

# Rural Migration News

## Blog 222

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### The H-2A Program and Nonfarm Jobs

The H-2A program allows farm employers who are unable to fill seasonal jobs to be certified by DOL to employ H-2A guest workers after they try and fail to recruit US workers. DOL must also determine that the presence of the H-2A workers will not adversely affect US workers.

The number of farm jobs certified by DOL to be filled by H-2A workers more than tripled, from 75,000 in FY05 to 275,000 in FY20, and increased by 20 percent between the half of FY20 and the first half of FY21, putting DOL on track to certify more than 300,000 jobs to be filled by H-2A workers.

During its peak years in the mid-1950s, the Bracero program certified 450,000 jobs a year for guest workers. At current growth rates, the H-2A program will be larger than the Bracero program as a share of US farm workers by 2025.

Over 88 percent of the H-2A jobs certified in FY20 were for crop farm workers, followed by 5.6 percent for agricultural equipment operators, four percent for animal farm workers, 1.2 percent for construction workers, and less than 0.5 percent each for truck drivers, graders and sorters,

and supervisors.

DOL aims to prevent H-2A workers from adversely affecting US workers by requiring employers to pay the highest of four wages, the federal or state minimum wage, the collective bargaining wage in the workplace, the prevailing wage, or the Adverse Effect Wage Rate (AEWR). The AEWR for each state is the average hourly earnings of non-supervisory crop and livestock workers as reported by farm employers to USDA's Farm Labor Survey (FLS) for the prior year, and range from \$12 to \$16 in 2021.

#### Proposals

DOL on July 26, 2019 proposed to change the basis for calculating the AEWR. Instead of one AEWR per state for all types of farm workers, DOL proposed to set AEWRs by job title, using the Standard Occupational Classification (SOC) to determine the type of job.

One reason to set AEWRs by job title is to prevent US employers from filling higher wage nonfarm jobs on farms at farm worker wages. DOL noted that an H-2A construction worker employed on an Ohio farm

could be paid the AEWR of \$12.93 in 2019, even though the average wage of Ohio construction laborers was \$20.27 or 60 percent more according to DOL's Bureau of Labor Statistics Occupational Employment Statistics (OES) program (p36182).

DOL proposed to use both FLS and OES wage data to set AEWRs by job title. The FLS has several job titles for farming in SOC 45, including supervisors in SOC 45-1000 plus four categories of workers in 45-2090:

- 45-2091, agricultural equipment operators;
- 45-2092 farm workers and laborers, crop, nursery, and greenhouse;
- 45-2093 farm workers, farm, ranch, and aquacultural animals and
- 45-2099, agricultural workers, all others

Under DOL's proposal, if the FLS generates a wage for the job title, the average hourly earnings of that job title from the year before would become the AEWR in the current year. If the job title is not in the FLS data, DOL would use the mean statewide OES wage for that job title to set the AEWR.

DOL's proposal to use the OES would raise AEWRs significantly for several job titles, including:

- SOC 11-9013 Farmers, Ranchers and Other Agricultural Managers
- SOC 45-1011 First Line Supervisors of Farming, Fishery, or Forestry Workers
- SOC 47-2061 Construction Laborers
- SOC 53-3032 Heavy and Tractor-Trailer Truck Drivers

#### Trucking

Construction, trucking and other nonfarm businesses that bring work-

## Alewelt Concrete Uses H-2A Workers to Build Hog and Other Buildings on Farms



Source: <https://alewelt-concrete.business.site/>

ers to farms to accomplish particular tasks can use the H-2A program to save on labor costs. As consumers in China and other countries consume more meat, the number of US hogs rose by 15 percent over the past decade to 75 million, including a third in Iowa.

Alewelt Concrete calls the workers who finish concrete in newly built hog barns “farm laborers” and pays them the Iowa AEW of \$15 in 2021. The average hourly OES wage for Iowa cement masons (SOC 47-2051) is 40 percent higher at \$21.

Alewelt’s application for DOL certification to employ H-2A workers to build hog barns was rejected in 2008. Alewelt was sued by some of its employees in 2010 when DOL approved its application for H2-A visas for hog-barn building workers. Alewelt settled with workers who alleged that they were not paid for all of the hours they worked and DOL approved more H-2A workers. Alewelt’s 3,475 certifications in FY16 made Alewelt one of the 10 largest H-2A employers that year.

Some trucking firms similarly classify drivers of heavy trucks as agricultural equipment operators and pay them the lower AEW rather than the higher OES wage. Two South Africans

employed by Kyle Mills Trucking and Custom Harvesting in Mississippi alleged in March 2021 that Kyle Mills hired them as agricultural equipment operators but required them to drive tractor trailer trucks up to 95 hours a week to deliver grain and fertilizer to farms.

The drivers were paid the AEW of less than \$12 an hour in 2021, even though the OES average wage for heavy and tractor-trailer truck drivers was over 90 percent higher at \$22 an hour. As farm workers, the drivers were not paid overtime wages.

