Foreign Labor Certification

News & Updates

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Calendar Year 2013

- **November 14, 2013: USDA Postpones Release of 2014 H-2A AEWR Wage Data.**

On October 17, 2013, the United States Department of Agriculture (USDA) announced a change in the schedule for the release of certain reports due to the lapse in Federal appropriations resulting in the Government shutdown. Among the affected reports is the Farm Labor Survey (FLS) report upon which the Department relies in order to establish the Adverse Effect Wage Rates in the H-2A program. The new release date for the FLS report will be December 5, 2013. To learn more, please read the USDA News Release.

- **OFLC Stakeholder Notice regarding handling of applications and responses after government shutdown**

OFLC appreciates the challenges the regulated community has experienced as a result of the lapse in appropriations, which resulted in the cessation of the operation of OFLC's electronic systems, and further resulted in a backlog of documents submitted to OFLC during that period by mail, hand-delivery, or email. As a result of the government shutdown, OFLC is implementing the following temporary changes to its standard procedures related to document timeliness:

1. **Submissions mailed, couriered, or emailed to OFLC and received between October 1 and October 18:**

   Submissions are applications that the National Processing Centers (Chicago, Atlanta, or Prevailing Wage Center) could not receive electronically through the iCERT system during the shutdown, and were mailed, delivered by private courier (Federal Express, etc.) or emailed to OFLC. These include Applications for Permanent Employment Certification (PERM, ETA 9089), Applications for Temporary Employment Certification (H-2B, H-2A ETA 9142), and Applications for Prevailing Wage Determinations (ETA 9141).

   Because of the backlog in submissions that were mailed, delivered or emailed to OFLC for shutdown-related reasons or otherwise, **all submissions received by OFLC between October 1 and October 18 will be considered received on October 18**. For example, a PERM application mailed to the Atlanta National Processing Center on October 5 will be given a receipt date of October 18, 2013. If an October 18 receipt date on an application would otherwise render out-of-date the recruitment or prevailing wage determination used for the application, the application will be deemed to have been timely filed for the purpose of the recruitment or the prevailing wage determination.

If an applicant transmitted an application or response by mail, hand-delivery or email between October 1 and October 18, 2013, and the employer has not received notice that the transmission was undeliverable, the employer should **NOT** re-submit it.

Employers are reminded that if they view a PERM application as erroneously denied during this period based on out-of-date recruitment, they may submit the request for reconsideration to the attention of the government error queue.

None of the temporary procedures established in this notice apply to appeals to the BALCA. Employers are encouraged to contact the BALCA for information related to deadlines applicable to appeals.

- **Records Notice of Employer Applications Retained in Permanent Backlog System (PBLS) Eligible for Destruction**

On July 8, 2013, the National Archives and Records Administration (NARA) approved OFLC's revised retention schedule following a 30-day period of public notice and review. As part of its review and approval process, NARA determined employer applications for labor certification and supporting documentation, whether retained in paper and electronic form, are temporary records and subject to destruction in accordance with an approved disposition schedule. The OFLC-approved disposition schedule authorizes the retention of records for a period of 5 years following the date a final determination letter is issued, subject to an active investigation or litigation hold.

The records NARA identified as permanent records are the annual disclosure data files currently located on the FLC Data Center at http://www.flcdatacenter.com, as well as the quarterly disclosure data files and the OFLC Annual Reports located on the OFLC Performance page at http://www.foreignlaborcert.doleta.gov/performancedata.cfm.

Permanent program applications retained in the OFLC Permanent Backlog System (PBLS): As of October 25, 2013 the OFLC no longer has access to employer application records that are beyond the retention period of 5 years from the date a final determination was issued and stored in the PBLS system. The PBLS system, which was previously used by the OFLC Backlog Processing Centers, has now been destroyed in accordance with OFLC Records Schedule Number DAA-0369-2013-0002. Prior to destruction of the PBLS system software and database, any records within the 5-year retention period, active investigation, Freedom of Information Act requests, or mandatory litigation hold have been identified and were not destroyed.

