

December 1, 2025

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Submitted electronically via regulations.gov.

RE: Adverse Effect Wage Rate Methodology for Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, Docket No. ETA-2025-0008

Dear Acting Assistant Secretary Frazier and Administrator Pasternak:

On behalf of the UFW Foundation and United Farm Workers (UFW), we submit this comment in opposition to the rule, Adverse Effect Wage Rate Methodology for Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, Docket No. ETA-2025-0008.

Farm workers should be paid more, not less. Everyday they toil under extremely challenging conditions to ensure that we have food on our tables. Doing this demanding work should allow workers to provide for themselves and for their families. This work should create opportunities and mobility, not cause farm workers to be targeted for cruel wage cuts that would be unacceptable for any other sector of workers.

The UFW is the nation's first and largest farmworker labor union, founded in 1962 by César Chávez, Dolores Huerta, and others. UFW represents thousands of farmworkers across the country and is dedicated to improving wages, working conditions, and economic stability for agricultural workers. UFW's members include thousands of farmworkers employed under

collective bargaining agreements, and many of those members spend part of each year working for employers that do not have a collective bargaining agreement. UFW also has direct members, farmworkers who pay membership dues but do not currently work under collective bargaining agreements, and their wages will be depressed if this interim final rule (IFR) remains in effect. UFW assists workers with enforcing their rights, engages in collective bargaining, and supports workers during workplace disputes, health and safety issues, wage theft, and labor violations. A core function of the UFW is to advocate for better wages for its members as part of its negotiations with employers for collective bargaining agreements, including renegotiating new terms. A lower Adverse Effect Wage Rate (AEWR) will directly undermine its ability to achieve this objective by providing more leverage to employers in those negotiations. The U.S. Department of Labor's (DOL) IFR will directly and immediately harm UFW and its members. Wage cuts of even one or two dollars per hour destabilize the incomes of farmworkers who already live at or near subsistence levels. When wages drop, UFW must divert significant staff time and resources to respond to urgent worker needs—helping workers avoid eviction, food insecurity, loss of transportation, and gaps in medical care. These impacts interfere with UFW's core mission and require the organization to redirect resources to address the economic disruption caused by the IFR. These harms are immediate, concrete, and irreparable. Moreover, the issue of fair wages for agricultural labor and services is directly germane to UFW's purpose as a farmworker union.

The UFW Foundation is a nonprofit organization and U.S. Department of Justice-accredited immigration legal services provider that serves over 100,000 farmworkers and immigrant community members annually. The UFW Foundation also has direct members, farmworkers who pay membership dues and rely on its services even when they do not work under collective bargaining agreements, and those members will face lower wages if the IFR remains in effect. UFW Foundation provides immigration services, emergency assistance, worker-rights education, and support for families experiencing financial instability, housing insecurity, food insecurity, or workplace abuses. The IFR will significantly increase the demand for UFW Foundation's services. Because many farmworkers live at or below the poverty line, reductions in wages immediately translate into inability to pay rent, buy food, afford transportation to work, purchase school supplies for children, or cover out-of-pocket medical costs. UFW Foundation will be forced to divert limited resources from ongoing programs to handle emergency food assistance requests, crisis rent support, and increased casework arising from workers losing income. These harms impair UFW Foundation's ability to carry out its mission and impose real, immediate, and irreparable burdens on the organization and the communities it serves.

We oppose the IFR because: of the disastrous impact that it will have on farm workers, including U.S. citizens and legal permanent residents; of the impact on our organizations as farm worker-serving organizations; and the IFR violates federal law, including the Immigration and Nationality Act and Administrative Procedure Act.

I. The IFR Will Adversely Affect the Wages and Working Conditions of U.S. Farm Workers

The federal government has a statutory obligation to ensure that employers' use of the H-2A program does not adversely affect the wages and working conditions of U.S. farm workers.¹ It has historically used the AEWR, based on the Farm Labor Survey (FLS), as a means to meet this statutory obligation, with few exceptions.²

Unfortunately, the IFR abandons this legal obligation, moving in the exact opposite direction by reducing wages for H-2A workers as well as U.S. farm workers who work in corresponding employment, undercutting U.S. workers' wages and working conditions. The IFR specifically adversely affects U.S. farm workers by basing the methodology for calculating wages on the lowest percentile of wages within the currently implemented Occupational Employment and Wage Statistics (OEWS), as opposed to the FLS; applying a housing "adjustment;" arbitrarily dividing wages between skill levels that are determined by the employer; and incentivizing employers to use the H-2A program for non-agricultural jobs by enabling them to pay workers less for previously higher-paying jobs like construction, driving, and service and electrician work, as long as those job responsibilities do not exceed 49% of the worker's total job responsibilities. These changes combine to have the direct result of lowering farm workers' wages, including U.S. citizens and legal permanent residents. The IFR will directly reduce, and in some cases, eliminate farm workers' ability to provide for themselves and their families and afford basic necessities to survive.

