

H-2A Temporary Foreign Labor – FY2022 SWA Updates

Michigan Department of Labor and Economic Opportunity
Workforce Development – Foreign Labor Services

Welcome and Introductions

Michigan State Workforce Agency (SWA) Contacts

Meet the Foreign Labor Services Team:

Jesus Centeno, Foreign Labor Analyst

Esmeralda Perez, Foreign Labor Analyst

Gustavo Juarez, Foreign Labor Analyst

Ginger L. Vallejo, Foreign Labor Services Manager

Hector Arroyo Jr., Administrative Manager



H-2A Temporary Foreign Labor Program

Michigan SWA FY2022 Updates

The Objectives for today's webinar:

- Provide an overview of the program trends over the last 5 years and a forecasted outlook
- Provide recommendations to ensure prompt processing of your H-2A Temporary Foreign Labor Application
- Provide updates regarding Workforce Development priorities aligned to the food and agriculture industry

H-2A Temporary Foreign Labor Certification Program

Allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a *temporary or seasonal* nature.

The H-2A temporary agricultural visa is a nonimmigrant visa which allows foreign nationals to enter the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

- A Temporary Final Rule established August 20, 2020, allows employers to petition for H-2A workers to remain in the U.S. for up to 3 years
- The employment cannot be for a term longer than one year with the same employer
- The worker may remain in the U.S. for up to 60 days after their last day of work with the contracting employer in an effort to obtain new employment

Soure: https://flag.dol.gov/.



H-2A Temporary Foreign Labor Certification Program

Role of State Workforce Agency (SWA) in the H-2A FLC Program

The central requirement of the H-2A Programs is to determine whether there are sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal employment for which an employer desires to import nonimmigrant foreign workers.

Other functions include:

- Reviewing H-2A applications for compliance with relevant federal, state and local regulations.
- Collaborating with the Michigan Department of Agriculture and Rural Development for housing inspections for Agricultural Clearance Orders.
- Posting jobs on the Pure Michigan Talent Connect website (MiTalent.org).
- Training Michigan Works! and State of Michigan staff about their role in the H-2A programs.
- Conducting agricultural prevailing wage and practice surveys throughout Michigan to determine common employment practices and average wages.
- Recruiting and Referring Migrant and Seasonal Farmworkers to available jobs.
- Completing field checks when U.S. workers are referred to H-2A jobs.



Historical Trends

Use of the H-2A Temporary Foreign Labor Program over the last 5 years





National Labor Force Projections

Population and Workforce trends impacting Foreign Labor Utilization over the next 9 years

An excerpt from the U.S. Bureau of Labor Statistics Employment Projections: 2020-2030 Summary

Population and Labor Force

- The civilian noninstitutional population growth rate is projected to decline slightly, from 0.9% annually in 2010–20 to 0.8% annually in 2020–30. This nonetheless results in an increase of 20.8 million over the 2020–30 projections decade, to a level of 281.1 million.
- The labor force is expected to increase by 8.9 million, from 160.7 million in 2020 to 169.6 million in 2030. The labor force participation rate is projected to decline, from 61.7% in 2020 to 60.4% in 2030.
- By 2030, all baby boomers will be at least 65 years old, contributing to a projected labor force growth rate that is slower than much of recent history, as well as a continued decline in the labor force participation rate because older people have lower participation rates compared with younger age groups.



Michigan Labor Force Projections

Population and Workforce trends that impact H-2A Program Utilization

Over the pervious 5 years and the next 8 years

Michigan's labor force projections show a decline in labor force participation that is significantly impacting all industries. The decrease among the 16 to 24-year-old age groups is based on birthrate.

Labor Force Projections					Year				
			2020		2024		2028		
Area	Sex	Age	Labor Force	LFPR	Labor Force	LFPR	Labor Force	LFPR	
Michigan	Total	16-19	200,000	39.%	178,100	35.9%	158,800	32.9%	
		20-24	479,800	72.3%	452,800	70.9%	432,200	69.4%	
		25-34	1,069,900	80.7%	1,104,300	80.%	1,068,300	79.2%	
		35-44	956,100	82.4%	992,600	82.2%	1,081,000	82.1%	
		45-54	974,900	79.7%	920,800	79.3%	904,600	78.9%	
		55-64	851,900	61.3%	816,600	62.6%	786,900	63.9%	
		65-74	270,300	25.2%	319,600	27.3%	360,300	29.6%	
		75-99	64,500	8.7%	84,100	9.9%	108,500	11.1%	
		Total	4,867,400	60.2%	4,868,900	59.3%	4,900,600	58.7%	

Source: Michigan DTMB Bureau of Labor Market Information and Strategic Initiatives



Use of the H-2A Temporary Foreign Labor Program in 2018

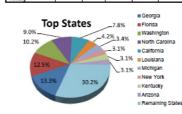
Source: https://www.dol.gov/agencies/eta/foreign-labor/performance

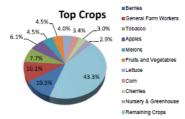
EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DOL

OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2018

	Applications Received ¹						tistics by Worker Position		fied	
	FY	Q1	Q2	Q3	Q4	% Change FY 2017	Rev	iew of Positions Certified F (% of total certified FY 2018)	Y 2018	
1	11,808	2,756	4,727	2,837	1,486	16.7%		Georgia	32,364	13.39





¹⁴Applications Received" is derived from data not publicly disclosed.
² Petrent of compilet H-A3 applications resolved 30 days before the start date of need, compilet H-A3 application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for the OFLC Certifying Officer to Issue a final determination 30 days before the start date of

Data as of September 30, 2018. All figures are rounded and not audited.