The OFLC will no longer respond to inquiries to confirm priority dates, search for records in response to FOIA requests, or provide information for requests for duplicate certifications for permanent labor certification applications with a final determination issued in 2008 or earlier, in keeping with the OFLC records schedule.

- **October 28, 2013: Notice to H-2A Stakeholders: Accommodation PDFs will Continue Through November 18th**

On October 21st, OFLC announced, as a temporary accommodation not to exceed 30 days, it would send an Adobe PDF of an approved certification to H-2A employers and authorized representatives. That accommodation will be continued through November 18, 2013.

AILA InfoNet Doc. No. 13111444. (Posted 11/14/13)

- **October 28, 2013: Revised ETA Forms 232 and 232A for the H-2A Program**

  The Department has revised the ETA Form 232, Domestic Agricultural In-Season Wage Report and ETA Form 232-A, Wage Survey Interview Record which are used by State Workforce Agencies (SWA) to collect wage information from agricultural employers for the H-2A program. This enhanced survey and reporting mechanism will allow for a more accurate data collection by the SWAs in support of the direct administration of the foreign labor certification programs. As of the date of this announcement, State Workforce Agencies should use the new forms for future H-2A program wage reporting to the Office of Foreign Labor Certification. To access the revised forms please click here.

- **USCIS Announces Temporary Accommodation for Form I-129 H-2A Petitions**
  On October 23, 2013, USCIS issued the following alert:

  With the reopening of the federal government, USCIS has been informed that the Department of Labor's (DOL) Office of Foreign Labor Certification is once again accepting and processing applications, including Temporary Labor Certifications (TLCs).

  On Oct. 21, 2013, DOL issued an announcement to H-2A stakeholders stating that once the TLC is certified, the Chicago National Processing Center will send an email to the employer and its authorized representative containing an Adobe PDF of the labor certification. The employer would need to print, sign and date the PDF version for submission to USCIS with the Form I-129, Petition for Nonimmigrant Worker.

  USCIS usually requires that a petitioner submit the certified TLC on blue security paper with original signatures. Beginning today, USCIS in consultation with DOL, has determined that USCIS will temporarily accept Form I-129 H-2A petitions that are filed with a copy of the certified TLC. During this temporary accommodation, the signatures on the TLC submitted to USCIS do not need to be original. This temporary accommodation is being implemented because of the unique time sensitivities associated with agricultural work.

  H-2A petitioners must submit the original Form I-129 petition, all required fees, and supporting documentation with a copy of the signed, certified TLC. DOL has indicated that this accommodation should last no longer than 30 days. USCIS will provide further guidance on when this accommodation will expire. At that time, H-2A petitioners will once again be required to submit the signed original of the certified TLC with their H-2A petition.

- **October 21, 2013: Notice to Stakeholders Regarding H-2A Certifications.**

  As a result of the unique perishable nature of agricultural commodities in the H-2A program, OFLC will temporarily (for a period not to exceed 30 days) implement the following mailing procedure:

  1. Upon certification of an H-2A application, the Chicago National Processing Center will send the employer and its authorized representative an Adobe PDF of the labor certification via e-mail. The employer would need to print, sign and date the PDF version for submission to USCIS with the I-129 Petition for Nonimmigrant Worker(s).
  2. The original (secure) H-2A labor certification will be delivered overnight to the employer or its authorized representative in line with normal OFLC practices.

- **September 30, 2013: Notice to Stakeholders Regarding Lapse in Appropriations**

  The Administration is working very hard to avoid a government shutdown and believes there is sufficient time to avoid such an occurrence; however, prudent management requires the Department to plan for the possibility that it may need to suspend operations should Congress be unable to pass a funding bill by midnight on Monday, September 30, 2013.

  OFLC functions are not "excepted" from a shutdown and its employees would be placed in furlough status should a lapse in appropriated funds occur. Consequently, in the event of a government shutdown, OFLC will neither accept nor process any applications or related materials (such as audit responses) it receives, including Labor Condition Applications, Applications for Prevailing Wage Determination, Applications for Temporary Employment Certification, or Applications for Permanent Employment Certification. OFLC's web site, including the iCERT Visa Portal System, would become static and unable to process any requests or allow authorized users to access their online accounts.

