

GROWERTALKS

JZ on D.C.

12/1/2020

Administration Announces New H-2A Wage Rule

Jennifer Zurko

A quick election note: As of press time, the winner of the presidential election had been called by most news networks for Joe Biden, but it hadn't been officially certified by the states, so we're going to save the prognosticating for a future issue when we know how our legislative industry priorities will be affected. Stay tuned.—JZ

Administration Announces New H-2A Wage Rule

On the afternoon of November 2, the AmericanHort advocacy team joined a White House briefing call announcing the Department of Labor (DOL) final H-2A wage rule. DOL and USDA officials hit the high notes; the finer details are to be found in actual rule language and an FAQ sheet (both can be found on the [dol.gov](https://www.dol.gov) website). The final rule, when officially published, will render moot an earlier lawsuit challenging USDA's discontinuation of the Farm Labor Survey that's been used by DOL to establish "adverse effect wage rates" (AEWR), which typically set the minimum wages for the H-2A program.

A few top lines based on initial review:

- For job classifications encompassed within the "field and livestock workers, combined" category (the significant majority of workers), the DOL has concluded that the FY2020 AEWRs, which took effect last January, shall extend through FY2022.
- After that time, for those job classifications, the AEWRs will be annually adjusted based on the annual change in the Employment Cost Index (ECI)—Wages & Salaries. The ECI is a broad statistical measure done by the Bureau of Labor Statistics of the cost of labor in the overall economy. The ECI over time has tended to increase annually in the 2.5% to 3% range. For the fiscal year that just ended September 30, the ECI increased 2.5%. By contrast, the national average of AEWRs established historically based on the USDA Farm Labor Survey has tended to rise 4% to 5% annually in recent years.
- For certain job classifications outside of the "field and livestock workers, combined" category (examples include on-farm construction and truck drivers), wages will be determined from the BLS Occupational Employment Statistics database.
- In those cases where a worker's job description crosses lines among the categories outside of the broad "field and livestock" category, the highest applicable wage will be assigned.

As of the editorial deadline, the rule was awaiting official publication. It will take effect 45 days after publication. There are significant points of uncertainty: will there be litigation challenging the rule? What will the results of the election mean for the future fate and implementation of the rule? And will Congress at some point step in and do something different?

Using the ECI as an indexing measure was first a feature of the agricultural title of S.744 bipartisan immigration reform legislation that passed the Senate in 2013. If it stands, the ECI approach to adjusting the AEWR will bring greater certainty to annual AEWR adjustments, as it's been substantially less "flashy" than the regional AEWRs derived from the Farm Labor Survey. In recent years, some regions have seen AEWR increases of as much as 10% to 23%.

—Craig Regelbrugge, Senior VP of Government Relations & Research, AmericanHort

EPA Announces Re-Registration for Dicamba Products

On October 27, the Environmental Protection Agency (EPA) announced approval on two dicamba products and extended the registration of an additional dicamba product.

The five-year registrations, which were only authorized for use on dicamba-tolerant cotton and soybeans, include new control measures to ensure these products can be used effectively while protecting the environment, including non-target plants, animals and other crops not tolerant to dicamba. The announcement is relevant for horticulture due to concerns with potential herbicide drift and crop damage.

One control measure of note is that EPA is requiring a downwind buffer of 240 ft. and 310 ft. in areas where certain species are located.

—Tal Coley, Director of Government Affairs, AmericanHort

Labor Force Projections Show Aging Population, Slowing Growth

The Bureau of Labor and Statistics (BLS) recently released its employment outlook over the next decade, noting both an aging U.S. population and slowing of labor force growth. These projections are determined by incorporating U.S. Census Bureau population projections with other various data sets.

BLS projects 0.4% annual growth in employment over the next 10 years, which is slower than the growth that occurred over the last decade. The changes in labor force growth are attributed to the previously mentioned aging population, as well as shifts to the overall population in general. A quarter of U.S. residents are expected to be 65 or older by 2029.

Specifically in agriculture, the industry accounted for 1.4% of U.S. employment in 2019 with an average of 1.6 million wage and salary workers, and 740,000 self-employed persons. Self-employed farmers and family members declined by 12% between 2009 and 2019, and BLS expects this number to decline another 10% by 2029.

Average wage and salary employment in agriculture rose 33% between 2009 and 2019, with a 2% rise expected by 2029. Hired workers are expected to be 71% of average agricultural employment by the next decade, up from 68% in 2019.

—Tal Coley

*News, views, commentary and event coverage about the policies and legislation that directly affect our industry.
Share your thoughts, opinions and news with me: jzurko@ballpublishing.com.*