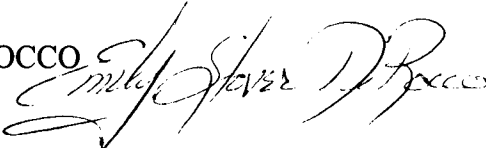


Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION H-2A Program
	CORRESPONDENCE SYMBOL OWS
	DATE August 2, 2002

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 23-01, Change 1

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS
ALL WORKER ADJUSTMENT LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS

FROM: EMILY STOVER DeROCCO
Assistant Secretary 

SUBJECT: Clarification of Transportation Requirements Under the H-2A Program

- Purpose. To correct the examples provided in TEGL No. 23-01, (see page 3, Example (ii) and Example (iv)).
- Reference. 20 C.F.R. 655.102(b)(5)(i) and (ii), 55 Fed. Reg. 20500, 20507 (June 1, 1987).
- Background. There have been a number of questions regarding the regulatory provisions governing the H-2A employer's obligation to reimburse transportation expenses for foreign and domestic workers.

U.S. workers, and in some cases H-2A workers, may go from a current H-2A employer to a subsequent employer. When this happens, questions are raised regarding which, if any, employer has the obligation to pay for (or provide) transportation back to the place from which the worker was recruited.

Workers have a right to make an informed decision regarding the economic benefits of a subsequent non-H-2A job and weigh these benefits against the loss of the transportation benefit. State and regional staff will attempt to assist former workers in obtaining transportation assistance either voluntarily from employers or through other sources.

RESCISSIONS TEGL NO. 23-01	EXPIRATION DATE Continuing
--------------------------------------	--------------------------------------

4. Pertinent Regulatory Provisions. The following regulatory provisions apply:

20 C.F.R. 655.102(b) (5) (i) "...the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment."

20 C.F.R. 655.102(b) (5) (ii) "Transportation from place of employment. If the worker completes the work contract period, the employer shall provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, has come to work for the employer or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer shall provide or pay for such expenses; unless the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer is not required to provide or pay for such expenses."

20 C.F.R. 655.102(b)(5)(i) and (ii), 55 Fed. Reg. 20500 (June 1, 1987) (Supplemental Information) "...the employer must offer to pay for (or provide) the worker's transportation home, or wherever the worker began the series of jobs culminating at the current place of employment.... H-2A workers may be authorized to go from "criteria" employment...to other criteria employment.... **This effectively places the requirement on the H-2A worker's final criteria employer to pay for (or provide) the H-2A worker's transportation "home."** (emphasis added)

"U.S. workers, however, may go from "criteria" employment (i.e., where they have H-2A co-workers in the same agricultural activity) to either criteria or non-criteria employment...**The transportation "home" requirement is assumed by the next criteria employer...**" (emphasis added)

If the U.S. worker's subsequent employer is a non-criteria employer, ...and unless that subsequent employer offers to pay for...transportation "home," or to further employment, it is the worker's responsibility to obtain transportation... The transportation "home" requirement...is not assumed by the non-criteria employer..." (emphasis added)

"If the U.S. worker has no subsequent employer, the current employer must offer to pay for (or provide) the worker's transportation home, or wherever the worker began the series of jobs culminating at the current place of employment."

5. Policy.

a. In general, the final H-2A employer has responsibility for the trip home when the contract is completed, but only when there is no subsequent employer.

“Home” is where the worker was originally recruited. However, if subsequent employment is involved and the worker, whether H-2A or U.S., is referred from one H-2A employer to a subsequent H-2A employer, the last H-2A employer is responsible for the transportation home once the “final” contract is completed.

b. When there is a non-H-2A subsequent employer, the worker becomes responsible for his/her own transportation costs home.

c. When the regulations were written, it was not contemplated that an H-2A worker could go on to work for an employer in another legal status - - such as H-2B, which has no transportation requirement. It is ETA’s position that in this case, neither employer has an obligation under the H-2A regulations to provide transportation home.

Examples (assume contracts are completed):

(i) U.S. worker is recruited in Texas by a Michigan H-2A employer, and the worker then goes on to work for a Wisconsin H-2A employer. The Wisconsin employer is responsible for the worker’s transportation back to Texas.

(ii) U.S. worker is recruited in Texas by a Michigan H-2A employer, and the worker then goes on to work for a New York non-H-2A employer. If the subsequent, New York non-H-2A employer does not offer to pay for (or provide) the U.S. worker’s transportation from the current place of employment to the subsequent place of employment, the Michigan H-2A employer is required to pay for (or provide) such transportation. The transportation home requirement is not assumed by either employer, and it is the worker’s responsibility to obtain such transportation from some other source.

(iii) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then goes to work (after an approved visa status change petition) for another certified H-2A employer in New York. After completion of the contract, the New York H-2A employer is responsible for the worker’s transportation home to Jamaica.

(iv) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then goes to work (after an approved visa status change petition) for a Maine H-2B forestry employer. If the subsequent Maine H-2B employer does not offer to pay for (or provide) the worker’s transportation from the current place of employment to the subsequent place of employment, the Connecticut H-2A employer is required to pay for (or provide) such transportation. DOL regulations do not require either employer to pay for the worker’s transportation back to Jamaica.

(v) H-2A worker is recruited in Jamaica by a Connecticut H-2A employer. The H-2A worker then goes to work (after an approved visa status change petition) in an H-2B job with the same employer or an entity owned by the same employer. The H-2A employer is required to pay for (or provide) transportation home for the worker.

Note: This guidance addresses employer responsibility under the H-2A program only. However, the Immigration and Nationality Act, provides that the subsequent H-2B employer may be responsible for reasonable costs of return transportation. Specifically, Section 214 (c)(5)(A) provides that: “In the case of an alien who is provided nonimmigrant status under Sections 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.”

6. Action Required. State Workforce Agencies are requested to:

- a. Inform appropriate state staff of above policy;
- b. Inform worker advocates and outreach workers of these provisions (pre-harvest meetings are one way of disseminating this information); and
- c. Work with advocacy groups and the regional-state monitor advocate network in attempting to provide voluntary transportation reimbursement or other assistance to workers who might find themselves in a situation where no employer is under an obligation to pay for the worker’s transportation home.

7. Inquiries. Questions should be directed to Charlene Giles at (202) 693-2950.