  The Department has posted to its website information on the potential shutdown that can be accessed here.

- **September 26, 2013: Records Notice of Employer applications retained in Paradox database**

  On July 8, 2013, the National Archives and Records Administration (NARA) approved OFLC's revised retention schedule following a 30-day period of public notice and review. As part of its review and approval process, NARA determined employer applications for labor certification and supporting documentation, whether retained in paper and electronic form, are temporary records and subject to destruction in accordance with an approved disposition schedule. The OFLC-approved disposition schedule authorizes the retention of records for a period of 5 years following the date a final determination letter is issued, subject to an active investigation or litigation hold.

  The records NARA identified as permanent records are the annual disclosure data files currently located on the FLC Data Center at http://www.flcdatacenter.com, as well as the quarterly disclosure data files and the OFLC Annual Reports located on the OFLC Performance page at http://www.foreignlaborcert.doleta.gov/performancedata.cfm.

  Permanent program applications retained in Paradox Database – As of September 26, 2013, the OFLC no longer has access to employer application records or screen shots of such records filed in 2002 or earlier stored in the Paradox database. The Paradox database, which was the system used by the ETA Regional Offices and which is no longer used in the administration of the Permanent Program, was destroyed. This database contained information related to employer applications (screenshots of text) filed in 2002 or earlier where the records have been destroyed. In accordance with OFLC Records Schedule Number DAA-0369-2013-0002, the Paradox database and information contained in this database was destroyed on September 26, 2013. Prior to destruction of this database, the OFLC completed searches related to these records in response to Freedom of Information Act requests that were pending within the office. Any records subject to an active investigation or litigation hold have been identified and were not destroyed. The OFLC is no longer able to respond to inquiries to confirm priority dates, search for records in response to FOIA requests, or provide information for requests for duplicate certifications.

  September 24, 2013: The Office of Foreign Labor Certification (OFLC) updates its records retention schedule to include case management systems and electronic records

  On July 8, 2013, the National Archives and Records Administration (NARA) approved OFLC's revised record retention schedule following a 30-day period of public notice and review. During its review and approval process, NARA determined employer application files and supporting documentation, whether retained in paper or electronic form, to be temporary records and subject to destruction in accordance with an approved disposition schedule. The OFLC approved disposition schedule authorizes retention of records for a period of 5 years following the date a final determination letter is issued, subject to an active investigation or litigation hold. Employer applications that are part of an active investigation or pending litigation are exempted from the approved disposition schedule and will be retained until the investigation and/or litigation matters are closed. This approved disposition schedule limits retention of both paper and electronic records to a 5-year period. Records retained by the OFLC beyond the 5-year period will be destroyed on at least an annual schedule or as determined by the OFLC.

  Furthermore, this approved disposition schedule authorizes the destruction of case management systems and software as they become obsolete and are no longer needed to administer the program(s). For example, the Paradox database, formerly used by the ETA Regional Offices, and which is no longer needed in the

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administration of the Permanent Program, will be destroyed by September 26, 2013. This database contains texts of information related to employer applications filed in 2002 or earlier where the records have been destroyed. The text is called screenshots. As the OFLC implements its approved disposition schedule, we will provide notice to the public identifying the records and, where applicable, the associating case management systems and software being destroyed.

The records NARA identified as permanent records are the annual disclosure data files currently located on the FLC Data Center at http://www.flcdatacenter.com; as well as the quarterly disclosure data files and the OFLC Annual Reports located on the OFLC Performance page at http://www.foreignlaborcert.doleta.gov/performancedata.cfm.

