricultural jobs involved different procedures, as described, for example, in DOL, ETA, “Procedures for Processing Applications for Certification of Temporary Employment in Nonagricultural Occupations in the United States,” 49 *Federal Register* 25837-25845, June 25, 1984, https://archives.federalregister.gov/issue_slice/1984/6/25/25836-25845.pdf#page=2.

⁴ DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology,” 54 *Federal Register* 28040, July 5, 1989, https://archives.federalregister.gov/issue_slice/1989/7/5/28031-28051.pdf#page=10.

⁵ DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16775, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=10.

⁶ Until 2021, this program was called the Occupational Employment Statistics (OES) program. DOL, Bureau of Labor Statistics (BLS), *Occupational Employment and Wage Statistics (OEWS)*, <https://www.bls.gov/oes/notices/2023/occupational-employment-and-wage-statistics-oes.htm>.

⁷ Stella D. Fayer, “Agriculture: Occupational Employment and Wages,” *Monthly Labor Review*, DOL, BLS, July 2014, <https://doi.org/10.21916/mlr.2014.25>

⁸ DOL, BLS, *Occupational Employment and Wage Statistics: Overview*, April 2, 2025, https://www.bls.gov/oes/oes_emp.htm. While the FLS estimates are derived from surveys of farm establishments, the OEWS includes wage estimates for occupations such as Agricultural Equipment Operators; Farmworkers and Laborers, Crop, Nursery, and Greenhouse; and Farmworkers, Farm, Ranch, and Aquacultural Animals, based on surveys of non-farm employers in industries such as Support Activities for Agriculture (which includes farm labor contractors).

⁹ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47932, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-268>.

The OEWS program publishes estimates of mean wages for each occupation in each state, Puerto Rico, and Guam. This program also provides the DOL Office of Foreign Labor Certification (OFLC) with special estimates (not otherwise published) of mean wages for the lower third and the upper two-thirds of the wage distribution by occupations and geographic areas. Since the late 1990s, OFLC has used these special estimates to establish prevailing wages for the H-1B visa program,¹⁰ and for a few months during 2009 they were also used in setting the AEW.

In August 2025, USDA discontinued the FLS.¹¹ In a *Federal Register* notice, USDA noted that “recent improvements to the Department of Labor (DOL) Bureau of Labor Statistics Occupational Employment and Wage Statistics (OEWS) program make the OEWS the superior barometer for measuring farm wages.”¹² BLS continues collecting data for the OEWS.¹³

More information about agricultural wage measurement in the FLS and OEWS is available in CRS Report R47944, *Measuring Wages in the Agricultural Sector for the H-2A Visa Program*.

Initial Establishment of the AEW for the H-2A Program

An interim final rule published on June 1, 1987 (using the AEW methodology from a proposed rule published on May 5, 1987), established procedures for calculating and announcing AEWs for H-2A work. DOL “set the AEWs in each year for the H-2A program at a level equal to the previous year’s annual regional average hourly wage rates for field and livestock workers (combined), as computed by USDA quarterly wage surveys ... USDA publishes the data for the 48 contiguous States and Hawaii by nineteen agricultural regions, which consist of one or more States.” These AEWs were based on the FLS and were the same for all occupations within a geographic area.¹⁴

The AEWs established for the H-2A program in 1987 were lower in every state except Florida and Oregon than the AEWs in effect for that year under the earlier H-2 program.¹⁵ This decrease in the AEWs was smallest in California, where it fell from \$5.43/hour to \$5.17/hour under the new methodology, and largest in Alabama, where it fell from \$7.11/hour to \$3.73/hour. The new methodology established an AEW in Hawaii (\$6.43/hour), where no AEW had existed before, but it did not provide an AEW in Alaska or any U.S. territories.¹⁶

¹⁰ For more information about the prevailing wages used in the H-1B visa program, see CRS In Focus IF12892, *Prevailing Wage Requirements for H-1B, H-1B1, and E-3 Workers in Specialty Occupations*

¹¹ U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), *NASS discontinues select data collection programs and reports*, August 28, 2025, <https://www.nass.usda.gov/Newsroom/Notices/2025/08-28-2025.php>.

¹² USDA, NASS, “Discontinuance of Information Collections,” 90 *Federal Register* 42560, September 3, 2025.

¹³ DOL, BLS, *OEWS Survey Respondents: Instructions*, November 17, 2025, <https://www.bls.gov/respondents/oes/instructions.htm>.

¹⁴ DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16775, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=10; and DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 20496, June 1, 1987, https://archives.federalregister.gov/issue_slice/1987/6/1/20492-20524.pdf#page=5.

¹⁵ The H-2 program included both agricultural and non-agricultural jobs, but AEWs applied only to agricultural jobs.

¹⁶ CRS calculations based on DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16777, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=12.

