

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Part 655

#### Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Announcement of Non-Material Change to the Farm Labor Survey Used for Determining the Adverse Effect Wage Rate

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

**ACTION:** Announcement of non-material change.

**SUMMARY:** Under the Department of Labor's (we or the Department) H-2A temporary labor certification program, Adverse Effect Wage Rates (AEWRs) are the minimum wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular occupation and area such that the wages of similarly employed United States (U.S.) workers will not be adversely affected. 20 CFR 655.100(b). AEWRs are derived from the Farm Labor Survey (FLS) issued by the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS). In the interest of government transparency, we are publishing this document to announce a non-material change in the frequency of establishment surveys under the FLS (and its accompanying publication) beginning in 2012.

**DATES:** This announcement is effective March 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of

Labor, 200 Constitution Avenue NW., Room C-4312, Washington, DC 20210; Telephone (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY calling the toll-free Federal Information Relay Service as 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 agricultural workers in the U.S. unless the petitioner has received from the Department an H-2A labor certification. 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. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

The Department's H-2A regulations at 20 CFR 655.120(a) 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 wage; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage, if applicable; or (v) the Federal or State minimum wage, in effect at the time the work is performed. The H-2A regulations define the AEWR as "[t]he annual weighted average hourly wage for field and livestock workers (combined) in the States or regions as published annually by the U.S. Department of Agriculture (USDA) based upon its quarterly wage survey." 20 CFR 655.103(a) and (b).

NASS historically has conducted the FLS on which the AEWR is based. The FLS provides quarterly statistics on the number of agricultural workers; hours worked, and wage rates. We have relied upon the FLS since 1987<sup>1</sup> as the basis

<sup>1</sup> There a brief period of deviation beginning January 17, 2009 through March 14, 2010, where we decided to use the Bureau of Labor Statistics Occupational Employment Statistics Survey rather than the FLS to set the AEWR. See "Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification

for setting the AEWR. We explain our reasons in great detail in the preamble of the "Temporary Agricultural Employment of H-2A Aliens in the United States; Final Rule", 75 FR 6884, 6891-6901, Feb. 12, 2010 (the 2010 H-2A Rule). However, we are publishing several clarifications in light of recent changes to the method by which the FLS is conducted.

We stated in the preamble to the 2010 H-2A Final Rule that

[t]he FLS is conducted each year in January, April, July and October, and results are published the following month.

We also stated in the preamble that:

The FLS and publication schedule provide timely data for purposes of calculating the relevant State AEWRs. Specifically, the FLS is routinely available and published within 1 month of the survey date. The quarterly gathering of data ensures that the annual averages are more accurately reflective of the fluctuations of farm labor patterns, which are by definition seasonal and thus more subject to fluctuation than other occupations.

However, beginning calendar year 2012, NASS will conduct the FLS semi-annually and collect data for January and April during April and collect data for July and October during October. In other words, NASS will continue to collect data from all four quarters but will only survey the establishments twice a year, with publication of the results the following month. Other than this change in frequency in which establishments are surveyed, and the accompanying publication of the results, the FLS remains the same as described in the preamble to the 2010 H-2A Rule. NASS will continue to include its annual average estimate for wage rates, based on data collected from all four quarters of the year, in the October FLS report which is published in November.

The change in how frequently establishments are surveyed (and the accompanying publication of those results) does not change the statistical validity of the FLS. In the fall of 2011, NASS conducted an internal review and found that there was not enough evidence to conclude that collecting quarterly data at 3 months after the estimation period resulted in a statistically significant recall bias. Accordingly, the definition of AEWR at

Process and Enforcement, Final Rule", 73 FR 77110, Dec. 18, 2008.

20 CFR 655.103(b)<sup>2</sup> and the justification for returning to the FLS as the basis for the AEWR continue to apply and are not materially affected by this procedural change.

Signed in Washington, DC, this 28th day of February, 2012.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2012-5201 Filed 2-29-12; 4:15 pm]

BILLING CODE 4510-FF-P

## POSTAL SERVICE™

### 39 CFR Part 20

#### International Postal Service—Global Expedited Package Services (GEPS) Contracts

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service will revise *Mailing Standards of the United States Postal Service, International Mail Manual (IMM)*<sup>®</sup> to incorporate a change concerning the requirements that a mailer must meet in order to qualify for a Global Expedited Package Services (GEPS) contract.

**DATES:** *Effective date:* April 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Falwell, 202-268-2576.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service<sup>®</sup> gives notice that, on January 30, 2012, the Postal Service filed with the Postal Regulatory Commission a notice of a minor classification change for the international competitive product Global Expedited Package Services (GEPS) Contracts. The minor classification change concerns the requirements that a mailer must meet in order to qualify for a GEPS contract. This change is designed for consistency with published commercial plus pricing discounts for Express Mail International and Priority Mail International. The Commission concurred with the notice in its Order No. 1225, issued on February 10, 2012. Documents are available at [www.prc.gov](http://www.prc.gov), Docket No. MC2012-8.

#### List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR Part 20 is amended as follows:

#### PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service, International Mail Manual (IMM)*, as follows:

\* \* \* \* \*

#### 2 Conditions for Mailing

\* \* \* \* \*

#### 297 Customized Agreements

\* \* \* \* \*

#### 297.2 Qualifying Mailers

[Revise IMM 297.2 as follows:]

To qualify for a GEPS contract, a mailer must be capable, on an annualized basis, of paying at least \$200,000 in international postage to the Postal Service.

\* \* \* \* \*

We will publish an amendment to 39 CFR part 20 to reflect these changes.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012-5049 Filed 3-1-12; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2011-0850-201154(a); FRL-9639-8]

#### Approval and Promulgation of Implementation Plans; Georgia; Macon; Fine Particulate Matter 2002 Base Year Emissions Inventory

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the fine particulate matter (PM<sub>2.5</sub>) 2002 base year emissions inventory, portion of the State Implementation Plan (SIP) revision submitted by the State of Georgia on August 17, 2009. The emissions inventory is part of the Macon, Georgia (hereafter referred to as “the Macon Area” or “Area”), PM<sub>2.5</sub> attainment demonstration that was submitted for the 1997 annual PM<sub>2.5</sub> National Ambient

Air Quality Standards (NAAQS). This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective May 1, 2012 without further notice, unless EPA receives adverse comment by April 2, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0850, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. *Email:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax:* (404) 562-9019.

4. *Mail:* “EPA-R04-OAR-2011-0850,” Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2011-0850. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or email, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you

<sup>2</sup> Although the definition of AEWR refers to “quarterly surveys,” we do not believe that it is necessary to replace that reference with “semi-annual surveys,” as the NASS will continue to collect wage data from all four quarters and the annual weighted average hourly wage for field and livestock workers (combined) in the States or regions would continue to be based upon that quarterly wage data.