- **September 18, 2013: H-2A and H-2B Ombudsman Customer Service On-line Survey**

  The OFLC Ombudsman is pleased to announce a new on-line survey intended to encourage stakeholder feedback on their experience with Ombudsman Program. Survey questions are designed to promote the enhancement of customer service and overall satisfaction with the Program. The survey is located on both the H-2A and H-2B Ombudsman webpages: H-2A Ombudsman Webpage H-2B Ombudsman Webpage.
- **August 29, 2013: Final Rule in H-2B Program**

  On August 30, 2013, the Department of Labor (Department) will publish in the Federal Register a final rule to delay indefinitely the effective date of the Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program final rule (2011 Wage Rule), which was published on January 19, 2011, 76 FR 3452. This final rule is being published in order to comply with recurrent legislation that prohibits the Department from using any funds to implement the 2011 Wage Rule, and also to permit time for consideration of the public comments that were sought in conjunction with a separate H-2B wage interim final rule (IFR) published April 24, 2013, 78 FR 24047. This final rule does not affect the IFR, which establishes the current prevailing wage methodology for the H-2B program; that rule remains in effect. To see the final rule, please click here.

- **August 12, 2013: ETA-9033 and ETA-9033A Proposed Changes.**

  The Department has published a Notice in the Federal Register announcing a 60-day comment period on its proposed changes to the form ETA-9033, Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports and ETA-9033A, Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska. To read the Notice, please click here. To obtain a copy of the forms with proposed changes and the supporting documentation please submit your request to ETA.OFLC.Forms@dol.gov, subject line: Revised Form ETA-9033. Comments to the package must be submitted on or before October 7, 2013.

- **July 18, 2013. Notice of Proposed Rulemaking in H-2B Program:**

  The Department of Labor (Department) is issuing a Notice of Proposed Rulemaking (NPRM) to delay indefinitely the effective date of the 2011 H-2B Wage Rule. The NPRM is being published in order to comply with recurrent legislation that prohibits the Department from using any funds to implement the 2011 H-2B Wage Rule, and also to permit time for consideration of the public comments that were sought in conjunction with a separate H-2B wage interim final rule published April 24, 2013, 78 FR 24047. Comments are being accepted on the NPRM until August 9, 2013. To see the NPRM please click here.

- **DOL Open Government Initiative: Labor Certification Registry Goes Live!**

  The Department is pleased to announce the implementation of the Labor Certification Registry (LCR) on the Office of Foreign Labor Certification's (OFLC) iCERT Visa Portal System web site. The LCR provides the public with access to appropriately redacted copies of H-1B, H-1B1, E-3, H-2A, H-2B and permanent labor certification documents issued by OFLC, as well as quarterly and annual case disclosure data. To learn more about the LCR, please read the Department's Federal Register notice. To access the LCR, please click here.

- **June 27, 2013. Q3 FY 2013 Selected Statistics by Program**

  The Office of Foreign Labor Certification has posted updated program factsheets containing the Quarter 3 FY 2013 selected statistics as of June 15, 2013, for the Permanent Labor Certification Program, Prevailing Wage Determination Program, H-1B Temporary Visa Program, H-2A Temporary Agricultural Visa Program, and H-2B Temporary Non-agricultural Visa Program. The updated program factsheets may also be found on OFLC's Performance Data page.

- **May 30, 2013. USCIS Publishes a Revised Version of Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.**

  The U.S. Citizenship and Immigration Services (USCIS) announced that it will no longer accept prior versions of Form G-28 after May 26, 2013. The new version of the Form G-28 and its instructions, which were published on March 28, 2013, can be accessed by clicking here. All fields of the Form G-28 must be completed and signed by both the client and the attorney or accredited representative. Each individual application or petition must be accompanied by a separate, completed and signed Form G-28.

- **April 25, 2013. USCIS Resumes Adjudication of All H-2B Petitions Following Publication of Interim Final Rule.**

  As announced by USCIS on April 25, 2013, USCIS has resumed processing of all Form I-129, H-2B petitions for temporary non-agricultural workers. Read the USCIS Alert.

