



H-2A Agricultural Clearance Order  
 Form ETA-790A  
 U.S. Department of Labor

**A. Job Offer Information**

1. Job Title *								
2. Workers Needed *		a. Total	b. H-2A Workers	3. First Date *				4. Last Date *
5. Will this job generally require the worker to be on-call 24 hours a day and 7 days a week? * If "Yes", proceed to question 8. If "No", complete questions 6 and 7 below.								<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Anticipated days and hours of work per week (an entry is required for each box below) *						7. Hourly Work Schedule *		
	a. Total Hours		c. Monday	e. Wednesday	g. Friday	a. ____ : ____	<input type="checkbox"/> AM <input type="checkbox"/> PM	
	b. Sunday		d. Tuesday	f. Thursday	h. Saturday	b. ____ : ____	<input type="checkbox"/> AM <input type="checkbox"/> PM	
<b>Temporary Agricultural Services and Wage Offer Information</b>								
8a. Job Duties - Description of the specific services or labor to be performed.* (A response must begin in the space provided below on this form. Use <b>Addendum C</b> only if additional space is needed.)								
8b. Wage Offer *		8c. Per *		8d. Piece Rate Offer \$		8e. Piece Rate Units / Estimated Hourly Rate \$		
\$ ____ . ____		<input type="checkbox"/> HOUR <input type="checkbox"/> MONTH		\$ ____ . ____				
8f. Additional Information on Special Pay / Estimated Hourly Rate(s)								
8g. Overtime Pay - Is overtime pay available for this job opportunity at any worksite locations? * If yes, use <b>Addendum C</b> to describe the applicable overtime premium wage rate(s) for overtime hours worked and the circumstances under which the wage rate(s) for such overtime hours would be paid.							<input type="checkbox"/> Yes <input type="checkbox"/> No	
9. Are there any other wage rates, beyond those identified above in sections 8.b. through 8.g., that may apply to the job duties identified under this job order? If yes, use <b>Addendum A</b> to disclose the additional wage rate(s) for each crop or agricultural activity and geographic area of employment. *							<input type="checkbox"/> Yes <input type="checkbox"/> No	
10. Frequency of Pay: * <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify): _____								
11. Minimum Productivity/Performance Standards - Are there any minimum productivity standards that will be required of any worker(s) performing work under this job opportunity as a condition of job retention, or are there any other performance criteria that the employer will use to evaluate job performance? If yes, use <b>Addendum C</b> to describe the minimum productivity and performance standards or criteria that may serve as a basis for termination for cause.							<input type="checkbox"/> Yes <input type="checkbox"/> No	



H-2A Agricultural Clearance Order  
 Form ETA-790A  
 U.S. Department of Labor

**B. Minimum Job Qualifications/Requirements**

1. Education: minimum U.S. diploma/degree required. *			
<input type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's or higher <input type="checkbox"/> Other degree (JD, MD, etc.)			
2. Work Experience: number of <u>months</u> required. *		3. Training: number of <u>months</u> required. *	
4. Basic Job Requirements (check all that apply) §			
<input type="checkbox"/> a. Certification/license requirements		<input type="checkbox"/> f. Exposure to extreme temperatures	
<input type="checkbox"/> b. Driver requirements		<input type="checkbox"/> g. Extensive pushing or pulling	
<input type="checkbox"/> c. Criminal background check		<input type="checkbox"/> h. Extensive sitting or walking	
<input type="checkbox"/> d. Drug screen		<input type="checkbox"/> i. Frequent stooping or bending over	
<input type="checkbox"/> e. Lifting requirement _____ lbs.		<input type="checkbox"/> j. Repetitive movements	
5a. Supervision: does this position supervise the work of other employees? *		5b. If "Yes" to question 5a, enter the number of employees worker will supervise. §	
<input type="checkbox"/> Yes <input type="checkbox"/> No			
6. Additional Information Regarding Job Qualifications/Requirements. * (A response must begin in the space provided below on this form. Use <b>Addendum C</b> if additional space is needed. If no additional skills or requirements, enter " <b>NONE</b> " below)			

