



Workforce Issuance

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☒ Policy ☐ Information

To: MassHire Workforce Board Chairs
MassHire Workforce Board Directors
MassHire Career Center Directors
MassHire Fiscal Officers
MDCS Operations Managers

cc: WIOA State Partners

From: Diane Hurley, Acting Director
MassHire Department of Career Services

Date: November 21, 2024

Subject: **H-2A (Agricultural) Clearance Orders (Job Orders) Roles and Responsibilities**

Purpose: To notify Local MassHire Workforce Boards, Career Center Operators and other workforce partners, in particular, agricultural employer partners, of the requirements and responsibilities associated with filing and posting H-2A related clearance orders, also known as job orders.

Background: The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

Seasonal nature refers to employment tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations.

Temporary nature refers to the employer's need to fill positions with temporary workers for no longer than one year, unless in extenuating circumstances.

The MassHire Department of Career Services (MDCS) is the designated State Workforce Agency (SWA), federally funded to support the Foreign Labor Certification Programs. For the H-2A Program, this includes:

- Review and posting of H-2A related clearance/job orders
- Inspection of required employer-provided housing facilities
- Administration of prevailing wage and prevailing practices surveys
- Referral and follow-up services to job applicants

Policy: THE PROCESS

Agricultural employers seeking to hire workers under the H-2A program must show that:

1. There are not sufficient able, willing, and qualified United States (U.S.) workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire temporary foreign workers (H-2A workers); and
2. The employment of the H-2A worker(s) will not adversely affect the wages and working conditions of similarly employed workers in the U.S.

Prior to filing a petition for non-immigrant workers with Department of Homeland Security (DHS) [U.S. Citizenship and Immigration Services](#) (USCIS), an employer must obtain an approved temporary labor certification from the United States Department of Labor (USDOL).

Employers must complete the following four steps through the US Department of Labor (DOL) FLAG (Foreign Labor Application Gateway) online filing system. These steps address the ETA 790 and ETA 9142 applications. **Form ETA-790** and **Form ETA-9142** are both part of the H-2A temporary agricultural labor certification process, but they serve different purposes:

Form ETA-790:

This is the federal application for employers seeking certification for temporary agricultural employment. It's the initial application outlining job details, working conditions, and recruitment efforts.

Form ETA-9142:

This federal form serves as a supplement to the ETA-790, providing detailed appendices and documentation required to support the application. It provides specifics and compliance with legal requirements.

**Step 1: Filing a Clearance/Job order for an H-2A Job Opportunity
(Form ETA 790/790A)**

Employers and their authorized attorneys or agents must submit H-2A clearance/job order orders (*i.e.*, *H-2A Agricultural Clearance Order Form ETA-790/790A*) and all required addenda using the electronic method(s) designated

by the USDOL Office of Foreign Labor Certification (OFLC) Administrator, unless a specific exemption applies.

The USDOL [FLAG System](#), is available here: [USDOL Flag System](#)

In joint-employer situations, only one clearance/job order should be submitted for the job opportunity, with each employer identified in the clearance/job order, as explained in [Form ETA-790A, General Instructions](#).

The clearance/job order should be filed **as early as 75 but no later than 60 calendar days** before the employer's first date of need (start date of employment) to avoid any delays.

Upon receipt of the clearance/job order, the Chicago National Processing Center (CNPC) will transmit an electronic copy of the order to the MDCS Foreign Labor Certification (FLC) Unit. The FLC Unit will review the contents of the clearance/job order for compliance with the requirements set forth in [20 CFR part 653, subpart F](#), and will work with the employer to address any noted deficiencies.

If deficiencies are identified, the FLC Unit will issue a Notice of Deficiency (NOD) to the employer/agent outlining the deficiencies in its clearance/job order no later than **7 calendar days** from the date the FLC Unit received the clearance/job order. The NOD will express:

- the reason(s) the clearance/job order fails to meet the applicable requirements,
- the modification(s) needed for MDCS to accept the clearance/job order, and
- an opportunity for the employer to respond to the deficiencies within **5 calendar days** from the NOD issuance.

If the employer's response is not received within **12 calendar days** after the NOD was issued, the MDCS will notify the employer in writing that the clearance/job order is deemed abandoned, and the employer will be required to submit a new clearance/job order to the CNPC.

Upon receipt of the response to the NOD, the MDCS FLC unit will review the response and notify the employer in writing of its acceptance or denial of the clearance/job order within **3 calendar days** from the date of the response.

If no corrections are needed in the clearance/job order the MDCS FLC Unit will issue a Notice of Acceptance (NOA), post the clearance/job order on the state's job bank, MassHire JobQuest, and initiate recruitment of U.S. workers.

If, after providing responses to the deficiencies noted by the FLC Unit, the employer is not able to resolve the deficiencies, the employer may file an

Application for Temporary Employment Certification pursuant to the emergency filing procedures contained in [§ 655.134](#).

Step 2: Filing an *H-2A Application for Temporary Employment Certification (Form ETA-9142A)*

Employers must also submit an *H-2A Application for Temporary Employment Certification (Form ETA-9142A)* and all required documentation with the CNPC electronically using the FLAG system, unless a specific exemption applies.

The CNPC will review the application and job order for compliance with all applicable program requirements, notify the employer if there are any deficiencies within **7 calendar days** of receipt, and provide the employer with additional instructions for completing the temporary labor certification process.