1	Review of Positions Certified FY 2018 (% of total certified FY 2018)							
11		Georgia	32,364	13.3%				
-		Florida	30,462	12.5%				
		Washington	24,862	10.2%				
1		North Carolina	21,794	9.0%				
i	Top 10	California	18,908	7.8%				
H	States	Louisiana	10,079	4.2%				
H		Michigan	8,359	3.4%				
H		New York	7,634	3.1%				
H		Kentucky	7,604	3.1%				
H		Arizona	7,497	3.1%				
l		North Carolina Growers Association (NCGA)	11,609	4.8%				
1		Washington Farm Labor Association (WAFLA)	5,163	2.1%				
		Fresh Harvest, Inc.	4,237	1.7%				
		Zirkle Fruit Company	4,169	1.7%				
	Top 10	Alewelt Concrete, Inc.	2,706	1.1%				
	Employers	Elkhorn Packing Co., LLC	2,652	1.1%				
		AG Labor, LLC	2,207	0.9%				
		Overlook Harvesting Company, LLC	2,207	0.9%				
		Rancho Nuevo Harvesting Company, LLC	2,058	0.8%				
		Foothill Packing, Inc.	2,056	0.8%				
		Berries ³	25,424	10.5%				
		General Farm Workers	24,414	10.1%				
		Tobacco ⁴	18,652	7.7%				
		Apples ⁵	14,920	6.1%				
	Top 10 Crops/	Melons ⁶	11,026	4.5%				
	Occupations	Fruits and Vegetables	10,858	4.5%				
		Lettuce ⁷	9,758	4.0%				
		Com ⁸	8,254	3.4%				
		Cherries ⁹	7,245	3.0%				
		Nursery and Greenhouse Workers	7,117	2.9%				
٨	*Serries Category Includes Strauberies		7,117	2.99				

Samine Category includes listed Primary Crops of Berlies, Blackberlies, Blauberlies, Cramberlies, Raspberlies a Braukberlies. Tobacco: Category includes Primary Crops of Burley, Cutting, Rue-Cured, Settling, and Stripping Tobacco. Applies Category includes Primary Crop of Applies and Apple Drops.

Melons Category Includes Primary Crop of Cantaloupes, Melons, and Watermelons. Lettuce Category Includes Primary Crop of Iceberg Lettuce, Lettuce and Romaine Lettuce

*Cherries Category Includes listed Primary Crops of Cherries, Sweet Cherries, and V



Use of the H-2A Temporary Foreign Labor Program in 2019

Source: https://www.dol.gov/agencies/eta/foreign-labor/performance

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H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2019

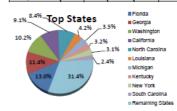
 Applications Received¹

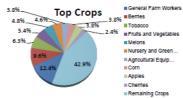
 FYTD
 Q1
 Q2
 Q3
 Q4
 % Change FY 2018

 13,081
 3,175
 5,380
 2,948
 1,578
 10.8%

Applications Processed³

Determination	FYTD	Q1	Q2	Q3	Q4
Total Determinations	13,095	1,964	5,800	3,357	1,974
- Certified	12,626	1,880	5,660	3,242	1,844
- Denied	211	34	67	53	57
- Withdrawn	258	50	73	62	73
Positions Requested	268,729	36,477	91,161	85,454	55,637
Positions Certified	257,667	35,449	87,868	82,094	52,256
Processed Timely ³	86.1%	92.6%	77.5%	85.6%	96.3%





1*Applications Received* is derived from data not publicly disclosed.

2Cumulative numbers may not match the numbers on previous reports due to changes in

The processing which H-2A applications resolved 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment report) necessary for the OFLC Certifying Officer to issue a final determination 30 days before the start date of need.

