

H-2A Roundtable 2023

Jeanne Malitz, Malitzlaw, Inc.
Jason Resnick, Western Growers
Association



USCIS Proposed Fee Increase New Surety Bond Rules for FLCs



USCIS PROPOSES TO INCREASE H-2A FEES

- The fee for an H-2A Petition for unnamed beneficiaries would increase from the current \$460 to \$530.
- The fee for an H-2A Petition for named beneficiaries would rise from the current \$460 to \$1,090.
- Named petitions will be limited to 25 employees, which will require the payment of another set of fees for each petition filed to achieve the employer's needs.
- *PLUS* \$600 Asylum Program Fee for every I-129 and I-140 petition

H-2A Visa Program

Helpful Tips and Reminders



Surety Bonds for H-2ALCs – Appendix B

- Streamlines H-2ALC bond requirement by implementing a bond form with **standardized language** and permitting the electronic execution and delivery of surety bonds (until FLAG system is enhanced, a scanned copy during filing followed by the original within 30 days is required).
- Adjusts bond amounts annually, using a newly defined term—"average AEWR"
 - Average AEWR" is the simple average of the AEWRs applicable to the SOC 45–2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse) and published by the OFLC Administrator in accordance with § 655.120.
 - The average AEWR remains valid until replaced with an adjusted average AEWR.
 - Current average AEWR, as of January 1, 2023, is \$16.13

H-2A Visa Program

Helpful Tips and Reminders



Surety Bonds for H-2ALCs – Appendix B

- Adjusts bond amounts to reflect crew size, using a national “average AEWR” figure and providing a method for calculating bond amounts for 100+ workers in 50-worker increments.
- Surety Bond Amounts

Number of H-2A Workers to be Employed	Base Amount
less than 25 workers	\$5,000
25 to 49 workers	\$10,000
50 to 74 workers	\$20,000
75 to 99 workers	\$50,000
100 or more	\$75,000

H-2A Visa Program

Helpful Tips and Reminders



Surety Bonds for H-2ALCs – Appendix B

Number of H-2A Workers to be Employed	Adjusted Bond Amount base amount x (\$16.13/\$9.25)
less than 25 workers	\$8,718.92
25 to 49 workers	\$17,437.84
50 to 74 workers	\$34,875.67
75 to 99 workers	\$87,189.19
100 or 149 workers	\$130,783.78
150 or more workers	\$130,783.78 + \$64,520 multiplied by each additional set of 50 H-2A workers over 100

Prevailing Wages Under the 2022 H-2A Program Rule



Prevailing Wages

Really new! Agricultural Online wage Library

- New prevailing wage survey standards that replace the outdated ETA Handbook 385: A 1981 Handbook used by SWAs to conduct prevailing wage surveys. **Example: if the estimated universe of employers is *at least* 5, then only 5 employers have to be surveyed and there must be at least 30 total employees of the 5 employers.
- Expanded universe of State entities that may conduct prevailing wage surveys for use in the H-2A program (e.g., SWA or any other State agency, State college, or State university)

Prevailing Wage Changes

DOL still must approve the final survey but:

- SWA discretion and control over prevailing wage surveys: The SWA determines whether to survey a crop activity or agricultural activity and, if applicable, distinct work task(s) within that activity (e.g., piece rate pay)
- The SWA determines when to survey (i.e., data collection period)
- The SWA determines the area to survey (e.g., sub-State area or region)
- The SWA determines whether to conduct the survey itself or leverage another State entity's survey

Prevailing Wage Process

- Formalized procedure for SWA submission and OFLC review and posting of prevailing wage rates SWA conducts a survey or selects another State entity's survey that satisfies the 2022 H-2A final rule prevailing wage methodology criteria
- SWA prepares and submits the survey with the new Form ETA-232, *Domestic Agricultural In-Season Wage Report*
- OFLC reviews the submission and, if all prevailing wage methodology criteria are met, approves the prevailing wage finding
- Upon approval of the prevailing wage finding, OFLC posts the prevailing wage rate(s) on its Agricultural Online Wage Library (“AOWL”), <https://www.dol.gov/agencies/eta/foreign-labor/wages/agriculture>
- Once posted on AOWL, a prevailing wage rate remains valid for 1 year, unless replaced with an adjusted prevailing wage rate. If not replaced, the prevailing wage rate will be removed from AOWL after 1 year.