- **April 25, 2013. H-2B Wage Methodology Interim Final Rule and Frequently Asked Questions.**

  On April 24, 2013, the Department of Labor and the Department of Homeland Security published in the *Federal Register* a joint Interim Final Rule, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2. The joint Interim Final Rule, revises the prevailing wage methodology used by the Department of Labor to calculate certain prevailing wages paid to H-2B workers and U.S. workers recruited in connection with an H-2B Application for Temporary Employment Certification, and has been published in response to a court order issued by the U.S. District Court for the Eastern District of Pennsylvania on March 21, 2013, in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 09-cv-00240 (E.D. Pa). The court order vacated a portion of the 2008 wage methodology rule dealing with the way the Department of Labor determines the prevailing wage when relying on the Bureau of Labor Statistics' Occupational Employment Statistics (OES) survey, and provided the Department of Labor with 30 days to come into compliance.

  On April 24, 2013, the effective date of the Interim Final Rule, the Department of Labor also resumed processing both pending H-2B prevailing wage requests and H-2B applications for temporary labor certification based on the OES wage survey data, in accordance with standards set in the Interim Final Rule. To learn more about the revised H-2B prevailing wage methodology, please read the Interim Final Rule.

  In addition, the Department of Labor is making available Frequently Asked Questions (FAQs) to assist filers with complying with the requirements of the joint Interim Final Rule. The FAQs address the applicability of the new prevailing wage methodology, employer wage obligations, requests for review and the processing of pending H-2B prevailing wage requests and H-2B applications for temporary labor certification. To learn more, please read the FAQs. **Important Note:** These FAQs have been updated as of April 25, 2013.

  We encourage stakeholders to sign up to receive e-mail alerts to ensure receipt of most recent updates affecting the H-2B Temporary Non-agricultural Visa Program. Instructions for signing up for e-mail updates are provided below.

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E-Mail Update Instructions: On the home page of the OFLC web site, under the E-mail Updates heading, enter your e-mail address and then click the "Subscribe" button. You will be directed to the Department's E-mail Subscription Service page. On that page, under the Employment and Training Administration heading, please select a checkbox next to "Foreign Labor Certification Website" and then click the "Submit" button.

- **April 11, 2013. Quarter 2 FY 2013 Selected Statistics by Program.**

  The Office of Foreign Labor Certification has posted updated program factsheets containing the Quarter 2 FY 2013 selected statistics for the Permanent Labor Certification Program, Prevailing Wage Determination Program, H-1B Temporary Visa Program, H-2A Temporary Agricultural Visa Program, and H-2B Temporary Non-agricultural Visa Program. The updated program factsheets may also be found on OFLC's Performance Data page.

- **April 4, 2103. Update on Suspension of Adjudication of Most H-2B Petitions Following Court Order.**

  As announced by USCIS on April 2, 2013, USCIS has temporarily suspended adjudication of certain Form I-129 H-2B petitions for temporary non-agricultural workers.

  For more complete information, please visit http://go.usa.gov/2uRT.

- **April 2, 2013. USCIS Suspends Adjudication of H-2B Petitions.**

  Effective March 22, U.S. Citizenship and Immigration Services (USCIS) is temporarily suspending adjudication of most Form I-129 H-2B petitions for temporary non-agricultural workers while the government considers appropriate action in response to the Court order entered March 21, 2013 in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 2:09-cv-00240-LDD (E.D. Pa). That order granted a permanent injunction against the operation of the portion of the Department of Labor's (DOL) 2008 wage rule related to certain prevailing wage determinations and gave DOL 30 days to come into compliance with the Court order. Read the alert.

- **April 1, 2013.**

  Effective March 22, the Department is holding in abeyance the issuance of final determinations on most pending H-2B applications for temporary labor certification and those it received after March 22, while it considers appropriate action in response to the Court order entered March 21, 2013 in Comite de Apoyo a los Trabajadores Agricolas et al v. Solis, 2:09-cv-00240-LDD (E.D. Pa). That order granted a permanent injunction against the operation of the portion of the 2008 wage rule related to certain prevailing wage determinations and gave the Department 30 days to come into compliance with the Court order.