The 1987 regulations also allowed for “special procedures ... for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock,” without specifying a specific AEW in these situations.¹⁷

Overview of Wage Regulations Since 1987

An overview of changes in H-2A wage regulations since 1987 is provided in **Table 1**. Administrations have changed these regulations over time to encourage greater use of the H-2A program, respond to implementation issues and litigation, and respond to changes in data availability.

¹⁷ DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16772, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=7.

Table I. Overview of Changes in H-2A Wage Regulations

Federal Register Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective Date: June 1, 1987</p> <p>Notice of Proposed Rulemaking (NPRM) published in 52 <i>Federal Register</i> 16770, May 5, 1987.^a Interim final rule published in 52 <i>Federal Register</i> 20496, Jun 1, 1987.^b Final rule published in 54 <i>Federal Register</i> 28037, July 5, 1989.^c</p>	<p>“Employers applying for temporary alien agricultural labor certifications must agree to comply with all employment-related laws. Thus, a worker in employment under the H-2A program must be paid at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the Federal or State statutory minimum wage.” (Prevailing wages for specific areas and agricultural activities were determined by state workforce agency [SWA] surveys)</p> <p>AEWRs were set each year at levels equal to the previous year’s annual regional average hourly wage rates for field and livestock workers (combined), as reported in the USDA FLS.</p> <p>Special procedures were established “for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock.”</p>	<p>Establishing labor certification regulations for the new H-2A visa program.</p>
<p>Effective Date: January 17, 2009</p> <p>NPRM published in 73 <i>Federal Register</i> 8538, February 13, 2008.^d Final rule published 73 <i>Federal Register</i> 77110, December 18, 2008.^e</p>	<p>The source of the AEWR switched from the USDA FLS to the BLS OEWS (then called the OES). Under this rule, the AEWR was set separately by experience or skill level (four possible levels) for each occupation in each geographic area. The applicable AEWR was determined by the experience or skill involved in the position, as follows (mirroring the four skill levels for each occupation in each geographic area used in setting prevailing wages for H-1B positions):</p> <ul style="list-style-type: none"> • Level I wage rates for beginning level employees. This wage rate was calculated as the average wage for the bottom third of the wage distribution (roughly the 17th percentile). • Level II wage rates for employees with education or experience providing them with a “good understanding of the occupation” (as shown in job requests with requirements for years of education and/or experience). This wage rate was calculated as one-third of the way between Level I and Level IV, and was roughly the 33th percentile of the wage distribution. • Level III wage rates for employees with education or experience providing them with a “sound understanding of the occupation” and special skills or knowledge (as shown in job requests with requirement for years of higher levels of experience or educational degrees and with terms such as “lead,” “senior,” “crew chief,” or “journeyman”). This wage rate was calculated as two-thirds of the way between Level I and Level IV, and was roughly the 50th percentile of the wage distribution. • Level IV wage rates for employees with sufficient experience in the occupation to plan and conduct work requiring judgment (as shown in job requests involving management and/or supervisory responsibilities). This wage rate was calculated as the average wage for the uppermost two-thirds of the wage distribution (roughly the 67th percentile) 	<p>Concern over “the increasing presence of undocumented workers in agricultural occupations and because of growing concern about the stability of the agricultural industry given its difficulty in gaining access to a legal workforce The H-2A program is woefully underutilized by agricultural employers.” Changes in the AEWR were part of a larger effort to make the H-2A program easier for agricultural employers to use.</p>

Federal Register Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective Date: June 29, 2009</p> <p>A notice of proposed suspension of the new rule was published in 74 <i>Federal Register</i> 11408 on March 17, 2009,^f and made effective by 74 <i>Federal Register</i> 25972 on May 29, 2009.^g</p>	<p>Reverting to previous regulation for nine months.</p>	<p>The notice of proposed suspension said, “it is rapidly becoming evident that the Department and the SWAs may lack sufficient resources to effectively and efficiently implement the H-2A Final Rule..... Furthermore, development of the H-2A Final Rule was based in part on policy positions of the prior Administration with which the current Administration may differ.”</p>
<p>Effective Date: March 15, 2010</p> <p>NPRM published in 74 <i>Federal Register</i> 45906, September 9, 2009,^h Final rule published in 75 <i>Federal Register</i> 6884, February 12, 2010.ⁱ</p>	<p>The AEWR returned to its 1987 definition, based on the USDA FLS, with only one AEWR for all occupations and skill levels within each state or multi-state region.</p> <p>Wage requirements for the H-2A program were modified to add a fifth wage rate, the agreed upon collective bargaining wage: “an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage.”</p>	<p>“The wages of agricultural workers have been adversely impacted to a far greater extent than anticipated by the 2008 Final Rule.....It was never the Department’s intention to produce a substantial and across-the-board reduction in the level of wage protection provided by the AEWR.”</p>
<p>Notice of suspension of data collection published in 76 <i>Federal Register</i> 28730 on May 18, 2011;^j notice of resumption published in 76 <i>Federal Register</i> 38110 on June 29, 2011.^k</p>	<p>No change in regulation; USDA discontinued the FLS and then resumed it with DOL funding.</p>	<p>USDA cancelled the FLS due to budget constraints; DOL provided funding for its resumption.</p>