The OFLC Certifying Officer (CO) will send notices and requests to employers, circulate approved clearance/job order to appropriate SWAs for interstate clearance and recruitment of U.S. workers using electronic method(s).

In joint-employer situations, the *H-2A Application for Temporary Employment Certification* must be signed and dated by each joint employer named in the application. Please refer to [20 CFR 655.131\(b\)](#) Joint employer filing requirements for additional information.

The application should be filed no less than **45 calendar** days before the employer's first date of need.

Step 3: Conducting Recruitment for U.S. Workers

The employer must engage in positive recruitment of U.S. workers. When the CO determines that the *H-2A Application for Temporary Employment Certification* and the clearance/job order meets requirements such that recruitment may begin, the CO will notify the employer of acceptance of the application and will send a copy of the notice to MDCS serving the area of intended employment.

The acceptance letter will include instructions for how to prepare and when to submit a recruitment report to the OFLC CNPC.

The CO will promptly transmit a copy of the approved clearance/job order for interstate clearance, at a minimum to all States listed in the job order as anticipated place(s) of employment and all other States designated by the OFLC Administrator as States of traditional or expected labor supply for the anticipated place(s) of employment.

In addition, the CO will place for public examination a copy of the clearance/job order on an electronic job registry maintained by the Department of Labor, which is accessible via [SeasonalJobs.dol.gov](#). Unless otherwise provided, the

clearance/job order will be posted on the electronic job registry in active status until the end of the recruitment period.

The employer must contact, by mail or other effective means, U.S. workers employed by the employer in the occupation at the place of employment during the previous year and solicit their return to the job. This contact must occur during the period that the clearance/job order is being circulated by MDCS for interstate clearance.

The recruitment report must be submitted on the date specified by the CO in the Notice of Acceptance.

If the CO accepted the application for purposes of recruitment but additional documents are required before a certification may be issued, the Notice of Acceptance will specify the additional documents the employer must submit to the CNPC in order to receive a final determination; and should the labor certification be granted, the certification being provided to USCIS.

Step 4: Completing the Temporary Labor Certification Process

If temporary agricultural labor certification is granted, the CO will send a Final Determination notice, the Approval Appendix and an invoice to all available emails identified in the application. The filers will also be able to retrieve a copy of the certified *Application for Temporary Employment Certification* and clearance/job order via their FLAG accounts. In addition, the CO will send this documentation, including any approved modifications, directly to USCIS via FLAG.

Temporary Labor Certifications are generally issued no later than **30 calendar days** before the first date of need identified in the *Application for Temporary Employment Certification*.

COMMUNICATIONS

All notices sent by the MDCS FLC Unit to an employer that requires a response will be sent using methods to assure next day delivery, including email or other electronic methods, with a copy to the employer's representative, as applicable.

Intrastate clearance. Upon its acceptance of the job order, the MDCS will promptly post the clearance/job order on MassHire JobQuest and commence recruitment of U.S. workers.

MASSHIRE CAREER CENTER RESPONSIBILITIES

MassHire JobQuest (MJQ) is Massachusetts' state job bank, and the clearance order/job order will have been posted in MJQ and accessible online. MDCS will send, by electronic means, to the local area of intended employment, notice of the clearance/job order and employment requirements.

MassHire Career Center staff can assist employers and provide labor market information, recruitment services and referrals. Local areas will ensure recruitment is conducted by providing notice to jobseekers and partners of the job opportunity(ies).

MassHire Career Center staff shall work with the local employer as needed or requested and record referrals and outcomes via MJQ.

MDCS and MCCs will be able to report on referral and outcomes for DOL, employers and any other required or interested stakeholders.

DURATION OF CLEARANCE/JOB ORDER POSTING

MDCS will keep the clearance/job order on its active file until the end of the recruitment period, as set forth in [§ 655.135\(d\)](#). For the H-2A program the recruitment period ends on the mid-date between the start and end date of the clearance/job order. MDCS will make that determination and document it on the clearance/job order.

MODIFICATIONS TO THE CLEARANCE/JOB ORDER

Prior to the issuance of a final determination on an *Application for Temporary Employment Certification*, the CNPC CO may require modifications to the clearance/job order when the CO determines that the offer of employment does not contain all the minimum benefits, wages, and working condition provisions. Such modifications must be made, or certification will be denied pursuant to [§ 655.164](#).

The employer may request a modification of the clearance/job order, Form ETA-790/790A, prior to the submission of an *Application for Temporary Employment Certification*. However, the employer may not reject referrals against the clearance/job order based upon a failure on the part of the applicant to meet the amended criteria, if such referral was made prior to the amendment of the clearance/job order. The employer may not request a modification of the clearance/job order on or after the date of filing an *Application for Temporary Employment Certification*.

The employer must provide all workers recruited in connection with the *Application for Temporary Employment Certification* with a copy of the modified

clearance/job order or work contract which reflects the amended terms and conditions, on the first day of employment, in accordance with [§ 655.122\(q\)](#), or as soon as practicable, whichever comes first.

LANGUAGE ACCESS

Career Center staff may, as needed, utilize the MassHire Department of Career Services Multilingual Services for assisting customers.

<https://www.mass.gov/mdcs-multilingual-services>

COMPLAINTS

Career Center staff who receive a complaint from a jobseeker against an employer about a specific H-2A job order must use the Unified Complaint System to address any reported unlawful recruitment practices.

Action:

Required: Please ensure that all appropriate individuals in your local workforce area are notified of this policy and take necessary action to ensure compliance with its content.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@mass.gov Also, indicate Issuance number and description.