



H-2A Stakeholders

H-2A Adverse Effect Wage Rate

Methodology Final Rule

April 4, 2023

United States Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification

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Overview of the New AEWB Rule

What is the new rule?

- Published on February 28, 2023, the final rule established a new methodology for determining the Adverse Effective Wage Rates (AEWRs) for non-range occupations.
- The new methodology uses a combination of wage data reported by USDA's Farm Labor Survey (FLS) and the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) survey.
- The new regulations helps prevent adverse effect on the wages paid to workers in jobs outside the Standard Occupational Classification (SOC) codes for field and livestock workers (e.g., supervisors, construction, logging, tractor-trailer truck drivers); and accurately reflect the wages paid to workers in every State or region (e.g., Alaska or Puerto Rico).

Effective Date

- The new rule and AEWR methodology became effective on March 30, 2023.
- Job orders filed on or after March 30, 2023, must use the new methodology to determine wage obligations, including job orders filed concurrently with an *Application for Temporary Employment Certification* for emergency situations under § 655.134.
- Job orders filed prior to March 30, 2023, are subject to AEWR update(s) applicable to the employer's job opportunity, including update(s) that the OFLC Administrator publishes using the new methodology.

Effective Date Scenarios

- Form ETA-790/790A:
 - Submitted before March 30, 2023.....2010 Methodology
 - Submitted on or after March 30, 2023.....2023 Methodology

- Form ETA-9142A:
 - Submitted before March 30, 2023.....2010 Methodology
(includes emergency filings under 20 CFR 655.134)
 - Submitted on or after March 30, 2023.....2010 Methodology
(related job order submitted before March 30, 2023)
 - Submitted on or after March 30, 2023.....2023 Methodology
(related job order submitted on or after March 30, 2023)

Final Rule Methodology

USDA FLS-Based AEWRs:

- The Department will continue to determine AEWR for field and livestock workers using USDA FLS data (same as 2010 rule) when reported.
- Applies to six SOC codes:
 - 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;
 - 45-2099: Agricultural Workers, All Other;
 - 53-7064: Packers and Packagers, Hand.
- **Important**: The Department anticipates the OEWS survey will be used to set statewide AEWRs for field and livestock worker occupations only in Alaska, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Final Rule Methodology, Cont'd

BLS OEWS-Based AEWRs:

- For all other H-2A occupations, AEWRs will be set using the OEWS statewide annual average hourly wage for the SOC code.
- In cases where the OEWS survey does not report a statewide hourly wage for the SOC, the national annual average hourly OEWS wage rate is used to determine AEWR.
- Examples of H-2A jobs opportunities subject to OEWS-based AEWRs include construction workers, truck drivers, farm equipment mechanics and farm supervisors and managers.

Top H-2A Occupations Outside of Six Ag SOC's, FY 2022 – FY 2023 Q1

SOC Code	SOC Title	Applications Processed	Workers Requested
53-3032	Heavy and Tractor-Trailer Truck Drivers	262	2,515
47-2061	Construction Laborers	225	3,738
45-1011	First-Line Supervisors of Agricultural Crop and Horticultural Workers	99	699
49-3041	Farm Equipment Mechanics and Service Technicians	95	291
45-4022	Logging Equipment Operators	19	59

Top States with Occupations Outside Six Ag SOCs, FY 2022 – FY 2023 Q1

State	Applications Processed	Workers Requested	Workers Certified
Iowa	159	2,200	2,084
Florida	80	934	907
Arkansas	72	222	222
South Dakota	69	1247	1,206
Texas	51	1047	834
Nebraska	38	507	491
California	35	314	264
Maine	34	116	116
Minnesota	29	310	286
Kansas	27	298	202
North Dakota	26	43	43
Idaho	17	182	176
Oregon	17	156	154
Arizona	17	154	154
Missouri	15	116	107
Indiana	14	229	229
Louisiana	14	595	595
Wisconsin	13	119	118
New York	13	48	40
Mississippi	13	70	70
North Carolina	12	48	48
New Jersey	12	44	43
Washington	11	69	60
Michigan	11	54	54
Vermont	10	58	58
Georgia	10	72	47
Connecticut	9	24	20
Colorado	9	64	62
Oklahoma	8	22	22
Illinois	7	103	102
Alabama	7	143	141
New Mexico	7	45	45
Virginia	7	25	25
Ohio	6	104	103

Final Rule Methodology, Cont'd

Multiple SOC Classifications:

- In rare cases an employer's job opportunity may require the performance of duties that cannot be classified within a single SOC code, and two or more distinct SOC codes will be assigned.
- If the applicable SOC codes are subject to different AEWRs (e.g., an FLS-based AEWR and an OEWS-based AEWR or two OEWS-based AEWRs):
 - The State Workforce Agency (SWA) will note the SOC code with the highest applicable AEWR at the time of processing the job order (Form ETA-790/790A).
 - That AEWR will govern the employer's wage obligations unless a subsequent AEWR update for any of the applicable SOC codes changes which of the applicable AEWRs is highest.

