

ETA 790 Agricultural Clearance Order Review Checklist

Authority: Pursuant to 20 CFR 655.121, prior to filing an Application for Temporary Employment Certification (ETA Form 9142), the employer must submit a completed job order, ETA Form 790 and all attachments, to the State Workforce Agency (SWA) serving the area of intended employment for clearance. 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 655.122.

Item Name	Yes	No	ETA Form 790 Standard of Review	Regulatory Citation(s)
Proper and Timely Submission			<ul style="list-style-type: none"> ✓ Valid ETA Form 790 containing OMB expiration date 10/31/2015 ✓ Identified as job order to be filed in connection with future H-2A application ✓ Submitted no more than 75 and no less than 60 days before Start Date of Need (ETA 790 Item #9) 	653.501 655.121(a)
Completed Form			<ul style="list-style-type: none"> ✓ All required items contain a response on the face of the form ✓ Employer signature exists ✓ If an attachment is necessary, the essential terms and conditions begin on the face of the form with a clear reference to the applicable attachment 	653.501 655.121(b)
Association Job Order			<ul style="list-style-type: none"> ✓ Identified as a job order supporting either (a) sole employer, (b) joint employer, or (c) agent filing on behalf of its employer-members ✓ Associations acting as joint employer may file a single job order signed by the association on behalf of all members ✓ Associations acting as agents must file separate job orders signed by each employer-member 	655.121(a)
Special Procedures			<ul style="list-style-type: none"> ✓ Application covered by special procedures issued by the Department of Labor 	655.102
Discriminatory Language			<ul style="list-style-type: none"> ✓ Does not contain an unlawful discriminatory specification by race, color, religion, national origin, age, sex, or mental or physical status unrelated to job performance (handicap) 	653.501(d) (1)
Employer name and address (ETA Item #1)			<ul style="list-style-type: none"> ✓ Must be an employer with a business location (physical address) in the U.S. ✓ Associations filing as a joint employer should attach a listing of all employer-members covered by the job order 	653.501

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Worksite locations (ETA 790 Item #2)			<ul style="list-style-type: none"> ✓ All worksite locations must be identified ✓ Directions should be clear and use commonly understood street or highway numbers and accurate distances ✓ Associations filing as a joint employer should attach a listing of all worksite locations covering the employer-members in <u>no more than 2 contiguous states</u> 	653.501
Housing locations (ETA 790 Item #3)			<ul style="list-style-type: none"> ✓ All housing locations must be identified (e.g., type, furnishings) and capacity of each unit stated in number of persons ✓ Housing located OUTSIDE the U.S. will not be accepted ✓ Contains assurance the employer will provide sufficient housing that meets the applicable standards at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day 	653.501(d)(2) (xv) 655.122(d)
Anticipated hours per week (ETA 790 Item #11)			<ul style="list-style-type: none"> ✓ Employer has identified expected hours of work for each day of the week ✓ Total hours must be at least 35 hours to constitute full-time employment ✓ Any special work schedule requirements should be disclosed in an attachment 	653.501(d)(2) 655.122(i)(1)
First Work Week Guarantee			<ul style="list-style-type: none"> ✓ Written assurance that the employer will provide U.S. workers the number of hours of work identified on the job order (item #11) for the week beginning with the anticipated start date of need (item #9), unless an amendment to the start date is approved 	653.501(d) (2)(v)(A)
Board arrangements/ meals (ETA Form Item #14)			<ul style="list-style-type: none"> ✓ Workers will be provided with 3 meals a day <u>or</u> employer will furnish free and convenient cooking and kitchen facilities to workers to prepare their own meals ✓ Job offer states the charge, if any, to the worker for meals provided by the employer ✓ Amount of meal charges is consistent with 20 CFR 655.173 	653.501(d)(2) (xv) 655.122(g)

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Referral instructions <i>(ETA 790 Item #15)</i>			<ul style="list-style-type: none"> ✓ Instructions clearly explain how U.S. workers are to be referred and considered for the job ✓ Provides the days/hours employer will be available to interview workers or receive referrals ✓ Interviews (telephone or in-person) must be conducted at little or no cost to the applicant ✓ If agent is identified to receive referrals, proof of a valid FLC license covering these activities has been provided 	653.501(d)(2)(v) 655.122(a) 655.133(b)
Job specifications <i>(ETA 790 Item #16)</i>			<ul style="list-style-type: none"> ✓ Provides a detailed explanation of the duties to be performed and, where applicable, describes the step-by-step instructions to perform the work ✓ Identifies the minimum job qualifications and requirements for the position (e.g., education, training, experience, licenses or permits) <u>and</u> all such requirements are consistent with normal and accepted qualifications required by non H-2A employers in the same or comparable occupations and crops ✓ Explains what tools or equipment will be needed to perform the work and, absent a common practice, an assurance the employer will furnish all tools, supplies, and equipment at no cost to the workers ✓ If applicable, minimum productivity standards are specified and, if pay is based on a piece rate, are either (a) no more than those required by the employer in 1977, unless DOL has approved a higher minimum, or (b) normally required by other employers for the activity in the area of intended employment 	655.122(b) 653.501(d)(2) 655.122(l)(iii)
Offered Wages <i>(ETA 790 Item #17 & #18)</i>			<ul style="list-style-type: none"> ✓ Provides the appropriate wage rate information for each crop or agricultural activity to be performed in all worksites identified with the job order ✓ Absent a special procedure, offered wage(s) is the highest of the AEW, the prevailing hourly or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage ✓ Offered wage is not based on commission, bonuses, or other incentives 	653.501(d)(2) 655.121(l)(iii) 655.120(a) 655.122(p) 655.122(l)

