



H-2A Temporary Agricultural Visa Program

2024 Worker Protection Final Rule Briefing

Key Changes to Forms ETA-790/790A and 9142A

**Office of Foreign Labor Certification
Employment and Training Administration
United States Department of Labor**

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2024 H-2A Worker Protection Final Rule - Agenda



- **Implementation Timeline and Transition Procedures**
- **Key Changes to Application Forms**
 - *ETA-790A, H-2A Agricultural Clearance Order*
 - Addendum A – Additional Crop/Agricultural Activities and Wage Offers
 - Addendum B – Agricultural Business, Worksite, and Housing
 - Addendum C – Additional Material Terms and Conditions of the Job
 - *ETA-9142A, H-2A Application for Temporary Employment Certification*
 - Appendix C – Owners/Operators/Supervisors/Managers
 - Appendix D – Foreign Labor Recruiter Information
- **Upcoming FLAG System Webinar – August 21st**

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Implementation Timeline and Transition Procedures



- **August 29, 2024:** Implementation date for OMB-approved revisions to the Forms ETA-790/790A and 9142A.
 - DOL will begin collecting information using the new forms and enforcing new rule provisions related to the contents of job offers (20 CFR 655.122), the employer’s assurances and obligations at 20 CFR 655.135, and provisions requiring the employer provide additional information at the time of filing (*e.g.*, 20 CFR 655.130(a) and 655.137(b)).
- **Current Rule Processing:** H-2A applications filed **before 7:00 P.M. Eastern Daylight Time (EDT) on August 28** will be processed in accordance with the current regulations.
- **New Rule Processing:** H-2A applications filed **on or after 12:00 A.M. EDT on August 29** will be processed in accordance with the new final rule.

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Implementation Timeline and Transition Procedures



- **YOU MUST** link current SWA processed Job Orders (new Form ETA-790/790A) in the FLAG System to the H-2A application (new Form ETA-9142A) in order to submit on and after August 29.
- All Job Orders that are not connected to a Form ETA-9142A under the current regulations **AND SUBMITTED** in the FLAG system by 7:00 P.M. EDT on August 28 will be removed from the filer's external account and no longer accessible.
- The SWA has 7 calendar days (20 CFR 655.121(e)(2)) to review the H-2A Job Orders. FLAG does allow for a Job Order to be linked to an ETA-9142A and submitted as an H-2A Application if the SWA makes no decision action in FLAG on the 8th calendar day.
- Based on the August 29 transition date, 8 calendar days prior to August 28th is **August 20th**.
 - The start date 75 days from August 20th is **November 3rd**.
 - The start date 75 days from August 28th is **November 11th**.



Major Changes to FLAG System User Account Profiles

- New Foreign Labor Recruiter Profile (for use on Form ETA-9142A, Appendix D).
- Modified Crop/Commodity Profile (for use on Form ETA-790A, Addendum A) where the Crop ID is removed, added a “Work State” field, and increased character limit to disclose piece rate units, estimated hourly, rates, and other special pay information.
- Removed Agricultural Business Profile (due to changes on Form ETA-790A, Addendum B).
- Modified Material Terms of Employment Profile (for use on Form ETA-790A, Addendum C).
 - Increased character limit from 3,500 to 5,000 characters.
 - Limited the drop-down options for the Section Number and Names (e.g., A.8g – Overtime Pay) to align with the applicable form sections.
 - Except for “Other Material Terms and Conditions,” the FLAG system will only permit one (1) Addendum C entry per form section to be imported on and after August 29.



MAJOR FORM PREPARATION REMINDERS AND TIPS

- Employers and authorized preparers **MUST READ** the OMB-approved general instructions carefully before completing the Forms ETA-790/790A (Job Order) and 9142A (H-2A Application).
- Employer contact information (including email address) must be an employee of the employer and **NOT** the authorized attorney or agent unless that person is an employee of the employer.
- A place of business must be a physical location – **NOT** a Post Office (P.O.) Box. A P.O. Box is a mailing address and not a valid physical address location.
- Entering “See Addendum C” in any open text box area will result in a Notice of Deficiency requiring the employer to submit a modified job order or application to begin a response in the space provided on the form.
- **DO NOT** repeat assurances or guarantees that are already covered by Section G.