Identifying Correct Wage Offer Under AEWL Rule

- Determine the SOC Code(s) applicable to the job opportunity described on ETA 790A.
- Determine the appropriate AEWL based on the SOC Code(s) determination.
- Determine if the wage offer listed on ETA 790A is at least equal to or higher than the determined hourly AEWL, the prevailing wage rate (if available), the Federal minimum wage, the State minimum wage, or the agreed-upon collective bargaining rate.

Determining SOC Code(s)

- Become very familiar with the O*Net Online descriptions of SOC codes found at: <https://www.onetonline.org/>.
- Make sure the Job duties listed on ETA Form 790A for your job opportunity are accurate and described in detail, then identify the SOC Code you initially feel encompasses the job duties described.
- Check to verify that the job duties listed are all included within the O*NET job description and summary of the SOC code.
- If job duties are needed for this job opportunity that do not fit the O*NET job description and summary of the SOC code, locate the SOC code(s) that does encompass those job duties.

Determining SOC Code(s)

- SWA will review the ETA 790A job order, with specific attention to any information relevant to Sections A and B to classify the correct SOC code(s).

OMB Approval: 1205-0537
Expiration Date: 11/30/2025

H-2A Agricultural Clearance Order
Form ETA-790A
U.S. Department of Labor



A. Job Offer Information							
1. Job Title *							
2. Workers Needed *		a. Total	b. H-2A Workers	Period of Intended Employment			
				3. First Date *	4. Last Date *		
5. Will this job generally require the worker to be on-call 24 hours a day and 7 days a week? * If "Yes", proceed to question 8. If "No", complete questions 6 and 7 below.							<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Anticipated days and hours of work per week (an entry is required for each box below) *							7. Hourly Work Schedule *
	a. Total Hours		c. Monday		e. Wednesday		g. Friday
	b. Sunday		d. Tuesday		f. Thursday		h. Saturday
							a. ____ : ____ <input type="checkbox"/> AM <input type="checkbox"/> PM
							b. ____ : ____ <input type="checkbox"/> AM <input type="checkbox"/> PM
Temporary Agricultural Services and Wage Offer Information							
8a. Job Duties - Description of the specific services or labor to be performed. * (Please begin response on this form and use Addendum C if additional space is needed.)							

Job title and the description of job duties are key components to classifying the appropriate SOC code(s).

Determining the AEWWR

- Identify if the SOC code(s) applicable to the job order are associated with the FLS-based AEWWR or the OEWS-based AEWWR or both.
- Visit the new AEWWR page at <https://flag.dol.gov/wage-data/adverse-effect-wage-rates> to identify the applicable AEWWR(s).
 - Section II is dedicated to determining the AEWWR for the six field and livestock worker SOC Codes (typically associated with the FLS-based method).
 - **Reminder:** The OEWS survey will be used to set statewide AEWWRs for field and livestock worker occupations only in Alaska, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.
 - Section III is dedicated to determining the AEWWR for each SOC Code other than the six field and livestock workers SOC codes (associated with the OEWS-based method).

Determining the AEWR

- After identifying the applicable SOC code(s) and the AEWR for the SOC code(s):
 - Note the AEWR. (If more than one AEWR applies to the job opportunity based on the applicable SOC codes, the highest of the applicable AEWRs is “the AEWR” for purposes of comparing the wage sources listed in 20 CFR 655.120(a).)
 - Compare the AEWR to the prevailing wage rate (if available), the Federal minimum wage, the State minimum wage, or the agreed-upon collective bargaining rate.
 - Note the highest rate among the wage sources.
 - Compare the highest rate among the wage sources to the employer’s wage to offer on ETA Form 790A, Section A.8b-c.

Reminder: The wage offer must be at least equal to the highest rate among the wage sources.

Determining the AEWWR

- Example of a job opportunity in Oklahoma assigned the following two SOC codes.
- 45-2091 Ag Equipment Operator
 - (FLS AEWWR): \$14.87
- 53-3032 Heavy and Tractor Trailer Truck Driver
 - (OEWS AEWWR-State): **\$23.53**
- The AEWWR for this job opportunity is \$23.53 and the SOC Code and title is 53-3032 – Heavy and Tractor-Trailer Truck Drivers

Job Order Review of Wage Offer

- Upon submission of ETA Forms 790/790A, the primary SWA will review the Job Order, determine the SOC code and insert their SOC code classification on ETA Form 790, Section I.4-5.
- The SOC code classification on ETA Form 790, Section I.4-5 will be the SOC code the SWA assigned that determines the current AEWR for your job opportunity.
- If the wage offer is less than the AEWR, the SWA will issue a NOD to give the employer the opportunity to respond and, if applicable provide permission to amend the job order.

H-2A Application Review of Wage Offer

- The employer must enter the SOC code on Form ETA-9142A Section E.1-2 that is identical to the SOC code the SWA classified and entered on Form ETA-790, Section I.4-5.
- *Exception:* If the SWA is not responsive to the job order submission in FLAG within 7 calendar days or the SWA and employer cannot reach agreement on the SWA's assigned SOC code, the employer may file an emergency application with the NPC. In the emergency application, the employer may enter the SOC code on Form ETA-9142A that the employer seeks to have the NPC consider.