Federal Register Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective Date: November 16, 2015</p> <p>NPRM published in 80 <i>Federal Register</i> 20300, April 15, 2015.^l Final rule published in 80 <i>Federal Register</i> 62958, October 16, 2015.^m</p>	<p>Monthly AEWR methodology was established <i>for range positions only</i> (in which workers are on call up to 24 hours per day, 7 days per week):</p> <ul style="list-style-type: none"> • The monthly AEWR was initially \$7.25 (the federal minimum wage) multiplied by 48 hours, and then multiplied by 4.333 weeks per month (\$1,507.88 per month). • Beginning with calendar year 2017, the monthly AEWR is adjusted annually based on the Employment Cost Index (ECI) for wages and salaries published by BLS for the preceding October-October period. <p>Transition Rates were provided from the effective date of the rule until 2018.</p>	<p>In <i>Mendoza, et al. v. Perez</i>, the D.C. Circuit court ruled DOL needed a rule to establish standards for H-2A herder positions, rather than field memoranda or guidance letters. DOL said there were not sufficient prevailing wage surveys from State Workforce Agencies to use such surveys in setting wages for H-2A workers in range positions.</p>
<p>Effective Date: December 21, 2020</p> <p>NPRM affecting many aspects of the H-2A program published at 84 <i>Federal Register</i> 36168 on July 26, 2019.ⁿ</p> <p>Notice of suspension of FLS data collection published in 85 <i>Federal Register</i> 61719 on September 30, 2020.^o</p> <p>Final rule focused on the AEWR published at 85 <i>Federal Register</i> 70445 on November 5, 2020.^p</p>	<p>For non-range occupations:</p> <p>(1) If the occupation and geographic area were included in the USDA FLS in November 2019 (field and livestock workers in all U.S. states other than Alaska),</p> <ul style="list-style-type: none"> • for the period from December 21, 2020, through calendar year 2022, the AEWR would be the AEWR in effect on January 2, 2020; • beginning in calendar year 2023, and annually thereafter, the AEWR would be adjusted based on the ECI for wages and salaries published by BLS for the most recent preceding 12 months. <p>(2) If the occupation or geographic area was not included in the USDA FLS in November 2019 (occupations other than field and livestock occupations, and all occupations in Alaska or U.S. territories),</p> <ul style="list-style-type: none"> • the AEWR would be the statewide annual average hourly gross wage for the occupation if it is reported by the OES; or • if no statewide wage for the occupation and geographic area is reported by the OES, the AEWR would be the national average hourly gross wage for the occupation reported by the OES. 	<p>Initial changes were proposed to “modernize the H-2A” program in several ways.</p> <p>In September 2020, USDA announced the cancelation of the FLS. DOL published a final rule focused on the AEWR, promulgating an AEWR methodology that did not rely on the FLS.</p>

Federal Register Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective date: February 23, 2021</p> <p>Notice of FLS resumption published in 85 <i>Federal Register</i> 79463 on December 10, 2020.^q AEWRs published at 86 <i>Federal Register</i> 10996 on February 23, 2021.^r</p>	<p>Return to the 2010 methodology for non-range occupations.</p>	<p>In <i>United Farm Workers, et al. v. Sonny Perdue, et al.</i>, the U.S. District Court for the Eastern District of California ordered USDA to reinstate data collection for the FLS on October 28, 2020. In <i>United Farm Workers, et al. v. DOL, et al.</i>, this court ordered DOL to return to the previous AEWR methodology on December 23, 2020.</p>
<p>Effective Date: November 14, 2022</p> <p>Final rule regarding aspects of the H-2A program other than the AEWR published at 87 <i>Federal Register</i> 61660 on October 12, 2022.^s</p>	<p>Specifies requirements for wage surveys such that the OFLC administrator will issue a prevailing wage for a specific crop activity or agricultural activity (or a distinct work task performed in that activity) in an individual state.</p>	<p>This was a continuation of the 2019 rulemaking.</p>

