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- **November 2, 2020. U.S. Department of Labor Issues Final Rule to Update Adverse Effect Wage Rate Methodology To Protect American Workers and Help American Farmers**

The U.S. Department of Labor today announced a final rule that updates the methodology for determining the annual Adverse Effect Wage Rates (AEWRs) in the H-2A visa program.

The AEWR is a minimum wage rate that provides a floor below which the wages of agricultural workers cannot be negotiated. Requiring employers to pay the AEWR when it is the highest applicable wage is the primary way the Department meets its statutory obligation to certify that the employment of foreign workers will not adversely affect workers in the United States similarly

AILA Doc. No. 20110530. (Posted 11/5/20)

employed. The new rule improves the consistency of the AEWRs, provides stronger protections for workers, and establishes better stability and predictability for employers in complying with their wage obligations.

For the vast majority of agricultural jobs, the rule uses the average hourly wages for field and livestock workers (combined), as reported by the U.S. Department of Agriculture's Farm Labor Survey published in November 2019, as the AEWRs for field and livestock worker occupations through calendar year 2022. Beginning in 2023, and annually thereafter, the Department will adjust these AEWRs by the percentage change in the Bureau of Labor Statistics' (BLS) Employment Cost Index for wages and salaries for the preceding 12-month period.

For all other agricultural jobs, the Department will set and annually adjust the AEWRs using the average hourly wages for the occupational classification reported by the BLS Occupational Employment Statistics (OES) Survey program. These agricultural jobs are often supervisory or higher skilled/uniquely skilled, such as construction jobs, which pay higher wages than typical farming occupations. Using the OES survey to establish AEWRs for these higher-skilled jobs will allow the Department to consistently establish occupation-specific AEWRs that better reflect the wages paid for such jobs and better protect against adverse effect on similarly employed United States workers.

The changes implemented in this rule also address stakeholder concerns about the potential for significant and unpredictable wage changes from year-to-year associated with the Department's prior AEWR methodology, while ensuring better wage protections for United States workers similarly employed in higher-skilled agricultural jobs. More predictable wage adjustments in the H-2A program will help American farmers plan and budget for their workforce needs,

and ensure that wages in the H-2A program keep pace with steadily increasing wages in the wider economy. By taking this action, the Department is protecting U.S. workers and helping farmers keep food on America's tables.

The Department intends to issue a second final rule to finalize the remainder of the July 29, 2019, proposed rule that will govern other aspects of the certification of agricultural labor or services performed by H-2A workers, and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers.

A copy of the final rule is available on the Office of Foreign Labor Certification's (OFLC) website. The final rule will publish in the *Federal Register* at a later date.

- [View the final rule to be published in the *Federal Register*](#)

Although the Office of the Federal Register may make minor technical edits to the version of the final rule posted with today's announcement, the substance of the final rule will remain the same. The version to be published in the *Federal Register* will be the official version that amends the current regulations.

OFLC has also prepared Frequently Asked Questions (FAQ) to help stakeholders better understand the H-2A AEWR final rule:

- [View the FAQs on the H-2A AEWR final rule](#)

- **October 29, 2020. OFLC Releases Round 2 of Frequently Asked Questions for the Wage Protections Interim Final Rule**

The Office of Foreign Labor Certification (OFLC) has released Round 2 of