DOL certified 15,396 jobs to be filled by agricultural equipment operators with H-2A visas in FY20. Some 2,288 or 15 percent of these agricultural equipment operator jobs included a requirement to have a commercial driver’s licenses (CDL), which is necessary to drive trucks with loads of 26,000 pounds or more.

DOL certified 205 jobs at 20 trucking businesses that required applicants to have truck-driving experience and CDLs in FY20. Most employers described the jobs they offer as agricultural equipment operator, although three used other SOCs, including one firm that called its jobs truck-driving jobs. One employer, D & D Harvesting & Trucking of Texas, offered a

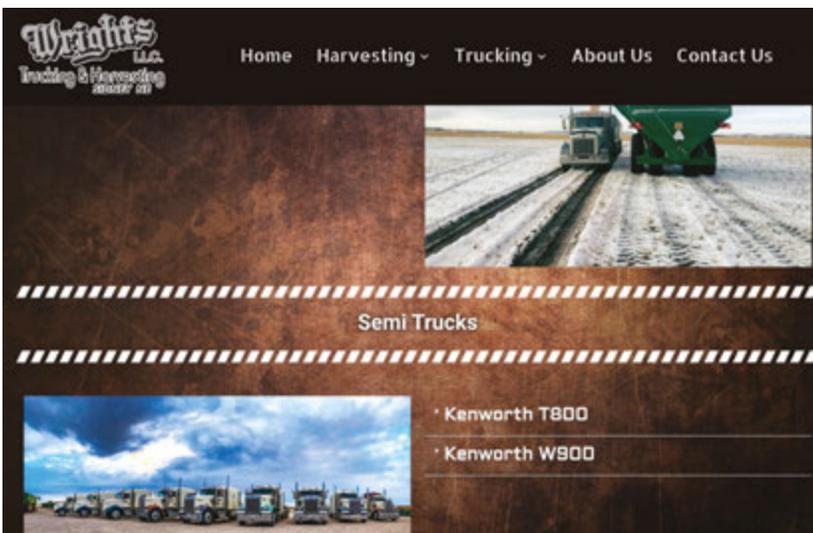
wage above the statewide AEW, but well below the OES wage for truck drivers.

Most of the trucking firms that hire H-2A workers are custom combining and trucking operations that harvest grain, silage, and other commodities and convey them from fields to storage facilities such as grain elevators or other off-farm locations. By paying the AEW rather than the OES truck-driver wage, these firms save 50 to 80 percent on hourly wages and discourage US truck drivers from applying for their jobs. Agricultural truck drivers often work long hours, and trucking firms in many states do not pay H-2A drivers who are classified as farm workers overtime wages.

**20 Trucking Firms were Certified to Fill 205 Jobs in FY20 that Required Applicants to have CDLs.  
All Except D&D Paid the AEW.**

Employer	Workers	NAICS	SOC	Job title	Work state	Wage (\$/hour)
2 Buds Trucking	6	111	45-2091	Agricultural Equipment Operator	Kansas	14.38
Brush Creek Trucking	2	1151	45-2091	Equipment Operator	Kansas	14.99
Chris Brown Trucking	3	1151	45-2091	Agricultural Equipment Operator	Kansas	14.38
Crane Harvesting & Trucking	25	1151	45-2091	Equipment Operator	Arizona	12.91
D & D Harvesting Trucking	8	1151	45-2091	Farm Worker Grain	Texas	14.99
FMR Trucking	5	1151	45-2091	Equipment Operator	Texas	12.67
Garrett Trucking	5	4841	45-2091	Farm Worker	Iowa	14.58
Harding Farming & Trucking	5	1111	45-2091	Farm Worker	Texas	12.67
Kepler Trucking	3	1151	45-2091	Farm Worker Grain	Nebraska	14.99
Mark Paplow Harvesting & Trucking	6	1151	45-2091	Agricultural Equipment Operators	North Dakota	14.99
Maurer Harvesting & Truck	12	1151	45-2091	Agricultural Equipment Operators	South Dakota	14.99
Mills Trucking & Custom Harvesting	6	1151	45-2091	Agricultural Equipment Operator	Mississippi	11.83
Parker Trucking & Harvesting	13	1151	45-2091	Agricultural Equipment Operators	Kansas	14.99
Towe Farms Trucking	6	1151	45-2091	Agricultural Equipment Operator	Arkansas	11.33
Vince Renner Trucking	5	1111	45-2091	Custom Combiner	Montana	13.48
Wrights Trucking & Harvesting	39	1151	45-2091	Farm Worker	Nebraska	14.99
Wrights Trucking	4	1111	45-2099	Farm worker	Nebraska	14.38
Elmore Truck Repair	12	1122	11-9013	Ranch hand	Minnesota	14.38
Harding Farming & Trucking	5	1111	45-2093	Farmworker	Texas	12.67
Fabian Morales Trucking	35	1151	53-3032	Ag Equipment	Texas	12.67
<b>Total</b>	<b>205</b>					

