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1. WHEN ARE PREVAILING WAGE SURVEYS REQUIRED?

As specified in ET Handbook 385 on page I-115, there are four conditions which require prevailing wage surveys:

- A. When there were more than 100 workers in one crop last season or you expect more than 100 workers IN THE current season.

We understand all of you are under pressures for resources. When the ET Handbook 385 was established back in 1981, States had larger budgets, and definitely more staff dedicated to agricultural surveys.

We know that States do not survey all the crops with 100 or more workers in their area, but we wish to stress that if you have an intra- or interstate clearance order, you must know the prevailing wage in order to comply with the regulations regarding the correct wage; or

- B. When there were H-2A workers last season or you expect H-2A workers in the current season; or

- C. When it is a very complex method of payment,

For example: In Florida, the National Office funded a citrus survey to anticipate any H-2A orders requesting citrus workers; or

- D. When a crop is of national interest,

For example: We continue to require a wage survey in Pennsylvania apples because bordering States use H-2A workers; or

- E. When there is a regular, i.e., non-criteria inter-state or intra-state clearance/job order, particularly if there are large numbers of workers involved (e.g., fifty or more).

Again, we recognize that your resources are limited and you have to make judgments about the most effective use of your available staff, but getting caught without a needed survey is time consuming and inefficient.

2. WAGE REPORTING AREAS

ET Handbook 385 spells out rules and instructions for delineation of agricultural reporting areas on pages I-102 through I-104. Generally, States should keep the same reporting areas every year as reported on their annual plan. However, we know crop activity varies; the same area may not be appropriate for another crop activity.

For example: Kentucky reports tobacco transplant and tobacco stripping on a statewide basis, but the crop reporting area changes when it comes to tobacco housing and cutting (see map on page 3). Kentucky justified the changes in wage reporting areas based on different labor market conditions in the spring and fall for all of Kentucky and then for specific areas and crop activities in the summer peak labor demand period.

The ET Handbook 385 recognizes that each State knows their own areas best, but departmental policy requires Regional Office and National Office concurrences with changes made to state crop reporting areas.

