

**U.S. Department of Labor**  
**Employment and Training Administration**  
**OFFICE OF FOREIGN LABOR CERTIFICATION**

**2023 H-2A Adverse Effect Wage Rate (AEWR) Final Rule FAQs**

**Round 2: AEWR Determination Guidance**

**Tuesday, July 11, 2023**

*On February 28, 2023, the Department of Labor (the Department) published a [final rule](#) promulgating regulations establishing a new methodology for determining hourly AEWRs for non-range occupations (i.e., all occupations other than herding and production of livestock on the range) for temporary labor certifications in the H-2A program (the 2023 AEWR Final Rule). The Department is providing these FAQs to assist employers, workers, and other interested parties in understanding this final rule, which went into effect on March 30, 2023.*

**1. Under the 2023 AEWR Final Rule, will most H-2A job opportunities be subject to the same AEWR as under the prior methodology?**

Yes. Based on program experience and the Department’s approach to evaluating job opportunities filed in the H-2A program, the Department estimated in the 2023 AEWR Final Rule that approximately 98 percent of H-2A worker positions would continue to be subject to the same AEWR source as they were under the prior methodology—the Farm Labor Survey (FLS) wage for field and livestock workers (combined) in the State or region. According to FLAG data accessed on July 6, 2023, of the 81,210 worker positions certified under the 2023 AEWR Final Rule by that date, 78,949 of those worker positions (or approximately 97.2 percent) have been assigned an FLS-based AEWR only.

**2. How do the State Workforce Agency (SWA) and Certifying Officer (CO) determine whether an FLS-based AEWR or an Occupational Employment and Wage Statistics (OEWS)-based AEWR will apply to my job opportunity?**

The AEWR applicable to a job opportunity depends on the Standard Occupational Classification (SOC) code or codes assigned to the job opportunity, which depends on the totality of the job opportunity described on an employer’s application. The SWA reviews the employer’s job opportunity, when reviewing the job order for compliance with the applicable regulations. The CO performs a secondary evaluation of the employer’s job order, including SOC coding, after receiving the employer’s form, *H-2A Application for Temporary Employment Certification*. Consistent with past practice, the CO may determine whether a different SOC coding is necessary, for example, based on additional information received during processing.

To assign SOC code(s), the SWA and CO compare the employer's job opportunity to the SOC code descriptions and other information on the Department's Occupational Information Network (O\*NET) website, located at <https://www.onetonline.org/>. Where similar tasks appear in more than one SOC code (i.e., overlapping tasks), such as transporting workers or agricultural commodities or maintaining and repairing farm equipment, the SWA and CO will continue to consider other factual information presented in the employer's application and job order (e.g., special skill or license requirements) that provide context for determining which SOC code or codes they will apply to the employer's job opportunity.

The majority of H-2A job opportunities will be classifiable in one or more of the SOC codes associated with the field and livestock workers (combined) category ("the Big Six") and will be subject to the FLS-based AEW. The FLS field and livestock workers (combined) category includes workers who, among many other duties, "plant, tend, pack, and harvest field crops, fruits, vegetables, nursery and greenhouse crops, or other crops" or "tend livestock, milk cows, or care for poultry," including those who "operate farm machinery while engaged in these activities." The current SOC codes and titles associated with these workers, and which will be subject to FLS-based AEWs, are: (1) 45-2041 Graders and Sorters, Agricultural Products; (2) 45-2091 Agricultural Equipment Operators; (3) 45-2092 Farmworkers and Laborers, Crop, Nursery and Greenhouse; (4) 45-2093 Farmworkers, Farm, Ranch, and Aquacultural Animals; (5) 53-7064 Packers and Packagers, Hand; and (6) 45-2099 Agricultural Workers – Other.

An H-2A job opportunity classified with an SOC code outside the "Big Six" will be subject to an OEWS-based AEW. Similarly, those job opportunities classified in the "Big Six" that are not located in the 49 States covered by the FLS (e.g., job opportunities in Alaska) will be subject to an OEWS-based AEW.

### **3. How do the SWA and CO determine which AEW will apply to my job opportunity if the job duties span multiple SOC codes?**

Job opportunities that require workers to perform tasks fully encompassed in any one or more of the "Big Six" SOC codes will be subject to the FLS-based AEW, assuming the FLS reports a wage for the geographic area. The majority of H-2A job opportunities will be classifiable in one or more of the "the Big Six" and will be subject to the FLS-based AEW.

Example: An H-2A job opportunity that requires a worker to hand-harvest field crops and operate light trucks to drive themselves along with other farmworkers from place to place around the farm property during the course of performing hand-harvest work, may be assigned SOC code 45-2091 (Agricultural Equipment Operators), which encompasses driving "trucks to haul . . . farm workers," in addition to SOC code 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse). Both SOC codes 45-2091 and 45-2092 are within the "Big Six" and so this H-2A job opportunity would likely be subject to the FLS-based AEW.