Wage Survey must meet 9 Criteria

Example:

- A single employer cannot employ more than 25% of employees in survey unless less than 4 employers
- Crop Activity must be defined and, if applicable, a distinct work task or tasks
- Surveyor must make a reasonable, good faith attempt to contact all employers employing workers in the crop activity in the geographic region surveyed or contact a randomized sample but no less than 5 employers and 30 employees.

California Wage Reporting Areas

AG REPORTING AREAS IN CALIFORNIA

06-06-00-Statewide

06-06-01- Desert

Imperial, Riverside, and San Bernardino counties

06-06-02- South Coast

Los Angeles, San Diego, Orange, Santa Barbara, San Luis Obispo, and Ventura counties

06-06-03- Central Coast

Alameda, Contra Costa, Monterey, San Benito, San Francisco, Santa Cruz, San Mateo, and Santa Clara counties

06-06-04- North Coast

Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Sonoma, and Trinity counties

06-06-05- San Joaquin Valley

Alpine, Amador, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, Stanislaus, Tulare, and Tuolumne counties

06-06-06- Sacramento Valley

Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Yolo and Yuba counties

Agricultural Online Wage Library - California

California

WAGE REPORTING AREA: CH-06-00 Statewide

2022

Apiary, Bee Keeping	No Finding 1/	10/31/2022
---------------------	-------------------------------	------------

2021

Bee Keeper	No Finding 1/	08/05/2021
------------	-------------------------------	------------

2020

Beekeeping	No Finding 1/	08/05/2020
------------	-------------------------------	------------

Sheep Shearing	No Finding 5/	05/14/2020
----------------	-------------------------------	------------

Sheep Wool Gathering	No Finding 5/	05/14/2020
----------------------	-------------------------------	------------

Sheep Wool Packing	No Finding 5/	05/14/2020
--------------------	-------------------------------	------------

WAGE REPORTING AREA: CH-06-01 Desert

2022

Avocado, Harvest	No Finding /	10/31/2022
------------------	--------------	------------

Melon, Harvest	No Finding /	10/31/2022
----------------	--------------	------------

2020

Lettuce Harvest	No Finding 1/	03/23/2020
-----------------	-------------------------------	------------

Broccoli Harvest	No Finding 1/	03/23/2020
------------------	-------------------------------	------------

Cauliflower Harvest	No Finding 1/	03/23/2020
---------------------	-------------------------------	------------

WAGE REPORTING AREA: CH-06-02 South Coast

2022

Avocado, Harvest	No Finding 1/	05/31/2022
------------------	-------------------------------	------------

Broccoli, Harvest	No Finding 1/	05/31/2022
-------------------	-------------------------------	------------

Cauliflower, Harvest	No Finding 1/	05/31/2022
----------------------	-------------------------------	------------

Celery, Harvest	No Finding 1/	05/31/2022
-----------------	-------------------------------	------------

Citrus, Harvest	No Finding 1/	05/31/2022
-----------------	-------------------------------	------------

Agricultural Online Wage Library – California cont'd

WAGE REPORTING AREA: CH-06-03 Central Coast

2022

Strawberry, Harvest

No Finding

10/31/2022

WAGE REPORTING AREA: CH-06-04 North Coast

2022

Wine Grape, General Vineyard Worker

\$19.65 Per hour

11/8/2022

Wine Grape Harvest

\$16.00 Per Hour

05/27/2022

WAGE REPORTING AREA: CH-06-05 San Joaquin Valley

2022

Broccoli, Harvest

No Finding [1/](#)

09/13/2022

Cauliflower, Harvest

No Finding

09/13/2022

Melon, Harvest

No Finding

09/13/2022

Onion, Harvest

No Finding

09/13/2022

WAGE REPORTING AREA: CH-06-06 Sacramento Valley

2022

Melon, Harvest

No Finding [1/](#)