Selected Statistics by Worker Positions Certif
Review of Positions Certified FY 2019 EOY
(%) of total portified EV 2019 EOV)

Review of Positions Certified FY 2019 EOY (% of total certified FY 2019 EOY)							
	Florida	33,598	13.0%				
	Georgia	29,480	11.4%				
	Washington	26,226	10.2%				
	California	23,321	9.1%				
Top 10	North Carolina	21,605	8.4%				
States	Louisiana	10,816	4.2%				
	Michigan	9,096	3.5%				
	Kentucky	8,315	3.2%				
	New York	8,104	3.1%				
	South Carolina	6,082	2.4%				
	North Carolina Growers Association (NCGA)	11,223	4.4%				
	Fresh Harvest, Inc.	4,812	1.9%				
	WAFLA	4,369	1.7%				
	Zirkle Fruit Company	3,400	1.3%				
Top 10 Employers	Farm-Op Kuzzens H2A, LLC	2,658	1.0%				
	Ag Labor, LLC	2,409	0.9%				
	Foothill Packing, Inc.	2,398	0.9%				
	Overlook Harvesting Co.	2,396	0.9%				
	R & R Harvesting, Inc.	2,094	0.8%				
	Rancho Nuevo Harvesting	2,024	0.8%				
	General Farm Workers	31,967	12.4%				
	Berries ⁴	24,661	9.6%				
	Tobacco ⁵	16,252	6.3%				
	Fruits and Vegetables ⁶	13,995	5.4%				
Top 10	Apples ⁷	12,479	4.8%				
Crops/ Occupation	Melons ⁸	11,876	4.6%				
2.0000000000000000000000000000000000000	Nursery and Greenhouse Workers	9,885	3.8%				
	Agricultural Equipment Operators ⁹	9,869	3.8%				
	Com ¹⁰	9,776	3.8%				
	Tomatoes	6,252	2.4%				

Bisseberries.

*Tobacco Category Includes Primary Crops of Air-cured, Burley, Cutting, Plue-cured, Setting, Stripping, and

Tobscoo Category Includes Primary Crops of Air-cured, Burley, Cutting, Rus-cured, Setting, Stripping, and lobacco.

Fruits and Vegetables Category Includes Primary Copp of Finits, Fututs and Vegetables, and Vegetables. Anoise Category Includes Primary Crops of Acol Droce, Anoise, 2014 and Roseles.

Applies Category includes Primary Crops of Applie Drops, Applies, and Tigl Applies.

**Missions Category Includes Primary Orops of Cartischupes, Missions, and Watermalors.

**Agricultural Equipment Operators Category Includes Primary Crops of Agricultural Equipment Operator, Custom Combine Harvasters, and Logging.

Data as of Setpember 30, 2019. All figures are rounded and not audited.



Use of the H-2A Temporary Foreign Labor Program in 2020

Source: https://www.dol.gov/agencies/eta/foreign-labor/performance

EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DOL

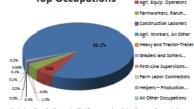
OFFICE OF FOREIGN LABOR CERTIFICATION

H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 EO

applications P	rocesse	d			
Determination	FY	Q1	Q2	Q3	Q4
Total Processed	14,063	2,111	6,820	3,095	2,037
- Certified	13,552	1,991	6,654	2,984	1,943
- Denied	247	62	73	67	45
- Withdrawn	264	58	93	64	49
Positions Requested	286,900	43,178	100,248	88,136	55,338
Positions	275,430	40,844	97,375	85,044	52,167

96.8% 97.8% 96.8% 95.9%





Includes all applications submitted for processing during the reporting period. Percent of complete applications resolved no later than 30 days before the dart cate of need. A complete H2A application is defined as one containing all the documentation (e.g., housing inspection report, underest compensation, recruitment report) necessary for OFLC to issue a final determination no later than 30 days before the data date of need.

All calculations are aggregated based on the unique FEIN submitted by the employer. Multiple appearances of the same employer name may occur when associated with multip FEINs.

al	Year (FY) 2	2020 EOY		
	Revie	w of Positions Certified I (% of total certified FY 2020	Y 2020 EO EOY)	Υ
		Florida	39,064	14.2%
	Top 10 States of	Georgia	27,614	10.0%
		Washington	26,832	9.7%
		California	25,453	9.2%
		North Carolina	22,052	8.0%
	Employment	Louisiana	11,332	4.1%
		Michigan	9,912	3.6%
		Arizona	8,602	3.1%
		New York	8,482	3.1%
		Kentucky	6,952	2.5%
		Farmworkers and Laborers, Crop	242,585	88.1%
		Agri. Equip. Operators	15,396	5.6%
	Top 10 Occupations (based on SOC Codes)	Farmworkers, Farm, Ranch, & Aqua. Animal	10,898	4.0%
		Construction Laborers	3,256	1.2%
		Agri. Workers, All Other	1,155	0.4%
		Heavy and Tractor- Trailer Truck Drivers	577	0.2%
		Graders and Sorters, Agri. Products	467	0.2%
		First-Line Supervisors of Agri. Crop and Horticultural Workers	379	0.1%
		Farm Labor Contractors	143	0.1%
		Helpers – Production Workers	100	0.04%
		North Carolina Grower's Assoc., Inc.	10,650	3.9%
		Fresh Harvest, Inc.	5,326	1.9%
		WAFLA	4,358	1.6%
	Top 10	Foothill Packing, Inc.	3,199	1.2%
	Employers ³ (based on	Farm Op Kuzzens H2A, LLC	2,998	1.1%
	unique FEINs)	Rancho Nuevo Harvesting, Inc.	2,864	1.0%
		Overlook Harvesting Company, LLC	2,589	0.9%
		Templabor, LLC	2,252	0.8%
l		Zirkle Fruit Company	2,191	0.8%
		R & R Harvesting, Inc.	2,056	0.8%