Some H-2A job opportunities may include duties that fall both within and outside of one of the "Big Six" categories. For these types of mixed job opportunities that are subject to both

an FLS- and OEWS-based AEW, the job opportunity would be assigned the higher AEW, to be paid to H-2A workers for all hours worked performing any of the duties in the job order, and to non-H-2A workers in corresponding employment for time spent engaged in corresponding employment.

Example: An H-2A job opportunity that requires a worker to perform hand-harvest work and help the farm supervisor direct or monitor the work of other workers engaged in planting and harvesting activities in the field, may be assigned only SOC code 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse), as that SOC code encompasses “direct[ing] and monitor[ing] the work of other seasonal help during . . . harvesting.” That SOC code is subject to the FLS-based AEW. However, if the duties identified in the job order include tasks such as training workers, monitoring compliance with safety regulations, or scheduling work crews, which are not encompassed in SOC code 45-2092, then the CO may also assign SOC code 45-1011 (First-Line Supervisors of Farm Workers) to the H-2A job opportunity. SOC code 45-1011 is subject to the OEWS-based AEW. If the OEWS-based AEW is higher than the FLS-based AEW, the job opportunity for that one worker would be assigned the OEWS-based AEW at the time of processing.

NOTE: The approved wage rate may be subject to an adjustment if a higher AEW is published during the contract period. See FAQ #7 from Round 1 of the AEW FAQs [here](#) for more information.

**4. My job opportunity requires driving duties. Does that mean the SWA and CO will assign an OEWS-based AEW to my job opportunity?**

Not necessarily. For job opportunities involving driving duties, the SWA and CO will look at factors such as the type of equipment involved (e.g., pickup trucks, custom combine machinery, or semi tractor trailer trucks; makes and models of machines to be used), the location where the work will be performed (e.g., on a farm or off), and any qualifications and requirements for the job opportunity in order to determine the appropriate SOC code(s) (and AEW) to assign to the employer’s job opportunity.

Example 1: Absent additional job details that might indicate otherwise, an H-2A job opportunity that requires a worker to care for livestock, including driving a truck loaded with supplemental feed to the locations where livestock are grazing, and repairing fences, likely would be assigned only SOC code 45-2093 (Farmworkers, Farm, Ranch, and Aquacultural Animals) and subject to the FLS-based AEW, as the list of tasks for this SOC code in O\*NET includes duties driving trucks to distribute feed and repairing fences and other enclosures.

Example 2: For an H-2A job opportunity that requires a worker to manually harvest crops in a field or orchard, perform other crop cultivation duties, and move the truck that holds the harvested crop from one place in the field or orchard to another and to storage or a pick-up point on the farm likely would be assigned only SOC code 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse) and subject to the

FLS-based AEW, as the list of tasks for this SOC code in O\*NET includes duties driving trucks loaded with agricultural products on the farm.

Example 3: In Example 2, if the “truck” was a heavy or more specialized piece of agricultural equipment than the basic example suggests (e.g., a harvesting machine that gathers and holds the crop during harvest), SOC code 45-2091 (Agricultural Equipment Operators) likely would be assigned in addition to SOC code 45-2092, because operating heavy agricultural machinery is not covered in SOC code 45-2092, but is covered in SOC code 45-2091, while manual harvesting is covered in SOC code 45-2092, but is not covered in SOC code 45-2091. However, based on the description of the location, type of equipment involved, and purpose of the truck driving in this example (i.e., driving trucks loaded with harvested crops from one location to another on the farm), neither SOC code 53-3033 (Light Truck Drivers) nor SOC code 53-3032 (Heavy and Tractor-Trailer Truck Drivers) would be assigned to the job opportunity. Therefore, even if the SWA and CO assign both SOC codes 45-2091 and 45-2092, both are within the “Big Six” and subject to the FLS-based AEW.

Example 4: An H-2A job opportunity that requires a worker to perform hand-harvest work and to pick up farmworkers, according to a regular schedule, from employer-provided housing or a centralized pick-up point, in a van used only for passenger transport, on public roads (e.g., from a motel to the farm), and drive them to the place(s) of employment to perform hand-harvest work, may be assigned SOC code 53-3053 (Shuttle Drivers and Chauffeurs), in addition to SOC code 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse). SOC codes 53-3053 and 45-2092 are subject to different AEW determinations; SOC code 53-3053 is subject to the OEWS-based AEW, while SOC code 45-2092 is subject to the FLS-based AEW. Whichever AEW is higher will be assigned to the job opportunity.

