

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2005 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement**

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

**ACTION:** Notice of Adverse Effect Wage Rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 2005.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this notice to announce: the 2005 AEWRs for employers seeking to employ temporary or seasonal nonimmigrant alien workers to perform agricultural labor or services (H-2A workers) or logging (H-2 logging workers); the allowable charges for 2005 that employers seeking H-2A workers and H-2 logging workers may levy upon their workers when three meals a day are provided by the employer; and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2005.

AEWRs are the minimum wage rates the Department has determined must be offered and paid to U.S. and alien workers by employers of H-2A workers or H-2 logging workers. AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers. The Department announces the AEWRs for 2005.

The Department also announces the new rates for 2005 which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expenses. The minimum reimbursement is the charge for three daily meals as noted above. The Department also announces the current maximum reimbursement that may be claimed in 2005 by workers with receipts.

**EFFECTIVE DATE:** March 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW., Washington,

DC 20210. Telephone: (202) 693-3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The U.S. Citizenship and Immigration Services may not approve an employer's petition for admission of H-2A workers or H-2 logging workers in the United States unless the petitioner has received from DOL an H-2A or H-2 labor certification, as appropriate. Approved labor certifications attest: (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 alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H-2A and H-2 program require covered employers to offer and pay their U.S., H-2A, and H-2 workers no less than the applicable hourly AEWR in effect at the time the work is performed. 20 CFR 655.102(b)(9) and 655.202(b)(9). See also 20 CFR 655.107 and 655.207. Reference should be made to the preamble of the final rule, 54 FR 28037 (July 5, 1989), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502-20505 (June 1, 1987).

**A. Adverse Effect Wage Rates for 2005**

AEWRs are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of H-2A workers or H-2 logging workers. DOL emphasizes, however, that employers of H-2A workers must pay the highest of (i) the AEWR in effect at the time the work is performed, (ii) the applicable prevailing wage, or (iii) the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Employers of H-2 logging workers must pay at least the AEWR. 20 CFR 655.202(b)(9).

Except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstance provisions of 20 CFR 655.93) 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) for the region as published annually by the U.S. Department of Agriculture (USDA). 20 CFR 655.107(a). USDA does not provide data on Alaska.

20 CFR 655.107(a) requires the Assistant Secretary, Employment and Training Administration, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2005 AEWRs for agricultural work performed by U.S. and H-2A workers on or after the effective date of this notice are set forth in the table below:

**2005 ADVERSE EFFECT WAGE RATES**

State	2005 AEWR
Alabama	\$8.07
Arizona	7.63
Arkansas	7.80
California	8.56
Colorado	8.93
Connecticut	9.05
Delaware	8.48
Florida	8.07
Georgia	8.07
Hawaii	9.75
Idah	8.20
Illinois	9.20
Indiana	9.20
Iowa	8.95
Kansas	9.00
Kentucky	8.17
Louisiana	7.80
Maine	9.05
Maryland	8.48
Massachusetts	9.05
Michigan	9.18
Minnesota	9.18
Mississippi	7.80
Missouri	8.95
Montana	8.20
Nebraska	9.00
Nevada	8.93
New Hampshire	9.05
New Jersey	8.48
New Mexico	7.63
New York	9.05
North Carolina	8.24
North Dakota	9.00
Ohio	9.20
Oklahoma	7.89
Oregon	9.03
Pennsylvania	8.48
Rhode Island	9.05
South Carolina	8.07
South Dakota	9.00
Tennessee	8.17
Texas	7.89
Utah	8.93
Vermont	9.05
Virginia	8.24
Washington	9.03
West Virginia	8.17
Wisconsin	9.18
Wyoming	8.20

The AEWRs for all logging employment shall be the prevailing wage rates in the area of intended employment. 20 CFR 655.207(a).

**B. Allowable Meal Charges**

Among the minimum benefits and working conditions which DOL requires

employers to offer their U.S., H-2A, and H-2 logging workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts that covered H-2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H-2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are adjusted by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food) between December of the year just concluded and December of the year prior to that. ETA may permit an employer to charge workers no more than the higher maximum amount set forth in 20 CFR 655.111(a) and 655.211(a), as applicable, for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI-U for Food between December of the year just concluded and December of the year prior to that. The program's regulations require DOL to make the annual adjustments and to publish a notice in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 2004 rates were published in the **Federal Register** notice, 69 FR 10063, (March 3, 2004).

DOL has determined the percentage change between December of 2003 and December of 2004 for the CPI-U for Food was 3.4 percent. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2005 are as follows: (1) Charges under 20 CFR 655.102(b)(4) and 655.202(b)(4) shall be no more than \$9.08 per day, unless ETA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211; (2) charges under 20 CFR 655.111 and 655.211 shall be no more than \$11.25

per day, if the employer justifies the charge and submits to ETA the documentation required to support the higher charge.

### C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is equivalent to the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42-94, established the maximum meals component of the standard continental United States (CONUS) per diem rate established by the General Services Administration (GSA) and published at 41 CFR part 301. The CONUS meal component is now \$31.00 per day. Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of \$15.50. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed in Washington, DC, this 22nd day of February, 2005.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administration.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Maritime Advisory Committee for Occupational Safety and Health; Notice of meeting.

**SUMMARY:** The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this Federal Register notice is to announce the March 2005 meeting of the committee.

**DATES:** The full committee will meet from 8:30 a.m. to 4:30 p.m. on March 31, 2005. The MACOSH work groups (shipyard, longshoring, container safety, traffic safety, safety culture and health) will meet from 9 a.m. until 4:30 p.m. on March 30, 2005.

**ADDRESSES:** MACOSH will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693-2086; fax: (202) 693-1663. Mail comments, views, or statements in response to this notice to Jim Maddux, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue NW., Washington, DC 20210; phone (202) 693-2086; FAX: (202) 693-1663.

**FOR FURTHER INFORMATION CONTACT:** For general information about MACOSH and this meeting: Jim Maddux, Director, Office of Maritime, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693-2086. For information about the submission of comments and requests to speak: Vanessa L. Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; Phone: (202) 693-2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693-2086 no later than March 15, 2005 to obtain appropriate accommodations.

**SUPPLEMENTARY INFORMATION:** All MACOSH meetings, including work group meetings, are open to the public. All interested persons are invited to attend MACOSH at the times and place listed above. The MACOSH meeting on March 31, 2005 will include discussions of MACOSH work group reports. Specific topics will include exposure monitoring information on beryllium and silica, shipyard practices on the control of hazardous energy (lockout/tagout), and analyses of accident causation data. MACOSH has several active work groups. The container safety, longshoring, and shipyard work groups will meet on the morning of March 30. The work groups dealing with health issues, traffic safety, and safety culture will meet on the afternoon of March 30.