<i>Federal Register</i> Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective Date: March 30, 2023</p> <p>NPRM published at 86 <i>Federal Register</i> 68174 on December 1, 2021,^c continuing the rulemaking process begun in 2019. Final rule published at 88 <i>Federal Register</i> 12760 on February 28, 2023.^u</p>	<p>For non-range occupations:</p> <p>(1) For occupations included in the USDA FLS Field and Livestock Workers (combined) category:</p> <ul style="list-style-type: none"> • If an annual average hourly gross wage in the state or region is reported by the FLS, that wage is the AEWR for the state. • If an annual average hourly gross wage in the state or region is not reported by the FLS (e.g., Alaska), the AEWR for the occupations is the statewide annual average hourly gross wage in the state as reported by the OEWS. • If a statewide annual average hourly gross wage in the state is not reported by the OEWS, the AEWR for the occupations is the national annual average hourly gross wage as reported by the OEWS. <p>(2) For all other occupations:</p> <ul style="list-style-type: none"> • The AEWR for each occupation is the statewide annual average hourly gross wage for that occupation in the state as reported by the OEWS. • If a statewide annual average hourly gross wage in the state is not reported by the OEWS, the AEWR for each occupation is the national annual average hourly gross wage for that occupation as reported by the OEWS. <p>If the job duties on the job order cannot be encompassed within a single occupational classification, the applicable AEWR is the highest AEWR for all applicable occupations.</p>	<p>This was a continuation of the 2019 rulemaking. It addressed concerns that FLS-based AEWRs were not appropriate for the small set of H-2A jobs in typically higher paid occupations with wages unmeasured by the FLS and in places without FLS coverage (such as Alaska and Puerto Rico). DOL also wanted a regulation that would provide for the use of OEWS data to set the AEWR when FLS was not available, in case USDA canceled the FLS again.</p>

Federal Register Notices and Dates	Wage Regulation or Change(s) Made to Previous Regulation	Rationale for Change(s)
<p>Effective Date: October 2, 2025</p> <p>Notice of discontinuance of FLS data collection published in 90 <i>Federal Register</i> 42560 on September 3, 2025.^v</p> <p>Interim final rule published at 90 <i>Federal Register</i> 47914 on October 2, 2025.^w</p>	<p>For all non-range occupations, the AEWR is based on OEWS data:</p> <p>(1) For occupations included in the Field and Livestock Workers (combined) category:</p> <ul style="list-style-type: none"> • If a state- or territory-wide annual average hourly wage for this group of occupations in each skill level (as described below) is reported by the OEWS, the AEWR in the state or territory is the state- or territory-wide OEWS average hourly wage for these occupations at that skill level. • If a state- or territory-wide annual average hourly wage for this group of occupations at either skill level is not reported by the OEWS, the AEWR in the state or territory is the national annual OEWS average hourly gross wage for these occupations at that skill level. <p>(2) For all other occupations:</p> <ul style="list-style-type: none"> • The AEWR for each occupation is the state- or territory-wide annual average hourly OEWS wage for the specific occupation in the state or territory at each skill level. • If a state- or territory-wide annual average hourly gross wage in the state or territory at either skill level is not reported by the OEWS, the AEWR for each occupation is the national annual OEWS average hourly wage for that specific occupation at that skill level. <p>For all non-range occupations, AEWRs are determined at two skill levels:</p> <ul style="list-style-type: none"> • Skill Level I (“entry-level”) wage rates are computed as the mean wage of the first third of the wage distribution for the occupation(s) and area. This skill level is associated with job offers where workers need no formal education or specialized training credentials and/or very little work-related experience (e.g., up to 2 months of related work experience cultivating diversified vegetable crops). • Skill Level II (“experienced”) wage rates are computed as the mean wage of the entire wage distribution for the occupation(s) and area. This skill level is associated with job offers that may require some formal education or training credentials or certificates and/or work-related experience at a level normal for the occupation (e.g., 3 months of related work experience harvesting apples). <p>There is a downward AEWR compensation adjustment for each state or territory computed as an equivalent hourly rate based on one-eighth of the weighted statewide average of fair market rents for a four-bedroom housing unit available from the U.S. Department of Housing and Urban Development, provided that such adjustment shall not exceed 30% of the AEWRs determined above.</p> <p>The occupational classification and applicable AEWR is determined based on the majority of workdays during the contract period the worker will spend performing the agricultural labor or services, including duties that are closely and directly related, and the qualifications on the job order.</p>	<p>In <i>Teche Vermilion Sugar Cane Growers Association Inc., et al. v. Chavez-DeRemer, et al.</i>, the U.S. District Court for the Western District of Louisiana ruled that the 2023 AEWR rule was “arbitrary and capricious” and vacated the rule on August 21, 2025. This reverted the AEWR methodology to the 2010 rule (relying on FLS data). The same week, USDA announced the cancelation of the FLS. This left a regulatory vacuum.</p> <p>The court case focused on the comparability of wages between non-agricultural heavy truck drivers and agricultural sugar cane haulers. DOL said this was why it was now setting two skill-based AEWRs within each occupation and geographic area. DOL also wrote, “With illegal border crossings at record lows—agricultural employers, who have historically been incentivized to rely on such workers because of high AEWRs mandated to use the H-2A program, will experience economic harm caused by mounting labor shortages.”</p>

Source: CRS presentation and analysis of the *Federal Register* notices listed.

Notes: Information in the “Rationale for Change(s)” column is taken directly from the relevant *Federal Register* notices. These rationales reflect agency justifications for changes.