**C. Place of Employment Information**

1. Place of Employment Address/Location *				
2. City *		3. State *	4. Postal Code *	5. County *
6. Additional Place of Employment Information and Crop or Agricultural Activity. (If no additional information, enter " <b>NONE</b> " below) *				
7. Is a completed <b>Addendum B</b> providing additional information on the places of employment and/or agricultural businesses who will employ workers, or to whom the employer will be providing workers, attached to this job order? *				<input type="checkbox"/> Yes <input type="checkbox"/> N/A

**D. Housing Information**

1. Housing Address/Location *				
2. City *		3. State *	4. Postal Code *	5. County *
6. Type of Housing (check only one) *			7. Total Units *	8. Total Occupancy *
<input type="checkbox"/> Employer-provided (including mobile or range) <input type="checkbox"/> Rental or public accommodations				
9. Identify the entity that determined the housing met all applicable standards: *				
<input type="checkbox"/> Local authority <input type="checkbox"/> SWA <input type="checkbox"/> Other State authority <input type="checkbox"/> Federal authority <input type="checkbox"/> Other (specify): _____				
10. Additional Housing Information. (If no additional information, enter " <b>NONE</b> " below) *				
11. Is a completed <b>Addendum B</b> providing additional information on housing that will be provided to workers attached to this job order? *				<input type="checkbox"/> Yes <input type="checkbox"/> N/A



H-2A Agricultural Clearance Order  
 Form ETA-790A  
 U.S. Department of Labor

**E. Additional Material Terms and Conditions of the Job Offer**

Respond to each item below and mark the checkbox to indicate that the corresponding section(s) of the Form ETA-790A, Addendum C, providing a detailed explanation of the material term(s) or condition(s) of employment is attached to this job order.

1a. <b>Provision of Meals:</b> Description of <u>how</u> the employer will provide each worker who resides in employer provided or secured housing with three meals per day or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. *		<input type="checkbox"/>	
1b. The employer:	<input type="checkbox"/> <b>WILL NOT</b> charge workers for meals.		
	<input type="checkbox"/> <b>WILL</b> charge each worker for meals at	\$ _____ . ____	per day, if meals are provided.
2. <b>Daily Transportation:</b> Description of how the employer will provide transportation to each worker who resides in employer provided or secured housing, at no cost to workers, from the location of such housing and, if applicable, centralized pick-up points to the places of employment at the beginning and end of each workday. If the daily transportation at no cost to workers is available to workers who do not reside in employer-provided housing, specify the transportation benefit to the worker(s). *		<input type="checkbox"/>	
3a. <b>Inbound/Outbound Transportation:</b> Description of how the employer will provide workers with transportation (a) to the place of employment from the place from which the worker has come to work for the employer (i.e., inbound) and (b) from the place of employment to the place from which the worker departed (i.e., outbound). State whether such transportation, and related daily subsistence, will be provided by the employer or how the employer will make payment to the worker for reasonable costs incurred (e.g., by advance payment or reimbursement).*		<input type="checkbox"/>	
3b. During the travel described in Item 3a, the employer will pay for or reimburse daily meals by providing each worker *	a. no less than	\$ _____ . ____	per day *
	b. no more than	\$ _____ . ____	per day with receipts *
4. <b>Deductions from Pay:</b> Description of all deduction(s) from the worker's paycheck the employer is required to make by law <u>and</u> all other deductions not required by law the employer will make from the worker's paycheck, and, if known, the amount(s) for each deduction. *		<input type="checkbox"/>	
5. <b>Other Material Terms and Conditions:</b> Description(s) of any other material terms, conditions, and benefits (monetary and non-monetary) that will be provided by the employer under this job offer. §		<input type="checkbox"/>	

