

H-2A Temporary Labor Certification Program

Annual NCAE Agriculture Employer Forum

November 2018

**Office of Foreign Labor Certification
Employment and Training Administration
United States Department of Labor**

H-2A Temporary Labor Certification Program



Briefing Section I

Overview of Office of Foreign Labor
Certification &
FY 2018-2019 Filing Season

Overview of the Immigration Process

Step 1



Obtain a labor certification from the **Department of Labor**

- Requires conducting a labor market test with the State Workforce Agency where work will be performed.

Step 2



Obtain an approved petition from the **DHS United States Citizenship and Immigration Service** for a specific number of workers under H-2A or H-2B visa classification.

Step 3



After receiving USCIS petition approval, workers will apply with one of the **Department of State** visa-issuing consulates abroad for an H-2A or H-2B visa.

Step 4



After receiving the visa from a DOS consulate, workers arrive at a port of entry where **DHS's Customs and Border Protection** officers verify eligibility for admission and length of stay.

Department of Labor

Office of Foreign Labor Certification - Overview

- Through a delegation from the Secretary of Labor, OFLC administers employment-based immigration programs.
 - “Employment-based” means that an employer and not the foreign worker is filing an application.
- OFLC certifies to DHS-USCIS and DOS that:
 1. There are not sufficient U.S. workers who are able, willing, qualified, and available for the requested positions; and that the
 2. Employment of the foreign worker(s) will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Department of Labor

Office of Foreign Labor Certification - Overview

- OFLC receives and processes employer-filed applications through National Processing Centers.
- OFLC programs are divided, by visa classification, into two major types:

Immigrant

Atlanta Processing Center

Permanent (PERM) Program
“Green Card”

Non-Immigrant

Chicago Processing Center

H-1B, H-1B1, E-3 Skilled Occupations Visas
H-2A Temporary Agricultural Visa
H-2B Temporary Non-Agricultural Visa

Department of Labor

Office of Foreign Labor Certification - Overview

- 20 CFR 655, Subpart B (*effective March 15, 2010*)
<https://www.foreignlaborcert.doleta.gov/h-2a.cfm>
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Department of Labor

