

BILL RITTER JR.
 Governor
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 Executive Director
THOMAS J LOOFT
 Director



DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF EMPLOYMENT & TRAINING
OFFICE OF WORKFORCE DEVELOPMENT PROGRAMS
 633 17th Street, Suite 700
 Denver, Colorado 80202-3660

Category: Foreign Labor Certification
Subject#: Employment Eligibility Verification Required For Temporary H-2A and H-2B Referrals
Source: Federal/State
Revise/Replace:
Contact: Jim Shimada
Distribution: One Stop Regions
Colorado One-Stop System Policy Guidance Letter #: 08-08-P
Date: August 6, 2008

I. REFERENCE(s): 20CFR Part 655, Subpart B; 20CFR Part 655, Subpart A; ETA Training and Employment Guidance Letter (TEGL) NO. 11-07, Change 1

II. PURPOSE: To disseminate information and instructions for the implementation of the Employment Eligibility Verification (Form I-9) for Workforce Center applicant referrals made on temporary agricultural (H-2A) and temporary non-agricultural (H-2B) jobs.

III. Background: The H-2A and H-2B non-immigrant visa programs permit employers to hire foreign workers to perform agricultural labor or services, and non-agricultural work of a temporary or seasonal nature. Both programs require the employer to apply to the Secretary of Labor for a certification that there are not sufficient workers who are able, willing, qualified, and available at the time and place where workers are to perform the work, and that the employment of workers under these programs will not adversely affect the wages and working conditions of similarly employed U.S. workers. In order to comply with the provisions of the program employers must advertise for qualified U.S. workers. Part of this advertising requirement is that they must list a job order with the appropriate Workforce Center.

In TEGL 11-07 Change 1 the United States Department of Labor (USDOL) requires Workforce Centers to complete Form I-9 for U.S. workers applying for H-2A and H-2B jobs.

IV. POLICY/ACTION: Workforce Center staff must mark new H-2A jobs beginning September 1st, 2008 by entering "HA" in the "Class" field in Job Link. The Foreign Labor Certification Unit will mark H-2B jobs by entering "HB" in the "Class" field in Job Link. These jobs will display on the 1st job order screen in Job Link or in the staff version of Connecting Colorado as "I-9 Required".

All in-person referrals on jobs marked in this way will require Workforce Center staff to complete Form I-9 pursuant to the attached instructions. Copies of the document(s) used for verification must also be taken. The I-9 process is not required for self-referrals over Connecting Colorado.

The original completed I-9 form and copies of the documentation must be sent to the employer within ten days after completion of the I-9 form. A copy of the completed I-9 must be retained for three years as proof that this procedure was followed for State and Federal monitoring.

V.Implementation Date: The implementation date of this Program Letter is September 1st, 2008.

VI.Inquiries: Inquiries regarding this Program Letter should be addressed to Jim Shimada, Colorado Department of Labor, Workforce Development Programs (303-318-8831).

Attachments:

IRS Form I-9

IRS Form I-9 Instructions

Thomas J. Looft, Director
Workforce Development Programs