

# Characteristics of H-2B Nonagricultural Temporary Workers

Fiscal Year 2021 Report to Congress

Annual Submission *March 10, 2022* 



U.S. Citizenship and Immigration Services

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#### Foreword

March 10, 2022

On behalf of the Department of Homeland Security, I am pleased to present the Fiscal Year 2021 annual submission on the "Characteristics of H-2B Nonagricultural Temporary Workers."

Pursuant to statutory requirements, this report is being provided to the following Members of Congress:

The Honorable Richard Durbin Chairman, Senate Committee on the Judiciary

The Honorable Chuck Grassley Ranking Member, Senate Committee on the Judiciary

The Honorable Jerrold Nadler Chairman, House Committee on the Judiciary

The Honorable Jim Jordan Ranking Member, House Committee on the Judiciary

Inquiries relating to this report may be directed to me at (202) 447-5890.

Sincerely,

Alice Lugo

Assistant Secretary for Legislative Affairs

## **Executive Summary**

The Department of Homeland Security (DHS) has compiled this Fiscal Year (FY) 2021 report on H-2B nonimmigrants from information provided by Department of State (DOS), Department of Labor (DOL), and three Components within DHS: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

This report includes data for each half of FY 2021.

#### Highlights

- A total of 97,268<sup>1</sup> nonimmigrants were issued H-2B visas or otherwise acquired H-2B status in FY 2021, with 95,192 H-2B visas issued by DOS including beneficiaries approved under the FY 2021 Supplemental Cap.
- The top five H-2B visa issuance countries in FY 2021 were:
  - o Mexico 73.6 percent
  - Jamaica 9.2 percent
  - o Guatemala 3.5 percent
  - Honduras 2.3 percent
  - Ukraine 2.3 percent
- 735 requests for change of status to H-2B were approved by USCIS. In such cases, a new visa is not required.
- 1,341 crossings of visa-exempt H-2B workers were processed by CBP.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> This number includes H-2B workers who are exempt from the H-2B cap and those who were approved under the FY 2021 Supplemental Cap.

<sup>&</sup>lt;sup>2</sup> For FY 2021, all 1,341 crossings of visa-exempt H-2B workers came from Canada. *See* 8 C.F.R. 212.1(a) for a list of nonimmigrants who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times (e.g., a Canadian residing in Windsor, Ontario, and commuting daily to work in Detroit, Michigan), he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

# Table of Contents

I.	Legislative Requirement
II.	Background
III.	Data Report and Analysis4
	Section 3.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in FY 20214
	Section 3.2 – Occupational information on, and compensation paid to, workers who were issued H-2B visas or provided H-2B status in FY 20215
	Section 3.3 – H-2B visas or status revoked or otherwise terminated5
	Section 3.4 – Number of nonimmigrants who were provided H-2B nonimmigrant status during FY 2021 and FY 2020
	Section 3.5 – Top 15 H-2B Petitioners6
	Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 2021

### I. Legislative Requirement

This report was prepared in accordance with section 416(d)(2) of the *American Competitiveness* and *Workforce Improvement Act of 1998*, Pub. L. 105-277, tit. IV, 112 Stat. 2681-641, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. 109-13, div. B, 119 Stat. 302, enacted May 11, 2005, which requires that:

Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate –

- (A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [(INA)] (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;
- (B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and
- (C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

Section 3.5 of this report on H-2B Top 15 petitioners fulfills the requirement set forth in the Joint Explanatory Statement of the Consolidated Appropriations Act, 2021 (P.L. 116-260), and a requirement in the Report of the Committee on Appropriations H. Rept. 116-458.

H--2B Visa Program Reporting - Within 120 days of the date of enactment of this Act, the Department shall report to the Committee on the distribution of visas granted through the H--2B program. The report should contain, but not be limited to, a tabulation of the percent of overall visas issued to the top 15 employers.

## II. Background

#### **Overview**

The H-2B program allows U.S. employers to bring foreign workers to the United States to fill temporary nonagricultural jobs. *See* INA § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). To petition successfully for this nonimmigrant classification, the employer must establish that:

- its need for the prospective worker's labor or services is temporary in nature that is, based on a one-time occurrence, a seasonal need, a peak load need, or an intermittent need;<sup>3</sup>
- qualified workers in the U.S. are not available to perform the temporary work; and

<sup>&</sup>lt;sup>3</sup> There is an exception to the temporariness requirement for certain H-2B workers in Guam and the Commonwealth of the Northern Mariana Islands (CNMI). See 48 U.S.C. 1806(b)(1)(B).

