

U.S. Department Labor
Employment and Training Administration

14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

Kitchen facilities, utilities, and utensils will be provided by the employer at no cost to the workers. Workers will provide and prepare their own meals. Upon request, the employer will provide transportation to stores at least every two weeks for shopping for food and other necessary items at no cost to the worker.

15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Vea las instrucciones para más detalles.

To apply, applicants must provide their full name and complete contact information as well as the name and contact information of at least one reference who has firsthand knowledge and can verify the worker's experience and performance to: David MacMillan, c/o Snake River Farmers' Association, 406 West 400 South, Heyburn, ID 83336 or by fax to: (208) 436-0573 from 9:00 a.m. to 4:00 p.m., Monday through Friday. Note: Only those applicants that meet all the special requirements for employment; who are able, willing, and qualified to perform the work; who are eligible for employment in the United States; and who will be available at the time and place needed, should apply.

SPECIAL REQUIREMENTS / QUALIFICATIONS: Applicants must have 20 days experience with farm/irrigation work. Applicants hired must be able to obtain a valid Driver's License as driving on public roads may be required.

Following the verification of prior work experience and satisfactory performance, all qualified applicants will receive a phone call and/or written notification containing the date and time to call the employer regarding the job opportunity. The employer will accept collect telephone calls at the appointed time and will be able to converse in English only. Bilingual services for applicants may be obtained from local offices of the State Workforce Agency. Form I-9 will be completed no later than the first date of employment. Documentation of identity and employment authorization (original documents only) as required for Form I-9 under the Immigration Reform and Control Act must be presented to the employer for examination within three business days of the employee's first date of employment.

16. Job description and requirements / Descripción y requisitos del trabajo:

Job duties may require straight and/or night shifts spanning two calendar days due to crop demands. The majority of the work activities during the overall contract period, however, will be related to general farmwork.

Worker will be required to perform a variety of duties related to the production of wheat and alfalfa grass.

General farm work will include the following responsibilities: maintain, drive, attach and operate farm implements/tractors/equipment to till soil, plant, cultivate, fertilize and harvest crops; make minor mechanical adjustments and repairs on farm machinery; remove undesirable and excess growth from crops or farm grounds; remove rocks from field; paint/repair/maintain farm structures; replace/repair fencing; perform general cleanup of farm and horse areas; drive, load/unload trucks;

Please see Attachments to Forms ETA 790 & ETA 9142, Item 16, to continue & complete.

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si ☒ No ☐ If yes, number of months preferred: / Si es así, numero de meses de experiencia:
must have 20 days experience with farm/irrigation work

2. Check all requirements that apply:

- ☐ Certification/License Requirements / Certificación/Licencia Requisitos
☒ Driver Requirements / Requisitos del conductor
☒ Employer Will Train / Empleador entrenará o adiestrará
☐ Extensive Sitting / Estar sentado largos ratos
☒ Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas
☒ Lifting requirement / Levantar o Cargar 100 lbs./libras
☐ Repetitive Movements / Movimientos repetitivos

- ☐ Criminal Background Check / Verificación de antecedentes penales
☐ Drug Screen / Detección de Drogas
☐ Extensive Pushing and Pulling / Empujar y Jalar Extensamente
☐ Extensive Walking / Caminar por largos ratos
☐ Frequent Stooping / Inclínándose o agachándose con frecuencia
☐ OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Dias Feriados no obligatorio

For further clarification, please see Attachments to Forms ETA 790 & ETA 9142

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Período de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			/ /
	\$	\$		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
General Farm/Irrigation Worker	\$11.75/hr or	when irrigating, \$.29/pipe, whichever is greater See Attachments, Item 17	See Attachments, Item 17	Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				State Tax /Impuestos Estatales	<input checked="" type="checkbox"/> If applicable	<input type="checkbox"/>	Bi-weekly/ Quincenal
				Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
				Other (specify) / Otro (especifica)	<input checked="" type="checkbox"/> If applicable per Attachments, Item 17	<input type="checkbox"/>	Monthly/Mensual
							Other/Otro
							<input type="checkbox"/>