10/31/2022

Agricultural Online Wage Library - Arizona

Arizona		
WAGE REPORTING AREA: CH-04-02 Yuma		
2020		
Broccoli, Harvester	No Finding 1/	09/02/2020
Cabbage, Harvester	No Finding 1/	09/02/2020
Cauliflower, Harvester	\$13.91 per hour	09/02/2020
Celery, Harvester	No Finding 1/	09/02/2020
Romaine Lettuce, Harvester	\$13.85 Per Piece Rate	09/02/2020
Iceberg Lettuce, Harvester	\$13.85 per hour	09/02/2020
Kale, Harvester	No Finding 1/	09/02/2020

Wage Adjustments During Contract Period

- An employer must increase wage rate(s) during the work contract period, if the prevailing wage or AEWR applicable to the job opportunity increases and is the highest of the applicable wage sources and higher than the employer's wage offer
- The employer must implement wage rate increases no later than the effective date of the adjustment. Notice of AEWR adjustments is provided through *Federal Register* notices as well as OFLC's website
- Notice of prevailing wage findings or adjustments is provided on OFLC's website. Also, OFLC sends written notice directly to potentially impacted employers, based on OFLC data regarding active TLCs
- An employer is **prohibited from reducing wage rate(s)** during the work contract period below the certified rate, even if the prevailing wage or AEWR applicable to the job opportunity decreases during the work contract period. Statements in job orders regarding the potential for pay reduction if the prevailing wage or AEWR decrease during the work contract are not permitted. If included, the CO will issue a NOD.

HOUSING



■ FLAG System Feature: ***Housing Inspection Results***

Why is this enhancement needed?

- Assist in reducing processing delays associated with housing inspections by providing greater transparency on SWA progress and results to OFLC and employers.

What will this enhancement do for employers and SWAs?

- For SWAs, provide the capability of reporting status and results for each housing location when multiple locations exist on the job order.
- For employers ...
 - Ability to view real-time status and results of housing inspections
 - Receive alerts if a SWA deficiency is noted resulting from a housing inspection that requires follow-up/actions
 - View SWA case notes and documents pertaining to each housing location and inspection results

Department of Labor

FLAG System: "Housing Inspection Results" Feature



[Back to Cases](#)

Case Number: **JO-A-300-21270-342625**

Application Type: **790A**

Employer Name: **North Carolina Growers Association**

Case Owner: **John Smith**

Job Title: **Picker**

Start Date: **December 1, 2021**

Submitted Date: **September 27, 2021 at 10:11 AM**

End Date: **December 31, 2021**

Case Status: **AVAILABLE FOR 9142A LINKING**

Actions

[View PDF](#)

Case Documents

Housing Inspection Results

Housing Type	Physical Location	Additional Information	Number of Units	Max Occupancy	Inspection Status	Inspection Entity	Results
Employer-provided	123 Days Inn Street	Housing Location 1	1	1	Not Started	SWA	View Details
Employer-provided	890 Test Street	housing location 2	1	1	Not Started	SWA	View Details
Employer-provided	3 jpisomg test street	housing location 3	1	1	Not Started	Other State Authority	View Details
Employer-provided	test street 4	housing location 4	2	2	Inspected - Meets Standards	Other State Authority	View Details



Case Documents

Housing Inspection Results

Housing Type	Physical Location	Additional Information	Number of Units	Max Occupancy	Inspection Status	Inspection Entity	Results
Employer-provided	123 Days Inn Street	Housing Location 1	1	1	Not Started	SWA	View Details
Employer-provided	890 Test Street	housing location 2	1	1	Not Started	SWA	View Details
Employer-provided	3 jpisomg test street	housing location 3	1	1	Not Started	Other State Authority	View Details
Employer-provided	test street 4	housing location 4	2	2	Inspected - Meets Standards	Other State Authority	View Details

