



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

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 updates to the 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 classified: in six Standard Occupational Classification (SOC) codes comprising the field and livestock workers (combined) category, and in the field and livestock workers (combined) occupational category that are 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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, for entities and states subject to the court order in *Kansas et. al. v. U.S. Department of Labor*, these rates are effective [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

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 in the U.S. unless the petitioner has received an H-2A labor certification from DOL. DOL issues such labor certification when it determines 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 involved in the petition; 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 AEWL 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 the various wage sources listed in § 655.120(a), including the AEWL. Further, when the AEWL is updated during a work contract, the employer must pay at least that updated AEWL upon the effective date of the new AEWL, if the updated AEWL is higher than the highest of the previous AEWL, a prevailing wage rate for the crop activity 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. *See* 20 CFR 655.120(b)(3). Similarly, when the AEWL is updated 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).

Pursuant to the 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), 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 classified: (1) in SOC codes other than the six SOC codes comprising the field and livestock workers (combined) category, and (2) in the field and livestock workers (combined) occupational category that are located in States or regions, or equivalent districts or territories, for which the USDA FLS does not report a wage.¹

The final rule, noted above, requires the OFLC Administrator to publish a *Federal Register* Notice at least once in each calendar year to establish each set of AEWRs. *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 and a second to update the non-range AEWRs based on data reported by the BLS OEWS survey. *See* 88 FR at 12775.

The updated AEWRs for all non-range agricultural employment classified in the field and livestock workers (combined) category, for which temporary H-2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the State or region as published by the USDA in the November 20, 2024, FLS. DOL's regulation, 20 CFR 655.120(b)(2), requires that the OFLC Administrator publish the USDA field and livestock worker (combined) wage data as AEWRs in a *Federal Register* Notice. Accordingly, the updated AEWRs to be paid for agricultural work performed by H-2A

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).

and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—ADVERSE EFFECT WAGE RATES FOR FIELD AND LIVESTOCK WORKERS
(COMBINED)

State AEWs

Alabama	\$16.08
Arizona	\$17.04
Arkansas	\$14.83
California	\$19.97
Colorado	\$17.84
Connecticut	\$18.83
Delaware	\$17.96
Florida	\$16.23
Georgia	\$16.08
Hawaii	\$20.08
Idaho	\$16.83
Illinois	\$19.57
Indiana	\$19.57
Iowa	\$18.65
Kansas	\$19.21
Kentucky	\$15.87
Louisiana	\$14.83
Maine	\$18.83
Maryland	\$17.96
Massachusetts	\$18.83
Michigan	\$18.15

Minnesota	\$18.15
Mississippi	\$14.83
Missouri	\$18.65
Montana	\$16.83
Nebraska	\$19.21
Nevada	\$17.84
New Hampshire	\$18.83
New Jersey	\$17.96
New Mexico	\$17.04
New York	\$18.83
North Carolina	\$16.16
North Dakota	\$19.21
Ohio	\$19.57
Oklahoma	\$15.79
Oregon	\$19.82
Pennsylvania	\$17.96
Rhode Island	\$18.83
South Carolina	\$16.08
South Dakota	\$19.21
Tennessee	\$15.87
Texas	\$15.79
Utah	\$17.84
Vermont	\$18.83
Virginia	\$16.16
Washington	\$19.82
West Virginia	\$15.87

Wisconsin \$18.15

Wyoming \$16.83

The AEWs set forth in the table above are the AEWs 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). These AEWs are published by the OFLC Administrator in accordance with 20 CFR 655.120(b)(2). Accordingly, the simple average of these AEWs constitutes the average AEW. *See* 20 CFR 655.103(b) (definition of average AEW). The simple average is calculated by finding the sum of the AEWs listed in the table above, then dividing by the total number of AEWs, which is currently 49 ($\$869.20 / 49 = \17.74). On and after the effective date of this notice, the average AEW to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2)(ii) is \$17.74.

Delayed Effective Date with Respect to Certain States and Entities

On April 29, 2024, DOL published the final rule, *Improving Protections for Workers in Temporary Agricultural Employment in the United States*, 89 FR 33898 (Apr. 29, 2024) (“Farmworker Protection Rule”). The Farmworker Protection Rule amended the regulation at 20 CFR 655.120(b)(2) to state that “[t]he updated AEW will be effective as of the date of publication of the notice in the *Federal Register*.” On August 26, 2024, the United States District Court for the Southern District of Georgia issued a preliminary injunction in the case *Kansas, et al. v. U.S. Department of Labor*, No. 2:24-cv-00076-LGW-BWC (S.D. Ga., Aug. 26, 2024) (“*Kansas*”), prohibiting DOL from enforcing the Farmworker Protection Rule in certain states and with respect to certain entities. The preliminary injunction specifically prohibits DOL from enforcing the Farmworker Protection Rule in the states of Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma,

South Carolina, Tennessee, Texas, and Virginia, and against Miles Berry Farm and members of the Georgia Fruit and Vegetable Growers Association as of August 26, 2024.²

Therefore, for work performed at places of employment located in Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, as well as for work performed by Miles Berry Farm and members of the Georgia Fruit and Vegetable Growers Association as of August 26, 2024, the effective date of this *Federal Register* Notice is [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As an example, for work performed at places of employment located in Missouri, a state subject to the *Kansas* Order, this *Federal Register* Notice would be effective on [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], but for work performed at places of employment located in Illinois, a state not subject to the *Kansas* Order, this *Federal Register* Notice would be effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

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² Neither the preliminary injunction issued in *Barton, et al. v. U.S. Department of Labor, et al.*, No. 5:24-cv-249-DCR (E.D. Ky., Nov. 25, 2024), nor the Section 705 stay issued in *International Fresh Produce Association, et al. v. U.S. Department of Labor, et al.*, No. 1:24-cv-309-HSO-BWR (S.D. Miss., Nov. 25, 2024) affect DOL's implementation or enforcement of 20 CFR 655.120(b)(2) as to the parties or entities subject to those orders.