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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants.

Civil Case No.: 1:25-cv-1614

NOTICE OF MOTION FOR PLAINTIFFS' MOTION FOR A SECTION 705 STAY AND PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

SCHEDULING STIPULATION TO FOLLOW

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the earliest practical date to be set by the Court, Plaintiffs United Farm Workers, UFW Foundation, Irene Mendoza, Claudia Garcia, Cristano Serrano, Yesenia Contreras Cervantes, Jose Cruz, Jane Doe I, Jane Doe II, John Doe I, Francisco Alvares Flores, Juan Manuel Flores Ayala, Aaron Grimaldo, Margaret DeAnda Magallon, Carina Martinez, Evelyn Medina, Isabel Rinton Panfilo, Celeste Whittle, Fortino Lopez, and Jesus Lopez, by and through their attorneys,

respectfully move the Court for a stay of, and preliminary injunction preventing Defendants United States Department of Labor ("DOL"), Lori Chavez-DeRemer, and Lori Frazier Bearden from implementing or otherwise taking any action to enforce, the Interim Final Rule DOL published in the Federal Register on October 2, 2025.

This Motion is supported by the accompanying Memorandum of Points and Authorities, the Declarations of Teresa Romero, Irene Mendoza, Claudia Garcia, Crisanto Serrano, Fortino Lopez, Jose Cruz, and Aaron Grimaldo, and such other written or oral argument as may be presented at or before the time this motion is taken under submission by the Court.

Thus far, no attorney has noticed an appearance for Defendants in this matter, and thus Plaintiffs were unable to meet-and-confer with their counsel as per the Court's standing order. Plaintiffs will serve a copy of these motion papers upon the U.S. Attorneys' Office for the Eastern District of California, and will attempt to negotiate a mutually acceptable briefing schedule.

DATED: December 22, 2025

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A SECTION 705 STAY AND PRELIMINARY INJUNCTION

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INTRODUCTION

U.S. farmworkers are among the most vulnerable members of our society. Although many already work for poverty-level wages, those wages would depress further if employers could freely hire foreign laborers who are willing to perform similar work for sub-market wages. To address this issue, and protect U.S. farmworkers, Congress enacted a statute allowing U.S. agricultural employers to hire seasonal foreign laborers only if, among other things, doing so will not adversely affect the wages of similarly employed U.S. workers. Congress tasked the Department of Labor ("DOL") with enforcing that "no adverse effect" requirement. To fulfill that mandate, DOL has historically set minimum wages for temporary foreign farmworkers that approximate the wages U.S. employees would otherwise receive for performing similar work ("Adverse Effect Wage Rates," or "AEWRs"). The AEWRs help ensure that employers cannot hire temporary foreign farmworkers at sub-market wages that would, in turn, depress the wages of similar U.S. workers.

DOL, however, recently issued an interim final rule ("IFR") drastically changing its methodology for calculating AEWRs so that they no longer track applicable market rates. Under the IFR, AEWRs will drop significantly, thus depressing U.S. farmworker wages—all while inflation continues to tick up and the agricultural sector continues to see record profits. DOL attempted a similar maneuver in 2020, and this Court stepped in, enjoining DOL's attempt to abdicate its responsibility to U.S. farmworkers. The IFR here is even more egregious than the 2020 rule. This Court must intervene again.

First, plaintiffs are likely to succeed on the merits of their claims that the IFR is unlawful under the Administrative Procedure Act ("APA"). For one, the IFR is arbitrary and capricious and contrary to law. DOL is statutorily obligated to protect U.S. worker wages from the adverse effects of H-2A labor. Multiple features of the IFR, however, will necessarily drop AEWRs far below the applicable market rates, thus producing the very adverse effects DOL is tasked with preventing. For example, although AEWRs were previously based on the *average wages* received by farmworkers in the relevant sectors—

a sensible measure of the "market rate"—under the IFR, the AEWRs for most farmworker positions equal only the *17th wage percentile* in the relevant sectors. It gets worse. Under the IFR, AEWRs will be reduced even further to account for temporary housing that, under applicable law, employers must provide H-2A workers for free. In some circumstances, this "housing deduction" can reduce AEWRs by a whopping *30%*. These are only two examples of the multiple ways in which the IFR severs any meaningful connection between AEWRs and market wages.

The IFR is also arbitrary and capricious because DOL was required to, but did not, adequately consider the reliance interests of U.S. farmworkers. By immediately slashing AEWRs, the IFR will result in a sudden and drastic decrease in farmworker wages. This pay cut will meaningfully impact farmworkers' lives, making it difficult for them to cover necessary costs for health care, food, and housing. Finally, the IFR is procedurally defective because it was issued without the required notice-and-comment process. Any regulation that has an impact on the rights and obligations of parties cannot be issued unless the public has first had an opportunity to submit comments. An agency can sidestep that process only if extraordinary circumstances—*e.g.*, an imminent threat to public safety—require immediate action, and those circumstances are not present here. Plaintiffs are thus likely to prevail on the merits of their APA claims.

Additionally, absent emergency relief, Plaintiffs will suffer irreparable harm, and the balance of the equities favors emergency relief. As explained above, the immediate and significant reduction in AEWRs will materially impact the lives of many farmworkers, including the individual Plaintiffs. DOL can articulate no meaningful, countervailing interest that outweighs that impact. Accordingly, the Court should stay or preliminarily enjoin DOL's implementation of the IFR. The Court should also order DOL to promptly begin calculating AEWRs that actually approximate market rates for U.S. farmworkers.

BACKGROUND

A. Congress instituted the H-2A program to allow U.S. employers to hire seasonal foreign laborers, but only if U.S. laborers were unavailable and the wages of similarly-employed U.S. workers would not be adversely affected by the use of H-2A labor.

Under the Immigration Reform and Control Act of 1986 ("IRCA"), agricultural employers may hire foreign temporary workers through "H-2A" petitions, but only if the Secretary of Labor certifies that: "(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services" at issue and "(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed." 8 U.S.C. § 1188(a)(1). Unlike other guestworker programs, the H-2A program has no cap on the number of foreign laborers permitted under the program.

To implement IRCA's "no adverse effect" requirement, DOL requires agricultural employers to pay H-2A workers the highest of (i) the AEWR, (ii) any applicable State minimum wage, (iii) any available prevailing wage rate,[1] or (iv) any agreed-upon collective-bargaining wage. *See* 20 C.F.R. 655.120(a). The highest available rates are generally the AEWRs, which are state or region-specific minimum wages set at least annually by DOL to ensure that the employment of H-2A workers will not artificially lower the wages of similarly employed domestic farmworkers. *See* 90 Fed. Reg. 47914, 47916–17 (Oct. 2, 2025); *UFW v. United States Dep't of Lab.*, 509 F. Supp. 3d 1225, 1231 (E.D. Cal. 2020) ("The AEWR . . . is the primary wage rate under the H-2A program because it is higher than the other wages in most circumstances" and so "the AEWR determines the wages of approximately 92 percent of the farmworkers working for H-2A program employers."). DOL has explained that, to comply with the "no

[1] A prevailing wage rate is a local (often crop- or task-specific) wage rate calculated by State workforce agencies ("SWAs") using State-based surveys. *See Garcia v. Stewart*, 531 F. Supp. 3d 194, 215 (D.D.C. 2021). Note that though there will always be a DOL-generated AEWR for each H-2A position, there will not always be a State-provided "prevailing wage rate" because "[m]any SWAs . . . declin[e] to conduct prevailing wage surveys at all." *Id.* at 201.

adverse effect" requirement, the AEWRs have "approximate[d] the equilibrium wage that would result absent an influx of temporary foreign workers" and thus "put incumbent farm workers in the position they would have been in but for the H-2A program." 75 Fed. Reg. 6884, 6891 (Feb. 12, 2010). With a few discrete exceptions, AEWRs have generally been based upon farmworker wage data collected by the U.S. Department of Agriculture ("USDA") through the Farm Labor Survey ("FLS"), which "provide[d] the basis for employment and wage estimates for all workers directly hired by the United States farms and ranches (excluding Alaska)." National Agricultural Statistics Service, Farm Labor Methodology and Quality Measures at 1 (May 21, 2025), https://perma.cc/J422-2EBT.

For decades, AEWRs, like wages in general, have steadily increased over time. In particular, since the 1990s, AEWRs have increased on average by about 4% per year. *See* Zachariah Rutledge et al., *H-2A Adverse Effect Wage Rates and U.S. Farm Wages*, Am. J. Agric. Econ. (June 9, 2025), https://perma.cc/6EFE-UJ2T. And more recently—from 2019 to 2025—AEWRs have increased annually by around 5.5%. *See* 90 Fed. Reg. at 47923. If the new AEWRs were based off of the FLS survey data collected in April 2025, those AEWRs would increase by 3%. *See April Hired Workers Up 3 Percent; Gross Wage Rate Increased 3 Percent from Previous Year*, U.S. Dep't of Agric. (May 21, 2025), https://perma.cc/JA5F-9BBN.

B. In 2020, DOL issued a regulation that would have lowered AEWRs, but it was found unlawful, and enjoined, by this Court.

Towards the end of the first Trump Administration, USDA suspended the FLS,[2] and DOL subsequently issued a final rule (the "2020 Rule") that would have produced lower AEWRs. In particular, the 2020 Rule, among other things, froze most AEWRs for two years. 85 Fed. Reg. 70445 (Nov. 5, 2020). UFW challenged the 2020 Rule, and this court held that it was likely to succeed on the merits of its claim

[2] This suspension of the FLS was enjoined. *See UFW v. Perdue*, No. 20-cv-01452, 2020 WL 6318432 (E.D. Cal. Oct. 8, 2020).

that the rule was arbitrary and capricious. *See UFW*, 509 F. Supp. 3d at 1225. The Court agreed with UFW that, by generally freezing AEWRs for two years, the Rule "sever[ed] the relationship between the AEWR and current farm labor market conditions" and "intentionally depresse[d] and stagnate[d] the wages of" U.S. farmworkers. *Id.* at 1237–39. The Court also explained that "DOL failed to analyze the economic harm to U.S. farmworkers of [the] Rule." *Id.* at 1243. Later, the Court issued a final judgment vacating the 2020 Rule on the same grounds.[3] *UFW v. DOL*, 598 F. Supp. 3d 878 (E.D. Cal. 2022).

C. In October, DOL suddenly and drastically changed its methodology for calculating AEWRs.

On October 2, 2025, DOL published the IFR, which instituted a new AEWR methodology that went into effect immediately without notice-and-comment. *See* 90 Fed. Reg. 47914. The new methodology made several significant changes which, by DOL's admission, will collectively decrease AEWRs. *See* 90 Fed. Reg. at 47928 ("The Department acknowledges that the overall impact of this new methodology will be a reduction in the AEWRs, or minimum hourly wage rate floors for H-2A workers and workers in corresponding employment that are likely to result in wage transfers to employers.").

First, the IFR changes the wage data source used to calculate AEWRs. On August 31, 2025, USDA again discontinued the FLS, and the IFR thus declares that DOL will now rely on state-level wage data collected by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics ("OEWS") survey. *See* 90 Fed. Reg. at 47920–25; 20 C.F.R. 655.120(b)(1). That data consists of wage estimates derived from a semi-annual survey of *non-farm* employers, though the IFR indicates that OEWS will begin collecting data from farm establishments in 2026. *See id.* at 47925. The OEWS organizes its wage

[3] Note that DOL issued a new AEWR rule in 2023, 88 Fed. Reg. 12760 (Feb. 28, 2023), which was likewise enjoined, *Teche Vermilion Sugar Cane Growers Ass'n Inc. v. Su*, 749 F. Supp. 3d 697 (2024). That rule has now been vacated. *See* Judgment, *Teche Vermilion Sugar Cane Growers Ass'n Inc.* v. *Su,* No. 6:23-cv-00831-RRS-CBW (W.D. La. Aug. 21, 2025), ECF No. 87. According to the IFR, the 2023 rule and the 2010 rule overlapped substantially. *See* 90 Fed. Reg. at 47952 n.189 (the 2010 rule and the 2023 rule "used the same methodology to set the AEWR for the vast majority of job[s]").

data into Standard Occupation Classification ("SOC") codes established by the Office of Management and Budget. Each SOC code represents a separate occupational category. For example, there are five SOC codes that encompass most H-2A positions (the "Big Five"): (1) farmworkers and laborers, crop, nursery, and greenhouse workers; (2) farmworkers, farm, ranch, and aquaculture animals; (3) agricultural equipment operators; (4) packers and packagers, hand; and (5) graders and sorters, agricultural products.[4] *Id.* at 47918 n.41. Each requested H-2A position is classified into an SOC code based on the duties associated with that job. *Id.* at 47937.

In deciding which OEWS data is relevant to any given H-2A position, DOL must first determine the applicable SOC code. To do so, DOL generally relies on the written job description produced by the employer. *Id.* at 47938. In the event an H-2A position involves multiple responsibilities that can be classified under multiple SOC codes, the IFR states that the position, as a whole, will be subject to the SOC code applicable to the duties that the person(s) occupying the position will perform for the majority (over 50%) of the workdays during the contract period. *Id.* at 47939; 20 C.F.R. 655.120(b)(7).

Second, in addition to changing the wage data source used to generate AEWRs, the IFR also changes *how* wage data is used to generate AEWRs. Prior to the IFR, the AEWR for any given position was equal to the average wage in the relevant sector (calculated using the available wage data). *See* 90 Fed. Reg. at 47917 (AEWRs were previously set to the "the average wage of farmworkers" in the relevant sectors). The IFR changes that through its new "two-tier" system. Specifically, the IFR adopts two tiers within each SOC code: Skill Level I and Skill Level II. *Id.* at 47926. Skill Level I jobs are those which DOL considers more "entry-level" and which require workers with limited to no formal training or credentials. *Id.* Skill Level II positions, however, generally do require formal training or credentials and

[4] Until this IFR, there was a sixth SOC code, "Agricultural Workers, All Others" included in the SOC group. The IFR eliminates this SOC code altogether.

often involve supervisory duties. *Id.* The IFR itself provides no criteria for determining whether a particular job opportunity falls under Skill Level I or II, though the IFR's preamble suggests that an amorphous "totality of the circumstances of an employer's job offer" standard will be used to classify jobs into one of those two tiers. *Id.* at 47932–34. Further, it appears that classification will be based on the written job descriptions, rather than the qualifications of the workers that eventually fill those positions. *Id*. The IFR estimates that 92% of H-2A positions will be considered Skill Level I. *See id.* at 47955.

Importantly, the AEWR for Skill Level I positions will not equal the average wage for the relevant SOC code, but rather the 17th wage percentile for that code. *Id.* Put differently, although 92% of H-2A workers are expected to receive the Skill Level I AEWR, this will be lower than the wages earned by 83% of farmworkers covered by the relevant SOC codes. Meanwhile, the AEWRs for the most skilled H-2A workers, those in Skill Level II positions, will equal the average wage for the relevant SOC code, even though, in theory, those are senior-level positions. *See id.* at 47933.

Third, even after identifying the appropriate SOC code and Skill Level tier for a particular position, the IFR decreases the AEWR even further through a "housing adjustment." By statute and regulation, U.S. employers must provide H-2A employees with free housing.[5] Although that free housing requirement remains in effect, the IFR nonetheless further reduces AEWRs for H-2A positions to account for the purported value of that housing. 90 Fed. Reg. at 47948. DOL estimates the value of that housing by looking to the so-called Fair Market Rents ("FMR") for a four-bedroom housing unit available from the Department of Housing and Urban Development ("HUD"), even though DOL does nothing to verify that H-2A housing is in any way comparable to a HUD four-bedroom unit. *Id.* DOL deducts, from the AEWR

[5] 8 U.S.C. § 1188(c)(4) ("Employers shall furnish housing in accordance with regulations"); 20 C.F.R. § 655.122(d) (2025) ("The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.").

per-hour rate, an amount sufficient to cover the estimated weekly housing cost assuming the H-2A laborer works a 40-hour workweek; *e.g.*, if the weekly housing cost is estimated at $100, the per-hour housing deduction will equal $2.50. *Id.* at 47949. That AEWR deduction, however, applies to every hour worked even if the laborer works more than 40 hours per week. The only limit on the housing deduction is that it cannot exceed 30% of the AEWR—*i.e.*, almost a third of their wages. *Id.* at 47948.

Accordingly, by instituting a number of changes—including changing the data source, instituting the two-tier system, and applying a housing deduction—the IFR drastically changes how AEWRs are calculated, with the "overall impact" being a reduction in AEWRs and thus a reduction in wages for similarly employed U.S. workers. *Id.* at 47928.

LEGAL STANDARD

"[S]tays under [section 705 of] the APA turn on the same factors as preliminary injunctions." *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 983 (9th Cir. 2025).[6] "To qualify for [a preliminary] injunction" or a Section 705 stay, "the moving party must establish a likelihood of success on the merits, that it will suffer irreparable harm in the absence of injunctive relief, that the balance of the equities tips in its favor, and that the public interest supports relief." *Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024). "As to the merits, [Ninth Circuit] cases . . . permit[] plaintiffs to satisfy this requirement with a 'serious question' on the merits when the balance of hardships tips sharply in their favor." *Id.* "Serious questions are issues that cannot be resolved one way or the other at the hearing on the injunction because they require more deliberative investigation." *Id.* "The final two injunction factors—the balance of equities and the public interest—merge where a government agency is a party." *Id.*

[6] Internal citations and quotation marks are omitted throughout this brief unless otherwise stated.

ARGUMENT

A. Plaintiffs have a strong likelihood of success on the merits of their APA claims.

The IFR violates the APA. First, it is arbitrary and capricious, and contrary to law, because DOL was obligated to, but did not, properly consider (i) whether the IFR's new methodology would protect U.S. farmworker wages from the adverse effects of H-2A labor and (ii) the reliance interests of U.S. farmworkers. Second, the IFR is procedurally defective because it was improperly issued without a notice-and-comment process.

1. The IFR is arbitrary and capricious, and contrary to law.

An agency action is arbitrary and capricious under the APA, and thus unlawful, if the agency failed to "act[] within a zone of reasonableness and, in particular, has" failed to "reasonably consider[] the relevant issues and reasonably explain[] the decision." *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Thus, to survive arbitrary-and-capricious review, "the agency must examine the relevant data and articulate a satisfactory explanation for its action" and "[i]n reviewing that explanation, the Court must determine "whether there has been a clear error of judgment." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

DOL committed a "clear error of judgment" in issuing the IFR for at least two reasons. First, DOL did not adequately consider whether the IFR will fulfill DOL's statutory obligation to protect U.S. farmworker wages from the adverse effects of H-2A labor. Indeed, to the contrary, the IFR deliberately slashes AEWRs to well below market levels, thus creating those very adverse effects. Second, DOL failed to properly consider reliance interests held by U.S. workers.

a. The IFR deliberately slashes AEWRs, creating the precise "adverse effects" on U.S. farmworker wages that DOL is statutorily required to prevent.

As explained above, to comply with statutory "mandate that foreign workers not adversely affect the wages of United States workers," DOL sets "minimum wage requirements" for H-2A workers; *i.e.*, AEWRs. *Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Brock*, 835 F.2d 912, 913 (D.C. Cir. 1987); *see*

supra at p. 9. Those "wage levels" are "designed to approximate the rates that would have existed had there been no increase in labor supply from foreign labor." *Brock*, 835 F.2d at 913. Here, DOL has offered no "satisfactory explanation" for how, under the IFR, AEWRs will serve their intended purpose: to protect U.S. farmworker wages from the adverse effects of the H-2A program. *State Farm*, 463 U.S. at 43. In fact, multiple features of the IFR, by design, significantly depress AEWRs, placing downward pressure on (and thus adversely affecting) the wages of similarly-employed U.S. farmworkers. First, the IFR creates an arbitrary "tier" system under which the AEWRs for the majority of H-2A positions will be equal to only the 17th wage percentile in the relevant sectors. Second, the IFR applies a large "housing deduction" to AEWRs, which will drop them even further. And third, the IFR immediately shifts to a new wage data source which, in the near term, does not even include data from farm establishments.

The Tier System. The IFR creates a two-tier system engineered to slash AEWRs for most H-2A positions. As explained above, to determine the AEWR for any given position, that position must first be assigned an SOC code. Then, under the IFR, the position must be classified into one of two tiers: Skill Level I or Skill Level II. Although the IFR provides no set criteria for making that classification, the IFR suggests that Skill Level I positions are those that require no formalized training or certification, even though they may very well involve complex tasks requiring highly skilled workers. *See supra* at pp. 6–7. Skill Level II positions, by contrast, are those more managerial positions that generally do require some formalized training or certification. *See supra* at p. 7. The IFR estimates that roughly 92% of H-2A positions will be classified as Skill Level I positions. *See* 90 Fed. Reg. at 47955; *see also* 85 Fed. Reg. at 70462 ("[DOL's] practical experience has demonstrated that use of a []tiered wage structure in the H–2A program leads to the overwhelming majority of H–2A job opportunities being classified at a level I wage"). Indeed, the most common farmworker positions will presumably all be classified under Skill

Level I, including line-level crop, nursery and greenhouse workers and hand packers and packagers.[7] *See id.* at 47935; *UFW*, 509 F. Supp. 3d at 1239 ("[L]ower-skill work, which is field and livestock work, make up most H-2A job opportunities.").

Alarmingly, under the IFR, the AEWRs for all Skill Level I positions—the overwhelming majority of H-2A positions—will equal only the 17th wage percentile for positions within the relevant SOC codes. Thus, for example, *all* Skill Level I positions within the Big Five SOC codes will receive AEWRs greater than only 17% of Big Five positions, even when those positions are filled with experienced farmworkers.[8] That is a radical departure from the prior methodology under which AEWRs equaled the average wage for the relevant occupational categories. *See supra* at pp. 6–7. And AEWRs will consequently drop significantly. For instance, the AEWR for a Big Five position in California was previously $19.97, but will now drop to $16.45 (a nearly 18% reduction) if classified as Skill Level I. *See* Compl. ¶ 100. Likewise, the AEWR for a Big Five position in Georgia was previously $16.08, but it will now drop to $12.27 if classified as Skill Level I—a nearly 24% decline. *See id.* The IFR provides no coherent explanation for how these new AEWRs, set to only the 17th wage percentile, "approximate[] the rates that would have existed" for *all* Skill Level I positions absent the H-2A program. *Brock*, 835 F.2d at 913.

Nor could it. DOL itself previously explained that "use of the *mean wage*"—not the 17th percentile wage—"best meets the Department's obligation to protect workers in the United States similarly employed against the adverse effects on their wages that could be caused by the employment of foreign

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[7] DOL has previously opined that a tier-system for H-2A jobs would make little sense because there are generally no material skill-level differences between those jobs. *See* 75 Fed. Reg. at 6900 (rejecting skill-level tier system in part because "the Department [found] that the notion of meaningful skill differences among agricultural workers is unfounded;" "[m]ost of the occupations and activities relevant to the H-2A program involve skills that are readily learned in a very short time on the job, skills peak quickly, rather than increasing with long-term experience, and skills related to one crop or activity are readily transferred to other crops or activities").

[8] *See, e.g.,* Decl. of Claudia Garcia, ¶¶ 2, 9 (U.S. farmworker with 25 years of experience who anticipates future positions that would likely be classified as Skill Level I under the IFR).

workers" because "[t]he mean provides equal weight to the wage rate received by each worker in the SOC code across the wage spectrum and represents the average wage paid to workers to perform jobs in the SOC codes." 88 Fed. Reg. 12760, 12774 (Feb. 28, 2023). DOL noted that it has therefore had "a long-standing practice of using the average or mean wage to determine the AEWR in the H-2A program." *Id.* Notably, DOL previously conceded that "*[s]etting the AEWR below the mean in the relatively less skilled agricultural SOC codes that predominate in the H-2A program may have a depressive effect on the wages of workers in the United States similarly employed.*" *Id.* (emphasis added).

The IFR tries to justify its policy change by noting that an AEWR "computed at the equivalent of the 17th [wage] percentile . . . is similar to the" prevailing wages "for other nonimmigrant and immigrant visa programs administered by the Department," referring at least to the H-1B program. 90 Fed. Reg. at 47932-33. The IFR, however, omits a key distinction: the H-1B program—which concerns skilled non-agricultural positions—utilizes a *four-tier* system where the "prevailing wage" for only the *fourth tier* is "approximately the 17th percentile of the OEWS wage distribution for the relevant occupation in the relevant location." 90 Fed. Reg. 45986, 45990 (Sept. 24, 2025). Here, by contrast, there are only two tiers, the bottom tier will likely encompass roughly 92% of all positions, and yet that entire tier will receive AEWRs equal to the 17th wage percentile for the relevant occupational categories.[9]

Moreover, DOL previously acknowledged that it should not incorporate the H-1B program's four-tier system into the H-2A companion program—the H-2B program (which concerns temporary non-agricultural work)—because doing so would create adverse effects on U.S. worker wages. Specifically, DOL estimated that "almost 75 percent of [H-2B] jobs" would be "classified at a Level I wage," and noted that basing the prevailing wages for all of those jobs "on the mean of the bottom one third"—*i.e.*, roughly

[9] Note that, unlike with the H-2A program, there is a cap on the number of workers who may be hired through the H-2B program. *See* 75 Fed. Reg. at 6895.

the 17th percentile—would "adverse[ly] impact . . . those U.S. workers performing the same tasks and engaged in the same jobs." 76 Fed. Reg. 3452, 3463 (Jan. 19, 2011). DOL thus concluded that the "four-tier structure artificially lowers that wage to a point that it no longer represents a market-based wage for that occupation." *Id.* The same reasoning applies here: like with the H-2B program, most H-2A positions are likely to be Skill Level I positions, and setting AEWRs for all of those positions at the 17th wage percentile would adversely affect the wages of similarly-employed U.S. workers.

Furthermore, the IFR will likely give employers an incentive to structure positions so that they will fall under Skill Level I, even though they should qualify as Skill Level II positions. In determining the skill level tier for any particular position, DOL relies on the employer's written description of the position. 90 Fed. Reg. at 47934. Thus, to secure a lower, Skill Level I AEWR for a particular position, an employer need only frame that position's description so that it seemingly requires no formalized training, even though it ultimately will require—and may be filled by a farmworker who possesses—formalized, managerial training. *Cf.* 75 Fed. Reg. at 6898 ("applicants for H-2A workers" can show a "bias toward low skill job specifications"). Accordingly, the IFR's arbitrary two-tier system will adversely affect U.S. farmworker wages.[10]

Housing Adjustment. The IFR further tanks AEWRs by broadly applying an arbitrary "housing deduction." Employers have long been required to provide housing "at no cost" to H-2A workers (and U.S. workers in corresponding employment) who are not reasonably able to return to their residences at the end of the workday. 20 C.F.R. § 655.122(d)(1); *see* 8 USCA § 1188(c)(4) ("Employers shall furnish housing in accordance with regulations."). As noted above, the IFR upends this longstanding requirement

[10] Strangely, for positions classified under Skill Level II—in theory, the senior-level managerial positions—the AEWRs will equal only the average wage for positions within the relevant SOC codes. The IFR offers no coherent explanation for that decision either. If Skill Level II positions require formalized training and involve managerial functions, they would presumably merit salaries above the average wages in the relevant SOC codes.

by calling for a reduction in AEWRs to purportedly account for the value of that housing. *See supra* at pp. 7–8; 20 C.F.R. § 655.120(b)(3) (applying the downward housing adjustment to "H-2A workers sponsored under the Application for Temporary Employment Certification"). That housing deduction will push AEWRs further below market levels. For example, the IFR itself projects that, in California and Florida, the housing deduction can reduce an AEWR by roughly 18%. *See* 90 Fed. Reg. at 47927. And the IFR contemplates that the housing deduction could even reach 30%. *See supra* at p. 8.

Worse, the housing deduction will almost certainly overshoot the value of the housing H-2A workers ultimately receive. The methodology used to calculate the per-hour AEWR deduction assumes a 40-hour workweek; *i.e.*, it determines the amount that must be deducted per-hour for 40 hours to cover a week's worth of housing. Farmworkers (including H-2A workers[11]), however, often work more than 40 hours per week,[12] and the deduction will apply to all of those hours, not just the first 40 hours. The IFR also calculates the housing deduction based on the "Fair Market Rent" for a four-bedroom unit from HUD, but makes no attempt to establish that H-2A housing is comparable in quality to that type of HUD unit.[13]

DOL tries to justify the housing deduction by essentially arguing that the "free housing" requirement for H-2A workers unfairly privileges those workers over U.S. workers. *See* 90 Fed. Reg. at 47948. That explanation makes little sense. First, by lowering the AEWRs, the housing deduction will in

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[11] *See e.g.*, H-2A Job Order H-300-25305-354421, posted November 12, 2025, https://seasonaljobs.dol.gov/api/job-order/H-300-25305-354421, attached hereto as Ex. 1 (anticipating 66 hours of work per week, while deducting the housing adjustment from H-2A worker wages).

