

# Rural Migration News

## Blog 253

DECEMBER 2021

### AEWRs, FLS, and OEWS

Farm employers may be certified to recruit and employ H-2A guest workers if they satisfy two major requirements: recruitment and adverse effect. The recruitment test requires employers to try and fail to recruit US workers, and the adverse effect test requires employers to offer and pay H-2A and similar US workers an Adverse Effect Wage Rate (AEWR) that is higher than the federal or state minimum wage.

Recruitment and housing were the major H-2A issues debated during the 1980s when the H-2A program was created by modifying the previous H-2 program in IRCA in 1986. California farmers feared that union supporters may respond to their recruitment ads and vote for a union under the state's labor law, leaving them with a contract even if the workers moved on to another farm. Few California farmers had the housing that was required for H-2A workers, so they requested that Congress approve a free-agent alternative to the H-2A program so they would not have to undergo supervised recruitment and provide housing to H-2A workers.

IRCA included a free-agent alternative to the H-2A program, the

Replenishment Agricultural Worker program, which required DOL and USDA to calculate the shortage of farm workers to determine the number of RAW-visas to issue to foreigners in the US or abroad. Farmers would not have had to try to recruit US workers before hiring RAWs, and would not have to provide RAW workers with housing.

Some 700,000 foreigners registered for RAW visas in the early 1990s, but no RAW visas were issued because DOL and USDA agreed with the Commission on Agricultural Workers that there were no farm labor shortages. The H-2A program has been the major avenue for US farmers to hire legal guest workers for almost four decades.

#### Alternatives

Unauthorized workers comprised half of US crop workers since the mid-1990s, prompting farmers to assert that there was a shortage of legal farm workers and Congress to consider alternatives to the H-2A program. The House considered dozens of non-certification guest worker proposals during the 1990s. Most would have issued free-agent visas to guest workers who would

have "floated" from one US farm job to another as under the RAW program. Foreign free-agent workers would maintain their legal status by not being jobless more than 30 or 60 days.

These free-agent proposals eliminated requirements that employers try and fail to recruit US workers and pay the AEWR. President Clinton threatened to veto any bill with an alternative guest worker program for agriculture, instead promising in 1995 that: "If our crackdown on illegal immigration contributes to labor shortages.... I will direct the departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers."

The Agricultural Job Opportunity, Benefits and Security Act (AgJOBS) went through several iterations in the late 1990s, including one version approved by the Senate in 1998 that would have created DOL-operated registries of US workers seeking farm jobs. If a farm employer requested 100 workers, and the registry referred 40, the employer could employ 60 AgJOBS guest workers who could have received a housing allowance to find their own housing.

Worker advocates opposed these early versions of AgJOBS, but in the year 2000 worker and employer representatives negotiated an AgJOBS compromise that would have repeated the IRCA approach to farm labor, viz, legalize currently unauthorized farm workers and streamline the H-2A program. A legalization and guest worker version of AgJOBS was included in Senate-approved comprehensive immigration reform bills in 2006 and 2013, but was not enacted into law.

The most recent alternative to the H-2A program is the Farm Workforce Modernization Act approved by the House in March 2021. The FWMA would legalize unauthorized farm workers and require them do farm work for at least four more years. Barriers to H-2A workers would be reduced, and dairy and other year-round farm jobs would be open to H-2A workers for the first time, but farm employers would still have to provide housing to guest workers. All farm employers would have to use E-Verify to check the status of new hires.

### **AEWRs and FLS**

While Congress debates what to do about unauthorized farm workers and H-2A reforms, the H-2A program expanded to a record 317,000 jobs in FY21. As the H-2A program expands, the AEWR has become a point of contention.

The AEWR is a minimum hourly wage set by DOL that must be paid to H-2A workers, and US workers hired by employers of H-2A workers who are in corresponding employment or similar jobs. The purpose of the AEWR is to prevent wage depression or adverse effects on US farm workers. In September 4, 2009 rule making, DOL explained that the AEWR provides “a floor below which wages cannot be negotiated, thereby strengthening the ability of this particularly vulnerable labor force [US farm workers] to negotiate over wages with growers who are in a stronger economic and financial position in contractual negotiations for employment.”

