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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

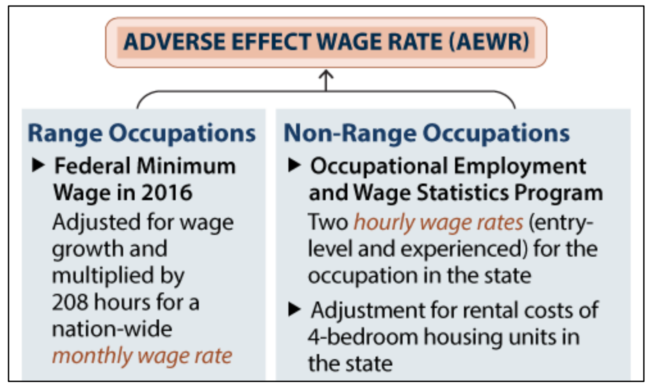
- there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services for which an employer desires to hire temporary foreign workers (H-2A workers); and

- 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 -$.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 cancelation 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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