



# H-2A Temporary Labor Certification Program

October 2017

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

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# H-2A Temporary Labor Certification Program

## Topics



- ❖ H2A Workload / Filing Trends
- ❖ H2A Program Requirements
- ❖ Filing tips and best practices
- ❖ iCERT updates

# H-2A Temporary Labor Certification Program



## H-2A Programs: Filing Trends

- **H-2A Workload Trends:**

- *Workload – Received:* In FY 2017, Applications Received has increased by 15% as compared to FY 2016.

- *Workload – Processed:* Workers Processed has increased by 16% from FY 2016.

- *Worksite Locations:* The Top 3 Work States are Florida, Georgia North Carolina

- *H2ALC Applications* – In FY 2017, Applications Received from H2ALC's increased by 32% as compared to FY 2016.

# Department of Labor

## H-2A Program Workload Profile, FY 2017 to date (June 2017)

<b>Applications Submitted for Processing</b>		<b>10,115</b>
<b>Applications Processed</b>		<b>10,097</b>
<i>Certifications</i>		9,797
<i>Denials</i>		144
<i>Withdrawn</i>		156
<b>Worker Positions Requested</b>		<b>206,156</b>
<i>Worker Positions Certified</i>		200,049
<i>Worker Positions Denied</i>		3,252
<i>Worker Positions Withdrawn</i>		2,855

# Understanding the H-2A Program



## H-2A Program Requirements

# State Workforce Agency Role

## ■ Prefiling Procedures

- *Job Order* – no more than 75/no fewer than 60 days
  - Know SWA requirements
    - Tax ID numbers
    - State Farm Labor Contractor Licensing Requirements
  - Be responsive to SWAs
    - General information requests
    - Notice of Deficiency response



# State Workforce Agency Role

***Housing*** – ready for occupancy 30 days prior to date of need

- Employer-provided – requires SWA housing inspection
- Rental or public accommodation – may require SWA inspection – check with your SWA
  - Refer to Round 12 FAQs published June 16th

# State Workforce Agency Role

## ■ Recruitment Assistance

- Process Job Order and begin local recruitment
- Continue local and begin interstate recruitment
  - Act as Order-Holding Office
    - Provide other SWAs with up-to-date information
      - » Changes in crop-conditions, start dates, etc.

# H-2A Temporary Labor Certification 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 Temporary Labor Certification Program

## STEP 1: Obtain a Prevailing Wage & Prepare Application

- Employer obtains minimum wage information from the OFLC agricultural on-line wage library
- 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 on the Form ETA-790 and H-2A application package

**Recommended Timeframe: 90 and 75 days before work start date**

# H-2A Temporary Labor Certification Program

## Sample Wage Offers on Form ETA-790

- Make sure wage offer(s) **match** the Form ETA-9142A in each of the crops and commodities

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Período de Pago
Cultivos	Sálario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			/ /
Apple Harvest	\$11.74	\$1.00 per 1-1/8 BU. Box		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal <input checked="" type="checkbox"/>
Orchard Labor	\$11.74			Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Apple Packing	\$11.74			State Tax / Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
				Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
				Other (specify) / Otro (especifica)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Monthly/Mensual <input type="checkbox"/>

# H-2A Temporary Labor Certification 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 Temporary Labor Certification Program

## *Preparing the Form ETA-790 – General Requirements*

- Employer's job opportunity must . . .
  - Offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers
  - Not impose on U.S. workers any restrictions or obligations that will not be imposed on H-2A workers
  - Offer job qualifications and requirements (e.g., experience) that are bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupations and crops
  - CO or SWA may require employer to submit documentation substantiating the appropriateness of any qualification contained in the ETA Form 790

# H-2A Temporary Labor Certification Program

## *Preparing the Form ETA-790 – General Requirements*

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



# H-2A Temporary Labor Certification Program

## Step 3: File Application with the OFLC

 Employer will submit the following documents:

- ETA 9142A
- Appendix A - signed and dated copy of original
- Copy of Form ETA-790/all attachments submitted to the SWA
- Itinerary of worksites (*if applicable*)
- Workers compensation coverage
- SWA housing inspection report(s) or other documentation demonstrating rental/public accommodation housing meets standards and sufficient to house all workers
- Agent agreement/documentation demonstrating authority to represent the employer and MSPA registration (*if applicable*)

# H-2A Temporary Labor Certification Program

## Labor Contractor Filing Checklist



### 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 (see housing FAQ to determine if inspection required)
  - Transportation complies with applicable Federal, State, or local laws and regulations

# H-2A Temporary Labor Certification 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 Temporary Labor Certification Program