AEWRs were first introduced during the Bracero program in the late 1950s, when DOL concluded that farm wages in areas with Braceros had not risen. By setting an AEWR that was not depressed by the presence of foreign workers, DOL aimed to protect US workers.

The basis for setting AEWRs changed several times during the 1960s and 1970s, but in most years since 1987 DOL has published one AEWR per state based on the USDA’s Farm Labor Survey. The FLS contacts about 12,000 US farms that are believed to hire workers, and receives about 6,000 responses. Employers report the gross earnings of workers during the week that includes the 12th of the month and their hours worked, so that dividing earnings by hours yields average hourly earnings.

The FLS publishes the average hourly earnings of crop workers, livestock workers, and crop and livestock workers combined, which is the wage that DOL uses to set the AEWR for each state. In addition, FLS collects and publishes earnings data for specific occupations within the combined category of crop and livestock workers, including crop workers (45-2092), animal workers (45-2093), graders and sorters (45-2041), and equipment operators (45-2091).

In many cases, the FLS sample size is too small to make a wage estimate for a single state, so many states have the same AEWR. There are 18 FLS regions, including three states, CA, FL, and HI.

The farm employment reported by FLS farm employers is smaller than the farm employment indicated by other data sources, in part because the FLS includes only workers who are hired directly by farmers, not workers who are brought to farms by support service firms such as farm labor contractors.

The FLS reported that the employment of hired farm workers in 2021 averaged 672,000, from 5,000 in Hawaii to 143,000 in California. The FLS estimates that a third of average hired worker employment is along the Pacific Coast, and that eight per-

cent is in Florida and the southeastern states. The eight states around the Great Lakes have 16 percent of average hired worker employment, twice the share of Florida and the southeast.

Average hourly earnings sometimes rise or fall significantly from year-to-year in particular regions, prompting suits from employers when AEWRs rise. Between 2020 and 2021, FLS average hourly earnings of crop and livestock workers rose from less than one percent in the mountain states to over 10 percent in the Northeast II region that includes Pennsylvania. Across the US, the average hourly earnings of crop and livestock workers rose 6.4 percent to \$15.56 in 2021, more than the 4.6 percent increase in the Employment Cost Index for nonfarm workers.

Between 2017 and 2021, the average hourly earnings of crop and livestock workers rose by 28 percent, with a significant variance by region. Earnings rose fastest in the mountain states that include CO, up 42 percent, and slowest in FL and the southeastern states, up 12-13 percent. Florida and the southeastern states have the highest shares of H-2A workers in their farm workforces. There have been few studies of links between shares of H-2A workers and changes in FLS earnings (<https://migration.ucdavis.edu/rmn/blog/post/?id=2573>).

### **DOL**

H-2A workers fill different types of jobs on farms, from harvesting crops and tending livestock to operating equipment and constructing fences and buildings. Some of these jobs, even when conducted on farms, pay significantly more than the wages of crop and livestock workers, as with carpenters, mechanics, and welders who work on farms.

The FLS Publishes Average Hourly Earnings for Various Types of Workers Hired Directly by Farm Employers

**Annual Average Gross Wage Rates by Type of Worker – Regions and United States: 2020 and 2021**

[Excludes agricultural service workers and Alaska. Annual rates are averages of the published wage rates for each survey week weighted by the number of hours worked during the week]