Data as of September 30, 2020. All figures are rounded and calculated based on data submitted by employers for processing



Use of the H-2A Temporary Foreign Labor Program so far in 2021

Source: https://www.dol.gov/agencies/eta/foreign-labor/performance

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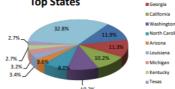
H-2A Temporary Agricultural Program -Selected Statistics, Fiscal Year (FY) 2021 Q1-Q3

	FYTD	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2020
Γ	14,302	4,556	6,453	3,293	-	15.8%

Applications Processed

pp.neutrene i recessed					
Determination	FYTD	Q1	Q2	Q3	Q4
Total Processed	13,675	2,722	7,545	3,408	-
- Certified	13,127	2,568	7,324	3,235	-
- Denied	273	75	108	90	-
- Withdrawn	275	79	113	83	-
Positions Requested	257,506	51,252	120,767	85,487	-
Positions Certified	247,969	48,926	116,867	82,176	-
Processed	97.1%	97.5%	97.0%	97.2%	-

Top States



■All Other States



Includes all applications submitted for processing during the reporting period

*Percent of complete applications resolved no later than 30 days before the start date of need. A complete H-2A application is defined as one containing all the documentation (e.g., housing inspection report, workers' compensation, recruitment ort) necessary for OFLC to issue a final determination no later than 30 days before the start date of need.

Self-culations are aggregated based on the unique FEIN submitted by the employer.

Multiple appearances of the same employer name may occur when associated with multiple

Data as of June 30, 2021. All figures are rounded and calculated based on data submitted by employers for processing

North Carolin ■ Louisiana ■ Kentucky

Review	of Positions Certified FY (% of total certified FY 2021)	Y 2021 Q1- Q1-Q3)	Q3
	Florida	29,506	11.9%
	Georgia	28,076	11.3%
	California	25,406	10.2%
	Washington	25,197	10.2%
Top 10 States of	North Carolina	19,900	8.0%
Employment	Arizona	9,024	3.6%
	Louisiana	8,374	3.4%
	Michigan	7,812	3.2%
	Kentucky	6,671	2.7%
	Texas	6,586	2.7%
	Farmers and Laborers, Crop	214,809	86.6%
	Agri. Equip. Operators	15,837	6.4%
	Farmworkers, Farm, Ranch, and Aqua	11,226	4.5%
	Construction Laborers	2,473	1.0%
Top 10 Occupations	Graders & Sorters, Agri. Products	663	0.3%
(based on SOC Codes)	Heavy and Tractor- Trailer Truck Drivers	634	0.3%
	Agricultural Workers, All Other	633	0.3%
	First-Line Supervisors of Agri. Crop	631	0.3%
	Packers and Packagers, Hand	252	0.1%
	Farm Labor Contractors	237	0.1%
	NCGA, Inc.	9,510	3.8%
	Fresh Harvest, Inc.	5,292	2.1%
	Foothill Packing, Inc.	3,096	1.2%
Top 10	WAFLA	3,039	1.2%
Employers ³	Zirkle Fruit Company	2,904	1.2%
(based on unique	Temp Labor, LLC	2,567	1.0%
FEINs)	R & R Harvesting, Inc.	2,297	0.9%
	Rancho Nuevo Harvesting, Inc.	2,188	0.9%
	Overlook Harvesting Company, LLC	2,057	0.8%
	Peri & Sons Farms, Inc.	1.956	0.8%



State Monitor Advocate Role

The State Monitor Advocate (SMA):

- Utilizes the state's Employment Service complaint system to record all H-2A Employment Service and Employment-Related Law Complaints.
- •Refers all complaints involving contracts with workers to U.S. DOL Wage Hour Division for appropriate handling and resolution.
- Refers complaints alleging that an H-2A employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights section.
- Will initiate procedures for discontinuation of services to employers who submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws.

Employment Services

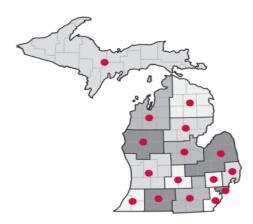
<u>The Michigan Works! Network —</u> <u>MichiganWorks! Association</u>



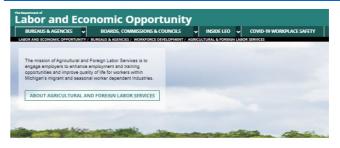
Michigan Works! is the first statewide, unified workforce development system in the country. Our members serve as private sector leaders and partners whose work drives economic activity and strategic growth in their communities.

