



Immigration Reform and H-2A

March 17, 2023

Michael Marsh, President and CEO

National Council of Agricultural Employers



A look at the numbers

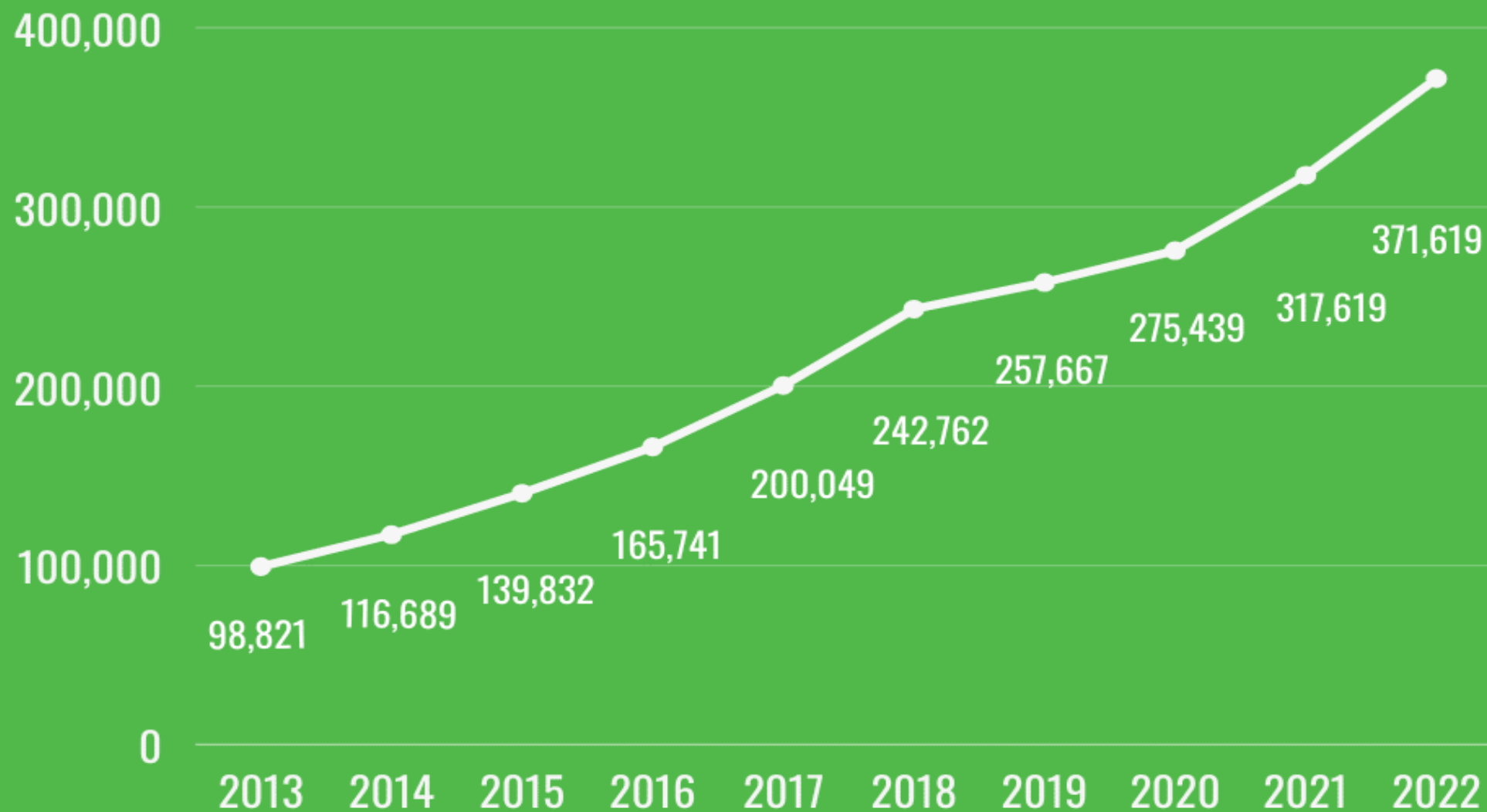
- 2.4 million hired ag
- About 200,000 H-2As
- ~ 50% of domestic ag workers are unauthorized
- Martin-UC Davis
- Policy