[12] *See* Decl. of Irene Mendoza, ¶ 3 ("I have generally worked around 11–14 hours a day, often for many hours without breaks. In my experience, it is common for me and other similar farmworkers to work more than 40 hours per week."); Decl. of Aaron Grimaldo, ¶ 3 ("I have generally worked over 10–12 hours a day").

[13] H-2A housing is generally inferior to a typical HUD unit. *See* Agricultural Workers Advocacy Coalition, Comment Letter on Interim Final Rule, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States (Nov. 25, 2025) ("[H-2A living] conditions are not remotely equivalent to the housing quality, privacy, amenities, square footage, or safety that the HUD Fair Market Rent metric assumes"), https://perma.cc/A5RX-97KQ.

turn place downward pressure on the wages of similarly-employed U.S. farmworkers. That will harm the very U.S. farmworkers that the housing deduction is purportedly trying to serve. Further, the premise of DOL's argument is wrong: the free housing requirement also applies to domestic workers in corresponding employment who cannot reasonably return to their homes at the end of the workday. *See* 20 C.F.R. § 655.122(d)(1). Finally, the housing deduction will actually disadvantage U.S. farmworkers. It will lower the AEWRs applicable to H-2A workers, making them cheaper than similar U.S. farmworkers, thus creating a strong incentive for employers to hire H-2A workers over U.S. workers. Accordingly, the housing deduction further (and needlessly) depresses AEWRs.

Data Source. The IFR also cannot ensure that its AEWRs will approximate the market wages of U.S. farmworkers because it relies on a data source that currently does not even contain wage data from farm establishments. *See supra* at pp. 5–6. DOL previously generated AEWRs using FLS wage data, which was based on surveys of actual farm establishments. *See supra* at p. 4. DOL therefore repeatedly championed FLS data, claiming that it provided accurate estimates of market wages. *See* 90 Fed. Reg. at 47929; 75 Fed. Reg. at 6898; 88 Fed. Reg. at 12794. The IFR, however, now shifts to OEWS data, which currently does *not* survey wages from farm establishments. *See* 90 Fed. Reg. at 47931–32. DOL previously admitted that that "the [OEWS] survey is not an appropriate data source for ensuring that the importation of guest workers does not adversely affect U.S. workers" because it "does not gather data directly from farmers." 75 Fed. Reg. at 6901. DOL further explained that OEWS data on farmworker wages comes "from non-farm establishments whose operations support farmer production" and the "workers employed by support services establishments are less educated and less likely to be U.S. citizens than employees of farm establishments, and therefore typically have substantially lower wage rates." *Id.* Thus, for example, FLC employees in California have been paid only around 70% of the wages received by other

farmworkers.[14] Similar trends can be seen nationwide.[15] FLC wages are thus not a reliable basis to calculate the market rates for farmworkers in all relevant sectors.

Indeed, the IFR appears to acknowledge that OEWS data, in its current form, is insufficient. It notes that DOL intends to work to ensure that, in the future, OEWS data will incorporate data from farm establishments. *See* 90 Fed. Reg. at 47931–32. However, the IFR anticipates that farm establishment data will be collected for OEWS purposes starting only in May 2026. *See id.* And even then, it is unclear whether OEWS data will truly incorporate farm establishment data at that point. OEWS surveys create estimates by averaging wage rates from a three-year period; thus, it appears farm establishment data will have to be collected for three years (2026, 2027, and 2028) before it will be included in OEWS data.[16] The earliest the OEWS survey could provide data based on farm establishment surveys may therefore be 2029. Until then, OEWS data could generate inaccurate estimates for farmworker market wages.

Not only is the OEWS data generally insufficient, the IFR, in certain circumstances, will deliberately rely on the wrong OEWS data. As explained above, in certain circumstances, an H-2A job may involve multiple tasks that can be classified under different SOC codes. *See supra* at p. 6. Rather than

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[14] *See* Daniel Costa, *EPI Comment on DOL's Interim Final Rule Modifying the AEWR Methodology for H-2A Farmworkers*, Econ. Pol'y Inst. (Dec. 1, 2025), https://perma.cc/6FB6-QYVK. *See also* Rural Migration News, *California: FLC Employment Down and Wages Up in 2020*, U.C. Davis (July 16, 2021) (https://perma.cc/Q8M4-ERNB).

[15] *Compare* Quarterly Census of Employment and Wages, *Private, NAICS 111 Crop production, All Counties 2025 First Quarter, All establishment sizes*, Bureau of Lab. Stats. (last visited Dec. 16, 2025), https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=1&year=2025&qtr=1&own=5&ind=111&supp=0 (finding in the 1st Quarter of 2025 directly hired farmworkers averaged a weekly wage of $838) *with* Quarterly Census of Employment and Wages, *Private, NAICS 115115 Farm labor contractors and crew leaders, All Counties 2025 First Quarter, All establishment sizes*, Bureau of Lab. Stats. (last visited Dec. 16, 2025), https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=1&year=2025&qtr=1&own=5&ind=115115&supp=0 (finding in the 1st Quarter of 2025 FLC hired employees averaged $620 in weekly wages).

[16] *See* Costa, *supra* n. 14. *See also Survey Methods and Reliability Statement for the May 2023 Occupational Employment and Wage Statistics Survey*, Bureau of Lab. Stats. (last visited Dec. 16, 2025), https://perma.cc/47ZV-NQD9.

pull data from all relevant SOC codes, the IFR requires that the entire job be subject to the SOC code applicable to the task that consumes over 50% of the job. *See id.* That can further depress AEWRs. For example, suppose an H-2A position calls for the jobholder to spend 51% of his time doing ranch farmwork and 49% of his time working as a heavy truck driver. The FLS notes that the median wage for the ranch farmworker SOC code has been $17.38 per hour, whereas the median wage for the heavy truck driver SOC code has been far higher, at $27.62 per hour. *See* 90 Fed. Reg. at 47935. Under the IFR, the AEWR for that position as a whole—including the heavy truck driving tasks—will be based only on data for the ranch farmworker SOC code, thus obviously underestimating the true market rate for that job. The IFR therefore does not base AEWRs on appropriate data.

* * * * *

At bottom, the IFR deliberately (and significantly) decreases AEWRs, allowing U.S. agricultural employers to hire an unlimited supply of foreign labor at sub-market, exploitative wages, all to avoid having to hire U.S. farmworkers at fair wages. DOL thus cannot "articulate a satisfactory explanation" for how the AEWRs will serve their intended purpose: to protect U.S. farmworker wages from the adverse effects of the H-2A program. *State Farm*, 463 U.S. at 43. Indeed, the IFR is even more problematic than the 2020 Rule that this Court previously found unlawful. That rule merely froze AEWRs for a limited period of time; the IFR, by contrast, reduces them, even though AEWRs are expected to (and generally do) rise annually. *See supra* at pp. 4–5.

Notably, the Administration has taken a different approach with respect to the H-1B program which, unlike the H-2A program, is reserved for white-collar jobs such as computer engineering positions. Similar to the H-2A program, companies may hire foreign workers under the H-1B program if it "will not adversely affect the working conditions of workers similarly employed." 8 U.S.C. § 1182(n)(1)(A). In a proclamation issued less than two weeks prior to the IFR's release, the President asserted that "[t]he H-1B nonimmigrant visa program . . . has been deliberately exploited to replace, rather than supplement,

American workers with lower-paid" foreign workers. Proclamation No. 10973, 90 Fed. Reg. 46027 (Sep. 24, 2025). The President stated that "some employers . . . have abused the H-1B" program "to artificially suppress wages, resulting in a disadvantageous labor market for American citizens." *Id.* The proclamation thus called for *higher* mandatory rates for H-1B workers in order to protect American workers in white-collar positions. *See id.* The same economic reasoning should apply to the H-2A program. Nevertheless, while the Administration has sought to protect high-earning U.S. workers from the effects of foreign labor, it has inexplicably failed to provide low-income farmworkers the same protection. There is no rational explanation for the difference in treatment. The IFR is therefore arbitrary and capricious.

Furthermore, the arguments set forth in this subsection also show that Plaintiffs are likely to prevail on their statutory claim that the IFR conflicts with the INA because it creates the very "adverse effects" on U.S. worker wages that Congress requires DOL to prevent. *See Nw. Env't Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 682 (9th Cir. 2007) ("The APA empowers [courts] to set aside an agency decision that is contrary to governing law.").

b. DOL failed to properly consider the reliance interests of U.S. farmworkers.

DOL failed to adequately consider the reliance interests of U.S. farmworkers—the central group DOL is statutorily obligated to protect. When serious reliance interests could be impacted by an agency action, the agency is required to "assess whether there were reliance interests, determine whether they [are] significant, and weigh any such interests against competing policy concerns." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020). The agency must address *why* the benefits of the policy shift outweigh the reliance interests. *See Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007). Merely saying something "was considered is not enough to show reasoned analysis." *Texas v. Biden*, 10 F.4th 538, 555 (5th Cir. 2021).

Here, the IFR minimizes U.S. workers' reliance interests by stating that there is "no evidence" of a substantial population of U.S. workers that would accept agricultural work but for H-2A workers, and

that any such "reliance interest [in the prior methodology] is vitiated by the USDA's discontinuation of the FLS." 90 Fed. Reg. at 47928. Both arguments fail. The first response ignores the thousands of U.S. workers who currently do accept farmworker positions[17] and who, in light of the IFR, will experience dramatic reductions to what DOL concedes are already "low wages." *Id.* at 47948. The second response misunderstands the reliance interests. U.S. farmworkers were not just relying on a methodology that depended on FLS data; they relied on a methodology that, unlike the IFR, based AEWRs on actual market rates. By deliberately slashing AEWRs to sub-market levels, and thus depriving many U.S. farmworkers of key wage protections, the IFR will make it difficult for those farmworkers to cover necessary life expenses, including costs for health care, food, and housing.[18]

The IFR does not grapple with these reliance interests. It acknowledges that it will reduce U.S. farmworker wages, resulting in a wage transfer from "corresponding workers, not only H-2A workers," 90 Fed. Reg. at 47956, but it makes no attempt to quantify the impact on U.S. farmworkers, instead asserting that DOL "lacks sufficient information about the number of corresponding workers or their wage structures to measure these impacts." 90 Fed. Reg. at 47956. As this Court previously found under nearly identical circumstances, such a meager assessment of the IFR's effect on the key statutorily protected group—U.S. workers—is insufficient. *See UFW*, 509 F. Supp. 3d at 1244–45 (determining that the 2020 Rule's statement that DOL "does not have sufficient information about the number of workers in

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[17] When submitting H-2A job orders in 2024, employers estimated needing 91,895 U.S. workers in addition to the H-2A workers they requested. *See* IFR Comment Letter from CATA, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 14 (Dec. 1, 2025), https://perma.cc/U4J9-VS5K, attached hereto as Ex. 2.

[18] *See* IFR Comment Letter from State Attorneys Generals including Rob Bonta, California Attorney General, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 19 (Dec. 1, 2025), https://perma.cc/H99A-4RVH, attached hereto as Ex. 3; IFR Comment Letter from Migration That Works, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States (Dec. 1, 2025), https://perma.cc/VDR3-D9XP, attached hereto as Ex. 4 .

corresponding employment affected and their wage structure to reasonably measure the wage transfer to or from these workers" failed to adequately analyze harm to U.S. farmworkers). This failure to meaningfully analyze harms on U.S. workers renders the IFR arbitrary and capricious.[19] Plaintiffs are therefore likely to succeed on their APA arbitrary-and-capricious claim.

2. The IFR is procedurally defective.

The IFR is unlawful because it was issued without the required notice-and-comment process. The APA requires that, prior to promulgating rules, an agency must "give interested persons an opportunity to participate in the rule making through submission of" comments. *See* 5 U.S.C. § 553(b), (c). The notice-and-comment procedure can be bypassed if an agency, "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). "[T]he good cause exception goes only as far as its name implies: It authorizes departures from the APA's requirements only when compliance would interfere with the agency's ability to carry out its mission." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (alteration in original). "Good cause is to be narrowly construed and only reluctantly countenanced." *Id*. "[T]he good cause exception is usually invoked in emergencies, and an agency must overcome a high bar to do so." *Id*.

Here, DOL fails to overcome the high bar of showing that it had good cause for bypassing the notice-and-comment process. DOL relies on two arguments to try and show good cause. Neither has merit. First, DOL argues that increased enforcement of immigration law has created a "current and imminent labor shortage" since farms were relying on undocumented laborers. 90 Fed. Reg. at 47920. But it is unclear how drastically reducing AEWRs is necessary to cure any labor shortage. DOL fails to explain

[19] In fact, the Economic Policy Institute estimates that the IFR will result in annual wage losses of $2.7 billion for U.S. farmworkers. *See* Daniel Costa & Ben Zipperer, *Trump's New H-2A Wage Rule Will Radically Cut the Wages of All Farmworkers*, Econ. Pol'y Inst. (Nov. 26, 2025) https://perma.cc/SF4E-M7W5.

why farms could not simply hire more H-2A workers based on AEWRs that actually approximate relevant market rates.[20] Alternatively, those farms could also address any labor shortage by doing what employers generally do in that circumstance: increase wages in order to draw more U.S. workers. *See* 80 Fed. Reg. 62958, 62992 (Oct. 16, 2015) ("[A] basic principle of economic supply-and-demand theory is that in market economies, shortages signal that adjustments should be made to maintain equilibrium" and thus "compensation should rise to attract more workers where employers are experiencing a shortage of available workers").

Second, DOL also tries to justify bypassing notice-and-comment by referring to USDA's cessation of the FLS. 90 Fed. Reg. at 47926. But the FLS's discontinuance could, at most, justify an immediate regulation that selects a new data source (*i.e.*, the IFR provision selecting OEWS data as the new source for calculating AEWRs). The FLS's discontinuance, however, does not justify bypassing notice-and-comment for the other IFR provisions that DOL admits are "untethered from the continued use of annual FLS wage data," *id.* at 47920, including those creating an arbitrary two-tier system and imposing the housing deduction. DOL had to, but did not, utilize notice-and-comment before instituting those provisions. *See Am. Fed'n of Gov't Emp. v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981) ("[D]etailed regulations which respond . . . to much more than the exigencies of the moment must be promulgated through public procedures before they are chiseled into bureaucratic stone."). Those provisions are thus unlawful. Plaintiffs are therefore likely to succeed on their APA notice-and-comment claim.

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[20] Further, DOL provides no evidence at all that a material decline in the use of unauthorized farmworkers has occurred or will occur. 90 Fed. Reg. at 47921. The IFR states that there has been a "near total cessation of illegal inflow" of immigrants, *id.* at 47921, but, according to the NAWS survey relied upon throughout the IFR, the vast majority of farmworkers (excluding H-2A workers) are not recent immigrants: only 5% of *foreign-born* farmworkers had arrived into the United States within the last year. NAWS, at 1. The IFR further relies on an academic model of a "hypothetical decision to heighten immigration enforcement actions," but this model of hypothetical actions is not evidence of a present labor shortage. 90 Fed. Reg. at 47922.

B. The IFR will irreparably harm Plaintiffs, and the balance of the equities favors issuing emergency relief.

The IFR's express purpose is to reduce farmworker wages by reducing the AEWR,[21] which in turn will cause significant and irreparable harms. *See* Decl. of Irene Mendoza, ¶¶ 11–12 (describing how wage cuts will make the health care that she needs to prevent heart failure and subsequent death unaffordable); Decl. of Claudia Garcia, ¶ 10 (IFR wage cuts caused will limit Ms. Garcia's ability to pay for food and educational expenses); Decl. of Fortino Lopez, ¶ 8 (IFR wage cuts may prevent Mr. Lopez from purchasing adequate food and health care for his family); Decl. of Crisanto Serrano, ¶ 11; Decl. of Jose Cruz, ¶ 8; Decl. of Aaron Grimaldo, ¶ 10. Importantly, this Court has previously noted that "[t]he irreparable nature of [these] injur[ies] is heightened by [farmworkers'] fragile socioeconomic position." *UFW*, 509 F. Supp. 3d at 1249.

Additionally, the wage cuts occasioned by lower AEWRs may force the individual Plaintiffs to look for employment in other sectors. As this court has acknowledged, lowering the costs of H-2A labor will incentivize employers to rely more on the H-2A workers and less on U.S. farmworkers, many of whom simply could not afford to work for wages based on sub-market AEWRs. *See UFW*, 509 F. Supp. 3d at 1249. And the Ninth Circuit has held that loss of a job opportunity constitutes irreparable harm that cannot be remedied by damages. *See Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (holding that plaintiffs' "diminished [] opportunity to pursue [their] chosen professions" because they were unable to "remain[] in good jobs where they faced possible promotion" and "prevented [] from

[21] 90 Fed. Reg. at 47922–23 ("[T]he Department anticipates negative impacts for certain populations associated with this regulation."); *id.* at 47956 ("The decrease (or increase) in the AEWRs also represents a wage transfer from corresponding workers, not only H-2A workers."); *id.* at 47952 ("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.").

applying for desirable entry-level jobs" constituted irreparable harm). The IFR will thus inflict irreparable harms on Plaintiffs.

Moreover, the balance of the equities favors emergency relief here. For one, "[t]here is generally no public interest in the perpetuation of unlawful agency action" and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *Washington v. DeVos*, 481 F. Supp. 3d 1184, 1197 (W.D. Wash. 2020). Further, the IFR offers no evidence-backed justification for its methodological changes that would outweigh the harms inflicted on vulnerable U.S. farmworkers. For example, the IFR claims that it spares growers from increased labor costs due to increased immigration enforcement. *See* 90 Fed. Reg. at 47921. But that is not a legitimate interest that should discourage emergency relief here. Growers should be paying the market rate for farmworkers, not the rate they illegally paid to undocumented workers. *See United States v. Rare Breed Triggers, LLC*, 690 F. Supp. 3d 51, 121 (E.D.N.Y. 2023) ("[A]ny harm appears to stem from defendants' own wrongful conduct" and in "such circumstances, the Court cannot say the harm to defendants outweighs the harm to plaintiffs."); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1170 (9th Cir. 2002) (describing the hiring of undocumented workers by growers as "[a] scheme [] to gain an illegal commercial advantage" that hurt American farmworkers). And the IFR offers no evidence indicating that U.S. agricultural employers, as a general matter, cannot afford to pay farmworkers an appropriate, market-based rate. Thus, the balance of equities and public interest weigh in favor of preliminary relief.

C. Remedy

The Court should stay the IFR under 5 U.S.C. § 705 and issue a universal preliminary injunction against the IFR. The Court must also order DOL to then promptly generate AEWRs pursuant to a lawful methodology.

1. *Plaintiffs are entitled to a stay under 5 U.S.C. § 705.*

If Plaintiffs satisfy the preliminary injunction factors, this Court may issue a "§ 705 Stay [that] pauses the" implementation of the IFR "during the pendency of this litigation in a manner similar to a preliminary injunction." *Immigrant Defs. L. Ctr. v. Noem*, 145 F. 4th 972, 983 (9th Cir. 2025). A §705 stay would functionally "set aside" (*i.e.*, vacate) the rule on a temporary basis. *See Trump v. CASA, Inc.*, 606 U.S. 831, 869 (2025) (Kavanaugh, J., concurring) ("To be sure, in the wake of the Court's decision . . . in cases under the Administrative Procedure Act, plaintiffs may [still] ask a court to preliminarily 'set aside' a new agency rule.").

2. *Plaintiffs are entitled to a universal preliminary injunction against the IFR.*

The Court should also preliminarily enjoin implementation of the IFR in full. A universal injunction is appropriate if it is necessary to provide the plaintiffs with complete relief. *See Trump*, 606 U.S. at 851–52 (successful plaintiffs are entitled to injunctions that provide them with full relief, and those "party-specific injunctions" may potentially "advantag[e] nonparties"). Here, a universal injunction is necessary to provide Plaintiffs with complete relief. First, UFW has members in most States. *See* Decl. of Teresa Romero, President of UFW, ¶ 5. Second, many individual Plaintiffs have traveled, and are willing to again travel, to different States for work. Thus to provide them with complete relief, the injunction would have to prevent the IFR from depressing wages for positions across the country that Plaintiffs would potentially pursue. Third, there is no practical way to craft a party-specific injunction. The individual Plaintiffs' injuries here stem from the broader market effects of lower AEWRs. Specifically, lower AEWRs will generally enable U.S. employers to fulfill their labor needs at lower wages, which will incentivize use of the H-2A program to the detriment of U.S. workers and will bring down market rates for positions across the country. Only a categorical injunction can prevent that impact.

In fact, an attempt to craft a narrower injunction would be impractical. For example, an injunction that only bars enforcement of the IFR in the markets where Plaintiffs reside would place those markets at

a significant disadvantage. Those markets would be subject to labor costs higher than every other market in the United States, making it difficult for employers in those affected markets to compete and thus potentially precluding them from hiring any farmworkers. Accordingly, any injunction against the IFR must and should apply universally. *City of Columbus v. Kennedy*, 796 F. Supp. 3d 123, 176 (D. Md. 2025) ("The complicated interplay between the ACA and numerous market actors would make it exceedingly difficult if the challenged provisions went into effect for some of the population served by. [sic] the Exchange but were stayed as to others.").

3. *Any relief must require DOL to promptly begin calculating AEWRs pursuant to a lawful methodology.*

A stay of, or injunction against, the IFR would require DOL to generate AEWRs pursuant to a different methodology. Given that the FLS has been discontinued, Plaintiffs acknowledge that DOL may not be able to revert to the 2010 Rule which governed AEWR calculations immediately prior to the IFR. To the extent DOL cannot promptly institute a new, permanent methodology, it must adopt an interim methodology for calculating lawful AEWRs pending its issuance of a more permanent methodology. *See Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015) ("[T]he district court has broad discretion in fashioning a remedy."). For example, DOL can revert to the FLS-based AEWRs in place immediately prior to the IFR and apply an upward adjustment that accounts for the degree to which the AEWRs likely would have increased if the FLS had not been discontinued, which this Court ordered DOL to do when it enjoined the 2020 Rule. Whichever route DOL selects, its new methodology—permanent or interim—must generate AEWRs that will actually approximate the wages that U.S. farmworkers in the relevant markets would have received absent the H-2A program. *See supra* at p. 4.

CONCLUSION

The Court should grant Plaintiffs' Motion for a Section 705 Stay and Preliminary Injunction. A Proposed Order is attached.

DATED: December 22, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF TERESA ROMERO

DECLARATION OF TERESA ROMERO

I, Teresa Romero, declare as follows:

1. I am the President of the United Farm Workers ("UFW").
2. The UFW represents thousands of farmworkers across the country and is dedicated to improving wages, working conditions, and economic stability for agricultural workers.
3. UFW has thousands of farmworker members in California, Oregon, Washington, and New York who are employed under collective bargaining agreements, and many of whom spend part of each year working for employers that do not have a collective bargaining agreement.
4. UFW also has direct members who pay membership dues but do not work under a collective bargaining agreement in California, Arizona, Oregon, Washington, and New York.
5. In the majority of the states, UFW also has non-dues paying members. The UFW created and maintains active farm worker specific social media groups that tens of thousands of farm workers

choose to enroll in to receive information and interact with other farm workers. Farm worker participants in these groups consistently request agricultural job opportunities in states outside of where they are living.

6. Because the UFW has members and engages with farm workers in the majority of the states, a stay or a preliminary injunction that is not universal would result in the Interim Final Rule and its wage cuts harming UFW members in states where the stay or injunction does not apply. This would destabilize the incomes of UFW members, making it more difficult, if not impossible, for them to afford food, rent, healthcare, and other basic needs for subsistence. It would also divert significant staff time and resources from the UFW in order to respond to its members' urgent needs and interfere with our core mission.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 21, 2025, in Keene, California.

/s/ 

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF AARON GRIMALDO

DECLARATION OF AARON GRIMALDO

I, Aaron Grimaldo, declare as follows:

1. I am a U.S. citizen and have worked as a farmworker for 12 years.
2. I have worked in picking potatoes and tractor driving, transporting produce from the field to warehouses for the last four years.
3. I have generally worked over 10-12 hours a day, often in cold, 25-30 degrees Fahrenheit weather.
4. I currently live and work in Weslaco, Texas but have also traveled to (and temporarily resided in) Wisconsin, Minnesota, Michigan, and Texas for farmworker positions. One employer provided housing but another did not in Michigan. My employer in Wisconsin and Minnesota provided housing. When I traveled to Michigan for work, I was still paying for my housing in my residence in Texas.

5. My last employer, in Michigan, promised me an hourly wage of $20 but only gave me $17.50. This employer didn't keep his word about providing housing and reduced by hourly wage by charging me for transportation from where I was staying to the workplace.

6. Under the Interim Final Rule ("IFR"), the Adverse Effect Wage Rate ("AEWR") applicable to my last job would have been $13.78, which is a cut of 21.2% to the wage that I last received, a 31.1% cut of what my last employer offered me, and a cut of 24% to the AEWR.

7. I anticipate continuing to seek employment as a farmworker, and I have been, and will continue to be, willing to travel to different States for work, including in Wisconsin, Minnesota, and Michigan.

8. I have worked with H-2A workers and have held positions that often are filled by H-2A workers. In the future, I anticipate seeking positions that could likewise potentially be filled by H-2A workers like tractor driver positions.

9. I anticipate continuing to seek positions where I would be a tractor driver and picker. Prior to the IFR,[1] the AEWR applicable to those roles would have been $18.15, but under the IFR, the AEWRs would be $13.78.

10. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts will negatively impact my ability to pay for food, housing, and transportation in several of the states where I would potentially work. Those wage cuts would also impact my ability to cover living expenses and expenses related to health care and my children's education. Wage cuts would limit my ability to afford food and housing, including cutting down in weekly groceries for me and my family and forcing us to move. The resulting

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

harms to my family's health and safety cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2025, in Weslaco, Texas.

/s/ Aaron Grimaldo

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF JOSE CRUZ

DECLARATION OF JOSE CRUZ

I, Jose Cruz, declare as follows:

1. I am a lawful permanent resident and have worked as a farmworker for 26 years.
2. I have worked in wine grapes for the last 26 years.
3. I have generally worked eight hours a day, often in challenging weather. During the summer, the heat becomes unbearable because we work in the middle of the vineyards where the branches and leaves block air flow. The lack of air flow makes the temperature inside of the field feel 10 to 15 degrees hotter than the actual weather, which can feel suffocating. Duties like cleaning the grapevines are especially challenging, since it requires us to hunch over or kneel for long periods of time. In the fall, strong winds, rain, and dropping temperatures make the work increasingly difficult. With the winds in particular, the strong winds lift the dirt into the air, making it hard to

breathe due to the amount of dust we inhale. Winter conditions present additional dangers, including poor visibility of potholes, loose vines, and branches on the ground, which increase the risk of slipping or falling. During this season, we also prune wine grapes using air-powered tools connected to hoses with scissor-like attachments, working in a line of 10-12 other workers while keeping pace with a moving tractor. In icy and windy conditions, the hoses often get caught in the vines, creating delays, increasing the risk of falls, and at times requiring us to stop or replace broken tools.

4. I currently live and work in Sunnyside, Washington.

5. My last hourly wage was $20.93 in Washington. This was for the role of a Chemical Sprayer/Tractor Driver, where the Adverse Effect Wage Rate (AEWR) was $19.82.

6. Under the IFR, the AEWR applicable to my last job would have been $16.53, which is a cut of 16.6% to the AEWR and a cut of 21.02% of what I last received.

7. I anticipate continuing to seek positions where I would operate machinery, drive tractors. Prior to the Interim Final Rule ("IFR"),[1] the AEWR applicable to those roles would have been $19.82, but under the IFR, the AEWRs would be $16.53.

8. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts will negatively impact my ability to pay for food, housing, and transportation. At $20.93 an hour, it is already hard enough to pay for food. With the wage cuts, it would make it even more difficult to meet our basic needs, forcing me to significantly reduce essential expenses. Currently, I spend $400 on groceries every two weeks for my family of three. However, I would have to reduce that amount by $200 and limit our food to only the most necessary such as eggs, beans, milk, and vegetables. Paying rent would also become increasingly

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

difficult. I was paying $1,100 each month for the home where we lived, but out of economic need, we had to move in with my father, where I help with the rent and bills for that house. Covering the costs for gas would be a challenge and would require choosing between bills. Overall, I would be forced to live with only the bare minimum, prioritizing only what is necessary to survive and eliminate nonessential expenses like outings or trips. The resulting harms to my family's health and safety cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2025, in Sunnyside, Washington.