3. Creating a Universe

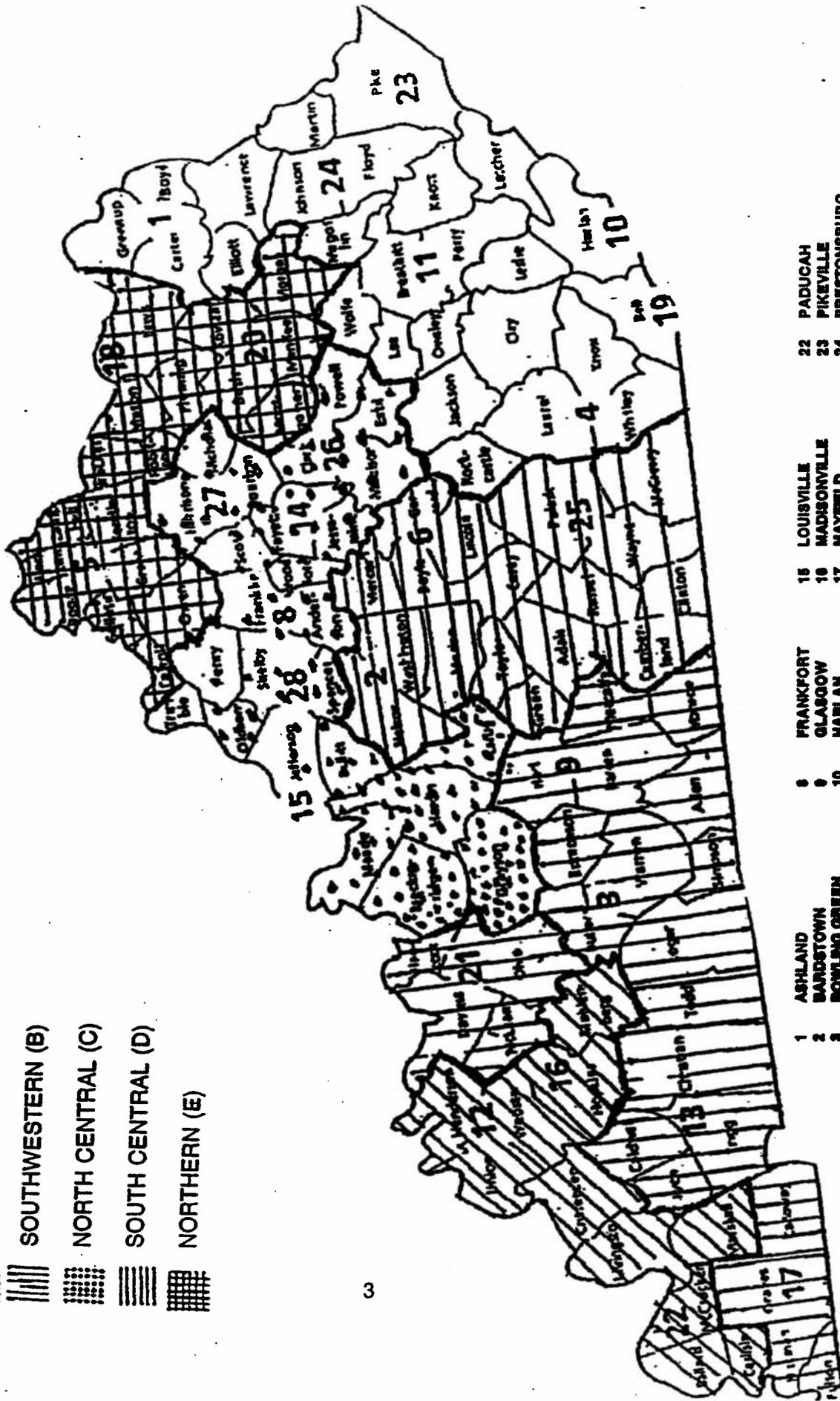
In order to do a good survey, you need to know what the universe is that you are sampling. There are various resources to assist you in creating your universe.

For Example: UI records, grower associations, agricultural cooperative extension in your State, etc. You can find an exhaustive list on page 53 of the Reno handout.

Once you have assembled your lists, you then need to start purging and reducing them to a single list. There will be many duplicates. Some employers will be under the employer's name on one list and a corporate name on another list.

**TOBACCO CUTTING
FARMWAGE AREAS, KY ETA-232**

-  NORTHWESTERN (A)
-  SOUTHWESTERN (B)
-  NORTH CENTRAL (C)
-  SOUTH CENTRAL (D)
-  NORTHERN (E)



- 1 ASHLAND
- 2 BARDSTOWN
- 3 BOWLING GREEN
- 4 CORBIN
- 5 COVINGTON
- 6 DANVILLE
- 7 ELIZABETHTOWN
- 8 FRANKFORT
- 9 GLASGOW
- 10 HARLAN
- 11 HAZARD
- 12 HENDERSON
- 13 HOPKINSVILLE
- 14 LEXINGTON
- 15 LOUISVILLE
- 16 MADISONVILLE
- 17 MAYFIELD
- 18 MAYSVILLE
- 19 MIDDLEBORO
- 20 MOREHEAD
- 21 OWENSBORO
- 22 PADUCAH
- 23 PIKEVILLE
- 24 PRESTONSBURG
- 25 SCHERERSBURG
- 26 WINCHESTER
- 27 GEORGETOWN
- 28 FERN VALLEY

Make sure that your employers qualify as agricultural employers. Some entities will be family farms with no hired employees. Not everyone who is a member of an agricultural association is an employer. Many are only members for other purposes.

For example: The membership list of the State Nursery Operators Association will include many entities which are retail businesses and do not grow 50% of the agricultural products they sell. Therefore, they are not agricultural employers for our survey purposes.