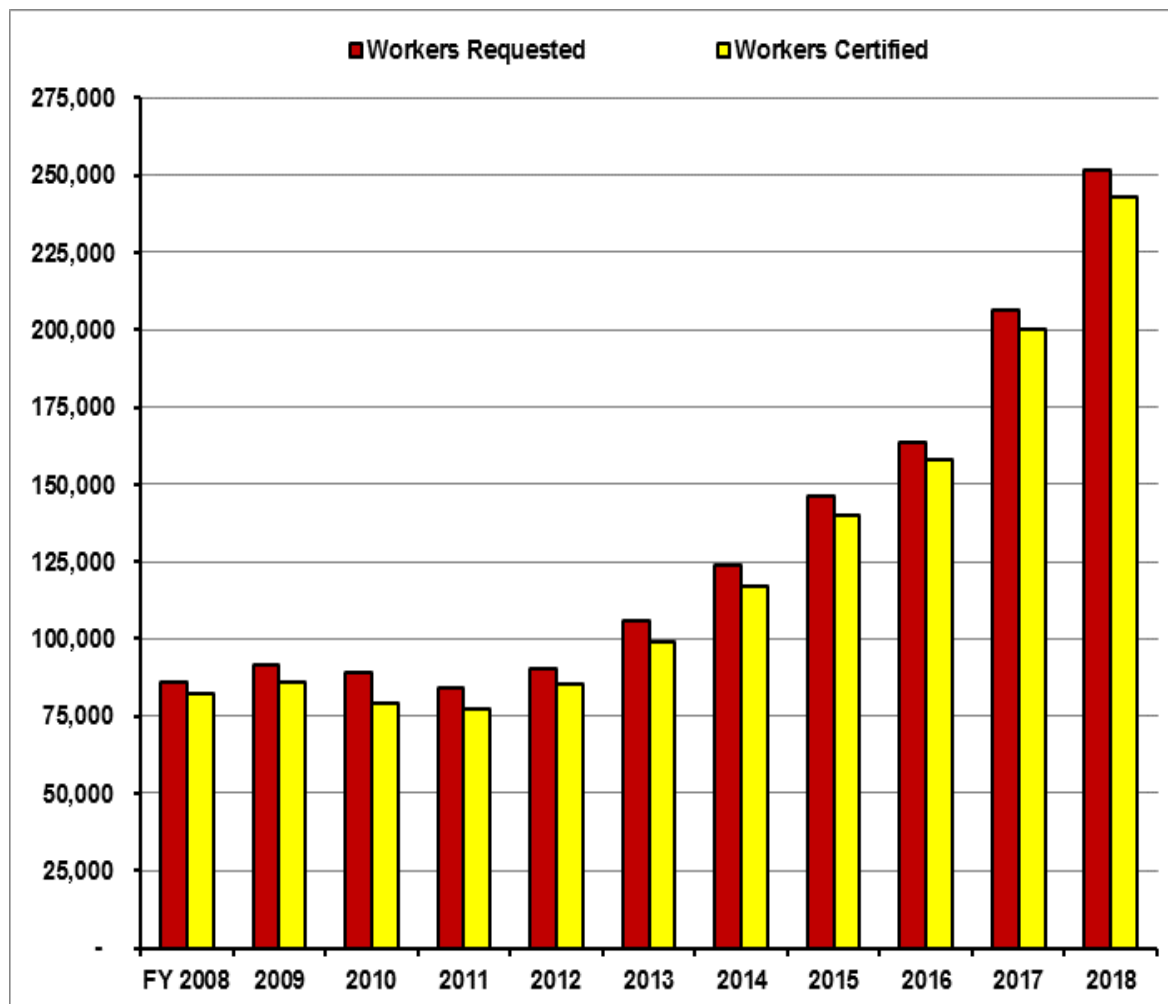
H-2A Program Workload Trends, FY 2008 - 2018

FY 2018 Workload

- 11,300 labor certifications
- 242,700 workers certified
- 97% certification rate
- 62% of certifications for individual farms-ranches
- 43% of workers certified for farm labor contractors