/s/ Jose Cruz

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF FORTINO LOPEZ

DECLARATION OF FORTINO LOPEZ

I, Fortino Lopez, declare as follows:

1. I am a U.S. citizen and have worked as a farmworker for 40 years.
2. I have worked in wine grapes for the last 20 years. In total, I have worked in agriculture for 40 years picking apples, asparagus, cherries, hops, pears, and grapes.
3. I have generally worked 8 hours a day, often in the rain, extreme winds, snow, and extreme heat. When it rains it is difficult to see because the downpour mixes with dirt on my safety glasses and blurs my vision. In strong winds, driving my tractor is challenging, especially when transporting 10-12 workers who prune the wine grapes using hoses attached to the tractor with scissor-like tools. In these conditions, both the workers and I often get caught in the grape plants. Working in the snow leaves us cold and soaked. By the end of the day, my body and feet ache. In extreme heat, our clothes become drenched with sweat, our skin burns, and we must cover ourselves with

long sleeves, jeans, and bandanas to cover our faces. Many workers have suffered from heat illness, sometimes to the point of fainting.

4. I currently live and work in Sunnyside, Washington.

5. My last hourly wage was $20.90 in Washington. This was for the role of a Tractor Driver, where the Adverse Effect Wage Rate (AEWR) was $19.82.

6. Under the IFR, the AEWR applicable to my last job would have been $16.53, which is a cut of 16.6% to the AEWR and a cut of 20.9% of what I last received.

7. I anticipate continuing to seek positions where I would be a tractor driver in agriculture or driving a forklift at fruit/vegetable factories. Prior to the Interim Final Rule ("IFR"),[1] the AEWR applicable to those roles would have been $19.82, but under the IFR, the AEWRs would be $16.53.

8. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts will negatively impact my ability to pay for food, housing, and transportation. They would also make it difficult to cover living expenses and expenses relating to health care and my children's education. Currently, I spend $200 per week on food, but if my wages are cut, I would be forced to reduce that to $50 a week and purchase only necessities such as rice, beans, milk, and limited fresh produce. It would not be sufficient to feed my family. My wife has lived with Type 2 diabetes for more than 15 years, and our family depends on having reliable health insurance to ensure she can properly manage her condition. She must take daily medication to control her diabetes. With insurance, we approximately pay $30 per month for her medication. Without coverage, the cost would increase to about $300 per month, which would be unaffordable for our family, especially with wage cuts. My 20-year-old daughter attends Lewis-

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

Clark College in Lewiston, Idaho and because we live in Washington state, her education requires out-of-state tuition. I currently pay $1,500 every semester for her tuition and books. But a wage cut would make it impossible to continue covering those costs or to assist her with car payments, gas, food, or unexpected emergencies. The resulting harm to my family's health and safety cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2025, in Sunnyside, Washington.

/s/ Fortino Lopez

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF CRISANTO SERRANO

DECLARATION OF CRISANTO SERRANO

I, Crisanto Serrano, declare as follows:

1. I am a U.S. citizen and have worked as a farmworker for 45 years.
2. I have worked picking potatoes and transporting produce from the field to warehouses for the last four years. In addition, I have worked in fruit-packing factories, operated forklifts in cherry and mushroom facilities, performed construction, and driven a combine in the hop fields.
3. I have generally worked 8 hours a day, often in inclement weather while working in the hops. In cold conditions, my hands freeze and I experience asthma attacks that force me to stop working to catch my breath. In the summer, I also suffer asthma attacks. However, because during the summer I operate a combine in the hop fields, stopping due to an asthma attack can be dangerous. If I were to accidentally hit a lever or move the steering wheel during an attack it would continue driving without my control. Even routine tasks, such as pulling the hoses through

the hop fields require significant physical force to cut the plants and remove hoses, this exertion often triggers additional asthma attacks.

4. I currently live and work in Sunnyside, Washington.

5. My last hourly wage was $20 in Washington. This was for the role of a Machine Operator, where the Adverse Effect Wage Rate (AEWR) was $19.82.

6. Under the IFR, the AEWR applicable to my last job would have been $16.53, which is a cut of 16.6% to the AEWR and a cut of 17.35% of what I last received.

7. I anticipate continuing to seek employment as a farmworker.

8. I have worked alongside H-2A workers and have held positions that often are filled by H-2A workers. In the future, I anticipate seeking positions that could likewise potentially be filled by H-2A workers, such as driving combines, operating machinery, driving small semi-trucks, and driving tractors.

9. I anticipate continuing to seek positions where I would operate machinery and driving tractors. Prior to the Interim Final Rule ("IFR"),[1] the AEWR applicable to those roles would have been $19.82, but under the IFR, the AEWRs would be $16.53.

10. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts will negatively impact my ability to pay for food, housing, and transportation. Those wage cuts would also impact my ability to cover living expenses and expenses relating to health care. As a farmworker, I do not have health insurance and cannot afford routine medical care. Instead, when I experience a severe asthma attack, I am forced to seek emergency treatment at the hospital, where I require a respirator to help me breathe, along with injections, IV fluids, and medicine to control the attack. These asthma attacks occur at least

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

twice a year, and each emergency visit costs approximately $4,000. As a result, I have $18,000 in medical debt, with no realistic way to pay the debt.

11. To manage my asthma on a daily basis, I must purchase my medication Salmeterol for $150 every 3 months and an asthma inhaler for $110 each month. At times, especially during the winter, the inhaler does not last the entire month because I need to use it frequently, sometimes requiring me to purchase two inhalers in the same month. My medication is essential to my survival. With the wage cuts, I would be forced to choose between paying for my medication and buying groceries. Currently, I spend approximately $300 on food and gas, and nearly the rest of my income goes toward covering my medical needs. The resulting harms to my health and safety cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2025, in Sunnyside, Washington.

/s/ Crisanto Serrano

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF CLAUDIA GARCIA

DECLARATION OF CLAUDIA GARCIA

I, Claudia Garcia, declare as follows:

1. I am a U.S. citizen and have worked as a farmworker for 25 years.
2. I have worked in picking and packing lettuce for the last 25 years.
3. I have generally worked over 7-8 hours a day, often in extremely challenging conditions in extreme weather, rains, cold, doing repetitive motions that strains my knees, hands, waist, and wrists.
4. I currently live and work in Salinas, California.
5. My last hourly wage was $19.97 in California. This was for the role of a packager, where the Adverse Effect Wage Rate (AEWR) was $19.97.
6. Under the Interim Final Rule ("IFR"), the AEWR applicable to my last job would have been $16.45, representing a cut of 17.6%.

7. I anticipate continuing to seek employment as a farmworker.

8. My employer hires H-2A workers and I have held positions that often are filled by H-2A workers working in the same fields as me. In the future, I anticipate seeking positions that could likewise potentially be filled by H-2A workers, such as a packager or picker.

9. I anticipate continuing to seek positions where I would be a packager and picker. Prior to the IFR,[1] the AEWR applicable to those roles would have been $19.97, but under the IFR, the AEWR would be $16.45.

10. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts would make me unable to afford my rent and force me to cut expenses for food, bills, and other expenses. It would affect everything. I currently pay for the college education of my daughter, who is a freshman studying medicine. The wage cuts would make me unable to afford this, causing her to be unable to continue her studies. I would be unable to support my family. The resulting harms to my family's ability to have housing and food and for my daughter to pursue her education cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 18, 2025, in Salinas, California.

/s/ Claudia Garcia

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants

Civil Case No.: 1:25-cv-01614-KES-SKO

DECLARATION OF IRENE MENDOZA

DECLARATION OF IRENE MENDOZA

I, Irene Mendoza, declare as follows:

1. I am a U.S. citizen and have worked as a farmworker for four years.
2. I have worked in packing, sorting, and picking green beans and potatoes for the last four years.
3. I have generally worked around 11-14 hours a day, often for many hours without breaks. In my experience, it is common for me and other similar farmworkers to work more than 40 hours per week.
4. My work is physically difficult. For example, a typical job I have done requires lifting heavy sacks of potatoes of 50 pounds, during early hours and until late at night. As part of my work, I have worked in cold storage warehouses where the weather was 30 degrees Fahrenheit for long hours, and have used chemicals to clean machines that are irritating to the skin and have caused chemical burns in my cornea.

5. I currently live and work in Weslaco, Texas but have also traveled to (and temporarily resided in) Wisconsin, Minnesota, Michigan, and Texas for farmworker positions.

6. My last promised hourly wage was $20 in Michigan, though I was ultimately paid only $17 per hour after my employer argued that they provided transportation and therefore that was reduced from my hourly salary, but they never told me that until the day before I received my paycheck, after six days of working.

7. Under the Interim Final Rule ("IFR")[1], the AEWR applicable to my last job would have been $13.78, representing a cut of 18.9% to the wage that I last received, representing a 31.1% cut of what my last employer offered me, and representing a cut of 24% to the AEWR.

8. I anticipate continuing to seek employment as a farmworker, and I have been, and will continue to be, willing to travel to different States for work, including Wisconsin, Minnesota, Michigan, Washington, Oregon, and Montana.

9. I have worked alongside H-2A workers and have held positions that often are filled by H-2A workers. In the future, I anticipate seeking positions that could likewise potentially be filled by H-2A workers, such as pickers.

10. I anticipate continuing to seek positions where I would be a picker. Prior to the IFR,[2] the AEWR applicable to those roles would have been $18.15, but under the IFR, the AEWR would be $13.78 in Michigan.

11. The anticipated cuts to my wages due to the IFR will substantially and irreparably harm me and my family. Those wage cuts will negatively impact my ability to pay for food; housing; transportation; and healthcare, home, vehicle, and life insurance in several of the states where I

[1] 90 Fed. Reg. 47914 (Oct. 2, 2025).

[2] *Id.*

would potentially work. Those wage cuts would also impact my ability to cover living expenses and expenses relating to health care and my children's education. I would have to choose to pay for some of these expenses and not pay for other expenses because I simply would not have enough. My quality of life would be impacted by my inability to pay for healthcare costs. For healthcare insurance, I pay $54 a month for general coverage and $25 for heart-related insurance. I have a heart condition that requires me to take two medications to address heart failure, metoprolol and ivabradine, that are both filled monthly and that I have to take twice a day. One of them is $600 without insurance and the other one is in the thousands but with healthcare insurance, I pay $100 for each.

12. I also use a Continuous Positive Airway Pressure (CPAP) machine to help me breathe at night, because, without it, my brain would be unable to connect with my heart. It would cost $3,000 but I bought it for $200 with insurance. My doctor recommends that the masks for the CPAP machine be changed every 3-6 months, with each change costing $150 without insurance. Insurance covers the change of masks annually. This means that in order to follow my doctor's recommendation, I need to pay $150, 2-3 times per year in order to maintain my breathing and life at night. I also need an inhaler throughout the day, which costs $200 a month. While it varies, this month I have three procedures and one surgery coming up. I have an upcoming heart surgery that would be $15,000 without insurance; an upcoming biopsy that would be $350 without insurance; an upcoming colonoscopy; and for these procedures, anesthesia would cost $1,000 without insurance. Any wage cuts would prevent my ability to afford my healthcare insurance, which would impact my non-temporary, life-time need for healthcare and my actual life.

13. In addition to the expenses for my healthcare insurance, deductibles, and co-pays, I also have expenses for my child's healthcare insurance and for their school expenses, such as school

supplies and uniforms. All of this would be impacted by wage cuts. The resulting harms to the health and safety of me and my family cannot be remedied by an injunction against the IFR that comes only on a final judgment entered many months from now.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 12, 2025, in Weslaco, Texas.

/s/ Irene Mendoza

Exhibit 1

OMB Approval: 1205-0502
Expiration Date: 10/31/2025

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

A. Job Offer Information

1. Job Title * Packers and Packagers, Hand

2. Workers Needed *	a. Total	b. H-2A Workers	Period of Intended Employment	
	1	1	3. First Date * 12/24/2025	4. Last Date * 3/1/2026

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. ☐ Yes ☑ No

6. Anticipated days and hours of work per week *(an entry is required for each box below)* *

66	**a. Total Hours**	10	c. Monday	10	e. Wednesday	10	g. Friday
8	b. Sunday	10	d. Tuesday	10	f. Thursday	8	h. Saturday

7. Hourly Work Schedule *
a. 7 : 00 ☑ AM ☐ PM
b. 6 : 00 ☐ AM ☑ 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.)

AEWR; US Workers: IN: $14.93; H2A Workers: IN: $13.66.
Examine containers, treatment materials, and products to ensure that crop quality and packing specifications are met; Record product, packaging, and order information on specified forms and records; Seal bags; Mark and label containers, container tags, or products, using marking tools; Remove completed or defective products or materials, placing them on moving equipment, such as conveyors, or in specified areas, such as loading docks; Place or pour products or materials such as seed treatment into containers from spouts or chutes; Ensure sufficient mixing for complete seed coverage; Load materials and products into package processing equipment. Deliveries and maintenance on building and equipment. Must speak and understand English.

8b. Wage Offer *	8c. Per *	8d. Piece Rate Offer §	8e. Piece Rate Units / Estimated Hourly Rate / Special Pay Information §
$ 14.93	☑ HOUR ☐ MONTH	$ ____.__	

9. Is a completed **Addendum A** providing additional information on the crops or agricultural activities to be performed and wage offers attached to this job offer? * ☐ Yes ☑ N/A

10. Frequency of Pay: * ☑ Weekly ☐ Biweekly ☐ Other (specify): N/A

11. State all deduction(s) from pay and, if known, the amount(s). *
(Please begin response on this form and use Addendum C if additional space is needed.)
See ADD C

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

B. Minimum Job Qualifications/Requirements

1. Education: minimum U.S. diploma/degree required. *
☑ None ☐ High School/GED ☐ Associate's ☐ Bachelor's ☐ Master's or higher ☐ Other degree (JD, MD, etc.)

2. Work Experience: number of months required. *	1	3. Training: number of months required. *	0

4. Basic Job Requirements (check all that apply) §

- ☑ a. Certification/license requirements
- ☑ b. Driver requirements
- ☐ c. Criminal background check
- ☑ d. Drug screen
- ☑ e. Lifting requirement 50 lbs.
- ☑ f. Exposure to extreme temperatures
- ☑ g. Extensive pushing or pulling
- ☑ h. Extensive sitting or walking
- ☑ i. Frequent stooping or bending over
- ☑ j. Repetitive movements

5a. Supervision: does this position supervise the work of other employees? *	☐ Yes ☑ No	5b. If "Yes" to question 5a, enter the number of employees worker will supervise. §	

6. Additional Information Regarding Job Qualifications/Requirements. *
*(Please begin response on this form and use Addendum C if additional space is needed. If no additional skills or requirements, enter "**NONE**" below)*

One (1) month recent and verifiable experience required for the job duties listed. Must be able to obtain following hire appropriate CDL and obtain clean driving record to drive trucks. Be able to lift up to 50 lbs. Once hired, worker may be required to take a random drug test at no cost to the worker. Testing positive for an illegal/controlled substance or failure to comply may result in immediate termination from employment.

C. Place of Employment Information

1. Place of Employment Address/Location *
9900 West Maple

2. City *	3. State *	4. Postal Code *	5. County *
Orland	Indiana	46776	Steuben County

6. Additional Place of Employment Information. *(If no additional information, enter "**NONE**" below)* *
None

7. Is a completed **Addendum B** providing additional information on the places of employment and/or agricultural businesses who will employ workers, or to whom the employer will be providing workers, attached to this job order? * ☑ Yes ☐ N/A

D. Housing Information

1. Housing Address/Location *
6825 N 375 E

2. City *	3. State *	4. Postal Code *	5. County *
Howe	Indiana	46746	Lagrange County

6. Type of Housing *(check only one)* *	7. Total Units *	8. Total Occupancy *
☑ Employer-provided (including mobile or range) ☐ Rental or public	1	4

9. Identify the entity that determined the housing met all applicable standards: *
☐ Local authority ☑ SWA ☐ Other State authority ☐ Federal authority ☐ Other (specify): _____

10. Additional Housing Information. *(If no additional information, enter "**NONE**" below)* *
None

11. Is a completed **Addendum B** providing additional information on housing that will be provided to workers attached to this job order? * ☐ Yes ☑ N/A

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

E. Provision of Meals

1. Describe how the employer will provide each worker with three meals per day or furnish free and convenient cooking and kitchen facilities. *
(Please begin response on this form and use Addendum C if additional space is needed.)

Employer will furnish free and convenient cooking and kitchen facilities, all of which are in working order, including refrigeration, space for food preparation, cooking accessories and utensils, appliances, and dishwashing facilities so that workers may prepare their own meals. Kitchen facilities include adequate sinks with hot and cold water under pressure. Employer will provide transportation once a week to assure workers access to stores where they can purchase groceries, when the employer is providing cooking and kitchen facilities.

2. The employer: *	☑ **WILL NOT** charge workers for meals.		
	☐ **WILL** charge each worker for meals at	$ _____ . ____	per day, if meals are provided.

F. Transportation and Daily Subsistence

1. Describe the terms and arrangements for daily transportation the employer will provide to workers. *
(Please begin response on this form and use Addendum C if additional space is needed.)

See ADD C

2. Describe the terms and arrangements for providing workers with transportation (a) to the place of employment (*i.e.*, inbound) and (b) from the place of employment (*i.e.*, outbound). *
(Please begin response on this form and use Addendum C if additional space is needed.)

See ADD C

3. During the travel described in Item 2, the employer will pay for or reimburse daily meals by providing each worker *	a. no less than	$ 16 . 28	per day *
	b. no more than	$ 68 . 00	per day with receipts

G. Referral and Hiring Instructions

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

1. Explain how prospective applicants may be considered for employment under this job order, including verifiable contact information for the employer (or the employer's authorized hiring representative), methods of contact, and the days and hours applicants will be considered for the job opportunity. *
(Please begin response on this form and use Addendum C if additional space is needed.)

Please contact the employer point of contact listed on Form ETA-790 Section II. Box 4. at the phone number found at Section G Box 2. Potential U.S. workers (referrals) will be accepted from the local Job Service Office, through word-of-mouth, gate hires (walk-up workers), and other sources. All applicants should be thoroughly familiarized with the job specifications and terms and conditions of employment on the job order. Only workers meeting all qualifications of the job order should be referred by the Job Service Office. In the event the employer receives phone calls or walk-up workers interested in the job offer, the employer must inform the worker of the job requirements and duties, must consider the worker for the job based on the workers qualifications, and must report the results in the final recruitment report submitted to the U.S. Department of Labor. The employer may utilize various delivery methods for contact through mail, email, phone, website, and in the event that any delivery method is not functioning and you've utilized all contact methods, please contact the State Workforce Agency (SWA) for further assistance. The best day/time to contact the employer is Monday-Friday 9:00 a.m. to 4:00 p.m.

2. Telephone Number to Apply *	3. Extension §	4. Email Address to Apply *
+1 (580) 744-4031	1364	N/A

5. Website Address (URL) to Apply *
https://agriplacements.clevyr.com/llt-group/jobs/8432

H. Additional Material Terms and Conditions of the Job Offer

1. Is a completed **Addendum C** providing additional information about the material terms, conditions, and benefits (monetary and non-monetary) that will be provided by the employer attached to this job order? *	☑ Yes ☐ No

I. Conditions of Employment and Assurances for H-2A Agricultural Clearance Orders

By virtue of my signature below, I **HEREBY CERTIFY** my knowledge of and compliance with applicable Federal, State, and local employment-related laws and regulations, including employment-related health and safety laws, and certify the following conditions of employment:

1. **JOB OPPORTUNITY**: Employer assures that the job opportunity identified in this clearance order (hereinafter also referred to as the "job order") is a full-time temporary position being placed with the SWA in connection with an *H-2A Application for Temporary Employment Certification* for H-2A workers and this clearance order satisfies the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655, subpart B. This job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR part 655, subpart B. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship.

2. **NO STRIKE, LOCKOUT, OR WORK STOPPAGE**: Employer assures that this job opportunity, including all places of employment for which the employer is requesting temporary agricultural labor certification does not currently have workers on strike or being locked out in the course of a labor dispute. 20 CFR 655.135(b).

3. **HOUSING FOR WORKERS**: Employer agrees to provide or secure housing for the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence at the end of the work day. That housing complies with the applicable local, State, and/or Federal standards and is sufficient to house the specified number of workers requested through the clearance system. The employer will provide the housing without charge to the worker. Any charges for rental housing will be paid directly by the employer to the owner or operator of the housing. If public accommodations or public housing are provided to workers, the employer agrees to pay all housing-related charges directly to the housing's management. The employer agrees that charges in the form of deposits for bedding or other similar incidentals related to housing (e.g., utilities) must not be levied upon workers. However, the employer may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation. When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, the employer agrees to provide family housing at no cost to workers with families who request it. 20 CFR 655.122(d), 653.501(c)(3)(vi).

   Request for Conditional Access to Intrastate or Interstate Clearance System: Employer assures that the housing disclosed on this clearance order will be in full compliance with all applicable local, State, and/or Federal standards at least 20 calendar days before the housing is to be occupied. 20 CFR 653.502(a)(3). The Certifying Officer will not certify the application until the employer provides evidence that housing has been inspected and approved or, in the case of rental or public accommodations, is otherwise in full compliance.

4. **WORKERS' COMPENSATION COVERAGE**: Employer agrees to provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer agrees to provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment. 20 CFR 655.122(e).

5. **EMPLOYER-PROVIDED TOOLS AND EQUIPMENT**: Employer agrees to provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. 20 CFR 655.122(f), .210(d), or .302(c).

6. **MEALS**: Employer agrees to provide each worker with three meals a day or furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer will state the charge, if any, to the worker for such meals. The amount of meal charges is governed by 20 CFR 655.173. 20 CFR 655.122(g). When a charge or deduction for the cost of meals would bring the worker's wage below the minimum wage set by the FLSA at 29 U.S.C. 206, the charge or deduction must meet the requirements of 29 U.S.C. 203(m) of the FLSA, including the recordkeeping requirements found at 29 CFR 516.27.

   For workers engaged in the herding or production of livestock on the range, the employer agrees to provide each worker, without charge or deposit charge, (1) either three sufficient meals a day, or free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals. To be sufficient or adequate, the meals or food provided must include a daily source of protein, vitamins, and minerals; and (2) adequate potable water, or water that can be easily rendered potable and the means to do so. 20 CFR 655.210(e).

7. **TRANSPORTATION AND DAILY SUBSISTENCE**: Employer agrees to provide the following transportation and daily subsistence benefits to eligible workers.

   A. *Transportation to Place of Employment (Inbound*)

   If the worker completes 50 percent of the work contract period, and the employer did not directly provide such transportation or subsistence or otherwise has not yet paid the worker for such transportation or subsistence costs, the employer agrees to reimburse the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker came to work for the employer to the employer's place of employment, whether in the U.S. or abroad. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount the employer will pay for daily subsistence expenses are those amounts disclosed in this clearance order, which are at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event will be less than the amount permitted under 20 CFR 655.173(a). The employer understands that the Fair Labor Standards Act applies independently of the H-2A requirements and imposes obligations on employers regarding payment of wages. 20 CFR 655.122(h)(1).

   B. Transportation from Place of Employment (Outbound)

   If the worker completes the work contract period, or is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer agrees to provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. Return transportation will not be provided to workers who voluntarily abandon employment before the end of the work contract period, or who are terminated for cause, if the employer follows the notification requirements in 20 CFR 655.122(n).

   If the worker has contracted with a subsequent employer who has not agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the employer must provide for such expenses. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the subsequent employer must provide or pay for such expenses.

   The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the employer's obligation to hire U.S. workers who apply or are referred after the employer's date of need during the recruitment period set out in 20 CFR 655.135(d). 20 CFR 655.122(h)(2).

   C. Daily Transportation

   Employer agrees to provide transportation between housing provided or secured by the employer and the employer's place(s) of employment at no cost to the worker. 20 CFR 655.122(h)(3).

   D. Compliance with Transportation Standards

   Employer assures that all employer-provided transportation will comply with all applicable Federal, State, or local laws and regulations. Employer agrees to provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.104 or 500.105 and 29 CFR 500.120 to 500.128. If workers' compensation is used to cover transportation, in lieu of vehicle insurance, the employer will ensure that such workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation. Employer agrees to have property damage insurance. 20 CFR 655.122(h)(4).

8. **THREE-FOURTHS GUARANTEE**: Employer agrees to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any. 20 CFR 655.122(i).

   The employer may offer the worker more than the specified hours of work on a single workday. For purposes of meeting the three-fourths guarantee, the worker will not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays. If, during the total work contract period, the employer affords the U.S. or H-2A worker less employment than that required under this guarantee, the employer will pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer will not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order. All hours of work actually performed may be counted by the employer in calculating whether the period of guaranteed employment has been met. Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work, and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays), may be counted by the employer in calculating whether the period of guaranteed employment has been met. 20 CFR 655.122(i).

   If the worker is paid on a piece rate basis, the employer agrees to use the worker's average hourly piece rate earnings or the required hourly wage rate, whichever is higher, to calculate the amount due under the three-fourths guarantee. 20 CFR 655.122(i).

If the worker voluntarily abandons employment before the end of the period of employment set forth in the job order, or is terminated for cause, and the employer follows the notification requirements in 20 CFR 655.122(n), the worker is not entitled to the three-fourths guarantee. The employer is not liable for payment of the three-fourths guarantee to an H-2A worker whom the Department of Labor certifies is displaced due to the employer's requirement to hire qualified and available U.S. workers during the recruitment period set out in 20 CFR 655.135(d), which lasts until 50 percent of the period of the work contract has elapsed (50 percent rule). 20 CFR 655.122(i).

Important Note: In circumstances where the work contract is terminated due to contract impossibility under 20 CFR 655.122(o), the three-fourths guarantee period ends on the date of termination.

9. **EARNINGS RECORDS**: Employer agrees to keep accurate and adequate records with respect to the workers' earnings at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. The records must include each worker's permanent address, and, when available, permanent email address, and phone number(s). All records must be available for inspection and transcription by the Department of Labor or a duly authorized and designated representative, and by the worker and representatives designated by the worker as evidenced by appropriate documentation. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Department of Labor, or a duly authorized and designated representative, and by the worker and designated representatives. The content of earnings records must meet all regulatory requirements and be retained by the employer for a period of not less than 3 years after the date of certification by the Department of Labor. 20 CFR 655.122(j).

10. **HOURS AND EARNINGS STATEMENTS**: Employer agrees to furnish to the worker on or before each payday in one or more written statements the following information: (1) the worker's total earnings for the pay period; (2) the worker's hourly rate and/or piece rate of pay; (3) the hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in 20 CFR 655.122(i), separate from any hours offered over and above the guarantee); (4) the hours actually worked by the worker; (5) an itemization of all deductions made from the worker's wages; (6) if piece rates are used, the units produced daily; (7) beginning and ending dates of the pay period; and (8) the employer's name, address and FEIN. 20 CFR 655.122(k).

    For workers engaged in the herding or production of livestock on the range, the employer is exempt from recording and furnishing the hours actually worked each day, the time the worker begins and ends each workday, as well as the nature and amount of work performed, but otherwise must comply with the earnings records and hours and earnings statement requirements set out in 20 CFR 655.122(j) and (k). The employer agrees to keep daily records indicating whether the site of the employee's work was on the range or off the range. If the employer prorates a worker's wage because of the worker's voluntary absence for personal reasons, it must also keep a record of the reason for the worker's absence. 20 CFR 655.210(f).

11. **RATES OF PAY**: The employer agrees that it will offer, advertise in its recruitment, and pay at least the Adverse Effect Wage Rate (AEWR), a prevailing wage rate, the agreed-upon collective bargaining rate, the Federal minimum wage, or the State minimum wage, whichever is highest, for every hour or portion thereof worked during a pay period. If the offered wage(s) disclosed in this clearance order is/are based on commission, bonuses, or other incentives, the employer guarantees the wage paid on a weekly, semi-monthly, or monthly basis will equal or exceed the AEWR, prevailing wage rate, Federal minimum wage, State minimum wage, or any agreed-upon collective bargaining rate, whichever is highest. If the applicable AEWR or prevailing wage is adjusted during the contract period, and that new rate is higher than the highest of the AEWR, the prevailing wage, the collective bargaining rate, the Federal minimum wage, or the State minimum wage, the employer will increase the pay of all employees in the same occupation to the higher rate no later than the effective date of the adjustment. If the new AEWR or prevailing wage is lower than the rate guaranteed on this job order, the employer will continue to pay at least the rate guaranteed on this job order.

    If the worker is paid on a piece rate basis, the piece rate must be no less than the prevailing piece rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity in the geographic area, if one has been issued. At the end of the pay period, if the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the employer agrees to supplement the worker's pay at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had instead been paid at the appropriate hourly wage rate for each hour worked. 20 CFR 655.120, 655.122(l).