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Form ETA-790A, Section A



8b. Wage Offer * \$ _____.	8c. Per * <input type="checkbox"/> HOUR <input type="checkbox"/> MONTH	8d. Piece Rate Offer § \$ _____.	8e. Piece Rate Units / Estimated Hourly Rate §
8f. Additional Information on Special Pay / Estimated Hourly Rate(s)			
8g. Overtime Pay - Is overtime pay available for this job opportunity at any worksite <u>locations</u> ?* If yes, use Addendum C to describe the applicable overtime premium wage rate(s) for overtime hours <u>worked</u> and the circumstances under which the wage rate(s) for such overtime hours would be paid.			<input type="checkbox"/> Yes <input type="checkbox"/> No

NEW Field 8.f

For disclosure of special pay information (e.g., bonuses or other incentives) or the upper end of a wage range offered for a crop or activity and the estimated hourly equivalent.

Include or be prepared to make the method of calculating the estimated hourly wage rate equivalent(s) and supporting materials available to the SWA.

NEW Field 8.g

If “Yes,” use Addendum C to disclose the wage rate(s) to be paid; the circumstances under which the wage rate(s) for overtime hours will be paid; whether overtime wage rates will vary between places of employment; and citation to the applicable federal, State, or local law requiring overtime pay.

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Form ETA-790/790A, Section A and Addendum A



- Modified Field A.9 instructing the employer to complete Addendum A if the employer is offering additional rates not identified in Items 8.b. through 8.g. (e.g., multiple piece rates for multiple agricultural activities).

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 Addendum A 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
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- Modified Addendum A: Combined the “wage offer” and “per” columns and the added a new column to identify the work state.

Work State	Crop or Agricultural Activity	Wage Offer/Per	Piece Rate Offer	Piece Rate Units / Estimated Hourly Rate / Special Pay Information
		\$ _____ <input type="checkbox"/> HOUR <input type="checkbox"/> MONTH	\$ _____	

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Form ETA-790/790A, Section A



- **NEW Field A.11** instructs the employer to complete Addendum C if the employer will have any performance expectations and/or minimum productivity standards that will be imposed on workers as a condition of job retention.
- Disclose all qualitative and quantitative criteria for performance evaluation.
- Employers are **NOT** required to disclose all policies, rules and procedures (i.e., work/housing rules).
- Employers may include whatever policies, rules and procedures it deems appropriate, provided they (1) do not conflict with applicable law or regulation, **AND** (2) there is a clear reference to an Employee Handbook or other document the employer will provide to the workers with the job order.

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 **Addendum C** to describe the minimum productivity and performance standards or criteria that may serve as a basis for termination for cause.

Yes No



■ Filing Tips for Field A.11

- Each productivity standard must be static (i.e., cannot change during the work contract period), quantifiable, and that specifically quantify the expected output per worker in the specific crop or agricultural activity.
- Productivity standards must be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or, if the employer first applied for temporary agricultural labor certification after 1977 (see 20 CFR 655.122(1)(3)).

Examples of Unacceptable Performance Standard Statements:

- Worker must “perform work in a timely and proficient manner” ... “perform work at a sustained, vigorous pace” ... “keep up with the crew” ... “not work slower than other workers”

Important Reminder: The SWA or OFLC may, at their discretion, request documentation from the employer to substantiate the appropriateness of any job qualification (including productivity standards).



- Specified work location and **crop or agricultural activity**

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. <i>(If no additional information, enter "NONE" below) *</i>				
7. Is a completed Addendum 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

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Form ETA-790/790A, Addendum B – C.1



C.1. Additional Agricultural Business Information

Ag Business 1

1. FEIN (from IRS) *	2. Legal Business Name *			3. Total Workers *
4. Trade Name/Doing Business As (DBA), if applicable §	5. Previous DBA, if applicable §		6. Previous DBA, if applicable §	
7. Address 1 *			8. Address 2 (suite/floor and number) §	
9. City *	10. State *	11. Postal code *	12. County *	

