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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.)

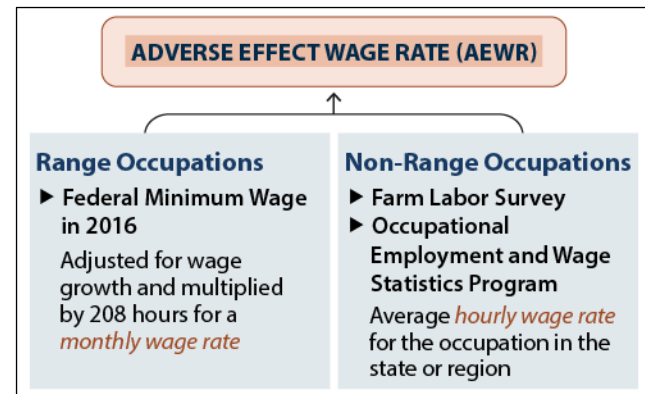
The Immigration and Nationality Act (INA) authorizes the H-2A program and requires that prospective H-2A employers apply to the Department of Labor (DOL) for labor certification. Per 8 U.S.C. §1188(a)(1), before approving a labor certification application, DOL must determine that

- 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.

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. For example, the 2024 AEWR for range occupations was \$1,982.96. Between September 2023 and September 2024, the ECI increased by 3.8%. The monthly AEWR for range occupations was adjusted to $\$1,982.96 \times (100\% + 3.8\%) = \$2,058.31$, effective January 1, 2025.

DOL AEWR Methodology: Non-range Occupations

AEWRs for non-range occupations are calculated using estimates of average wages from the National Agricultural Statistics Service's (NASS's) Farm Labor Survey (FLS) and the BLS Occupational Employment and Wage Statistics (OEWS) program.

Field and Livestock Workers (Combined)

DOL provides a single AEWR per state for workers in occupations included in the FLS *field and livestock workers (combined)* category. NASS publishes annual FLS estimates of average gross wages by state or region for such workers. DOL uses these average wage estimates as the AEWR where FLS estimates are available.

The FLS field and livestock workers (combined) category consists of six occupations with 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;
- 53-7064 Packers and Packagers, Hand; and
- 45-2099 Agricultural Workers, All Other.

Descriptions of the SOC 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/>.

NASS does not publish wage estimates for Alaska, the District of Columbia (DC), or the U.S. territories. For Alaska, DC, Guam, Puerto Rico, and the U.S. Virgin Islands, the AEWR for field and livestock workers (combined) is the statewide or territory-wide annual average hourly gross wage in the state or territory for these occupations reported by the OEWS program; or, if not available, the national annual average hourly gross wage reported for these occupations by the OEWS program. Neither the FLS nor the OEWS collect data from—and consequently AEWRs are not available for—American Samoa or the Commonwealth of the Northern Mariana Islands.

In January 2025, the AEWR for non-range occupations in the field and livestock workers (combined) category ranged from \$9.94 per hour (Puerto Rico) to \$22.23 (DC). Among states, AEWRs ranged from \$14.83 (Arkansas, Louisiana, and Mississippi) to \$20.08 (Hawaii).

Other Non-range Occupations

For non-range occupations other than the six in the field and livestock workers (combined) category, the AEWR is the most recent statewide annual average hourly wage for the specific occupation published by the OEWS. If the OEWS does not publish a statewide annual average hourly wage for the occupation, the AEWR is the national annual average hourly wage for the occupation published by the OEWS.

Farm supervisors or managers, heavy truck drivers, farm construction workers, and logging workers are examples of agricultural occupations not included in the field and livestock workers (combined) category; AEWRs for such workers are based on OEWS estimates. For example, as of January 2025, the AEWR for First-Line Supervisors of Farming, Fishing, and Forestry Workers (SOC 45-1011) ranged from \$16.03 (Puerto Rico) to \$37.17 (Tennessee).

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 for the H-2A job. Some H-2A jobs cannot be classified within a single occupation. If all of the DOL-assigned occupations are among the six in the field and livestock workers (combined) category, then the AEWR is the AEWR for field and livestock workers (combined) in the state. If a job is assigned occupations with *different* AEWRs, then the highest wage rate applies. For example, if an H-2A job opportunity in California is classified as both a first-line supervisor of farming workers (SOC 45-1011), with an OEWS-based AEWR of \$28.89, and an agricultural equipment operator (SOC 45-2091), with an FLS-based AEWR of \$19.24, the applicable AEWR is \$28.89 (i.e., the higher of these rates).

Publication Schedule

DOL publishes separate notices of AEWR adjustments in the *Federal Register* for rate adjustments based on FLS data and rate adjustments based on OEWS data. DOL publishes FLS-based AEWRs on or about January 1 and OEWS-based AEWRs on or about July 1. If the adjusted AEWR remains the highest of the five wage rates considered by DOL (i.e., AEWR, applicable prevailing wage rate, an agreed-upon collective bargaining wage rate, the federal minimum wage rate, or the applicable state minimum wage rate) and the adjusted AEWR is higher than the previous AEWR, the employer must pay at least the updated AEWR upon the effective date of the rate in the *Federal Register*. If the updated AEWR is lower than the wage rate guaranteed on the H-2A job order, the employer must continue to pay at least the guaranteed rate.

Recent Regulatory History

On February 28, 2023, DOL published a final rule that revised the methodology for determining hourly AEWRs for non-range agricultural occupations; the rule took effect on March 30, 2023. Previously, DOL had determined AEWRs for non-range agricultural occupations using methodology established in a 2010 rule. It used FLS data for the field and livestock workers (combined) category to calculate a single state-level AEWR for all non-range occupations in each year for states included in the FLS.

The DOL 2023 rule responded to two primary concerns about the effectiveness of the previous methodology to prevent adverse effects on the wages of agricultural workers in the United States. First, the prior methodology did not take into account wages paid to workers in jobs outside the field and livestock workers (combined) category. For example, wages paid to relatively high-paid agricultural workers such as farm supervisors were excluded from the calculation. Second, the prior methodology did not produce AEWRs for every state or territory where employers may seek to employ H-2A workers (e.g., Alaska, Puerto Rico).

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