Housing Inspection Case Notes

Date	Note
3/4/2022	<p>Lorem ipsum dolor sit amet, consectetur adipiscing elit. Proin sodales nec nisi a aliquam. Aliquam nec tellus luctus, viverra sapien vel, dignissim lorem. Pellentesque cursus sed mauris ac ornare. Sed aliquam tellus vitae nulla fermentum, vel auctor justo ullamcorper. Proin ac massa vel sapien venenatis pretium. Curabitur pulvinar metus pretium mi ultricies vehicula. Nulla placerat nec libero ac hendrerit. Aliquam placerat nisi sit amet ipsum dignissim, sit amet ultricies eros imperdiet. Quisque tempus, mi nec varius maximus, sem turpis fermentum sapien, ut commodo tellus libero eget massa.</p>
3/3/2022	<p>Lorem ipsum dolor sit amet, consectetur adipiscing elit. Quisque rutrum sem vel sapien condimentum, ut congue sem tempus. Etiam feugiat urna nec erat sagittis, in consequat elit dictum. Integer sit amet eros efficitur sem lobortis interdum. Suspendisse at neque viverra, ultricies oeci sit amet, conwallis nisi. Morbi quis imperdiet ex, id semper mi. Nullam ut vestibulum ex. Vivamus at vehicula ante. Nunc tempus augue a turpis condimentum, a rutrum dui fermentum. Vivamus commodo ipsum nec magna laoreet dapibus. Fusce vehicula consectetur sem, vitae pellentesque nunc posuere et. Etiam nec purus sed sapien faucibus rutrum eu a neque. Mauris ultricies, sapien quis ullamcorper vehicula, tellus nisi dictum elit, quis euismod ligula libero laoreet augue. Praesent ut tortor at dolor pellentesque semper.</p> <p>Curabitur sodales nunc justo, quis ultrices libero hendrerit sed. Duis et mi dictum, ornare urna eget, fermentum risus. Proin et ante viverra, aliquam nunc egestas, feugiat velit. Nulla in auctor ligula. Nunc rhoncus odio ut malesuada vulputate. Fusce imperdiet id elit non porttitor. Nam non magna id dui vestibulum volutpat. Nam luctus turpis mauris, at dapibus eros cursus id. Nunc sit amet iaculis dui. Morbi pulvinar felis ac facilisis tempus. Sed et neque et nisi commodo mattis. Pellentesque magna nisi, aliquam id massa sed, pharetra commodo ipsum.</p>

Housing Inspection Documentation

Date	Document
3/4/2022	ETA 790 for H-300-21270-342625.pdf Download



Case Documents

Housing Inspection Results

Housing Type	Physical Location	Additional Information	Number of Units	Max Occupancy	Inspection Status	Inspection Entity	Results
Employer-provided	123 Days Inn Street	Housing Location 1	1	1	Not Started	SWA	View Details
Employer-provided	890 Test Street	housing location 2	1	1	Not Started	SWA	View Details
Employer-provided	3 jpisomg test street	housing location 3	1	1	Not Started	Other State Authority	View Details
Employer-provided	test street 4	housing location 4	2	2	Inspected - Meets Standards	Other State Authority	View Details