a. The IFR Will Drastically Cut the Wages of H-2A Workers and U.S. Farm Workers Who Are in Corresponding Employment, and Drive Down Wages of Other U.S. Farm Workers

The IFR reduces the wages of farm workers, including U.S. citizens and legal permanent residents, by changing the basis of the AEWR from the FLS to the OEWS, as it's currently collected by the results of non-farm establishments like Farm Labor Contractors (FLCs) and basing the overwhelming majority of hourly wages on the lowest 17th percentile of job categories or Standard Occupational Classification (SOC).

The IFR, according to DOL's own estimates in the rule, will transfer \$2.46 billion annually from workers to employers, amounting to one of the largest transfers of wealth in U.S. agricultural

¹ 8 U.S.C. § 1188(a)(1)(B).

² The two times that DOL varied from using the FLS, it quickly abandoned that approach after that rulemaking was challenged in federal court. In 2008, it temporarily stopped using the FLS but quickly returned to it. *See Temporary Agricultural Employment of H-2A Aliens in the United States*, 74 Fed. Reg. 45905, 45911 (proposed Sept. 4, 2009). In 2020, DOL attempted to stop using the FLS but that rule was enjoined by a federal court. *United Farm Workers v. U.S. Dep't of Lab.*, 509 F. Supp. 3d 1225, 1231 (E.D. Cal. 2020).

history.³ In California, the IFR reduces the AEWR from \$19.97 to \$16.45 for U.S. workers who work alongside H-2A workers. Despite longstanding federal law and regulations, the IFR transfers the costs of housing to H-2A workers, amounting to a second round of wage cuts for H-2A workers.⁴ In California, this housing “adjustment,” as the IFR phrases it, amounts to a \$3.00 wage reduction. This totals a \$6.52 reduction in hourly wages for H-2A workers in California. In Georgia, the IFR reduces the AEWR from \$16.08 to \$12.27 for U.S. farm workers who work alongside H-2A workers. For H-2A workers, the IFR further reduces wages through the housing “adjustment” by \$1.75, amounting to a total hourly wage cut of \$5.56. In Michigan, the IFR reduces the AEWR from \$18.15 to \$13.78 for U.S. farm workers who work alongside H-2A workers. For H-2A workers, the IFR further reduces wages by \$1.32, amounting to a total hourly wage cut of \$5.69. In Washington, the IFR reduces the AEWR from \$19.82 to \$16.53 for U.S. farm workers who work alongside H-2A workers. For H-2A workers, the IFR further reduces wages by \$2.49, amounting to a total hourly wage cut of \$5.78. In New York, the IFR reduces the AEWR from \$18.83 to \$15.68 for U.S. farm workers who work alongside H-2A workers. For H-2A workers, the IFR further reduces wages by \$2.40, amounting to a total hourly wage cut of \$5.55.⁵

These wage cuts will make it more difficult, and, in some cases, impossible for farm workers to afford basic necessities for survival with the wages that they make from their labor. In preparation for this comment, the UFW Foundation surveyed 3,312 farm workers across the country. Out of 3,312 farm workers surveyed, 98.7% reported that wage cuts of \$3-4 dollars will affect their family’s ability to afford rent, food, transportation, or bills. 98.9 percent of these workers reported that these wage cuts will force them to move, take a second job, or cut spending on essentials.

One U.S. farm worker reported that food insecurity as a result of wage cuts may force her to skip meals for her and her four children. Others reported that they will have to seek food banks, donations, and other forms of assistance. Other U.S. farm workers reported that they will have to reduce what they spend on food because they will simply not have enough for food. Many reported that they will be unable to pay their rent and fear homelessness. U.S. workers reported that they will be unable to support their families, including children and elderly parents with medical expenses. U.S. farm workers reported that wage cuts would make them unable to afford a college education for themselves and their children. Others reported that they would have to cut expenses for children like school supplies and uniforms. Others report that they would be unable to make child support payments.

³ See 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, 47952 (Oct. 2, 2025).

⁴ See 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.”).

⁵ 90 Fed. Reg. at 47927.

Many U.S. farm workers report that the IFR's wage cuts will cause them to get a second job and work additional hours at their current agricultural job. Many also report that the IFR's wage cuts will cause them to move because they will no longer be able to afford the rent where they currently live.