- a. DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 16770, May 5, 1987, https://archives.federalregister.gov/issue_slice/1987/5/5/16766-16795.pdf#page=5.
- b. DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States,” 52 *Federal Register* 20496, June 1, 1987, https://archives.federalregister.gov/issue_slice/1987/6/1/20492-20524.pdf#page=5.
- c. DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology,” 54 *Federal Register* 28037, July 5, 1989, https://archives.federalregister.gov/issue_slice/1989/7/5/28036-28053.pdf#page=2.
- d. DOL, ETA, “Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement,” 73 *Federal Register* 8538, February 13, 2008, <https://www.federalregister.gov/documents/2008/02/13/E8-2525/temporary-agricultural-employment-of-h-2a-aliens-in-the-united-states-modernizing-the-labor>.
- e. DOL, ETA, “Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement,” 73 *Federal Register* 77110, December 18, 2008, <https://www.federalregister.gov/documents/2008/12/18/E8-29309/temporary-agricultural-employment-of-h-2a-aliens-in-the-united-states-modernizing-the-labor>.
- f. DOL, ETA, “Temporary Employment of H-2A Aliens in the United States,” 74 *Federal Register* 11408, March 17, 2009, <https://www.federalregister.gov/documents/2009/03/17/E9-5562/temporary-employment-of-h-2a-aliens-in-the-united-states>.
- g. DOL, ETA, “Temporary Employment of H-2A Aliens in the United States,” 74 *Federal Register* 25972, May 29, 2009, <https://www.federalregister.gov/documents/2009/05/29/E9-12436/temporary-employment-of-h-2a-aliens-in-the-united-states>.
- h. DOL, ETA, “Temporary Agricultural Employment of H-2A Aliens in the United States,” 74 *Federal Register* 45906, September 9, 2009, <https://www.federalregister.gov/documents/2009/09/04/E9-21017/temporary-agricultural-employment-of-h-2a-aliens-in-the-united-states>.
- i. DOL, ETA, “Temporary Agricultural Employment of H-2A Aliens in the United States,” 75 *Federal Register* 6884, February 12, 2010, <https://www.federalregister.gov/documents/2010/02/12/2010-2731/temporary-agricultural-employment-of-h-2a-aliens-in-the-united-states>.
- j. USDA, NASS, “Notice of Intent To Suspend the Agricultural Labor Survey and Farm Labor Reports,” 76 *Federal Register* 28730, May 18, 2011, <https://www.federalregister.gov/documents/2011/05/18/2011-12255/notice-of-intent-to-suspend-the-agricultural-labor-survey-and-farm-labor-reports>.
- k. USDA, NASS, “Notice of Intent To Resume the Agricultural Labor Survey and Farm Labor Reports,” 76 *Federal Register* 38110, June 29, 2011, <https://www.federalregister.gov/documents/2011/06/29/2011-16249/notice-of-intent-to-resume-the-agricultural-labor-survey-and-farm-labor-reports>.
- l. DOL, ETA, “Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States,” 80 *Federal Register* 20300, April 15, 2015, <https://www.federalregister.gov/documents/2015/04/15/2015-08505/temporary-agricultural-employment-of-h-2a-foreign-workers-in-the-herding-or-production-of-livestock>.
- m. DOL, ETA, “Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,” 80 *Federal Register* 62958, October 16, 2015, <https://www.federalregister.gov/documents/2015/10/16/2015-26252/temporary-agricultural-employment-of-h-2a-foreign-workers-in-the-herding-or-production-of-livestock>.
- n. DOL, ETA, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 84 *Federal Register* 36168, July 26, 2019, <https://www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states>.
- o. USDA, NASS, “Notice of Revision to the Agricultural Labor Survey and Farm Labor Reports by Suspending Data Collection for October 2020,” 85 *Federal Register* 61719, September 30, 2020, <https://www.federalregister.gov/documents/2020/09/30/2020-21592/notice-of-revision-to-the-agricultural-labor-survey-and-farm-labor-reports-by-suspending-data>.

- p. DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 85 *Federal Register* 70445, November 5, 2020, <https://www.federalregister.gov/documents/2020/11/05/2020-24544/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>.
- q. USDA, NASS, “Notice of Reinstatement of the Agricultural Labor Survey Previously Scheduled for October 2020,” 85 *Federal Register* 79463, December 10, 2020, <https://www.federalregister.gov/documents/2020/12/10/2020-27109/notice-of-reinstatement-of-the-agricultural-labor-survey-previously-scheduled-for-october-2020>.
- r. DOL, ETA, “Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations,” 86 *Federal Register* 10996, February 23, 2021, <https://www.federalregister.gov/documents/2021/02/23/2021-03752/labor-certification-process-for-the-temporary-employment-of-aliens-in-agriculture-in-the-united>.
- s. DOL, ETA, “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States,” 87 *Federal Register* 61660, October 12, 2022, <https://www.federalregister.gov/documents/2022/10/12/2022-20506/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states>.
- t. DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 86 *Federal Register* 68174, December 1, 2021, <https://www.federalregister.gov/documents/2021/12/01/2021-25803/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>.
- u. DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 88 *Federal Register* 12760, February 28, 2023, <https://www.federalregister.gov/documents/2023/02/28/2023-03756/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>.
- v. USDA, NASS, “Discontinuance of Information Collections,” 90 *Federal Register* 42560, September 3, 2025, <https://www.federalregister.gov/documents/2025/09/03/2025-16831/discontinuance-of-information-collections>.
- w. DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/documents/2025/10/02/2025-19365/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>.

