

**PROCEDURES FOR INTERSTATE CLEARANCE  
OF H-2A JOB ORDERS UTILIZING  
AMERICA'S JOB BANK**

I. General

In the 1970's, a series of ES complaints were consolidated in a lawsuit titled NAACP (Western Region) v. Brennan. Among the problems identified in the complaints and lawsuit were referrals of farmworkers to jobs for which there were deficient orders or orders with insufficient information. In resolving the lawsuit, DOL established guidelines for the handling of interstate orders, both criteria and non-criteria. Those guidelines were promulgated in regulations at 20 CFR 653.500-503 and were designed to insure that farmworkers were not referred to jobs that offered inadequate wages or working conditions and that farmworkers had access to information about all material aspects of the job offer.

Although automated job banks were in use at the time of the regulations, their use was limited and electronic distribution was within the State. A State had to take specific action to place a job on the Interstate Job Bank (IJB), the predecessor of today's America's Job Bank (AJB). States were informed of jobs on the IJB through periodic updates of microfiche. There were often delays of two weeks or more between the time a local office accepted a job order and when an order would appear on the IJB microfiche.

The use of electronic technology has the positive effect of making information about agricultural jobs available more quickly in more States and in locations other than the Employment Service office. With automation advances today and the development of AJB, in most States when a job is listed by AJB, it is simultaneously available throughout the States. Some States also make all their job orders available on the Internet.

II. Preliminary Steps

- A. The coded AJB job order (Attachment B) will be considered to be the approved ETA checklist for purposes of compliance with 20 CFR 653.501(f)(2)(ii). The checklist shall summarize wages, working conditions and other specifications on the job order. The checklist shall be provided in English and in Spanish when necessary.

- B. The full description of the meaning of each H-2A element (3/4 guarantee, 50% rule, etc.) will be available in English on the internet at:

<http://www.labor.state.ny.us/agricul>

Local offices which have active applicants interested in these orders can print a copy of the H-2A provisions to provide to such workers.

### III. Operating Procedures

Upon issuance of this GAL, the AJB Interstate clearance pilot project will be effective with respect to jobs in New York only. All States shall refer workers to all available agricultural job opportunities (criteria and noncriteria) in New York utilizing the following procedures:

- A. Job orders will continue to be developed in the field with the assistance of local job service staff.
- B. Orders will continue to be submitted to the Regional Office (Region II) for review and approval.
- C. After completion of the regional review process, New York State will be notified of acceptance consistent with current practice.
- D. Upon receiving notice of acceptance, the order will be released for entry into the National AJB system. Orders will not be released into the National AJB system until the ETA Regional Office in New York has accepted them for entry into the clearance system.
- E. Once the order has been placed into the AJB system, a copy of the complete order (the ETA 790 and all attachments) will be provided to each designated applicant-holding ETA Regional Office, and the Regional Farm Labor Enforcement Committee for the New York Region.

- F. Applicant-holding offices should provide a complete copy of the job order only when they have applicants who have expressed an interest in being referred and who have requested an opportunity to inspect a copy of the complete order.

The applicant-holding office should use the internet to print a blank copy of the order, found at:

<http://www.labor.state.ny.us/agricul/sample.pdf>

and use the information on the AJB to create a complete order. If the applicant-holding office does not have access to the Internet, it should request the order-holding office to fax a copy of the complete order in English, or Spanish when necessary. Standard "boilerplate" such as the 3/4 rule, etc., should already be available so that it may be provided to workers at all local offices, and it is also available on the general web address. The applicant-holding office must continue to provide each referred worker a copy of the description of the worker's rights developed by the National Farm Labor Coordinated Enforcement Committee.

#### IV. General Provisions

- A. Attachment B provides a sample of the AJB screen containing the codes as they will appear on the screen; Attachment C provides an explanation of the code meanings. Attachment D provides additional definitions and discussion of the codes.

In developing this new procedure, the coding system (Attachment C) was developed to meet the needs of the pilot State. Therefore, the categories shown may not be universally applicable. For example, when harvesting a strawberry crop, the cents/drop category is not needed. In instances such as this where the category is "Not Applicable," the AJB screen entry should show as "N."

- B. Recent MSPA amendments (Federal Register Vol. 61, No. 96) require that employers disclose additional information regarding workers' compensation. ETA is working with ESA to incorporate this information either on the checklist or in the free form so that the job order can fulfill the MSPA disclosure requirements.
  
- C. Supplementary information such as detailed job information including experience and productivity standards should be explained in the "free form" section of the computer screen. The NY AJB system will allow (5) lines for typed text, one of which is used for the codes.