Legislative Update

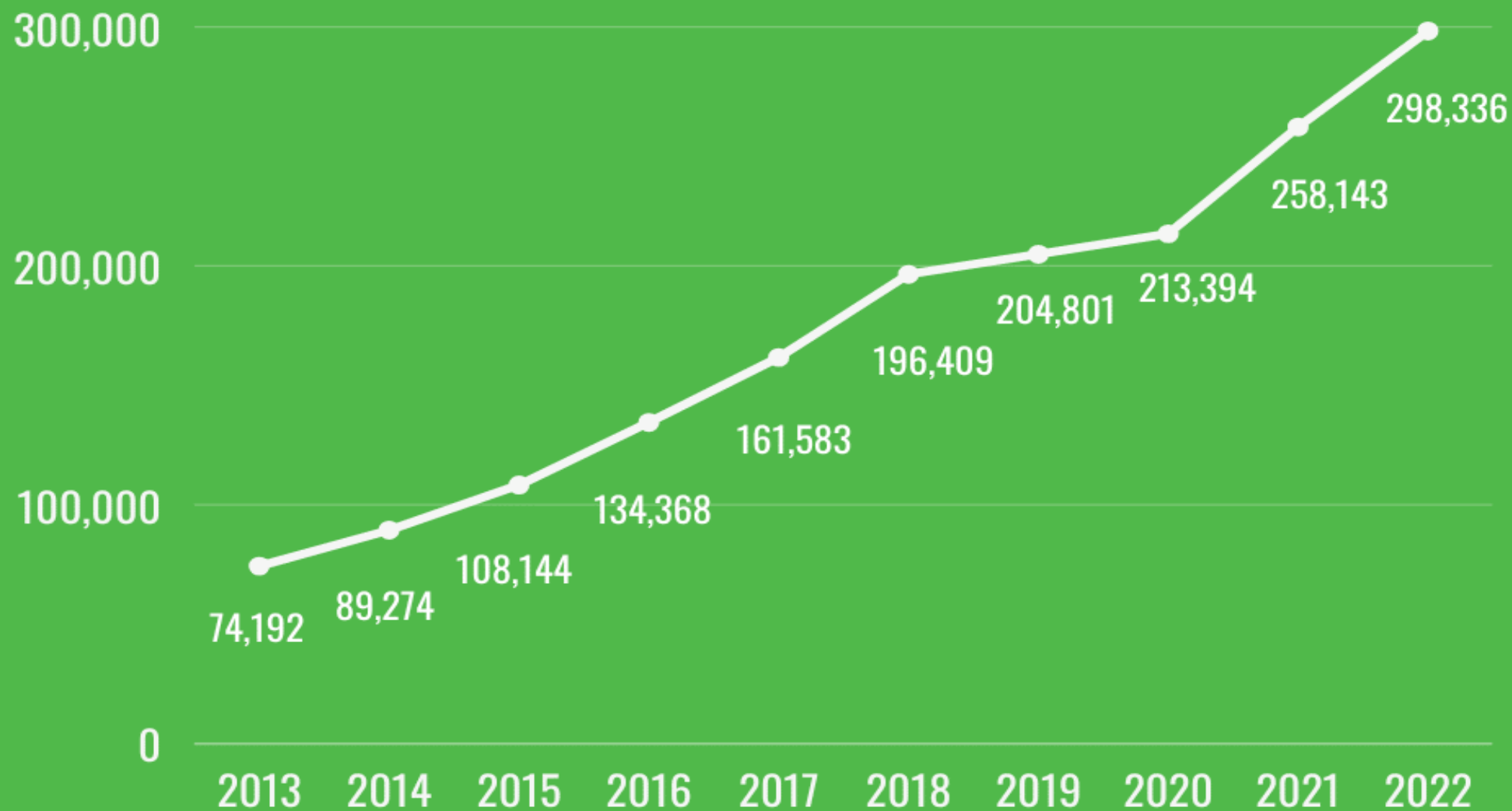
- FWMA passed in 2019 & 2021
 - Last House action since 1986
 - 115th Congress
- More employer-friendly Senate version?
 - Bennet (D-CO)
- Regular Order v. Reconciliation v. Omnibus
- 118th Congress



TOTAL H-2A POSITIONS CERTIFIED BY FISCAL YEAR



TOTAL H-2A VISAS ISSUED BY FISCAL YEAR



H-2A Program Rule



- Started in July 2019 under Trump Administration
- Posted on January 14, 2021
 - DOL website
 - Signed
- Withdrawn on Inauguration Day 2021
- NCAE Challenge
 - TRO denied
 - Preliminary Injunction denied
 - MFSJ