• the employment of the H-2B nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

See Title 8 Code of Federal Regulations (C.F.R.) § 214.2(h)(6)(ii)(B) and (iv)(A). Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a valid temporary labor certification from DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. See 8 C.F.R. § 214.2(h)(6)(iii)(A) and (C). H-2B petitions may include multiple workers if the workers will be performing the same service, for the same period of time, and in the same location. See 8 C.F.R. § 214.2(h)(2)(ii). An H-2B worker must also be from a list of "Eligible Countries," as designated by DHS in a notice published in the Federal Register, unless it is determined to be in the U.S. interest that a foreign worker from any country not on this list be granted H-2B status. See 8 C.F.R. § 214.2(h)(6)(i)(E).

Effective January 19, 2021, DHS, in consultation with DOS, determined that the Independent State of Samoa and Tonga are no longer designated as eligible countries because they no longer meet the regulatory standards for the H-2B visa program. Additionally, the Philippines was added to the list of countries eligible to participate in the H-2B visa program. DHS maintains its authority to add countries to the eligible countries list at any time, and to remove any country at the time it publishes a new list, should DHS and DOS determine that a country fails to meet the requirements for continued designation. Examples of factors that could result in the exclusion of a country or the removal of a country from the list include fraud (including but not limited to fraud in the H–2 petition or visa application process by nationals of the country, the country's level of cooperation with the U.S. government in addressing H–2 associated visa fraud, and the country's level of information sharing to combat immigration-related fraud), nonimmigrant overstay rates for nationals of the country (including but not limited to H–2 nonimmigrants), non-compliance with the terms and conditions of the H–2 visa programs by nationals of the country, and the country's level of compliance with U.S. immigration policies.

#### The H-2B Cap

The *Immigration Act of 1990* limits the number of workers who may be granted H-2B classification in a fiscal year (the H-2B "cap") to 66,000. *See* INA § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B). Subsequently, section 405 of the *REAL ID Act of 2005* mandated that the H-2B cap be allocated semiannually, allowing for up to 33,000 H-2B workers in the first half of the fiscal year (October 1 – March 31), and for the remaining H-2B visas to be allocated to workers during the second half of the fiscal year (April 1 – September 30). *See* INA § 214(g)(10), 8 U.S.C. § 1184(g)(10). USCIS will announce that it will no longer accept further H-2B petitions upon determining that it has received a sufficient number of petitions to ensure that the statutory caps will not be exceeded. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.<sup>4</sup>

In accordance with the time-limited statutory authority of section 105 of division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus), on May 25, 2021, DHS and DOL published a final rule increasing the H-2B cap by up to 22,000 additional visas through the end of FY 2021. These supplemental visas were available only to U.S. businesses that, among other things, attested that they would likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition. Of the 22,000

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<sup>&</sup>lt;sup>4</sup> See 8 CFR 214.2(h)(8)(vii).

additional visas, 16,000 were initially available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2018, 2019 and 2020). The remaining 6,000 visas were set aside for nationals of Honduras, Guatemala, and El Salvador (collectively called the Northern Triangle) and were exempt from the returning worker requirement. The unused visas from the Northern Triangle allocation were subsequently made available to returning workers.

#### Exemptions from the H-2B Cap

Generally, a worker whose stay in H-2B status is extended will not be counted against the H-2B cap again. Additionally, the following workers are exempt from the H-2B cap:

- H-2B workers in the United States or abroad who have been previously counted toward the cap in the same fiscal year;
- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;<sup>5</sup> and
- From November 28, 2009, until December 31, 2029, certain workers performing labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.<sup>6</sup>

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and are not counted against the H-2B cap. *See* INA § 214(g)(2), 8 U.S.C. § 1184(g)(2); 8 C.F.R. § 214.2(h)(8)(ii)(A). Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of nonimmigrants who are exempt from the H-2B cap are generally included in the data provided in this report.