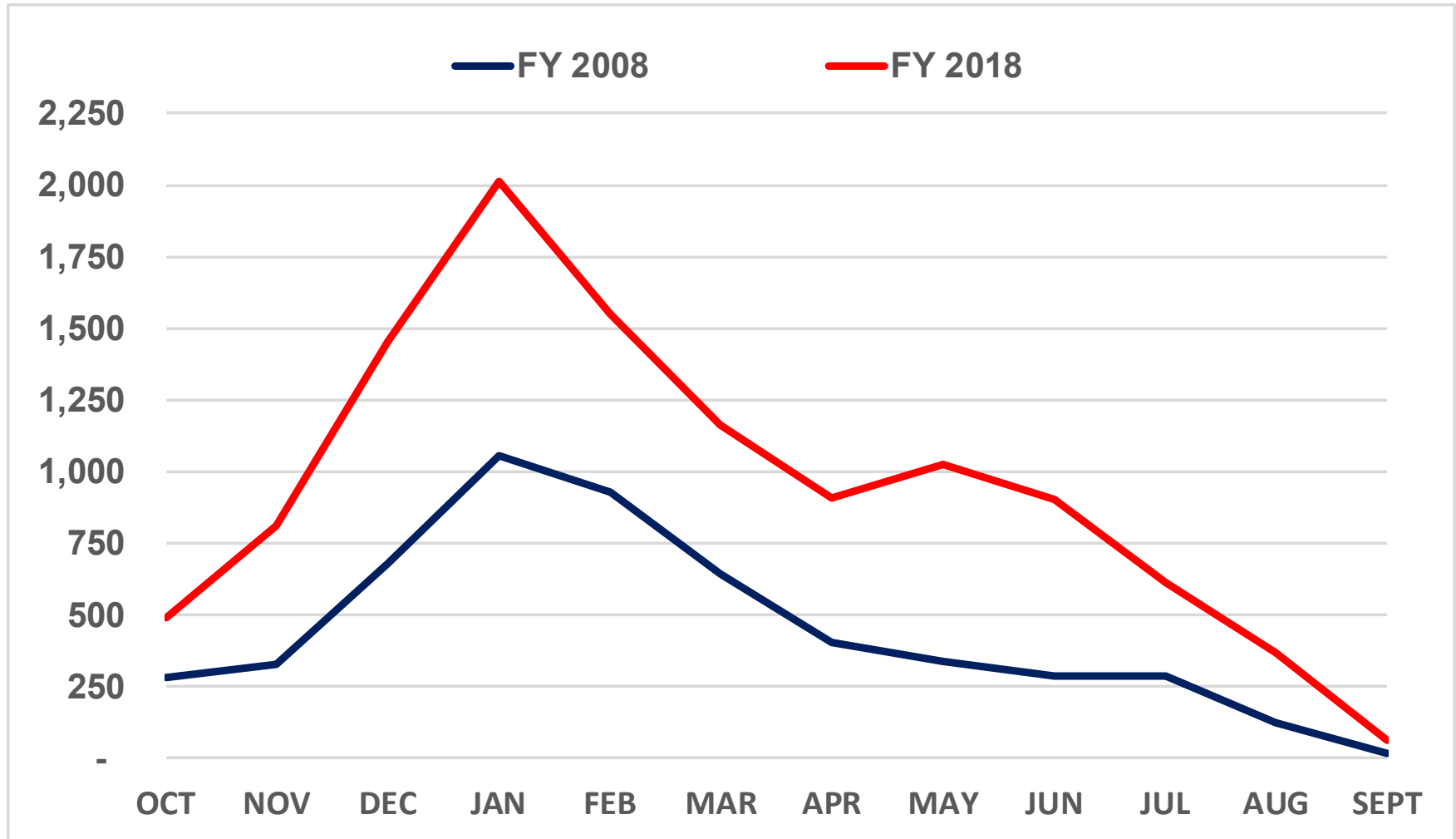
Top States of Employment

	<u>FY 2008</u>	<u>FY 2018</u>
Georgia	6,500	32,300
Florida	5,800	30,400
Washington	2,500	24,800
North Carolina	9,100	21,700
California	2,900	18,900



Department of Labor

H-2A Applications Received, FY 2008 vs. FY 2018



H-2A Program

FY 2018-2019 Initiatives

Regulatory Action	Summary/Description	Status
1205-AB89	DOL H-2A Program Modernization Technical improvements to existing H-2A regulations to modernize and streamline administration of the program	Proposed Rule December 2018
1205-AB90	DOL Modernizing H-2A Recruitment Requirements Eliminate print newspaper advertisements and modernize requirements for advertising jobs to U.S. workers https://www.federalregister.gov (published Nov. 9)	Comment Period Ends Dec. 10
1205-AB91	DOL-DHS Modernizing H-2B Recruitment Requirements Eliminate print newspaper advertisements and modernize requirements for advertising jobs to U.S. workers https://www.federalregister.gov (published Nov. 9)	Comment Period Ends Dec. 10

- For more information, visit <https://www.reginfo.gov/public/>

H-2A Program

FY 2018-2019 Initiatives



H-2A Application Form Revisions

- Published on October 25, 2018
- 60-Day Public Comment Period
- Comments Due On or Before December 24, 2018