Jessica Ledesma,* a U.S. farm worker in California with 15 years of experience with grapes, onions, radishes, peaches, and dates, who has worked alongside H-2A workers, reports that wage cuts: "would affect me a lot because I wouldn't be able to cover all my expenses. And being a single mother, it would affect me even more. I wouldn't be able to afford the rent, food, gas, and everything else. It wouldn't be enough to buy food or pay for everything else. It would be very difficult." **Ella Torres**, a U.S. citizen farm worker in Michigan with five years of experience with squash and apples, reports that wage cuts will cause her, as a single mother, difficulty feeding her four children and possibly force her to skip meals. **Miguel Aguadilla**, a U.S. citizen farm worker in California with 38 years of experience with grapes, peaches, nectarines, and various types of vegetables, reports that wage cuts: "would affect us a lot. I wouldn't be able to make certain payments that I make now; we'd fall behind on everything. It would hit me hard when it comes to food, school supplies, clothing, shoes. . . . [I]nsurance and all of that would affect me a lot overall." **Jose Juarez**, a U.S. farm worker in California with 39 years of experience with grapes, chili peppers, cilantro, spinach, and broccoli, states that "[t]hings are already really bad right now as they are. With that salary, you can't even make enough to survive. Before, I used to save a little money, but that's over now. With that wage cut, I don't know how we'd manage the rent, food, the truck, and all the bills. Everything would be even worse"

Yahira Cuervas, a U.S. farm worker in California with 12 years of experience in cherries, tomatoes, and apricots, reports that because of wage cuts, "I wouldn't have enough to pay my bills, rent, food, gas, and household supplies. Also childcare, medicine—everything is very expensive and the wages are very low." **Jimmy Fernandez**, a U.S. farm worker with 12 years of experience in picking and packing potatoes and transporting produce from fields to warehouses in Texas, Wisconsin, Minnesota, and Michigan, reports that "I wouldn't be able to provide for my family if my wages were cut by that much. Food and fuel prices are already high. This would only make it more difficult to provide or have enough to move around. Rent would be very difficult to make up for and [we] would probably have to find something smaller." **Mariangela Urbina**, a U.S. citizen farmworker in California with experience in the strawberry fields, reports that wage cuts will make it "harder to cover existing expenses like food, rent, and childcare. It would also limit the support we provide to our family members (parents or grandparents). . . . Additionally, we wouldn't have enough for basic things like going to the laundromat—the cost of washing keeps going up—or paying for medical appointments."

*The names of all farm workers included in this comment have been changed for security purposes.

Ernesto Santos, a U.S. citizen farm worker in Washington with 45 years of experience with apples, cherries, asparagus, and tractor operating, who has worked alongside H-2A workers, states that:

“Right now it is already difficult for us to cover basic expenses because of how low our wages are. A wage cut would be devastating for my family and for me. . . . If my employer lowers my wages, I won’t be able to pay the mortgage on my home and I would risk losing it . . . leaving my family unprotected and practically out on the street. . . . I would have to choose between buying my medications or making sure my family has food . . . I have asthma due to so many years of exposure to farm chemicals.”

Camila Mayaguez, a U.S. citizen farm worker in California with four years of experience in grapes and onions, who has worked alongside H-2A workers, states that: “[my employer] reduced my hours . . . I have to pay more for babysitting . . . food is more expensive . . . my bills are going up but my pay is not. If you earn less . . . we’re at risk of becoming homeless.”

Gabriela Lopez, a U.S. citizen farm worker in California with 25 years of experience with lettuce, states that: “[w]ith a salary reduction of \$3–\$4 per hour, I simply wouldn’t be able to cover the basics . . . I would be forced to find a second job. This doesn’t just affect us financially: it affects the heart of the home, family unity, and my children’s emotional well-being.”

Andres Bolivar, a U.S. citizen farm worker in Michigan with eight years of experience with blueberries, apples, asparagus, strawberries, and cherries, states that wage cuts: “would affect us tremendously because this pay has to cover all the expenses. . . . Family members would have to pick up additional jobs to make ends meet. . . . This wage cut would make our family move even more trying to find employment.” **Salvador Sanchez**, a U.S. citizen farm worker in California with ten years of experience in grapes, blueberries, and apples, who has worked alongside H-2A workers, states that with wage cuts: “I will not have enough money to survive—to pay for my food, my lunch, my rent, my bills, and for my college education. . . . I would have to look for another job because I would not be able to afford helping my mother and going to school.”