#### Obtaining H-2B Status

After USCIS approves an H-2B petition, a worker may be granted H-2B status through:

- admission as an H-2B worker by CBP at a port of entry after issuance of an H-2B nonimmigrant visa by DOS;
- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadian and Bermudian citizens, Bahamian nationals, and British subjects resident in certain islands; or
- change of nonimmigrant status to H-2B granted by USCIS.

<sup>&</sup>lt;sup>5</sup> See Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

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<sup>&</sup>lt;sup>6</sup> See 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

## III. Data Report and Analysis

Section 3.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in Fiscal Year 2021

Based on information provided by DOS, the nationalities of workers who were issued H-2B visas in FY 2021 are as follows:

Table 1. Number of H-2B workers who were issued H-2B visas by the Department of State, by Nationality, FY 2021

Nationality	Number	Nationality	Number
Antigua and Barbuda	D	Italy	D
Argentina	96	Jamaica	8,950
Australia	D	Japan	166
Austria	D	Kazakhstan	D
Barbados	24	Lithuania	D
Belgium	D	Mexico	71,120
Belize	29	Moldova	D
Bosnia-Herzegovina	D	Mongolia	83
Brazil	D	Montenegro	12
Bulgaria	263	Netherlands	D
Canada	D	New Zealand	11
Chile	22	Nicaragua	62
China – Taiwan	D	North Macedonia	180
Colombia	74	Panama	80
Costa Rica	204	Peru	12
Croatia	D	Philippines	1,088
Czech Republic	79	Poland	176
Dominican Republic	12	Portugal	D
Ecuador	35	Romania	833
El Salvador	953	Serbia	2,012
Estonia	D	Slovakia	15
Georgia	D	South Africa	447
Germany	D	South Korea	D
Great Britain and Northern Ireland	13	Sweden	D
Greece	13	Thailand	D
Guatemala	3,427	Turkey	71
Honduras	2,226	Ukraine	2,222
Hungary	26	Not Reported	83
Ireland	D	Grand Total	95,192

Note: Per USCIS best practices, units of less than 10 beneficiaries are masked so as to limit the possibility of the de-anonymization of data. "D" represents data withheld to protect privacy. However, the total includes the values of all countries, including those marked "D".

# Section 3.2 – Occupational information on, and compensation paid to, workers who were issued H-2B visas or provided H-2B status in FY 2021

DOL posts occupational information on, and compensation paid to, workers who were issued H-2B visas or otherwise provided H-2B status for the latest quarter and for previous fiscal years on its website at <a href="http://www.dol.gov/agencies/eta/foreign-labor/performance">http://www.dol.gov/agencies/eta/foreign-labor/performance</a>. The data also includes information about the certification, partial certification, withdrawal, and denial of temporary employment certification applications.

Guam Department of Labor (Guam DOL) collects similar information, but does not routinely publish this information on its website. Please see the Appendix for a chart displaying occupational and compensation data for all H-2B applicants in FY 2021.

#### Section 3.3 – H-2B visas or status revoked or otherwise terminated

From October 1, 2020, through September 30, 2021, USCIS revoked or otherwise terminated 52 approved H-2B petitions covering a total of 1,353 H-2B positions. Please see footnote 9 below for the reasons for revocations, particularly in February 2021.

Table 2. Number of H-2B petitions revoked by USCIS and corresponding beneficiaries by month, FY 2021

Month	Number of Petitions	Number of Beneficiaries	Month	Number of <b>Petitions</b>	Number of Beneficiaries
Oct. 2020	2	19	Apr. 2021	3	14
Nov. 2020	2	15	May 2021	3	3
Dec. 2020	1	30	Jun. 2021	0	3
Jan. 2021	0	0	Jul. 2021	5	131
Feb. 2021	33	1,0929	Aug. 2021	1	28
Mar. 2021	1	6	Sep. 2021	3	15
			Total	52	1,353

During this same period, CBP denied admission to 21 nonimmigrants who were found inadmissible at ports of entry, <sup>10</sup> and ICE removed 75 nonimmigrants who were found removable after admission to the United States. <sup>11</sup>

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<sup>&</sup>lt;sup>7</sup> The legislative requirement described in Section I calls, in part, for occupation information on and compensation paid to nonimmigrants. The occupational information includes the position being petitioned for and the corresponding compensation information. DHS relies on DOL to electronically capture such data, including compensation paid to H-2B workers. DOL routinely publishes such information online at the link provided.

