

Rural Migration News

Blog 325

APRIL 2023

DOL Changes AEWRs and PWRs

DOL revised its Adverse Effect Wage Rate (AEWR) methodology in regulations issued February 28, 2023. Instead of one AEWR per state based on USDA’s Farm Labor Survey (FLS) of farm employers who hire workers directly, there will be five to 10 AEWRs in each state based on the wage associated with a particular job title determined by DOL but drawn from the employer’s description of the job to be performed.

Under the new AEWR methodology, DOL will first look to the FLS to determine the AEWR for a particular job title. If the FLS does not provide earnings data for that job title, DOL will use the Occupational Employment and Wage Survey (OEWS) database to establish the AEWR.

Some farm employers sued to block the new AEWR methodology, arguing that it complicates an already bureaucratic H-2A program and will raise the AEWR for H-2A workers who fill “nonfarm jobs” on farms, including construction worker, van and truck driver, and supervisor. Some farmers argue that DOL should first determine that the presence of H-2A workers has adverse

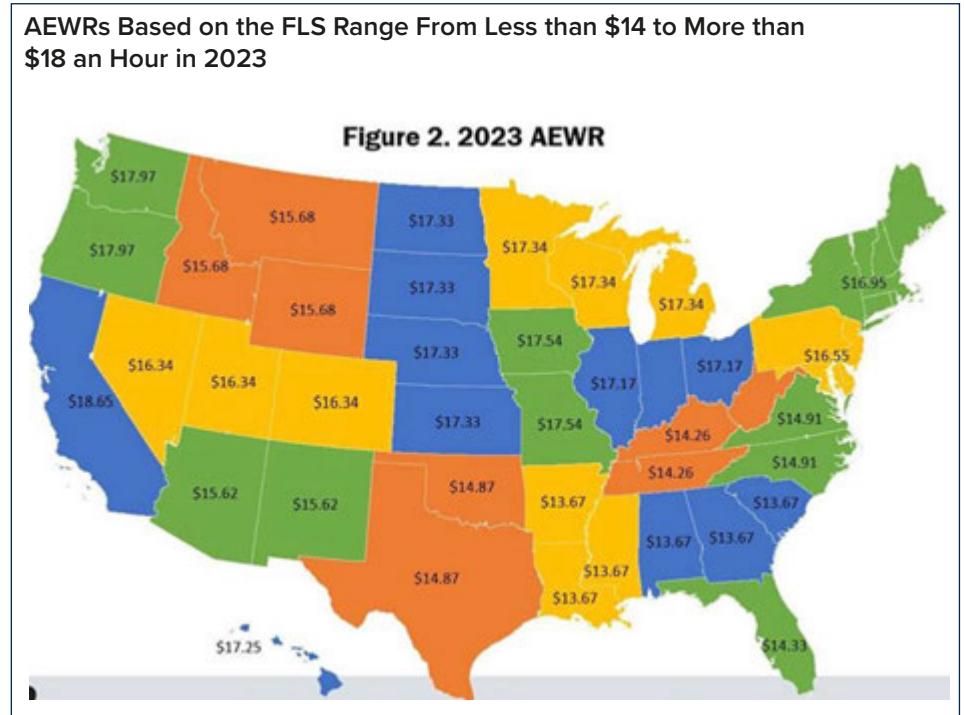
effects on US workers before establishing an AEWR, that is, they want the AEWR abolished unless DOL can prove that the presence of H-2A workers hurts US workers. Farm employers also complained because a worker who both drives a van or bus of workers to fields and then works alongside them could be considered a van or bus driver entitled to the higher OEWS wage.

The US has over 100,000 farm employers who employ an average 1.5 million farm workers. However, due to seasonality and turnover, some 2.5 million unique individuals are employed for wages on US farms sometime during a typical year, a 1.7 to one ratio of workers to year-round equivalent jobs. Some 10,000 or 10 percent of US farm employers employ H-2A guest workers, including some migrants who fill several farm jobs while they are in the US. Some 300,000 H-2A workers are in the US for an average six months each and fill a sixth of the average year-round equivalent jobs on US crop farms.

