DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2013 Adverse Effect Wage Rates

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2013 Adverse Effect Wage Rates (AEWRs) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services.

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 agricultural job and area so that the wages of similarly employed U.S. workers will not be adversely affected. 20 CFR 655.100(b). In this notice, the Department announces the AEWRs for 2013.

DATES: Effective Date: This notice is effective January 8, 2013.


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).

Adverse Effect Wage Rates for 2013

The Department’s H-2A regulations at 20 CFR 655.120(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, if applicable; or (v) the Federal or State minimum wage rate, in effect at the time the work is performed.

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 procedure provisions of 20 CFR 655.102) 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 annually by the United States Department of Agriculture (USDA). 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 2013 AEWRs to be paid 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:

### TABLE—2013 ADVERSE EFFECT WAGE RATES—Continued

<table>
<thead>
<tr>
<th>State</th>
<th>2013 AEWRs</th>
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<tbody>
<tr>
<td>California</td>
<td>10.74</td>
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<tr>
<td>Colorado</td>
<td>10.08</td>
</tr>
<tr>
<td>Connecticut</td>
<td>10.91</td>
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<td>Delaware</td>
<td>10.67</td>
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<td>Florida</td>
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<td>Georgia</td>
<td>9.78</td>
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<tr>
<td>Hawaii</td>
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<tr>
<td>Idaho</td>
<td>11.74</td>
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<tr>
<td>Illinois</td>
<td>9.99</td>
</tr>
<tr>
<td>Indiana</td>
<td>11.74</td>
</tr>
<tr>
<td>Iowa</td>
<td>11.41</td>
</tr>
<tr>
<td>Kansas</td>
<td>12.33</td>
</tr>
<tr>
<td>Kentucky</td>
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<tr>
<td>Louisiana</td>
<td>9.50</td>
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<tr>
<td>Maine</td>
<td>10.91</td>
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<tr>
<td>Maryland</td>
<td>10.87</td>
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<tr>
<td>Massachusetts</td>
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<tr>
<td>Michigan</td>
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<tr>
<td>Minnesota</td>
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<tr>
<td>Mississippi</td>
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<td>Missouri</td>
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<td>Montana</td>
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<td>Nevada</td>
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<td>New Hampshire</td>
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<td>New Jersey</td>
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<tr>
<td>New Mexico</td>
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<td>Oklahoma</td>
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<td>11.30</td>
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<tr>
<td>Wyoming</td>
<td>9.99</td>
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</tbody>
</table>

Pursuant to the H–2A regulations at 20 CFR 655.173, the Department will publish a separate Federal Register notice in early 2013 to announce (1) the allowable charges for 2013 that employers seeking H–2A workers may charge their workers for providing them three meals a day; and (2) the maximum travel subsistence reimbursement that a worker with receipts may claim in 2013.
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 by calling the toll-free Federal
Information Relay Service at 1–800–
877–8339.

SUPPLEMENTARY INFORMATION: The H–2A nonimmigrant worker visa program
enables United States (U.S.) agricultural
employers to employ foreign workers on
a temporary basis to perform
agricultural labor or services. Section
101(a)(15)(H)(ii)(a) of the Immigration
and Nationality Act (INA or the Act), 8
U.S.C. 1101(a)(15)(H)(ii)(a); see also 8
U.S.C. 1184(c)(1) and 1188. The INA
authorizes the Secretary of the
Department of Homeland Security
(DHS) to permit employers to import
foreign workers (H–2A workers) and
workers in the U.S. similarly employed.
8 U.S.C. 1188(a)(1). The Department’s
H–2A regulations at 20 CFR 655.120(a)
provide that employers must pay their
H–2A workers and workers in
occupations in which they work at least
the highest of: (i) The AEWR; (ii) the
prevailing hourly wage or piece rate;
(iii) the agreed-upon collective
bargaining wage, if applicable; or (iv)
the Federal or State minimum wage, in
effect at the time the work is performed,
except where a special procedure has
been approved for use in an occupation
or specific class of agricultural
employment.

On June 14, 2011, the Department
issued four TEGLs revising special
procedures for occupations involved in
the open range production of livestock,
the Itinerant Animal Shearing Industry
under the H–2A Program; and
TEGL No. 16–06, Change 1, Special
Procedures: Labor Certification Process for Employers Engaged in
Sheepherding and Goatherding Occupations under the H–
2A Program; and TEGL No. 16–06,
Change 1, Special Procedures: Labor
Certification Process for Multi-State
Custom Combine Owners/Operators
under the H–2A Program. These revised
special procedures clarified the process
for establishing the annual prevailing
wage and/or piece rates for those
occupations, but largely continued
industry-specific variances to the
offered wage requirement. For example,
since occupations involving the open
range production of livestock,
sheepherding and/or goatherding are
characterized by other than a reasonably
regular workday or workweek, the
Department has continued a special
variance to the offered wage
requirements contained at 20 CFR
655.120(a) by permitting an employer to
offer, advertise in the course of its
recruitment, and pay the daily, monthly,
weekly, or semi-monthly prevailing
wage established by the Department for
each State in an approved itinerary.
As provided in the H–2A regulations at 20
CFR 655.102, for open range production
of livestock, sheepherding, and
goatherding occupations, which are
characterized by other than a reasonably
regular workday or workweek, the
prevailing wage results, reflected as
monthly or daily prevailing wage rates,
are deemed to be the Adverse Effect
Wage Rates (AEWR) for those
occupations.

As described in each of the TEGLs,
the Department continues to use
findings from prevailing wage surveys
conducted by the SWAs in accordance
with the procedures in the ET
Handbook No. 385, Domestic
Agricultural In-Season Wage Finding
Process, to determine the prevailing
wage and/or piece rates for those
occupations. The SWAs transmit their
findings for occupations covered by the
special procedures to the Office of
Foreign Labor Certification (OFLC)
between May 1st and June 1st of each
calendar year. Upon receipt of the wage
findings and review of the SWA-
reported survey results, the OFLC
publishes the new prevailing wages with
an immediate effective date.1 For
occupations involving the open range
production of livestock, animal
shearing, sheepherding and/or
goatherding where the SWA survey
results were insufficient to establish a
prevailing wage rate for an occupation,
due to inadequate sample size or
another valid reason, the applicable
TEGL’s wage setting procedures allow
the Department to issue a prevailing

1 In accordance with ET Handbook 385, the
SWAs only report the wage findings for occupations
that are present in the wage reporting area;
prevailing wage rates are established only for those
States where the activity subject to the special
procedure is actually performed.