These wage cuts will exacerbate an already precarious economic situation for U.S. farm workers. In California, DOL data shows that, prior to this IFR, 23% of farm workers had incomes below the poverty level.⁶ DOL data shows that, before the IFR, nationwide, one-fifth of farm workers had family incomes below the poverty level.⁷ Seventeen percent of farm workers reported that

⁶ California Findings from the National Agricultural Workers Survey (NAWS) 2015–2019: A Demographic and Employment Profile of California Workers, Rsch. Report No. 15, U.S. Dep’t of Agric. (Jan. 2022), <https://perma.cc/X3FW-ASGJ>.

⁷ Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers, Rsch. Report No. 17, U.S. Dep’t of Agric. (Sep. 2023), <https://perma.cc/4K4Q-PWAS>.

they or someone in their household had received some form of benefit from a contribution-based program in the previous two years, while 64% said someone in their household had received some form of benefit from a needs-based program in the previous two years.⁸ Other localized studies show that between 47 and 82% of farm worker households experience food insecurity.⁹ These difficulties of being able to afford basic needs like food, rent, transportation, healthcare, and other basic necessities will be dramatically increased by the wage cuts of the IFR.

For H-2A workers, the wage cuts will also deeply impact them. If 95% of H-2A workers are considered Skill Level I under the IFR, and they work under a standard H-2A contract (40-hour weeks for six months, or 1,040 hours), based on the number of H-2A workers during Fiscal Year 2024, overall H-2A workers would suffer wage cuts that total at least:

- \$241,633,808 annually in California;¹⁰
- \$238,604,954 annually in Georgia;¹¹
- \$84,408,646 annually in Michigan;¹²
- \$204,921,808 annually in Washington;¹³ and
- \$56,444,388 annually in New York.¹⁴

These calculations of total wage losses are almost certainly an underestimate because first, they do not quantify how the H-2A program could be expanded to non-agricultural jobs, as discussed below in Section I(d). Secondly, they do not quantify the growth of the H-2A program that would be a direct result of this IFR. The rule itself estimates that it will expand the H-2A program by 26 percent.¹⁵

Additionally, with the housing “adjustment” serving as a second round of wage cuts for H-2A workers, regardless of whether they live in employer-provided housing, the IFR could enable H-2A employers to pay H-2A workers wages that are below the minimum wage of the state or territory where the job is located. In some states, the new AEWR under this IFR is lower than the state minimum wage even before the housing “adjustment.”¹⁶ With the housing “adjustment,” the IFR makes the new AEWR go below the state or territory-wide minimum wage in large parts of the country, including 21 states and additional territories: Alaska, Arizona, California, Colorado,

⁸ *Id.*

⁹ Ali Reznickova, *How Many Farmworkers Are Food Insecure? It’s Hard to Tell*, The Equation (Nov. 21, 2022), <https://perma.cc/3TQX-JUEZ>.

¹⁰ Based on 37,511 H-2A workers.

¹¹ Based on 43,436 H-2A workers.

¹² Based on 15,015 H-2A workers.

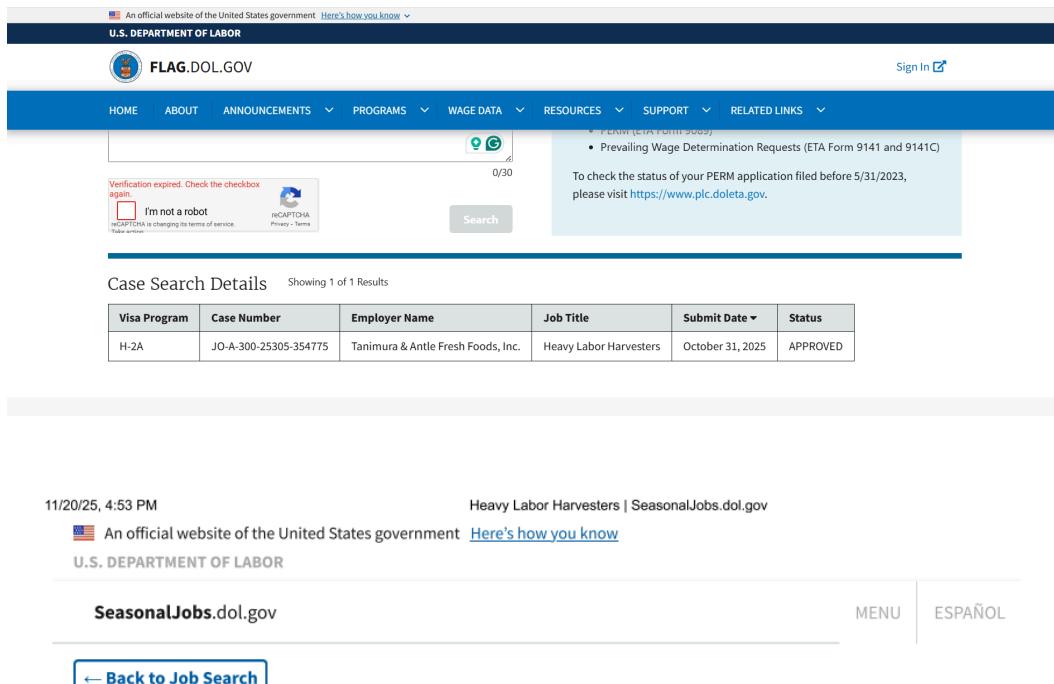
¹³ Based on 35,884 H-2A workers.