Regions <sup>1</sup> and United States	Type of worker						Gross wage rates for all hired workers	
	Field workers		Livestock workers		Field and livestock combined		2020	2021 <sup>2</sup>
	2020	2021 <sup>2</sup>	2020	2021 <sup>2</sup>	2020	2021 <sup>2</sup>		
(dollars per hour)	(dollars per hour)	(dollars per hour)	(dollars per hour)	(dollars per hour)	(dollars per hour)	(dollars per hour)	(dollars per hour)	
Northeast I .....	15.29	16.22	14.54	14.79	14.99	15.66	16.09	16.61
Northeast II .....	14.35	15.90	13.37	14.51	14.05	15.54	15.10	16.44
Appalachian I .....	13.22	14.26	12.91	13.82	13.15	14.16	13.80	14.79
Appalachian II .....	12.89	13.75	13.05	14.08	12.96	13.89	13.55	14.50
Southeast .....	11.86	11.81	11.69	12.58	11.81	11.99	12.34	12.54
Florida .....	12.01	12.36	12.45	12.76	12.08	12.41	13.12	13.30
Lake .....	15.07	16.22	14.47	14.70	14.72	15.37	15.44	16.14
Cornbelt I .....	15.61	16.08	14.57	15.38	15.31	15.89	15.99	16.61
Cornbelt II .....	15.54	16.36	15.20	16.01	15.37	16.19	15.94	16.92
Delta .....	11.84	12.40	12.03	12.61	11.88	12.45	12.26	12.85
Northern Plains .....	16.68	16.99	15.12	15.90	15.89	16.47	16.46	16.93
Southern Plains .....	12.69	13.80	13.34	13.94	13.03	13.88	13.50	14.37
Mountain I .....	14.25	14.65	14.81	14.71	14.55	14.68	15.20	15.36
Mountain II .....	14.68	15.56	14.92	15.59	14.82	15.58	15.41	16.25
Mountain III .....	13.31	14.36	14.13	15.35	13.67	14.79	14.43	15.56
Pacific .....	16.41	17.47	15.78	16.84	16.34	17.41	16.93	18.07
California .....	16.01	17.46	16.22	17.74	16.05	17.51	17.51	18.76
Hawaii .....	15.15	16.33	17.83	18.01	15.56	16.54	17.25	18.05
United States .....	14.76	15.77	14.35	15.08	14.62	15.56	15.49	16.38

DOL recognized that at least five percent of H-2A jobs involved non-farm job titles, and proposed regulations July 26, 2019 that would have set AEWs by occupation or job title instead of one AEW per state. DOL wanted to ensure that H-2A workers who fill nonfarm jobs on farms are paid the prevailing wage for these jobs, which is often twice the AEW. The FLS collects data only from farmers who hire workers directly, not from nonfarm agricultural support firms that range from labor contractors to machinery repair firms who bring workers to farms.

DOL proposed that AEWs for job titles that were not in the FLS be based on Occupation Employment and Wage Statistics data collected by BLS from 200,000 nonfarm firms twice a year to generate wage estimates for over 800 occupations at

various geographic levels, including the US, states, and metro areas. The OEWS publishes the mean (\$19.29 an hour in May 2020) and median (\$18.05) wage for an occupation such as fence erector (SOC 47-4031) as well the wage at various rungs of the wage ladder, such as the 25th (\$14.83) and 75th (\$22.75) percentile wage to reflect the wages of entry-level and experienced workers.

DOL's July 2019 proposal would have set separate AEWs by agricultural occupation and state using FLS data for the job titles covered by the FLS. AEWs for other job titles, such as truck driver and construction worker. The result would have been slightly lower wages for the crop and livestock worker job titles, 45-2092 and 45-2093, because the higher-wage agricultural equipment operators, 45-2019,

would have been removed from the crop and livestock wage category and had their own AEW. The AEWs for job titles based on the OEWS, including managers and supervisors, construction workers, and truck drivers, would have been much higher than the current statewide AEW based on the FLS-derived average hourly earnings of crop and livestock workers.