Current Status of the AEW R

On August 25, 2025, the U.S. District Court for the Western District of Louisiana issued an order in *Teche Vermilion Sugar Cane Growers Association, Inc., et al. v. Lori Chavez-DeRemer*, vacating the 2023 H-2A AEW R final rule. This vacatur said only that the 2023 final rule was “arbitrary and capricious in violation of the Administrative Procedure Act.”¹⁸ In a preliminary injunction the previous year, the court ruled H-2A sugarcane truck drivers and non-farm heavy and tractor-trailer truck drivers do sufficiently different jobs that DOL should not use the average wage for all non-farm heavy and tractor-trailer truck drivers to set the AEW R for H-2A sugarcane truck drivers, and DOL had not shown any evidence that the wages and working conditions of any H-2A workers affected non-farm heavy and tractor-trailer truck drivers.¹⁹

As a result of this vacatur, AEW R rates would have been set according to the methodology of the 2010 rule.²⁰ However, the 2010 rule used data from the FLS to set AEW R rates, and USDA discontinued the FLS on August 28, 2025.²¹ This left a regulatory vacuum. DOL released a new interim final rule (IFR) on September 30, 2025, which became effective on publication in the *Federal Register* on October 2, 2025.²² The AEW R is now determined by this IFR (see the last row of **Table 1**).

In the “Justification” section of the 2025 IFR, DOL noted that the changes are intended to address:

immediate dangers to the American food supply. The methodology for calculating AEW Rs in the vacated 2023 AEW R Final Rule and even under current 2010 final rule, both of which used a single average gross hourly wage for the vast majority of H-2A jobs without regard to the qualifications of the employer’s job offer or how much time a worker spends performing specific duties during a work contract period poses an imminent risk to the supply of agricultural labor by setting unreasonably high price floors on labor. This IFR addresses and solves this imminent threat by implementing an AEW R methodology that results in more precise market-based price floors that still serves its statutory function of protecting American workers, but also, ensures that American supermarkets and U.S. consumers will have access to safe, affordable and American-grown produce....

Employers in the U.S. agricultural sector are facing a structural, not cyclical, workforce crisis driven by both the lack of an available legal workforce that is relatively mobile and able to adjust to changes in labor demands as well as an ever hastening loss of the mobile

¹⁸ *Teche Vermilion Sugar Cane Growers Association Inc., et al. v. Lori Chavez-DeRemer, et al.* (United States District Court, Western District of Louisiana, Lafayette Division, 2025), <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Teche-Vermillion-Judgment.pdf>.

¹⁹ *Teche Vermilion Sugar Cane Growers Association Inc., et al. v. Julie Su, et al.* (United States District Court, Western District of Louisiana, Lafayette Division, 2024), https://scholar.google.com/scholar_case?case=11085968560824963067&q=749+F.Supp.3d+697&hl=en&as_sdt=1006.

²⁰ DOL, ETA, OFLC, *OFLC Announces Update to Implementation of the 2023 H-2A AEW R Final Rule; District Court’s Order Vacating the Final Rule*, August 28, 2025, <https://www.dol.gov/agencies/eta/foreign-labor>.

²¹ USDA, NASS, *NASS discontinues select data collection programs and reports*, August 28, 2025, <https://www.nass.usda.gov/Newsroom/Notices/2025/08-28-2025.php>.

²² DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-4>.

illegal alien workforce that had flowed in and out of the United States through a previously porous border.²³

The 2025 IFR made four main changes to AEW methodological methodology that affect AEW levels, as discussed below.

Wage Data

The first change the 2025 IFR makes to the AEW methodology is the source of wage data for Field and Livestock Workers (combined). This occupational group contains more than 95% of H-2A job opportunities.²⁴ Previously, the AEW for these workers was determined (in all states except Alaska) by average state or regional wages in the FLS. Under the 2025 IFR, the AEW for these workers is determined by state- or territory-level wage measurements from the OEWS. Except for a brief period in 2011,²⁵ the OEWS has surveyed only non-farm employers,²⁶ but the 2025 IFR indicates that starting in FY2026, the OEWS will be expanded to collect data from farms as well as non-farm business establishments.²⁷ The OEWS program uses three years of data to produce estimates.²⁸ If the OEWS program began collecting data from farms in November 2025, these data will be fully incorporated into OEWS estimates for May 2028, published in early 2029.