Call your One-Stop Service Center at 800-285-WORKS (9675)

Click your location on the map below to find your nearest Michigan Works! offices.



<u>Labor and Economic Opportunity - Agricultural &</u>
Foreign Labor Services (michigan.gov)





Foreign Labor Services supports Michigan employers who are seeking to hire non-immigrant foreign workers through the Foreign Labor Certification Program as a temporary employment solution in order to





Pure Michigan Talent Connect



Agriculture Employment Services

Agricultural Employment Services provides employment and training services to employers and Migrant and Seasonal Farmworkers (MSFWs) to facilitate referrals between employers seeking workers and workers seeking employment.

Agricultural Employment Services Supervisors

Regions 1-5
Rubi Salgado
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Shelby, MI 49455
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Email: salgador@michigan.go

Regions 6-10 Hugo Pantoja 32849 Red Arrow Highway, Ste 100 Paw Paw, MI 49079 Cell: 517-290-6374 Email: pantojah2@michigan.gov

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Regions 4 and 5

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Benita Rendon-Murray

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Email: rendon-murrayb@michigan.go

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Stephanie Cole

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Regions 1, 2 and 3

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Maria (Nina) Guerra (Seasonal) 400 River Street Manistee, MI 49660 Cell: 231-923-1980 Email: guerram2@michigan.gov

Region 4

Jo Estrada-Guerra (Seasonal) 195 N Michigan Avenue Shelby, MI 49455 Cell: 517-420-0941 Email: estradaguerraj@michigan.gov

Angie Oliva (Seasonal) 121 Clover Street Holland, MI 49423 Cell: 517-449-4219 Email: olivaa2@michigan.gov

Rosalinda (Rose) Rangel 195 N Michigan Avenue Shelby, MI 49455 Office: 231-259-2006 | Cell: 517-388-9097 Email: rangelr@michigan.gov

Region 8

Paula Hayward (Seasonal)
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Sandy Jimenez

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Isaac Lopez 499 West Main Street

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Ginger Lee Vallejo

32849 Red Arrow Highway, Ste 100 Paw Paw, MI 49079 Office: 1-800-533-5800 Ext 1267 Cell: 517-388-6034 Email: vallejog@michigan.gov

Regions 9 and 10 Miriam J. Ramos

1040 S Winter Street, Ste 1014 Adrian, MI 49221 Office: 517-266-5627 Ext 64274 Cell: 517-282-5842 Email: ramosm2@michigan.gov

More information is available at Michigan.gov/AFLS.

Agricultural Employment Liaison Assignments



Agricultural Recruitment System Hotline: 1-855-633-2373





The Agricultural Recruitment System

The application and recruitment process for agricultural jobs

Local Job Order (recruiting within a normal commuting distance)

Intrastate Clearance Order (recruiting within Michigan)

Interstate Clearance Order (recruiting outside Michigan)

If enough U.S. workers have not been located for referral to available agricultural jobs, it is recommended that employers apply to recruit foreign workers under the H-2A Foreign Labor Certification Program.



The Agricultural Recruitment System Continued

Designation of Supply States

When an application (clearance order) reaches Interstate stage, USDOL designates the states that will serve as "supply" states, as shown in the bulleted list here.

The Interstate Clearance Order is then sent to labor supply states for posting the available jobs on their state's labor exchange system, for recruitment of able, willing and qualified U.S. domestic workers.

- Ohio
- Indiana
- Texas
- Florida
- Georgia
- North Carolina
- Puerto Rico

Labor Market Test

Develop a Job Posting at the local level to initiate recruitment of workers Complete the ETA-790A prior to the filing date.

- 1. Download a printable version of the ETA-790/790A and additional documents from FLAG System. (Addendum, Farm Labor Contractor documents, Bonding, etc)
- 2. Contact your local Michigan Works! Agency or a LEO-WD Agricultural Employment Liaison (AEL) to assist with development of the Job Order (JO) and in completing the ETA-790A.
- Creating a job posting through the state's Labor Exchange System (MiTalent.org) at the local level
 to initiate recruitment of local workers is recommended.
- 4. As part of the labor market test, the JO must be posted for a minimum of two weeks to allow job seekers sufficient time to apply. For H-2A, the requirement is to attempt recruitment of U.S. job seekers through 50% of the employment period.
- 5. Posting a local Job Order will result in recruiting within a normal commuting distance following the Agricultural Recruitment System.

Enter Fed Reg re: Testing the local job market.



Agricultural Clearance Order

Forms used for posting agricultural jobs

ETA-790, ETA-790A and general instructions for completing the forms.