Before the July 2019 DOL regulation was finalized, USDA cancelled the FLS in September 2020, prompting DOL to issue a proposed regulation in November 2020 that would have frozen AEWs at their 2020 levels in 2021 and 2022 and adjusted them afterward on basis of changes in the Employment Cost Index. However, a federal judge ordered the USDA to conduct the FLS survey and DOL to use the FLS data to set AEWs for

The FLS Publishes Average Hourly Earnings for Multistate Regions



Region	States
Northeast I	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.
Northeast II	Delaware, Maryland, New Jersey, Pennsylvania
Appalachian I	North Carolina, Virginia.
Appalachian II	Kentucky, Tennessee, West Virginia.
Southeast	Alabama, Georgia, South Carolina.
Lake	Michigan, Minnesota, Wisconsin.
Cornbelt I	Illinois, Indiana, Ohio.
Cornbelt II	Iowa, Missouri.
Delta	Arkansas, Louisiana, Mississippi.
Northern Plains	Kansas, Nebraska, North Dakota, South Dakota.
Southern Plains	Oklahoma, Texas.
Mountain I	Idaho, Montana, Wyoming.
Mountain II	Colorado, Nevada, Utah.
Mountain III	Arizona, New Mexico.
Pacific	Oregon, Washington.

2021. The Biden Administration in 2021 withdrew the November 2020 wage freeze regulation.

DOL proposed another change on December 1, 2021 to set AEWRs by job title. Over 90 percent of the jobs filled by H-2A workers are crop and livestock jobs for which AEWRs would continue to be set on the basis of the average hourly earnings data collected by the FLS. DOL would use OEWS data to set AEWRs for areas not covered by the FLS, Alaska and Puerto Rico, and if FLS data are not available.

For other job titles, DOL would use mean OEWS prevailing wages to set AEWRs, doubling some from e.g. \$13 to \$26 an hour. DOL noted that the FLS has since 2015 collected earnings data by Standard Occupational Classification, but does not publish earnings data by SOC job title. Farming occupations are in the 45-SOC,

and include agricultural equipment operators, 45-2091, crop workers, 45-2092, animal workers, 45-2093, and other agricultural workers, 45-2099.

DOL presented CPS data on the race and ethnicity of workers by the major SOC job titles in H-2A applications. Hispanics were 53 percent of cement masons, 46 percent of construction laborers, and 43 percent of persons in farming occupations, that is, the share of Hispanics was higher in CPS data in the nonfarm occupations in H-2A applications than in farming occupations. CPS data on occupations within farming are not available, but would likely show a higher Hispanic share for e.g. crop workers, 45-2092.

DOL considered two alternatives to its proposal to set AEWRs for most 45-SOC job titles using the FLS and to use the OEWS to set AEWRs

for other job titles. Under DOL's proposed AEWR regulation, there would be a 10-year transfer from employers to employees of \$295 million in 2020 dollars because AEWRs for nonfarm job titles would rise.

DOL's Alternative 1 would have set AEWRs as the highest statewide wage for a job title after reviewing both the FLS or the OEWS, and result in a transfer of \$1 billion from employers to employees over a decade as many AEWRs would rise. Alternative 2 would use only the OEWS to set AEWRs and result in a transfer of \$723 million from employees to employers, largely because the OEWS collects data only from nonfarm employers who bring workers to farms, some of whom are labor contractors whose employees have lower average hourly earnings than workers who are hired directly by farm employers.

## FLS Hired Worker Employment is Concentrated in the Pacific and Midwestern States

### Annual Average Number of Hired Workers and Gross Hours Worked – Regions and United States: 2020 and 2021

[Excludes agricultural service workers and Alaska]

Regions <sup>1</sup> and United States	Hired workers		Gross hours worked	
	2020 (1,000)	2021 <sup>2</sup> (1,000)	2020 (hours per week)	2021 <sup>2</sup> (hours per week)
Northeast I .....	32.0	31.5	41.2	41.1
Northeast II .....	26.5	31.5	40.0	37.5
Appalachian I .....	28.8	30.0	38.6	40.8
Appalachian II .....	23.5	23.0	39.2	40.0
Southeast .....	29.0	28.0	38.8	40.0
Florida .....	36.3	27.3	41.8	42.1
Lake .....	53.0	53.5	40.9	40.9
Cornbelt I .....	36.3	34.5	39.1	39.6
Cornbelt II .....	25.0	23.0	38.2	38.8
Delta .....	28.8	29.3	42.0	42.8
Northern Plains .....	38.0	37.0	43.3	45.7
Southern Plains .....	53.8	45.3	40.0	40.6
Mountain I .....	24.8	21.3	47.0	44.9
Mountain II .....	18.3	16.0	42.1	42.7
Mountain III .....	17.0	15.0	46.6	46.5
Pacific .....	72.5	78.0	40.7	39.8
California .....	150.3	143.0	41.5	41.3
Hawaii .....	4.3	5.0	34.7	36.6
United States .....	697.8	672.0	41.1	41.1