    For workers engaged in the herding or production of livestock on the range, the employer agrees to pay the worker at least the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. If the offered wage disclosed in this clearance order is based on commissions, bonuses, or other incentives, the employer guarantees that the wage paid will equal or exceed the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, whichever is highest, and will be paid to each worker free and clear without any unauthorized deductions. The employer may prorate the wage for the initial and final pay periods of the job order period if its pay period does not match the beginning or ending dates of the job order. The employer also may prorate the wage if an employee is voluntarily unavailable to work for personal reasons. 20 CFR 655.210(g).

12. **FREQUENCY OF PAY:** Employer agrees to pay workers when due based on the frequency disclosed in this clearance order. 20 CFR 655.122(m).

13. **ABANDONMENT OF EMPLOYMENT OR TERMINATION FOR CAUSE**: If a worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer is not responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker, and that worker is not entitled to the three-fourths guarantee, if the employer notifies the U.S. Department of Labor and, if applicable, the Department of Homeland Security, in writing or by any other method specified by the Department of Labor or the Department of Homeland Security in the *Federal Register*, not later than 2 working days after the abandonment or termination occurs. A worker will be deemed to have abandoned the work contract after the worker fails to show up for work at the regularly scheduled time for 5 consecutive work days without the consent of the employer. 20 CFR 655.122(n).

14. **CONTRACT IMPOSSIBILITY**: The work contract may be terminated before the end date of work specified in the work contract if the services of the workers are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes fulfillment of the contract impossible, as determined by the Department of Labor. In the event that the work contract is terminated, the employer agrees to fulfill the three-fourths guarantee for the time that has elapsed from the start date of work specified in the work contract to the date of termination. The employer also agrees that it will make efforts to transfer the worker to other comparable employment acceptable

to the worker and consistent with existing immigration laws. In situations where a transfer is not affected, the employer agrees to return the worker at the employer's expense to the place from which the worker, disregarding intervening employment, came to work for the employer, or transport the worker to his/her next certified H-2A employer, whichever the worker prefers. The employer will also reimburse the worker the full amount of any deductions made by the employer from the worker's pay for transportation and subsistence expenses to the place of employment. The employer will also pay the worker for any transportation and subsistence expenses incurred by the worker to that employer's place of employment. The amounts the employer will pay for subsistence expenses per day are those amounts disclosed in this clearance order. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. 20 CFR 655.122(o).

The employer is not required to pay for transportation and daily subsistence from the place of employment to a subsequent employer's place of employment if the worker has contracted with a subsequent employer who has agreed to provide or pay for the worker's transportation and subsistence expenses from the present employer's place of employment to the subsequent employer's place of employment. 20 CFR 655.122(h)(2).

15. **DEDUCTIONS FROM WORKER'S PAY**: Employer agrees to make all deductions from the worker's paycheck required by law. This job offer discloses all deductions not required by law which the employer will make from the worker's paycheck and all such deductions are reasonable, in accordance with 20 CFR 655.122(p) and 29 CFR part 531. The wage requirements of 20 CFR 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under 20 CFR part 655, subpart B, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. 20 CFR 655.122(p).

16. **DISCLOSURE OF WORK CONTRACT**: Employer agrees to provide a copy of the work contract to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences. For an H-2A worker coming to the employer from another H-2A employer or who does not require a visa for entry to the United States, the employer agrees to provide a copy of the work contract no later than the time an offer of employment is made to the H-2A worker. A copy of the work contract will be provided to each worker in a language understood by the worker, as necessary or reasonable. In the absence of a separate, written work contract entered into between the employer and the worker, the work contract at minimum will be the terms of this clearance order, including all Addenda, the certified *H-2A Application for Temporary Employment Certification* and any obligations required under 8 U.S.C. 1188, 29 CFR part 501, or 20 CFR part 655, subpart B. 20 CFR 655.122(q).

17. **ADDITIONAL ASSURANCES FOR CLEARANCE ORDERS**:

A. Employer agrees to provide to workers referred through the clearance system the number of hours of work disclosed in this clearance order for the week beginning with the anticipated first date of need, unless the employer has amended the first date of need at least 10 business days before the original first date of need by so notifying the Order-Holding Office (OHO) in writing (*e.g.*, email notification). The employer understands that it is the responsibility of the SWA to make a record of all notifications and attempt to inform referred workers of the amended first date of need expeditiously. 20 CFR 653.501(c)(3)(i).

If there is a change to the anticipated first date of need, and the employer fails to notify the OHO at least 10 business days before the original first date of need, the employer agrees that it will pay eligible workers referred through the clearance system the specified rate of pay disclosed in this clearance order for the first week starting with the originally anticipated first date of need or will provide alternative work if such alternative work is stated on the clearance order. 20 CFR 653.501(c)(5).

B. Employer agrees that no extension of employment beyond the period of employment specified in the clearance order will relieve it from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation from the place of employment, as described in paragraph 7.B above. 20 CFR 653.501(c)(3)(ii).

C. Employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration, and other employment-related laws. 20 CFR 653.501(c)(3)(iii).

D. Employer agrees to expeditiously notify the OHO or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. 20 CFR 653.501(c)(3)(iv).

E. If acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on this clearance order, the employer assures that it has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State FLC certificate. 20 CFR 653.501(c)(3)(v).

F. Employer assures that outreach workers will have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107. 20 CFR 653.501(c)(3)(vii).

*I **declare** under penalty of perjury that I have read and reviewed this clearance order, including every page of this Form ETA-790A and all supporting addendums, and that to the best of my knowledge, the information contained therein is true and accurate. This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. 20 CFR 653.501(c)(3)(viii). I understand that to knowingly furnish materially false information in the preparation of this form and/or any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both. 18 U.S.C. §§ 2, 1001.*

1. Last (family) name *	2. First (given) name *	3. Middle initial §
Larimer	Sherrie	
4. Title *		
Manager		

OMB Approval: 1205-0502
Expiration Date: 10/31/2025

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

5. Signature (or digital signature) *	6. Date signed *
Digital Signature Verified and Retained By	11/1/2025

For Public Burden Statement, see the Instructions for Form ETA-790/790A.

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

C. Additional Place of Employment Information

1. Name of Agricultural Business §	2. Place of Employment *	3. Additional Place of Employment Information §	4. Begin Date §	5. End Date §	6. Total Workers §
Lord's Seed	9900 West Maple Orland, Indiana 46776 STEUBEN COUNTY		12/24/2025	3/1/2026	1
Lord's Seed	6825 N 375 E Howe, Indiana 46746 LAGRANGE COUNTY		12/24/2025	3/1/2026	1

D. Additional Housing Information

H. Additional Material Terms and Conditions of the Job Offer

a. Job Offer Information 1

1. Section/Item Number *	A.11	2. Name of Section or Category of Material Term or Condition *	Pay Deductions - *Deductions

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Where allowed or required by State, Local, or Federal law, reasonable repair cost of damage from deliberate or negligent destruction, other than that caused by normal wear and tear and so long as it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act or by the gross negligence of the employee, for damage to housing, furnishings, tools, or equipment, applicable Federal or State Taxes, and wage garnishments required by law may be deducted from the workers pay. Should employee fail to maintain housing in a clean manner which leads to degradation of the housing, employer may deduct cost of cleaning to restore housing from workers pay. Employer may make voluntary deductions at workers request for items not required to perform the job such as internet, tv, no interest cash advances, non work related medical expenses, 401K election, etc. If a worker is authorized to use company funds for purchasing items on behalf of the company, any rebate associated with the purchase constitutes funds of the company and can be deducted from worker's pay if wrongfully retained by the worker. Should the worker abandon employment or be terminated for cause, the worker may be required to reimburse the employer for cost of transportation & subsistence that were advanced or reimbursed to the worker. No deductions which are for the benefit of the employer and that would bring the employee's hourly wage below the Federal Minimum Wage will be made.

b. Job Offer Information 2

1. Section/Item Number *	F.1	2. Name of Section or Category of Material Term or Condition *	Daily Transportation - *Housing Details

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Living & laundry facilities available. Housing will be clean and in compliance with OSHA Housing Standards at 29 CFR 1910.142 when occupied. Workers will be responsible for maintaining housing in a neat, clean manner. Housing and utilities are provided at no cost to workers who are unable to return to their place of residence the same day. Workers eligible for and offered employer-provided housing may choose not to occupy the employer provided housing. Workers eligible for employer provided housing may elect to obtain their own housing at worker's expense. Workers eligible for employer-provided housing who elect to decline the employer provided housing and instead obtain their own housing may withdraw such election at any time during the period of employment, and upon doing so will be provided housing by the employer as set forth in the Clearance Order or as amended and approved by DOL. The Company assumes no responsibility whatsoever for housing arranged by workers on their own. The employer will not provide a housing allowance or assistance to workers eligible for employer-provided housing who elect to obtain their own housing. Worker cannot change assigned housing or move between the housing listed on the job order without the consent of the employer. No worker may allow for overnight guests in the housing without the prior consent of the employer, and housing provided is for the worker only unless family housing is required by law or agreed upon by the employer.

For Public Burden Statement, see the Instructions for Form ETA-790/790A.

OMB Approval: 1205-0562
Expiration Date: 10/31/2025

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

H. Additional Material Terms and Conditions of the Job Offer

c. Job Offer Information 3

1. Section/Item Number *	B.6	2. Name of Section or Category of Material Term or Condition *	Job Requirements - *Min Requirements

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Minimum Performance/Work/Housing Requirements
Workers must comply with local, state, and federal laws at all times
Workers may not carry, possess, or use any dangerous or deadly weapon on employers premises or vehicles, growers premises or vehicles, employer provided housing or while on the clock without consent from the employer.
Workers must conduct themselves professionally at all times. This includes no fighting, no stealing, no lying, no harassing, amongst other actions that any reasonable person would view as unprofessional. These actions extend to displaying professional conduct when dealing with the employer, other workers, growers, vendors, customers, or any persons related to the employer's operations.
Workers may not deface, destroy, misuse, relocate without permission, operate without permission, or damage any equipment, vehicles, tools, machinery, housing, property associated with the employer, growers or other workers.
Workers must immediately report any damage that occurs to machinery, vehicles, equipment tools, or other property belonging to the employer, growers or other workers.
Workers must keep housing, living quarters, common areas, work premises, vehicles, employer and grower properties orderly, neat, clean, free of trash, and in good working order.
Workers living in employer provided housing must follow standard housing practices such as but not limited to the following: ensuring doors and windows are shut and locked when not present, adjust heat and air to conserve energy, keep doors and windows shut and secured during adverse weather conditions, report any housing issues to employer in a timely manner, leave furniture in designated areas unless permitted by employer. The employer reserves the right to enter the housing at any time and is able to perform inspections at random to ensure housing meets applicable standards.
Workers must honor quiet hours at employer provided housing if designated by employer. Workers may not disrupt other workers sleep/rest periods by excessive or unnecessary noise. No persons, other than workers assigned by employer, may sleep in the housing without employer consent.
Workers must adhere to standard safety practices such as wearing seat belts, taking appropriate water breaks on hot days as directed by supervisor or company policy, wearing personal protective equipment appropriate for the tasks being performed, complete and obey all safety trainings provided by the employer, and report any injuries, accidents, or safety concerns immediately to the supervisor.
Workers must perform quality and timely work, must follow supervisor's instructions, must follow good hygiene practices, must be present, able, and willing to perform assigned duties every scheduled workday at the scheduled time unless excused by the employer, whereas excessive tardiness and absences are not permitted and workers must report any absence from work prior to the scheduled start time. Employer may terminate any worker who abandons employment (five consecutive workdays of unexcused absence).
H-2A workers must leave the United States at the end of the period certified by the Department or separation from the employer, whichever is earlier, unless the H-2A worker is being sponsored by another subsequent H-2A employer.

d. Job Offer Information 4

1. Section/Item Number *	F.1	2. Name of Section or Category of Material Term or Condition *	Daily Transportation - *Fixed Site Daily, Inbound, Outbound Transportation

3. Details of Material Term or Condition (*up to 3,500 characters*) *

The employer shall provide transportation between housing and worksite and for personal errands (e.g., groceries, banking services) in the form of pickup, car, van, self propelled farm machine (ex. tractor, combine, sprayer, harvester, truck), or other common means controlled/operated by the employer between the place where the employer has provided housing to the actual work site and return at the end of the workday. Given the nature of farming operations, the employer's vehicles, number of vehicles, and seating capacities in use change regularly, but in general, will always be 1 or more and will consist of vehicles such as pickups, cars, vans, or farm machinery. Pickups, cars, and vans seat up to 6 individuals, trucks seat up to 3 individuals, and farm machinery seats no more than 2 individuals. If the employer's total number of workers exceeds the total capacity of its vehicles, workers will be driven between the housing and worksite and for personal errands in staggered groups. In instances where the employer has not provided the worker his or her own means (such as one of the prior mentioned modes) or in the case that the worker does not possess the ability to operate a motor vehicle on public roadways, the employer provided pick up time will be at the scheduled begin worktime and drop off will be at the scheduled end of worktime as identified in section A. Job Offer Information of form ETA 790A with the exception of fluctuations in work schedule resulting from crop, weather, or other dictating conditions. All work related transportation will be without cost to the worker, all transportation is controlled/operated by the employer, and the means of transportation shall meet all applicable local, state, and federal safety standards. If workers' compensation is used to cover transportation in lieu of vehicle insurance, the employer will either ensure that the workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation and it must have property damage insurance.

For Public Burden Statement, see the Instructions for Form ETA-790/790A.

H. Additional Material Terms and Conditions of the Job Offer

e. Job Offer Information 5

1. Section/Item Number *	F.2	2. Name of Section or Category of Material Term or Condition *	Inbound/Outbound Transportation - *Inbound and Outbound Transportation

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Employer provided inbound/outbound transportation to and from the worker's home country will be airplane, charter bus, employer operated vehicle, or other common means depending on the worker's country or State of origin. If a worker is terminated for cause or abandons employment (prior to the 50% point for inbound travel or prior to the completion of the contract for outbound travel), and the employer has already paid for the outbound transportation, the worker may be required to reimburse the employer either by a deduction from pay or separate payment unless such a reimbursement is disallowed under an applicable local, state, or federal law (ex. such a reimbursement is not allowed in New York State). The employer will either provide transportation or reimburse the worker who secured his or her own transportation. The method will be determined on a worker by worker basis based on factors such as the worker's home country (or US State) of origin, means of transportation available to the worker, capacity or lack thereof of worker to purchase his or her own transportation, worker's desire or lack thereof to coordinate one's own schedule, etc. The employer will either provide or pay for an acceptable mode of transportation, or will permit workers to select any means of transportation they choose and reimburse workers at no less than the most economical and reasonable common carrier transportation charges for the distances involved.

f. Job Offer Information 6

1. Section/Item Number *	B.6	2. Name of Section or Category of Material Term or Condition *	Job Requirements - *Additional Details

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Should the Employers worker's compensation insurance policy expire during the work contract period in which workers are employed under the H-2A program, the worker's compensation insurance policy will be renewed so that workers are covered for the entire duration of the contract. The Employer may terminate a worker if a worker: refuses without justified cause to perform work for which the worker was recruited and hired; or commits a serious act of misconduct; or fails to be able to perform all of the tasks described in the job order. If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the SWA, DOL, and USCIS in the case of an H2A worker, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker, and the worker is not entitled to the three-fourths guarantee.

For Public Burden Statement, see the Instructions for Form ETA-790/790A.

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

H. Additional Material Terms and Conditions of the Job Offer

g. Job Offer Information 7

1. Section/Item Number *	B.6	2. Name of Section or Category of Material Term or Condition *	Job Requirements - *Minimum Job Qualifications/Requirements

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Operating tools and equipment as applicable and noted in the job description as well as operating a motor vehicle under the influence of drugs and/or alcohol is dangerous. Operator manuals have label warnings – Do Not Operate Under the Influence of Drugs or Alcohol. Work Comp Insurance as well as vehicle insurance companies require safety compliance. Poor judgment, improper driving, etc. can result in serious and fatal accidents. Employer has a strict policy prohibiting drug use. Any drug testing will be post hire and at the employer's expense. Assisting with the employers farming operation includes lifting agricultural tools and equipment that weigh up to the lifting requirement listed at B.4.e. Employer may request but cannot require workers to work on their Sabbath. The nature of farm work may require workers to work after dark and possibly weekends depending on weather conditions. Hours offered may vary based on factors such as weather or other unpredictable variables that impact the farm's operation. (as applicable and per the job description) Employer may, at the company's sole discretion, pay workers at a rate above the minimum required and/or provide additional compensation such as bonuses, fixed salaries, PTO, insurance, incentive pay, or other benefits to any worker employed under this job order based on lawful, non-discriminatory factors including skill, performance, tenure with the employer, licensing, training, punctuality, or prior related experience. Workers will be required to report to the worksite(s) listed at the beginning of the work day and may perform the job duties listed at various fields, patches, parcels, etc. All work performed at any location will result in the worker being able to return to the housing listed on the job order at the end of each work day. The employer may have multiple job opportunities and reserves the right to present other job opportunities to workers already employed under this job order as well as possible applicants for their consideration. All workers must have proper work authorization to be employed under any of the employer's job opportunities. While the employer's frequency of pay is defined in the job order, the frequency may change during the contract period as a result of factors such as payroll service provision, internal business operations, etc., but in no event will the frequency be less than twice per month in which case, all days and payday hours, as applicable by local, state, or federal law would be paid.

h. Job Offer Information 8

1. Section/Item Number *		2. Name of Section or Category of Material Term or Condition *	

3. Details of Material Term or Condition (*up to 3,500 characters*) *

For Public Burden Statement, see the Instructions for Form ETA-790/790A.

Exhibit 2

Comments on behalf of CATA
El Comité de Apoyo a Los Trabajadores Agrícolas

Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States (RIN 1205-AC24)

December 1, 2025

To: **Susan Frazier**
Acting Assistant Secretary for Employment and Training, Labor
U.S. Department of Labor

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Employment and Training Administration,
U.S. Department of Labor

Submitted electronically via regulations.gov

These comments are submitted on behalf of CATA, El Comité de Apoyo a Los Trabajadores Agrícolas, by and through their counsel Justice at Work, in opposition to the interim final rule adopted by the Department of Labor (DOL) effective October 2, 2025 without any opportunity for public comment prior to their adoption by DOL. **CATA has reviewed comments prepared by Farmworker Justice and adopts and incorporates those comments by reference into this statement**.

CATA was founded in 1979 and has been active in advocacy and litigation relating to temporary foreign worker programs including the initial H-2 program and its successors the H-2A agricultural temporary worker program and the H-2B non-agricultural temporary worker program.

These comments principally add to the national Farmworker Justice submitted comments by initially focusing on the gross deficiency in the resurrection for the H-2A program of a DOL methodology which had consistently reduced wages for companion H-2B non-agricultural temporary worker program after DOL itself recognized the deficiency of that mythology 15 years ago.

I. Relevance of CATA Challenges to Use of Skill Level Wage Differentials in the H-2B program

CATA was the lead plaintiff against 2008 regulations adopted by the Bush administration effective January 2009 for the H-2B program that incorporated many of the same procedures for establishing sub-standard minimum prevailing wage rates for the H-2B program as provided for in the October 2025 interim final rule for the H-2A program. *See*, *Comité de Apoyo a Los Trabajadores Agrícolas, et al. v. Hilda Solis, et al.* (EDPA, Civil Action No. 09–240).

In that litigation, the same depressed skill level 1wage adopted by DOL in October 2025 for the H-2A program was established in relationship to the H-2B program as having no valid statistical or rational basis and was ruled invalid by the District Court. In subsequent rulemaking that skill level wage rate was abandoned by DOL as inappropriate for the H-2B program. *See* Proposed Rule, 75 *Fed. Reg.* 61,578 (Oct. 5, 2010*)* and rule at 76 *Fed Reg* 3452 (Jan. 19, 2011).

DOL in its October 5, 2010 proposed rulemaking for the H-2B program stated at 75 *Fed Reg* at 61580:

> "The types of jobs found in the H-2B program involve few if any skill differentials necessitating tiered wage levels. The Department has an obligation to require H-2B employers to offer wages that do not adversely affect the wages of their U.S. workforce. By their very existence, however, multiple wage rates, particularly in a program in which most job opportunities have few or no skill requirements, stratify wages and inappropriately allow employers to force much of the wage-earning workforce into a lower wage. H-2B workers, most of whom fill jobs with low skill levels, are more likely to be classified at the low end of the wage tiers, ultimately adversely affecting the wages of U.S. workers in those same jobs. In addition, even if skill-based wage tiers were desirable as a theoretical matter, neither the OES nor any other comprehensive data series that we are aware of attempts to capture such variations. While the Department has, since 1998, created tiered wages by mathematically manipulating OES data in accordance with the statute, the actual OES survey instrument does not solicit data concerning the skill level of the workers whose wages are being reported. *While the assumption that lower wages reflect lower skills (the basis for the current methodology) may have some validity in higher skilled occupations, there is no support for that assumption in the case of the lower-skilled occupations that predominate in the H-2B program.*

"H-2B disclosure data from the last 10 years demonstrates that many jobs for which employers seek H-2B workers—housekeepers, landscape workers, etc.—clearly require minimal skill to perform, have few special skill or experience requirements, and do not generally have career ladders. These jobs have typically resulted in a Level 1 (the lowest wage level) determination for the H-2B employer, because the jobs themselves do not require the employer to seek workers with higher skill levels. The result is a wage determination that is in fact lower than the average wage paid for many jobs that are of the same classification as those jobs filled under the H-2B program.[2] By allowing jobs to be filled by H-2B workers at these lower wages, a tiered wage system can have a depressive effect on wages of similar domestic workers, ultimately adversely affecting the wages of U.S. workers in those same jobs.[3] The Department cannot continue to allow such wage depression where its mandate is to ensure that the wages of U.S. workers suffer no adverse impact.

"The Department, accordingly, proposes to require that the arithmetic mean of the OES wage rates be the basis for determining the OES component of the prevailing wage rate in the H-2B program as it is the most effective available method for preventing adverse effect on wages. The Department welcomes comment on specific alternatives for wage calculations to meet its mandate for avoiding adverse effect on wages while ensuring that wages reflect economic realities in the marketplace for such jobs."

Footnotes at 75 *Fed Reg* at 6158:

> [2] DOL analysis shows that, in about 96 percent of the cases, the H-2B wage is lower than the mean of the OES wage rates for the same occupation.
>
> [3] Absent an increase in the number of workers under the H-2B program to fill the temporary labor shortage, wages for these temporary jobs would rise in order to dispel the shortage, until sufficient additional domestic labor is attracted into the market. These wage increases are avoided, however, under the prevailing wage requirements of the H-2B program as currently configured. Moreover, when H-2B wages are set lower than wages paid to U.S. workers in similar jobs, as they generally are under the tiered wage system, the H-2B wages may not actually reflect the economic value of the work, impeding any upward pressure on wages that would otherwise result from the labor shortage.

In its subsequent rulemaking proceeding at 76 *Fed Reg* 3452-3461 (Jan. 19, 2011) DOL stated (*footnote citations omitted below*):

> "In early 2009, a lawsuit was filed challenging various aspects of the Department's H-2B procedures included in the 2008 Final Rule; among the issues raised was the use of the four-tier wage structure in the H-2B program and the optional use of SCA and DBA wages. *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09-cv-240-LP, 2010 WL 3431761 (E.D. Pa.). In its August 30, 2010 decision, the court ruled that the Department had violated the Administrative Procedure Act (APA) in failing to adequately explain its reasoning for using skill levels as part of the H-2B prevailing wage determinations, and failing to consider comments relating to the choice of appropriate data sets in deciding to rely on OES data rather than SCA and DBA in setting the prevailing wage rates. The court ordered the Department to "promulgate new rules concerning the calculation of the prevailing wage rate in the H-2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order."
>
> * * *
>
> "The NPRM proposed to eliminate the use of the four-tier wage structure for the H-2B program in favor of the mean OES wage for each occupational category…. After a thorough review of the comments, the Department has decided to finalize these changes.
>
> * * *
>
> **3. The Elimination of the Four-tier Wage Structure**
>
> "In the NPRM, the Department proposed to eliminate the use of the four-tier wage structure and *implement a single prevailing wage rate based on the arithmetic mean of the OES wage data for the job classification in the area of intended employment*. The NPRM cited a number of reasons why the four tiers did not establish an adequate prevailing wage. After thorough consideration of the public comments, the Department has decided that the proposed elimination of the use of the four-tier wage structure is appropriate.
>
> * * *

a. The Four-Tier Wage Structure is Not Suitable for Unskilled Jobs

* * *

"As discussed elsewhere in this Final Rule, the Department's obligation to administer the H-2B program requires that the prevailing wage which is offered and paid in the program reflect the minimum requirements of the position. This requirement reflects the *Department's obligations to avoid adverse effect on the wages of workers and enable meaningful access to job opportunities for U.S. workers*. *Because the Department has determined that the majority of H-2B jobs reflect no or few skill differentials, the appropriate prevailing wage an employer must offer and pay*, absent a higher CBA, SCA, or DBA wage, *is the arithmetic mean of the OES wage data of workers who are similarly employed in the area of intended employment*. Where an employer's job opportunity requires skills beyond those minimally required for the position (which may include but are not limited to additional certifications based on experience, or safety accreditations), the employer is at liberty to offer and pay to its workers in excess of the prevailing wage to account for the additional skills or experience which the employer requires.

* * *

"As discussed in the NPRM, the Department has found that almost all jobs for which employers seek H-2B workers require little, if any, skill—an assertion with which few commenters disagreed. H-2B disclosure data from Fiscal Year (FY) 2007 to 2009 demonstrates that most of the jobs included in the top five industries for which the greatest annual numbers of H-2B workers were certified—construction; amusement, gambling and recreation; landscaping services; janitorial services; and food services and drinking places—require minimal skill to perform, according to every standardized source available to the Department, such as the SOC, O*NET and the Occupational Outlook Handbook. These jobs include, but are not limited to, landscaper laborer, housekeeping cleaner, construction worker, forestry worker, and amusement park worker, which make up the majority of occupations certified in those years, all of which require less than 2 years of experience to perform, if that.[10] *This prevalence of job opportunities in low-skilled categories is generally reflected in the H-2B employer applications. These jobs have typically resulted in a Level I wage determination, which is lower than the average wage paid to similarly employed workers in job classifications in non-H-2B jobs*.

"Under the Department's 2005 Prevailing Wage Guidance, the determination of an appropriate wage level is dependent upon the duties and requirements of the job opportunity as described by the employer …. The Department applies a standard analysis of the job position (found in the 2005 Prevailing Wage Guidance) to determine the appropriate wage level. In doing so, the Department compares the employer's job requirements with those typical of the job classification. A Level I [11] wage is based on a determination that the job position described by the employer does not deviate, or only minimally deviates, from the typical minimum requirements of the corresponding SOC-based job classification contained in O*NET, including the specific Job Zone. *A Job Zone reference indicates the level of skill, education, experience and/or preparation typically required to perform the job, and ranges from one (for which little or no preparation is needed)* to five (in which extensive education, training, and preparation are required to adequately perform the job duties at the entry-level). For example, one of the most requested H-2B job classifications, landscaping and groundskeeping worker, is classified as falling within O*NET Job Zone One.[12] All of the other frequently represented positions in the program: janitors and cleaners, housekeepers, construction laborers, and amusement and recreation attendants, also are categorized within Job Zone One.

"The notion that the four wage tiers have a meaningful relationship to skill, as expressed by many commenters including the Chief Counsel for Advocacy, SBA, represents a misunderstanding of the way in which the Department calculates the four tiers. *The Department does not collect data associated with skill levels, but instead collects data across the job spectrum*. The Department approximates skill levels from that generalized data, not because the data can be disaggregated by skill level, but because it is required to assign a value to four skill levels, in accordance with the formula set forth at section 212(p)(4) of the INA. *The formula is artificial, designed to approximate arbitrary skill levels and has a skewing effect when applied to the wage rates applicable to typical H-2B jobs, in which there are fewer skill differentials.* The four wage levels currently used by the Department are calculated by applying a statutory mathematical formula to the wage distribution corresponding to a particular occupational classification in the area of intended employment. *The Level I wage is established by taking the arithmetic mean of the bottom one-third of the wage distribution;* the Level IV wage rate is determined by establishing the arithmetic mean of the top two-thirds of the wage distribution…

* * *

"Thus, *there is no correlation in the four-tier wage structure between the skill level required to perform a job and the wage attached to it*. An employer can pay a higher wage for many reasons other than skill level. The lack of a meaningful nexus between the skill level and the compensation is significant where applied to the wage rates assigned to typical H-2B jobs in which there are fewer skill differences, because in most cases, a basic skill set is all that is required to adequately perform these jobs. The range of wages reported in these low-skilled occupations represents the range of pay in the occupation, not the range of pay for skills associated with the job opportunity.

