

agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The five cultural items are one antler tool; one nose ring or bracelet; one mortar and pestle; one jar of beads; and one bag of bells.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Coquille Tribe of Oregon; and Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

On March 17, 1929, V.P. Mitchell removed a "horn implement" from an unknown site near Yachats, OR. On December 21, 1933, V.P. Mitchell donated the antler horn implement to the museum and listed as part of the J. G. Crawford collection. Although the Horner Collection, Oregon State University has no documentation that the antler tool was ever buried with any individual, Mr. Crawford is known to have collected human remains and cultural items from burials and mounds.

On December 21, 1933, V.P. Mitchell donated a nose ring or bracelet to the museum. Provenience records show that the item was in V.P. Mitchell's possession in 1929 and is listed as a "Yachats Indian nose ring." On June 27, 2006, a representative of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California identified the item as a bracelet of a young lady or grandmother. On February 11, 2004, a representative of the Confederated Tribes of Siletz Indians, Oregon identified the cultural item as a funerary object from Yachats, OR.

At an unknown date, cultural items were removed by Mrs. P. Mitchell from an unknown area near Yachats, OR. On April 13, 1968, Mrs. Mitchell donated one mortar and pestle, one jar of Indian beads, and one bag of bells, along with a human skull, to the museum. A deed of gift was submitted, which states

"Collection of Indian artifacts found near Yachats, OR." The Horner Collection, Oregon State University has no specific documentation that the cultural items were ever buried with any individual. However, with the inclusion of a human skull donated with the cultural items, the museum has identified them as unassociated funerary objects. The human remains are described in a previously published Notice of Inventory Completion in the **Federal Register** of October 26, 2005 (FR Doc 05-21332, pages 61839-61840).

All of the above cultural items were removed from undisclosed locations near Yachats, OR. According to a tribal representative for the Confederated Tribes of the Siletz Reservation, Oregon, the Yachats area had large middens lining the lower Yachats River and nearby coastline. Large middens show the extensive time period of occupation of the Yachats area. The Yachats area was made part of the Siletz/Coast Reservation when it was established in 1855. This area was inhabited by the Alsea, Coos, Lower Umpqua, some South Slough and lower Coquille people, and some members of other tribes also confederated upon the Siletz Reservation. The Alsea people, as well as others that lived at Yachats, moved to the Siletz reservation in 1876. Descendants of tribes from the Yachats area are members of the Confederated Tribes of the Siletz Reservation, Oregon.

Based on geographic, historic documents, museum and donor history, and consultation evidence, the Horner Collection, Oregon State University reasonably believe the cultural items to be unassociated funerary objects and culturally affiliated with the Confederated Tribes of the Siletz Reservation, Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Siletz Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally

affiliated with the unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737-8260, before December 20, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Siletz Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Coquille Tribe of Oregon; and Santa Rosa Indian Community of the Santa Rosa Rancheria, California that this notice has been published.

Dated: October 18, 2007.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

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**BILLING CODE 4312-50-S**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Clarification of Certain Procedures for Processing H-2A Labor Certification Applications

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) is providing additional clarification to the procedures by which State Workforce Agencies and ETA National Processing Centers (NPC) process employer applications for H-2A temporary agricultural labor certification issued in the Training and Employment Guidance Letter (TEGL) No. 11-07 on November 6, 2007. These additional clarifications have been made under TEGL No. 11-07, Change 1, which is published below in order to inform the public. The clarifications and requirements stated in the TEGL take effect immediately.

**SUPPLEMENTARY INFORMATION:**

*Training and Employment Guidance Letter No. 11-07, Change 1—Clarification of Certain Procedures for Processing H-2A Labor Certification Applications*

1. *Purpose.* To modify TEGL No. 11-07 to further clarify certain procedures for State Workforce Agencies (SWAs) and Employment and Training Administration (ETA) National Processing Centers (NPCs) involved in the processing of H-2A labor certification applications for temporary agricultural employment of foreign workers in the United States (U.S.).

2. *References.* Immigration and Nationality Act (INA) Section 101(a)(15)(H)(ii)(a); INA Section 218; 20 Code of Federal Regulations (CFR) 651.10; 20 CFR Part 653 Subparts B and F; 20 CFR Part 654, Subpart E; 20 CFR Part 655, Subpart B; 20 CFR Part 658, Subpart F; Field Memorandum No. 16-00; Training and Employment Guidance Letter No. 31-01; General Administration Letter No. 1-02; Training and Employment Guidance Letter No. 11-07 (November 6, 2007).