¹⁴ Based on 10,294 H-2A workers.

¹⁵ 90 Fed. Reg. at 47956 (estimating that the IFR will grow the number of certified H-2A workers annually from 383,210 to 514,905).

¹⁶ This includes California, Connecticut, Delaware, the District of Columbia, Florida, Puerto Rico, Rhode Island, and Washington.

Connecticut, Delaware, District of Columbia, Florida, Guam, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, Oregon, Puerto Rico, Rhode Island, Virginia, Virgin Islands, and Washington. The IFR states explicitly that it does not revise federal regulations, 20 C.F.R. § 655.120(a)(1), which requires H-2A employers to pay the highest between the AEWR, prevailing wage rate, agreed-upon collective bargaining wage, federal minimum, or state minimum wage. However, since the IFR went into effect on October 2, employers have offered rates that are below the applicable state minimum wage. For example, the below H-2A job in Winterhaven, California was approved by DOL despite offering a wage of \$15.32, well below California's state minimum wage of \$16.50. At the very least, additional guidance and enforcement would be necessary to ensure that some employers do not continue using the IFR as a reason for paying farm workers below state minimum wages. The IFR does not offer that, which harms H-2A workers and adversely affects U.S. farm workers.



The screenshot shows the U.S. Department of Labor website with a search result for a job position. The search details are as follows:

Visa Program	Case Number	Employer Name	Job Title	Submit Date	Status
H-2A	JO-A-300-25305-354775	Tanimura & Antle Fresh Foods, Inc.	Heavy Labor Harvesters	October 31, 2025	APPROVED

Below the search result, there is a summary of the job details:

11/20/25, 4:53 PM Heavy Labor Harvesters | SeasonalJobs.dol.gov

U.S. DEPARTMENT OF LABOR

[SeasonalJobs.dol.gov](#)

[← Back to Job Search](#)

Heavy Labor Harvesters

Tanimura & Antle Fresh Foods, Inc.
Winterhaven, CA

Begin date: 12/22/2025
End date: 5/22/2026

\$15.32 per hour

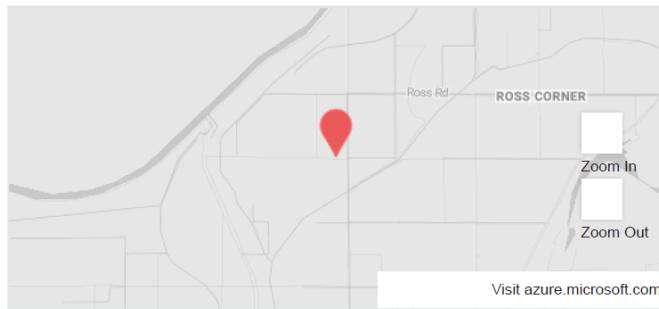
Job Order Not Available

INACTIVE

Worksite

Address:

H.Berryman: 32.778409, -114.543017, Winterhaven, CA 92283



Job Order Details

ETA Case Number:

H-300-25305-354775

While DOL argues that this IFR is necessary to ensure an H-2A workforce, and fails to consider the adverse effect the rule will have on U.S. farm workers, it does not consider that even H-2A workers may not accept these wage cuts and housing “adjustments.” **Yoel Martinez**, an H-2A worker in Missouri with four years of experience in packing bell peppers, peppino peppers, squash, eggplant, okra, and tomatoes, discusses how the IFR’s wage cuts could make him leave H-2A employment: “[t]here wouldn’t be enough money left to support myself, much less my family. It wouldn’t be enough to come work in the U.S. with so little money.”