DOL's proposal to require employers to submit applications for H-2A workers by job title is likely to increase its workload, since applications for, e.g. equipment operators would have to be separated from those for crop workers. Instead of one AEWL announcement each year, there would be two, including the FLS-based AEWLs published at the beginning of each year and OEWS AEWLs published in July each year.

DOL reported that 9,927 unique employers filed applications for H-2A workers in FY21; there were 16,500 applications, but some employers filed multiple applications. DOL used Data Axle to determine that 80 percent or 2,105 of the 2,615 entities that could be matched with H-2A certification data were small, with an average 11 employees and \$3.6 million in annual revenue. DOL's data-matching exercise highlights the high share of applications

### FLS Average Hourly US Earnings Rose 6% from \$14.62 in 2020 to \$15.56 in 2021



from employers with nonfarm NAICS codes, including landscaping and fruit and vegetable marketing companies.

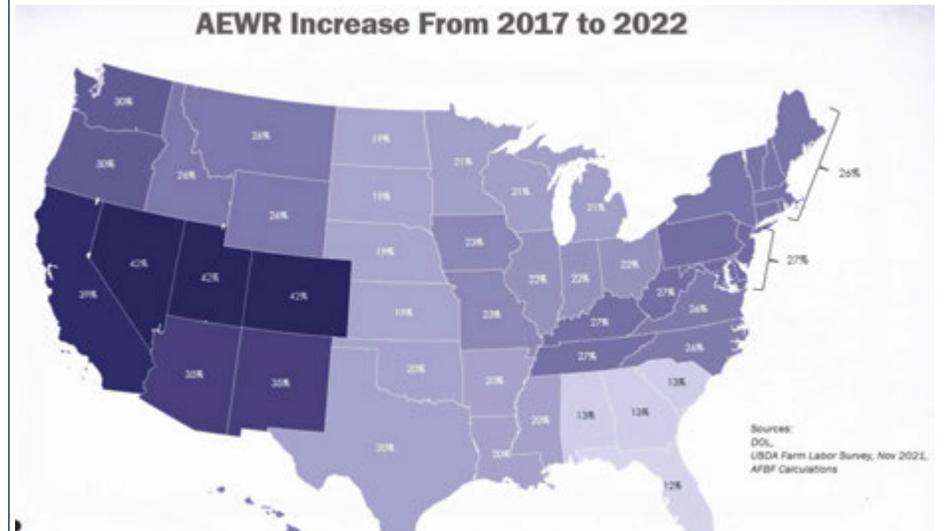
Competitive markets generate a wage that equates supply and demand and creates surpluses

for employers and workers. Some employers would have been willing to pay higher wages, and some workers would have been willing to work for lower wages, creating triangles of employer and worker surplus. If wages are set too high or too low, there are deadweight losses

because supply is not allowed to equal demand at the market-clearing wage.