OMB Approval: 1205-0466

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



IMPORTANT: In accordance with 20 CFR 653 500, at employers seeking U.S. socient to perform apricultural services or labor on a temporary, less than year-count heals through the Aprointural Revoluter of System for U.S. Workers, must sub-unit a completed by declarance coster from ETA-700) to the EMB Wirdsfore Appropriate (SWA) for placement on its investate and interstate job clearance systems. Employers submitting a job order in connection with an H-24 Application for Temporary Employment Centralization from ETA-700 and with a completed 700A. At time employers submitting application for temporary indications from ETA-700 and with a completed 700A. At time employers submitted in a special proprieted 700A and time of the employers and submitted contained or the employers and submitted or the employers and submitted or the employers and submitted or the expensive size contained and submitted or the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expensive size contained as indicated by the acction (5 of the expe

I. Clearance Order Information

F		FORCE AGENCY (SWA estions 1 through 17) USE ONLY
Clearance Order Number *	2. Clearance	Order Issue Date *	 Clearance Order Expiration Date *
SOC Occupation Code *	5. SOC Occup	pation Title *	_
	SWA Order Hold	ding Office Contact Info	ormation
Contact's last (family) name *		. First (given) name *	8. Middle name(s) §
Contact's job title *	·		
10. Address 1 *			
11. Address 2 (suite/floor and number) §			
12. City *		13. Sta	ate * 14. Postal code *
15. Telephone number *	16. Extension	§ 17. E-Mail address	•

II. Employer Contact Information

1. Legal Business Name *						
Trade Name/Doing Business As (DB	IA), if applicable §					
Contact's last (family) name *		First (given) name *		5. Middle name(s) §		
Contact's job title *						
7. Address 1 *						
8. Address 2 (apartment/suite/floor and number) §						
9. City*			10. State *	11. Postal code *		
12. Telephone number *	13. Extension §	14. Busine	ss e-mail address *	•		
Federal Employer Identification Number (FEIN from IRS) * 16. NAICS Code *						

III. Type of Clearance Order

recruitment of U.S. workers. (choose only one) *	□ 790B (regular clearance orde
 Indicate the type of agricultural clearance order being placed with the SWA for 	□ 790A (H-2A clearance order)

Form ETA-790 AGRICULTURAL CLEARANCE ORDER

OMB Approval: 1205-0466

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



IMPORTANT: Employers and authorized preparers must read these general instructions carefully before completing the Form ETA-790A, Agricultural Clearance Order, and all required addendums. These instructions contain explanations of the questions and assurances that make up the Form ETA-790A. If you are not submitting these forms electronically, please complete ALL required fields/items containing an asterisk (*) and any fields/items where a response is conditional as indicated by the section (6.) symbol.

It is a federal offense to knowingly and willfully furnish materially false information in the preparation of the Form ETA-790A and any supplement thereto or to aid, abet, or counsel another to do so (18 U.S.C., §§ 2, 1001). Other penalties may also apply to fraud or misuse of this immigration document and to perjuny with respect to this form (18 U.S.C., §§ 1546, 1521).

REQUIREMENT TO FILE AN AGRICULTURAL CLEARANCE ORDER (FORM ETA-790/790A)

In accordance with 20 CFR 653.500, all employers seeking U.S. workers to perform agricultural services or labor on a temporary, less than year-round basis through the Agricultural Recrultment System for U.S. Workers must submit a completed job clearance order to the State Workforce Agency (SWA) for placement on its intrastate and interstate job clearance systems. In accordance with 20 CFR 655.121, prior to filling an H-2A Application for Temporary Employment Certification (Form ETA-9142A), the employer must submit a job order to the SWA serving the area of intended employment for intrastate clearance, identifying it as a job order to be placed in connection with a future Form ETA-9142A for H-2A workers. The job order is defined as the document containing the materials terms and conditions of employment that is posted by the SWA on its inter- and intrastate job clearance systems based on the Form ETA-90.20 CFR 655.103(b). An employer seeking temporary labor certification under the H-2A visa classification must satisfy this regulatory requirement by completing the Form ETA-790/790A.

The Form ETA 790/790A is designed to (1) facilitate the initial receipt and processing of the job order by the SWA, (2) identify the primary employer of the worker(s) sought for the job opportunity, (3) designate that the job order will be used in connection with a future Form ETA-9142A for H-2A workers, and (4) disclose all the material terms and conditions of employment that the employer will offer to H-2A worker and U.S. workers. Except in emergency situations (20 CFR 655.134) or for job opportunities involving herding or production of livestock on the range (20 CFR 655.205), the employer must submit this job order no more than 75 calendar days and no fewer than 60 calendar days before the date of need. If the job opportunity is located in more than one State within the same area of intended employment, the employer may submit a job order to any one of the SWAs having jurisdiction over the anticipated worksites. The job order submitted to the SWA must satisfy the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR part 655, subpart at 555.

Any references to the term "clearance order" on the Form ETA-790/790A and these instructions shall have the same meaning as the "job order."

FORM ETA-790 COVERSHEET

Section I

Clearance Order Information

This section is to be completed by the SWA ONLY upon initial receipt and processing of the agricultural clearance order.