**Wrights LLC Calls H-2A Agricultural Equipment Operators “Farm Workers” and Pays Them the AEW**



Source: <https://wrights-llc.com/our-equipment>

DOL's July 26, 2019 Regulations Would Have Raised Wages for Ag Equipment Operators and Truck Drivers by Switching from the FLS to the OES

36252

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TABLE 2—AVERAGE HOURLY STATEWIDE WAGES AND THEIR SOURCES UNDER THE PROPOSED RULE—Continued

Region	State	SOC	Title	2016		2017		2018	
				Wage	Source	Wage	Source	Wage	Source.
Delta	AR	49-3041	Farm Equipment Mechanics and Service Technicians.	16.42	OES State	16.33	OES State	17.20	OES State.
Delta	AR	53-7064	Packers and Packagers, Hand ...	10.19	FLS Regional	10.21	FLS Regional	10.61	FLS Regional.
Delta	LA	11-9013	Farmers, Ranchers, and Other Agricultural Managers.	30.80	OES State	30.70	OES State	17.95	FLS Regional.
Delta	LA	45-1011	First-Line Supervisors of Farming, Fishing, and Forestry Workers.	26.52	OES State	27.24	OES State	16.25	FLS Regional.
Delta	LA	45-2041	Graders and Sorters, Agricultural Products.	10.61	FLS Regional	9.19	FLS Regional	16.15	OES State.
Delta	LA	45-2091	Agricultural Equipment Operators	10.61	FLS Regional	10.27	FLS Regional	10.77	FLS Regional.
Delta	LA	45-2092	Farmworkers and Laborers, Crop, Nursery, and Greenhouse.	10.43	FLS Regional	10.44	FLS Regional	10.40	FLS Regional.
Delta	LA	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals.	10.27	FLS Regional	10.33	FLS Regional	11.41	FLS Regional.
Delta	LA	45-2099	Agricultural Workers, All Other ...	20.04	OES State	26.79	OES State	24.13	OES State.
Delta	LA	53-7064	Packers and Packagers, Hand ...	10.19	FLS Regional	10.21	FLS Regional	10.61	FLS Regional.
Delta	MS	11-9013	Farmers, Ranchers, and Other Agricultural Managers.	23.51	OES State	21.98	FLS National	17.95	FLS Regional.
Delta	MS	45-1011	First-Line Supervisors of Farming, Fishing, and Forestry Workers.	22.15	OES State	20.71	OES State	16.25	FLS Regional.
Delta	MS	45-2041	Graders and Sorters, Agricultural Products.	10.61	FLS Regional	9.19	FLS Regional	11.41	OES State.
Delta	MS	45-2091	Agricultural Equipment Operators	10.61	FLS Regional	10.27	FLS Regional	10.77	FLS Regional.
Delta	MS	45-2092	Farmworkers and Laborers, Crop, Nursery, and Greenhouse.	10.43	FLS Regional	10.44	FLS Regional	10.40	FLS Regional.
Delta	MS	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals.	10.27	FLS Regional	10.33	FLS Regional	11.41	FLS Regional.
Delta	MS	45-2099	Agricultural Workers, All Other ...	11.38	OES State	14.54	OES State	13.36	FLS National.
Delta	MS	53-7064	Packers and Packagers, Hand ...	10.19	FLS Regional	10.21	FLS Regional	10.61	FLS Regional.
Florida	FL	11-9013	Farmers, Ranchers, and Other Agricultural Managers.	46.15	OES State	50.97	OES State	41.57	OES State.
Florida	FL	13-1074	Farm Labor Contractors	20.26	OES State	22.74	OES National	11.51	OES State.
Florida	FL	45-1011	First-Line Supervisors of Farming, Fishing, and Forestry Workers.	22.67	OES State	22.56	OES State	22.95	OES State.
Florida	FL	45-2041	Graders and Sorters, Agricultural Products.	10.75	FLS Regional	10.91	FLS Regional	9.29	OES State.
Florida	FL	45-2091	Agricultural Equipment Operators	13.09	OES State	14.50	OES State	11.75	FLS Regional.
Florida	FL	45-2092	Farmworkers and Laborers, Crop, Nursery, and Greenhouse.	10.66	FLS Regional	10.95	FLS Regional	11.21	FLS Regional.
Florida	FL	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals.	11.71	FLS Regional	12.80	FLS Regional	11.98	FLS Regional.
Florida	FL	45-2099	Agricultural Workers, All Other ...	15.31	OES National	16.48	OES State	10.40	FLS Regional.
Florida	FL	49-3041	Farm Equipment Mechanics and Service Technicians.	17.42	OES State	18.27	OES State	19.28	OES State.
Florida	FL	53-3032	Heavy and Tractor-Trailer Truck Drivers	18.19	OES State	18.91	OES State	19.78	OES State.

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