

**U.S. Department of Labor**  
***Employment and Training Administration***

**Frequently Asked Questions**  
***Wage Disclosure and Calculation Requirements***  
***on Agricultural Clearance Orders***

***December 29, 2021***

*ETA is issuing these FAQs to remind SWAs that they are obligated under the Wagner-Peyser Act regulations at 20 CFR 653.501 to check an employer's piece rate offer, estimated in hourly wage rate equivalents for each activity and unit size, when reviewing the Forms ETA-790A and 790B (collectively referred to as "Agricultural Clearance Orders") and to clarify the related wage disclosure and calculation requirements of these forms for employers.*

**1. If the employer offers a piece rate, must the employer disclose the estimated hourly wage rate equivalent for the piece rate offered on Agricultural Clearance Orders?**

Yes. A State Workforce Agency (SWA) is required to ensure that the content of Agricultural Clearance Orders contain "all the material terms and conditions of employment," including the "hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size." 20 CFR 653.501(c)(1)(iv)(E). Although estimated hourly wage rate equivalents are not the offered rate nor a guarantee, they must be entered on the applicable Agricultural Clearance Orders form. The SWA must "check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher." 20 CFR 653.501(c)(2)(i).

To enable the SWA to complete this check, the employer must identify the: (1) crop or agricultural activity; (2) wage offer (amount of pay per piece) for each possible unit (e.g., container with size dimensions, or other unit of measurement; not simply stating a "box" of undefined size); (3) how many of each possible unit(s) a worker is typically able to produce or complete per hour; and (4) the estimated hourly wage rate for each possible unit(s), assuming a worker produces or completes the typical number of units per hour.

As shown in the below example, the Form ETA-790A, Section A, Job Offer Information, provides a free text field at Item A.8e where an employer may disclose this additional required information.

8b. Wage Offer *	8c. Per *	8d. Piece Rate Offer \$	8e. Piece Rate Units/Special Pay Information \$
\$ 11 81	<input checked="" type="checkbox"/> HOUR <input type="checkbox"/> MONTH	\$ 6 00	Per 20lb bucket. Estimated hourly wage rate equivalent for this piece rate is \$18/hr, based on workers filling 3 buckets per hour on average. Guaranteed \$11.81/hr.

Employers may also provide the required information on unit size and estimated hourly wage rate in the Form ETA-790A, Addendum A.

**Note:** The SWA may request additional information and supporting materials regarding the employer's estimated hourly wage rate equivalent calculation, such as information about how the employer determined the typical production for a worker. See 20 CFR 653.501(c)(2)(i).

**Reminder:** When completing the Form ETA-790A in the H-2A program, the employer must also specify the hourly rate guaranteed to workers offered a piece rate, as required for compliance with 20 CFR 655.122(l)(2) and (2)(i).

## 2. What information must the employer provide on the Agricultural Clearance Orders to disclose more than one offered piece rate?

If an employer offers multiple piece rates (e.g., different piece rates for different crops or activities, or a range of piece rates, depending on various unit sizes), the clearance order must identify each piece rate offered. The employer's clearance order must identify all possible unit sizes (e.g., bushel, pot, container, etc.) for each crop or agricultural activity and the specific piece rate offered for each possible unit size, for each crop or agricultural activity. In addition, the employer's clearance order must provide the estimated hourly wage rate equivalent for each piece rate offered (i.e., for each crop or agricultural activity, and for each possible unit size within that crop or agricultural activity). For the Form ETA-790A in the H-2A program, the employer must also specify the guaranteed hourly rate.

For example, the Form ETA-790A provides a free text field at Item A.8e, and corresponding fields in Form ETA-790A, Addendum A, where an employer may disclose additional required information about piece rate wage offers, such as detailed information on unit size and the estimated hourly wage rate equivalent for the offered piece rate. See the Addendum A example below.

**A.9. Additional Crop or Agricultural Activities and Wage Offer Information**

Crop ID	Crop or Agricultural Activity	Wage Offer	Per	Piece Rate Units/Special Pay Information
	Apple Harvesting	\$ 25 . 00	bin	Per 47x47x24.5 bin. Estimated hourly wage rate equivalent for this piece rate is \$18.75/hr based on workers filling .75 bin/hr on average. Guaranteed \$17.41/hr.
	Pear Harvesting	\$ 25 . 10	bin	Per 47x47x24.5 bin. Estimated hourly wage rate equivalent for this piece rate is \$18.82/hr based on workers filling .75 bin/hr on average. Guaranteed \$17.41/hr.
	Blueberry Harvesting	\$ 00 . 75	lb	Estimated hourly wage rate equivalent for this piece rate is \$37.50/hr based on workers picking 50 lbs/hr on average. Guaranteed \$17.41/hr.

The SWA will review the employer's entries in Item A.8e and Addendum A, to "check if the employer's calculation of the estimated hourly wage rate equivalent is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher" for each wage offered that is expressed as a piece rate. 20 CFR 653.501(c)(2)(i). To enable the SWA to complete this check for each wage offered that is expressed as a piece rate, the employer must include the: (1) crop or agricultural activity; (2) wage offer (amount of pay per piece) for each crop or agricultural activity identified and each possible unit identified (e.g., container with size dimensions, or other unit of measurement, not simply stating a "box" of undefined size); (3) how many of each possible unit(s) a worker is typically able to produce or complete per hour; and (4) the estimated hourly wage rate for each possible unit(s), assuming a worker produces or completes the typical number of units per hour.

**Note:** The SWA may request additional information and supporting materials regarding the employer's estimated hourly wage rate equivalent calculation, such as information about how the employer determined the typical production for a worker. See 20 CFR 653.501(c)(2)(i).

**3. Upon receiving an Agricultural Clearance Order, what actions must the State Workforce Agency (SWA) take to ensure that the wage disclosure and calculation requirement(s) on the form is satisfied?**

The SWA must ensure that the wage offered by the employer is "not less than the prevailing wages . . . among similarly employed farmworkers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher." 20 CFR 653.501(c)(2)(i).

If the employer offers a piece rate, the SWA must review the employer's calculation of the estimated hourly wage rate equivalent(s) to see if it is "reasonably accurate and not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher." 20 CFR 653.501(c)(2)(i). The SWA must perform this check during the SWA's review of the clearance order for intrastate clearance. SWAs should compare the estimated hourly wage rate to prevailing wage findings published in ETA's Agricultural Online Wage Library, available at: <https://www.foreignlaborcert.doleta.gov/aowl.cfm>. In cases where there is not a prevailing wage finding, SWAs must still check that the estimated hourly wage rate is not less than the applicable Federal or State minimum wage.

The SWA may request additional information and supporting materials regarding the employer's estimated hourly wage rate equivalent calculation, such as information about how the employer determined the typical production for a worker. See 20 CFR 653.501(c)(2)(i).

**IMPORTANT NOTE:** The estimated hourly wage rate equivalent calculation is independent of, and in addition to, an employer's obligation under the H-2A program to calculate, and supplement, as required, a worker's piece rate earnings at the time work is performed so that the worker's pay in each pay period is at least as much as the worker would have earned if they had been paid at the appropriate hourly wage rate. See 20 CFR 655.122(l)(2) and (2)(i). Accordingly, for H-2A related orders and in addition to the hourly rate guaranteed for compliance with 20 CFR 655.122(l)(2) and (2)(i), the employer must include each estimated hourly wage rate equivalent on the clearance order for compliance with 20 CFR 653.501(c)(1) and (2).