In developing your universe for survey purposes, you must collect information on small, medium and large employers of domestic workers. For further guidance refer to page I-114 of the ET Handbook 385.

4. TIME FRAMES - WHEN TO DO SURVEY

When planning to do surveys, remember that it is best not to conduct surveys in the beginning nor end of the season because crops are too scarce. Therefore, the activity and the pay would not be representative of the production for that harvest season.

For example: During the first and last weeks of the apple season workers are often paid using an hourly wage, but during the peak week the piece rate method of payment is more commonly used.

In the shepherding industry there is no peak week.

There is not necessarily a peak week or "absolute best" week for conducting surveys. After talking to growers, employees and others in the agricultural industry (and of course with your experience), you want to pick a time to do your survey that is truly representative of that activity. Also, plan in advance to do surveys, keeping in mind workers' and growers' valuable time as well as your limited resources and time.

Page I-115 in the ET Handbook 385 mentions that States should complete surveys within 3 days unless States have obtained prior approval from the Regional Office. The National Office realizes that

States have limited monetary and human resources to conduct surveys. Therefore, it would be unrealistic to expect States to conduct every survey over a 3-day period. Some surveys may take a couple of weeks to be completed.

The National Office would rather States take additional time and submit accurate data.

When a State concludes that there is a "No Finding" for a wage survey, the State may work with the National Office to determine what wage to use.

Some Alternatives Include:

- ◆ Using the rate from a neighboring State
- ◆ Using a similar crop reporting area in the same State
- ◆ Using last year's prevailing wage rate or
- ◆ Using a prevailing wage rate from a similar occupation

5. AD HOC SURVEYS

No matter what we do, there are going to be times when we are surprised by submission of an H-2A order for a crop activity in which we have not conducted a survey. What do we do? As you know, we are under time pressure since the Regional Office has only 7 calendar days to accept or reject the application.

One of the things that can help us in such a situation is the likelihood that the Adverse Effect Wage Rate (AEWR) is higher than the prevailing wage.

If the State is lucky, it may have records of sufficient job orders filed in the wage reporting area in the previous season to feel comfortable with using that information as a base. If the wage that you find from reviewing Job Service Orders shows a wage significantly below the AEWR, you can comfortably submit that information to the National Office as your prevailing wage finding.

However, if the Job Service wage information is sketchy or too close to the AEWR for comfort, you will need to expand your survey universe.

Remember, growers who file job orders with the Employment Service (ES) are not an unbiased, stratified random sample.

Circumstances will differ, but basically you use the same strategies mentioned above in creating a universe. You simply do not have time to worry about purging lists of duplicates or other refinements. You are trying to reach as many appropriate employers, as quickly as you can, until you reach a comfort level.

Remember, when you seek information in an Ad hoc survey, you still want information about how many workers were paid a given wage. When you look at a Job Service Order, you need to capture not only the wage but the number of workers requested. When you talk to an employer, you need to ask not only what wage was paid but also how many workers got that wage at the peak of the season.

If it looks like your Ad hoc survey will not produce anything worthwhile, give your Regional Office a call to discuss other alternatives.

REMEMBER, REMEMBER, REMEMBER!

If you get an H-2A application which requires an Ad hoc survey this year, you need to immediately take the steps mentioned earlier to plan and execute a proper wage survey this season.

States are supposed to follow up an Ad hoc survey with a regular survey in the same harvest season or next harvest season. After completing the Ad hoc survey, the State should send a copy of the memorandum stating their findings to the Regional and National Offices.

6. COLLECTING DATA

Page I-116 in the ET Handbook 385 states that there are three methods for collecting data for wage surveys:

1. In Person
2. By Mail and
3. By Telephone

Although States have limited resources, it is important to use personal interviews as a verification tool as much as possible when conducting surveys. This method is extremely important in helping you determine the prevailing wage when you have piece rates as a method of payment.