**F. Referral and Hiring Instructions**

1. Explain <u>how</u> prospective applicants may be considered for employment under this job order, including verifiable contact information for the employer, methods of contacting the employer directly, and the days and hours applicants will be considered for the job opportunity. * (A complete response must be disclosed below. Use of Addendum C <b>not permitted</b> .)		
2. Employer Telephone Number to Apply *	3. Extension §	4. Employer Email Address to Apply *
5. Employer Website Address (URL) to Apply *		



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

**G. Conditions of Employment and Assurances for H-2A Agricultural Clearance Orders**

By virtue of my signature below, I **HEREBY CERTIFY** my knowledge of and compliance with 20 CFR 653, subpart F, 20 CFR part 655, subpart B, 29 CFR part 501, and all applicable Federal, State, and local laws and regulations, including health and safety laws, and certify the following conditions of employment:

1. **JOB OPPORTUNITY:** Employer assures that the job opportunity identified in this clearance order (hereinafter also referred to as the "job order") is a full-time temporary position being placed with the SWA in connection with an *H-2A Application for Temporary Employment Certification* for H-2A workers and this clearance order satisfies the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655, subpart B. This job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR part 655, subpart B. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship.
2. **NO STRIKE, LOCKOUT, OR WORK STOPPAGE:** Employer assures that this job opportunity, including all places of employment for which the employer is requesting temporary agricultural labor certification does not currently have workers on strike or being locked out in the course of a labor dispute. 20 CFR 655.135(b).
3. **HOUSING FOR WORKERS:** Employer agrees to provide or secure housing for the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence at the end of the work day. That housing complies with the applicable local, State, and/or Federal standards and is sufficient to house the specified number of workers requested through the clearance system. The employer will provide the housing without charge to the worker. Any charges for rental housing will be paid directly by the employer to the owner or operator of the housing. If public accommodations or public housing are provided to workers, the employer agrees to pay all housing-related charges directly to the housing's management. The employer agrees that charges in the form of deposits for bedding or other similar incidentals related to housing (e.g., utilities) must not be levied upon workers. However, the employer may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation. When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, the employer agrees to provide family housing at no cost to workers with families who request it. The employer agrees to permit workers residing in employer-furnished housing to invite, or accept at their discretion, guests to their living quarters and/or the common areas or outdoor spaces near such housing during time that is outside of the workers' workday, subject only to reasonable restrictions designed to protect worker safety or prevent interference with other workers' enjoyment of these areas. Because workers' ability to accept guests at their discretion depends on the ability of potential guests to contact and seek an invitation from those workers, restrictions impeding this ability to contact and seek an invitation will be evaluated as restrictions on the workers' ability to accept guests. 20 CFR 655.122(d), 655.135(n), 653.501(c)(3)(vi).

*Request for Conditional Access to Intrastate or Interstate Clearance System:* Employer assures that the housing disclosed on this clearance order will be in full compliance with all applicable local, State, and/or Federal standards at least 20 calendar days before the housing is to be occupied. 20 CFR 653.502(a)(3). The Certifying Officer will not certify the application until the employer provides evidence that housing has been inspected and approved or, in the case of rental or public accommodations, is otherwise in full compliance.

4. **WORKERS' COMPENSATION COVERAGE:** Employer agrees to provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer agrees to provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment. 20 CFR 655.122(e).
5. **EMPLOYER-PROVIDED TOOLS AND EQUIPMENT:** Employer agrees to provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. 20 CFR 655.122(f), .210(d), or .302(c).
6. **MEALS:** Employer agrees to provide each worker with three meals a day or furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer will state the charge, if any, to the worker for such meals. The amount of meal charges is governed by 20 CFR 655.173. 20 CFR 655.122(g). When a charge or deduction for the cost of meals would bring the worker's wage below the minimum wage set by the FLSA at 29 U.S.C. 206, the charge or deduction must meet the requirements of 29 U.S.C. 203(m) of the FLSA, including the recordkeeping requirements found at 29 CFR 516.27.