  The Department will, however, continue to process and issue final determinations on H-2B applications for temporary labor certification where the employer's wage offer is based upon a prevailing wage not enjoined by the court order: those utilizing applicable Collective Bargaining Agreements, acceptable private wage surveys or Service Contract Act or Davis Bacon Act wage determinations. The Department intends to promulgate a revised wage rule within 30 days of the date of the Court order. This will allow the Department to resume providing employers with both prevailing wage determinations and final determinations on their H-2B applications for temporary labor certification.

  We encourage stakeholders to sign up to receive e-mail updates through the Department's Office of Foreign Labor Certification (OFLC) web site. Instructions for signing up for e-mail updates are provided below.

  E-Mail Update Instructions: On the home page of the OFLC web site, under the E-mail Updates heading, enter your e-mail address and then click the "Subscribe" button. You will be directed to the Department's E-mail Subscription Service page. On that page, under the Employment and Training Administration heading, please select a checkbox next to "Foreign Labor Certification Website" and then click the "Submit" button.

- **March 29, 2013. H-2B Wage Final Rule Update: Delay of Effective Date.**

  The Department of Labor has published a notice in the Federal Register delaying the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H-2B Program final rule (2011 Wage Final Rule), which was published on January 19, 2011, 76 FR 3452. In light of the enactment of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, which establishes the Department's appropriations through September 30, 2013, and also continues the prohibition of the expenditure of the Department's appropriated funds to implement, administer, and enforce the 2011 Wage Final Rule, the Department is delaying the effective date of the 2011 Wage Final Rule. To read the Final Rule please click here.

- **March 28, 2013. H-2A Program: Prevailing Wage Rates for Certain Occupations Processed under H-2A Special Procedures, Correction/Rescission Notice.**

  The Department has published in the Federal Register a notice correcting certain prevailing wage rates established by the January 8, 2013 notice for H-2A workers and workers in corresponding employment engaged in the open range production of livestock in Texas, Wyoming, Idaho, Montana, North Dakota, South Dakota, and Oklahoma. In addition, this notice rescinds prevailing wage rates established by the January 8, 2013 notice for H-2A workers and workers in corresponding employment engaged in sheepherding and goatherding occupations in Arizona, Nevada, Oregon and Washington. In the absence of the January 8 prevailing wage rates for sheepherding and goatherding, the Department is reverting to previously established prevailing wage rates for these occupations. To learn more, please read the Federal Register notice.

- **March 28, 2013.**

  Effective March 22, the Department is holding in abeyance most pending H-2B prevailing wage requests and those it received after March 22, while it considers appropriate action in response to the Court order entered March 21, 2013 in Comite de Apoyo a los Trabajadores Agricolas et al v. Solis, 2:09-cv-00240-LDD (E.D. Pa). That order granted a permanent injunction against the operation of the portion of the 2008 wage rule related to prevailing wage determinations and gave the Department 30 days to come into compliance with the Court order. The result is that the Department can no longer make prevailing wage determinations based on the Occupational Employment Statistics (OES) survey four tier wage system. The Department will, however, continue to process prevailing wage requests not enjoined by the court order: those utilizing applicable Collective Bargaining Agreements, acceptable private wage surveys or Service Contract Act or Davis Bacon Act wage determinations. The Department intends to comply with the Court order within 30 days by promulgating a revised wage rule. This will allow the Department to resume providing employers with prevailing wage determinations.

  We encourage stakeholders to sign up to receive e-mail updates through the Department's Office of Foreign Labor Certification (OFLC) web site. Instructions for signing up for e-mail updates are provided below.

  E-Mail Update Instructions: On the home page of the OFLC web site, under the E-mail Updates heading, enter your e-mail address and then click the "Subscribe" button. You will be directed to the Department's E-mail Subscription Service page. On that page, under the Employment and Training Administration heading, please select a checkbox next to "Foreign Labor Certification Website" and then click the "Submit" button.