For example: Sometimes employers do not keep correct or detailed records on workers. An employer's records may show that his employees worked 6 hours. Personal interviews with employees will give you more insight to what workers on that farm are actually earning. The employee can specifically tell you if he is picking 80 items in 6 hours or 80 items in 8 hours. Again, the purpose of the survey is to research what is truly representative of the harvest and the personal interview is your best tool for achieving this goal.

As mentioned in the ET Handbook 385, States should try to interview 10% of the workers in the sample for each wage survey. This 10% representation should be drawn from workers of as many as possible of the employers interviewed.

Some examples of sources for the collection of wage information are:

- ◆ Employers
- ◆ Crew Leaders and Labor contractors
- ◆ Families
- ◆ Individual workers and
- ◆ Other Government agencies

Some tips to keep in mind when collecting data are the following:

- A. States should collect what was actually paid, not convert rates.

For example: In section 4, do not convert piece rate to hourly rate, etc. Any conversion from a piece rate to an hourly equivalent should be made in section 5 of the Form 232.

- B. List each wage separately and record wages as information is given to you. Do not average or put wages in ranges (unless there is a schedule--submit copies of schedules).
- C. Explain unusually high or low rates or extreme ranges or rates. Use the comment section 6 on the Form 232.
- D. Remember that the data for the surveys should be representative of small, medium and large employers.
- E. In order to prevent only a small number of employers from dominating wages in your State, avoid using the same sample year after year.
- F. All information/data that you obtain should be kept on file in case of law suits. The National Office may have to use your Prevailing Wage data for support in building cases in other States.
- G. The Department of Labor does not accept agricultural wage findings from trade associations and labor unions unless the State has a contract with that association. The National Office should approve the contract for trade associations and labor unions to make sure it states "U.S. DOL has access to all raw data."
- H. Get names, addresses and telephone numbers of crew leaders. (In fact, State agencies should keep a list of all crew leaders. Regional and State Monitor Advocates should also have a list.)

- I. States should fill out Form 232 and send to Regional and National Offices even if they determine there is No Finding. Be sure to explain why there was a No Finding.

If the National Office receives

- ◆ incorrect data,
- ◆ not enough data,
- ◆ data from invalid sources and data that is not current, the State may be asked to spend more of its time and money on completing the survey or conducting a whole new survey.

The most important thing to remember when planning or conducting a survey is to:

- ◆ Obtain all of the data needed to calculate the Prevailing Wage and
- ◆ Get accurate data from the correct sources.

Once the staff in the National Office receives the information, they can work with States to interpret and calculate the Prevailing Wage.

7. FILLING OUT THE FORM 232

The Form 232 has a header, six numbered sections and a signature block. This section discusses filling out the header (**Figure 2**) and sections 2 & 3. Filling out sections 1 & 4 will be illustrated in the units on arraying the data by mode and on making a determination.

A. The Header

Wage Reporting Area Name (a)	DOMESTIC AGRICULTURAL IN-SEASON WAGE REPORT	State (d)
Number (b)		Survey Period (e) Beginning Ending
Crop and Activity (c)		Date of Finding (Month, Day, Year) (f)

Figure 2

The discussion of the header is keyed to the letters in Figure 2

- (a) Each wage reporting area has a name. Some names can refer to a specific crop, such as "White County Strawberry." Other names ("Northeast") refer to a section of the State and others (Yuma County) refer to a specific political entity. Since each named area has a code number, the name provides a redundancy, a way of double checking to be sure that the survey being reported is indeed from the correct area.
- (b) The number is assigned by the National Office, based on the number of wage reporting areas in the State. Each number should contain at least 3-two number cells (i.e., ##-##-##).

The first cell contains the designation of the Regional Office. Thus, the first two numbers for California are 06 because California is in Region VI.

The second cell is the State FIPS code number.

The third cell contains the number assigned to each wage reporting area of the State.

Thus, 06-06-06 refers to the Sacramento Valley wage reporting area for the State of California. Some States use an additional two number cell to track the number of wage surveys done in a wage reporting area. Thus, 03-37-03-05 is the fifth wage survey done that year in the Raleigh wage reporting area of North Carolina.

