

hearing transcript to EBSA's website and the date the reopened comment period closes.

The Department held the virtual public hearing on November 17, 2022, and reopened the comment period on the hearing date.⁵ The Department is hereby providing notice that it posted the hearing transcript to EBSA's website on December 12, 2022, and determined that the reopened comment period will close on January 6, 2023. The hearing transcript may be accessed here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07>.

The Department encourages all interested parties to submit comments on the proposed amendment before the reopened comment period closes. All written comments should be identified by Z-RIN 1210 ZA07 and sent to the Office of Exemption Determinations through the Federal eRulemaking Portal: <https://www.regulations.gov> at Docket ID number: EBSA-2022-0008. Please follow the instructions for submitting comments.

All comments on the proposed amendment and requests to testify at the hearing are available to the public without charge online at <https://www.regulations.gov> at Docket ID number: EBSA-2022-0008 and <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07>. They also are available for public inspection in EBSA's Public Disclosure Room, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 12th day of December 2022.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022-27334 Filed 12-15-22; 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 2023

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 2023 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 to help ensure the Department meets its statutory obligation to certify that the employment of H-2A foreign workers will not have an adverse effect on the agricultural wages 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, 2023.

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 2023

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 (\$1,807.23), 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 2021 and September 2022 was 5.2 percent, resulting in a monthly AEWR for range occupations in effect for 2023 of \$1,901.21.¹ The national monthly AEWR rate for all range occupations in the H-2A program in 2023 is calculated by multiplying the monthly AEWR for calendar year 2022 by the October 2022 ECI adjustment ($\$1,807.23 \times 1.052 = \$1,901.21$) or \$1,901.21. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the

¹ 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' (BLS) 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 28, 2022, by BLS was used for establishing the monthly AEWR under the regulations. See https://www.bls.gov/news.release/archives/eci_10282022.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.

⁵ The hearing did not continue on November 18, 2022, because the Department was able to schedule all witnesses that requested to testify on one day.

monthly AEW of \$1,901.21, 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).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022-27333 Filed 12-15-22; 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 2023

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 2023 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 to help ensure the Department meets its statutory obligation to certify that the employment of H-2A foreign workers will not have an adverse effect on the wages of agricultural workers in the United States (U.S.) similarly employed. In this notice, DOL announces updates of the AEWRs and the average AEWR, which is used to calculate adjustments to required bond amounts for H-2A Labor Contractors.

DATES: These rates are applicable January 1, 2023.

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 2023

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) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, a prevailing 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, the employer must pay at least that adjusted AEWR upon the effective date of the new rate, as provided in the applicable **Federal Register** Notice. See 20 CFR 655.120(b)(3). Similarly, when the AEWR is adjusted during a work contract and 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).

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. Litigation followed the 2020 AEWR Final Rule’s publication. On December 23, 2020—two days after the 2020 AEWR Final Rule went into effect—the court in *United Farm Workers, et al. v. Dep’t of Labor, et al.*, No. 20-cv-01690 issued an order preliminarily enjoining the Department from further implementing the 2020 AEWR Final Rule and ordering the Department to use the 2010 H-2A Final Rule methodology for establishing hourly AEWRs.¹ On April 4, 2022, the court vacated the 2020 AEWR Final Rule.² Accordingly, DOL has used the methodology set forth in the 2010 H-2A Final Rule to determine the 2023 AEWRs.

The 2023 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 23, 2022, Farm Labor Report. 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 2023 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—2023 ADVERSE EFFECT WAGE RATES

State 2023 AEWRs	
Alabama	\$13.67
Arizona	15.62
Arkansas	13.67
California	18.65
Colorado	16.34
Connecticut	16.95
Delaware	16.55
Florida	14.33
Georgia	13.67
Hawaii	17.25
Idaho	15.68
Illinois	17.17
Indiana	17.17
Iowa	17.54

¹ 509 F. Supp. 3d 1225 (E.D. Cal. 2020).

² No. 20-cv-01690-DAD-BAK, 2022 WL 1004855 (E.D. Cal. April 4, 2022).