The change of wage data source from the FLS to the OEWS for Field and Livestock Workers (combined) classified in Skill Level II (see below) will mean a change as of fall 2025 of only a few cents per hour in many states, though there are larger increases (e.g., \$1.45/hour in New Jersey) and decreases (e.g., \$1.26/hour in California) in others.²⁹

Two Levels of AEWs: Skill Level I and Skill Level II

A second change to AEW methodology in the 2025 IFR is the establishment of two AEWs for each occupation in each state or territory. Skill Level I (“entry-level”) is associated with job offers where workers need no formal education or specialized training credentials and employers typically require no or very little work-related experience (e.g., up to two months of related work

²³ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47920, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-188>. A summary of structural workforce issues in the agricultural sector is available in CRS Report R48614, *Rising Agricultural Wages: Context for Congressional Interest in the H-2A Visa Program*

²⁴ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-162>.

²⁵ Stella D. Fayer, “Agriculture: Occupational Employment and Wages,” *Monthly Labor Review*, DOL, BLS, July 2014, <https://doi.org/10.21916/mlr.2014.25>.

²⁶ DOL, BLS, *Occupational Employment and Wage Statistics: Overview*, April 2, 2025, https://www.bls.gov/oes/oes_emp.htm. The OEWS does include wage estimates for occupations such as Agricultural Equipment Operators; Farmworkers and Laborers, Crop, Nursery, and Greenhouse; and Farmworkers, Farm, Ranch, and Aquacultural Animals. These estimates are based on surveys of non-farm employers in industries such as Support Activities for Agriculture (which includes farm labor contractors).

²⁷ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47932, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-268>.

²⁸ *Technical Notes for May 2024 OEWS Estimates*, April 2, 2025, https://www.bls.gov/oes/2024/may/oes_tec.htm.

²⁹ Lucas Smith and Richard Stup, *Major H-2A Wage Changes: Overview of New AEW Methodology*, Cornell Agricultural Workforce Development, The Ag Workforce Journal, October 10, 2025, <https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-awr-methodology/>.

experience cultivating diversified vegetable crops). Skill Level II (“experienced”) is associated with job offers that may require some formal education or training credentials or certificates and employers typically require work-related experience at a level that is normal for the occupation (e.g., three months of related work experience harvesting apples). AEWs for Skill Level I positions are computed as the mean wage of the lowest third of the wage distribution for the occupation(s) in the state or territory; AEWs for Skill Level II positions are computed as the mean wage of the entire wage distribution for the occupation(s). In the “Justification” section of the IFR, DOL indicated that having separate skill level-based AEWs within each occupation within each state was necessary because *Teche Vermilion Sugar Cane Growers Association, Inc., et al. v. Lori Chavez-DeRemer* focused on the comparability of wages for non-farm heavy and tractor-trailer truck drivers with wages for workers engaged in driving sugarcane trucks.

This change in AEW methodology has precedent: the 2008 final rule (in effect during early 2009) also had multiple skill levels for each occupation in each geographic area. In the 2010 final rule (reverting to the AEW methodology of the 1987 final rule), DOL said:

The Department assumed [in the 2008 final rule] that employers would seek a variety of skill levels in occupations for which workers were sought—some higher and some lower than the occupational median, but that the overall result would likely be balanced and average to the median. The FY 2009 implementation experience revealed a significantly different outcome: 73 percent of applicants for H-2A workers specified the lowest available skill level—corresponding to the wage earned by the lowest paid 16 percent of observations in the OES data.³⁰

The difference between Skill Level I AEWs and Skill Level II AEWs in the 2025 IFR can be substantial. For workers in the Field and Livestock Workers (combined) category, in fall 2025 Skill Level I AEWs were lower than Skill Level II AEWs by amounts ranging from 87 cents per hour (Puerto Rico) to \$6.67 per hour (North Dakota).³¹

Adverse Compensation Adjustment

A third change to AEW methodology in the 2025 IFR is a new Adverse Compensation Adjustment to the AEW for the cost of employer-provided housing.³² DOL’s rationale for this change is to equalize compensation between domestic workers (who pay for their own housing) and workers in H-2A positions (who have housing provided by their employers).³³ Housing costs are the second largest cost (after wages) to employers in the H-2A program.³⁴ The magnitude of this adjustment in reducing the effective AEW in fall 2025 ranged from 71 cents per hour

³⁰ DOL, ETA, “Temporary Agricultural Employment of H-2A Aliens in the United States,” 75 *Federal Register* 6898, February 12, 2010, <https://www.federalregister.gov/d/2010-2731/p-146>.

³¹ CRS calculations based on DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-259>.