- (c) It is important to specify not only the crop, but also the activity involved: The pruning wage in apples is not necessarily the wage paid for harvesting. In Kentucky tobacco, there are four different activities (setting, cutting, housing, stripping) which each require a separate wage, survey.

- (d) Self-evident (Name of State).
- (e) Specify the dates from the beginning of the survey to the end.
- (f) This date is the date that the SESA has completed its analysis of the survey data, has arrayed it on a Form 232, and made its prevailing wage determination. ET Handbook 385 says the determination should be made within 2 weeks of the completion of the survey.

B. The Estimated Universe and the Survey Universe

The numbers in part 2c. should be comparable to those in part 4. In the example shown in Figure 3, 37.5% (300 of 800) of the workers are Instate. The survey numbers in Figure 4 below have only 20% (40 out of 200) who are Instate. This raises the question as to whether the estimate in 2c. is wrong or whether the sample surveyed is not representative of the universe. The estimate in 2c. suggests that a finding should be made for Instate since it represents more than 25% of the universe. With only 20% in the actual survey, no finding will be made on the Instate wage.

2. ESTIMATED NUMBER OF EMPLOYERS AND EMPLOYEES IN CROP ACTIVITY

<p>a. Employers <u>600</u></p>	<p>c. TOTAL Domestic Hired Workers. <u>800</u></p> <p>(1) Instate (Local and Intrastate). <u>300</u></p> <p>(2) Interstate (Excl. Cont. P.R.) . <u>500</u></p> <p>(3) Contract Puerto Rican .. <u>0</u></p>
<p>b. Contract Foreign Workers <u>800</u></p>	
<p>3. Employers Contacted</p> <p>a. Number <u>200</u></p> <p style="padding-left: 40px;">Percent of Total</p> <p>b. in Crop Activity <u>405</u></p>	

Figure 3

The numbers in section 3 should also approximate the results of the survey. In **Figure 3**, 200 employers were contacted which is 33% (200 out of 600) of the estimated employer universe. Number 3b. indicates that the employers contacted represent 40% of the total in the crop activity. The survey results show only 25% (200 out of the estimated 800) of the worker universe. While none of these discrepancies necessarily invalidates the survey results, taken together they raise questions and do provide a pretext for challenging the survey.

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
Total	200	40	160
\$6.00/hour	80	40	40
\$5.30/hour	120		120

Figure 4

8. ARRAYING DATA BY MODE

Each different mode of payment should be arrayed separately. If the arrays are extensive, they can be placed on separate Form 232's. If only a small number of different wages are involved, the arrays can be on a single Form 232. **Figure 5** below is an example of two arrays on a single Form 232.

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
Total	200	45	155
Sub-Total Hourly	108	38	70
\$6.21/hour	41	11	30
\$5.25/hour	40		40
\$4.75/hour	27	27	
Sub-Total Piece Rate	92	7	85
\$0.65 EAB	79	7	72
\$0.625 EAB	13		13

Figure 5

This array makes it very easy to make a prevailing wage finding. The totals in the universe and the sub-categories of "Instate" and "Interstate" appear at the top of the form which makes it easy to determine the dominant mode, whether there is a 40% rate, and whether the less than 25% rule for dropping a rate should be used.

The sub-totals for each of the arrays makes it easy to quickly identify the hourly wage (108 out of 200) as the dominant method of payment and, therefore, the array which is to be used in making the prevailing wage determinations if there is no 40% wage rate.

A. What Constitutes a Different Mode?

For all activities except the range production of livestock (see below), the mode includes only cash wages. Some of the different modes of payment follow:

- 1) Hourly
- 2) Weekly
- 3) Monthly
- 4) Piece by unit (bunch, pipe, row, acre)
- 5) Piece by volume (bushel, pint, lug, bin)
- 6) Piece by weight (ounce, pound, ton)

When different employers pay in similar modes, but different units, the different units should be converted to the most common one.