DOL provides four examples of how AEWRs could affect labor supply and demand and the equilibrium wage. The most realistic example, Figure 3, shows that an unlimited supply of foreign workers is available at a wage below the AEWR. If foreign workers were admitted at this low wage, there would be maximum farm worker employment of mostly foreign workers and a very small US employee surplus due to few US workers willing to work for the low wage. There would be a

**FLS Average Hourly US Earnings Rose 6% from \$14.62 in 2020 to \$15.56 in 2021**



**DOL's July 2019 Proposed Rule Would have Raised AEWRs for some Nonfarm Job Titles**

**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
Corbett I	IL	47-2061	Construction Laborers	25.07	OES State	27.01	OES State	27.55	OES State
Corbett I	IL	53-7064	Packers and Packagers, Hand	12.31	OES State	11.91	OES State	12.31	OES State
Corbett I	IN	11-9013	Farmers, Ranchers, and Other Agricultural Managers	31.54	OES State	21.98	FLS National	30.10	OES State
Corbett I	IN	45-1011	First-Line Supervisors of Farm- ing, Fishing, and Forestry Workers	20.98	OES State	22.70	OES State	22.46	OES State
Corbett I	IN	45-2041	Graders and Sorters, Agricultural Products	13.08	FLS Regional	13.55	FLS Regional	10.43	FLS Regional
Corbett I	IN	45-2091	Agricultural Equipment Operators	17.41	OES State	17.42	OES State	14.76	FLS Regional
Corbett I	IN	45-2092	Farmworkers and Laborers, Crop, Nursery, and Green- house	11.93	FLS Regional	12.80	FLS Regional	11.53	FLS Regional
Corbett I	IN	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals	12.90	OES State	12.31	OES State	12.29	OES State
Corbett I	IN	45-2099	Agricultural Workers, All Other	15.31	OES National	16.88	OES National	10.12	OES State
Corbett I	IN	53-7064	Packers and Packagers, Hand	11.36	OES State	11.31	OES State	11.96	OES State
Corbett I	OH	11-9013	Farmers, Ranchers, and Other Agricultural Managers	32.14	OES State	40.03	OES State	39.74	OES State
Corbett I	OH	45-1011	First-Line Supervisors of Farm- ing, Fishing, and Forestry Workers	25.27	OES State	25.33	OES State	23.15	OES State
Corbett I	OH	45-2041	Graders and Sorters, Agricultural Products	13.08	FLS Regional	13.55	FLS Regional	10.43	FLS Regional
Corbett I	OH	45-2091	Agricultural Equipment Operators	16.22	OES State	16.76	OES State	14.76	FLS Regional
Corbett I	OH	45-2092	Farmworkers and Laborers, Crop, Nursery, and Green- house	11.93	FLS Regional	12.80	FLS Regional	11.53	FLS Regional
Corbett I	OH	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals	12.84	OES State	13.68	OES State	13.92	OES State
Corbett I	OH	45-2099	Agricultural Workers, All Other	13.65	OES State	16.88	OES National	13.36	FLS National
Corbett I	OH	47-2061	Construction Laborers	18.93	OES State	19.20	OES State	20.27	OES State
Corbett I	OH	53-7064	Packers and Packagers, Hand	11.46	OES State	11.66	OES State	11.99	OES State
Corbett II	IA	11-9013	Farmers, Ranchers, and Other Agricultural Managers	37.05	OES State	37.28	OES State	34.50	OES State
Corbett II	IA	45-1011	First-Line Supervisors of Farm- ing, Fishing, and Forestry Workers	26.09	OES State	27.52	OES State	27.02	OES State
Corbett II	IA	45-2021	Animal Breeders	15.74	OES State	15.52	OES State	14.86	OES State
Corbett II	IA	45-2041	Graders and Sorters, Agricultural Products	13.73	OES State	13.56	OES State	14.24	OES State
Corbett II	IA	45-2091	Agricultural Equipment Operators	17.08	OES State	17.07	OES State	16.93	OES State
Corbett II	IA	45-2092	Farmworkers and Laborers, Crop, Nursery, and Green- house	13.73	OES State	13.12	OES State	11.82	FLS Regional
Corbett II	IA	45-2093	Farmworkers, Farm, Ranch, and Aquacultural Animals	12.55	FLS Regional	13.24	FLS Regional	13.57	FLS Regional
Corbett II	IA	45-2099	Agricultural Workers, All Other	13.37	OES State	14.70	OES State	15.56	OES State
Corbett II	IA	53-7064	Packers and Packagers, Hand	11.14	OES State	11.72	OES State	12.38	FLS Regional
Corbett II	MO	11-9013	Farmers, Ranchers, and Other Agricultural Managers	27.68	OES State	30.33	OES State	28.72	OES State
Corbett II	MO	45-1011	First-Line Supervisors of Farm- ing, Fishing, and Forestry Workers	21.63	OES State	22.34	OES State	23.37	OES State