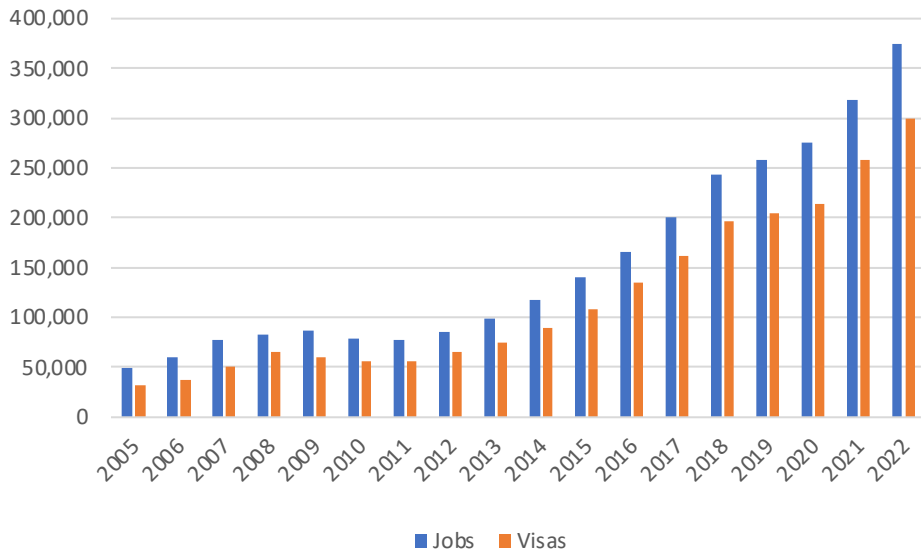
Fewer than 100,000 jobs were certified to be filled with H-2A workers in FY13, but certifications rose rapidly and topped 372,000 in FY22. The number of H-2A visas issued is typically 80 percent of the number of jobs certified, about 300,000 in FY22.

H-2A Program

The H-2(A) program has since 1952 allowed US employers who anticipate too few US workers to be



The Number of H-2A Jobs and Workers Tripled Over the Past Decade



certified by the US Department of Labor (DOL) to recruit and employ guest workers to fill seasonal jobs; the program was changed by the Immigration Reform and Control Act of 1986 to H-2A for seasonal agricultural jobs and H-2B for seasonal nonfarm jobs. In order to receive DOL certification, farm employers must satisfy three major criteria.

First, DOL must certify that the employer tried and failed to recruit enough US workers to fill the vacant jobs. Second, after being certified, employers must recruit workers abroad, pay worker travel expenses, and offer free and approved housing to H-2A workers while they are employed in the US

and daily transportation between this housing and the work place. Out-of-area US workers receive the same housing and transportation benefits as H-2A workers, and US workers employed on a farm with H-2A workers in similar positions or corresponding employment are to receive the same wages.

Third, the employer must offer and pay the higher of the federal or state minimum wage, the prevailing wage rate, the wage in an applicable collective bargaining agreement, or the AEW to H-2A and US workers in similar employment. The AEW is normally the highest of these wages, and AEWs in 2023 range from almost \$14 to over \$18

an hour across states. Three federal agencies (1) determine whether employers need H-2A workers and enforce H-2A regulations (DOL), (2) whether the employer petition for H-2As is accurate and check incoming workers with H-2A visas (DHS), and (3) issue H-2A visas to foreign workers abroad (DOS).

DOL certification of an employer's need for H-2A workers means that DOL agrees with the employer (1) that US workers are not available to fill seasonal farm jobs and (2) that the presence of H-2A workers will not adversely affect similar US workers. DHS ensures that the employer is legitimate and that H-2A workers did not pay for their jobs, and DOS determines whether the workers recruited by the employer are eligible for visas.