Example 5: Absent additional job details that might indicate more or different off-farm driving, an H-2A job opportunity that requires a worker to drive trucks used to collect harvested crops in and around the field during harvest for a farmer with multiple, separate fields within the area of intended employment and the worker will drive those trucks on public roads between the farmer’s fields to perform the in-field driving tasks at each field, likely would be assigned only SOC code 45-2091 (Agricultural Equipment Operator) and subject to the FLS-based AEW, as the list of tasks for this SOC code in O\*NET includes duties driving trucks loaded with agricultural products on the farm and driving trucks to haul supplies or tools to the farm.

NOTE: In some geographic areas, the current OEWS-based AEW applicable to SOC code 53-3053 (Shuttle Drivers and Chauffeurs) is lower than the current FLS-based AEW applicable to SOC code 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse).

NOTE: According to FLAG data accessed on July 6, 2023, of the 3,611 H-2A applications filed as of that date under the 2023 AEWL Final Rule, 14 total applications (less than one-half of one percent) have been assigned SOC 53-3053 (Shuttle Drivers and Chauffeurs).

**5. I need 20 H-2A workers to perform hand-harvesting work. I need one of those workers to also drive a semi-truck to haul crops to and from the market on public roads. Which AEWL applies to the workers?**

It depends on how the job order(s) is/are structured and on the work actually performed by the workers. To determine whether the truck driving duties would be subject to an OEWS-based AEWL, please see question 4, above. If the truck driving duties fall within SOC code 53-3032 (Heavy and Tractor-Trailer Truck Drivers), the employer could structure the job order(s) and work performed in several ways, including:

Example 1: The employer could file only one application for labor certification and associated job order for all 20 H-2A workers that includes both the harvesting and driving job duties which would likely span both SOC code 45-2092 for Farmworkers and Laborers, Crop, Nursery and Greenhouse (subject to the “Big Six”/FLS-based AEWL) and SOC code 53-3032 for Heavy and Tractor-Trailer Truck Drivers (subject to the OEWS-based AEWL). If the OEWS-based AEWL is higher than the FLS-based AEWL, the job opportunity for all 20 workers would be assigned the OEWS-based AEWL at the time of processing.

NOTE: Any non-H-2A workers engaged in corresponding employment must be paid at least the applicable AEWL for any time spent engaged in that work. Corresponding employment means the employment of non-H-2A workers by an H-2A employer “in any work included in the job order, or in any agricultural work performed by the H-2A workers,” during the job order period.

Example 2: The employer could file one application for labor certification and associated job order for one H-2A worker that includes both the harvesting and driving job duties that would likely span both SOC code 45-2092 for Farmworkers and Laborers, Crop, Nursery and Greenhouse (subject to the “Big Six”/FLS-based AEWL) and SOC code 53-3032 for Heavy and Tractor-Trailer Truck Drivers (subject to the OEWS-based AEWL). If the OEWS-based AEWL is higher than the FLS-based AEWL, the job opportunity for that one worker would be assigned the OEWS-based AEWL at the time of processing. Separately, the employer could file an application for labor certification and associated job order for 19 H-2A workers to perform duties that fall solely within the SOC code 45-2092 (harvesters), subject to the FLS-based AEWL. The job opportunity for these 19 workers would likely be assigned the FLS-based AEWL.

NOTE 1: H-2A workers may not be employed in duties not listed in the job order under which they are hired. However, if any of the 19 H-2A “harvesting-only” workers in Example 2 *in fact* performed the driving duties described in the “harvesting plus driving” job order (which itself would constitute a violation of

the H-2A program requirements), any such worker(s) must be paid the OEWS-based AEW.

NOTE 2: In Example 2, because the “harvesting plus driving” job order includes harvesting duties, a non-H-2A worker who performs only harvesting duties would be engaged in corresponding employment with the “harvesting plus driving” H-2A worker, and thus due the OEWS-based AEW for time spent performing the harvesting duties, even if the worker does not perform driving duties. As an alternative to this result, an employer could file one full-time “driving only” job order for one worker and one “harvesting only” job order for 19 workers. Assuming the “driving only” H-2A worker performs only the driving duties described in their job order, then any non-H-2A workers who perform only harvesting duties would be engaged in corresponding employment with the “harvesting only” H-2A workers and therefore due the FLS-based AEW for time spent performing the harvesting duties.

Example 3: The employer could employ a U.S. worker to perform the “harvesting plus driving” work, and file only one application for labor certification and associated job order for 19 H-2A workers to perform duties that fall solely within the SOC code 45-2092 (harvesters), subject to the FLS-based AEW. The employer must pay the U.S. worker at least the FLS-based AEW for time spent engaged in corresponding employment (time spent performing harvesting work).