18. More Details About the Pay / Mas Detalles Sobre el Pago:

Please see Attachments to Forms ETA 790 & ETA 9142, Items 11 & 17

19. Transportation Arrangements / Arreglos de Transportación

Inbound transportation and subsistence costs from the place the worker has come to work, whether in the US or abroad, to the place of employment will be paid to the worker upon completion of 50% of the work contract period. Receipts showing transportation charges will be required. Outbound transportation and subsistence will be provided/paid by the employer where the worker completes the work contract period, or is terminated without cause, and no subsequent H-2A employment is available. Transportation costs will be based on the most economical common carrier or other transportation which conforms to Interstate Commerce Commission (ICC) regulations.

The employer is responsible for paying inbound transportation costs in the first workweek of employment to the extent that shifting such costs to the employees (either directly or indirectly) would effectively bring their wages below the FLSA minimum wage.

Travel and subsistence costs will cover those incurred by the worker while in travel from/to the place from which the worker came to work for the employer, disregarding intervening employment.

Subsistence costs will be paid at the rate of \$12.07 per each 24-hour period of time that the worker is in travel status. A workers entitlement to reimbursement for reasonable subsistence costs in excess of \$12.07 per day shall be limited to actual expenses not exceeding \$51.00 per day, based on receipts. The worker must produce receipts from commercial food establishments showing the amount spent for any food and non-alcoholic beverages, including tax.

When required, transportation between the employer-provided housing and the work site will be provided by the employer at no cost to the worker.

Visa fees, border crossing fees, and other government mandated fees related to employment will be reimbursed to the worker during the first week of employment based on receipts.

If the death of a worker occurs during the time the worker is employed under this job order, the employer agrees to pay for shipping the worker's body to permanent home only. The employer is not liable for any funeral or other costs associated with preparing the worker's remains for shipping.

20. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? / ¿Es la práctica habitual usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si ☐ No ☒

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le paga al Contratista de Trabajo Agrícola por cada actividad?

21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores? If applicable - Yes/Si ☒ No ☐

22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador: Yes/Si ☒ No ☐

23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores?

Yes/Si ☒ No ☐

24. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None".) / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno".)

None

25. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None".) / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno".)

None

26. Is this job order to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de empleo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/Si ☒ No ☐

27. Employer's Certification: This job 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. / Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

DAVID D. MCKINLEY President
Employer's Printed Name & Title / Nombre y Título en Letra de Molde/Imprenta del Empleador

[Signature]
Employer's Signature / Firma y Título del Empleador

10/24/12
Date / Fecha

READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Employment and Training Administration (ETA) nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the American Job Center constitute a contractual job offer to which the American Job Center, ETA or a State agency is in any way a party.

LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (American Job Center) constituyen una oferta de trabajo contractuales a las que el American Job Center, ETA o un organismo estatal es de ninguna manera una de las partes.

PUBLIC BURDEN STATEMENT

The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

DECLARACION DE CARGA PÚBLICA

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501), se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para revisar las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene por qué responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

28. Use this section to provide additional supporting information (including section Box number). Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

- To the extent that the ETA Form 790 deviates from the H-2A regulations and/or any other published and relevant regulation, the language of the regulation controls
- Please see Attachments to Forms ETA 790 & ETA 9142

20 CFR 653.501
Assurances

INTRASTATE AND INTERSTATE CLEARANCE ORDER

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 11 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The 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.

The employer agrees to expeditiously notify the OHO or State agency by telephone 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.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name: Bearshorn Ranch LLC Date: 10/24/17

Employer's Signature: [Signature]

Besides the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.

ATTACHMENTS TO FORMS ETA-790 and ETA 9142 -- AGRICULTURAL CLEARANCE ORDER

Beaverhead Ranch, LLC

ITEM 3 LOCATION and DIRECTION to the HOUSING

Housing and utilities are provided at no cost to H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. Housing will be clean and in compliance with OSHA Housing Standards or ETA at 29CFR 654.400 to 417 when occupied. Workers will be responsible for maintaining housing in a neat and clean manner. Reasonable repair costs for damage other than that caused by normal wear and tear will be deducted from the earnings of workers found to have been responsible for damage to housing or furnishings.