- **March 12, 2013. H-2A Program: 2013 Allowable Meal Charges and Travel Subsistence.**

  The Department has published in the Federal Register a notice establishing the 2013 allowable meal charges and maximum travel subsistence reimbursement amounts. The 2013 allowable charge for providing three meals a day is set at $11.42 per day, although employers may petition the Chicago National Processing Center for a higher charge if justified by documentation of actual costs. Similarly, the 2013 minimum subsistence charge for meals

AILA InfoNet Doc. No. 13111444. (Posted 11/14/13)

during travel is set at $11.42 a day. The maximum travel subsistence for meals will remain set at $46.00 per day again this year for those workers who submit receipts substantiating a higher expense. Workers may claim up to $34.50 with receipts for travel subsistence when traveling less than a full day. The new 2013 amounts are effective upon publication in the Federal Register. To learn more, please read the Federal Register notice.

- **March 1, 2013. H-2A Program: 2013 Allowable Meal Charges and Travel Subsistence.**

  The Department expects to publish within a week a notice in the Federal Register establishing the 2013 allowable meal charges and maximum travel subsistence reimbursement amounts. The new 2013 amounts will become effective upon publication in the Federal Register, which the Department will announce on this website.

- **February 13, 2013. H-2A Program Frequently Asked Questions, Round 8.**

  The Department of Labor has posted new FAQs for the H-2A program. Topics include custom combine activities, housing inspections, filing an application, rates of pay, reimbursable costs, surety bonds, and recruitment. These FAQs are available here and on the FAQs page of the OFLC website under the H-2A heading.

- **February 4, 2013. H-2A Program Frequently Asked Questions, Round 7.**

  The Department of Labor has posted new FAQs for the H-2A program. Topics include signatures, job preferences, and fees. These FAQs are available here and on the FAQs page of the OFLC website under the H-2A heading.

- **February 1, 2013. H-2A Prevailing Wage Rates for the Sheepherding/Goatherding and the Open Range Production of Livestock Occupations: UPDATE.**

  On January 8, 2013, the Department published a notice in the Federal Register establishing new 2013 prevailing wage rates for certain occupations processed under H-2A special procedures, including for sheepherding/goatherding and open range production of livestock occupations which became effective immediately. See, 78 FR 1260 (Jan. 8, 2013). The Department is hereby updating prevailing wage rates for these occupations that must be offered and paid in certain states effective as of January 8, 2013. To access these prevailing wage rates please click here.

- **January 24, 2013. Open Government Initiative: iCERT Labor Certification Registry.**

  The Department has published in the Federal Register a notice announcing the implementation on *July 1, 2013* of the latest component of the Department's Open Government Initiative - the iCERT Labor Certification Registry (LCR). The LCR is intended to enhance transparency of the labor certification process by making generally available appropriately redacted copies of labor certification documents issued by the Department's Office of Foreign Labor Certification in the H-1B, H-1B1, E-3, H-2A, H-2B and the Permanent labor certification programs. To learn more about the Labor Certification Registry, please read the Federal Register notice.

- **January 8, 2013. New 2013 H-2A Adverse Effect Wage Rates (AEWRs).**

  The Department has published a notice in the *Federal Register* announcing new Adverse Effect Wage Rates (AEWRs) for each state based on the Farm Labor Survey conducted by the U.S. Department of Agriculture. The AEWRs are the minimum hourly wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular agricultural job and area so that the wages of similarly employed U.S. workers will not be adversely affected. To read the Federal Register notice please click here.

  Important Note: The Department will publish a separate Federal Register Notice to announce the allowable charges for 2013 that employers seeking H-2A workers may charge for meals as well as the maximum travel subsistence reimbursement that a worker can claim. Until that Federal Register Notice is published, employers should continue to use the current meal charges and maximum travel subsistence which may be accessed here.

- **January 8, 2013. New Prevailing Wage Rates for Certain Occupations Processed Under H-2A Special Procedures.**

  The Department has published a notice in the Federal Register establishing new prevailing wage rates for certain occupations processed under H-2A special procedures. The wage rates established by this Federal Register notice apply only to the following activities: open range production of livestock, itinerant animal shearing, sheepherding and goatherding, and custom combine operations. To read the *Federal Register* notice please click here.