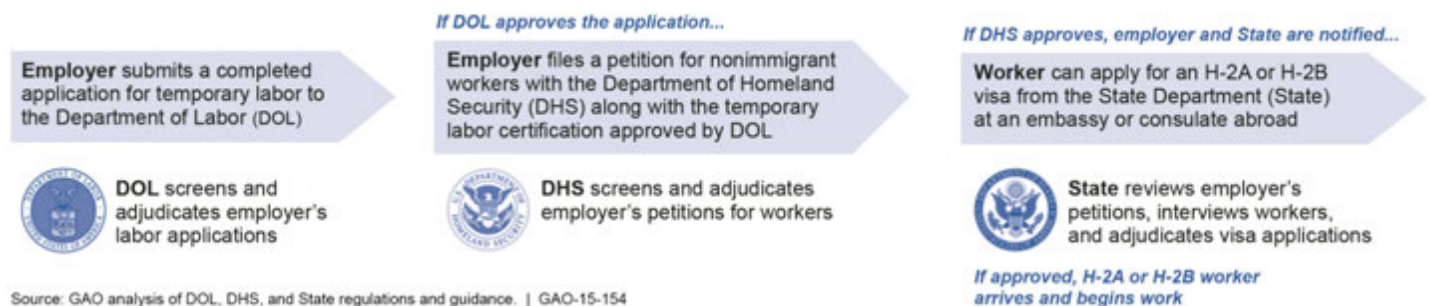
AEWRs

The AEW is currently one hourly statewide wage that reflects the earnings of field and livestock workers in the state or multistate region. After April 1, 2023, there may be 10 or more AEWs in each state, depending on the jobs that employers seek to fill with H-2A workers.

Statewide AEWs have since 1987 almost always been based on USDA's Agricultural or Farm Labor

3 Federal Agencies are Involved in the H-2A Program

Figure 1: H-2A and H-2B Visa Programs Approval Process



Source: GAO analysis of DOL, DHS, and State regulations and guidance. | GAO-15-154
 Source: <https://www.gao.gov/assets/gao-15-154.pdf>

Half of the Employers Contacted to Provide FLS Wage and Employment Data Respond

Farm Labor Sample Size and Response Rate – Regions and United States: October 10-16, 2021 and October 9-15, 2022

Regions	Sample size		Response rate	
	2021 (number)	2022 (number)	2021 (percent)	2022 (percent)
Northeast I	943	921	47.5	52.3
Northeast II	979	944	44.4	42.8
Appalachian I	723	730	53.3	46.2
Appalachian II	977	956	56.8	49.9
Southeast	788	805	60.0	49.7
Florida	807	824	54.0	40.0
Lake	1,013	998	43.6	43.2
Cornbelt I	1,330	1,325	43.2	40.0
Cornbelt II	1,528	1,550	41.9	44.1
Delta	1,136	1,153	57.1	48.7
Northern Plains	1,346	1,340	40.5	40.7
Southern Plains	1,465	1,459	53.7	57.4
Mountain I	715	706	42.9	42.6
Mountain II	462	451	52.4	45.2
Mountain III	407	414	42.5	38.2
Pacific	755	738	34.2	32.5
California ¹	1,136	857	40.8	39.7
Hawaii	583	588	51.5	47.3
United States	17,093	16,759	47.5	45.0

¹ July-October 2021 sample size remained at pre-reduction level due to region-specific sampling constraints.

Survey (FLS) of farm employers. USDA contacts about 17,000 farm employers twice a year. Less than half respond, providing information on the earnings and hours worked of the various types of farm workers they employed during the week that includes the 12th of the month of January, April, July, and October. Employer response rates are less than 40 percent in California, the Pacific Northwest and the Mountain III states of AZ and NW, and above 50 percent only in the Northeast I states.

Employers complete a table with rows for 16 types of workers. Most farm workers are category 12, Crop, Nursery and Greenhouse Farm-workers.

Employers report the total hours worked and the gross weekly wages paid to each type of worker during the survey week, that is, earnings before taxes.

Section 3 asks questions about peak employment and whether the farm had any H-2A workers during the previous year, while Section 4 collects data on the farm's sales during the previous year by category, such as over \$5 million, the farm's acres of various crops, and the share of the farm's sales accounted for by fruits, nuts and berries, vegetables and melons, and corn and grains, but does not collect data on sales of individual commodities. Sections 5 and 6 collect data on farm operators.

The FLS publishes average hourly earnings by type of worker for 18 regions, all of which are multistate except CA, FL, and HI. The average hourly earnings of field and livestock workers combined that DOL uses to set the AEW for 2023 were \$16.62 in 2022, and ranged from \$13.67 in the Delta states to \$18.65 in California.

The sample of employers who provide data to the FLS can be small in some regions, such as the mountain regions that have fewer than 500 respondents, leading to sharp year-to-year fluctuations in average hourly earnings. The coefficient of variation or the ratio of the standard deviation to the mean of sample data is a measure of the reliability of the employment and wage estimates.