For workers engaged in the herding or production of livestock on the range, the employer agrees to provide each worker, without charge or deposit charge, (1) either three sufficient meals a day, or free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals. To be sufficient or adequate, the meals or food provided must include a daily source of protein, vitamins, and minerals; and (2) adequate potable water, or water that can be easily rendered potable and the means to do so. 20 CFR 655.210(e).

7. **TRANSPORTATION AND DAILY SUBSISTENCE:** Employer agrees to provide the following transportation and daily subsistence benefits to eligible workers.

A. *Transportation to Place of Employment (Inbound)*

If the worker completes 50 percent of the work contract period, and the employer did not directly provide such transportation or subsistence or otherwise has not yet paid the worker for such transportation or subsistence costs, the employer agrees to reimburse the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker came to work for the employer to the employer's place of employment, whether in the U.S. or abroad. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount the employer will pay for daily subsistence expenses are those amounts disclosed in



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

this clearance order, which are at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event will be less than the amount permitted under 20 CFR 655.173(a). The employer understands that the Fair Labor Standards Act applies independently of the H-2A requirements and imposes obligations on employers regarding payment of wages. 20 CFR 655.122(h)(1).

**B. Transportation from Place of Employment (Outbound)**

If the worker completes the work contract period, or is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer agrees to provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. Return transportation will not be provided to workers who voluntarily abandon employment before the end of the work contract period, or who are terminated for cause, if the employer follows the notification requirements in 20 CFR 655.122(n).

If the worker has contracted with a subsequent employer who has not agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the employer must provide for such expenses. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the subsequent employer must provide or pay for such expenses.

The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the employer's obligation to hire U.S. workers who apply or are referred after the employer's date of need during the recruitment period set out in 20 CFR 655.135(d). 20 CFR 655.122(h)(2).

**C. Daily Transportation**

Employer agrees to provide transportation between housing provided or secured by the employer and the employer's place(s) of employment at no cost to the worker. 20 CFR 655.122(h)(3).

**D. Compliance with Transportation Standards**

Employer assures that all employer-provided transportation will comply with all applicable Federal, State, or local laws and regulations. Employer agrees to provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.104 or 500.105 and 29 CFR 500.120 to 500.128. The employer must not operate, or allow any other person to operate, any employer-provided transportation that is required by the U.S. Department of Transportation regulations, including 49 CFR 571.208, to be manufactured with seat belts, unless all passengers and the driver are properly restrained by seat belts meeting standards established by the U.S. Department of Transportation, including 49 CFR 571.209 and 49 CFR 571.210. If workers' compensation is used to cover transportation, in lieu of vehicle insurance, the employer will ensure that such workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation. Employer agrees to have property damage insurance. 20 CFR 655.122(h)(4).

8. **THREE-FOURTHS GUARANTEE:** Employer agrees to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any. 20 CFR 655.122(i). In the event the worker begins working later than the specified beginning date of the contract, the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect. 20 CFR 655.122(i)(1)(i).

The employer may offer the worker more than the specified hours of work on a single workday. For purposes of meeting the three-fourths guarantee, the worker will not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays. If, during the total work contract period, the employer affords the U.S. or H-2A worker less employment than that required under this guarantee, the employer will pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer will not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order. All hours of work actually performed may be counted by the employer in calculating whether the period of guaranteed employment has been met. Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work, and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays), may be counted by the employer in calculating whether the period of guaranteed employment has been met. 20 CFR 655.122(i).

If the worker is paid on a piece rate basis, the employer agrees to use the worker's average hourly piece rate earnings or the required hourly wage rate, whichever is higher, to calculate the amount due under the three-fourths guarantee. 20 CFR 655.122(i).

If the worker voluntarily abandons employment before the end of the period of employment set forth in the job order, or is terminated for cause, and the employer follows the notification requirements in 20 CFR 655.122(n), the worker is not entitled to the three-fourths guarantee. The employer is not liable for payment of the three-fourths guarantee to an H-2A worker whom the Department of Labor certifies is displaced due to the employer's requirement to hire qualified and available U.S. workers during the recruitment period set out in 20 CFR 655.135(d), which lasts until 50 percent of the period of the work contract has elapsed (50 percent rule). 20 CFR 655.122(i).