3. *Background.* The H-2A nonimmigrant visa program permits employers to hire foreign workers to perform agricultural labor or services of a temporary or seasonal nature. The H-2A visa classification requires the intending employer, prior to filing a petition for one or more H-2A workers with the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), to apply to the Secretary of Labor for a certification that: (1) There are not sufficient workers who are able, willing, qualified, and available at the time and place where the H-2A worker is to perform the work; and (2) employment of the H-2A worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The NPC having jurisdiction over the state(s) in which the area of intended employment is located is responsible for processing a request for H-2A labor certification. NPC responsibilities include reviewing the application for acceptance, directing the SWA to clear the job order through the intrastate and interstate clearance system, ensuring the employer meets positive recruitment requirements, and making a final determination with respect to granting or denying certification for all or some of the job opportunities requested.

The SWA serving the area of intended employment, with which the employer files a concurrent request for H-2A labor certification, is responsible for placing a job order, using information submitted by the employer on its job

offer for intrastate and interstate clearance, and, where necessary, performing inspections to ensure that housing meets the applicable standards.

4. *Clarification of Procedures for H-2A Applications.* This Training and Employment Guidance Letter (TEGL) clarifies certain procedures the SWAs and NPCs must use in processing temporary labor certification applications under the H-2A program. These clarifications replace and supersede prior corresponding operating procedures issued for the H-2A program, as noted. However, these clarifications do not affect the special procedures established by ETA for sheepherders and goatherders, for occupations involved in the open range production of livestock, for multi-state custom combine owners and operators, and for itinerant animal shearing.

*A. Filing*

i. *SWA Locations.* The specific location of each SWA may be obtained directly from the Office of Foreign Labor Certification's Web site at <http://www.foreignlaborcert.doleta.gov/contacts.cfm>. Each SWA must notify the appropriate NPC of any changes to its location or mailing address.

ii. *Worksite(s) Crossing State Jurisdictional Boundaries.* In circumstances where a fixed-site employer has one or more worksites located in the same area of intended employment and that lie in one or more state jurisdictions, the employer should file a single H-2A labor certification application concurrently with the SWA in the state where the work will begin and the NPC that covers this state. This provision does not apply to Farm Labor Contractors (FLCs) filing as employers. SWAs are reminded that, in circumstances where work will be performed in multiple states, unless special procedures apply, the job order for recruiting U.S. workers must be transmitted to all other state jurisdictions in which any work will take place in order that they post the opportunity in their respective job clearance system.

iii. *Timing.* The Secretary of Labor is required to make a labor certification determination at least 30 calendar days before the employer's date of need, unless the initial or modified application was not filed timely. INA Section 218(c)(3)(A). As such, the SWA must conduct a housing inspection, the employer must provide a recruitment report to the NPC, and the employer must provide evidence of workers' compensation insurance coverage to the NPC, all before the date that is 30 calendar days before the date of need.

*B. Recruitment*

i. *Contact Information.* In accordance with the regulatory requirements at 20 CFR 655.103(d)(2)(ii), each advertisement the employer places in a newspaper of general circulation serving the area of intended employment must direct interested applicants to apply or send resumes to the nearest office of the SWA for referral to the employer's place of work. This regulatory requirement also applies to job orders placed by the SWA in intrastate and interstate clearance to ensure that all U.S. workers referred through such job orders are apprised of the terms and conditions of employment.

Absent a SWA referral, however, an employer must still respond to employment inquiries from individuals who appear at the employer's place of business or otherwise contact the employer directly. While the employer is not required to be consistently available to answer every inquiry placed by an interested individual, the employer should have a mechanism in place to take messages (e.g., an answering machine) and should respond to such messages within 24 hours. The employer may not reject for other than a lawful, job-related reason any U.S. worker's application.

An employer is required to engage in positive recruitment of U.S. workers in the area of intended employment until the foreign worker(s) have departed for the employer's place of work (20 CFR 655.103(d)). The Department may also require employers to recruit in other states of "traditional or expected labor supply." 20 CFR 655.105(a). The imposition of such out-of-state recruiting requirements shall be based on current information provided by a state agency or other sources "that there are a significant number of able and qualified U.S. workers" in each state designated for recruitment "who, if recruited, would likely be willing to make themselves available for work at the time and place needed." *Id.* As required by regulation, the Department will not require employers to "recruit in areas where there are a significant number of local employers recruiting for U.S. workers for the same types of occupations." *Id.*

ii. *Verification of Employment Eligibility.* The Department's statutory duties under the H-2A program require it to ascertain the employment eligibility of all referred workers. INA Section 218(c)(3)(A) mandates that the Department issue a labor certification "not later than 30 days before the date such labor or services are first required to be performed \* \* \* if (1) the

employer has complied with the criteria for certification (including criteria for the recruitment of *eligible* individuals as prescribed by the Secretary), and (2) the employer does not actually have, or has not been provided referrals of, qualified *eligible* individuals who have indicated their ability to perform such labor or services. \* \* \* The Department has fulfilled its statutory mandate by instructing SWAs via regulation and through this guidance letter that workers cannot be referred to employers unless the SWA has determined that the worker is "able, willing, and eligible" to take the job. 20 CFR 655.106(a). Eligibility is clearly defined by statute to mean "with respect to employment, *an individual who is not an unauthorized alien* \* \* \* with respect to that employment." INA Section 218(i)(1).