- Enter the unique number assigned to the agricultural clearance order that will used by the SWA to facilitate the intrastate
 and interstate clearance of the employer's job opportunity and recruitment of U.S. workers.
- Enter the date on which the agricultural clearance order was placed in intrastate clearance (20 CFR 655.121(c)). Use a month/day/ year (mm/dd/yyyy) format.
- 3. Enter the first date on which the agricultural clearance order will no longer be on the SWA's active file. In accordance with 20 CFR 655.121(d), the SWA must keep the job order on its active file until the end of the recruitment period, which is generally until 50 percent of the period of the work contract has elapsed, 20 CFR 655.135(d). The start and end of the work contract period shall be based on the Begin Date (tlem 3) and End Date (tlem 4) entered in Section 4 of the Form ETA-790A, adjusted based on any modifications to the Begin Date (tlem 3) approved by the Certifying Officer (CO). Use a month/day/year (mr/add/yypy) format.
- Enter the six- or eight digit Standard Occupational Classification (SOC) code for the occupation that most clearly describes
 the agricultural services or labor to be performed, as identified on the Form ETA-790A. For example, the eight-digit SOC
 code for a fruit or vegetable harvester or orchard worker is 45-2092.02 (Farmworkers and Laborers, Crops).

Form ETA-790A GENERAL INSTRUCTIONS Page 1 of 1





H-2A Temporary Foreign Labor Certification Program

The Foreign Labor Application Gateway









Announcements

April 30, 2021

OFLC Announces a Reminder to Filers of Form ETA-9141 to Submit Their Initiated Cases Prior to May 3, 2021.







The Department's regulations around wage requirements for foreign workers. The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.



H-2A, Temporary Labor Certification for Agricultural Workers

Visa program permitting U.S. employers to hire



H-2B, Temporary Labor Certification for Non-Agricultural Workers

Visa program permitting U.S. employers to hire nonimmigrant workers to temporarily come to the U.S. and perform non-agricultural services or labor.



H-1B | H-1B1 | E-3, Labor Condition Application (LCA) for Specialty Occupations

April 30, 2021

OFLC Announces a Reminder to Filers of Form ETA-9141 to Submit Their Initiated Cases Prior to May 3, 2021.

April 02, 20

OFLC Announces New Form ETA-9141, Application for Prevailing Wage Determination, for Use Beginning May 3, 2021

February 12, 2021

OFLC Announces Enhancements to the FLAG System for Case Management

February 01, 2021

January 22, 2021. OFLC Announces Plan for Reissuing Certain Prevailing Wage Determinations Issued under the Department's Interim Final Rule of October 8, 2020

January 04, 2021

January 4, 2021. OFLC Announces Number of H-2B Applications Filed in the Foreign Labor Application Gateway System During the Three-day filing window of the Peak Filing Season

All Announcements



H-2A Temporary Foreign Labor Certification Program

The application and recruitment process for H-2A jobs

There are 17 Conditions of Employment and Assurances for H-2A Agricultural Clearance Orders that the SWA and OFLC must review and ensure are contained within the ETA-790A.

- Job opportunity
- No strike out, lockout, or work stoppage
- Housing for workers
- Worker's Compensation coverage
- Employer provided tools
- Meals
- Transportation and daily subsistence
 - Inbound & outbound
 - Daily transportation
 - Compliance with transportation standards

- Three/Fourths Guarantee
- Earning records
- Hours and earning statement
- Rates of pay
- Frequency of pay
- Abandonment of Employment or Termination for Cause
- Contract impossibility
- Deduction from worker's pay
- Disclosure of work contract
- Additional assurances for clearance orders



Reviewing the ETA-790/790A

The SWA will review the ETA-790 for deficiencies

Common Deficiencies found in Job Orders

Minor- local resolution

- Inability to view full content in ETA-790A or Addendums.
- Use of GPS Coordinates without more information.
- Housing should comply with all local, state, and federal regulations.
- SWA contact information for referral and hiring section.

Major- Requires Official Notice of Deficiency.

- Missing CFR Required language
- Position description (duties do not match title)
- Pay/Pay week and Inbound/Outbound Transportation not clearly explained.

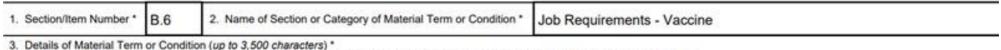
If no deficiencies are found the SWA will approve the job order for Intrastate Recruitment. If a minor deficiency is found, the SWA will attempt to informally amend the JO. However, if a major deficiency is found, a Notice of Deficiency will be sent to the Agent/Employer to amend the JO.



Example of a Deficiency

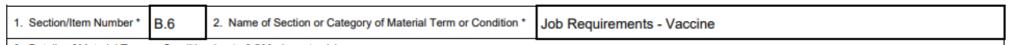
COVID-19 Related Job Requirements

Can you identify why this may be identified as a minor deficiency?



Employer may require workers to provide proof he or she is fully vaccinated against Covid-19.

Clearly detailing the material terms or conditions of the Job Requirements will prevent delays in review and approval of job orders.



