

**Employment and Training Administration**  
**Office of Foreign Labor Certification**  
**Frequently Asked Questions**  
**H-2A Temporary Agricultural Foreign Labor Certification Program**  
**2010 Final Rule, Round 10**  
**January 2016**

**Post-certification**

*Corporate Restructuring / Successor in Interest*

- 1. Due to corporate restructuring or the sale of the business, a successor in interest will now be the employer of workers employed under an H-2A certification. Can the successor in interest still use the certification? How do I notify the Department of this change?**

A successor in interest entity may use the certification issued, provided that it assumes all obligations, liabilities, and undertakings arising under the certification. The Department's H-2A regulations expressly contemplate successorship by including a definition of "successor in interest" and, in fact, permit debarment of employers who are successors to a debarred employer. See 20 CFR 655.100(b) and 20 CFR 655.182(a). As a result, although the H-2A regulations do not expressly contain a process in which a certification may be assumed by a successor employer, the Office of Foreign Labor Certification (OFLC) has determined that such a process is a reasonable interpretation of the H-2A regulations cited above, and that such a model would prove useful to both employees and employers in situations involving corporate restructuring or sale of a business.

As indicated in the definition of "successor in interest" at 20 CFR 655.100(b), the following factors may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

- (i) substantial continuity of the same business operations;
- (ii) use of the same facilities;
- (iii) continuity of the work force;
- (iv) similarity of jobs and working conditions;
- (v) similarity of supervisory personnel;
- (vi) whether the former management or owner retains a direct or indirect interest in the new enterprise;
- (vii) similarity in machinery, equipment, and production methods;
- (viii) similarity of products and services; and
- (ix) the ability of the predecessor to provide relief.

Before employing workers covered by the certification, a successor in interest entity should notify the Chicago National Processing Center (NPC) by submitting a sworn written statement that identifies the certification using the ETA case number; describes the business situation resulting in the change; provides the successor in interest's name and contact information; and confirms the successor in interest's assumption of all obligations, liabilities, and undertakings arising under the certification. Also, a copy of the sworn written statement submitted to the Chicago NPC should be added to the employer's document retention file, consistent with the H-2A regulation's record and documentation retention requirements described at 20 CFR 655.167.

**Important Note:** The H-2A regulations do not provide a process for the Chicago NPC to determine whether a new entity is a "successor in interest" for purposes of using the H-2A certification. Therefore, the Chicago NPC's receipt of the sworn statement serves only to document the asserted successorship and the transition between employers using the certification.