Mail intended for workers occupying this housing should be addressed to the worker in care of the employer. In case of emergency, workers occupying this housing can be contacted by calling the number listed at Item 1.

Housing will be provided to workers only.

ITEM 11 ANTICIPATED HOURS OF WORK

The anticipated workday is *eight hours a day Monday through Saturday*. The actual hours may vary and there may be periods when little or no work will be available due to weather, time of year, and the requirements of the cropping program.

The worker may be offered work seven days a week, as farmwork must be performed seven days a week. The worker will be required, however, to work 6 days a week. The worker may be offered more than the specified hours per day, but is only required to work the hours specified. The worker may be requested, but will not be required, to work on his/her Sabbath and/or on Federal holidays.

The employer guarantees to offer a total number of work hours that is equal to at least three-fourths of the workdays in the total contract period, and all extensions thereof, 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 termination date specified in the work contract or extensions thereof. The computation of hours of work offered for the purpose of this guarantee will be based on 6 required workdays per week less Federal holidays. This guarantee can only be abated under conditions specified in 20CFR 655.122 (o) which states: "If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO." In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of 20 CFR 655.122. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must: (1) 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 the worker's next certified H-2A employer, whichever the worker prefers; (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and (3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of 20 CFR 655.122. 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.

If the worker voluntarily abandons employment before the end of the period of employment set forth in ITEM 9 or is terminated for cause, the worker is not entitled to the guarantee set forth above.

The employer guarantees to offer work for the week beginning with the anticipated date of need specified in ITEM 9 unless the employer amends the date of need at least 10 working days prior to the original date of need by notifying the order-holding office. If the employer fails to notify the order-holding office at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the clearance system the specified hourly rate of pay, or in the absence of a specified hourly rate of pay, the higher of the Federal or State minimum wage for the first week starting with the originally-anticipated date of need. If it becomes necessary to abort the contract under conditions specified above, the employer agrees to offer 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 the worker's next certified H-2A employer, whichever the worker prefers.

ITEM 16 JOB SPECIFICATIONS

Job duties may require straight and/or night shifts spanning two calendar days due to crop demands. The majority of the work activities during the overall contract period, however, will be related to general farmwork.

Worker will be required to perform a variety of duties related to the production of wheat and alfalfa grass.

General farm work will include the following responsibilities: maintain, drive, attach and operate farm implements/tractors/equipment to till soil, plant, cultivate, fertilize and harvest crops; make minor mechanical adjustments and repairs on farm machinery; remove undesirable and excess growth from crops or farm grounds; remove rocks from field; paint/repair/maintain farm structures; replace/repair fencing; perform general cleanup of farm and horse areas; drive, load/unload trucks; operate motor bike or all-terrain vehicle in the course of performing duties; feed horses.

Irrigation duties will include the following:

Hand lines: connect pipes; check alignment of pipe and adjust for proper water distribution; attach lines to water supply; turn on pump; turn valves to start flow of water; disassemble lines and carry pipes across fields at specified intervals; move pipes through freshly irrigated crops and/or plowed fields where mud may be deep at times; lift and carry pipe sections weighing approximately 40 pounds on a sustained basis.

Wheel lines: start gasoline engines and operate controls to move lines across fields at specified intervals.

Pivots: push on switch that activates circle sprinkler system.

Other Irrigation Duties: remove pipes/wheel lines from storage and lay out/place in predetermined patterns in fields;

lubricate, adjust, repair and replace parts such as sprinkler heads and drive chains using hand tools; observe revolving sprinklers and adjust to ensure proper operation and uniform distribution of water; disassemble, service and store pipes/mainlines/wheel lines after irrigation season.

To meet minimum acceptable performance standards when irrigating, the worker must, after a 10 day conditioning period, move an average of at least 48 40-foot sections of 3-inch pipe or 44 40-foot sections of 4-inch pipe per hour under normal working conditions..