Housing Inspection Case Notes

Date	Note
3/4/2022	<p>Lorem ipsum dolor sit amet, consectetur adipiscing elit. Proin sodales nec nisi a aliquam. Aliquam nec tellus luctus, viverra sapien vel, dignissim lorem. Pellentesque cursus sed mauris ac ornare. Sed aliquam tellus vitae nulla fermentum, vel auctor justo ullamcorper. Proin ac massa vel sapien venenatis pretium. Curabitur pulvinar metus pretium mi ultricies vehicula. Nulla placerat nec libero ac hendrerit. Aliquam placerat nisi sit amet ipsum dignissim, sit amet ultricies eros imperdiet. Quisque tempus, mi nec varius maximus, sem turpis fermentum sapien, ut commodo tellus libero eget massa.</p>
3/3/2022	<p>Lorem ipsum dolor sit amet, consectetur adipiscing elit. Quisque rutrum sem vel sapien condimentum, ut congue sem tempus. Etiam feugiat urna nec erat sagittis, in consequat elit dictum. Integer sit amet eros efficitur sem lobortis interdum. Suspendisse at neque viverra, ultricies oeci sit amet, conwallis nisi. Morbi quis imperdiet ex, id semper mi. Nullam ut vestibulum ex. Vivamus at vehicula ante. Nunc tempus augue a turpis condimentum, a rutrum dui fermentum. Vivamus commodo ipsum nec magna laoreet dapibus. Fusce vehicula consectetur sem, vitae pellentesque nunc posuere et. Etiam nec purus sed sapien faucibus rutrum eu a neque. Mauris ultricies, sapien quis ullamcorper vehicula, tellus nisi dictum elit, quis euismod ligula libero laoreet augue. Praesent ut tortor at dolor pellentesque semper.</p> <p>Curabitur sodales nunc justo, quis ultrices libero hendrerit sed. Duis et mi dictum, ornare urna eget, fermentum risus. Proin et ante viverra, aliquam nunc egestas, feugiat velit. Nulla in auctor ligula. Nunc rhoncus odio ut malesuada vulputate. Fusce imperdiet id elit non porttitor. Nam non magna id dui vestibulum volutpat. Nam luctus turpis mauris, at dapibus eros cursus id. Nunc sit amet iaculis dui. Morbi pulvinar felis ac facilisis tempus. Sed et neque et nisi commodo mattis. Pellentesque magna nisi, aliquam id massa sed, pharetra commodo ipsum.</p>

Housing Inspection Documentation

Date	Document
3/4/2022	ETA 790 for H-300-21270-342625.pdf Download

H-2A Visa Program

Helpful Tips and Reminders



Section D. Housing Information

D. Housing Information

1. Housing Address/Location *				
2. City *	3. State *	4. Postal Code *	5. County *	
6. Type of Housing (check only one) * <input type="checkbox"/> Employer-provided (including mobile or range) <input type="checkbox"/> Rental or public accommodations			7. Total Units *	8. Total Occupancy *
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 " <u>NONE</u> " below) *				
11. Is a completed Addendum B providing additional information on housing that will be provided to workers attached to this <u>job order</u> ? *				<input type="checkbox"/> Yes <input type="checkbox"/> N/A

Form ETA-790A

FOR DEPARTMENT OF LABOR USE ONLY

Page 2 of 8

H-2A Case Number: _____ Case Status: _____ Determination Date: _____ Validity Period: _____ to _____

H-2A Visa Program

Helpful Tips and Reminders



Housing Information Section D.

Good Practice (excerpt from an approved H-2A Job Order, Section D.10):

Regarding the motel at Best Western, 321 Lubbock Rd, Brownfield, TX, 79316, I've spoken to the manager who informs me that the motel does not receive any, local, state, or federal inspection. The manager's name is N/A and the phone number is 806-637-9471. Consistent with the FAQ published, I attest that the housing will meet applicable, local, state, and federal standards. In the absence of such standards, DOL OSHA 1910.142 will apply; housing is compliant with the applicable health and safety standards at 20 CFR 655.122(d)(1)(ii); the accommodations are sufficient for the number of workers requested; there will be 8 rooms each with 2 beds for a capacity of 16, which covers the requested number of workers of 15.

Housing Standards

Rental and/or Public Accommodations

Where there are no local or state health and safety standards for certain housing standards listed in the H-2A regulations, OSHA or DOL standards apply: (29 CFR 1910.142(b) et seq. and 20 CFR 654.400 et seq.)

- Minimum square footage: i.e. 50 sq. ft. per person in sleeping areas etc.
- Adequate storage for personal items
- Sufficient and sanitary cooking and kitchen facilities
- Heating, cooking and water heating equipment
- Adequate and sanitary toilet, laundry, handwashing, and bathing facilities: i.e. Laundry must be free of charge
- Sufficient lighting in kitchens and sleeping rooms: i.e. ceiling lights and outlets
- Refuse disposal: i.e. Garbage cans must be emptied when full but at least 2x per week

Employer Certification of Housing Standards

20 CFR 655.122(d)(1)(iii):

Employer must provide in its application:

A written statement, signed and dated, that attests that the accommodations are compliant with the applicable standards under paragraph (d)(1)(ii) of this section and are sufficient to accommodate the number of workers requested. This statement must include the number of bed(s) and room(s) that the employer will secure for the worker(s). If applicable local or State rental or public accommodation standards under paragraph (d)(1)(ii) of this section require an inspection, the employer also must submit to the CO a copy of the inspection report or other official documentation from the relevant authority. If the applicable standards do not require an inspection, the employer's written statement must confirm that no inspection is required.