To obtain a copy of the proposal, please visit one of the following websites:

www.foreignlaborcert.doleta.gov

www.federalregister.gov



Expected Benefits & Impacts

- Reduce length of H-2A application and streamline data collection
- Better align data collection with current H-2A regulations
- Create a new electronic job order (*Form ETA-790A*) integrated with the H-2A application
- Eliminate “paper” certifications using a new E-Certification form

H-2A Program

FY 2018-2019 Initiatives

- Promote electronic filing and continue to examine ways to increase automation (*85% electronic filing*)
- Expand contractor support within the Chicago NPC to provide administrative and case adjudication services
- Renew “cross-training” of staff within the OFLC processing centers to perform adjudication functions traditionally performed by other centers
- Extend IT contract support for extended hours to address system outages or performance degradation

H-2A Program

Publication of 2019 Hourly AEWRs

- Based on U.S. Department of Agriculture's (USDA) Farm Labor Survey
- Annual weighted average hourly wage for field and livestock workers (*combined*)
- Wage rates are statewide based on USDA regions

new 2019 AEWRs will be published in the Federal Register (December 2018)

The screenshot shows the official website of the United States Department of Labor, Employment & Training Administration. The page is titled "ADVERSE EFFECT WAGE RATES - YEAR 2016" under the "Foreign Labor Certification" section. It provides detailed information about the 2016 Adverse Effect Wage Rates (AEWRs) for agricultural employment. The page includes a table of 2016 AEWRs by state, ranging from \$10.59 in Alabama to \$13.80 in Kansas. The table is titled "TABLE -- 2016 ADVERSE EFFECT WAGE RATES".

STATE	2016 AEWR
Alabama	\$10.59
Arizona	\$11.20
Arkansas	\$10.69
California	\$11.89
Colorado	\$11.27
Connecticut	\$11.74
Delaware	\$11.66
Florida	\$10.70
Georgia	\$10.59
Hawaii	\$12.64
Idaho	\$11.75
Illinois	\$12.07
Indiana	\$12.07
Iowa	\$12.17
Kansas	\$13.80
Kentucky	\$10.85

For current AEWRs, visit the OFLC Agricultural Online Wage Library at:
<https://www.foreignlaborcert.doleta.gov/adverse.cfm>

H-2A Temporary Labor Certification Program



Briefing Section II

H-2A Program 101: The Basics

H-2A Program

General Requirements for Employer Participation

- Must qualify as a U.S. employer (e.g., farm/ranch), association of agricultural producers, or farm labor contractor
- Associations of agricultural producers can participate as a sole employer, agent with one member, or joint employer with multiple members
- Work must consist of agricultural labor or services, such as planting, raising, cultivating, harvesting, or production of any agricultural or horticultural commodity
- Work must be full-time (35 hours or more a week)
- Employer's need for workers must be seasonal or temporary in nature, such as a recurring growing cycle (generally lasting 10 months or less)

H-2A Program

STEP 1: Obtain a Prevailing Wage & Prepare Application

- Minimum wage information available at OFLC agricultural on-line wage library (<https://www.foreignlaborcert.doleta.gov/aowl.cfm>)
- Employer must offer, advertise in recruitment, and pay workers the highest of the following:
 1. Adverse Effect Wage Rate (AEWR)
 2. Prevailing Hourly Wage or Piece Rate
 3. Collective Bargaining Wage
 4. Federal or State Minimum Wage
- Employer begins preparing a job order (Form ETA-790) and H-2A application package

Recommended Timeframe: 90 and 75 days before work start date

H-2A Program

STEP 2: Submit a Job Order to the State Workforce Agency

- Employer submits the Form ETA-790 and informs the SWA of intent to file a future application for H-2A workers
- Job order must meet minimum regulatory content requirements (*20 CFR 653 Subpart F and 20 CFR 655.122*)
- SWA reviews job order and notifies employer of any deficiencies within 7 days **OR**, if acceptable, begins recruitment of U.S. workers within the state
- Employer will typically request that the SWA inspect housing for farmworkers during this timeframe