Communicating all Classified SOC Codes

- The NPC will notify the employer in the NOA letter that the job opportunity could not be classified within a single SOC code, and two or more distinct SOC codes subject to different AEWR determinations were assigned.
- The NOA letter will
 - Inform the employer of each assigned SOC code to the job opportunity; and
 - Remind the employer to monitor the AEWR applicable to each SOC code throughout the employment period for updates that may impact the employer's wage obligations.

Communicating all Classified SOC Codes

- The NOA letter will only identify SOC codes applicable to the employer's job opportunity if the assigned codes are subject to different AEWRs.
- **Example of NPC note to employer in NOA regarding employers wage obligations** To ensure you comply with your wage obligations throughout the employment period, monitor the AEWRs posted on <https://flag.dol.gov/> for adjustments on or around January 1 and July 1 for the following SOC codes assigned to your job opportunity: SOC code 53-3032 (Heavy and Tractor-Trailer Truck Drivers) and 45-2091 (Agricultural Equipment Operators).

Coding Examples (non-combination)

- **Example 47-2061 – Construction Laborers:** An employer seeks workers to dismantle and remodel livestock buildings and confinement structures during warm weather months on farms as well as repair and/or installation of feed equipment, slats, waterlines, gating, insulation, doors, ceilings, steel curtains, and roofing of confinement structures.
- The job opportunity constitutes a classification of 47-2061 – Construction Laborers, subject to the AEWB for SOC 47-2061.

Coding Examples (non-combination), cont'd

- **Example 53-3032 - Heavy and Tractor-Trailer Truck Drivers:** An employer seeks workers to drive a tractor-trailer combination, with a gross vehicle rating (GVWR) of 26,001 pounds or more, to deliver sod produced on the farm which it was grown (in its unmanufactured state) to storage or to market or to a carrier for transportation to market. The employer requires 12 months of experience operating such equipment and a valid Class A CDL or equivalent.
- The job opportunity constitutes a classification of 53-3032 - Heavy and Tractor-Trailer Truck Drivers, subject to the AEW for 53-3032.

Coding Examples (non-combination), cont'd

- **Example 45-1011 - First-Line Supervisors of Farming, Fishing, and Forestry Workers:** An employer seeks workers supervise and manage workers in the various duties associated with the production, harvest, & packing of organic vegetable crops. The job opportunity also includes holding subordinates accountable for tasks/responsibilities/rules, controlling and documenting the field operations in a manner that achieves the quality/production/efficiency/safety goals laid out by management.
- The job opportunity constitutes a classification of 45-1011 - First-Line Supervisors of Farming, Fishing, and Forestry Workers, subject to the AEW for 45-1011.

Coding Examples (combination)

- **Example 45-2092 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse, and 53-3032 - Heavy and Tractor-Trailer Truck Drivers:** An employer seeks workers to both plant, cultivate, and harvest crops, as well as drive semi tractor-trailer trucks to and from specified destinations. The job opportunity also requires 12 months of experience operating such equipment and a valid Class A CDL or equivalent.
- The job opportunity constitutes a combination of SOC 45-2092 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse, and SOC 53-3032 - Heavy and Tractor-Trailer Truck Drivers, subject to either the AEWRS for SOC 45-2092 or the AEWRS for SOC 53-3032, whichever is a higher rate per hour.

Coding Examples (combination), cont'd

- **Example 45-2092 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse, and 47-2061 - Construction Laborers:** An employer seeks workers to both plant, cultivate, and harvest crops, as well as, dismantle and rebuild livestock buildings and confinement structures during warm weather months.
- The job opportunity constitutes a combination of SOC 45-2092 - Farmworkers and Laborers, Crop, Nursery, and Greenhouse, and SOC 47-2061 - Construction Laborers, subject to either the AEWRs for SOC 45-2092 or the AEWR for SOC 47-2061, whichever is a higher rate per hour.

Establishing the AEW for Jobs Covering Multiple Occupations

- **Example:** An employer seeks workers to both drive tractors and other mechanized, electrically-powered or motor-driven equipment on farms and semi tractor-trailer units to and from specified destinations within area of intended employment (including maneuvering trucks into and out of loading and unloading positions as well as driving in both on-road (paved) and off-road conditions), which requires 12 months of experience operating such equipment and a valid Class A CDL or equivalent.
- The job opportunity constitutes a combination of SOC 45-2091 and SOC 53-3032, subject to either the AEWs for SOC 45-2091 or the AEW for SOC 53-3032, whichever is a higher rate per hour.

Additional AEWR Information

- For more information, see the new [H-2A Adverse Effect Wage Rates](#) resource on the FLAG website
- [Adverse Effect Wage Rate 2023 Final Rule](#)
- View OFLC's [Implementation FAQs](#) regarding the 2023 H-2A AEWR Final Rule
- [The Bureau of Labor Statistics](#) (BLS)
- [The O*NET Online System](#) (ONET)