These wage cuts for H-2A workers and U.S. farm workers who work alongside them would undercut the wages and working conditions of U.S. farm workers beyond those who work for H-2A employers. Not only does this violate DOL’s statutory obligation to prevent an adverse effect on U.S. farm workers; it accelerates that adverse effect.

b. The IFR Replaces the Basis For the AEW^R on Imprecise Data That Drives Down Farm Workers’ Wages

The IFR argues that it should replace the FLS data with OEWS because it is a more precise and robust data source.¹⁷ But if DOL was seeking to achieve its objective and statutory mandate of preventing an adverse effect on U.S. workers employed in farm labor, it would not be using the OEWS, which surveys non-farm establishments like FLCs. The FLS surveyed farm establishments, like farm operators, landscape architects, and other agricultural businesses, while none of these entities are surveyed by the OEWS.

¹⁷ *Id.* at 47928.

FLCs are driving forces in the exploitation of farm workers, including illegal recruitment fees, with FLCs being one of the worst violators of labor laws and regulations, with one report finding that FLCs account for 25% of all federal law violations in agriculture.¹⁸ The IFR will increase this abuse and incentivize H-2A employers and FLCs to choose H-2A workers over U.S. workers. **Mr. Sanchez**, a U.S. citizen farm worker who works for a FLC alongside H-2A workers, describes how his hours have been reduced and subsequently his pay has been reduced:

“[t]he hours have dropped due to not just the salary, but also the hours. No more 40 hours a week; we are only working 30 hours a week. Also, we are not working on Saturdays anymore. My checks are now \$400-\$500 a week. When in October and back, my check would be close to \$700.”

Mr. Sanchez goes on to explain that he would have to look for another job because of the IFR’s wage cuts. As a U.S. citizen farm worker, DOL has a statutory mandate to protect against an adverse effect against him and other U.S. workers. But by changing the AEWR basis to OEWS, the IFR will depress the AEWR paid to Mr. Sanchez and other U.S. workers, likely displacing them.

By basing the AEWR on the OEWS that includes non-farm establishments like FLCs, the IFR contradicts its stated objective of seeking a more precise and comprehensive data source, and depresses the wages for H-2A workers as well as U.S. farm workers who work alongside them. This will have a downward effect on the wages and working conditions of all U.S. farm workers, in violation of DOL’s statutory mandate.

c. The IFR Arbitrarily Establishes Skill Levels that Will Drive Down the Wages of Farm Workers, Including Those With Decades of Experience

The IFR creates two categories of positions, Skill Level I and Skill Level II, that effectively codifies a permanent pay downgrade and establishes a two-tier wage system that rewards employers for misclassifying and underpaying workers.¹⁹ The majority of farm workers will likely be classified as Skill Level I, which will have wages that are equal to the lowest 17th percentile of wages in the relevant farming sectors. The IFR leaves the categorization of a particular job at the discretion of employers.

¹⁸ Centro de los Derechos del Migrante, *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program* 4 (2020), <https://cdmigrante.org/ripe-for-reform>; Daniel Costa, Philip Martin, & Zachariah Rutledge, *Federal Labor Standards Enforcement in Agriculture*, Economic Policy Institute (December 15, 2020), <https://www.epi.org/publication/federal-labor-standards-enforcement-in-agriculture-data-reveal-the-biggest-violators-and-raise-new-questions-about-how-to-improve-and-target-efforts-to-protect-farmworkers/>.

¹⁹ 90 Fed. Reg. 47932.

The IFR requires that Skill Level II will mostly require formal education or training credentials or certificates that are not commonly required and will arbitrarily exclude farm workers with years, and, in many cases, decades of experience. This includes UFW and UFW Foundation members. For example, **Ms. Ledesma**, a U.S. farm worker who has worked alongside H-2A workers, has 15 years of experience; **Mr. Aguadilla**, a U.S. citizen farm worker, has 38 years of experience; **Mr. Juarez**, a U.S. farm worker, has 39 years of experience; **Ms. Cuervas**, a U.S. farm worker, has 12 years of experience; **Mr. Fernandez**, a U.S. farm worker, has 12 years of experience; **Mr. Santos**, a U.S. citizen farm worker, has 45 years of experience; Ms. Lopez, a U.S. citizen farm worker, has 25 years of experience. Additionally, **Lorena Velasquez**, a U.S. farm worker in California, has 18 years of experience with tomatoes and grapes. **Elena Aviles**, a U.S. farm worker in Georgia, has eight years of experience with blackberries, peaches packing, squash, and blueberries. **Marina Eligio**, a U.S. citizen in California, has ten years of experience with onions. **Maceo Marti**, a U.S. farm worker in Washington, has 26 years of experience with grapes.