³² Regulations regarding employer provided housing for the H-2A program built on or after April 3, 1980, are at 29 C.F.R. §§1910.142 et seq., <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XVII/part-1910/subpart-J/section-1910.142>. For older employer-provided housing, regulations are at 20 C.F.R. §§654.404 et seq., <https://www.ecfr.gov/current/title-20/chapter-V/part-654/subpart-E/>. Regulations for employer provided housing for H-2A range positions are at 20 C.F.R. §655.235, <https://www.ecfr.gov/current/title-20/chapter-V/part-655/subpart-B/section-655.235>.

³³ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-425>.

³⁴ USDA, *H-2A Visa Program: Costs of the H-2A Visa Program*, <https://www.farmers.gov/working-with-us/h2a-visa-program#costs>.

(Puerto Rico) to \$3.18 per hour (Hawaii).³⁵ In several states—including the major agricultural states of California, Florida, and Washington—after making this adjustment, the AEW is now lower than state-level minimum wages, and so the wage employers must pay H-2A workers in these states is the state-level minimum wage rather than the AEW.³⁶ There is no precedent for this adjustment in the previous history of the AEW.

AEW for Positions Spanning Multiple Occupations

A fourth change to AEW methodology in the 2025 IFR is the AEW for positions that span occupations with different AEWs. This was one of the concerns raised in litigation over the 2023 final rule. That rule determined the AEW for these positions as the highest applicable AEW. The 2025 IFR determines the AEW for these positions based on the work done during the majority of workdays.³⁷

Ongoing Litigation

A group of 18 individual farm workers, the United Farm Workers (UFW), and the UFW Foundation has filed suit to block the 2025 IFR.³⁸ Their suit argues that

First, the IFR contravenes DOL’s statutory mandate to ensure that the employment of H-2A workers will not adversely affect the wages of similarly employed U.S. workers....

Second, the IFR is arbitrary and capricious.... Most H-2A positions are likely to be classified as Skill Level I, and the AEWs for Skill Level I positions will be equal to only the 17th wage percentile for the relevant farming sectors. Stated differently, whereas many AEWs were previously equal to the average wage in a given sector, they will now be less than the amount that 83% of farmworkers receive in that sector....

By statute and regulation, U.S. employers must provide H-2A employees with free housing. Critically, until now, that housing never impacted the applicable AEWs....

the OEWS data is based on a three-year reporting cycle, meaning it is unclear how it can produce accurate farm wages before 2029.³⁹

³⁵ ETA, DOL OFLC, *Statewide 2025-2026 IFR AEWs*, October 2025, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/DOL-OFLC_2025-2026_AEWs_FINAL.xlsx.

³⁶ Lucas Smith and Richard Stup, *Major H-2A Wage Changes: Overview of New AEW Methodology*, Cornell Agricultural Workforce Development, *The Ag Workforce Journal*, October 10, 2025, <https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-aewr-methodology/>.

³⁷ DOL, ETA, “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States,” 90 *Federal Register* 47914, October 2, 2025, <https://www.federalregister.gov/d/2025-19365/p-362>.

³⁸ UFW Foundation, *U.S. Farm Workers Sue Trump Administration to Save American Farm Jobs and Wages*, Washington, DC, November 21, 2025, <https://ufwfoundation.org/u-s-farm-workers-sue-trump-administration-to-save-american-farm-jobs-and-wages/>.

³⁹ United Farm Workers, et al., v. United States Department of Labor (United States District Court, Eastern District of California, 2025).

Commentary

Academic observers say that the 2025 IFR makes major changes to wage requirements, and these requirements may change further based on public comments and the outcome of ongoing litigation.⁴⁰ They also note that the 2025 IFR establishes AEWRs lower than minimum wages in many states, including states that are heavy users of the H-2A program, such as California, Florida, and Washington. This may shift agricultural labor cost regulation discussions from the federal to the state level.⁴¹

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⁴⁰ Lucas Smith and Richard Stup, *Major H-2A Wage Changes: Overview of New AEWR Methodology*, Cornell Agricultural Workforce Development, *The Ag Workforce Journal*, October 10, 2025, <https://agworkforce.cals.cornell.edu/2025/10/10/major-h-2a-wage-changes-overview-of-new-aewr-methodology/>; and Myat Thida Win and Zachariah Rutledge, *Explaining the new H-2A Wage Rule for Michigan growers*, Michigan State University Extension, December 12, 2025, <https://www.canr.msu.edu/news/explaining-the-new-h-2a-wage-rule-for-michigan-growers>.

⁴¹ Philip Martin, *DOL: H-2A Changes*, *Rural Migration News*, October 24, 2025, <https://migration.ucdavis.edu/rmn/blog/post/?id=3086>. Note that some states exempt agricultural workers from minimum wage laws. An overview of minimum wage provisions for agricultural workers by state is available in The National Agricultural Law Center, *Minimum Wage for Agricultural Workers*, <https://nationalaglawcenter.org/state-compilations/agpay/minimumwage/>.