Regulatory Timeframe: 75 and 60 days before work start date

H-2A Program

Tips for Preparing the Form ETA-790

- Make sure the job order contains the minimum content requirements under 20 CFR 655.122(d)

Minimum Benefits, Wages, and Working Conditions	Regulatory Citation(s)
Provision of Housing	655.122(d)
Provision of Workers' Compensation	655.122(e)
Provision of Tools, Supplies, and Equipment	655.122(f)
Provision of Meals or Cooking Facilities	655.122(g)
Provision of Transportation and Daily Subsistence	655.122(h)
Three-Fourths Guarantee	655.122(i)
Hours/Earnings Records, Rates and Frequency of Pay	655.122(j) through (m)
Abandonment or Termination for Cause	655.122(n)
Contract Impossibility	655.122(o)
Required Deductions from Worker's Pay	655.122(p)
Work Contract or ETA Form 790 and attachments	655.122(q)

H-2A Program

Tips for Preparing the Form ETA-790

- Make sure the expected start and end dates of work and the number of workers requested match the Form ETA-9142A
- Identify all housing units for workers including
 - Clear and legible directions to each housing location
 - Description of the housing and type (e.g., rental/public accommodation, labor camp, 2-story wood frame barracks)
 - Capacity of the housing unit, if available
- For rental housing or other public accommodations, employer must provide a signed and dated assurance from the housing operator that identifies the applicable housing standards (*e.g., local, state, federal*) and that the housing unit(s) meet those standards

H-2A Program

Tips for Preparing the Form ETA-790

- Disclose the current amounts for transportation and daily subsistence payments to workers located at:
http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm
- Proofread documents prior to submission for errors and inconsistencies
- Ensure all required information on the ETA Forms 790 are completed prior to submission
- Ensure the form is signed and dated by the employer; NOT the employer's authorized agent or attorney
 - Electronic signature of the employer on the Form ETA-790 is acceptable

H-2A Program

STEP 3: *Submit H-2A Application to DOL-OFLC*

- File applications by U.S. mail or electronically (<https://icert.doleta.gov/>)
- Basic H-2A Application Package
 - ✓ Form ETA-9142A and Appendix A
 - ✓ Copy of Form ETA-790/all attachments submitted to the SWA
 - ✓ Itinerary of worksites (*if applicable*)
 - ✓ Workers compensation coverage
 - ✓ Housing inspection report/documentation
 - ✓ Agent agreement/documentation demonstrating authority to represent the employer and MSPA registration (*if applicable*)

Statutory Timeframe: No later than 45 days before work start date

H-2A Program

Application Filing Checklist (*non-emergency situation*)



Additional documentation for H-2A labor contractors:

- Name and location of each fixed-site employer, expected start and end dates of work, and a description of the crops and activities
- Copy of fully-executed work contracts with each fixed-site employer
- Copy of MSPA FLC Certificate of Registration, where required, identifying the specific FLC activities
- Proof of ability to discharge financial obligations by submitting an original surety bond document
- Where the fixed-site employer will provide housing or transportation to workers, information that confirms. . .
 - Housing complies with applicable standards and has been certified by the SWA
 - Transportation complies with applicable Federal, State, or local laws and regulations

H-2A Program

General Filing Tips & Issues

- Ensure all required fields on the ETA-9142A are completed prior to submission
- Review your application package carefully and ensure all required documents are included or uploaded electronically
 - Use a “checklist cover sheet” that identifies all items submitted for processing with your application package
 - For more efficient processing, upload separate electronic documents for each document type (e.g., job order, agent agreement) rather than one large file
- Provide legible copies of supporting documentation - this is a particular problem with contractor documents (e.g., *FLC registrations, H-2A surety bonds*)

H-2A Program

STEP 4: DOL-OFLC Processing of H-2A Application

- Department reviews application for obvious errors or inaccuracies and compliance with program requirements