**Important Note:** In circumstances where the work contract is terminated due to contract impossibility under 20 CFR 655.122(o), the three-fourths guarantee period ends on the date of termination.



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

9. **EARNINGS RECORDS:** Employer agrees to keep accurate and adequate records with respect to the workers' earnings at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. The records must include each worker's permanent address, and, when available, permanent email address, and phone number(s). All records must be available for inspection and transcription by the Department of Labor or a duly authorized and designated representative, and by the worker and representatives designated by the worker as evidenced by appropriate documentation. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Department of Labor, or a duly authorized and designated representative, and by the worker and designated representatives. The content of earnings records must meet all regulatory requirements and be retained by the employer for a period of not less than 3 years after the date of certification by the Department of Labor. 20 CFR 655.122(j).
10. **HOURS AND EARNINGS STATEMENTS:** Employer agrees to furnish to the worker on or before each payday in one or more written statements the following information: (1) the worker's total earnings for the pay period; (2) the worker's hourly rate and/or piece rate of pay; (3) the hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in 20 CFR 655.122(i), separate from any hours offered over and above the guarantee); (4) the hours actually worked by the worker; (5) an itemization of all deductions made from the worker's wages; (6) if piece rates are used, the units produced daily; (7) beginning and ending dates of the pay period; and (8) the employer's name, address and FEIN. 20 CFR 655.122(k).

For workers engaged in the herding or production of livestock on the range, the employer is exempt from recording and furnishing the hours actually worked each day, the time the worker begins and ends each workday, as well as the nature and amount of work performed, but otherwise must comply with the earnings records and hours and earnings statement requirements set out in 20 CFR 655.122(j) and (k). The employer agrees to keep daily records indicating whether the site of the employee's work was on the range or off the range. If the employer prorates a worker's wage because of the worker's voluntary absence for personal reasons, it must also keep a record of the reason for the worker's absence. 20 CFR 655.210(f).

11. **DELAYED START OF WORK:** In the event of a minor delay in the start of work, the employer will notify each worker and the State Workforce Agency of the delay, in accordance with 20 CFR 655.175(b)(2)(i). The employer will provide to all workers who are already traveling to the place of employment, upon their arrival and without cost to the workers until work commences, daily subsistence in the same amount required during travel under 20 CFR 655.122(h)(1), except for days for which the worker receives compensation under 20 CFR 655.175(b)(2)(ii). If the employer fails to provide timely notification to any worker(s), the employer will pay such worker(s) for each hour of the offered work schedule in the job order, for each day that work is delayed, for a period up to 14 calendar days, in accordance with 20 CFR 655.175(b)(2)(ii). Employers must continue to provide housing in accordance with 20 CFR 655.122(d). The employer will comply with similar obligations to U.S. workers under 20 CFR 653.501(c)(3), described further below in Item 22, ADDITIONAL ASSURANCES FOR CLEARANCE ORDERS.
12. **RATES OF PAY:** The employer agrees that it will offer, advertise in its recruitment, and pay at least the Adverse Effect Wage Rate (AEWR); a prevailing wage rate, if the OFLC Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; the agreed-upon collective bargaining rate, the Federal minimum wage, the State minimum wage, or any other wage rate it intends to pay, whichever is highest. Where these wage rates are expressed in different units of pay, the employer must list the highest applicable wage rate for each unit of pay in its job order and must offer and advertise all of these wage rates in its recruitment. If the applicable AEWR or prevailing wage is adjusted during the contract period, and that new rate is higher than the highest of the AEWR, the prevailing wage, the collective bargaining rate, the Federal minimum wage, or the State minimum wage, the employer will increase the pay of all employees in the same occupation to the higher rate no later than the effective date of the adjustment. If the new AEWR or prevailing wage is lower than the rate guaranteed on this job order, the employer will continue to pay at least the rate guaranteed on this job order.