MEALS

H-2A Visa Program

Helpful Tips and Reminders



Provision of Meals

■ Provision of Meals

- Employer must provide 3 meals a day to workers or furnish free and convenient cooking and kitchen facilities
- Giving workers cash or a stipend, or providing access to third-party vendors is not acceptable
- Identify any third-party providers (i.e., caterers) and briefly explain the arrangements made with the vendor to provide meals

■ Requesting Approval for Higher Meal Charges

- Explain the method(s) used and provide documentation showing itemized costs directly related to the preparation and serving of meals
- Costs related to transportation, profit/overhead, capital depreciation or other similar costs cannot be shifted to workers

H-2A Visa Program

Helpful Tips and Reminders



Provision of Meals

OMB Approval: 1205-0466
Expiration Date: XXXXX/XXXXX

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



E. Provision of Meals

1. Describe how the employer will provide each worker with three meals per day or furnish free and convenient cooking and kitchen facilities. *
- (Please begin response on this form and use Addendum C if additional space is needed.)

2. The employer: *

☐ WILL NOT charge workers for meals.

☐ WILL charge each worker for meals at \$ _____ . _____ per day, if meals are provided.

Meals

Meals are a big deal!

- **Note: Not included in the regulation but discussed:** “Clarified” in the preamble that:
- Kitchen facilities provided in lieu of meals must include clean space for food preparation, working cooking and refrigeration appliances, and facilities.
- Appliances provided must be sufficient to allow workers to safely prepare three meals per day, a requirement that is not met if the employer merely provides an electric hot plate, a microwave, or an outdoor community grill, or if workers are required to purchase cooking appliances or accessories, such as portable burners, charcoal, propane, or lighter fluid.
- Public accommodations such as hotels or motels frequently do not have adequate cooking facilities to satisfy an employer's obligations under this section, and, in those instances, employers must provide three meals a day to workers to meet their obligations.

Meals (cont'd)

Clarified in the preamble that:

- The employer may only consider complimentary breakfast to meet its obligation to provide meals when the breakfast is readily accessible to the workers and is nutritionally adequate.
- **Meals must be provided in a timely and sanitary fashion. For example, prepared meals requiring refrigeration that are delivered hours before an anticipated mealtime would not meet the employer's meal obligation.**
- Meals must be calorically and nutritionally adequate. An employer's determination as to the adequacy of the meals must be reasonable—merely providing snacks such as chips or crackers, for example, would not meet an employer's meal obligations.
- When convenient kitchen and cooking facilities are not provided, stipends are not an acceptable substitute for meals.

H-2A Visa Program

Helpful Tips and Reminders



Provision of Meals

- Providing kitchen facilities for workers to prepare meals

Good Practice (excerpt from an approved H-2A Job Order, Section E):

Employer does not provide meals. Employer will provide free, convenient and fully equipped with refrigerator, stove, pots, pans utensils and counter space cooking and kitchen facilities to workers living in employer provided housing, which will enable workers to prepare their own meals. Employer will also provide free transportation once per week to/from closest town or city to buy food, banking services, and other necessities.

- **Have a contingency plan!** Disclose to workers how meals will be provided, including any appropriate meal charges, in the event kitchen facilities become temporarily inoperable or otherwise unavailable

Transportation

H-2A Visa Program

Helpful Tips and Reminders



Daily Transportation and Inbound/Outbound Transportation

F. Transportation and Daily Subsistence

1. Describe the terms and arrangements for daily transportation the employer will provide to workers. *

(Please begin response on this form and use Addendum C if additional space is needed.)

2. Describe the terms and arrangements for providing workers with transportation (a) to the place of employment (i.e., inbound) and (b) from the place of employment (i.e., outbound). *

(Please begin response on this form and use Addendum C if additional space is needed.)