"These comments did not identify any significant data or analysis that undermines the essential component of the analysis contained in the NPRM: that there are no significant skill-based wage differences in the occupations that predominate in the H-2B program, and to the extent such differences might exist, those differences are not captured by the existing four-tier wage structure. No commenter directly addressed the Department's concerns about these deficiencies in the existing methodology. N*o commenter challenged the fact that the OES survey does not collect information about the skills or responsibilities of the workers whose wages are included in the survey*. *No commenter offered any analytical or empirical support for the notion that the mean of the lowest one-third of the workers in the survey somehow reflects the entry-level wage*, nor offered an alternative to the OES wage methodology that might better reflect the purported differences in skills within an occupation. *While skill-based wage differences may exist in these occupations, there is insufficient evidence to justify any judgment about what that wage rate should be within a particular occupational code, and it is more appropriate for the employer to select a different occupational code that is more suitable for the level of skills and responsibilities required for the position*. In the absence of reliable information that would permit the Department to make and quantify such a judgment, *our responsibility to avoid adverse effect mandates that the average of the OES wage for that occupation be considered in determining the prevailing wage for the occupation for which workers are sought.* Again, as noted above, this does not prevent employers from offering higher wages if necessary to attract appropriate applicants.

"Even with the elimination of the four-tier wage structure from the H-2B program, employers would still be able to obtain wage determinations that account for differences in skill. The SOC classification system generally groups job classifications into larger categories encompassing related

positions; for example, it recognizes entry-level positions such as the landscaping and groundskeeping workers, as well as positions requiring additional skills or experience such as first-line supervisors/managers of landscaping, lawn service, and groundskeeping workers. The latter are classified as Job Zone Two and contain different and/or additional job duties and requirements, which, if selected by the employer, yield a prevailing wage that is higher than that for the low-skilled worker in the same broader SOC category. The variety of SOC job classifications reflecting different kinds and levels of skills ensures that the employer has the latitude to select a different SOC code for the Department's consideration to reflect a position which requires additional skills and experience, and which permits the employer to adequately compensate for those additional skills and experience.

"Therefore, the Department disagrees with some commenters' assertions that raising the OES base wage to the mean necessarily means having to increase job requirements or otherwise justify that increase with additional skills. The jobs themselves are written to incorporate the basic skills at entry. Use of the arithmetic mean in determining the prevailing wage simply recognizes that those who are performing the tasks of the job at Level I are performing the same tasks at Level III, with the distinction between the wages for the two levels not being based on a differential in skills.

"If an employer chooses to increase its requirements for the position, it should consider classifying the occupation under an SOC code that more closely approximates the requirements and duties of the job; otherwise, the employer will need to justify the higher requirements as a business necessity. Additionally, nothing in this rule prevents an employer from paying a wage higher than the prevailing wage to a worker who possesses skills, licenses, certifications, etc. above those listed in its H-2B application. Employers who cannot use a different O*NET/OES category remain free to offer a wage higher than the established prevailing wage if they desire to do so. Employers are also at liberty to specify experience or other requirements consistent with the long-standing program requirement that job qualification must be normal to the occupation, or are otherwise justified by business necessity. This rule does not prevent monetary rewards for those employees who have earned them through experience, skill acquisition, or even employer loyalty. Nothing in this Final Rule suggests nor should be construed to prevent the employer from paying its workers, U.S. and H-2B, more than the required prevailing wage.

* * *

"*The purpose of establishing the prevailing wage is to establish the minimum wage that avoids adverse effect, considering the actual requirements of the position for which H-2B certification is being sought*. It is not to ensure that H-2B workers or workers whose experience or skills exceed those of the position receive premium pay for having more in the way of skills, knowledge, or experience than what the position actually requires. The Department, by this Final Rule, is only setting the floor against which compensation for the basic occupation for which an employer seeks H-2B workers is to be measured, in accordance with its obligations under the H-2B program.

* * *

"The history of the H-2B program… indicates that it grew out of its *agricultural predecessor*, the Bracero program, as a companion for employers requiring assistance with low-skilled non-agricultural work. Although the Department recognizes that not all positions requested through the H-2B program are for low-skilled labor, **the program is still overwhelmingly used for work requiring lesser skilled workers—those occupations that require at most 2 years, and in most cases much less than 2 years, of education, training, or experience to perform the job duties, tasks, and activities.** As discussed above, there is no justification for stratifying wage levels to artificially create wage-based skill levels when in fact there is no great difference in skill levels with which to stratify the job.

c. Elimination of the Four-tier Wage Structure in the H-2A Program

"In proposing the elimination of the four-tier wage structure in favor of a single arithmetic mean wage, the Department noted that it had previously taken similar action in the H-2A program. One commenter disagreed with the Department's reasoning behind the elimination of the four-tier wage structure arguing that the H-2A and H-2B programs are different and suggested that the Department continue to treat the H-2B program as distinct. Another commenter asserted that the Department's rationale for the elimination of the four-tier wage structure in the H-2A program was based on the concern that the OES data is inaccurate and not concern over adverse effect.

"**The H-2A and H-2B temporary programs are similar in that they both involve largely low-skilled occupations where skill-based wage differences do not appear to exist to any significant degree and to the extent they do exist, the differences are not reflected in the OES survey**

> **data.** The Department especially limited its rationale to eliminating OES in the H-2A program to the inappropriateness of the OES in light of a more appropriate wage source (e.g., the Farm Labor Survey). No similar data source exists for the range of jobs in the H-2B program. Thus, the Department has adopted the OES as the best data source available for the H-2B program, absent an applicable CBA, SCA, or DBA wage rate. *The lack of skill-based wage differences is a sufficient basis to support the determination that the four-tier wage structure should no longer be used in either program.:*

DOL's 2010-2011 rulemaking for the H-2B program rejecting reduced "skill level" wages for that program is directly applicable to the H-2A program and the October 2025 Interim Final Rule should be vacated for its failure to address these issues or to give the public an opportunity to comment on them before implementing interim rules that are already reducing wages required to be paid by H-2A employers.

II. Relevance of O*Net Job Zones

DOL's 2010-2011 rulemaking for the H-2B program identified the DOL O*Net job classifications as directly relevant to DOL's conclusion that artificial skill level determinations were not appropriate for the low skilled Job Zone 1 and Job Zone 2 occupations as described in the O*Net system. Below is information from DOL's description of these classifications.

https://www.onetonline.org/help/online/zones

O*NET OnLine Help

Job Zones

Overview

A Job Zone is a group of occupations that are similar in:

- how much education people need to do the work,
- how much related experience people need to do the work, and
- how much on-the-job training people need to do the work.

The five Job Zones are:

- Job Zone 1 - occupations that need little or no preparation
- Job Zone 2 - occupations that need some preparation
- Job Zone 3 - occupations that need medium preparation
- Job Zone 4 - occupations that need considerable preparation
- Job Zone 5 - occupations that need extensive preparation

Job Zone One: Little or No Preparation Needed

Education Some of these occupations may require a high school diploma or GED certificate.

Related Experience Little or no previous work-related skill, knowledge, or experience is needed for these occupations. For example, a person can become a waiter or waitress even if he/she has never worked before.

Job Training Employees in these occupations need anywhere from a few days to a few months of training. Usually, an experienced worker could show you how to do the job.

Job Zone Examples These occupations involve following instructions and helping others. These occupations involve following instructions and helping others. Examples include *agricultural equipment operators*, dishwashers, floor sanders and finishers, landscaping and groundskeeping workers, *logging equipment operators*, baristas, and maids and housekeeping cleaners.

SVP Range (Below 4.0)

Job Zone Two: Some Preparation Needed

Education These occupations usually require a high school diploma.

Related Experience Some previous work-related skill, knowledge, or experience is usually needed. For example, a teller would benefit from experience working

directly with the public.

Job Training Employees in these occupations need anywhere from a few months to one year of working with experienced employees. A recognized apprenticeship program may be associated with these occupations.

Job Zone Examples These occupations often involve using your knowledge and skills to help others. Examples include orderlies, counter and rental clerks, customer service representatives, security guards, upholsterers, tellers, and dental

laboratory technicians.

SVP Range (4.0 to < 6.0)

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https://www.onetonline.org/help/online/svp

O*NET OnLine Help

Specific Vocational Preparation (SVP)

Specific Vocational Preparation is a component of Worker Characteristics information found in the *Dictionary of Occupational Titles* (U.S. Department of Labor, 1991).

Specific Vocational Preparation, as defined in Appendix C of the *Dictionary of Occupational Titles*, is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the

special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

Vocational education (high school, commercial or shop training, technical school, art school, and that part of college training which is organized around a specific vocational objective)

Apprenticeship training (for apprenticeable jobs only)

In-plant training (organized classroom study provided by an employer)

On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker)

Essential experience in other jobs (serving in less responsible jobs, which lead to the higher-grade job, or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level Time

1. Short demonstration only
2. Anything beyond short demonstration up to and including 1 month
3. Over 1 month up to and including 3 months
4. Over 3 months up to and including 6 months
5. Over 6 months up to and including 1 year
6. Over 1 year up to and including 2 years
7. Over 2 years up to and including 4 years
8. Over 4 years up to and including 10 years
9. Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.
U.S. Department of Labor. (1991). *Dictionary of Occupational Titles* (Rev. 4th ed 1.

DOL groups five SOC Codes into its Adverse Effect Wage Rate (AEWR) combined SOC code rulemaking largely consistent with past DOL practice for the H-2A program (except for the removal of SOC Code 45-2099 "All Other Agricultural Workers"). Those SOC Codes and their O*Net system coding and Job Zones are as follows:[1]

SOC	Occupation title (SOC code)	ONET Code	ONET Title	Job Zone
45-2041	Graders and Sorters, Agricultural Products (45-2041)	45-2041.00	Graders and Sorters, Agricultural Products	1
45-2091	Agricultural Equipment Operators (45-2091)	45-2091.00	Agricultural Equipment Operators	1
45-2092	Farmworkers and Laborers, Crop, Nursery and Greenhouse Workers (45-2092)	45-2092.00	Farmworkers and Laborers, Crop, Nursery, and Greenhouse	1
45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals (45-2093)	45-2093.00	Farmworkers, Farm, Ranch, and Aquacultural Animals	2
53-7064	Packers and Packagers, Hand (53-7064)	53-7064.00	Packers and Packagers, Hand	2

[1] ONET Codes in the chart below are hypertext linked to DOL's O*Net web pages for that ONET Code.

As with the H-2B program each of the SOC and companion O*Net codes are either Job Zone 1 or Job Zone 2 occupations requiring minimal training or experience.

Analysis of DOL data for FY24 and FY25 jobs indicates that in FY24 and FY25 disclosure data reflects that these jobs were overwhelmingly Job Zone 1 positions.

Job Zone ONET	FY24	FY24%	FY25	FY25%
1	353,415	95.2%	368,907	94.8%
2	17,646	4.8%	20,114	5.2%
Total	**371,061**	**100%**	**389,021**	**100%**

ONET Code	ONET Title	Job Zone ONET	FY24	FY24%	FY25	FY25%
45-2041.00	Graders and Sorters, Agricultural Products	1	1,399	0.4%	1,162	0.3%
45-2091.00	Agricultural Equipment Operators	1	30,654	8.3%	36,463	9.4%
45-2092.00	Farmworkers and Laborers, Crop, Nursery, and Greenhouse	1	321,362	86.6%	331,282	85.2%
45-2093.00	Farmworkers, Farm, Ranch, and Aquacultural Animals	2	17,141	4.6%	19,418	5.0%
53-7064.00	Packers and Packagers, Hand	2	505	0.1%	696	0.2%
		Total	**371,061**	**100%**	**389,021**	**100%**

This overwhelming presence of Job Zone 1 occupations conforms to the 2010 - 2011 DOL analysis for the H-2B program. The effect of the October 2025 IFR is to establish a combined SOC code rate which has an adverse impact on U.S. workers.

III. Reduced H-2A AEWR Wage Rates Have a Direct Impact on U.S. Workers

The reduction in the Adverse Effect Wage Rate (AEWR) required to be offered by employers participating in the H-2A program for the five combined wage SOC Codes to an amount significantly below the average wage identified by both the USDA Farm Labor Survey and the Bureau of Labor Statistics OEWS survey **has a direct adverse impact** on U.S. workers employed in corresponding employment by H-2A workers.

Although the October 2025 Interim Final Rule indicates that DOL denies a relatively small number of employer requests for H-2A labor certification as a result of referrals from State Workforce Agencies (SWA's) of workers applying

for H-2A positions,[2] that data ignores that H-2A employers identify significant numbers of non-H-2A workers in corresponding employment that they intend to employ independently of the request for labor certification.

OFLC Performance data website data file H-2A_Disclosure_Data_FY2024.xlsx for the H-2A program for 2024 contains data fields explained at H-2A_Record_Layout_FY2024.pdf. The data files include the following fields:

FIELD	DESCRIPTION
TOTAL_WORKERS_NEEDED	Total number of US and H-2A full-time workers needed to perform the agricultural services or labor. Form ETA-790A, Section A, Item 2a.
TOTAL_WORKERS_H-2A_REQUESTED	Total number of H-2A workers requested by the Employer(s). Form ETA- 790A, Section A, Item 2b.
TOTAL_WORKERS_H-2A_CERTIFIED	Total number of H-2A workers certified by the ETA National Processing Center.

Subtracting the number of H-2A workers requested from the number of Total Workers Needed shows that the H-2A employers anticipate employing 91,895 U.S. workers.

Cases	CASE NUMBER	TOTAL WORKERS NEEDED	Total US Workers Needed	TOTAL WORKERS H2A REQUESTED	TOTAL WORKERS H2A CERTIFIED
22,172	**Total Cases**	**476,915**	**91,895**	**385,020**	**384,865**

It should be noted that this total excludes cases in which employers withdrew applications for H-2A labor certification and presumably identified other workers within the U.S. to employ.

CATA historical roots included amongst its members significant numbers of Puerto Rican U.S. citizens who seasonally migrated to employment with H-2 and other agricultural employers in the Eastern U.S. In 1977 the United States Court of Appeals for the First Circuit upheld the right of the U.S. Secretary of Labor to treat Puerto Rican workers seeking employment with H-2 employers as unavailable for positions for which employers sought foreign H-2 workers, because Puerto Rican law authorized the Secretary of Labor of Puerto Rico to require employers seeking Puerto Rican workers to enter into agreements protecting basic employment rights. *See*, *Hernandez Flecha v. Quiros*, 567 F. 2d 1154 (1st Cir 1977). This holding has the effect of allowing H-2A employers to refuse employment to U.S. workers who

[2] *See*, 90 F*ed Reg* 47,914 at 47,922 (Oct. 2, 2025)

condition their applications for employment on being paid higher wages than H-2A employers are **required** by DOL to offer.

IV. Effect of Skill Level Reduction of BLS OEWS Average Wage

The table below identifies the effect on U.S. workers of the arbitrary "skill level" reduction to the OES average wage for workers in the five combined SOC codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064.

Combined SOC Codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064						
#	ST	State	OEWS Avg Wage	Skill level I (entry-level)	Below OES Avg Wage	% Below OES Avg
1	AL	Alabama	$14.95	$11.25	$3.70	24.7%
2	AK	Alaska	$20.01	$14.79	$5.22	26.1%
3	AZ	Arizona	$18.01	$15.32	$2.69	14.9%
4	AR	Arkansas	$16.18	$13.40	$2.78	17.2%
5	CA	California	$18.71	$16.45	$2.26	12.1%
6	CO	Colorado	$20.02	$16.28	$3.74	18.7%
7	CT	Connecticut	$18.20	$15.93	$2.27	12.5%
8	DE	Delaware	$19.63	$14.61	$5.02	25.6%
9	DC	District of Columbia	$23.80	$17.47	$6.33	26.6%
10	FL	Florida	$15.06	$12.47	$2.59	17.2%
11	GA	Georgia	$16.22	$12.27	$3.95	24.4%
12	GU	Guam	$10.89	$9.70	$1.19	10.9%
13	HI	Hawaii	$18.49	$14.36	$4.13	22.3%
14	ID	Idaho	$17.07	$12.92	$4.15	24.3%
15	IL	Illinois	$18.75	$15.48	$3.27	17.4%
16	IN	Indiana	$19.22	$14.93	$4.29	22.3%
17	IA	Iowa	$18.87	$14.20	$4.67	24.7%
18	KS	Kansas	$18.14	$12.69	$5.45	30.0%
19	KY	Kentucky	$17.99	$13.94	$4.05	22.5%
20	LA	Louisiana	$14.84	$9.59	$5.25	35.4%
21	ME	Maine	$18.95	$14.81	$4.14	21.8%
22	MD	Maryland	$18.21	$15.35	$2.86	15.7%
23	MA	Massachusetts	$17.57	$15.29	$2.28	13.0%
24	MI	Michigan	$17.47	$13.78	$3.69	21.1%
25	MN	Minnesota	$19.33	$14.60	$4.73	24.5%
26	MS	Mississippi	$14.92	$9.74	$5.18	34.7%
27	MO	Missouri	$18.74	$14.56	$4.18	22.3%
28	MT	Montana	$18.48	$13.03	$5.45	29.5%
29	NE	Nebraska	$19.26	$14.20	$5.06	26.3%
30	NV	Nevada	$18.40	$14.54	$3.86	21.0%
31	NH	New Hampshire	$16.14	$13.99	$2.15	13.3%

Combined SOC Codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064						
#	ST	State	OEWS Avg Wage	Skill level I (entry-level)	Below OES Avg Wage	% Below OES Avg
32	NJ	New Jersey	$19.41	$16.05	$3.36	17.3%
33	NM	New Mexico	$16.20	$12.51	$3.69	22.8%
34	NY	New York	$18.75	$15.68	$3.07	16.4%
35	NC	North Carolina	$16.39	$12.78	$3.61	22.0%
36	ND	North Dakota	$18.98	$12.31	$6.67	35.1%
37	OH	Ohio	$18.11	$14.38	$3.73	20.6%
38	OK	Oklahoma	$16.01	$11.27	$4.74	29.6%
39	OR	Oregon	$17.62	$15.25	$2.37	13.5%
40	PA	Pennsylvania	$17.99	$13.88	$4.11	22.8%
41	PR	Puerto Rico	$10.37	$9.50	$0.87	8.4%
42	RI	Rhode Island	$17.17	$14.15	$3.02	17.6%
43	SC	South Carolina	$15.92	$12.14	$3.78	23.7%
44	SD	South Dakota	$17.48	$13.19	$4.29	24.5%
45	TN	Tennessee	$16.64	$12.44	$4.20	25.2%
46	TX	Texas	$15.67	$11.81	$3.86	24.6%
47	UT	Utah	$16.86	$12.48	$4.38	26.0%
48	VT	Vermont	$19.23	$15.96	$3.27	17.0%
49	VI	Virgin Islands	$14.34	$10.98	$3.36	23.4%
50	VA	Virginia	$18.40	$13.90	$4.50	24.5%
51	WA	Washington	$19.00	$16.53	$2.47	13.0%
52	WV	West Virginia	$16.15	$12.00	$4.15	25.7%
53	WI	Wisconsin	$18.22	$13.29	$4.93	27.1%
54	WY	Wyoming	$17.23	$11.34	$5.89	34.2%

V. Reduction in Wage Rate for H-2A Workers for Employer Provided Housing

The Farmworker Justice comments which CATA is joining in discuss this issue extensively and those comments are incorporated herein. See also an important blog post by the Economic Policy Institute including an extensive discussion of this issue.[3]

[3] CATA and its counsel have worked closely with the Economic Policy Institute staff for 20 years. It is possible that the EPI analysis calculations fail to recognize gaps in many state minimum wage laws for farmworker coverage (including New Jersey) and that the economic loss to farmworkers may be even greater in those states.

Trump's new H-2A wage rule will radically cut the wages of all farmworkers: *New estimates show farmworkers stand to lose $4.4 to $5.4 billion annually under DOL's updated Adverse Effect Wage Rate.* Available at:

https://www.epi.org/blog/trumps-new-h-2a-wage-rule-will-radically-cut-the-wages-of-all-farmworkers-new-estimates-show-farmworkers-stand-to-lose-4-4-to-5-4-billion-annually-under-dols-updated-adverse-effec/

It is possible to directly estimate the impact on workers by calculating the number of H-2A workers employed on each job order by employers, times the hourly reduction in H-2A worker wage rates, times the number of hours of work by those workers. DOL disclosure data for the H-2A program, includes information on the hours of work that employers disclose will be offered to H-2A workers. However, it is likely in many cases that the employer estimates of hours of work will understate the hours which workers may actually work in many weeks. The reduced wages received by H-2A workers will likely make such workers eager to work as many hours as possible.

As the Farmworker Justice comments clearly illustrate, the DOL basis for calculation of the value of employer provided housing to H-2A workers in most cases is a totally inappropriate mechanism for calculating the value of that housing. This is particularly true where workers in fact work 50 or more hours in a work week. DOL has long recognized that the protected wage rates established under the H-2 programs are the functional equivalent of minimum wage rates and should therefore be judged under the actual and reasonable cost standards applied under the Fair Labor Standards Act if any housing cost reduction (deduction) is permitted. Employers should have to establish that housing is offered in compliance with law and that they are not making a profit from the amount charged for housing. DOL appears to be acting as if the treatment of these costs as a reduction in wages rather than a deduction should insulate employers from compliance with these tests.

The reduced wages paid to H-2A workers has a direct competitive impact on U.S. workers as well, since it will increase the economic incentives for employers to prefer foreign temporary H-2A workers over workers present in the U.S.

Examination of the amounts to be received by employers is particularly significant in the case of large employers including farm labor contractor employers. An examination by Justice at Work Pennsylvania of 2024 H-2A disclosure data included the following data about farm labor contractors.

FY2024 H-2A Farm Labor Contractors

Rank	FLC Employer	FLC Certificate Number	Emp FEIN	Workers	ER ST	Work States
	Sub-Total 32 Farm Labor Contractors More than 1,000 Workers			75,625		35
	Sub-Total 1,117 other Farm Labor Contractors			112,936		46
	Total 1,149 H-2A Farm Labor Contractors			178,816		48
1	FOOTHILL PACKING, INC.	FLC-R-WE-CA-20189290-0725	77-0314932	6,433	CA	3
2	FRESH HARVEST, INC.	FLC-I-WE-CA-34176551-1025	86-0772971	5,140	CA	4
3	TEMP LABOR, LLC.	FLC-R-SE-FL-58184600-0626	46-3062820	3,324	FL	1
4	ELKHORN PACKING CO., LLC	FLC-R-WE-CA-92177929-0125	77-0529948	3,205	CA	2
5	AG LABOR LLC	FLC-R-SE-FL-79159234-1224	46-4527497	3,042	FL	1
6	EVERGLADES HARVESTING, INC.	FLC-R-SE-FL-98172425-1124	59-3132549	2,585	FL	4
7	AGRILABOR, INC	FLC-R-WE-OR-75160387-0325	81-0844786	2,326	OR	3
8	EMPIRE FARM LABOR CONTRACTOR, LLC	FLC-R-WE-CA-94198448-0926	81-1484686	2,321	CA	2
9	MANZANA, LLC	FLC-I-MW-MI-71173574-1225	47-2259609	2,229	MI	7
10	D&K HARVESTING, INC.	FLC-R-SE-FL-40180318-1225	59-2129884	2,198	FL	10
11	ALCO HARVESTING, LLC	FLC-R-WE-CA-92156366-1124	45-2833889	2,197	CA	2
12	V. VALENCIA HARVESTING, INC.	FLC-R-SE-FL-33178350-1224	20-1769604	2,080	FL	7
13	ROYAL OAK AG SERVICES, INC.	FLC-I-WE-CA-78156738-1224	82-2949930	2,064	CA	1
14	AG MANAGEMENT GROUP, LLC	FLC-R-WE-WA-27162092-0125	46-1766652	1,972	WA	1
15	OVERLOOK HARVESTING COMPANY, LLC	FLC-R-SE-FL-55192220-1026	20-5399333	1,921	FL	5
16	R & R HARVESTING, INC.	FLC-R-SE-FL-85182102-0126	61-1668397	1,901	FL	6

FY2024 H-2A Farm Labor Contractors

Rank	FLC Employer	FLC Certificate Number	Emp FEIN	Workers	ER ST	Work States
17	PALOMA HARVESTING, INC.	FLC-R-SE-FL-78182101-0125	20-5833830	1,789	FL	5
18	GARCIA'S CROP HARVESTING, LLC.	FLC-R-SE-FL-89177317-1125	84-4152912	1,776	FL	6
19	THE GROWERS COMPANY, INC.	FLC-R-SE-FL-89177317-1125	86-0215204	1,751	FL	2
20	DEL NORTE HARVESTING, LLC.	FLC-R-SE-SC-24156183-1224	84-3939978	1,712	SC	14
21	T. BELL DETASSELING, LLC	FLC-R-MW-IA-74182457-0326	42-1222600	1,334	IA	6
22	MCNEILL LABOR MANAGEMENT, INC.	FLC-R-SE-FL-19168688-0725	65-1110344	1,332	FL	4
23	OVERLOOK HARVESTING MICHIGAN, LLC	FLC-R-SE-FL-38178068-0126	83-1647464	1,267	FL	7
24	JVKS HARVEST SOLUTIONS, LLC. DBA AGSOCIO	FLC-R-WE-CA-88188343-0726	81-4602353	1,224	CA	3
25	E BERRY HARVEST COMPANY, LLC.	FLC-R-SE-FL-51181589-0226	45-4516359	1,207	FL	5
26	MARTINEZ & SONS TRUCKING, LLC.	FLC-R-SE-FL-18191382-0725	27-5224475	1,126	FL	4
27	JACKSON CITRUS, INC.	FLC-R-SE-FL-35164091-0625	59-1512937	1,116	FL	4
28	MARINO'S AG HARVESTING, INC. DBA RANCHO PACKING	FLC-R-WE-CA-83171716-0925	81-3772682	1,109	CA	1
29	CHI EMPLOYEE BENEFIT COMPANY	FLC-R-WE-CA-44192768-0825	84-4578492	1,105	CA	2
30	ADA HARVESTING, LLC	FLC-R-SE-GA-81183736-0226	81-4811288	1,070	GA	1
31	PEQUENO HARVESTING, LLC.	FLC-R-SE-FL-96182750-0625	47-2737594	1,012	FL	5
32	LEGACY LABOR, INC.	FLC-R-MW-MI-62156888-0125	84-3839457	1,012	MI	15

Employers employing more than 1,000 workers such as these labor contractors will be huge beneficiaries of the payments by H-2A workers through reduced wage rates for provision of farm housing. It should be recognized that the principal reason for providing housing to agricultural workers by agricultural employers is the convenience to the employer of having workers readily available at the worksite on a predicable basis.

VI. Effect of Reduction in Wage Rate for H-2A Level 1 Workers for Employer Provided Housing

The table below identifies the effect on H-2A workers of the combination of the housing reduction in wages and the arbitrary "skill level" reduction to the OES average wage for workers in the five combined SOC codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064.