At the end of the pay period, the employer must calculate workers' wages using the wage rate that will result in the highest wages for each worker in each pay period. Where the wage rates set forth in § 655.120(a)(1) include both hourly and non-hourly wage rates, the employer must calculate each worker's wages, in each pay period, using the highest wage rate for each unit of pay, and pay the worker the highest of these wages for that pay period. When calculating wages based on an hourly wage rate, the calculation must reflect every hour or portion thereof worked during a pay period. The wages actually paid cannot be lower than the wages that would result from the wage rate(s) guaranteed in the job order. Where a worker performs multiple activities or tasks, each of which have different applicable wage rates, the employer must evaluate, with respect to each activity or task performed in the pay period, which of the applicable wage rates would result in the highest wage for the worker for the work performed and to pay the worker the highest wage with respect to each activity or task performed. 20 CFR 655.120, 655.122(l)(1) and (2). Where applicable, the employer agrees to pay the worker any overtime pay earned by the worker pursuant to the circumstances for the payment of overtime pay as described in this Form ETA-790A and in compliance with any applicable Federal, State, or local law requiring the overtime pay.

For workers engaged in the herding or production of livestock on the range, the employer agrees to pay the worker at least the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, or any other wage rate the employer intends to pay, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. If the offered wage disclosed in this clearance order is based on commissions, bonuses, or other incentives, the employer guarantees that the wage paid will equal or exceed the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, whichever is highest, and will be paid to each worker free and clear without any unauthorized deductions. The employer may prorate the wage for the initial and final pay periods of the job order period if its pay period does not match the beginning or ending dates of the job order. The employer also may prorate the wage if an employee is voluntarily unavailable to work for personal reasons. 20 CFR 655.210(g). Where applicable, the employer agrees to pay the worker any overtime pay earned by the worker pursuant to the circumstances for the payment of overtime pay as described in this Form ETA-790A and in compliance with any applicable Federal, State, or local law requiring the overtime pay.