- **Use Section C.1 for any Ag Business that will employ workers or to which the employer will provide the workers attached to the job order.**



- **Individual Employers:** Do not complete Section C.1.
- **Individual Employers filing as an H-2ALC:** Must complete a Section C.1 entry for each fixed site employer client and the number of workers entered for each entry can match the total number of workers entered on Form ETA-790A, Section A, Item A.2a.
- **Itinerate Employers (Custom Combine, Sheep Shearing & Bee Keeping):** Must complete a Section C.1. entry for each employer being provided a service and the number of workers entered for each entry can match the total number of workers entered on Form ETA-790A, Section A, Item A.2a.
- **24/7 Livestock Herders:** Do not complete Section C.1 unless the employer is filing as an H-2ALC or has a joint employer agreement with additional employer(s).

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Form ETA-790/790A, Addendum B – C.1



- **Joint Employers:** Complete Section C.1 for each additional agricultural employer sharing employment of the workers and the number of workers entered for each entry can match the total number of workers entered on Form ETA-790A, Section A, Item A.2a. or have zero "0" entered.
- **Association - Joint Employers:** Must complete a Section C.1. entry for each of the Employer members of the Association, agreeing to employ workers for the specific job order.
- Addendum B, Section C.1. data will be used in FLAG to generate the Employer details section (Pg 2) of the invoice for Association Joint Employers. Each C.1. entry will serve as the Employer's itemized invoice bill line by using the Legal Business Name entered in item 2 and then the Total Workers number entered in Item 3.
- An entry of zero (0) for number of workers is allowed if the association member has joint agreements with other members.

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Form ETA-790/790A, Addendum B – C.2



C.2. Additional Place of Employment Information

1. Legal Business Name *	2. Place of Employment *	3. Additional Place of Employment Information and Crop and Agricultural Activity *	4. Begin Date §	5. End Date §	
	a. Address Location *				
	b. City *				c. State*
	d. Postal Code *				e. County *

- Use Section C.2 to list any additional place of employment locations



- **Individual Employers:** Complete Section C.2 when the employer has multiple work locations where work will be performed. Estimated start and end dates are **not** required to be entered for each additional work location.
- **Individual Employers filing as an H-2ALC:** Complete a Section C.2 entry for each unique work location not listed on Form ETA-790A, Section C. Estimated start and end dates are **not** required to be entered for each additional work location.
- **Itinerant Employers (Custom Combine, Sheep Shearing & Bee Keeping):** Complete a Section C.2 entry for each unique work location not listed on Form ETA-790A, Section C. Estimated start and end dates **are required** to be entered for each work location.



- **24/7 Livestock Herders:** Complete a Section C.2 entry for each unique county location. Only the county and state are required for Item 2, place of employment. In item 3, for additional place of employment information include the owner(s) of the land being grazed. Estimated start and end dates **are required** to be entered for each work location.
- **Joint Employers:** Complete a Section C.2 entry for each unique work location not listed on Form ETA-790A, Section C. Estimated start and end dates are **not** required to be entered for each work location.
- **Association - Joint Employers:** Complete a Section C.2 entry for each unique work location not listed on Form ETA-790A, Section C. Estimated start and end dates **are required** to be entered for each work location.



- **Item 3 – Crop and Agricultural Activity:** This information is a new requirement for each additional work location.
 - FLAG will provide a standard statement to be inserted if the same activities as described in the job description details will be performed.
 - If an Addendum A was created, FLAG will provide a dropdown menu option of internally generated crop IDs that can be selected for a specific worksite.



- Section E is now a list of five (5) material terms and conditions that will require the completion of only one (1) **Addendum C**.

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. Provision of Meals: 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"/> WILL NOT charge workers for meals.	
	<input type="checkbox"/> WILL charge each worker for meals at \$ _____ per day, if meals are provided.	
2. Daily Transportation: 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. Inbound/Outbound Transportation: 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"/>



a. Job Offer Information

1. Section/Item Number *		2. Name of Section for Material Term or Condition *	
3. Details of Material Term or Condition (up to 5,000 characters) *			

The Addendum C contains a large free text area, and the space has now increased from allowing 3,500 characters to 5,000. An Addendum C narrative is to be specific in describing details that pertain to a material term or condition on an ETA Form section/item.