Combined SOC Codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064								
#	ST	State	OEWS Avg Wage	Skill level I (entry-level)	Amount Housing adjustment	H-2A Level 1 Rate	H-2A Below OES Avg Wage	H-2A % Below OES Avg
1	AL	Alabama	$14.95	$11.25	($1.20)	$10.05	$4.90	32.8%
2	AK	Alaska	$20.01	$14.79	($1.90)	$12.89	$7.12	35.6%
3	AZ	Arizona	$18.01	$15.32	($2.10)	$13.22	$4.79	26.6%
4	AR	Arkansas	$16.18	$13.40	($1.13)	$12.27	$3.91	24.2%
5	CA	California	$18.71	$16.45	($3.00)	$13.45	$5.26	28.1%
6	CO	Colorado	$20.02	$16.28	($2.18)	$14.10	$5.92	29.6%
7	CT	Connecticut	$18.20	$15.93	($2.06)	$13.87	$4.33	23.8%
8	DE	Delaware	$19.63	$14.61	($1.85)	$12.76	$6.87	35.0%
9	DC	District of Columbia	$23.80	$17.47	($2.64)	$14.83	$8.97	37.7%
10	FL	Florida	$15.06	$12.47	($2.29)	$10.18	$4.88	32.4%
11	GA	Georgia	$16.22	$12.27	($1.75)	$10.52	$5.70	35.1%
12	GU	Guam	$10.89	$9.70	($2.35)	$7.35	$3.54	32.5%
13	HI	Hawaii	$18.49	$14.36	($3.18)	$11.18	$7.31	39.5%
14	ID	Idaho	$17.07	$12.92	($1.84)	$11.08	$5.99	35.1%
15	IL	Illinois	$18.75	$15.48	($1.79)	$13.69	$5.06	27.0%
16	IN	Indiana	$19.22	$14.93	($1.27)	$13.66	$5.56	28.9%
17	IA	Iowa	$18.87	$14.20	($1.15)	$13.05	$5.82	30.8%
18	KS	Kansas	$18.14	$12.69	($1.26)	$11.43	$6.71	37.0%
19	KY	Kentucky	$17.99	$13.94	($1.24)	$12.70	$5.29	29.4%

Combined SOC Codes: 45-2041, 45-2091, 45-2092, 45-2093, 53-7064								
#	ST	State	OEWS Avg Wage	Skill level I (entry-level)	Amount Housing adjustment	H-2A Level 1 Rate	H-2A Below OES Avg Wage	H-2A % Below OES Avg
20	LA	Louisiana	$14.84	$9.59	($1.35)	$8.24	$6.60	44.5%
21	ME	Maine	$18.95	$14.81	($1.60)	$13.21	$5.74	30.3%
22	MD	Maryland	$18.21	$15.35	($2.31)	$13.04	$5.17	28.4%
23	MA	Massachusetts	$17.57	$15.29	($2.42)	$12.87	$4.70	26.8%
24	MI	Michigan	$17.47	$13.78	($1.32)	$12.46	$5.01	28.7%
25	MN	Minnesota	$19.33	$14.60	($1.68)	$12.92	$6.41	33.2%
26	MS	Mississippi	$14.92	$9.74	($1.15)	$8.59	$6.33	42.4%
27	MO	Missouri	$18.74	$14.56	($1.28)	$13.28	$5.46	29.1%
28	MT	Montana	$18.48	$13.03	($1.80)	$11.23	$7.25	39.2%
29	NE	Nebraska	$19.26	$14.20	($1.24)	$12.96	$6.30	32.7%
30	NV	Nevada	$18.40	$14.54	($2.15)	$12.39	$6.01	32.7%
31	NH	New Hampshire	$16.14	$13.99	($1.96)	$12.03	$4.11	25.5%
32	NJ	New Jersey	$19.41	$16.05	($2.28)	$13.77	$5.64	29.1%
33	NM	New Mexico	$16.20	$12.51	($1.44)	$11.07	$5.13	31.7%
34	NY	New York	$18.75	$15.68	($2.40)	$13.28	$5.47	29.2%
35	NC	North Carolina	$16.39	$12.78	($1.69)	$11.09	$5.30	32.3%
36	ND	North Dakota	$18.98	$12.31	($1.27)	$11.04	$7.94	41.8%
37	OH	Ohio	$18.11	$14.38	($1.23)	$13.15	$4.96	27.4%
38	OK	Oklahoma	$16.01	$11.27	($1.22)	$10.05	$5.96	37.2%
39	OR	Oregon	$17.62	$15.25	($2.11)	$13.14	$4.48	25.4%
40	PA	Pennsylvania	$17.99	$13.88	($1.52)	$12.36	$5.63	31.3%
41	PR	Puerto Rico	$10.37	$9.50	($0.71)	$8.79	$1.58	15.2%
42	RI	Rhode Island	$17.17	$14.15	($1.87)	$12.28	$4.89	28.5%
43	SC	South Carolina	$15.92	$12.14	($1.54)	$10.60	$5.32	33.4%
44	SD	South Dakota	$17.48	$13.19	($1.20)	$11.99	$5.49	31.4%
45	TN	Tennessee	$16.64	$12.44	($1.60)	$10.84	$5.80	34.9%
46	TX	Texas	$15.67	$11.81	($1.84)	$9.97	$5.70	36.4%
47	UT	Utah	$16.86	$12.48	($1.84)	$10.64	$6.22	36.9%
48	VT	Vermont	$19.23	$15.96	($1.61)	$14.35	$4.88	25.4%
49	VI	Virgin Islands	$14.34	$10.98	($1.59)	$9.39	$4.95	34.5%
50	VA	Virginia	$18.40	$13.90	($2.08)	$11.82	$6.58	35.8%
51	WA	Washington	$19.00	$16.53	($2.49)	$14.04	$4.96	26.1%
52	WV	West Virginia	$16.15	$12.00	($1.12)	$10.88	$5.27	32.6%
53	WI	Wisconsin	$18.22	$13.29	($1.29)	$12.00	$6.22	34.1%
54	WY	Wyoming	$17.23	$11.34	($1.32)	$10.02	$7.21	41.8%

The economic impact on H-2A workers weekly wages will vary greatly both by the state in which they work and the number of hours of work. The chart below shows the impact on H-2A workers weekly wages of the housing charges at 50 hours of work in a week and at 60 hours of work in a week.

#	ST	State	Amount Housing Adjustment	Weekly @ 50 Hours	Weekly @ 60 Hours
1	AL	Alabama	($1.20)	($60.00)	($72.00)
2	AK	Alaska	($1.90)	($95.00)	($114.00)
3	AZ	Arizona	($2.10)	($105.00)	($126.00)
4	AR	Arkansas	($1.13)	($56.50)	($67.80)
5	CA	California	($3.00)	($150.00)	($180.00)
6	CO	Colorado	($2.18)	($109.00)	($130.80)
7	CT	Connecticut	($2.06)	($103.00)	($123.60)
8	DE	Delaware	($1.85)	($92.50)	($111.00)
9	DC	District of Columbia	($2.64)	($132.00)	($158.40)
10	FL	Florida	($2.29)	($114.50)	($137.40)
11	GA	Georgia	($1.75)	($87.50)	($105.00)
12	GU	Guam	($2.35)	($117.50)	($141.00)
13	HI	Hawaii	($3.18)	($159.00)	($190.80)
14	ID	Idaho	($1.84)	($92.00)	($110.40)
15	IL	Illinois	($1.79)	($89.50)	($107.40)
16	IN	Indiana	($1.27)	($63.50)	($76.20)
17	IA	Iowa	($1.15)	($57.50)	($69.00)
18	KS	Kansas	($1.26)	($63.00)	($75.60)
19	KY	Kentucky	($1.24)	($62.00)	($74.40)
20	LA	Louisiana	($1.35)	($67.50)	($81.00)
21	ME	Maine	($1.60)	($80.00)	($96.00)
22	MD	Maryland	($2.31)	($115.50)	($138.60)
23	MA	Massachusetts	($2.42)	($121.00)	($145.20)
24	MI	Michigan	($1.32)	($66.00)	($79.20)
25	MN	Minnesota	($1.68)	($84.00)	($100.80)
26	MS	Mississippi	($1.15)	($57.50)	($69.00)
27	MO	Missouri	($1.28)	($64.00)	($76.80)
28	MT	Montana	($1.80)	($90.00)	($108.00)
29	NE	Nebraska	($1.24)	($62.00)	($74.40)
30	NV	Nevada	($2.15)	($107.50)	($129.00)
31	NH	New Hampshire	($1.96)	($98.00)	($117.60)
32	NJ	New Jersey	($2.28)	($114.00)	($136.80)
33	NM	New Mexico	($1.44)	($72.00)	($86.40)

#	ST	State	Amount Housing Adjustment	Weekly @ 50 Hours	Weekly @ 60 Hours
34	NY	New York	($2.40)	($120.00)	($144.00)
35	NC	North Carolina	($1.69)	($84.50)	($101.40)
36	ND	North Dakota	($1.27)	($63.50)	($76.20)
37	OH	Ohio	($1.23)	($61.50)	($73.80)
38	OK	Oklahoma	($1.22)	($61.00)	($73.20)
39	OR	Oregon	($2.11)	($105.50)	($126.60)
40	PA	Pennsylvania	($1.52)	($76.00)	($91.20)
41	PR	Puerto Rico	($0.71)	($35.50)	($42.60)
42	RI	Rhode Island	($1.87)	($93.50)	($112.20)
43	SC	South Carolina	($1.54)	($77.00)	($92.40)
44	SD	South Dakota	($1.20)	($60.00)	($72.00)
45	TN	Tennessee	($1.60)	($80.00)	($96.00)
46	TX	Texas	($1.84)	($92.00)	($110.40)
47	UT	Utah	($1.84)	($92.00)	($110.40)
48	VT	Vermont	($1.61)	($80.50)	($96.60)
49	VI	Virgin Islands	($1.59)	($79.50)	($95.40)
50	VA	Virginia	($2.08)	($104.00)	($124.80)
51	WA	Washington	($2.49)	($124.50)	($149.40)
52	WV	West Virginia	($1.12)	($56.00)	($67.20)
53	WI	Wisconsin	($1.29)	($64.50)	($77.40)
54	WY	Wyoming	($1.32)	($66.00)	($79.20)

VII. Payment for H-2A Workers Performing Job Duties Outside of the Combined SOC Codes

The cap on the availability of visas under the non-agricultural H-2B program has for many years provided an incentive for employers to classify workers as agricultural subject to the H-2A program, rather than as non-agricultural subject to the H-2B program.

Under the H-2B program and every other DOL foreign labor wage rate determination program, the wage rates for jobs are based on the SOC code with duties performed by the temporary foreign worker. This has been DOL policy for many years. *See* the current version of that long established policy at: Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised November 2009.

That policy at page 4 states:

> "*Nature of the Job Offer*"
>
> In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification. The NPWHC can identify the appropriate O*NET occupation using O*NET OnLine (http://online.onetcenter.org/) and entering the employer's job title to search for the appropriate O*NET-SOC occupation and code.
>
> If the employer's prevailing wage request contains only a code from the Dictionary of Occupational Titles (DOT) rather than a job title, the DOT to O*NET-SOC crosswalk found on the On-Line Wage Library shall be used to identify the related O*NET-SOC code.
>
> If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

The rationale behind this long-established policy is that a U.S. worker with the occupational skills sufficient to perform the duties in a higher paid occupational code can only be expected to accept a job offer if they are offered a market rate of pay commensurate with the skills for the job.

Examination of DOL H-2A disclosure date for FY2024 and FY2025 jobs reflects the following significant SOC codes outside of the 5 combined SOC Codes.

#	SOC	SOC Title	FY2025	FY2024	FY24-25
1	53-3032	Heavy and Tractor-Trailer Truck Drivers	7,340	8,234	15,574
2	53-3053	Shuttle Drivers and Chauffeurs	2,975	2,169	5,144
3	47-2061	Construction Laborers	2,714	2,365	5,079
4	47-3012	Helpers--Carpenters	679	296	975
5	49-9098	Helpers--Installation, Maintenance, and Repair Workers	652	569	1,221
6	49-3041	Farm Equipment Mechanics and Service Technicians	630	427	1,057
7	45-1011	First-Line Supervisors of Farming, Fishing, and Forestry Workers	493	469	962

#	SOC	SOC Title	FY2025	FY2024	FY24-25
8	53-3033	Light Truck Drivers	383	204	587
9	35-2012	Cooks, Institution and Cafeteria	358	220	578
10	47-3019	Helpers, Construction Trades, All Other	238	105	343
11	11-9013	Farmers, Ranchers, and Other Agricultural Managers	151	11	162
12	47-4031	Fence Erectors	127	138	265
13	51-3022	Meat, Poultry, and Fish Cutters and Trimmers	99	151	250
14	49-9071	Maintenance and Repair Workers, General	98	96	194
15	35-2021	Food Preparation Workers	97	85	182
16	45-4022	Logging Equipment Operators	93	79	172
17	51-9198	Helpers--Production Workers	76	54	130
18	53-3052	Bus Drivers, Transit and Intercity	59	126	185
19	53-7062	Laborers and Freight, Stock, and Material Movers, Hand	45	50	95
20	45-2099	Agricultural Workers, All Other	44	59	103
21	51-3023	Slaughterers and Meat Packers	42	17	59
22	37-2012	Maids and Housekeeping Cleaners	42	20	62
23	45-2011	Agricultural Inspectors	32	18	50
24	37-3012	Pesticide Handlers, Sprayers, and Applicators, Vegetation	24	283	307
25	51-3021	Butchers and Meat Cutters	24	21	45
26	53-6032	Aircraft Service Attendants	24	14	38
27	47-3013	Helpers--Electricians	20	16	36
28	53-7061	Cleaners of Vehicles and Equipment	20	33	53
29	13-1074	Farm Labor Contractors	14	630	644
30	39-2011	Animal Trainers	11	19	30
32	49-9095	Manufactured Building and Mobile Home Installers	0	94	94
	Total		**17,604**	**17,072**	**34,676**

As a threshold matter it is important that DOL prevent H-2A employers for seeking to identify SOC codes with lower OEWS wage rates in particular areas and seeking to classify H-2A workers under such lower paid SOC

codes so as to avoid paying the general Adverse Effect Wage Rate for H-2A agricultural workers.

However, the IFR provisions allowing employers to pay lower combined SOC Code wages for OES codes with significantly higher wage rates provided the employers assert those individuals spend less than 50% if their time in those lower paid job duties will have a clear adverse impact on U.S. workers who might accept positions with those employers if they were paid appropriate market wage rates.

Consistent with long established DOL policy for all foreign labor programs, H-2A employers should have to pay wage rates based on the highest paid occupational code of the job duties of the position.[4]

VIII. Resumption of the Farm Labor Survey and Future Transition to BLS OES Wage Surveys

The unjustified discontinuance of the Farm Labor Survey without having provided sufficient time, resources, and training for the Bureau of Labor Statistics to undertake a full-scale assessment of agricultural employer wage rates is totally improper. The IFR itself will result in reduced wage rates for future wage surveys if its disastrous reduction in wage rates is not reversed. It is clear that in the current fiscal environment, it is exceptionally unlikely that BLS will have the capacity to adequately assess and survey farm labor wage rates paid by agricultural employers rather than labor contractors.

In the interim, the wage rates from prior USDA Farm Labor Surveys have consistently demonstrated an increase in wage rates rather than the drastic wage reductions provided for under the IFR.

USDA Farm Labor Survey data is available from USDA. See:
https://quickstats.nass.usda.gov/results/25AE1A01-3221-312B-BEA6-58DD71F51F49

A review of the data for the period 2018-2024 reflects a consistent increase in wage rates at a national level. That data suggests that a 5.29% increase over the 2024 survey data would be a likely appropriate temporary increase over the 2024 data used to establish the initial 2025 AEWR wage rates. The USDA data for that period reflects the following:

[4] Although it would be inappropriate in terms of established DOL policy for foreign labor programs, DOL should at a minimum require the payment of higher occupational wage rates for hours of work performed in positions outside of the worker's primary job duties. This would only be acceptable under circumstances where such job duties were performed on only an occasional and insubstantial basis.

Program	Year	Period	Geo Level	Commodity	Data Item	Value	Percent Increase
					Average increase 2018-2024 =		5.29%
SURVEY	2024	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$19.10	3.08%
SURVEY	2023	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$18.53	5.52%
SURVEY	2022	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$17.56	7.20%
SURVEY	2021	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$16.38	5.75%
SURVEY	2020	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$15.49	3.89%
SURVEY	2019	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$14.91	5.22%
SURVEY	2018	YEAR	NATIONAL	LABOR	LABOR, HIRED - WAGE RATE, MEASURED IN $ / HOUR	$14.17	6.38%

IX. Recommended Action

DOL should vacate the IFR and take interim steps to adjust the 2026 H-2A wage rates appropriately while re-opening a new comment period after proposing procedures that protect workers against the adverse effects of changes in the H-2A program.

Exhibit 3

State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

December 1, 2025

Submitted By Electronic Filing

The Honorable Lori Chavez-DeRemer
U.S. Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue NW
Washington, DC 20210

RE: Interim Final Rule, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 20 Fed. Reg. 47914 (Oct. 2, 2025) (DOL Docket No. ETA-2025-0008)

Dear Secretary Chavez-DeRemer:

We, the undersigned Attorneys General of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Washington (the "State AGs") submit this comment letter, opposing the U.S. Department of Labor's (the "DOL") October 2, 2025 publication of the Interim Final Rule ("IFR"), *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*. The H-2A visa program provides U.S. farmers with a means to hire agricultural workers from other countries on a temporary basis when domestic workers are in short supply. The IFR puts into immediate effect, without the notice-and-comment process required by the Administrative Procedure Act ("APA"), a significant reduction to the Adverse Effect Wage Rate ("AEWR"), which lowers the wages of workers employed under the H-2A program. The IFR rolls back without good cause wage protections instituted since 1986 for farm laborers who bring food to homes across the nation. Moreover, in slashing wages for guest workers, it promises to undercut the wages of domestic workers, precisely the result that Congress instituted the AEWR to prevent. Instead, the IFR aims to transfer $2.46 billion annually from workers' wages to employers' pockets.

H-2A workers and their domestic counterparts are an important portion of the agricultural labor force of the States represented by the undersigned State AGs.[1] We have a compelling interest to protect the accurate computation and implementation of agricultural wages so that both temporary and domestic farmworkers get their fair pay. The DOL has reported that the industry remains rife with wage theft and poor housing conditions. State AGs are concerned that despite these findings, the DOL shifts monetary gains to employers and away from workers rather than protect employees from continuous substandard treatment. In addition, the States will suffer direct impacts to their budgets because their State Workforce Agencies administer the H-2A program, performing the initial screening on every employer application and categorizing job postings by occupational classification.[2] The IFR projects that its wage cuts will greatly increase the use of the H-2A program in the coming decade, which will mechanically also increase the administrative burden imposed on State Workforce Agencies, without any additional funding from the DOL.

The State AGs urge the DOL to withdraw the IFR as it is arbitrary and runs antithetical to the DOL's statutory mission to promote and develop the welfare of wage earners.[3] This comment letter first reviews the background of the AEWR and the short-lived attempts to change the AEWR methodology. Second, the letter provides comments opposing the IFR for the following reasons: (1) the DOL evades the notice-and-comment process to effectuate a new AEWR methodology; (2) the DOL arbitrarily abandons the use of long-standing, farm-specific data to lower the AEWR; (3) the DOL arbitrarily creates a lower-paid job category to excuse further cuts in pay; (4) the DOL defies the purpose of the AEWR and undercuts the statute that mandates that employers must provide housing to temporary agricultural workers; (5) the DOL further lowers wages by creating an arbitrary "majority duties rule" for specialized labor; (6) by effectuating the rule in haste, the DOL ignores historic violations in the H-2A program to quickly backfill a workforce diminished by the President's immigration policies; and (7) the IFR will result in farmworkers being paid less than or close to the federal poverty line, inflicting direct financial injuries on our States.

I. BACKGROUND

A. Wages under the AEWR have historically relied on farm-specific data.

Under 20 C.F.R. § 655.120(a), an employer must pay H-2A workers and their domestic counterparts the highest of the (1) Adverse Effect Wage Rate ("AEWR"), (2) prevailing wage rate, (3) agreed-upon collective bargaining wage, (4) federal minimum wage, (5) state minimum wage, or (6) any other wage rate the employer intends to pay. Since 1987, the DOL has primarily established the AEWR through the Farm Labor Survey conducted by the U.S. Department of Agriculture (the "USDA") for non-range occupations, the most common of occupations in the

[1] Domestic counterparts to H-2A workers are referred to as "corresponding workers" under 20 C.F.R. 655 Subpart B and 29 C.F.R. Part 501. Corresponding workers are defined under 20 C.F.R. § 501(a) as U.S. workers who do the same work as the H-2A workers at the same locations as the H-2A workers during the pendency of the H-2A certification.

[2] *See* 20 C.F.R. § 655.121(e).

[3] Pub. L. No. 62-426, 37 Stat. 736 (1913).

agricultural industry.[4, 5] The Farm Labor Survey collects data specifically from all farms and ranches from each state or region with $1,000 or more in agricultural sales.[6] The survey collects data quarterly on the number of workers, total hours worked, and total wages by type of work to compute the AEWR.[7] The AEWR is then published in the Federal Register.[8]

Except for brief periods under the 2008 and 2020 Final Rules, the DOL has established the AEWR primarily on the Farm Labor Survey conducted by the USDA.[9] From 1987 to 2008, the AEWR was based on this survey. For a short two-year period from 2008 to 2010, the DOL changed the computation of the AEWR by using data collected by the Occupational Employment Statistics administered by the DOL's Bureau of Labor Standards. The statistics derive from broader data from all occupations rather than farm-specific data. In 2010, the DOL reverted back to the Farm Labor Survey to calculate the AEWR after analyzing the effects of the 2008 rule and concluding that the Farm Labor Survey is the "authoritative source for data on agricultural wages."[10] Computation of the AEWR through the survey remained so until a short stint in 2020.[11] On November 5, 2020, during the first Trump administration, the DOL published a final rule that changed the AEWR methodology by relying on an index that excluded farms and agricultural workers. The first Trump administration prevented reliance on the Farm Labor Survey through the USDA's abrupt suspension of the Farm Labor Survey on September 30, 2020. The Eastern District of California's decision in *United Farm Workers v. Perdue* enjoined the USDA from suspending the Farm Labor Survey, and the court's decision in *United Farm Workers v. U.S. Department of Labor* enjoined the implementation of the 2020 Final Rule.[12] In both decisions, the court recognized that farmworkers across the country would suffer irreparable harm by the suspension of the Farm Labor Survey and the enactment of the 2020 rule since workers would suffer grave economic hardship by the decreased wages resulting from the 2020 AEWR methodology.[13] Therefore, until now, the DOL has continued using the Farm Labor Survey to compute the AEWR.

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[4] 20 C.F.R. § 655.120(b)(1)(i)(A); *see also* 84 Fed. Reg. 36,168, 36,179 (Jul. 26, 2019) (noting that, in many areas, local prevailing wage surveys are not conducted for all agricultural occupations because the method is resource-intensive, so the prevailing wage rates do not exist for all H-2A occupations).

[5] 54 Fed. Reg. 29037, 28039-2040 (Jul. 5, 1989) (recognizing that the USDA's Farm Labor Survey determined the wage rates for foreign workers imported into the United States even during the H-2A program's predecessor, the Bracero program as described *infra* n. 15).

[6] U.S. Dept. of Agric., *Farm Labor Methodology and Quality Measures* (Nov. 20, 2024), https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Farm_Labor/ (last visited Oct. 17, 2025).

[7] *Id.*

[8] 20 C.F.R. 655.120(b)(2).

[9] *See* 73 Fed. Reg. 77110 (Dec. 18, 2008); 85 Fed. Reg. 70455 (Nov. 5, 2020).

[10] 88 Fed. Reg. 12760, 12773 (Feb. 28, 2023) (citing 84 Fed. Reg. 36183-84, 36243 (Jul. 26, 2019)).

[11] 75 Fed. Reg. 6883 (Feb. 12, 2010).

[12] *United Farm Workers v. Perdue*, 2020 WL 6318432, at *17 (E.D. Cal. Oct. 28, 2020); *United Farm Workers v. United States Dep't of Lab.*, 509 F. Supp. 3d 1225, 1233 (E.D. Cal. 2020).

[13] *United Farm Workers v. Perdue* at *15 (E.D. Cal. Oct. 28, 2020); *United Farm Workers v. United States Dep't of Lab.* at 1252 (E.D. Cal. 2020).

B. Federal statute has long required employers to cover H-2A housing costs.

Under the Immigration and Nationality Act ("INA"), as amended by the Immigration and Reform Control Act of 1986 ("IRCA"), "[e]mployers shall furnish housing in accordance with regulations."[14] The implementing regulation at 20 C.F.R. § 655.122(d)(1) requires employers to provide housing *at no cost* to H-2A workers, as well as corresponding workers who cannot reasonably return to their residence after a workday. The requirement has been in place since the DOL effectuated the rule in 1987.[15] Since then, the DOL has enforced civil money penalties and has ordered backpay if growers deducted housing costs from workers' wages.[16]

Section 655.122(d)(1), along with the adjoining regulations in 20 C.F.R. 655 Subpart B and 29 C.F.R. Part 501, institute robust protections against the poor conditions that historically plagued the farming industry since the implementation of the Bracero program.[17, 18] To prevent exploitation, the regulations mandate employers to specifically provide safe and healthy transportation, food, and housing for workers. By codifying the housing requirement under the INA, Congress intended to attract U.S. workers to farm labor without being adversely affected by known industry abuses.[19]

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[14] 8 U.S.C. § 1188(c)(4).

[15] *See* 75 Fed. Reg. at 6909 (recognizing the employer-provided housing requirement has been in place since 1987 and reinstituting inspection and certification requirements in 2010).

[16] *See* 29 C.F.R. Part 501; *see also* U.S. Gov't Accountability Office, *H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement*, GAO-25-106389, at 7, 29, 36, 52 (2024), https://www.gao.gov/assets/gao-25-106389.pdf (last visited Oct. 17, 2025).

[17] The Bracero program was born out of agreements between the United States and Mexico in 1917-1921 and 1942-1964 to establish a legal guestworker program for Mexican citizens to work on U.S. farms. The Bracero program was initially established to respond to labor shortages during war. Upon its termination in 1964, the program brought four million guestworkers to work in U.S. agriculture and railroads. Philip Martin, *Mexican Braceros and US Farm Workers*, Wilson Center (July 10, 2020), https://www.wilsoncenter.org/article/mexican-braceros-and-us-farm-workers (last visited Oct. 20, 2025); Philip Martin, *Promise Unfulfilled: Unions, Immigration, and the Farm Workers* (ILF Press 2003); "1942: Bracero Program," Library of Congress, https://guides.loc.gov/latinx-civil-rights/bracero-program (last visited Oct. 20, 2025).

[18] H.R. REP. 99-682(I), 84, 1986 U.S.C.C.A.N. 5649, 5688 (When considering amending the INA in 1986, the House Report by the Judiciary Committee recognized that the Bracero program is "likened by some to indentured slavery where employer exploitation was rampant and inhumane."); *see also* Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story—An Account of the Managed Migration of Mexican Farm Workers in California, 194201960* (McNally & Loftin 1964); *Harvest of Loneliness: The Bracero Program* (Gilbert G. Gonzalez, Vivian Price & Adrian Salinas, dirs., 2010); 89 Fed. Reg. 103202 (Dec. 18, 2024) (describing the flagrant wage theft, contract violations, and inhumane living and working conditions experienced by workers employed in the program).

[19] *See* U.S. Gov't. Accountability Off., *The H-2A Program: Protections for U.S. and Foreign Agricultural Workers* 2 (GAO/PEMD-89-3, Oct. 21, 1988); *see also* H.R. REP. 99-682(I), 84, 1986 U.S.C.C.A.N. 5649.

C. Notice and comment are required for substantial rule changes absent narrow exemptions.

The APA requires agencies to provide formal notice-and-comment process prior to establishing a final rule implementing the laws passed by Congress. Agencies must provide the public with reasonable time to review the proposed rule and provide comments.[20, 21] Thereafter, agencies respond to those comments in any final rule.[22] The APA specifically requires that "[t]he required publication . . . shall be made not less than 30 days before its effective date."[23] Courts have ruled that "[w]hen substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comments."[24] Agencies have typically provided at least a 60-day comment period to "afford the public a meaningful opportunity to comment on any proposed regulation . . . [and] to explore . . . consensual mechanisms for developing regulations, including negotiated rulemaking."[25, 26]

During the last attempt to lower the AEWR, the DOL abided by the timeframe permitted by the notice-and-comment process under the APA. Under the first Trump administration, the DOL published a Notice of Proposed Rulemaking, lowering the AEWR, on July 26, 2019 and allowed 60 days for the public to review the proposed rule and provide comments through September 24, 2019. The DOL reviewed a total of 83,532 public comments and published its final rule, incorporating responses to public comment, on November 5, 2020.[27]

The APA's notice and comment requirements are subject to very narrow exemptions.[28] The good cause exemption allows an agency to bypass the APA's requirements when the notice and comment period is impracticable, unnecessary, or against the public interest.[29] The exemption is not an "escape clause[] that may be arbitrarily utilized at the agency's whim."[30]

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[20] 5 U.S.C. § 553.

[21] Section 553 "serve[s] the laudable purpose of informing affected parties and affording them a reasonable time to adjust to the new regulation . . . The more expansive the regulatory reach of these rules, of course, the greater the necessity for public comment." *Am. Fed'n of Gov't Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981).

[22] *See* 5 U.S.C. § 553(b)-(c).

[23] 5 U.S.C. § 553(d).

[24] *Nat'l Lifeline Ass'n v. Fed. Commc'ns Comm'n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (citing *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 453 (3d Cir. 2011)); *see also Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 955 (N.D. Cal. 2021).

[25] Executive Order 12866 § 6(a), 58 Fed. Reg. 51735 (Oct. 4, 1993).

[26] *See*, *e.g.*, *State v. Biden,* 52 F.4th 362, 367 (8th Cir. 2022); *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020); *Defs. of Wildlife v. Browner*, 909 F. Supp. 1342, 1350 (D. Ariz. 1995).

[27] 85 Fed. Reg. at 70447-48.

[28] 5 U.S.C. § 553(a), (b)(A)-(B).

[29] 5 U.S.C. § 553 (b)(B).

[30] *Am. Fed'n of Gov't Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (citing S. Rep. No. 752, 79th Cong. 1944-46 at 200, 201).