<sup>&</sup>lt;sup>8</sup>A "partial certification" occurs when the DOL Certifying Officer who issues the temporary labor certification (TLC) reduces either the period of need and/or the number of H-2B workers being requested. The employer will then receive an amended ETA Form 9142 and a Final Determination letter that includes the reasons for the partial certification.

<sup>&</sup>lt;sup>9</sup> This substantial one-month increase represents, in significant part, revocations primarily related to a single petitioner in the CNMI, "Imperial Pacific International LLC," which was debarred from the H-2B program by the U.S. Department of Labor for numerous labor-related violations.

<sup>&</sup>lt;sup>10</sup> This number includes those beneficiaries who received a visa and those who are visa-exempt. However, no visa-exempt beneficiaries were found inadmissible in FY 2021.

<sup>&</sup>lt;sup>11</sup> ICE defines removed H-2B workers as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal nonagricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

During FY 2021, DOS reported refusing the visa applications of a total of 7,452 H-2B workers.

The cancellation, termination, and visa refusal data from CBP, ICE, and DOS are not available on a month-to-month basis.

# Section 3.4 – Number of nonimmigrants who were provided H-2B nonimmigrant status during FY 2021 and FY 2020

In FY 2020, a total of **65,742**<sup>12</sup> nonimmigrants were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 61,891 H-2B visas issued by DOS;
- 346 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 3,505 crossings of visa-exempt H-2B workers processed by CBP.<sup>13</sup>

In FY 2021, a total of **97,268**<sup>14</sup> nonimmigrants were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This number includes cap-exempt workers and workers approved under the FY 2021 Supplemental Cap.

This includes:

- 95,192 H-2B visas issued by DOS;
- 735 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 1,341 crossings of visa-exempt H-2B workers processed by CBP. 15

#### Section 3.5 – Top 15 H-2B Petitioners

Table 3 below shows the top 15 companies that submitted petitions for H-2B workers in FY 2021 by the number of approved workers. In total, the top 15 petitioners were approved for 15,590 workers or about 11.5% of the total of 134,654 workers approved on H-2B petitions in FY 2021. Note, the number of approved beneficiaries in Table 3 does not reflect the number of beneficiaries ultimately employed or the number of visas issued by DOS as some positions may not be filled and some approved workers may not receive a visa or travel to the United States, among other reasons.

<sup>&</sup>lt;sup>12</sup> This number includes H-2B workers who are exempt from the H-2B cap.

<sup>&</sup>lt;sup>13</sup> For FY 2020, all 3,505 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of nonimmigrants who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

<sup>&</sup>lt;sup>14</sup> This number includes H-2B workers who are exempt from the H-2B cap and those who were approved under the FY 2021 Supplemental Cap.

<sup>&</sup>lt;sup>15</sup> For FY 2021, all 1,341 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of nonimmigrants who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

Table 3: Top 15 H-2B Employers, FY 2021

Last Four Digits of the Tax ID Number	Petitioner (Company) Name	Petitioner's State <sup>16</sup>	Number of Approved Beneficiaries
2463	TRIDENT SEAFOODS CORPORATION	WA	2,631
9115	STRONGWOOD FORESTRY INC	MS	1,416
7036	PROGRESSIVE SOLUTIONS LLC	AR	1,414
4330	OBI SEAFOODS LLC	WA	1,194
4616	BLACK CONSTRUCTION CORP	GU	1,082
4313	BRIGHTVIEW LANDSCAPES LLC	PA	1,026
6297	ABC PROFESSIONAL TREE SERVICES INC	VA	900
0454	CORE TECH CONSTRUCTION CORPORATION	GU	852
2332	PETER PAN SEAFOOD CO LLC	WA	819
2025	SILVER BAY SEAFOODS LLC	WA	800
7126	UNISEA INC	WA	751
6456	PETER PAN SEAFOODS INC	WA	745
0243	YELLOWSTONE LANDSCAPE CENTRAL INC	VA	665
1541	BVLS3115 BRIGHTVIEW LANDSCAPE SVCS	PA	661
4879	ALPHA SERVICES LLC	ID	634
All Other Companies		1	119,064
Grand Total			134,654

Source: USCIS. Data as of November 2021.