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

### Conducting Positive Recruitment for U.S. Workers

- ✓ Place 2 print advertisements in local area
- ✓ Contact U.S. employees from prior season/year
- ✓ Conduct out-of-state recruitment (*not more than 3 states*)
- ✓ 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 Temporary Labor Certification Program

## *Submission of Initial Recruitment Report*

**20 CFR 655.156(a)**

- Employer must prepare, sign, date, and submit a written recruitment report on a date specified by the CO in NOA
- Recruitment report must contain the following information:
  - Identification of each recruitment source by name
  - Name/contact information of each U.S. worker who applied for the job and the disposition of each worker
  - Confirm that former US employees were contacted and by what means
  - Explanation of the lawful job-related reason(s) for not hiring each U.S. worker (if applicable)

# H-2A Temporary Labor Certification 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 Temporary Labor Certification Program

## *REMINDER: Issuance of Final Determination*

- In the H-2A program, DOL issues a final determination 30 days before the start date of work as long as all program requirements are met
- Common reason(s) for delaying the H-2A final determination is the employer or authorized representative not providing . . .
  - Proof of valid workers' compensation coverage
  - Housing documentation for farmworkers
  - Valid farm labor contractor licenses
  - Valid surety bond for labor contractors
  - Recruitment report
- DOL provides employers with additional time to submit required documents to obtain certification, rather than issue a denial forcing employers to choose between filing an appeal or new application

# H-2A Program

## *General Filing Tips & Issues*

### Post-Certification Recruitment Obligations

- Employers must continue to cooperate with the SWA in recruiting for the job opportunity and provide employment to any qualified U.S. worker who applies for the job opportunity
  - H-2A until 50 percent of the certified period of work has elapsed
- Employer must continue to update the initial recruitment report submitted to the CO for certification throughout the entire recruitment period
- Employer must sign and date the final written recruitment report and be prepared to submit it when requested by the CO in the event of an audit examination or other request from the Department



# H-2A Program

## *Important Reminders*

- 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/abandonment of workers in a timely manner (*no later than 2 working days*)
- If changing period of employment requested for certification- please ensure changes represent bona fide business need in documentation (*e.g., claiming expected government delays is not an acceptable justification*)

# H-2A Program

## *Important Reminders*

- Agents/Attorneys- If using a template to submit applications and the CO issues a Notice of Deficiency (NOD) impacting your template, remember to *amend the template* to avoid a continuation of the same NOD for each application
- Change iCERT password frequently
- Round 12 H2A FAQ's published June 16, 2017  
Housing Assurances required when using public accommodations

# Additional OFLC H2A Resources

- <https://www.foreignlaborcert.doleta.gov/h-2a.cfm>

The screenshot displays the OFLC H-2A Certification website. At the top, a dark red navigation bar contains links for Home, Career Info, Industry, Professionals, Contracts, TAA Program, Certification, & Results, and States. Below this, a breadcrumb trail reads: Home > Foreign Labor Certification > H-2A Certification.

The main content area features a blue header with the text "Foreign Labor Certification" and the tagline "Helping U.S. employers fill jobs while protecting U.S. and foreign workers". Below the header, a yellow banner highlights the "H-2A Temporary Agricultural Program".

A sidebar on the left lists various resources under the heading "Office of Foreign Labor Certification", including "About FLC", "OFLC Division Organization Chart", "Policies & Regulations", "Program Debarments", "Foreign Labor Recruiter List", "OFLC Performance Data", "Contact Information", and "OFLC Help Desks". Other sidebar sections include "Ombudsman Programs" (H-2A, H-2B), "Electronic Filing" (iCERT Online Filing System, H-2A and H-2B Electronic Filing Resources, PERM Online Filing System), "Forms and Instructions", and "Hiring Foreign Workers" (Permanent, H-1B, H-1B1).

The main content area includes a "Helpful Links" section with a yellow background, listing: "H-2A Herder Rule Implementation Page", "Frequently Asked Questions", "Regulations and Special Procedures", "Factsheets and Filing Tips", "Wage and Survey Information", "Public Job Registry", "Disclosure Data", "Forms", "Program Debarments", "H-2A Ombudsman Program", and "Additional Resources". To the right of this section are two red buttons: "On This Page" and "Quick Links".

Below the helpful links, a yellow banner announces "H-2A Electronic Filing via iCERT Portal System Now Available". Underneath, a "Program Overview" section provides a brief description: "The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations."

# iCert Enhancements 2017

- Agricultural Association Data Entry improvements
- SWA document upload capability
- Mandatory Documents Upload feature at case submission

*iCERT VISA PORTAL SYSTEM QUICK START GUIDE FOR H-2A MANDATORY DOCUMENTS UPLOAD*

[https://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Quick\\_Start\\_Guide.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Quick_Start_Guide.pdf)