3. Details of Material Term or Condition (up to 3,500 characters) *
Workers unable to provide proof of vaccination must wear a mask at all times while working. Vaccinated workers may be required to wear masks while working as well, depending on the current status of COVID risk in the area. Whether a worker must wear a mask will be clearly communicated by a supervisor. These requirements are subject to change due to State or Federal guidelines related to COVID, or the changing risk of COVID in the area.



Example of a Deficiency

Rates of Pay

Adverse Effect Wage Rate (AEWR)

An employer seeking to employ foreign workers under the H-2A program is required to offer, advertise in its recruitment, and pay a wage that is at least equal to the AEWR when it is the highest applicable wage rate among the wage sources applicable to the employer's job opportunity. For range occupations, the wage offered and paid to H-2A workers and workers in corresponding employment must equal or exceed the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, or any agreed-upon collective bargaining rate, whichever is highest. See 20 CFR 655.210(g) and .211(a).

- Michigan does not have an agreed-upon collective bargaining rate for most agricultural jobs.
- Michigan's minimum wage is currently \$9.65 per hour. The Federal Minimum Wage is \$7.25 per hour.
- Michigan does not have an established Prevailing Wage for agricultural hand harvest work.
- Michigan's AEWR is currently \$14.72, subject to change for FY 2022.
- The AEWR can be found on the U.S. Department of Labor Website.

Source: Adverse Effect Wage Rates | U.S. Department of Labor (dol.gov)



The recruitment process for H-2A Job Orders

The application and recruitment process for agricultural jobs

Since a local labor market test was already conducted, the H-2A Job Order starts as an Intrastate Clearance Order (recruiting within Michigan)

Once the USDOL-Office of Foreign Labor Certification (OFLC) issues a Notice of Acceptance, the job order transitions to an Interstate Clearance Order (recruiting outside Michigan)

Once USDOL issues a Notice of Certification, the employer is authorized to recruit Foreign Workers, facilitating employment authorization under the H-2A visa. Workers authorized under the H-2A visa are only authorized to work with the specific employer recruiting them, unless a transfer is authorized by the U.S. Citizenship and Immigration Service.

Tips to Ensure Seamless Processing

- 1. Submit Housing inspection and licensing applications to MDARD early.
- 2. Make sure all housing contracts for leased housing is signed and executed prior to submitting.
- 3. Double and triple check ETA documents to ensure the 17 Conditions of Employment and Assurances are clearly detailed in the content of the job orders, and all information is correct prior to submitting your application.
- 4. Make sure company contact information for the referral and hiring is accurate. Failure to answer calls or emails from applicants can result in a Notice of Deficiency or possible denial.
- 5. If using an agent, make sure Power of Attorney or Agency Representation documents are signed and executed.
- 6. Make sure any additional documents such as land lease, Farm Labor Contractor, crew leaders, bus driver, and the such are all signed and valid/unexpired prior to submission. Apply early to ensure timely receipt of valid documents.
- 7. Be patient with one another and let's work together to ensure employers' labor needs are met.



H-2A Temporary Agricultural Program Contacts

H-2A Temporary Agricultural Program

H-2A Temporary Agricultural Program | U.S. Department of Labor

(dol.gov)

FLAG System Technical Help Desk Technical questions, troubleshooting, password resets related to the Foreign Labor Application Gateway (FLAG) System Online Support Form

<u>Contact | Flag.dol.gov</u>

H-2A Ombudsman Program Direct, paperless submission of requests for assistance to the H-2A Ombudsman Program

2A Ombudsman Program

h2a.ombudsman@dol.gov



SWA Priorities and Program Initiatives

Michigan's Sixty by 30 Goal

Seeks to build a better Michigan in three ways:

- 1. Close the skills gap that poses the single greatest threat to the success of our businesses and our state's prosperity. Jobs requiring skilled employees today, as well as jobs on the horizon, demand greater education and training than ever before. Increasingly, the best jobs require more than a high school diploma.
- 2. Increase Michigander's access to the education and skills that create opportunities for better jobs and bigger paychecks.
- 3. Make Michigan more competitive for inclusive economic growth.

Reprioritizing the Food and Agriculture Industry

- Promote the food and agriculture industry as an industry that provides promising high wage jobs for trained and highly skilled workers.
- Increase visibility of job opportunities for middle and high school students through career exploration.
- Align training to career pathways to promote individual growth and development within the various food and ag sectors.



SWA Priorities and Program Initiatives Continued

Michigan Agriculture and Food Systems Workforce Advancement Initiative

Seeks to help Michigan food growers, processers and distributors develop the technology- and data-savvy workforce

Training may include:

- Work-Based Learning
- On-the-Job Training (OJT)
- Industry Recognized Training and Apprenticeships
- Career and Technical Education

This initiative will help develop innovative educational programs in agriculture systems and technology, meet Michigan food business needs to remain viable with a more reliable supply of skilled workers, and support MSFWs who want more work stability and economic opportunity by developing the skills needed to advance. The initiative also aligns with Michigan's Sixty by 30 Goal.