3. During the travel described in Item 2, 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

H-2A Visa Program

Helpful Tips and Reminders



Daily Transportation to Place of Employment – Section F.1

- Provide sufficient detail to apprise workers and the SWA and CO of the employer's daily transportation plan:
 - the mode(s) of transportation (e.g., vans, buses)
 - the daily transportation schedule
 - the number of vehicles to be used
 - the type of vehicle and seating capacity for each vehicle
 - whether the vehicles to be used will be provided by the fixed-site grower(s), are authorized for use under a valid Farm Labor Contractor Certificate of Registration, or belong to a common carrier, identifying the common carrier by name.
 - whether the daily transportation, which is required at no cost for workers residing in housing provided by the employer, is available to workers who do not reside in employer-provided housing.

H-2A Visa Program

Helpful Tips and Reminders



Daily Transportation Section F. Item 1.

Good Practice (excerpt from an approved H-2A Job Order, Section F.1):

The employer is a fixed site employer and has 2 pickup trucks seating capacity 4 each, which shall be treated as station wagons described in 29 CFR Section 500.102, at the Diamond Ring Location, 1 passenger vehicle capacity 4 and the Pryor Creek location and 1 Pickup(station wagon) capacity 5 at the South Pryor Location available for the workers to use, at no cost to the worker to get to and from the job site and employer housing.

These vehicles may also be used to get supplies and groceries as well as for personal errands. Employer provided transportation will meet all applicable local, state and federal safety standards and will abide by 29 U.S.C 1841, 29 CFR 500.104, and 120-128, be properly insured for liability in addition to workers compensation insurance and be operated by licensed drivers. The daily schedule will be communicated between the employer and worker and will fall within the job offer section provided in the form 790 due to the weather-related issues of working on a farm and ranch.

H-2A Visa Program

Helpful Tips and Reminders



Inbound/Outbound Transportation – Section F.2

- Describe 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)**.
- At a minimum, state whether such transportation, and related daily subsistence, will be provided by the employer or paid by the employer to the worker for reasonable costs incurred (e.g., advance payment or reimbursement) and identify the modes of transportation, if known.
- For example, the employer may state that it will provide or pay for charter bus services or other modes of transportation to groups of workers, or permit workers to select any means of transportation they choose and reimburse workers at no less than the most economical and reasonable common carrier transportation charges for the distances involved. If additional space is needed, use the Form ETA-790A, Addendum C.

Area of Intended Employment



Area of Intended Employment

20 CFR 655.103(b)

- “The geographic area within normal commuting distance of the place of the job opportunity for which the certification is sought.”
- Involves a fact-specific evaluation of factors that indicate the normal commuting area for that job opportunity
- No rigid measure of distance
- If within a Metropolitan Statistical Area, any place within an MSA is deemed to be within normal commuting distance
- A location outside an MSA may be within a normal commuting distance of a location inside or near an MSA

Area of Intended Employment

MSAs

- CO determines the “place of employment,” Sec. C for Form ETA-790, or the designated pick-up point
- This is the location to which workers would commute to begin their workday.
- This is the “starting point” by which the AIE will be determined
- Considers average commuting times, barriers to reaching the worksite, regional transportation

Area of Intended Employment

Notices of Deficiency

- DOL will issue a deficiency identifying the applicable MSA based on the **first worksite listed**
- DOL will give the estimated distance based on the distance from one end of the MSA to the other end, which becomes the threshold distance
- Every worksite listed in the application should be within that DOL determined distance from the **first worksite**
- DOL will take the position that any worksites beyond that threshold distance from the first worksite are disqualified, and provide the employer an opportunity to remove, explain or amend

Area of Intended Employment

2022 Final H-2A Rule

- Clarifies that all applications are limited to one AIE.
 - Limited exceptions for master applications, beekeeping, shearing, herding on the range, custom combining
- Clarifies that places of work after the workday begins (e.g., delivery locations) are not included in the AIE assessment provided that such travel is necessary to perform the duties and workers can reasonably return to their residence or employer-provided housing within the same workday.

Appeals of Denials

- No appeals at deficiency stage
- Must wait until application is denied



QUESTIONS?

Thank you!