CPS Data on Characteristics of US Farm Workers by SOC, 2021

SOC code	Description	% of employed people				Number of FY 2021 Q1-Q3 H-2A workers
		White	Black or African American	Asian	Hispanic or Latino	
45-0000 .....	Farming, fishing, and forestry occupations ..	90 .....	4 .....	2 .....	43 .....	(**)
47-2061 .....	Construction Laborers .....	87 .....	8 .....	1 .....	46 .....	2,107
53-3032 .....	Heavy and Tractor-Trailer Truck Drivers .....	77 .....	17 .....	3 .....	23 .....	526
45-1011 .....	First-Line Supervisors of Farming, Fishing, and Forestry Workers.	90 .....	5 .....	3 .....	28 .....	328
47-3012 .....	Helpers—Carpenters .....	Not available .....	Not available .....	Not available .....	Not available .....	104
45-4022 .....	Logging Equipment Operators .....	Not available .....	Not available .....	Not available .....	Not available .....	57
49-3041 .....	Farm Equipment Mechanics and Service Technicians.	94 .....	4 .....	1 .....	19 .....	55
47-2031 .....	Carpenters .....	88 .....	7 .....	2 .....	36 .....	30
47-3019 .....	Helpers, Construction Trades, All Other .....	Not available .....	Not available .....	Not available .....	Not available .....	18
47-2051 .....	Cement Masons and Concrete Finishers .....	83 .....	8 .....	1 .....	53 .....	16

\* Not available indicates that racial/ethnic data for that SOC code was not reported in the CPS data.  
 \*\* 45-2000 is included as a reference for the racial/ethnic distribution of agricultural workers generally.

**Note:** Estimates for the above race groups (White, Black or African American, and Asian) do not sum to totals because data are not presented for all races. Persons whose ethnicity is identified as Hispanic or Latino may be of any race.

DOL's Proposed FLS-OEWS Methodology Would Transfer \$295 Million from Employers to Workers Over a Decade

EXHIBIT 9—ESTIMATED MONETIZED TRANSFERS AND COSTS OF THE PROPOSED RULE  
 [2020 \$millions]

	Proposed rule (transfers from employers to employees)	Regulatory alternative 1 (transfers from employers to employees)	Regulatory alternative 2 (transfers from employees to employers)
Total 10-Year Transfer .....	\$295	\$1,033	\$723
Total with 3% Discount .....	254	890	623
Total with 7% Discount .....	212	742	519
Annualized Undiscounted Transfer .....	30	103	72
Annualized Transfer with 3% Discount .....	30	104	73
Annualized Transfer with 7% Discount .....	30	106	74

