



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2024

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2024 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered, advertised in recruitment, and paid by employers to H-2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. The AEWRs established in this notice are applicable to H-2A job opportunities that are both: classified in one (or more) of the six Standard Occupational Classification (SOC) codes comprising the field and livestock workers (combined) category, and located in States or regions, or equivalent districts or territories, in which the United States Department of Agriculture's (USDA) Farm Labor Report (better known as the Farm Labor Survey, or FLS) reports wages. In this notice, DOL also announces an update to the average AEWR, which is used to calculate adjustments to required bond amounts for H-2A Labor Contractors.

DATES: These rates are effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of

Labor, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION:

The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers into the U.S. unless the petitioner has received an H-2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services for which the employer desires to hire temporary foreign workers; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

FLS-based AEW R Updates

DOL's H-2A regulations at 20 CFR 655.122(l) provide that employers must pay their H-2A workers and workers in corresponding employment at least the highest of: (i) the AEW R; (ii) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, for every hour or portion thereof worked during a pay period. Further, when the AEW R is adjusted during a work contract and is higher than the highest of the previous AEW R, a prevailing rate for the crop or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage,

the Federal minimum wage rate, or the State minimum wage rate, the employer must pay at least that adjusted AEWR upon the effective date of the new rate, as provided in the applicable *Federal Register* Notice. *See* 20 CFR 655.120(b)(3). When the AEWR is adjusted during a work contract and is lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

On February 28, 2023, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 88 FR 12760 (Feb. 28, 2023), to establish a new methodology for setting hourly AEWRs, effective March 30, 2023. Pursuant to this new rule, while most AEWRs will continue to be based, as they have been since 1987, on the USDA FLS, AEWRs based on DOL's Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) survey will apply to H-2A job opportunities that are: (1) classified in SOC codes other than the six SOC codes comprising the field and livestock workers (combined) category, and/or (2) located in States or regions, or equivalent districts or territories, for which the USDA FLS does not report a wage.¹

The new final rule requires the OFLC Administrator to publish a *Federal Register* Notice at least once in each calendar year to establish each AEWR. *See* 20 CFR 655.120(b)(2). The OFLC Administrator provides this notice by publishing two separate announcements in the *Federal Register*, one to update the non-range AEWRs based on the wage data reported by the USDA's FLS, effective on or about January 1, and a second to update the non-range AEWRs based on data reported by the BLS OEWS survey, effective on or about July 1.²

The 2024 AEWRs for all non-range agricultural employment classified in the field and livestock workers (combined) category are the annual average hourly gross wage rates for field

¹ In the event an employer's job opportunity requires the performance of agricultural labor or services that are not encompassed in a single SOC code's description and tasks, the applicable AEWR will be the highest AEWR for all applicable SOC codes. *See* 20 CFR 655.120(b)(5).

² *See* 88 FR at 12775; *see also* *Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate Updates for Non-Range Occupations*, 88 FR 39482 (Jun. 16, 2023).

and livestock workers (combined) in the State or region as published by the USDA in the November 2023 FLS.³ Accordingly, the 2024 AEWRs to be offered, advertised in recruitment, and paid for agricultural work performed by H-2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—2024 ADVERSE EFFECT WAGE RATES

State 2024 AEWRs

Alabama	\$14.68
Arizona	\$16.32
Arkansas	\$14.53
California	\$19.75
Colorado	\$16.63
Connecticut	\$17.80
Delaware	\$17.20
Florida	\$14.77
Georgia	\$14.68
Hawaii	\$18.74
Idaho	\$16.54
Illinois	\$18.18
Indiana	\$18.18
Iowa	\$17.79
Kansas	\$18.32
Kentucky	\$15.14
Louisiana	\$14.53
Maine	\$17.80

³ See U.S. Dep't of Agriculture, Nat'l Agricultural Statistics Service, Farm Labor: Annual Average Gross Wage Rates by Type of Worker – Regions and United States: 2022 and 2023 (Nov. 22, 2023), pp. 25-26, *available at* <https://downloads.usda.library.cornell.edu/usda-esmis/files/x920fw89s/v405tw18s/dn39zk84n/fmla1123.pdf>.

Maryland	\$17.20
Massachusetts	\$17.80
Michigan	\$18.50
Minnesota	\$18.50
Mississippi	\$14.53
Missouri	\$17.79
Montana	\$16.54
Nebraska	\$18.32
Nevada	\$16.63
New Hampshire	\$17.80
New Jersey	\$17.20
New Mexico	\$16.32
New York	\$17.80
North Carolina	\$15.81
North Dakota	\$18.32
Ohio	\$18.18
Oklahoma	\$15.55
Oregon	\$19.25
Pennsylvania	\$17.20
Rhode Island	\$17.80
South Carolina	\$14.68
South Dakota	\$18.32
Tennessee	\$15.14
Texas	\$15.55
Utah	\$16.63
Vermont	\$17.80

Virginia	\$15.81
Washington	\$19.25
West Virginia	\$15.14
Wisconsin	\$18.50
Wyoming	\$16.54

The AEWRs set forth in the table above are the AEWRs applicable to the following SOC titles and codes: Farmworkers and Laborers, Crop, Nursery, and Greenhouse (45–2092), Farmworkers, Farm, Ranch, and Aquacultural Animals (45–2093); Agricultural Equipment Operators (45–2091); Packers and Packagers, Hand (53–7064); Graders and Sorters, Agricultural Products (45–2041); and All Other Agricultural Workers (45–2099). Accordingly, the simple average of these AEWRs constitutes the average AEWR, which is used to calculate the bond amounts required for H-2A Labor Contractors. *See* 20 CFR 655.103(b) (definition of average AEWR), 655.132(c)(2)(ii) (use of average AEWR in calculating bond requirements). The simple average is calculated by finding the sum of the AEWRs listed in the table above, then dividing by the total number of AEWRs, which is currently 49 ($\$831.98 / 49 = \16.98). On and after the effective date of this notice, the average AEWR to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2) is \$16.98.

Authority: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

Lenita Jacobs-Simmons,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023-27435 Filed: 12/13/2023 8:45 am; Publication Date: 12/14/2023]