Item A.8a - Job Duties & B.6 - Job Qualifications/Requirements require there to be written details on the ETA-790A form section. At least 80% of the allowable character limit must be utilized before an Addendum C can be created for the specific form item.

Temporary Agricultural Services and Wage Offer Information

8a. Job Duties - Description of the specific services or labor to be performed.*
(Allow on this form. Use Addendum C only if additional space is needed.)

See Addendum C



- The below Form ETA-790A items will allow for an Addendum C to be used to describe the material terms and conditions if they are applicable to the job opportunity.
 - **Item A.8g - Overtime Pay**
 - **Item A.11 - Minimum Productivity/Performance Standards**
 - **Item E.4 - Deductions from Pay**
 - **Item E.5 - Other Material Terms and Conditions**



- The below Form ETA-790A items require the employer to check a box in Section E for the specific item signaling that an Addendum C describing the material terms and conditions has been completed.
 - **Item E.1a - Provision of Meals**
 - **Item E.2 - Daily Transportation**
 - **Item E.5 - Inbound/Outbound Transportation**

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Form ETA-9142A, Section B



B. Employer Information

1. Legal Business Name *	
2. Trade Name/Doing Business As (DBA), if applicable §	
3. Previous DBA, if applicable §	4. Previous DBA, if applicable §

- **New:** Additional form items included to allow for including previous DBAs used in the prior two years.

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Form ETA-9142A, Section E



4. A completed **Appendix C** is attached to this application identifying the owners of the agricultural business, all operators of each place of employment (if different than the employer(s)), and all persons who manage or supervise any worker employed under the job order associated with this application, regardless of whether those managers or supervisors are employed by the employer or another entity. *

Yes

- Mark “**Yes**” to indicate that the employer is submitting a completed Appendix C that provides the identity, location, and contact information for the owners of each employer of workers under the job order associated with this application, and the identity, location, and contact information for the operator(s) of each place of employment

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Form ETA-9142A, Appendix C



1. Role of person <i>(select all that apply)</i> *			
<input type="checkbox"/> Owner – Employer		<input type="checkbox"/> Operator of Place of Employment	
		<input type="checkbox"/> Manager	
		<input type="checkbox"/> Supervisor	
2. FEIN <i>(from IRS)</i> *		3. Legal Business Name *	
4. Contact's Last (family) Name *		5. First (given) Name *	6. Middle Name(s) §
7. Address 1 *		8. Address 2 <i>(apt/suite/floor and number)</i> §	
9. City or Town *		10. State/District/Territory *	11. Postal Code *
12. Country *		13. Province §	
14. Date of Birth *	15. Telephone Number*	16. Extension §	17. Email Address *



- Pursuant to 20 CFR 655.130(a), the employer or joint employer (as applicable) must disclose to the Department the identity, location and contact information of all owners of each employer, the operators of each place of employment (if different than the employer(s)), and all managers and supervisors of workers employed under the job order associated with this application, regardless whether those managers or supervisors are employed by the employer(s) or another entity.
- **Important Note:** Each employer, any joint employer, and each operator of any place of employment identified on the job order (Form ETA-790/790A), must be identified in each section of “Additional Contact Information” on Appendix C.
- **Item 14:** Enter the Date of Birth of the individual identified in this section. The Employer is reminded that it must exercise due diligence when gathering, disclosing and updating as necessary, this required information. If after a good faith effort to obtain this information, the Employer is unable to ascertain the Date of Birth at the time of filing, please enter 88/88/8888.



- **Owner:** An owner legally owns or has a controlling operational role in the employer(s) business.
 - Any owner with ownership of more than 50 percent of a business, and
 - Any owner who exercises any decision-making responsibilities over the business.
 - The owner of the parent entity, if the employer is a branch, subsidiary, or affiliate of a corporate or joint venture.
- **Operator of place of employment:** An operator runs the agricultural business, making day-to-day management decisions. An operator could be an owner, hired manager, cash tenant, share tenant, and/or a partner.
- **Manager:** A person whose duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources.
- **Supervisor:** A person who supervises and coordinates the activities of agricultural, range, aquacultural, and related workers.