80% of H-2A Applications were Small, and Most had Nonfarm NAICS Codes

EXHIBIT 10—NUMBER OF H-2A SMALL EMPLOYERS BY NAICS CODE

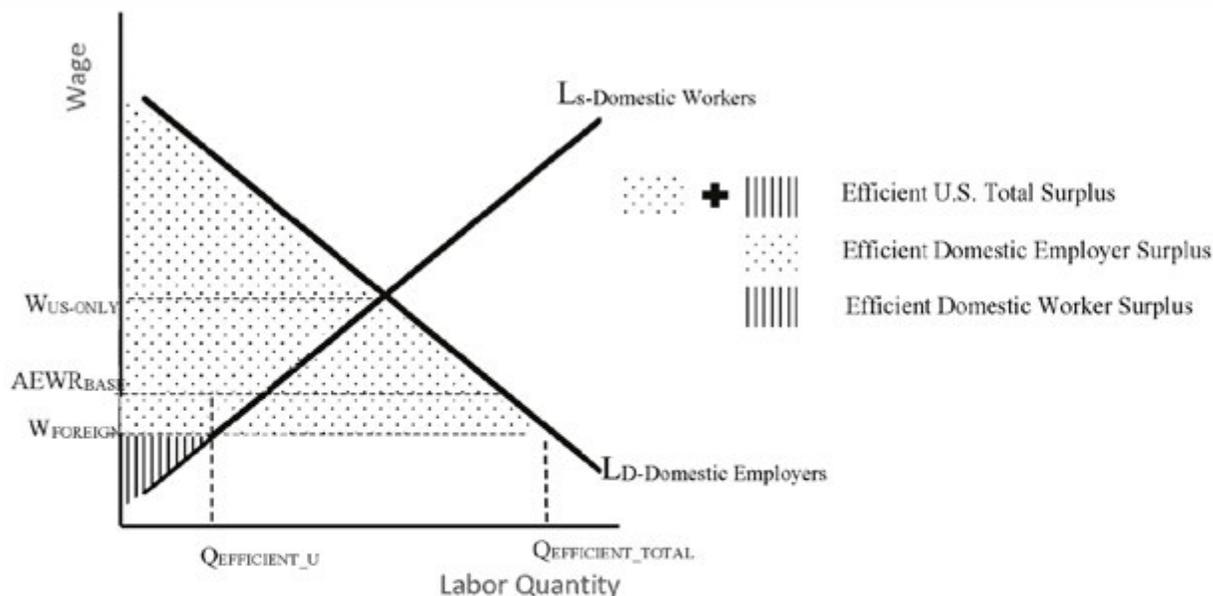
6-Digit NAICS	Description	Number of employers	Percent
111998 .....	All Other Miscellaneous Crop Farming .....	611	31
444220 .....	Nursery, Garden Center, and Farm Supply Stores .....	162	8
561730 .....	Landscaping Services .....	134	7
445230 .....	Fruit and Vegetable Markets .....	127	6
424480 .....	Fresh Fruit and Vegetable Merchant Wholesalers .....	84	4
111339 .....	Other Noncitrus Fruit Farming .....	78	4
112990 .....	All Other Animal Production .....	57	3
424930 .....	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers .....	51	3
424910 .....	Farm Supplies Merchant Wholesalers .....	41	2
484230 .....	Specialized Freight (except Used Goods) Trucking, Long-Distance .....	39	2

large employer surplus due to the low wage.

Setting an AEWR that is above the wage that could attract an unlimited number of foreign workers, but below the wage that would equate the supply and demand of only US

workers, would slightly increase the number of US workers employed and slightly decrease total farm employment and employer surplus. DOL's analysis assumes that foreign and US workers are perfect substitutes, which is unlikely to be true since foreign workers are younger

and typically more productive in hand-labor tasks. In some cases, foreign workers complement US workers, as when foreign hand harvesters support the jobs of US packing workers.



**Figure 3: Under the efficient competitive equilibrium with no AEWR, assuming domestic and foreign labor are perfect substitutes and foreign labor is infinitely supplied at wage  $W_{FOREIGN}$ , U.S. employers will hire  $Q_{CE\_TOTAL}$  number of workers at the labor market competitive equilibrium wage rate ( $W_{FOREIGN}$ ) below the equilibrium wage rate  $W_{US\_ONLY}$  if no foreign workers were allowed. With a large supply of foreign workers willing to work at  $W_{FOREIGN}$ , U.S. employers will not need to raise the wage rate any further to attract more workers. The number of U.S. workers willing to work at that wage rate is  $Q_{CE\_US}$ . This results in the Efficient Domestic Employer Surplus, the Efficient Domestic Worker Surplus, and the Efficient U.S. Total Surplus. Because any change in quantity of labor would decrease total surplus, total surplus is maximized and DWL is zero.**

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