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

13. **FREQUENCY OF PAY:** Employer agrees to pay workers when due based on the frequency disclosed in this clearance order. 20 CFR 655.122(m).
14. **TERMINATION FOR CAUSE OR ABANDONMENT OF EMPLOYMENT:** If a worker is terminated for cause or voluntarily abandons employment before the end of the contract period, the employer is not responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker, and that worker is not entitled to the three-fourths guarantee, if the employer notifies the U.S. Department of Labor and, if applicable, the Department of Homeland Security, in writing or by any other method specified by the Department of Labor or the Department of Homeland Security in the *Federal Register*, not later than 2 working days after the abandonment or termination occurs. A worker is terminated for cause only where the employer terminates the worker for failure to comply with employer policies or rules or to satisfactorily perform job duties in accordance with reasonable expectations based on criteria listed in the job offer, and only where the employer satisfies five conditions: The worker has been informed (in a language understood by the worker) of the policy, rule, or performance expectations, or reasonably should have known, of the policy, rule, or performance expectations; compliance was within the worker's control; the policy, rule, or performance expectation is reasonable and applied consistently to the employer's H-2A workers and workers in corresponding employment; the employer undertakes a fair and objective investigation; and the employer engages in progressive discipline. A worker will be deemed to have abandoned the work contract after the worker fails to show up for work at the regularly scheduled time for 5 consecutive work days without the consent of the employer. 20 CFR 655.122(n).
15. **CONTRACT IMPOSSIBILITY:** The work contract may be terminated before the end date of work specified in the work contract if the services of the workers are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes fulfillment of the contract impossible, as determined by the Department of Labor. In the event that the work contract is terminated, the employer agrees to fulfill the three-fourths guarantee for the time that has elapsed from the start date of work specified in the work contract to the date of termination. The employer also agrees that it will make efforts to transfer the worker to other comparable employment acceptable to the worker and consistent with existing immigration laws. In situations where a transfer is not affected, the employer agrees to return the worker at the employer's expense to the place from which the worker, disregarding intervening employment, came to work for the employer, or transport the worker to his/her next certified H-2A employer, whichever the worker prefers. The employer will also reimburse the worker the full amount of any deductions made by the employer from the worker's pay for transportation and subsistence expenses to the place of employment. The employer will also pay the worker for any transportation and subsistence expenses incurred by the worker to that employer's place of employment. The amounts the employer will pay for subsistence expenses per day are those amounts disclosed in this clearance order. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. 20 CFR 655.122(o).
- The employer is not required to pay for transportation and daily subsistence from the place of employment to a subsequent employer's place of employment if the worker has contracted with a subsequent employer who has agreed to provide or pay for the worker's transportation and subsistence expenses from the present employer's place of employment to the subsequent employer's place of employment. 20 CFR 655.122(h)(2).
16. **DEDUCTIONS FROM WORKER'S PAY:** Employer agrees to make all deductions from the worker's paycheck required by law. This job offer discloses all deductions not required by law which the employer will make from the worker's paycheck and all such deductions are reasonable, in accordance with 20 CFR 655.122(p) and 29 CFR part 531. The wage requirements of 20 CFR 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under 20 CFR part 655, subpart B, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. 20 CFR 655.122(p).
17. **DISCLOSURE OF WORK CONTRACT:** Employer agrees to provide a copy of the work contract to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences. For an H-2A worker coming to the employer from another H-2A employer or who does not require a visa for entry to the United States, the employer agrees to provide a copy of the work contract no later than the time an offer of employment is made to the H-2A worker. A copy of the work contract will be provided to each worker in a language understood by the worker, as necessary or reasonable. In the absence of a separate, written work contract entered into between the employer and the worker, the work contract at minimum will be the terms of this clearance order, including all Addenda, the certified *H-2A Application for Temporary Employment Certification* and any obligations required under 8 U.S.C. 1188, 29 CFR part 501, or 20 CFR part 655, subpart B. 20 CFR 655.122(q).
18. **NO UNFAIR TREATMENT:** The employer agrees that it has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has:
- Filed a complaint under or related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188;
  - Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188;
  - Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188;
  - Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188;



H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

- e. Consulted with a key service provider on matters related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188;
- f. Exercised or asserted on behalf of themselves or others any right or protection afforded by 8 U.S.C. 1188, 20 CFR part 655, subpart B, 29 CFR part 501, or any Department regulation promulgated under 8 U.S.C. 1188; or
- g. Filed a complaint, instituted, or caused to be instituted any proceeding; or testified, assisted, or participated (or is about to testify, assist, or participate) in any investigation, proceeding, or hearing under or related to any applicable Federal, State, or local laws or regulations, including safety and health, employment, and labor laws.

With respect to any person engaged in agriculture as defined and applied in 29 U.S.C. 203(f), the employer agrees that it has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person because such person:

- a. Has engaged in activities related to self-organization, including any effort to form, join, or assist a labor organization; or has engaged in other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions; or has refused to engage in any or all of such activities; or
- b. Has refused to attend an employer-sponsored meeting with the employer or its agent, representative or designee, if the primary purpose of the meeting is to communicate the employer's opinion concerning any activity protected by this subpart; or has refused to listen to employer-sponsored speech or view employer-sponsored communications, the primary purpose of which is to communicate the employer's opinion concerning any activity protected by this subpart.

19. **DESIGNATION OF REPRESENTATIVE:** With respect to any H-2A worker or worker in corresponding employment engaged in agriculture as defined and applied in 29 U.S.C. 203(f), employed at the place(s) of employment included in Form ETA-9142A, the employer must permit a worker to designate a representative to attend any investigatory interview that the worker reasonably believes might result in disciplinary action and must permit the worker to receive advice and active assistance from the designated representative during any such investigatory interview. Where the designated representative is present at the worksite at the time of the investigatory interview, the employer must permit the representative to attend the investigatory interview in person. Where the designated representative is not present at the time and place of the investigatory interview, the employer must permit the representative to attend the investigatory interview remotely, including by telephone, videoconference, or other means.