Lower CVs indicate less dispersion around the mean or more precise estimates. The CV of FLS average hourly earnings is less than one percent for the US, but over two percent in six of the 18 regions. The CV is also high for wage estimates of some job titles such as packers and packagers.

DOL's OFLC, which certifies employers to hire H-2A workers, expects to use the FLS to determine AEWs for 98 percent of all H-2A jobs because

Farmers Report Wage and Employment Data for 16 Types of Workers they Hire Directly

Code	Work Hired to Do
CROP, NURSERY AND GREENHOUSE WORKERS	
11	Agricultural Equipment Operators - Crop, Nursery and Greenhouse: Drive and control farm equipment to till soil and to plant, cultivate, and harvest crops.
12	Farmworkers - Crop, Nursery and Greenhouse: Manually plant, cultivate, and harvest vegetables, fruits, nuts, horticultural specialties, field crops, Christmas trees and short rotation woody crops. Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives. Duties may include tilling soil and applying fertilizers; transplanting, weeding, thinning, or pruning crops; applying pesticides; or cleaning, grading, sorting, packing, and loading harvested products. May construct trellises, repair fences and farm buildings, or participate in irrigation activities.
13	Graders And Sorters - Crop, Nursery and Greenhouse Products: Grade, sort, or classify agricultural crops by size, weight, color or condition.
14	Hand Packers And Packagers - Crop, Nursery and Greenhouse Products: Pack or package by hand a wide variety of products and materials.
15	All Other Field Workers: Specify: _____ All agricultural workers working with crops, nursery or greenhouse products not included in codes 11-14.
LIVESTOCK WORKERS	
20	Agricultural Equipment Operators - Farm, Ranch, and Aquacultural Animals: Drive and control heavy farm equipment while attending to live farm, ranch, or aquacultural animals and in harvest of unprocessed animal products.
21	Farmworkers - Farm, Ranch, and Aquacultural Animals: Attend to live farm, ranch, or aquacultural animals including cattle, sheep, swine, goats, horses and other equines, poultry, finfish, shellfish, and bees. Duties may include feeding, watering, herding, milking, grazing, castrating, branding, de-beaking, weighing, catching, and loading animals. May conduct simple exams; maintain records; assist in births; and administer medications, vaccinations, or insecticides. May clean and maintain animal housing areas.
22	Graders And Sorters - Farm, Ranch, and Aquacultural Animal Products: Grade, sort, or classify unprocessed food and other agricultural products by size, weight, color, or condition.
23	Hand Packers And Packagers - Farm, Ranch and Aquacultural Animal Products: Pack or package by hand a wide variety of products and materials.
24	All Other Livestock Workers: Specify: _____ All agricultural workers working with farm, ranch and aquacultural animals or products not included in codes 20 - 23.
SUPERVISORS	
31	Farmers, Ranchers and Other Agricultural Managers: Plan, direct, or coordinate the management or operation of farms, ranches, greenhouses, aquacultural operations, nurseries, tree farms, or other agricultural establishments.
32	First-Line Supervisors of Farm Workers: Directly supervise and coordinate the activities of agricultural, aquacultural, and related workers.
OTHER WORKERS	
41	Agricultural Inspectors: Inspect agricultural commodities, processing equipment and facilities, and aquacultural operations, to ensure compliance with regulations and laws governing health, quality, and safety.
42	Animal Breeders: Select and breed animals according to their genealogy, characteristics, and offspring.
43	Pesticide Handlers and Sprayers: Mix or apply pesticides, herbicides, fungicides, or insecticides through sprays, dusts, vapors, soil incorporation, or chemical application to all crops including nursery and greenhouse products and facilities, and livestock, and livestock facilities. Usually requires specific training and state or federal certification. Excludes pilots who dust or spray crops from aircraft.
44	Any Other Worker Not Listed Above: Specify: _____ Including, but not limited to, mechanics, shop workers, truck drivers, accountants, bookkeepers and office workers. Excluding contract and custom workers, retail workers, and "value-added" workers.

the six FLS job titles account for 98 percent of the farm jobs for which employers seek certification:

- 85 percent of H-2A job certifications in FY 22 were for the job title farmworkers and laborers, crop, nursery and greenhouse workers (45-2092);
- seven percent were agricultural equipment operators (45-2091);
- four percent were farmworkers, farm, ranch, and aquacultural animals (45-2093);
- less than one percent were graders and sorters, agricultural products (45-2041) and all other agricultural workers (45-2099).