II. COMMENTS OPPOSING THE INTERIM FINAL RULE

The IFR at issue here is President Trump's second expedited attempt to lower wages in the H-2A program. The IFR intends to lower worker wages in four ways. First, the IFR implements a new AEWR methodology based on a semiannual survey typically conducted with nonfarm establishments. Second, the IFR establishes a two-tiered wage determination, cutting wages further for "entry-level" workers. Third, the IFR deducts from the AEWR an amount to cover the cost of housing, which employers have statutorily provided workers at no cost since 1987. Fourth, the rule ends the practice of paying workers a higher hourly AEWR for doing specialized jobs unless these duties encompass more than 50 percent of the workdays. The DOL provides inconsistent and arbitrary reasons to hastily abandon the long-standing methodology to compute the AEWR. And, in contrast to the previous rulemaking on this issue by the first Trump administration and in violation of the APA, the DOL has done this all without proper notice and comment through an interim final rule that was immediately effectuated.

A. The DOL evades the notice-and-comment process without good cause.

On October 2, 2025, the DOL effectuated the IFR without good cause to bypass the notice-and-comment period required under the APA. The good cause exception is "narrowly construed and only reluctantly countenanced."[31] This is a "high bar," as the exception is "essentially an emergency procedure."[32] Agencies must therefore establish that "delay would do real harm to life, property, or public safety."[33] The proffered reasons fall far short of that stringent standard.

The DOL claims that the APA's good cause exemption under Section 553(b)(B) allows it to institute the rule immediately because the USDA discontinued the Farm Labor Survey in August 2025, rendering impracticable an AEWR computation based on the survey.[34] That is no "emergency."[35] The agency had readily available alternatives, such as simply using the most recent iteration of the Farm Labor Survey, last published quite recently in May 2025, to determine AEWRs for calendar year 2026.

In addition, that basis for invoking the exemption is a self-manufactured exigency. As mentioned *supra*, the DOL failed in its attempt during the first Trump administration to suspend the survey. The court in *Perdue* recognized that the USDA and the DOL work in coordination so that the DOL can arrive at the most accurate wage rates reflective of the farm labor market; the DOL has even funded the Farm Labor Survey since July 2011 pursuant to a memorandum of understanding between the agencies.[36] The court concluded that the suspension of the survey

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[31] *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004).
[32] *U.S. v. Valverde*, 628 F.3d 1159, 1164–65 (9th Cir. 2010).
[33] *E. Bay Sanctuary Covenant v. Trump*, 932 F.2d 742, 777 (9th Cir. 2018).
[34] 90 Fed. Reg. at 47920.
[35] *Valverde*, 628 F.3d at 1165.
[36] *United Farm Workers v. United States Dep't of Lab.,* 509 F. Supp. 3d at 1231–32.

would lead to inaccurate wage computations by the DOL.[37] For the same reasons, this second attempt to lower the AEWR through the IFR is unjustified. The IFR ignores the coordination between the USDA and the DOL to change the AEWR. Similar to the timeline during the first Trump administration, the DOL published the IFR just a month after the USDA canceled the Farm Labor Survey.[38] The purported impracticability of using the survey and the resulting need to base the AEWR on alternative data was a foreseeable and avoidable exigency that does not justify an emergency implementation of the IFR.

The DOL additionally claims that there is good cause to immediately circumvent the APA because there is harm to the public interest caused by "the current and imminent labor shortage exacerbated by the near total cessation of the inflow of illegal aliens."[39] This argument makes the fundamental error of confusing the public interest in the outcome of the rulemaking—a cut to farmworker wages—with the public interest in the APA's notice-and-comment requirement. It is the latter question that matters under the public-interest exception: "The public interest prong of the good cause exception is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest."[40] The DOL has said nothing to explain why public-comment procedures would have any effect, positive or negative, on the statutory purposes of the H-2A visa program. Instead, the DOL makes a category error by focusing on the alleged ultimate effects of the IFR itself.

And, in any event, the DOL's explanation about the effects of the IFR also makes no sense. The DOL stakes out an illogical position that cutting wage rates by abandoning the Farm Labor Survey (and making the other changes to the AEWR) will serve "to assist employers in securing a reliable workforce alternative."[41] If "the agricultural sector is experiencing acute labor shortages," slashing farmworkers wages will only exacerbate that problem by making it even less attractive for any worker—foreign or domestic—to pursue these difficult jobs that "involve manual labor, long hours, and exposure to extreme weather conditions."[42] Moreover, the purported harm to the public interest is caused by the current administration's own immigration policies. As the IFR states, the current administration's aggressive approach to immigration enforcement has manufactured a potential labor shortage in the fields.[43] That enforcement in no way curtails access to H-2A workers, however, and if anything, facilitates employers' ability to successfully use H-2A workers as a "reliable workforce alternative" by eliminating competition from those who have violated the law by paying substandard wages to immigrants not legally allowed to work. It does not serve the public interest to allow an administration to manufacture a crisis and then exploit that alleged crisis to forgo lawful public-participation procedures.

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[37] *United Farm Workers v. Perdue*, No. 120CV01452DADJLT, 2020 WL 6318432, at *8 ("[B]ecause the [Farm Labor Survey] is the only timely and reliable source of information on the size of the farm worker population, legal consequences would flow from an inaccurate tabulation of wage rates." (quotations omitted)).

[38] *See* 90 Fed. Reg. 42560 (Sept. 3, 2025); *see also* 80 Fed. Reg. 61719 (Sept. 30, 2020).

[39] 90 Fed. Reg. at 47920.

[40] *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 95 (D.C. Cir. 2012).

[41] 90 Fed. Reg. at 47922.

[42] *Id.*

[43] *Id.* at 47921, 47959.

Hence, good cause does not exist to excuse the DOL from complying with the APA. Meaningful notice and comment are necessary especially because the IFR effectuates regulatory changes in a complex, long-established foreign worker program in an industry challenged with historic abuses that pre-date Congress' formation of the H-2A program.[44]

B. The DOL arbitrarily eliminates long-standing, farm-specific data to transfer worker wages into employers' pockets.

The IFR's new AEWR methodology cuts worker wages by abandoning agricultural-specific data historically relied upon for the AEWR computation. The IFR aims to eliminate the computation of the AEWR based upon the USDA's Farm Labor Survey—a computation primarily used by the DOL since 1987—and solely relies upon the Occupational Employment and Wage Statistics ("OEWS") survey administered by the Bureau of Labor Statistics.[45] The OEWS is a semiannual survey on the wage and salary of workers typically in nonfarm establishments for approximately 830 occupations both in part-time and full-time employment.[46] The wage estimates are produced by using three years of OEWS data and is derived from a list maintained by State Workforce Agencies.[47] Contrastingly, the USDA has collected data for the Farm Labor Survey since 1910, collecting data from all farms and ranches from each state or region more often than the OEWS (every quarter as opposed to semiannually) to understand the number of hours and wages received by agricultural workers.[48] Prior rulemaking has recognized the following:

> [T]he [Farm Labor Survey] is a "superior wage source" . . . for field and livestock worker job opportunities for many reasons, including the comparatively broad geographic scope and the fact that "only the [Farm Labor Survey] directly surveys farmers and ranchers and the [Farm Labor Survey] is recognized by the BLS as the authoritative source for data on agricultural wages."[49]

The *Perdue* court also reasoned that because the Farm Labor Survey "is the only timely and reliable source of information on the size of the farmworker population, legal consequences would flow from an inaccurate tabulation of wage rates."[50]

The IFR provides a surface-level analysis to explain why the OEWS should be the preferred source for the AEWR. The IFR claims that using OEWS is more accurate than using

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[44] *See, supra*, notes 16, 17.

[45] Computing the AEWR through the OEWS is currently an option under 20 C.F.R. § 655.120(b)(1)(i)(B) when the annual average hourly gross wage is not reported by the FLS.

[46] U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics Frequently Asked Questions*, https://www.bls.gov/oes/oes_ques.htm (last visited Oct. 17, 2025).

[47] *Id.*

[48] *United Farm Workers v. United States Dep't of Lab.*, 509 F. Supp. 3d at 1231.

[49] 88 Fed. Reg. 12760, 12773 (Feb. 28, 2023) (citing 84 Fed. Reg. 36183-84, 36243 (Jul. 26, 2019)).

[50] *United Farm Workers v. Perdue*, No. 120CV01452DADJLT, 2020 WL 6318432, at *8 (internal quotations omitted).

the Farm Labor Survey because the data is based on a larger sample of employer establishments employing workers for temporary and permanent employment across different sectors in the United States.[51] The AEWR would then incorporate a larger sample size of establishments (1.1 million total nonfarm establishments) to arrive at average wage rates.[52] In that regard, the AEWR would be based upon competing wages in other industries that are available to corresponding workers within a specified region. The IFR further adds that the DOL can no longer compute the AEWR because the USDA eliminated the Farm Labor Survey on August 28, 2025, so no data collection could occur for the mandatory January 1, 2026 publication of the AEWR.[53] Yet, the claimed inability to do so is self-created by the current administration as discussed *supra*.

The reliance on broader data points and the self-manufactured inability to rely on the Farm Labor Survey provide no clear support to alter an AEWR computation specifically reflective of the farm labor market. The Farm Labor Survey produces more accurate wage estimates since it considers overtime, on-call pay, and shift differentials in the farming industry, as the IFR itself recognizes.[54] So a larger sample size of establishments—from wholly unrelated industries—does not imply a more accurate measure. Indeed, the belated change to the OEWS reflects the arbitrary nature of choosing it. The 2020 Final Rule instead proposed using the generic Employment Cost Index as the data source for the AEWR. These repeated shifts suggest that there is no real confidence that either broad data set helps to compute accurate agricultural wages better than the canceled Farm Labor Survey, but the IFR does acknowledge that its proposed changes will transfer $2.46 billion from farmworker wages to farm employers.[55]

C. The DOL arbitrarily creates a lower job category to excuse further cuts in pay.

The DOL arbitrarily bifurcates the AEWR to establish an even lower wage rate for "entry-level" H-2A workers. The IFR adds a new subsection, Section 655.120(b)(2), that further lowers wages by bifurcating the AEWR into (1) skill level I ("entry-level") and (2) skill level II ("experienced").[56] Skill level I AEWR is computed as the average hourly gross wage paid to the lower one-third of all workers employed in jobs of the five Standard Occupational Classification codes of the "field and livestock workers (combined)" category.[57] Skill level II AEWR is computed as the average hourly gross wage paid to all workers in the five codes of the same category. In other words, "entry-level" workers will be paid even lower wages since their compensation will be based on the lowest wages offered to one-third of workers in all five codes.

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[51] 90 Fed. Reg. at 47929, 47930, 47934.

[52] U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics Overview*, https://www.bls.gov/oes/oes_emp.htm (last visited Oct. 17, 2025); *see also* 75 Fed. Reg. 66268, 6895 (Oct. 27, 2010).

[53] 90 Fed. Reg. at 47926.

[54] *Id.* at 47931.

[55] *Id.* at 47952.

[56] 90 Fed. Reg. at 47932-47933.

[57] The five Standard Occupational Classification codes under the new rule are (1) 45-2092 – Crop, Nursery, Greenhouse workers; (2) 45-2093 – Livestock, Farm, Aquacultural animal workers; (3) 45-2091 – Ag equipment operators; (4) 45-2041 – Graders & sorters; agricultural products, and (5) – 53-7064 – Packers & Packagers, Hand). *Id.* at 47918 n. 41.

For example, if there were fifteen workers categorized in all five codes with wages ranging from $15 to $21, but five workers (one-third of the labor pool) were specifically paid the lowest wages of the workforce at $15, $15.25, $15.50, $16.00, and $16.50, "entry-level" workers will receive an AEWR of $15.65 (average of $15, $15.25, $15.50, $16.00, and $16.50). As a result, this two-tier system provides a means to further cut worker wages. In addition, as defined in the IFR, although the lower-tier wage will be computed based on the lowest third of wages, the higher-tier wage will continue to be computed based on *all* wages, not just the highest two-thirds. In the above example, if the ten highest-paid workers in the labor pool earned between $17.00 and $21.00 per hour with an average wage of $19.50, their AEWR would nevertheless not be $19.50 but a significantly lower rate based on an average including the entry-level workers as well. This makes no sense if, as the IFR assumes, the "entry-level" and "experienced" workers are effectively performing different jobs with different skill levels.

The DOL provides no evidence that the tiered pay structure is practicable for the H-2A program. In the IFR, the DOL purports that the tiered system as seen in the H-1B program is a model supporting the use of pay differentials.[58] In the H-1B program, those with specialty occupations, such as those in technology, engineering, medicine, finance, and academia, are classified into the following four levels to determine their prevailing wage:

- Level 1: Entry – wage rates assigned to jobs for beginning level employees who have only a basic understanding of the occupation.
- Level 2: Qualified – wage rates assigned to jobs for qualified employees who have attained, either through education or experience, a good understanding of the occupation.
- Level 3: Experienced – wage rates assigned to jobs for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge.
- Level 4: Fully competent – wage rates assigned to jobs for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques.[59]

Collectively, the median annual compensation for all H-1B employees in FY 2022 was $118,000, and 70 percent of H-1B employees had a bachelor's degree or higher. By comparison, nearly half of farmworkers lack a high school diploma.[60] The H-1B labor pool is a stark contrast

[58] 90 Fed. Reg. at 47932-37.

[59] Employment and Training Admin., U.S. Dep't of Lab., *Prevailing Wage Determination Policy Guidance* (Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf (last visited Nov. 13, 2025); Congressional Research Service, *Prevailing Wage Requirements for H-1B, H-1B1, and E-3 Workers in Specialty Occupations* (Jan. 30, 2025), https://www.congress.gov/crs_external_products/IF/PDF/IF12892/IF12892.3.pdf (last visited Nov. 13, 2025).

[60] U.S. Dep't of Agric., Econ. Research Serv., *Farm Labor* (Sept. 12, 2025), https://www.ers.usda.gov/topics/farm-economy/farm-labor/ (last visited Nov. 13, 2025).

to the H-2A labor pool, rendering the H-1B tiered payment concept incompatible with the realities of the H-2A program.

Even the DOL during the first Trump administration recognized the irrationality of a tiered pay structure in the H-2A program. In the 2020 Final Rule, the DOL responded to a comment which suggested the provision of a tiered, skill-based wage structure like the H-1B program. The DOL stated the following:

> [T]he Department determined that the notion of meaningful skill differences among agricultural workers is unfounded and that the most common H-2A agricultural occupations involve skills that are readily learned in a very short time on the job, skills peak quickly, rather than increasing with long-term experience, and skills related to one crop or activity are readily transferred to other crops or activities.
> . . .
> Importantly, the Department's practical experience has demonstrated that use of a []tiered wage structure in the H-2A program leads to the overwhelming majority of H-2A job opportunities being classified at a level I wage, well below the median wage for the occupation. The Department's experience using a tiered wage structure in the H-2B program led to a similar result and the Department ultimately determined that use of the tiered wage structure produced artificially lower [wages] to a point that [they] no longer represent[ed] a market-based wage. The commenter . . . provided no evidence demonstrating the existence of a meaningful skill differentials among workers within a particular occupation, much less a nexus between those differentials and wages paid to workers in the occupation that would necessitate the same . . . skill-based wage structure in the H-2A program . . . .[61]

Similarly, the DOL during the second Trump administration in this IFR provides no evidence necessitating a skill-based wage structure in an industry untethered to the prolonged educational and experiential attainment needed for the specialty jobs overseen by the H-1B program. The ever-changing positions of the DOL evince the arbitrary nature to lower the AEWR in such a rushed manner through an IFR.[62]

Furthermore, the new tiered system will be a burden to our States. According to the IFR, the State Workforce Agencies ("SWA"), for example, the Employment Development Department in California, the Department of Employment Security in Illinois, and the Employment Security Department in Washington, will make the AEWR determination for the

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[61] 85 Fed. Reg. at 79462 (internal quotations omitted) (citing to the data recognized by the 2010 Final Rule after the brief establishment of the four-tier pay structure in the H-2A program established by the 2008 Final Rule, whereby "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" while "[o]nly 8 percent of applicants specified a skill level that translated in a wage above the OES median." 75 Fed. Reg. at 6898).

[62] *See Banner Health v. Price*, 867 F.3d 1323, 1349 (D.C. Cir. 2017) (concluding that "[a]gency regulations are arbitrary and capricious where they rely on reasoning that is internally inconsistent and inadequately explained" (internal quotations omitted)).

state or territory using one of the two skill levels identified in the employer's job order and the SWA will determine the appropriate occupational classification for the employer's requested occupation.[63] In response to the 2010 rule, a SWA noted that the data used and the assessment of a worker's skill-level under the 2008 tiered system was a "complex, confusing system resulting in multiple H-2A wage rates for various geographical areas within a State."[64] This complication will likewise occur under the IFR, and the DOL has not provided any substantive reason to impose this added responsibility on our States when a tiered wage system has no merit in the H-2A program.

Indeed, even though the IFR anticipates that hundreds of thousands of additional H-2A guest workers will need to be certified by SWAs as a result of the IFR's wage cuts, the IFR says nothing about the increased administrative burden on the States or how that cost is to be defrayed. The IFR does not even mention SWAs' costs under the "Quantifiable Costs" section of the IFR's cost-benefit analysis.[65] The DOL administers a grant program to help states afford the role that they play in the H-2A program, the Foreign Labor Certification Grant, but the IFR does not mention that program or how it might be adjusted to reflect the rapid growth that the DOL seeks to promote of H-2A job-seekers.

D. To further cut wages, the DOL defies the purpose of the AEWR and undercuts the federal statute that mandates that employers must provide temporary agricultural workers with housing.

The IFR whittles wages even further by subtracting an amount from foreign worker wages to help cover the cost of housing that employers are obligated to provide under the INA.[66] The IFR eliminates an employer's full obligation to provide housing at no cost to the employee under 8 U.S.C. § 1188(c)(4) and 20 C.F.R. § 655.122(d)(1), stating that corresponding workers who are reasonably able to return to their residence within the same workday are adversely affected because they "are competing in an uneven playing field as they must accept employment under at least the same terms of the work contract—often at the same wage—while continuing to pay and maintain their own housing out of their earned wages [while H-2A workers do not]."[67] Hence, the IFR will subtract from wages, at an amount not to exceed thirty percent of the AEWR, the weighted statewide average of fair market rents for four-bedroom housing units established by the U.S. Department of Housing and Urban Development.[68] The IFR provides the example that if the fair market rent for a four-bedroom unit is $1,390, and if there are eight worker occupants in the unit who each work 172 hours in one month, the hourly housing adjustment to their AEWR is $1.07, which is $1,390 divided by (172 multiplied by 8).[69] Thereafter, if a worker identified as "entry-level" had a computed AEWR of $15.07, the housing adjustment of $1.07 will result in an actual AEWR of $14.00 for the worker.

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[63] 90 Fed. Reg. at 47933; *see also* 20 C.F.R. § 655.121(e) (SWA review).
[64] 75 Fed. Reg. at 6900.
[65] *See* 90 Fed. Reg. at 47953.
[66] 8 U.S.C. § 1188(c)(4).
[67] 90 Fed. Reg. at 47947.
[68] *Id.* at 47948, 47963.
[69] *Id.* at 47954.

Leveling down in this manner drives toward exactly the opposite of the purpose of the AEWR as mandated by Congress. The status quo, under which the AEWR *is not subtracted by* guest workers' housing, is what prevents an adverse effect on domestic workers. The status quo forces employers to simply treat no-cost housing for H-2A guest workers as an added cost of hiring them.

The DOL during the first Trump administration recognized this reality, in response to public comment to the 2020 Final Rule:

> The Department declines to adopt [a wage credit for housing] because of its longstanding determination that such approaches would lead to an adverse effect on the wages of workers in the United States similarly employed in violation of the Department's statutory mandate. Requiring employers to guarantee an hourly AEWR based on a wage survey without adjustments for housing and other benefits costs has been the Department's interpretation of H-2A statutory requirements since the 1980s. In addition, the statute contemplates a wage rate that accounts for the lower wages that the introduction of foreign workers causes, as well as no-cost housing and transportation for workers outside the local commuting area, which is intended to make agricultural jobs more attractive to U.S. workers.[70]

So the downward housing adjustment will achieve the opposite of the claimed effect. The new IFR asserts, for instance, that "[t]he employment of H-2A workers is generally more costly than hiring local domestic farm workers due to the other program costs and non-wage compensation benefits employers provide."[71] But that state of affairs *fulfills* the statutory purpose that "the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States." 8 U.S.C. § 1188(a)(1)(B). By cutting the AEWR to eliminate added housing cost, the IFR promises only to erode the wage position of *domestic* laborers, who are the particular object of the statute's concern.

Moreover, the IFR does not recognize that Congress set out to avoid the ills of the Bracero program by amending the INA with the IRCA in 1986 to add the requirement that "[e]mployers shall furnish housing in accordance with regulations."[72] The statute and its implementing regulation, 20 C.F.R. 655.122(d), were instituted in response to the substandard housing historically provided to agricultural laborers and as a means to ensure safe conditions that would attract domestic workers. Almost two decades after the enactment of the housing requirement, the DOL still continues to find that employers continuously violate the requirement

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[70] 85 Fed. Reg. at 70463.

[71] 90 Fed. Reg. at 47947.

[72] 8 U.S.C. § 1188(c)(4); *see* H.R. REP. 99-682(I), 83-84, 1986 U.S.C.C.A.N. 5649, 5687-88 (The House Judiciary Committee in 1986 was "ever mindful of the reports of abuses that occurred during the old Bracero program," recognizing the most effective way to respond to "[employer] concerns regarding the availability of labor and at the same time to protect workers to the fullest extent of all applicable federal, state and local laws is to provide workers with the option of switching jobs and to provide them with a status that ensures that their employment is fully governed by all relevant law without exception.").

to provide safe housing to workers.[73] Despite this, in enacting the housing adjustment here, the IFR provides no detailed analysis on whether growers are already fiscally sound enough to cover the full cost of housing for the workers that they have requested through the H-2A program. The IFR provides no evidence or data showing how the added gains to employers from the new housing adjustment will relieve purported losses experienced by growers when covering full housing costs. The IFR does not provide a concrete analysis as to why the AEWR must be subtracted specifically by the statewide average of fair market rents for four-bedroom housing units. The IFR does not address corrections to H-2A housing already mired by safety and health violations.

The housing adjustment is an arbitrary and capricious measure that eliminates core protections mandated by the INA, both for domestic workers on the one hand and guest workers on the other. It is a drastic shift ignoring the very purpose of the statute and its implementing regulations.

E. The DOL further lowers wages by creating an arbitrary "majority duties rule" for specialized labor.

The IFR arbitrarily creates a "majority duties rule" that lowers wages for specialized labor. The 2023 Final Rule, in part, required that H-2A workers doing jobs outside the field and livestock Standard Occupational Classification codes, like heavy truck driving or construction labor, were entitled to a higher hourly wage than the fieldwork AEWR.[74] The IFR replaces this rule with a "majority duties standard" which allows jobs to be categorized within the field and livestock workers category even if the job order includes duties from other occupations, as long as those other duties are performed for less than the majority of the workdays during the contract period.[75] As a result, an H-2A worker could spend 49 percent of their days under the contract doing skilled work such as driving heavy trucks or construction without being paid the OEWS AEWR applicable to this occupation for the hours spent doing this specialized labor.

The DOL imposition of this "majority of workdays" rule is arbitrary and contrary to the mandate to prevent adverse effects on local worker wages. This reduction in wages for workers performing duties that do not fall with the field and livestock worker Standard Occupational Classification codes will further lower wages for some H-2A and corresponding workers and risks depressing wages for other workers in these occupations. The DOL provides no justification for its "majority of workdays" approach, nor an explanation for how paying workers a lower than AEWR rate for specialized work that falls outside of the field and livestock worker category will avoid adversely effecting wages for this occupation.

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[73] U.S. Gov't Accountability Office, *H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement*, GAO-25-106389, at 33 (2024), https://www.gao.gov/assets/gao-25-106389.pdf (last visited Oct. 17, 2025).

[74] *Id.*

[75] *Id.* at 47939.

Furthermore, oversight of whether the job duties in fact do not exceed the majority of workdays will burden state enforcement agencies. The DOL's assertion that its "existing regulatory mechanisms to enforce prohibitions on misclassification of workers are adequate and appropriate"[76] is belied by state enforcement efforts. For example, Washington's Office of the Attorney General has brought enforcement actions against employers in cases where they misrepresent the availability of work for U.S.-based workers[77] and Washington State's SWA issues several notices of discontinuance to employers each year. The DOL's reliance on the employers' determinations of the time allocated to the job duty, when employers are incentivized to underestimate the time spent doing specialized occupation work, creates a risk of errors and misclassification. The IFR creates an unjustifiably complex rule for when workers must be paid the AEWR for specialized labor, which will increase burdens on state enforcement agencies.

F. By effectuating the rule in haste, the DOL ignores historic violations in the H-2A program to quickly backfill a workforce diminished by the administration's immigration policies.

The IFR boasts about the current administration's aggressive deportation of undocumented immigrants and assumes that a quick and significant agricultural labor deficit will hence result. The IFR claims that by decreasing the AEWR, growers will become motivated to restore the labor shortage expediently by hiring more H-2A workers.[78] Despite the expectation of introducing more H-2A workers into the labor pool, the IFR makes no effort to examine how growers will comply with the safe housing and transportation obligations that have historically challenged employers. The expanded violations will burden our States.

Providing safe and affordable housing, especially in rural farming areas, remains difficult under the H-2A program as the IFR recognizes. Under 20 C.F.R. 655.122(d)(1)(ii), rental or public accommodations offered by employers must meet state standards to address health or safety concerns. As mentioned *supra,* this regulation was instituted in response to the substandard housing or lack of housing historically secured for agricultural laborers. Despite the enactment of the regulation two decades ago, the DOL continues to find significant housing violations by employers.[79] State agencies, like California's Department of Housing and

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[76] *Id.* at 47938

[77] *See* Press Release, Washington State Office of the Attorney General, *Sunnyside mushroom farm*, *supra*; Press Release, Washington State Office of the Attorney General, *AG's civil rights, consumer protection investigation results in $180,000 payment from agricultural grower King Fuji Ranch* (April 22, 2025), https://www.atg.wa.gov/news/news-releases/ag-s-civil-rights-consumer-protection-investigation-results-180000-payment; Press Release, Washington State Office of the Attorney General, *AG Brown sues Toppenish grower for discriminating against Washington farmworkers and women* (June 20, 2025), https://www.atg.wa.gov/news/news-releases/ag-brown-sues-toppenish-grower-discriminating-against-washington-farmworkers-and.

[78] *Id.* at 47957 ("[T]he Department assumes that lowering the AEWR increases H-2A employment—growers employ H-2A workers when the cost of doing so falls . . . .").

[79] U.S. Gov't Accountability Office, *H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement*, GAO-25-106389, at 33 (2024), https://www.gao.gov/assets/gao-25-106389.pdf (last visited Oct. 17, 2025).

Community Development, are tasked to assist in ensuring employers are following state safety and health standards.[80] Yet, states are under-resourced to ensure compliance.[81] The IFR is silent in proposing support or a solution to employers' disregard of housing mandates. Instead, the IFR assumes that the monetary transfer of funds from workers to employers will provide sufficient housing for employees. This is shortsighted and ignores the need for a robust analysis to ensure safe housing for the workers that U.S. employers petition to hire under the H-2A program.

States are already burdened by the unsafe use of employer-provided transportation to and from the fields. The IFR provides an incomplete analysis because it expects that its reform of the AEWR will prompt employers to hire an influx of H-2A workers, yet it ignores the increased obligation for employers, who already struggle to provide lawful transportation, to safely transport employees to and from work. The DOL's Wage and Hour Division uncovered that during FY2018 – FY2023, 30 percent of violations in the H-2A program were violations in providing safe employer-provided transportation.[82] The DOL has brought notable lawsuits against growers and farm labor contractors who provided unsafe transportation that caused or were close to causing the death of workers.[83] When accidents happen, those using state roads are put at risk, workers are injured, local and state law enforcement are called to the scene, and medical professionals within our States are called to respond to the injuries.

The IFR is also likely to exacerbate abuses of the H-2A program, including employers' use of the program to displace local domestic workers. While the H-2A program is intended to supplement, not displace, the local workforce, corresponding U.S.-based workers in some locations and industries have been displaced due to the growth of the program and employers'

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[80] Cal. Dep't of Housing and Comm. Dev., *Employee Housing Program Overview*, https://www.hcd.ca.gov/building-standards/employee-housing/overview (last visited Nov. 16, 2025).

[81] CalMatters, *State inspectors are supposed to visit all farmworker housing to ensure its safety. Sometimes they used FaceTime instead*, Jul. 1, 2024, https://calmatters.org/california-divide/2024/07/california-farmworker-housing/ (last visited Oct. 17, 2025) (stating "Washington, for example, has one inspector for every 7,000 workers . . . North Carolina has about one inspector for every 4,000 workers. Michigan has about one for every 2,000, and inspectors regularly visit farmworker housing both before and after it's occupied . . . .")