H-2A Wages

- Employers must pay the higher of:
 - State or Federal minimum wage,
 - Collectively bargained rate,
 - Prevailing wage,
 - Or the Adverse Effect Wage Rate (AEWR)




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capitalpress.com/ag_sectors/orchards_nuts_vines/washington-cant-find-any-u-s-workers-for-h-2a-farm-jobs/article_caf3a9da-2149-11ec-ae0d-7f4be7842960.html

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Washington can't find any U.S. workers for H-2A farm jobs

By DON JENKINS Capital Press Sep 29, 2021



A foreign farmworker picks apples in Orondo, Wash. The Washington Employment Security Department couldn't place any U.S. workers to fill requests for foreign farmworkers.

Capital Press File

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Washington state's Employment Security Department found no U.S. workers to take the place of foreign farmworkers this year, despite a concerted effort to make sure foreign labor wasn't displacing American jobseekers.

The ESD received 112 resumes for farm jobs, but most came from people from other countries, while others did not meet job requirements, according to Dan Zeitlin,

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AEWR

- AEWRs generated by FLS disconnected from ag labor markets
- Federal minimum wage \$7.25/hr
- Average 2022 AEWR \$15.56/hr
- Average FY 2022 FLS \$16.62/hr (\$13.67 - \$18.65)
 - > 2 x Federal Minimum



What's the problem?

- NASS does a great job
- When DOL uses it as a wage
 - Disconnected from actual wages
 - H-2A included to some extent
 - Piece rates, OT, bonuses
 - Averaging

AEWR



- Litigation and petitions
- Bifurcated wage piece
- Disaggregation - Duty
 - Truck driving, supervisor, construction worker, farm manager
- Biden Rule – NPRM
 - OIRA

Disaggregated Wages

	Occupation		CA	
<u>Year</u>	<u>Code</u>	<u>Occupation</u>	<u>AEWR</u>	<u>OES Wage</u>
2023	53-3053	Van drivers	\$18.65	\$18.59

Disaggregated Wages

	Occupation		CA	
<u>Year</u>	<u>Code</u>	<u>Occupation</u>	<u>AEWR</u>	<u>OES Wage</u>
2023	11-9013	Farm Managers	\$18.65	\$60.00



Disaggregated Wages

<u>Year</u>	<u>Occupation Code</u>	<u>Occupation</u>	<u>CA AEWR</u>	<u>OES Wage</u>
2023	47-2061	Construction Laborers	\$18.65	\$25.38