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Offered Wages <i>(ETA 790 Item #17 & #18)</i>			<ul style="list-style-type: none"> ✓ If piece rate(s) is paid, employer provided estimated hourly wage rate equivalents including unit size(s) used to determine worker pay, <u>and</u> guarantee earnings at least equal to the amount the worker would have been paid at the appropriate hourly rate (i.e., wage supplement) where piece rate earnings in a week are less ✓ Assurance provided that the highest wage will be paid at the time work is performed, for every hour or portion thereof worked, including any adjustments during a work contract period upon notification from the Department of Labor 	653.501(d)(2) 655.121(l)(iii) 655.120(a) 655.122(p) 655.122(l)
Frequency of Pay <i>((ETA 790 Item #17 & #18)</i>			<ul style="list-style-type: none"> ✓ Pay arrangements (e.g., daily, weekly, biweekly) are identified and must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent 	655.122(m) 653.501(d)(4)
Deductions <i>(ETA 790 Item #17 & #18)</i>			<ul style="list-style-type: none"> ✓ Employer must make all deductions from the worker's paycheck required by law ✓ All deductions not required by law are itemized and reasonable ✓ Deductions that include a profit to the employer or any affiliated person OR are primarily for the benefit or convenience of the employer are not considered reasonable 	655.122(p)
Transportation Arrangements <i>(ETA 790 Item #19)</i>			<ul style="list-style-type: none"> ✓ If it is prevailing, employer assures that advance inbound transportation and subsistence costs will be paid to the worker ✓ Otherwise, employer assures that reimbursement for inbound transportation and subsistence costs from the place the worker has come to work, whether in the U.S. or abroad, to the place of employment will be paid to the worker upon completion of 50% of work contract period ✓ Assurance transportation between housing and worksite will be provided daily at no cost to the worker ✓ Assurance 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 	653.501(d)(5) 655.122(h)(1)

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Transportation Arrangements <i>(ETA 790 Item #19)</i>			<ul style="list-style-type: none"> ✓ Amount of daily subsistence payments must be at least as much as the employer would charge the worker for providing 3 meals a day, but 	653.501(d)(5) 655.122(h)(1)

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			cannot be less than the amount permitted under 655.173(a)	
Workers' Compensation (ETA 790 Item #22)			<ul style="list-style-type: none"> ✓ Assurance employer will provide workers' compensation 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, assurance employer will provide, <u>at no cost</u>, workers' compensation providing benefits at least equal to those under State law or other comparable employment 	655.122(e)(1)
Tools and equipment provided at no cost (ETA 790 Item #23)			<ul style="list-style-type: none"> ✓ Response must be "Yes" unless it is common to the occupation or work that workers bring their own tools and equipment 	653.501(d)(2) 655.122(f)
3/4 Guarantee			<ul style="list-style-type: none"> ✓ Offers the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total work contract period 	655.122(i)(1)
Earnings Records and Statements			<ul style="list-style-type: none"> ✓ Assurance employer will furnish the worker on or before each payday writing hours and earnings statements meeting the regulatory requirements at 20 CFR 655.122(k) ✓ Assurance 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 	655.122(j) 655.122(k)
Abandonment or termination for cause			<ul style="list-style-type: none"> ✓ Statement indicating that workers who voluntarily abandon employment or are terminated for cause, and where the employer provides timely notification to the NPC and DHS, will relieve the employer for subsequent transportation and subsistence costs and the 3/4th guarantee 	655.122(n)

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Contract impossibility			<ul style="list-style-type: none"> ✓ Statement the employer may terminate the work contract where services are no longer required for reasons beyond the employer's control due to fire, weather, or other Act of God. ✓ Assurance that 3/4th guarantee will be provided between the start and termination dates, make efforts to transfer the worker to other comparable work acceptable to the worker, <u>and</u>, if transfer is not viable, provide outbound transportation and subsistence in accordance with 20 CFR 655.122(o) 	655.122(o)
Disclosure of work contract			<ul style="list-style-type: none"> ✓ Assurance to provide workers with a copy of the work contract, including any approved modifications, on the day work commences or as soon as practically possible 	655.122(q)
Farm Labor Contractor (FLC) license			<ul style="list-style-type: none"> ✓ Assurance the employer, if acting as a FLC or FLCE on the order, possesses a valid FLC license 	653.501(f) (xiv)
50 percent rule exemption			<ul style="list-style-type: none"> ✓ Employer requested small business exemption to the 50 percent rule 	655.135(d)
Agent Agreement/ Attorney G-28			<ul style="list-style-type: none"> ✓ Agent agreement or G-28 provided with the ETA 790 demonstrating authority to represent employer ✓ If applicable, valid FLC license has been provided by the agent demonstrating authority to perform covered FLC activities 	655.133 653.501