OFLC will use the average state-wide or national mean wage in the OEWS to set the AEW for

the other two percent of jobs that employers want to fill with H-2A workers, including construction worker and van or truck driver. DOL justified changing the wage survey to set AEWs for the 30 "nonfarm job titles" in employer applications because these job titles typically have higher hourly wages than field and livestock workers.

SWAs assign SOC codes to jobs based on employer job descriptions. DOL worries that some farm employers may save money by calling heavy truck drivers (SOC 53-3032) who move harvested crops over public roads to processing or storage facilities agricultural equipment operators (45-2091), resulting in the lower FLS hourly

wage and no overtime pay in most states because farm workers are exempt from federal overtime pay requirements. The OEWS wage for heavy truck drivers is often twice the FLS wage for agricultural equipment operators.

The FLS interviews only farm employers, while the OEWS interviews only nonfarm employers, including those who bring workers to farms such as farm labor contractors. FLS wages are generally lower than OEWS wages, giving employers an incentive to misclassify non-farm workers as farm workers.

PWRs

In addition to the AEW, employers must also offer and pay the prevailing wage rate (PWR) for the job that is actually performed by the H-2A worker if a prevailing wage has been determined. For example, if the California AEW is \$18.65 an hour, an employer may have to pay vineyard workers the prevailing wage of \$20 an hour in a high-cost area such as Napa CA. In Washington, employers must guarantee workers at least the hourly AEW and may also have to offer the prevailing piece rate of \$30 to pick a bin of Gala apples.

Workers employed under piece rate wage systems are guaranteed the AEW. The government-set AEW and the employer-set piece rate combine to create a productivity standard. For example, a worker who picks six bins of apples in an eight-hour day at \$30 a bin earns \$180 or \$22.50 an hour. If the AEW increases by 10 percent from \$15 to \$16.50, but the piece rate remains at \$30 a bin, a worker who picks six bins a day would still earn \$180 a day or \$22.50 an hour, but have less incentive to work fast because his piece rate earnings generate a smaller premium above the AEW. If the AEW continues to rise and

2023 AEWRs Range from \$13.67 in the Delta States to \$18.65 in California

Annual Average Gross Wage Rates by Type of Worker – Regions and United States: 2021 and 2022

[Excludes agricultural service workers and Alaska. Annual rates are averages of the published wage rates for each survey week weighted by the number of hours worked during the week]

Regions ¹ and United States	Type of worker						Gross wage rates for all hired workers	
	Field workers		Livestock workers		Field and livestock combined			
	2021 (dollars per hour)	2022 (dollars per hour)	2021 (dollars per hour)	2022 (dollars per hour)	2021 (dollars per hour)	2022 (dollars per hour)	2021 (dollars per hour)	2022 (dollars per hour)
Northeast I	16.22	17.34	14.79	16.25	15.66	16.95	16.61	17.91
Northeast II	15.90	16.85	14.51	15.63	15.54	16.55	16.44	17.68
Appalachian I	14.26	14.78	13.82	15.32	14.16	14.91	14.79	15.54
Appalachian II	13.75	14.20	14.08	14.34	13.89	14.26	14.50	15.03
Southeast	11.81	13.68	12.58	13.62	11.99	13.67	12.54	14.35
Florida	12.36	14.28	12.76	14.63	12.41	14.33	13.30	15.26
Lake	16.22	17.79	14.70	16.94	15.37	17.34	16.14	18.22
Cornbelt I	16.08	17.60	15.38	16.11	15.89	17.17	16.61	17.87
Cornbelt II	16.36	17.43	16.01	17.68	16.19	17.54	16.92	18.37
Delta	12.40	13.59	12.61	13.95	12.45	13.67	12.85	14.10
Northern Plains	16.99	17.89	15.90	16.71	16.47	17.33	16.93	17.90
Southern Plains	13.80	14.34	13.94	15.38	13.88	14.87	14.37	15.57
Mountain I	14.65	15.86	14.71	15.50	14.68	15.68	15.36	16.43
Mountain II	15.56	17.25	15.59	15.26	15.58	16.34	16.25	17.27
Mountain III	14.36	14.95	15.35	16.43	14.79	15.62	15.56	16.38
Pacific	17.47	17.95	16.84	18.16	17.41	17.97	18.07	18.66
California	17.46	18.62	17.74	18.80	17.51	18.65	18.76	20.09
Hawaii	16.33	17.10	18.01	18.11	16.54	17.25	18.05	19.15
United States	15.77	16.77	15.08	16.29	15.56	16.62	16.38	17.56

separate from the AEWR for every occupation and agricultural activity in every state.”