Foreign Labor Recruiter Information

- Section facilitates disclosure of agreements with foreign labor recruiters and information about the foreign labor recruiters that have or will be engaged in the recruitment of H-2A workers.
- “**N/A**” can be marked where the employer has NOT utilized and has no plans to use the services of a foreign labor recruiter in the recruitment of H-2A workers.

11. Is the employer, and its attorney or agent, as applicable, engaging or planning to engage any agent(s) or recruiter(s) in the recruitment of prospective H-2A workers, regardless of whether such agent(s) or recruiter(s) is (are) located in the U.S. or abroad? *	<input type="checkbox"/> Yes <input type="checkbox"/> No
11a. Indicate whether a copy of all agreements with any agent or recruiter whom you are engaging or planning to engage in the recruitment of H-2A workers is attached to this application. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
11b. Indicate whether a completed Appendix D providing the identity and location of all persons and entities hired by or working for the agent or recruiter subject to the agreement(s), including any of the agents or employees of those persons and entities, is attached to this application. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A



Foreign Labor Recruiter Information – Field E.11

- Mark “**Yes**” if the employer has engaged or is planning to engage any agent(s) or foreign labor recruiter(s), directly or indirectly, in the recruitment of prospective H-2A workers, regardless of whether such agent(s) or recruiter(s) is (are) located in the U.S. or abroad.
- Mark “**No**” here if the employer has not engaged and has no plans to engage any agent(s) or recruiter(s) in the recruitment of prospective H-2A workers.

Important Reminder: Employer must update this information with any changes during the contract period (§ 655.137(c)) and must retain this information for a period of three years (§ 655.167(c)(8)).



Foreign Labor Recruiter Information – Field E.11a

- Mark “**Yes**” to indicate that the employer is submitting a copy of all contracts and agreements with any agent and/or recruiter whom the employer is engaging or planning to engage in the recruitment of H-2A workers for this application.
- Mark “**N/A**” here if there are no agreements with any agent or recruiter whom the employer is engaging or planning to engage in the recruitment of H-2A workers.
- Mark “**N/A**” if question E.11 above is marked “No.”

Important Reminder: An employer is required under 20 CFR 655.137(a) to submit a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of H-2A workers.



Foreign Labor Recruiter Information – Field E.11b

- Mark “Yes” to indicate that the employer has provided, through Appendix D, the identity and location of all persons and entities hired by or working for the foreign labor recruiter or agent, and any of the agents or employees of those persons and entities, to recruit prospective foreign workers for the H-2A job opportunity.
- If the employer has NOT utilized and has no plans to use the services of a foreign labor recruiter in the recruitment of H-2A workers for this application, mark “N/A” here.

Important Reminder: OFLC will publish a foreign labor recruiter registry containing a recruiter’s identifying information, as in H-2B. **§ 655.137(d).**

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Form ETA-9142A, Appendix D



Foreign Labor Recruiter Information 1

1. Last (family) Name *	2. First (given) Name *	3. Middle Name(s) §
4. Name of Employer/Recruiting Organization *		
5. City *	6. State/District/Territory *	7. Postal Code *
8. Country *	9. Province §	
10. Registration Number 1 §	11. Issuing Country §	
12. Registration Number 2 §	13. Issuing Country §	

Important Reminders

- Include the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agents or employees of those persons and entities.
- Each form collects U.S. and foreign locations.
- Complete as many additional Appendix D form sections as are necessary to disclose all persons.

NEW Foreign Labor Registration Number Fields

- Issued by a governmental agency with jurisdiction to authorize or license persons to provide recruiting services.
- Enter all “9s” if the person is NOT registered or refuses to provide the registration **OR** “N/A” if not applicable.



Upcoming H-2A Webinar

August 21, 2024

- In collaboration with OFLC, staff representing the Department's Office of the Chief Information Officer will provide a demonstration of the technical changes to the job order and application filing process in the FLAG System – which will be implemented on August 29.