For the overwhelming majority of these workers and other U.S. farm workers, this IFR will allow H-2A employers to categorize their skill level and subsequently underpay them, despite decades and years of experience and a deep knowledge of their work and the skills required to perform it.

d. The IFR Incentivizes H-2A Employers to Underpay Farm Workers for Non-Agricultural Labor and Expand the H-2A Program to Non-Agricultural Jobs

The IFR will allow H-2A employers to underpay farm workers for non-agricultural labor that was previously higher paying as long as those tasks do not exceed 49% of the farm workers' total tasks.²⁰ This could potentially further expand the H-2A program to non-agricultural jobs and adversely affect large sectors of non-agricultural workers.

Under previous regulations, H-2A workers and U.S. farm workers in corresponding employment who performed higher-paying tasks were paid accordingly even if they did not perform those tasks for the majority of their contract. Under the IFR, DOL abandons this approach and allows H-2A employers to pay the worker lower-paying, farm labor wages even though they perform higher-paying, non-agricultural duties, so long as those non-agricultural duties do not exceed 49 percent of their total job responsibilities.

While this IFR states that all H-2A jobs must still qualify as agricultural, it also discusses multiple job duties that are non-agricultural and are nevertheless anticipated to be included in H-2A jobs under this rule, ranging from machinery repairs; irrigation; repairing buildings and fences; aligning and sealing structural components (e.g., walls and pipes); building frameworks

²⁰ *Id.* at 47939.

(e.g., walls, roofs, joists, studding, and window and door frames); welding; construction; and mechanics and service technician work (e.g., diagnose, repair, and overhaul engines, transmissions, components, electrical and fuel systems on tractors, and replace motors); among others.²¹ DOL states that it already receives H-2A applications with these job duties listed. The IFR also discusses the benefits that its guidance will have towards classifying these non-agricultural jobs in the H-2A program and acknowledges that these kinds of job duties will be a part of H-2A jobs.²²

DOL argues that this change is necessary to address recent case law, *Teche-Vermilion Sugar Cane Growers Ass'n Inc. v. Chavez-Deremer*, that invalidated regulations that required H-2A employers to pay the higher-paying wage rate due to certain tasks, for the entirety of a farm worker's wages even if those tasks did not total 50% or more of a worker's total job responsibilities.²³ However, *Teche-Vermilion*, which was a lawsuit by employer associations that went uncontested by the current administration, need not control or lead to this IFR. DOL could simply have issued rulemaking, consistent with *Teche-Vermilion*, that requires H-2A employers to pay the higher-paying wage rate for farm workers who perform higher-paying tasks, like construction or fencing, for the percentage of the time that that worker performs those higher-paying tasks. Instead, this rule selectively cites *Teche-Vermilion* to argue that it must allow employers to pay lower, farm worker wages even when that worker is performing higher-paying, non-agricultural tasks up to 49% of the time.

This will reduce the wages of U.S. farm workers. For example, under this IFR, **Mr. Santos**, a U.S. citizen farm worker with 45 years of experience, including tractor operating, could operate tractors for up to half of his total job hours and still receive a lower wage. **Mr. Fernandez**, who has experience in Texas, Wisconsin, Minnesota, and Michigan and has transported produce to warehouses, could drive for up to half of his job and still receive a lower wage. Similarly, under this IFR, **Raul Cisneros**, a U.S. citizen farm worker who also operates tractors, could operate tractors for up to 49% and still be paid a lower wage.

These are not isolated examples. Out of 3,312 farm workers that the UFW Foundation surveyed across the country, 50.4% reported performing non-agricultural tasks like driving, construction, fencing, and irrigation, as part of their farm labor jobs.

Instead of determining how to pay U.S. farm workers for non-agricultural job duties in a manner that prevents an adverse effect, the IFR selectively cites case law to make changes that will underpay farm workers as long as those non-agricultural duties do not exceed 49 percent of their total job responsibilities. This will ultimately cause an adverse effect on U.S. farm workers and

²¹ *Id.* at 47942-944.

²² *Id.* at 47945-946.

²³ *Teche-Vermilion Sugar Cane Growers Ass'n Inc. v. Chavez-Deremer*, No. 6:23-cv-00831 (Aug. 26, 2025).

potentially expand the H-2A program to non-agricultural jobs, and, thus, expand that adverse effect to non-agricultural workers.