The Department has also required by regulation that all local SWA offices must "determine whether or not applicants are MSFWs [migrant and seasonal farmworkers] as defined at 20 CFR § 651.10 of this chapter." "Farmworker" is defined by 20 CFR § 651.10 as as "agricultural worker," which is in turn defined as "a worker, whose primary work experience has been in farmwork \* \* \* whether alien or citizen, *who is legally authorized to work in the United States.*"

Accordingly, SWAs must verify the employment eligibility of any worker referred to an employer in response to an H-2A job order. The Department strongly recommends that SWAs use the E-Verify Web-based system administered by U.S. Citizenship and Immigration Services (USCIS). Information on the E-Verify system may be obtained directly from USCIS by clicking on the "E-Verify" link at <http://www.uscis.gov>. The Department is aware that many, and perhaps most, SWAs do not currently have reliable employment verification systems in place. Therefore, the Department will not enforce the employment verification requirements specified in this Training and Employment Guidance Letter against the SWAs until December 15, 2007.

SWAs should be aware that employers can rely on INA Section 274A(a)(5) only where the documentation complies with all statutory and regulatory requirements, including 8 CFR 274a.6. SWAs are strongly encouraged to provide this documentation. The Department will offer training between now and December 15 to provide SWAs additional guidance on how to comply with the applicable requirements.

iii. *SWA Referrals during Contract Period.* Once an employer's H-2A

workers have departed for the employer's place of work, SWAs should, in order to minimize disruption during the H-2A contract period, first make all reasonable efforts to refer an interested U.S. worker to a non-H-2A job order in the area of intended employment or to an unfilled H-2A job order in the area of intended employment in which the H-2A workers have not yet departed for the place of employment.

### C. Housing

*Housing Standards.* SWAs are reminded that employers must provide housing at no cost to any worker not reasonably able to return to his/her residence within the same day. Employer-provided housing, depending on when it was built, must meet either the USDOL Occupational Safety and Health Administration (OSHA) standards set forth under 29 CFR 1910.142 (standards for temporary labor camps), or the ETA standards at 20 CFR 654.404-654.417 (standards for H-2A housing), whichever are applicable pursuant to the regulations. In circumstances where rental, public accommodation, or another substantially similar class of habitation is used, the housing must first meet any local standards for such housing or, in the absence of applicable local standards, any applicable state standards. In the absence of both local and state standards, the housing must meet the OSHA standards for temporary labor camps. In accordance with the Federal regulations at 20 CFR 655.102(b)(1)(vi), when it is the prevailing practice in the area of intended employment and for the occupation to provide family housing, the employer must provide family housing to all workers who request it. Open range housing—for sheepherders or others engaged primarily in the range production of livestock—must comply with OSHA housing standards or, alternatively, DOL guidance. In the absence of OSHA standards, ETA has added housing-related guidance to its TEGL 15-06 (February 9, 2007), which governs the processing of H-2A labor certification applications for occupations involved in the open range production of livestock.

i. *Housing Inspections.* SWAs are encouraged to perform housing inspections in a timely manner so that processing of an employer's application is not unduly delayed. SWAs should be prepared to conduct housing inspections prior to the date an employer will file an H-2A labor certification application, if so requested by the employer.

ii. *Certified Housing that Becomes Unavailable.* For situations in which housing certified by the SWA later becomes unavailable for reasons outside the employer's control, the employer may substitute other rental or public accommodation housing that possesses a valid certificate of occupancy. The employer must notify the SWA, in writing, of the change in accommodations and the reason(s) for such change. The SWA may inspect such accommodations, prior to or during occupation, to ensure it meets applicable housing standards.

5. *Effective Date.* This guidance applies to all H-2A labor certification applications pending with or received by the NPC and SWA on or after the date this TEGL is issued.

6. *Action Required.* NPC Directors and SWA Administrators are directed to provide NPC, SWA and other state staff involved in the processing of H-2A applications with a copy of these procedures.

7. *Inquiries.* Questions from SWA staff should be directed to the Office of Foreign Labor Certification at (202) 693-3010.

Signed in Washington, DC, this 15th day of November, 2007.

**Emily Stover DeRocco,**

*Assistant Secretary, Employment and Training Administration.*

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## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The thirteenth meeting of the Federal Economic Statistics Advisory Committee will be held on December 14, 2007 in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.