For example: In a survey of apple picking, the piece rate wages are denominated by volume. The volume measurement can be bushel, Eastern Apple Box(EAB, a 1 1/8 bushel box), or bin. Bins can be of various sizes and it is important to determine the exact size of the individual employer's bin, but bins tend to be in multiples of bushels (15 bushels, 18 bushels, 20 bushels). In a wage survey which finds employers paying by the bushel, the EAB, and by the bin, all wages should be converted to a bushel wage and the finding be made by the bushel.

NOTE: Even though other conversions are theoretically possible, they must not be made. For example, piece rates should not be converted to an hourly equivalent. Nor should piece rates by weight be converted to volume. Even though a bushel of apples weighs roughly 42 lbs., a piece rate in apples in pounds should be in a separate array from piece rates by volume. Similarly, hourly, weekly, and monthly rates should not be equated but should be put in separate arrays.

B. Special Procedures for Open Range Occupations

As mentioned above, the survey findings for all occupations other than range production of livestock (especially sheepherders) should be only cash wages. In two separate cases, an Administrative Law Judge (ALJ) has ruled that the perquisites of free housing and free board must be considered in arraying wages in the range production of livestock. Figure 6 below is an example of a standard array, prior to the ALJ rulings.

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
	70	68	2
\$1,000 mo.	(d) 1	1	
\$ 950 mo.(+ housing)	(b) 3	3	
\$ 900 mo. (+ board)	(c) 3	3	
\$ 850 mo. (+ housing & board)	(a) 12	12	
\$ 800 mo. (+ housing)	(b) 2	2	
\$ 800 mo. (+ board)	(c) 1	1	
\$ 750 mo. (+ housing & board)	(a) 30	28	2
\$ 725 mo. (+ housing)	(b) 8	8	
\$ 700 mo. (+ housing & board)	(a) 10	10	

Figure 6

In the Total Workers column, each wage level has been coded (a), (b), (c) or (d). The ALJ decision requires that with survey findings like these, there should be four arrays:

- (a) The cash wage plus free housing and board
- (b) The cash wage plus free housing
- (c) The cash wage plus free board
- (d) A cash wage

The National Office can accept a Form 232 such as the one above (without the coding) because it contains all the information necessary to make a prevailing wage finding in accordance with the ALJ decisions. However, the preferred presentation is as follows:

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
	70	68	2
Sub-total- + Housing & Board	52	50	2
\$ 850 mo. (+ housing & board)	12	12	
\$ 750 mo. (+ housing & board)	30	28	2
\$ 700 mo. (+ housing & board)	10	10	
Sub-total- + Housing	13	13	
\$ 950 mo. (+ housing)	3	3	
\$ 800 mo. (+ housing)	2	2	
\$ 725 mo. (+ housing)	8	8	
Sub-total- + Board	4	4	
\$ 900 mo. (+ board)	3	3	
\$ 800 mo. (+board)	1	1	
\$1,000 mo.	1	1	

Figure 7

Remember, we must have the information about the provision of free room and free board. Other perquisites, such as "side of beef," should not be included in the array but the information should be collected in order to make a correct determination in accordance with 20 CFR 653.501 (d) (4): "The wages and working conditions are not less than the prevailing wages and working conditions...(Emphasis added)."

COLLECTING AND REPORTING THE NUMBER OF WORKERS WHO RECEIVE FREE HOUSING AND/OR FREE BOARD IS REQUIRED FOR RANGE LIVESTOCK WAGE SURVEYS. DO NOT REPORT SUCH INFORMATION ON THE FORM 232 FOR OTHER OCCUPATIONS!!!

