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DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2019

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2019 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 the Department 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 similarly employed workers in the United States (U.S.) will not be adversely affected. In this notice, the Department 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 established in 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, 63067-63068 (Oct. 16, 2015); 20 CFR 655.211.

DATES: The rate is applicable January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor, Box #12-200, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693-2772 (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 United States unless the petitioner has received an H-2A labor certification from the Department. 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); 20 CFR 655.100.

Adverse Effect Wage Rate for 2019

The Department's H-2A regulations covering the herding or production of livestock on the range (H-2A Herder Rule) at 20 CFR 655.210(g) and 655.211(a)(1) provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200-655.235 a wage

that is at least the highest of: (1) the monthly AEW, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by Federal or State law or judicial action. Further, when the monthly AEW 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 AEW upon publication by the Department in the *Federal Register*. 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2) of the H-2A Herder Rule, the monthly AEW for range occupations in all states for a calendar year is based on the monthly AEW for the previous calendar year, adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. In setting the AEW for 2019, ETA applied the required ECI adjustment of 3.1 percent to the monthly AEW for range occupations in effect for 2018, resulting in a monthly wage of \$1,633.33. The 12-month change in the ECI for wages and salaries of private industry workers between September 2017 and September 2018 was 3.1 percent.¹ Thus, the national monthly AEW rate for all range occupations in the H-2A program in 2019 is calculated by multiplying the monthly AEW for calendar year 2018 by the October 2018 ECI adjustment ($\$1,584.22 \times 1.031 = 1,633.33$) or

¹ The regulation at 20 CFR 655.211(c)(2) states that the monthly AEW 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 – September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 31, 2018, by the Bureau of Labor Statistics was used for establishing the monthly AEW under the regulations. See <https://www.bls.gov/news.release/eci.htm>. 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.

\$1,633.33. 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 AEW of \$1,633.33, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State legislation or judicial action at the time work is performed on or after the effective date of this notice.

Molly E. Conway,

Acting Assistant Secretary for the Employment and Training Administration.
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