PWRs are more important in the H-2B program, which allows employers to recruit guest workers to fill nonfarm seasonal jobs. Employers seeking H-2B workers file ETA Form 9141 outlining job duties, education and training requirements, and suggesting a SOC code for the job to be filled by the guest worker. OFLC reviews the employer submission, determines the SOC for the job, and makes a prevailing wage determination, usually from DOL’s OEWS database.

The OEWS database provides wage and employment data for 830 detailed occupations, with the data available for job titles at the statewide level and for 530 metro

and non-metro areas within states. The OEWS contacts employers who bring workers to farms such as farm labor contractors, and in May 2021 reported that California had 186,000 Farmworkers and Laborers, Crop, Nursery, and Greenhouse (SOC 45-2092), including 80 percent in the 10 areas with 80 percent of the state’s OEWS crop workers. Mean and median hourly wages in major farming areas were slightly lower than state averages in 2021, when the California minimum wage was \$13.

DOL Analysis

DOL’s analysis of the impacts of the new AEWR methodology reported that 10,000 unique employers (excluding FLCs) were certified to employ H-2A workers in FY20 and FY21. A sample of 2,600 of these

farm employers found that 80 percent were small, with an average 11 employees and average annual revenues of \$3.6 million.

DOL analyzed a sub-sample of 2,100 farm employers and found that a third were in NAICS 111998, miscellaneous (often seed production) crop farming, 15 percent were nurseries and garden centers (444220) or landscaping services (561730), and 10 percent were fruit and vegetable (retail) markets (445230) or fruit and vegetable wholesalers (424448). This means that two-thirds of the DOL sample had NAICS codes outside FVH agriculture, which encompasses NAICS 1112 vegetables and melons, 1113 fruits and nuts, and 1114 horticultural specialties from greenhouse and nursery crops to mushrooms.

The CV of FLS Wage Estimates is Over 2% for 1/3 of the 18 FLS Regions

Coefficient of Variation for Modeled Estimate of All Hired Workers and Gross Wage Rate – Region and United States: October 10-16, 2021 and October 9-15, 2022

Regions	All hired workers		Gross wage rate	
	2021	2022	2021	2022
	(percent)	(percent)	(percent)	(percent)
Northeast I	6.2	6.5	1.2	1.1
Northeast II	9.6	9.1	2.7	1.4
Appalachian I	12.6	11.7	1.3	1.6
Appalachian II	11.9	9.2	2.0	1.5
Southeast	10.1	9.7	2.4	2.2
Florida	17.6	11.6	1.8	2.2
Lake	8.8	7.4	2.0	1.9
Cornbelt I	8.5	7.7	2.0	1.9
Cornbelt II	11.4	10.5	2.0	1.9
Delta	11.1	9.0	1.8	2.1
Northern Plains	9.0	8.4	1.8	2.2
Southern Plains	10.9	9.3	1.9	1.8
Mountain I	10.4	10.6	1.7	1.5
Mountain II	11.7	10.5	1.8	2.8
Mountain III	12.4	11.0	2.1	1.8
Pacific	16.1	10.4	1.1	1.8
California	9.4	7.0	1.5	1.6
Hawaii	15.6	9.9	3.1	2.7
United States	4.1	3.0	0.6	0.6

Coefficient of Variation for Modeled Estimate of Hired Workers and Gross Wage Rate by Standard Occupational Classification (SOC) System – United States: October 10-16, 2021 and October 9-15, 2022