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<sup>&</sup>lt;sup>16</sup> "Petitioner's sState" is the state provided for the petitioner's mailing address and in which the petitioner claims its primary office (per the Instructions for Form I-129 instructions) but may not be the state in which any approved beneficiaries will perform the requested services or labor.

# Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 2021

FY2021 H-2B Characteristics Report - Guam						
O*Net Code	Job Title	No. of Positions Certified	Rate of Pay on Cert	Unit of Pay on Cert		
17-3011.02	Auto CAD Drafter	4	\$23.86	Hour		
19-4043	Soil Technician	3	\$29.23	Hour		
29-2032	Ultrasound Technician	1	\$36.44	Hour		
29-2033	Nuclear Medicine Technologist	1	\$38.58	Hour		
29-2035	MRI Technologist	1	\$35.70	Hour		
29-2061	Licensed Practical Nurse	2	\$17.18	Hour		
35-2012	Camp Cook	15	\$11.78	Hour		
37-3011	Landscape Gardener	20	\$10.46	Hour		
43-5061	Planning Clerk	1	\$21.50	Hour		
47-1011	Construction Supervisor	23	\$21.03	Hour		
47-1011	Field Supervisor	4	\$21.03	Hour		
47-2031	Carpenter	1160	\$15.48	Hour		
47-2031	Carpenter	127**	\$15.48	Hour		
47-2031	Lead Shipwright Carpenter	1	\$19.00	Hour		
47-2031	Shipwright Carpenter	5	\$15.91	Hour		
47-2051	Cement Mason	745	\$14.92	Hour		
47-2051	Cement Mason	38**	\$14.92	Hour		
47-2073	Heavy Equipment Operator	196	\$16.58	Hour		
47-2073	Heavy Equipment Operator	20**	\$16.58	Hour		
47-2111	Electrician	229	\$18.52	Hour		
47-2111	Electrician	35 **	\$18.52	Hour		
47-2141	Painter	34	\$12.86	Hour		
47-2152	Pipefitter	35	\$16.52	Hour		
47-2152	Pipefitter	4 **	\$16.52	Hour		

47-2152	Plumber	207	\$16.52	Hour
47-2152	Plumber	37 **	\$16.52	Hour
47-2171	Rebar Worker	10	\$15.61	Hour
47-2171	Reinforcing Metal Worker	451	\$15.61	Hour
47-2171	Reinforcing Metal Worker	48 **	\$15.61	Hour
47-2211	Sheet Metal Worker	75	\$16.73	Hour
47-2211	Sheet Metal Worker	5 **	\$16.73	Hour
47-2221	Structural Steel Worker	60	\$14.90	Hour
49-3031	Automotive Mechanic	11	\$24.21	Hour
49-3042	Construction Equipment Mechanic	46	\$18.32	Hour
49-3042	Heavy Equipment Mechanic	35	\$18.32	Hour
49-3042	Heavy Equipment Mechanic	19 **	\$18.32	Hour
49-3051	Marine Mechanic	7	\$20.89	Hour
49-9021	Air Conditioning & Refrigeration Technician	2	\$18.43	Hour
49-9021	Air Conditioning & Refrigeration Mechanic	5	\$18.43	Hour
49-9021	HVAC & Refrigeration Mechanic	60	\$18.43	Hour
49-9021	HVAC & Refrigeration Mechanic	7 **	\$18.43	Hour
49-9071	Maintenance Mechanic	1	\$12.64	Hour
49-9096	Rigger	12	\$25.49	Hour
49-9098	Equipment Technician	7	\$10.94	Hour
49-9098	Elevator Installer Technician	5	\$10.94	Hour
51-2021	Electric Motor Rewinder	4	\$18.63	Hour
51-3011	Baker	4	\$10.27	Hour
51-4121	Welder	102	\$18.49	Hour
51-4121	Welder/Fitter	10	\$18.40	Hour

51-9122	Lead Transportation Equipment Painter	1	\$19.00	Hour
51-9122	Painter/Blaster	5	\$12.52	Hour
51-9061	Quality Control Inspector	2	\$21.50	Hour
53-7021	Crane Operator	6	\$25.20 *	Hour
53-7021	Crane Operator	13	\$25.34	Hour

Note: \* Denotes the rate on the certifications valid from 7/1/2019 to 6/30/2020. \*\* Denotes occupations pending Governor's certification as of 10/25/2021.