[82] U.S. Gov't Accountability Office, *H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement*, GAO-25-106389, at 34 (2024), https://www.gao.gov/assets/gao-25-106389.pdf (last visited Oct. 17, 2025); *see* CalMatters, *California cracked down after a crash killed 13 farmworkers. Why are workers still dying on the road?*, May 14, 2024, https://calmatters.org/politics/capitol/2024/05/california-farmworkers-transportation-deaths/ (last visited Oct. 17, 2025).

[83] *See Perez v. Valley Garlic Inc. et al.*, No. 1:16-cv-01156 (E.D. Cal. 2016); *Julie A. Su v. Rancho Nuevo Harvesting, Inc.*, No. 2:23-cv-07078 (C.D. Cal. 2023); *see also* U.S. Dep't of Lab., *Federal Court Orders Labor Contractor to Pay More Than $1M in Back Wages, Penalties After Investigations Find Repeated Violations of Farmworkers' Rights,* Sept. 19, 2023, https://www.dol.gov/newsroom/releases/whd/whd20230919-0 (last visited Oct. 17, 2025); U.S. Dep't of Lab., *U.S. Department of Labor Secures Judgment to Enhance Farmworker Transportation Safety in California's Central Valley*, Apr. 10, 2018, https://www.dol.gov/newsroom/releases/whd/whd20180410 (last visited Oct. 17, 2025).

preference for an H-2A workforce that may be easier to exploit.[84] Furthermore, U.S.-based workers' wages and terms of employment are increasingly tied to H-2A employers, making the IFR's change to the AEWR critical to the entire agricultural labor force.

The DOL does not consider the holistic implications of its reform of the AEWR alongside the expected, subsequent need to safely house and transport an increase in H-2A workers laboring within our States.

G. The IFR results in farmworkers being paid less than or close to the federal poverty line, inflicting direct financial injuries to the States.

The IFR causes farmworkers to be paid meaningfully less than the wages computed through the traditional AEWR methodology. For instance, in California, an H-2A employee who worked for the same employer at the same job during an eight-month farming season prior to the IFR will most likely be paid a rate of $3.47 lower for the upcoming season for the same employer doing the same work.[85] This equates to approximately $609.46 per month or $5,163.36 in total less than last season's earnings. In Washington, an H-2A employee who worked for the same employer at the same job during an eight-month farming season prior to the IFR will likely be paid a rate of $3.16 lower for the upcoming season for the same employer doing the same work.[86] This equates to approximately $556.16 per month or $4,702.08 in total less than last season's earnings. In Connecticut, an H-2A employee who worked for the same employer at the same job during an eight-month farming season prior to the IFR will likely be paid a rate of $2.48 lower for the upcoming season for the same employer doing the same work.[87] This equates to approximately $436.48 per month or $3,690.24 in total less than last season's earnings. These

[84] *See supra* note 69.

[85] In California, the AEWR for entry level and experienced H-2A workers in addition to the housing adjustment, which respectively are $13.45 and $15.71, will be less than the state minimum wage of $16.50; hence, the wage rate will become the state minimum wage for temporary agricultural workers in the state. The most current AEWR for California prior to the IFR was $19.97. *See* U.S. Dep't of Lab., Foreign Labor Application Gateway, *H-2A Adverse Effect Wage Rates* (Dec. 16, 2024), https://flag.dol.gov/sites/default/files/2024-12/Range%20and%20Non-Range%20Occupations%20for%20Field%20Workers%20and%20Livestock%20Workers%20combined%20Effective%20December%2016%20to%20December%2029%2C%202024.pdf (last visited Nov. 17, 2025); *see also* 90 Fed. Reg. at 47926-27, Table-Statewide Hourly AEWRS Determined Under § 655.120(B)(1)(l) and Compensation Adjustment for H-2A Workers Only.

[86] In Washington, the AEWR for entry level and experienced H-2A workers in addition to the housing adjustment, which respectively are $14.04 and $16.51, will be less than the state minimum wage of $16.66; hence, the wage rate will become the state minimum wage for temporary agricultural workers in the state. The most current AEWR for Washington prior to the IFR was $19.82. *See id.*

[87] In Connecticut, the AEWR for entry level and experienced H-2A workers in addition to the housing adjustment, which respectively are $13.87 and $16.14, will be less than the state minimum wage of $16.35; hence, the wage rate will become the state minimum wage for temporary agricultural workers in the state. The most current AEWR for Connecticut prior to the IFR was $18.83. *See id.*

changes are significant as most farmworkers tend to earn an annual average of $35,980,[88] falling close to the current federal poverty line of $32,150 for a household of four.[89] By contrast, the median household income for the high school educated population in the United States is $58,410.[90] In the previous examples provided, the IFR's changes in the AEWR result in earnings as little as $24,552 for the eight-month season in California, $24,790.08 in Washington, and $24,328.80 in Connecticut.

The diminished earnings have significant effects on affording essential needs. As the court emphasized in *United Farm Workers v. United States Dep't of Lab.*:

> [Lowering the AEWR is] intertwined with farmworker poverty, notably that . . . [a lower AEWR] will intensify the challenges farmworkers already face in obtaining affordable housing and increase demand on state housing programs; farmworkers' children will be more educationally disadvantaged, experience food insecurity, and suffer poorer health, placing additional demands on state programs; and farmworkers, who already suffer from inadequate health care, will suffer poorer health.[91]

The IFR provides no analysis in examining the potential harms on the exact population the H-2A statute and regulations intend to protect. The effects will be widespread throughout the nation. The IFR lowers the AEWR below the state minimum wage in 21 states, including those with the largest H-2A workforces such as California, Florida, and Washington.[92] This results in deferring to paying the state minimum wage as the wage rate for temporary agricultural workers. The state minimum wages for these 21 states are lower than the most recent AEWRs calculated prior to the IFR. [93] This reduces wage rates up to $6 less than the AEWRs computed with data from the Farm Labor Survey.[94] In addition, the new AEWR for entry level workers with housing adjustments will be less than the AEWRs prior to the IFR *in all fifty states including the District of Columbia*

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[88] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Agricultural Workers (Sept. 25, 2025), https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm (last visited Nov. 13, 2025).

[89] Dep't of Health and Human Services, *Federal Poverty Level 2025,* https://www.healthcare.gov/glossary/federal-poverty-level-fpl/ (last visited Nov. 13, 2025).

[90] United States Census Bureau, *Income in the United States: 2024* (Sept. 2025), https://www.census.gov/data/tables/2025/demo/income-poverty/p60-286.html (last visited Nov. 13, 2025).

[91] 509 F. Supp. 3d at 1249–50.

[92] U.S. Dep't of Agric., Economic Research Service using data from U.S. Dep't of Labor, Office of Foreign Labor Certification (May 30, 2023), https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=106604 (last visited Nov. 13, 2025).

[93] *See* U.S. Dep't of Lab., Foreign Labor Application Gateway, *H-2A Adverse Effect Wage Rates* (Dec. 16, 2024), https://flag.dol.gov/sites/default/files/2024-12/Range%20and%20Non-Range%20Occupations%20for%20Field%20Workers%20and%20Livestock%20Workers%20combined%20Effective%20December%2016%20to%20December%2029%2C%202024.pdf (last visited Nov. 17, 2025); *see also* 90 Fed. Reg. at 47926-27, Table-Statewide Hourly AEWRS Determined Under § 655.120(B)(1)(l) and Compensation Adjustment for H-2A Workers Only.

[94] *Id.*

and U.S. territories.[95] As the DOL during the first Trump administration recognized, the positions with the lowest rates will most likely be the overwhelming majority of H-2A jobs applied for by employers; hence, the IFR will depreciate wages across the board.[96]

These dramatic wage cuts will, in the final analysis, make it impossible for the States to fulfill their role in the H-2A program: promoting the hiring of domestic workers for these roles through publicizing every H-2A job order, in accordance with the DOL's own regulations and policies. States know from their experience that domestic workers will not take these difficult jobs for so little money. In some locations and industries, domestic workers have already been displaced due to the growth of the program and employers' preference for an H-2A workforce that may be easier to exploit.[97] Because the IFR exacerbates rather than alleviates the roots of farmworker poverty, the direct strain on our States to provide essential needs to farmworkers, both domestic and foreign, will be considerable. Farmworkers will increasingly rely on state and local services, including food banks that receive state grant funding, benefits for workers that are funded by states, and state-funded programs for low-income students. In addition, reduced wages to farmworkers will lower state income tax and state tax revenues for essential programs, including workers' compensation programs, state family and medical leave programs, and state long-term care programs.

III. CONCLUSION

The Interim Final Rule fails to provide critical analysis on its impact on the workers who are the core demographic that the Immigration and Nationality Act's H-2A provisions mandate the DOL to protect. For the aforementioned reasons, the undersigned State AGs strongly oppose the U.S. Department of Labor's Interim Final Rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*.

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[95] *Id.*

[96] *See* 85 Fed. Reg. at 79462 (internal quotations omitted) (citing to the data recognized by the 2010 Final Rule after the brief establishment of the four-tier pay structure in the H-2A program established by the 2008 Final Rule, whereby "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" while "[o]nly 8 percent of applicants specified a skill level that translated in a wage above the OES median." 75 Fed. Reg. at 6898).

[97] *See, e.g.* Press Release, Washington State Office of the Attorney General, *Sunnyside mushroom farm will pay $3.4 million for violating the civil rights of its workers* (May 17, 2023), https://www.atg.wa.gov/news/news-releases/sunnyside-mushroom-farm-will-pay-34-million-violating-civil-rights-its-workers (more than 170 Washington-based farmworkers discriminated against by employer who replaced them with H-2A workers in violation of the Washington Law Against Discrimination).

Sincerely,

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Exhibit 4

Migration that Works

December 1, 2025

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Acting Assistant Secretary
Employment and Training Administration
U.S. Department of Labor

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Submitted through: https://www.regulations.gov/document/ETA-2025-0008-0001

Comment in response to DOL Docket No. ETA-2025-0008, Request for Public Comment Relating to Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States

Dear Acting Assistant Secretary Frazier and Administrator Pasternak,

Migration that Works strongly opposes the U.S. Department of Labor (hereinafter, "the Department" or "DOL")'s Interim Final Rule to revise the methodology for determining the Adverse Effect Wage Rate ("AEWR") for H-2A farmworkers.

Migration that Works is a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics advancing a labor migration model that respects the human rights of workers, families, and communities, and reflects their voices and experiences. Founded in 2011 as the International Labor Recruitment Working Group (ILRWG), Migration that Works aims to strategically address worker rights abuses across industries and visa categories.[1]

[1] For more information on Migration that Works, visit https://migrationthatworks.org/. To view Migration that Works' reports, visit https://migrationthatworks.org/reports/.

Migration that Works joins workers in supporting and advancing an ethical labor migration model in the legal and regulatory frameworks in the United States.[2] Our model for labor migration shifts control over the labor migration process from employers to workers, elevates labor standards for all workers, responds to established labor market needs, respects family unity, ensures equity and access to justice, and affords migrant workers an accessible pathway to citizenship. An ethical labor migration model would robustly protect all workers, while also ensuring that law-abiding employers are not undercut by unscrupulous employers determined to save costs by underpaying migrant and temporary workers.

The 2025 Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States Interim Final Rule (hereinafter, "2025 AEWR IFR" or "Interim Final Rule") has fundamentally changed the way the AEWR is determined to the detriment of both H-2A farmworkers and U.S. workers in corresponding employment. This revised methodology will depress farmworkers' pay in the United States generally, and have an even greater downward impact on H-2A workers' pay in particular. Agricultural employers will have an economic incentive to employ H-2A workers, and wages and working conditions will worsen across the industry. Furthermore, the housing deduction directly contravenes H-2A regulations, which require employers to provide housing free of charge, and will do nothing to address substandard housing conditions that H-2A workers already face. For these reasons, Migration that Works opposes this Interim Final Rule.

I. Background

U.S. agriculture is dependent on immigrant and migrant labor. Over two-thirds of crop workers surveyed in the 2021 National Agricultural Workers Survey were born outside the United States,[3] and migrant workers who work on U.S. farms through the H-2A visa program made up about 17% of crop workers in 2022.[4] If the recent trend of increasing H-2A visa issuances continues,[5] H-2A workers will represent an ever-growing part of the farm workforce in the coming years. The Federal Register notice for this Interim Final Rule acknowledges the U.S. agricultural sector's dependence on migrant and immigrant labor and argues that the current administration's heightened focus on aggressive immigration enforcement, including a

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[2] Exhibit A, Migration that Works, *Proposal for an Alternative Model for Labor Migration* (2025), https://migrationthatworks.org/wp-content/uploads/2025/10/alternative-model-for-labor-migration-updated-2025.pdf .

[3] Exhibit B, Wenson Fung et al., JBS International, *Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers* (2023), https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2017.pdf.

[4] Exhibit C, Daniel Costa, *How many farmworkers are employed in the United States?*, Working Economics Blog (Oct. 3, 2023, at 14:53 ET), https://www.epi.org/blog/how-many-farmworkers-are-employed-in-the-united-states/.

[5] Exhibit D, U.S. Dept. of State, Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2020-2024 (2025), https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2024AnnualReport/Table%20XVB.pdf.

widespread use of worksite enforcement, is causing an "acute labor shortage" in agriculture.[6] The DOL concludes that the only way to prevent economic harm in agriculture is to "provide agricultural employers a viable workforce alternative."[7] The "viable workforce alternative" that the DOL is seeking to make easier to employ is H-2A workers.

To participate in the H-2A program and employ H-2A workers, employers must certify that: 1) too few U.S. workers are able, willing, and qualified to fill the positions, and available to perform the work at the place and time needed, and 2) working conditions and wages of U.S. workers similarly employed will not be adversely affected by the hiring of H-2A workers.[8] Regulation of wages in the H-2A program is one way to ensure that the hiring of H-2A workers does not adversely affect the working conditions and wages of U.S. workers. Among other program rules and regulations, employers are required to pay H-2A and corresponding workers[9] the highest of the following: 1) the Adverse Effect Wage Rate (AEWR), 2) the prevailing wage, 3) the federal, state or local minimum wage, or 4) or the agreed upon collective bargaining wage.[10] The AEWR was designed to be a wage floor for H-2A farmworkers and other U.S.-based workers in corresponding employment to prevent the depression of wages for farmworkers across the industry.[11] Until recently, the AEWR was based on data obtained from the U.S. Department of Agriculture (USDA)'s Farm Labor Survey (FLS). FLS surveyed about 16,000 U.S. farms about their employees' earnings and had a 44-45% response rate in 2024 and 2025.[12] The FLS then published the average hourly earnings of crop and livestock farmworkers, and this data was used to determine the AEWR for each U.S. state.[13] The AEWR is one of the key protections that help prevent agricultural employers from exploiting the H-2A program through depressed farmworker wages, and prevents a "race to the bottom" by providing a minimum

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[6] Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 90 Fed. Reg. 47914 (Oct. 2, 2025) (to be codified at 20 C.F.R. pt. 655) [hereinafter AEWR IFR], https://www.govinfo.gov/content/pkg/FR-2025-10-02/pdf/2025-19365.pdf.

[7] *Id.*

[8] 8 U.S.C. §1188(a)(1); 20 C.F.R. § 655.100(a)(1)(ii) (2025) (noting that the Secretary may issue a temporary agricultural labor certification only if "[t]he employment of the H–2A worker(s) will not adversely affect the wages and working conditions of workers in the United States similarly employed").

[9] Corresponding employment is the employment of non-H–2A workers, including local U.S.-based workers, by an employer with an approved Application for Temporary Employment Certification in any work in the job order, or "in any agricultural work performed by H-2A workers." 20 C.F.R. § 655.103(b) (2025). Workers in corresponding employment are entitled to at least all the rights and protections of the H-2A contract. 20 C.F.R. § 655.122(a) ("The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers.").

[10] *See* Exhibit E, U.S. Dept. of Labor, Wage & Hour Div., *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act* (2010), https://www.dol.gov/agencies/whd/fact-sheets/26-H2A.

[11] Exhibit F, Rural Migration News, *AEWRs, FLS, and OEWS* (Dec. 30, 2021), https://migration.ucdavis.edu/rmn/blog/post/?id=2675.

[12] Exhibit G, Nat'l Ag. Stat. Serv., Ag. Stat. Bd., U.S. Dept. of Ag., *Farm Labor Methodology and Quality Measures* (May 2025), https://www.nass.usda.gov/Publications/Methodology_and_Data_Quality/Farm_Labor/06_2025/fmla0525.pdf.

[13] *Id.*

hourly wage floor that must be paid to all H-2A workers and any other worker engaged in corresponding employment.

II. The changes to the AEWR methodology will depress all farmworkers' wages and leave H-2A workers more susceptible to economic coercion and labor trafficking.

On August 28, 2025, USDA announced that it would discontinue the FLS. The DOL subsequently published the 2025 AEWR IFR, switching the basis for the AEWR from the FLS to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics ("OEWS"). Before this change, the OEWS applied to few H-2A jobs, including agricultural-support jobs that are largely not performed on farms, such as construction workers and truck drivers.[14] OEWS collected data for those jobs from farm labor contractors, who generally tend to pay lower wages than farmers do for the same work.[15] The 2025 AEWR IFR will also allow employers to deduct an "Adverse Compensation Adjustment" amount from H-2A workers' hourly AEWR to account for the cost of housing that employers are required to provide for H-2A workers. This deduction does not apply to corresponding U.S. workers. Taken together, the use of the OEWS and the application of the housing deduction will result in, in DOL's own words, a massive "wage transfer" from H-2A workers to their employers. DOL has projected an annual benefit of $2.46 billion for H-2A employers, or a transfer of about $5,513 from each H-2A worker to their employer.[16]

During the recent COVID-19 pandemic, farmworkers were widely recognized as "essential workers," workers who were unable to take time off or perform work remotely and were relied upon by the U.S. public to continue working, due to their work being intrinsic to the U.S. food supply.[17] A recent study by the Economic Policy Institute (EPI) noted that, although farmworkers are deemed essential workers, they are paid about 60% less than comparable workers outside of agriculture.[18] H-2A workers are paid even less than U.S.-based farmworkers.[19] Since the EPI analysis was conducted in 2021, farmworker wages have remained

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[14] Exhibit H, Rural Migration News, *DOL: H-2A Changes* (Oct. 24, 2025), https://migration.ucdavis.edu/rmn/blog/post/?id=3086.
[15] Rural Migration News, *supra* note 11.
[16] AEWR IFR, *supra* note 6.
[17] Exhibit I, U.S. Dept. of Homeland Sec, Advisory Memorandum Ensuring Essential Critical Infrastructure Workers' Ability to Work During the COVID-19 Response (Aug. 10, 2021), https://www.cisa.gov/sites/default/files/publications/essential_critical_infrastructure_workforce-guidance_v4.1_508.pdf.
[18] Exhibit J, Daniel Costa, *The Farmworker Wage Gap Continued in 2020*, Working Economics Blog (July 20, 2021, at 12:35 ET), https://www.epi.org/blog/the-farmworker-wage-gap-continued-in-2020-farmworkers-and-h-2a-workers-earned-very-low-wages-during-the-pandemic-even-compared-with-other-low-wage-workers/.
[19] *Id.*

low. In May 2024, the median annual income for crop workers on U.S. farms was $35,690.[20] In a National Agricultural Workers Survey, 21% of crop workers reported having family incomes below the federal poverty level.[21]

H-2A workers face additional forms of economic precarity due to coercive recruitment practices that many face before arriving in the United States. Prospective migrant workers are often charged illegal fees and face other forms of economic coercion when attempting to apply for H-2A jobs in the U.S. In Centro de los Derechos del Migrante's (CDM) report on the H-2A program, *Ripe for Reform*, more than a quarter of workers surveyed reported paying illegal recruitment fees, and 73% reported not receiving full inbound and outbound travel reimbursements from their employers, as required by H-2A rules.[22] Many prospective migrant workers take out loans with high interest rates to pay these illegal fees and expenses. Workers then face pressure to use their H-2A earnings to repay this employer-driven debt.[23] Because of this pattern of economic coercion in recruitment, H-2A workers are less likely to complain about substandard wages or working conditions, because the combination of economic precarity and employer-driven debt makes it difficult for them to take any actions that might place their livelihood at risk.

H-2A workers are also reluctant to blow the whistle on labor abuses because of their lack of power relative to their employer, an imbalance that is inherent in the structure of the H-2A program. The biggest hurdle H-2A workers face when deciding whether to take action to improve workplace conditions is the fact that workers' H-2A visas, and therefore their ability to stay in the U.S., are tied to their continued employment with the visa-sponsoring employer.[24] H-2A workers face a myriad of abuses—illegal recruitment fees, rampant wage theft, discrimination, and health and safety hazards. Many workers do not complain about wages or working conditions because they understand that their employer has the power to fire them (typically causing them to lose their authorization to stay in the United States), or choose not to hire them the following season.[25] If H-2A workers are fired, they must leave the United States within 60 days or risk accruing unlawful presence, which can result in lasting immigration-related consequences that could prevent them from returning to the U.S. in the future.[26]

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[20] U.S. Bureau of Lab. Stat., U.S. Dept. of Lab., Agricultural Workers, Occupational Outlook Handbook, https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm (Aug. 2025).
[21] Migration that Works, *supra* note 2.
[22] Exhibit K, Centro de los Derechos del Migrante, *Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program* (2020), https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf.
[23] *Id.* at 5.
[24] *Id.* at 4.
[25] *Id.* at 7, 27.
[26] U.S. Citizenship & Immigr. Serv., *Options for Nonimmigrant Workers Following Termination of Employment* (Jan. 2025), https://www.uscis.gov/archive/options-for-nonimmigrant-workers-following-termination-of-employment-0.

Another barrier to speaking out about workplace abuse is the fact that H-2A farmworkers often live and work in rural and isolated areas in the U.S. and have limited access to reliable transportation outside of employer-provided or -controlled transportation. Many workers cannot access legal, health, or other critical services when they have a need. Thirty-four percent of worker respondents in *Ripe for Reform* said that their employers have compounded their isolation by restricting their mobility.

Barriers to speaking out about labor abuses are especially acute in cases of labor trafficking. According to a recent report by the Polaris Project, an organization that operated the National Human Trafficking Hotline, 59% of H-2A workers who experienced labor trafficking reported that their employers made immigration-related threats when they spoke up about substandard workplace conditions or demanded their promised wages.[27] Although confiscating passports[28] and other identity documents is expressly prohibited under the regulations governing the H-2A program, advocates have documented instances of low-road employers doing so to control H-2A workers.[29] When employers confiscate H-2A workers' passports or other identity documents, workers are coerced to continue working and otherwise do as the employer demands. Without their documents, H-2A workers are reluctant to leave their workplace because they may be unable to prove their identity or visa status to anyone, including local or federal law enforcement. Withholding identity documents is an indicator of labor trafficking.

The downward pressure on farmworkers' wages created by the 2025 AEWR IFR will exacerbate H-2A program flaws, enabling unscrupulous agricultural employers and farm labor contractors to engage in human trafficking and extract as much labor for as little economic cost as possible, all at the expense of farmworkers. The Department acknowledges that the 2025 AEWR IFR will impact AEWRs and cut farmworkers' wages across all 50 states. New job certifications approved after October 2, 2025 will now be subject to the updated AEWR methodology, and H-2A and corresponding workers will be paid lower wages under this new regulation.[30] Against the backdrop of the H-2A program's many flaws, H-2A workers will likely feel more pressure to continue working under already difficult conditions. H-2A workers will be forced to work longer hours to make the same pay they made during prior seasons. Additionally, with the wage changes under this IFR, H-2A and corresponding workers will face more difficulty in determining whether they are being paid properly and repaying employer-driven debt.

III. The 2025 AEWR IFR's housing deduction will de facto charge H-2A workers for housing and create an adverse impact on U.S.-based farmworkers.

[27] Exhibit L, Polaris Project, *Labor Trafficking on Specific Temporary Work Visas* (2022), https://polarisproject.org/wp-content/uploads/2022/07/Labor-Trafficking-on-Specific-Temporary-Work-Visas-by-Polaris.pdf.
[28] 20 C.F.R. § 655.135(o) (2025).
[29] Polaris Project, *supra* note 27, at 27.
[30] AEWR IFR, *supra* note 6, at 47927.

The AEWR was designed to ensure that the H-2A visa program does not have an *adverse impact* on wages for U.S.-based farmworkers. In a prior AEWR rulemaking, the DOL recognized that U.S.-based farmworkers are particularly "vulnerable to wage deflation."[31] The 2025 AEWR IFR creates an incentive for agricultural employers to employ more H-2A workers, because employers will now be able to pay H-2A workers less by charging the "Adverse Compensation Adjustment" to account for the cost of housing. This IFR also directly contravenes regulations that require employers to provide housing free of cost for H-2A workers.[32]

Many H-2A workers report substandard conditions in their employer-provided housing; 45% of H-2A workers surveyed in *Ripe for Reform* reported overcrowded and even dangerous conditions in employer-provided housing.[33] H-2A workers calling CDM's intake line regularly share concerns about overcrowded housing and report insufficient bathrooms or spaces to store and prepare food safely. An H-2A worker in California recently reported being housed in a warehouse-style barracks with more than 70 other workers, few bathrooms and showers, and a single kitchen space to share with everyone living in the same barracks.[34] H-2A workers regularly encounter overcrowded housing, and this often causes or exacerbates other housing-related concerns, including inadequate ventilation and insulation, pest infestations, and general squalor.[35] A recent report from the Oakland Institute shares similar descriptions of dilapidated worker housing in California. It also highlights housing supply tensions local communities face when growers take over local motels and other housing in rural areas, which can displace local farmworker families.[36] Despite pervasive housing violations in the H-2A program, the IFR will enable employers to charge H-2A workers for substandard housing without strengthening housing protections.

IV. Conclusion

The 2025 AEWR IFR will result in a significant loss of earnings for H-2A and U.S.-based farmworkers, and this rule will inevitably result in the displacement of corresponding U.S.-based workers. Farmworker advocates are already mounting legal challenges to reverse this

[31] Temporary Agricultural Employment of H-2A Aliens in the United States, 74 Fed. Reg. 45906 (Sept. 4, 2009) (20 C.F.R. pt. 655), https://www.dol.gov/sites/dolgov/files/oalj/PUBLIC/INA/REFERENCES/FEDERAL_REGISTER/74_FED_REG_45905_(SEPT_4_2009).PDF.
[32] 20 CFR § 655.122(d)(1) (2025).
[33] Polaris Project, *supra* note 27, at 29.
[34] Anonymous interview with H-2A worker (July 3, 2024) (on file with Centro de los Derechos del Migrante).
[35] Polaris Project, *supra* note 27, at 29.
[36] Exhibit M, David Bacon, The Oakland Institute, *Dignity or Exploitation: What Future for Farmworker Families in the United States?* (2021), https://www.oaklandinstitute.org/sites/default/files/files-archive/dignity-exploitation.pdf.

interim final rule and preserve farmworker wages.[37] For the reasons explained above, Migration that Works strongly opposes the 2025 AEWR methodology IFR.

Sincerely,

Rachel Micah-Jones
Chair
Migration that Works

[37] Exhibit N, Press Release, UFW Foundation, U.S. Farmworkers Sue Trump Administration to Save American Farm Jobs and Wages (Nov. 21, 2025), https://ufwfoundation.org/u-s-farm-workers-sue-trump-administration-to-save-american-farm-jobs-and-wages/.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

UNITED FARM WORKERS, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR;

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor;

LORI FRAZIER BEARDEN, in her official capacity as Acting Assistant Secretary for Employment and Training

Defendants.

Civil Case No.: 1:25-cv-1614

[PROPOSED] ORDER GRANTING MOTION FOR A SECTION 705 STAY AND PRELIMINARY INJUNCTION

The Court **GRANTS** Plaintiffs' Motion for a Section 705 Stay and Preliminary Injunction, which the Court has carefully considered together with the Defendants' Opposition thereto and the relevant statutory, case, and other authorities. It is hereby **ORDERED** that the Interim Final Rule (90 Fed. Reg. 47914) is hereby **STAYED** and the Department of Labor is hereby **ENJOINED** from taking any action to implement the Interim Final Rule. It is also hereby **ORDERED** that Plaintiffs and the Department of Labor shall file a joint status report within two weeks of the issuance of this order concerning the steps the Department of Labor will take to promptly begin calculating Adverse Effect Wage Rates in a permissible manner. It is further **ORDERED** that no security is required to pay the costs and damages sustained by DOL in the event that it is found to have been wrongfully enjoined. *See* Fed. R. Civ. P. 65(c).

Because DOL is only required to comply with its existing regulations, DOL will not sustain costs or damages as a result of the preliminary injunction.

IT IS SO ORDERED.

Dated:

United States District Judge