

and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 9, 2021.

**Lisa Barton,**

Secretary to the Commission.

[FR Doc. 2021-27070 Filed 12-14-21; 8:45 am]

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## 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 2022

**AGENCY:** Employment and Training Administration, Department of Labor.  
**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing this notice to announce the 2022 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 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. In this notice, DOL announces updates of the AEWRs.

**DATES:** These rates are applicable December 29, 2021.

**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 in 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 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.

#### Adverse Effect Wage Rates for 2022

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 AEWR; (ii) the prevailing hourly wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage rate; or (v) the federal or state minimum wage rate in effect at the time the work is performed. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, the prevailing rate, the agreed-upon collective bargaining wage, the federal minimum wage rate, or the state minimum wage rate, the employer must pay that adjusted AEWR upon the effective date of the new rate, as provided in the applicable **Federal Register** Notice. See 20 CFR 655.122(l) (requiring the applicable AEWR or other wage rate to be paid based on the AEWR or rate in effect "at the time work is performed").

On November 5, 2020, 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*, 85 FR 70445 (2020 AEWR Final Rule), to establish a new methodology for setting hourly AEWRs, effective

December 21, 2020. However, on December 23, 2020, the U.S. District Court for the Eastern District of California issued an order enjoining DOL from implementing the 2020 AEWR Final Rule and ordering DOL to set the hourly AEWRs using the methodology set forth in the *Temporary Agricultural Employment of H-2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010) (2010 H-2A Final Rule). See Order Granting Plaintiffs' Motion for a Preliminary Injunction, *United Farm Workers, et al. v. U.S. Dep't of Labor, et al.*, No. 20-cv-1690 (E.D. Cal.), ECF No. 37. Pursuant to that order, DOL has used the methodology set forth in the 2010 H-2A Final Rule to determine the 2022 AEWRs.

Accordingly, the 2022 AEWRs for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200 through 655.235) 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 U.S. Department of Agriculture (USDA) in the November 24, 2021 Farm Labor Report. The 2010 H-2A Final Rule, 20 CFR 655.120(c), requires that the Administrator of the Office of Foreign Labor Certification publish the USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** Notice. Accordingly, the 2022 AEWRs to be 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—2022 ADVERSE EFFECT WAGE RATES

State	2022 AEWRs
Alabama .....	\$11.99
Arizona .....	14.79
Arkansas .....	12.45
California .....	17.51
Colorado .....	15.58
Connecticut .....	15.66
Delaware .....	15.54
Florida .....	12.41
Georgia .....	11.99
Hawaii .....	16.54
Idaho .....	14.68
Illinois .....	15.89
Indiana .....	15.89
Iowa .....	16.19
Kansas .....	16.47
Kentucky .....	13.89
Louisiana .....	12.45
Maine .....	15.66
Maryland .....	15.54
Massachusetts .....	15.66
Michigan .....	15.37
Minnesota .....	15.37

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

TABLE—2022 ADVERSE EFFECT WAGE RATES—Continued

State	2022 AEWRs
Mississippi .....	12.45
Missouri .....	16.19
Montana .....	14.68
Nebraska .....	16.47
Nevada .....	15.58
New Hampshire .....	15.66
New Jersey .....	15.54
New Mexico .....	14.79
New York .....	15.66
North Carolina .....	14.16
North Dakota .....	16.47
Ohio .....	15.89
Oklahoma .....	13.88
Oregon .....	17.41
Pennsylvania .....	15.54
Rhode Island .....	15.66
South Carolina .....	11.99
South Dakota .....	16.47
Tennessee .....	13.89
Texas .....	13.88
Utah .....	15.58
Vermont .....	15.66
Virginia .....	14.16
Washington .....	17.41
West Virginia .....	13.89
Wisconsin .....	15.37
Wyoming .....	14.68

Authority: 20 CFR 655.120(c).

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-27119 Filed 12-14-21; 8:45 am]

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## 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 Rate for Range Occupations in 2022

**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 2022 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates DOL has determined must be offered 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. In this notice, DOL announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology previously established in 2015.

**DATES:** The rate is effective January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, N-5311, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627 (TTY/TDD).

**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. The H-2A 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 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.

#### Adverse Effect Wage Rate for 2022

DOL's H-2A regulations covering the herding or production of livestock on the range, published in the **Federal Register** as the *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958 (Oct. 16, 2015), provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200 through 655.235 a wage that is at least the highest of (1) the monthly AEWR, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by Federal or State law or judicial action. See 20 CFR 655.210(g); 655.211(a)(1). Further, when

the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by DOL in the **Federal Register**. See 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2), the monthly AEWR for range occupations in all States for a calendar year is based on the monthly AEWR for the previous calendar year (\$1,727.75), adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2020 and September 2021 was 4.6 percent, resulting in a monthly AEWR for range occupations in effect for 2022 of \$1,807.23.<sup>1</sup> The national monthly AEWR rate for all range occupations in the H-2A program in 2022 is calculated by multiplying the monthly AEWR for calendar year 2021 by the October 2021 ECI adjustment ( $\$1,727.75 \times 1.046 = \$1,807.23$ ) or \$1,807.23. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the monthly AEWR of \$1,807.23, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action at the time work is performed on or after the effective date of this notice.

Authority: 20 CFR 655.211(b).

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-27121 Filed 12-14-21; 8:45 am]

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<sup>1</sup> The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries "for the preceding October–October period." This regulatory language was intended to identify the Bureau of Labor Statistics' October publication of ECI for wages and salaries, which presents data for the September to September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 29, 2021, by the Bureau of Labor Statistics was used for establishing the monthly AEWR under the regulations. See [https://www.bls.gov/news.release/archives/eci\\_10292021.pdf](https://www.bls.gov/news.release/archives/eci_10292021.pdf). The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H-2A herder workforce.