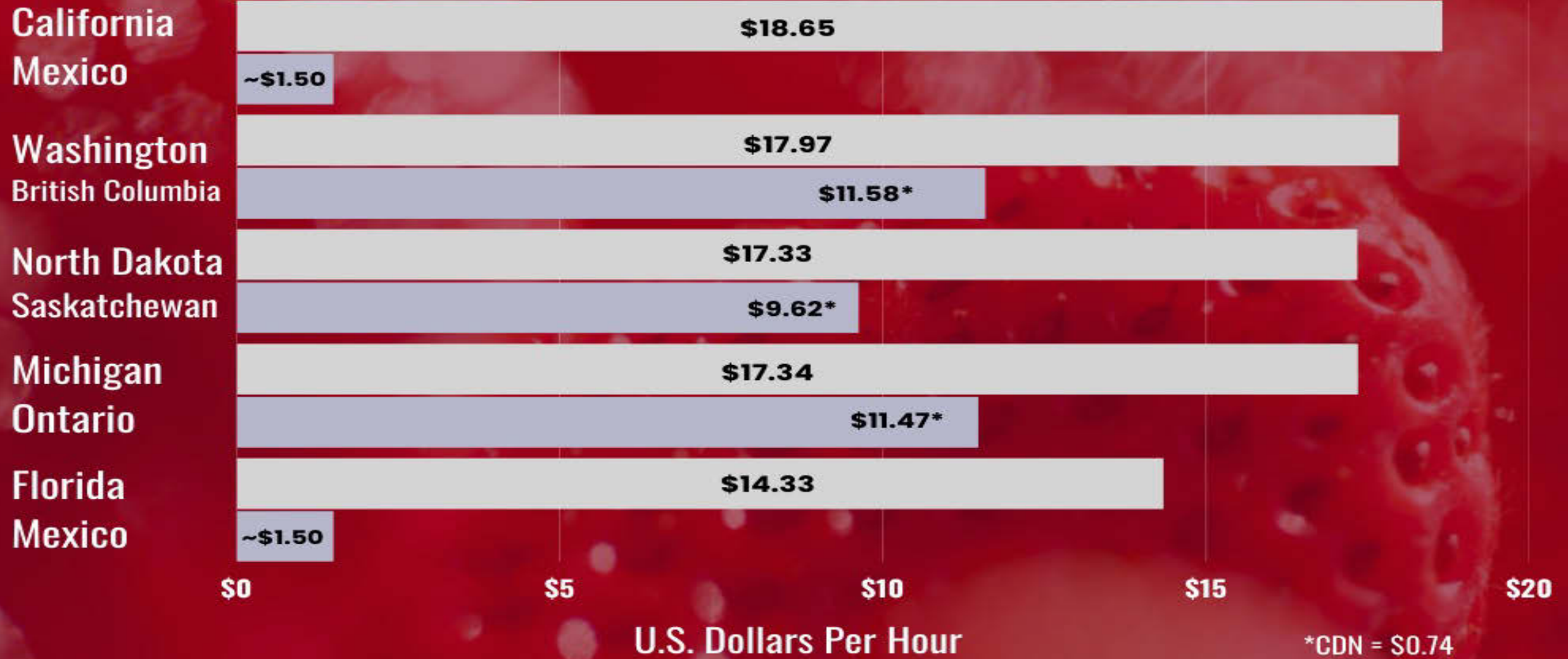
Disaggregated Wages

<u>Year</u>	<u>Occupation Code</u>	<u>Occupation</u>	<u>CA AEWR</u>	<u>OES Wage</u>
2023	45-1011	First-Line Supervisors - Farming	\$18.65	\$25.29

Disaggregated Wages

	Occupation		CA	
<u>Year</u>	<u>Code</u>	<u>Occupation</u>	<u>AEWR</u>	<u>OES Wage</u>
2023	53-3032	Heavy and Tractor-Trailer Truck Drivers	\$18.65	\$25.06

AEWR



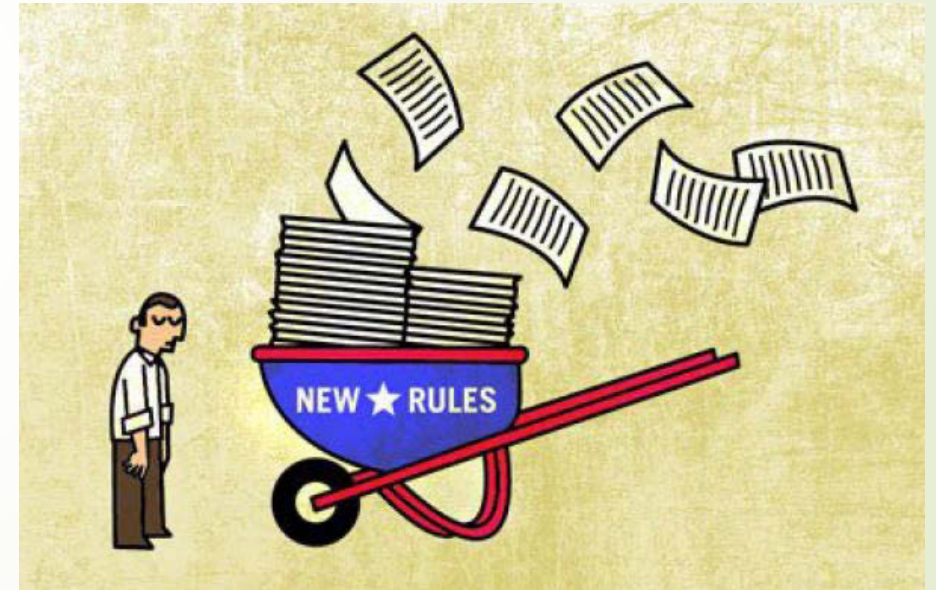
U.S.



Foreign Competition

Other “Stuff”

- Department of State effort to increase visa fees
- USCIS effort to increase fees by >237%
- OSHA Heat Rule NPRM coming in 2023
- USDA \$65 million “grant” program
- Card check
 - New York





Thank you!

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