II. The IFR Violates the Administrative Procedure Act by Undermining DOL’s Statutory Mandate to Protect Against Adverse Effect, Being Arbitrary and Capricious, and Failing to Provide a Notice-and-Comment Period

a. The IFR Violates the DOL’s Statutory Mandate to Protect Against An Adverse Effect on U.S. Farm Workers

Rather than issue rulemaking that meets DOL’s statutory obligation to ensure that employers’ use of the H-2A program does not adversely affect the wages and working conditions of U.S. workers, the IFR directly depresses the wages of U.S. farm workers who work alongside H-2A workers. It does this by: basing the AEWR on the 17th lowest percentile of wages collected through non-farm establishments in the OEWS; applying the housing “adjustment;” establishing the two-tier wage system where the overwhelming majority of farm workers will be categorized as Skill Level I despite years, if not decades of experience; and incentivizing employers to use the H-2A program for non-agricultural jobs by allowing them to pay workers less for higher-paying, non-agricultural tasks as long as those tasks do not exceed 49% of the worker’s total job responsibilities. These changes depress the wages of H-2A workers. And they create a downward pressure on the wages and working conditions of U.S. farm workers beyond those who work alongside H-2A workers, and thus, undermine DOL’s statutory requirement to prevent an adverse effect under 8 U.S.C. § 1188(a)(1)(B).

b. The IFR is Arbitrary and Capricious

The IFR is arbitrary and capricious, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), because it fails to consider the disastrous impact that the rule will have on U.S. farm workers’ wages, as discussed above. It varies from the historical norm of DOL basing AEWRs on the market rates paid to farm workers and instead uses the OEWS, based on non-farm establishments like FLCs, as the basis for the AEWR, contradicting the IFR’s own arguments that it needs more comprehensive and precise data. Additionally, the IFR establishes the two-tier wage system, where the overwhelming majority of workers will be paid the 17th lowest percentile of wages paid within Skill Level I jobs, the housing “adjustment,” and the ability for employers to underpay farm workers for previously higher-paying non-agricultural job duties. All of these changes will bring AEWRs down despite DOL’s statutory obligation to prevent an adverse effect through its setting of AEWRs.

DOL also failed to consider the reliance interests of U.S. farm workers and how the sudden wage cuts in the IFR would negatively impact them. DOL failed to “assess whether there were reliance

interests, determine whether they [are] significant, and weigh any such interests against competing policy concerns.”²⁴ Instead, the IFR simply made conclusory statements that fall short of providing a “reasoned explanation” for changing course.²⁵ For these reasons, the IFR is arbitrary and capricious in violation of the APA.

c. The IFR Failed to Provide the Public With An Opportunity to Provide Comment Prior to Its Implementation and Failed to Satisfy the APA’s “Good Cause” Exemption

The IFR failed to provide a notice-and-comment period as required by APA and failed to satisfy the “good cause” exemption.²⁶ The argument that there will be an economic impact from immigration enforcement does not satisfy the “good cause” exemption because, as DOL noted in rulemaking as recent as September 2025, basic economic policy provides the guidance that labor shortages should be addressed by increasing compensation, not decreasing it: “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 “[t]herefore, compensation should rise to attract more workers where employers are experiencing a shortage of available workers in a particular region or occupation.”²⁷ If DOL has identified a labor shortage, it should follow, based on the agency’s own logic in recent rulemaking, that wages should be increased, not decreased.

DOL also argues that the IFR was required and meets the “good cause” exemption because there was a regulatory void after the U.S. Department of Agriculture (USDA) cancelled the FLS in September 2025. However, when USDA conducted the FLS survey, it conducted it every year in April, with a report issued in May, and in October, with a report issued in November. In the absence of the FLS survey being conducted in October 2025, DOL could have relied on the April 2025 FLS to calculate the AEWR, which would have resulted in an average increase of 3% to the AEWR.²⁸ DOL could have also based the AEWR on the average annual increase since 2019, which would have resulted in an increase of 5.5% to the AEWR.²⁹ Alternatively, even if DOL pursued the option of basing the AEWR on OEWS data, it did not have to add elements of the IFR that are unrelated to the data source, like the two-tier wage system, housing “adjustment,” and allowing employers to underpay farm workers for non-agricultural job duties as long as it doesn’t exceed 49% of their total job responsibilities. The IFR’s regulatory void arguments do not justify implementing these additional elements without the notice-and-comment period.

²⁴ *Dep’t of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 33 (2020).

²⁵ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009)(holding that agencies must adequately explain the changes when an agency’s “new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account.”).

²⁶ U.S.C. § 553(b)(B), (c).

²⁷ 80 Fed. Reg. 62958, 62992 (Sept. 16, 2025).

²⁸ *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>.

²⁹ 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>.

By failing to provide a notice-and-comment period and by failing to satisfy the “good cause” exemption, the IFR violates the APA.

III. Conclusion

For the above reasons, the UFW Foundation and UFW strongly urge DOL to rescind this IFR. If you have any questions, please contact Diego Iñiguez-López, Director of Government Affairs for the UFW Foundation (at dilopez@ufwfoundation.org).

Sincerely,

UFW Foundation
United Farm Workers