20. **NO CONFISCATION OF TRAVEL OR IDENTITY DOCUMENTS:** The employer agrees that it will not hold or confiscate a worker's passport, visa, or other immigration or government identification document except where the worker states in writing that: the worker voluntarily requested that the employer keep these documents safe, the employer did not direct the worker to submit such a request, and the worker understands that the documents will be returned to the worker immediately upon the worker's request.

21. **NO WAIVER OF RIGHTS:** The employer has not and will not seek to have a worker waive any rights conferred under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or 29 CFR part 501. No person may prohibit a worker from communicating with the Department of Labor or other Federal, State, or local agency concerning the worker's rights under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or 29 CFR part 501, including under other applicable laws. See 20 CFR 655.135(e), (h); 29 CFR 501.5.

22. **ADDITIONAL ASSURANCES FOR CLEARANCE ORDERS:**

- A. Employer will provide to workers placed through the clearance system the number of hours of work disclosed in this clearance order for the 14 calendar days beginning with the anticipated first date of need, unless the employer has amended the first date of need at least 10 business days before the original date of need as described in 20 CFR 653.501(c)(3)(iv). 20 CFR 653.501(c)(3)(i).
- B. Employer will notify the order-holding office or SWA immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. If there is a change to the date of need, the employer will notify the order-holding office or SWA, and each worker who has been placed on the clearance order using the contact information the worker provided to the employer, in writing (email and other forms of electronic written notification are acceptable) at least 10 business days prior to the original date of need. Notification to workers must be made in accordance with the language access requirements of 29 CFR 38.9 for workers with limited English proficiency. If a worker provides electronic contact information, such as an email address or telephone number, the employer will send notice using one of the electronic contact methods provided. If the employer provides non-written telephonic notice, such as a phone call, voice message, or an equivalent, the employer will also send written notice using the email or postal address provided by the worker at least 10 business days prior to the original date of need. The employer will maintain records of the notification and the date notification was sent to the order-holding office or SWA and workers for 3 years. Consistent with 20 CFR 653.501(c)(5), if the employer does not properly send notification to the order-holding office or SWA and workers at least 10 business days prior to the original date of need, the employer will provide the housing described on the clearance order to all migrant workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences. The employer will pay all placed workers for the hours listed on the clearance order and will provide or pay all other benefits and expenses described on the clearance order for each day work is delayed up to 14 calendar days or provide alternative work. 20 CFR 653.501(c)(3)(iv).





H-2A Agricultural Clearance Order  
Form ETA-790A  
U.S. Department of Labor

- C. Employer agrees that no extension of employment beyond the period of employment specified in the clearance order will relieve it from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation from the place of employment, as described in paragraph 7.B above. 20 CFR 653.501(c)(3)(ii).
- D. Employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration, and other employment-related laws. 20 CFR 653.501(c)(3)(iii).
- E. If acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on this clearance order, the employer assures that it has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State FLC certificate. 20 CFR 653.501(c)(3)(v).
- F. Employer assures that outreach workers will have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107. 20 CFR 653.501(c)(3)(vii).

**I declare under penalty of perjury that I have read and reviewed this clearance order, including every page of this Form ETA-790A and all supporting addendums, and that to the best of my knowledge, the information contained therein is true and accurate. This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. 20 CFR 653.501(c)(3)(viii). I understand that to knowingly furnish materially false information in the preparation of this form and/or any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both. 18 U.S.C. §§ 2, 1001.**

1. Last (family) name *	2. First (given) name *	3. Middle initial §
4. Title *		
5. Signature (or digital signature) *		6. Date signed *

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**

DRAFT--NOT FOR SUBMISSION