9. MAKING A DETERMINATION

Once the data has been correctly arrayed on the Form 232, a determination can be made and the finding can be made in section 1 of the Form 232. For the following survey data in Figure 3 which we saw earlier

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
Total	200	45	155
Sub-Total Hourly	108	38	70
\$6.21/hour	41	11	30
\$5.25/hour	40		40
\$4.75/hour	27	27	
Sub-Total Piece Rate	92	7	85
\$0.65 EAB	79	7	72
\$0.625 EAB	13		13

Figure 3

The finding would be displayed thus:

1. PREVAILING WAGE RATE FINDINGS

a. All Workers	<u>\$5.25 hr. (51% rule)</u>
b. Instate	<u>No Finding (>25% rule)</u>
c. Interstate (including Contract P.R.)...	<u>\$5.25 hr. (40% rule)</u>

Figure 8

The survey data in **Figure 3** shows us a universe of 200 workers in the survey. Of that universe, only 45, or 22.5% are Instate workers. Therefore, no finding will be made for the Instate wages because they represent less than 25% of the universe. In a universe of 200, a wage paid to 40% or more of the workers would have to include at least 80 workers. There is no wage, hourly or piece rate, which was paid to 80 or more workers. Therefore, we analyze which mode was the dominant one. In this case, 108 workers were paid an hourly wage and 92 were paid by the piece. Therefore, the determination is based on the array of hourly wages.

The Interstate array of hourly wages has a universe of 70 workers. In a universe of 70, a wage paid to 28 or more workers represents 40% or more of the universe. Both the \$6.21 wage (30 workers) and the \$5.25 wage (40 workers) account for more than 40% of the universe. However, since the \$5.25 rate accounts for more workers, it is the prevailing rate for Interstate workers under the 40% rule. (In the sample, the basis for the determination is listed. Of course the National Office will figure out the basis without such notation. However, the notation speeds the review process and is appreciated.)

As mentioned above, no finding is made for Instate workers, since they represent less than 25% of the universe, even though they represent 35% (38 of 108) of the hourly universe.

For all workers, 40% of 108 is 43.2. Therefore, a wage would have to account for 44 or more workers to be the basis for the finding under the

40% rule. No wage accounts for that many workers. In a universe of 108, 51% equals 55.08. Therefore, the wage rate determined under the 51% rule must cumulatively cover at least 56 workers, starting with the lowest wage and working up. In this array, 27 workers receive \$4.75 an hour. Adding the 40 workers who receive \$5.25 to those 27, brings the cumulative total to 67, which exceeds the 56 threshold. The wage finding for all workers is thus \$5.25 per hour under the 51% rule.

To reiterate: The sequence of steps in analyzing the survey in making a determination is as follows:

- (a) Do both the Instate and Interstate totals represent 25% of the total universe of workers in the survey? If either one does not reach that threshold, no finding will be made in that category.
- (b) Does any wage account for 40% or more of the workers in the survey? If so, that wage is the prevailing wage. If two wages represent 40% or more, then the wage which accounts for the larger number of workers is the prevailing wage.
- (c) If no wage represents 40% of the workers and there is more than one mode of payment, then the prevailing wage determination is made on the array of the dominant mode. In making the determination in the dominant mode, the first screen is whether any wage represents 40% of all workers, Instate workers, or Interstate workers. If there is such a wage, that wage is prevailing for the category. (Assuming that the category is not designated "No Finding" in accordance with (a) above.)
- (d) If no wage is determined under (b) or (c) above, the array of the dominant mode is analyzed in accordance with the 51% rule. Beginning with the lowest wage, the number of workers receiving a wage are cumulated until the wage level is reached which equals or exceeds 51% of the universe in the category.

To illustrate (b) above, we will change the numbers in **Figure 3** only slightly. As you remember, **Figure 3** was as follows:

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
Total	200	45	155
Sub-Total Hourly	108	38	70
\$6.21/hour	41	11	30
\$5.25/hour	40		40
\$4.75/hour	27	27	
Sub-Total Piece Rate	92	7	85
\$0.65 EAB	79	7	72
\$0.625 EAB	13		13

Figure 3

The finding for **Figure 3** was \$5.25 an hour based on the dominant mode of hourly pay. **Figure 9** below has the same number of total workers and the same number of hourly and piece rate workers, but the finding is different.