Instruction, training, and general supervision will be provided by the farm operator or a designated employee. However, the worker must perform required duties without close supervision and listen to, understand, and follow simple instructions of the employer or supervisor.

All tools, supplies, and equipment required to perform the duties assigned will be provided at no charge to the worker. The worker will be required to return worn out tools, supplies, and equipment before new ones will be provided.

Most duties are performed out of doors and entail exposure to heat, cold, dust, rain, and other environmental conditions common in fields, including mosquitoes during certain seasons.

The worker must crouch, bend, and lift and carry items weighing up to 100 pounds in the course of performing required activities.

TERMINATION: The employer may terminate the worker's employment if the worker:

- (1) fails to complete or refuses to carry out work as assigned (including unexcused absences from work);
- (2) fails to work in accordance with the terms of this clearance order;
- (3) commits an act of misconduct;
- (4) commits a violation of the laws of the United States, the State, or the local jurisdiction;

If a worker voluntarily abandons the job or is terminated by the employer for cause, the employer will notify the NPC and DHS. Providing notification in a timely manner (within two working days) will relieve the employer of the subsequent requirements to provide return transportation and subsistence fees and the $\frac{1}{4}$ guarantee. Abandonment will be deemed to begin after a worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer.

WORK CONTRACT: The employer will provide a written work contract on the day work commences. Contracts will be provided in a language understood by the worker.

ITEM 17 WAGE RATES, SPECIAL PAY INFORMATION AND DEDUCTIONS

The employer will guarantee a wage rate that is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed upon Collective Bargaining Agreement wage, or the Federal or State minimum wage. The employer may pay by piece rate and when doing so will guarantee that the worker's earnings will be no less than the worker would have earned in each pay period if the worker had been paid at the appropriate hourly wage rate. The highest wage will be paid at the time the work is performed, for every hour or portion thereof worked during a work contract period, including any higher or lower adjustments published by the Department of Labor. Wages that are higher than the guaranteed hourly wage rate and/or bonuses and/or other small benefits or rewards may be offered at the employer's sole discretion during the period of employment. Any such added benefit, if elected by the employer, will be applied in a non-discriminatory manner to all employees under this job order who meet the employer's determined criteria, for example: length of service with the employer.

The worker will be paid at least twice monthly (such as the 1st and the 15th) by check. The employer will make the following deductions: FICA (if applicable); any other taxes as required by law; loans (if any); long distance telephone charges (if any); reimbursement for damage caused to the 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 (if any); charges for reasonable costs related to the worker's refusal or negligent failure to return all items furnished by the employer or due to the worker's willful damage or destruction of such property; deductions directed by the worker by a voluntary assignment solely for the benefit of the worker to a creditor, donee, or other 3rd party (e.g. worker's store/vendor accounts with merchants) wholly independent of the employer and from which neither the employer nor any person acting on his behalf or interest, directly or indirectly, derives any profit or benefit. No deductions except those required by law will be made which bring the worker's earnings below the Federal Minimum Wage.

The employer will furnish to the worker on or before each payday written hours and earnings statements meeting regulatory requirements at 20 CFR 655.122(k). All earnings records and statements will be available for inspection or transcription by the Secretary or a duly authorized and designated representative and by the worker and representatives designated by the worker.

ITEM 22 WORKERS' COMPENSATION

The employer will provide Workers' Compensation insurance in compliance with State law covering injury and disease arising out of and in the course of employment. If employment is not covered by or is exempt from State law, the employer will provide, at no cost to the worker, workers' compensation providing benefits at least equal to those under State law or other comparable employment.

Due to the need to renew Worker's Compensation insurance each and every year, the policy may expire within the contract period requested. If the employer's Worker's Compensation policy should expire during the certified contract period, the employer agrees to renew the policy on or before the expiration date and maintain Worker's Compensation coverage for H-2A employees, and employees in corresponding employment, throughout the certified contract period.

ITEM 23 REQUEST FOR CONDITIONAL ENTRY

The employer requests conditional access into the Interstate and Intrastate Clearance System and assures that the worker housing will meet the applicable Federal Standards not later than 30 days in advance of the date of need reflected on the attached ETA 790.