Statutory Timeframe: Within 7 days of receipt of the H-2A application

- Issues Notice of Deficiency or Acceptance
 - If deficiency is issued, employer has 5 business days to respond
 - If application is accepted, employer positively recruits for U.S. workers
- SWA is required to submit a housing inspection report (*if applicable*)

H-2A Program

STEP 4: DOL-OFLC Processing of H-2A Application

Conducting Positive Recruitment for U.S. Workers

- ✓ Place advertisements as directed by the CO
- ✓ Contact U.S. employees from prior season/year
- ✓ Additional recruitment can be ordered at the discretion of the Department
- ✓ Positive recruitment must occur no later than 3 days before the start date of work
- ✓ Report of recruitment efforts can be submitted by the date specified in the Notice of Acceptance

Regulatory Timeframe: Until H-2A workers depart or 3 days before start date, whichever occurs first

H-2A Program

STEP 5: Issuance of Labor Certification Determination

- Temporary labor certification will be granted no later than 30 days before start date of work as long as all program requirements are met
- Employer has rights to appeal any denial determination or partial certification of its request for H-2A workers
- Department issues an original Form ETA-9142A certified on “blue security paper” to the employer
- Department instructs the employer to submit the certified Form ETA-9142A and a signed and dated copy of Appendix A to the appropriate USCIS Service Center

Important Reminder: Employers must consider and hire U.S. workers until 50 percent of the certified period of work has elapsed

H-2A Program

General Filing Tips & Issues

- Pay the required H-2A certification fees in full and timely (*within 30 days after the certified is issued*)
- Maintain all documents supporting the certification for a period of 3 years
- Report the termination or separation of workers in a timely manner (*no later than 2 working days*)
- Ensure the workforce and period of employment requested for certification represent bona fide business need (*e.g., claiming expected government delays is not an acceptable justification*)

H-2A Program

How to Contact OFLC for Help

- General program and processing questions

Email: TLC.Chicago@dol.gov

Fax: (312) 353-6757

Mail: U.S. Department of Labor
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court, IL 60604-2105

- Check the OFLC website on regular basis for updates, FAQs, webinar announcements, and updated forms
<http://www.foreignlaborcert.doleta.gov>

H-2A Program

Helpful Resources

- Visit the OFLC website and “Subscribe” for e-mail updates
<http://www.foreignlaborcert.doleta.gov>

The screenshot shows the official website of the Office of Foreign Labor Certification (OFLC) under the U.S. Department of Labor. The header is red with the department's name and a navigation menu. The main content area is white with a blue header for the OFLC. It features buttons for H-2A, H-2B, H-1B, PERM, and Prevailing Wage Determinations. There is a search bar, a sidebar with links to various resources, and a section for e-mail updates and announcements. The date November 25, 2014, is prominently displayed, along with a news item about the USDA release of the 2014 Farm Labor Survey.

UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

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[ETA Home](#) > Foreign Labor Certification - Employment & Training Administration ★ Was this page helpful?

Office of Foreign Labor Certification

- About FLC
- How do I...
- Policies & Regulations
- Program Debarments
- OFLC Performance Data
- Contact Information
- OFLC Help Desks

Ombudsman Programs

- H-2A
- H-2B

Electronic Filing

- iCERT Online Filing System
 - H-2A and H-2B Electronic Filing Resources
- PERM Online Filing System

Office of Foreign Labor Certification

H-2A H-2B H-1B PERM Prevailing Wage Determinations

I Want To...

Select an Option

Performance Data

E-Mail Updates

Type your e-mail address into the box then click on "Subscribe" to receive OFLC updates.

Announcements

NOV 25 **November 25, 2014.**

November 20, 2014. USDA Release of 2014 Farm Labor Survey

On November 20, 2014, the United States Department of Agriculture (USDA) issued the Farm Labor Survey (FLS) report in which it established the average annual wage rates, by region and the United States, for field and livestock

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