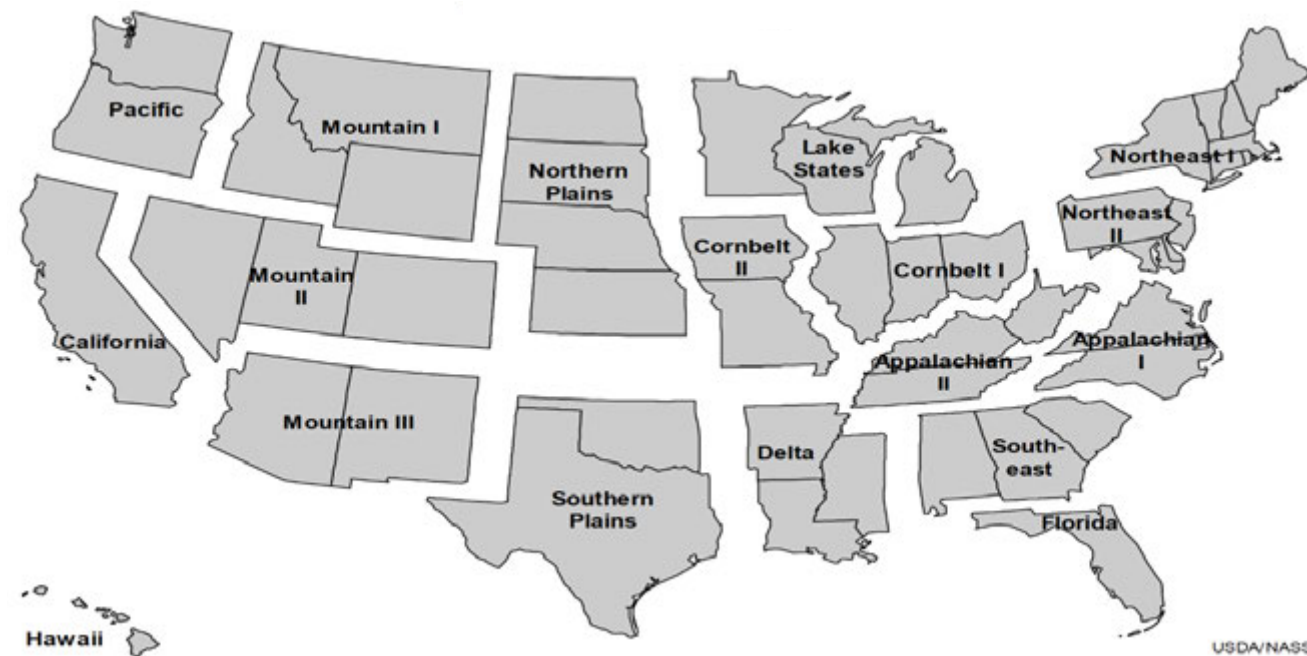
Title	SOC code	All hired workers		Gross wage rate	
		2021	2022	2021	2022
		(percent)	(percent)	(percent)	(percent)
Graders and sorters, agricultural products	(45-2041)	19.9	14.6	6.1	1.8
Agricultural equipment operators	(45-2091)	5.3	5.2	1.3	1.6
Farmworkers, crop, nursery, and greenhouse	(45-2092)	6.9	5.0	1.1	1.0
Farmworkers, farm, ranch, and aquacultural animals	(45-2093)	5.3	5.3	1.5	1.1
Agricultural workers, all other	(45-2099)	8.7	11.0	2.5	1.9
Packers and packagers, hand	(53-7064)	13.3	19.6	1.6	3.0
Farmers, ranchers, and other agricultural managers	(11-9013)	7.3	6.4	2.2	1.8
First-line supervisors of farming, fishing workers	(45-1011)	10.3	7.4	2.8	2.7

The Top 10 CA Areas Each had 5,000 or More OEWS Crop Workers and 80 Percent of CA Crop Workers

	Employment	Mean Wage	Median Wage
Bakersfield, CA(0012540)	42,880	14.45	14.21
Salinas, CA(0041500)	28,690	16.13	15.06
Fresno, CA(0023420)	19,910	14.83	14.07
Visalia-Porterville, CA(0047300)	19,080	14.78	14.01
Santa Maria-Santa Barbara, CA(0042200)	9,990	15.55	14.81
Madera, CA(0031460)	6,710	14.53	14.00
Stockton-Lodi, CA(0044700)	5,720	15.56	14.50
Modesto, CA(0033700)	5,580	14.85	14.23
Riverside-San Bernardino-Ontario, CA(0040140)	5,460	15.09	14.29
El Centro, CA(0020940)	5,050	14.68	14.15
Total /Average	186,220	15.88	14.93
Top 10	149,070	15.05	14.33
Top 10 share	80%	95%	96%

Source: OEWS

FLS Farm Labor Regions



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