Beaverhead Ranch, LLC

H-2A Employer's Assurances and Obligations (20 CFR 655.135)

As an employer seeking to employ H-2A workers I agree as part of the *Application for Temporary Employment Certification* and job offer that I will abide by the requirements of this subpart and make each of the following additional assurances:

(a) Non-discriminatory hiring practices. The job opportunity is, and through the period set forth in paragraph (d) of this section must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. Rejections of any U.S. workers who applied or apply for the job must be only for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hires and rejections as required by §655.167.

(b) No strike or lockout. The worksite for which the employer is requesting H-2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.

(c) Recruitment requirements. The employer has and will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an *Application for Temporary Employment Certification* is made) for the job opportunity until the end of the period as specified in paragraph (d) of this section and must independently conduct the positive recruitment activities, as specified in §655.154, until the date on which the H-2A workers depart for the place of work. Unless the SWA is informed in writing of a different date, the date that is the third day preceding the employer's first date of need will be determined to be the date the H-2A workers departed for the employer's place of business.

(d) Fifty percent rule. From the time the foreign workers depart for the employer's place of employment, the employer must provide employment to any qualified, eligible U.S. worker who applies to the employer until 50 percent of the period of the work contract has elapsed. Start of the work contract timeline is calculated from the first date of need stated on the *Application for Temporary Employment Certification*, under which the foreign worker who is in the job was hired. This provision will not apply to any employer who certifies to the CO in the *Application for Temporary Employment Certification* that the employer:

- (1) Did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in sec. 203(u) of Title 29;
- (2) Is not a member of an association which has petitioned for certification under this subpart for its members; and
- (3) Has not otherwise associated with other employers who are petitioning for temporary foreign workers under this subpart.

(e) Compliance with applicable laws. During the period of employment that is the subject of the *Application for Temporary Employment Certification*, the employer must comply with all applicable Federal, State and local laws and regulations, including health and safety laws. In compliance with such laws, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 18 U.S.C. 1592(a), the employer may not hold or confiscate workers' passports, visas, or other immigration documents. H-2A employers may also be subject to the FLSA. The FLSA operates independently of the H-2A program and has specific requirements that address payment of wages, including deductions from wages, the payment of Federal minimum wage and payment of overtime.

(f) Job opportunity is full-time. The job opportunity is a full-time temporary position, calculated to be at least 35 hours per work week.

(g) No recent or future layoffs. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment except for lawful, job-related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the *Application for Temporary Employment Certification* to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired. A layoff for lawful, job-related reasons such as lack of work or the end of the growing season is permissible if all H-2A workers are laid off before any U.S. worker in corresponding employment.

(h) No unfair treatment. The employer 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:

- (1) Filed a complaint under or related to 8 U.S.C. 1188, or this subpart or any other Department regulation promulgated thereunder;
- (2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;
- (3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;
- (4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder; or
- (5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder.


(i) Notify workers of duty to leave United States. (1) The employer must inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under paragraph (i)(2) of this section, unless the H-2A worker is being sponsored by another subsequent H-2A employer.

(2) As defined further in DHS regulations, a temporary labor certification limits the validity period of an H-2A petition, and therefore, the authorized period of stay for an H-2A worker. See 8 CFR 214.2(h)(5)(vii) A foreign worker may not remain beyond his or her authorized period of stay, as determined by DHS, nor beyond separation from employment prior to completion of the H-2A contract, absent an extension or change of such worker's status under DHS regulations. See 8 CFR 214.2(h)(5)(viii)(B).

(j) Comply with the prohibition against employees paying fees. The employer and its agents have not sought or received payment of any kind from any employee subject to 8 U.S.C. 1188 for any activity related to obtaining H-2A labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor. This provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

(k) Contracts with third parties comply with prohibitions. The employer has contractually forbidden any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H-2A workers to seek or receive payments or other compensation from prospective employees. This documentation is to be made available upon request by the CO or another Federal party.

(l) Notice of worker rights. The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to 8 U.S.C. 1188.

X 

Employer's Signature

10/24/17

Date