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
Total	200	45	155
Sub-Total Hourly	108	38	70
\$6.21/hour	41	11	30
\$5.25/hour	40		40
\$4.75/hour	27	27	
Sub-Total Piece Rate	92	7	85
\$0.65 EAB	82	7	75
\$0.625 EAB	10		10

Figure 9

In Figure 9, there are 82 workers who were paid a piece rate of \$0.65 per EAB. Since 82 is more than 40% of 200, \$0.65 is the prevailing wage finding, even though more workers were paid hourly (108) than were paid by the piece (92). Therefore, the finding is as in Figure 10 below:

1. PREVAILING WAGE RATE FINDING

a. All Workers	<u>\$0.65 EAB (40% rule)</u>
b. Instate	<u>No Finding (>25% rule)</u>
c. Interstate (including Contract P.R.)...	<u>\$0.65 EAB (40% rule)</u>

Figure 10

MAKING A FINDING FOR RANGE LIVESTOCK WAGES

In Figure 7, the different modes of payment were in different arrays and that Figure is used because it is clearer. An identical finding would be made if the array was as in Figure 6.

4. NUMBER OF DOMESTIC HIRED WORKERS IN SAMPLE - BY STATE

Rate (Amount Per Unit)	NUMBER OF U.S. WORKERS		
	Total	Instate	Interstate (Incl. Contract P.R.)
	70	68	2
Sub-total- + Housing & Board	52	50	2
\$ 850 mo. (+ housing & board)	12	12	
\$ 750 mo. (+ housing & board)	30	28	2
\$ 700 mo. (+ housing & board)	10	10	
Sub-total- + Housing	13	13	
\$ 950 mo. (+ housing)	3	3	
\$ 800 mo. (+ housing)	2	2	
\$ 725 mo. (+ housing)	8	8	
Sub-total- +Board	4	4	
\$ 900 mo. (+ board)	3	3	
\$ 800 mo. (+board)	1	1	
\$1,000 mo.	1	1	

Figure 7

For **Figure 7**, the finding would be as follows:

1. PREVAILING WAGE RATE FINDINGS

a. All Workers	<u>\$750 mo. (40% rule)</u>
b. Instate	<u>\$750 mo.(40% rule)</u>
c. Interstate (including Contract P.R.)...	<u>No Finding (>25% rule)</u>

Figure 11

C. Sections 5 & 6.

Sections 5 & 6 were not covered at the conference. See the discussion on pages I-142 and 143 of ET Handbook 385.

10. PREVAILING PRACTICE SURVEYS

The clearance (ARS) regulations at 20 CFR 653.501 and the H-2A regulations at 20 CFR 655.102 (b) and .103 (f) require the Department to make determinations about prevailing practices in order to know when a job offer is acceptable. The list of possible practices which could be of concern is limited only by the variations by crop activity by wage reporting area. However, the H-2A regulations specifically require determinations for five practices:

- A. Provision of family housing;
- B. Frequency of wage payments;
- C. Workers (shepherders) supplying own bedding;
- D. Advance transportation; and
- E. Utilization of farm labor contractors.

For family housing, frequency of wage payments, and supplying own bedding, the survey includes both H-2A and non-H-2A employers.

For advance transportation and utilization of crew leaders, the survey includes only non-H-2A employers. Only the five practices above have a regulatory definition of "prevailing" which is found at 20 CFR 655.100.

There is no requirement that the surveys be done simultaneously with prevailing wage surveys. However, that is the most efficient time to do prevailing practice surveys.

Other aspects of employment which should routinely be included in prevailing practice surveys are the following:

- A. Provision of tools and equipment:
- B. Productivity standards (firing threshold);
- C. Occupational qualifications;
- D. Recruitment practices; and
- E. Crewleader overrides (when crew leaders are used).

The list above is not meant to be exhaustive. People doing surveys should be alert to the existence of practices in specific crop activities which need to be surveyed in order to comply with the 20 CFR 653.501 regulations.