Calendar Year 2012

- **December 17, 2012. The Department has released its Foreign Labor Certification Annual Report for FY 2011.**

  The 2011 Annual Report presents information on the Prevailing Wage Determination Process, Permanent Labor Certification and Temporary Nonimmigrant Labor Certification for FY 2011. The report also contains State Employment-Based Labor Certification Profiles, information on STEM-related occupations in the labor certification programs, H-2A Agricultural Certification Statistics, and Country Employment-Based Immigration Profiles. Click the here to view the Annual Report.

- **December 3, 2012. Implementation of Electronic Filing in H-2B and H-2A Programs Frequently Asked Questions.**

  The Department has posted the first round of Frequently Asked Questions (FAQs) addressing the implementation of electronic filing in the H-2B and H-2A labor certification programs through the Department's iCERT Visa Portal System. The FAQs are largely based on questions received from participants in the four webinar training sessions conducted by the Office of Foreign Labor Certification, and are published to assist program users in navigating electronic filing in the H-2B and H-2A programs. To read the FAQs please click here. To learn more about the implementation of electronic filing, please click here.

- **November 15, 2012. FY 2012 Q4 Disclosure Files.**

  The OFLC PERM, H-2A, H-2B, Prevailing Wage, and H-1B program disclosure data files for Quarter 4 of FY 2012 are now available in CSV format. Click here to access the disclosure files and corresponding record layouts. Historical OFLC program disclosure files for prior fiscal years prior to 2008 are available on our Foreign Labor Certification Data Center website at www.flcdatacenter.com.

- **November 9, 2012. Hurricane Sandy Extension Requests.**

  Please click here for questions regarding extensions or other reasonable case-accommodations in light of the damage done by Hurricane Sandy.

- **September 28, 2012. Prevailing Wage Update for H-2B:**

AILA InfoNet Doc. No. 13111444. (Posted 11/14/13)

The Department, in anticipation of the enactment of H.J.Res 117, which prohibits the Department from expending funds to implement the 2011 H-2B Wage Rule for the duration of that Continuing Resolution, will publish in the Federal Register a Final Rule extending the effective date of the 2011 Wage Rule to March 27, 2013. The Final Rule is posted on the Federal Register's web site September 28, 2012 and it is accessible here.

- **September 26, 2012. FY 2012 Selected Statistics by Program.**

  The Office of Foreign Labor Certification has posted updated program factsheets containing the FY 2012 selected statistics for the:

  - **Permanent Labor Certification Program**
  - **Prevailing Wage Determination Program;**
  - **H-1B Temporary Visa Program;**
  - **H-2A Temporary Agricultural Visa Program;**
  - **H-2B Temporary Non-agricultural Visa Program.**

  The program information included in the factsheets is for the 2012 Fiscal Year to date (September 16, 2012). The updated program factsheets may also be found on OFLC's Performance Data page.

- **September 26, 2012. Implementation of Electronic Filing in the H-2A and H-2B Programs.**

  The Department has made available for public inspection a *Federal Register* notice formally announcing the implementation of electronic filing in the H-2A and H-2B visa programs through the Department's iCERT Visa Portal System. As indicated in the notice, electronic filing in the H-2B program will begin on October 15, 2012. Electronic filing in the H-2A program will begin on December 10, 2012. In advance of these implementation dates, the Department will conduct four webinar training sessions to orient the public to electronic filing in the H-2A and H-2B programs. To read the *Federal Register* notice please click here. To learn more about the implementation of electronic filing, including how to participate in the upcoming webinar training sessions, please click here.

- **September 25, 2012**

  The Department is announcing the implementation of electronic filing in the H-2A and H-2B visa programs through the Department's iCERT Visa Portal System. We believe this new electronic filing capability will enhance the accessibility and quality of labor certification services, reduce the data collection and reporting burden on small employers, facilitate more streamlined business processes, and establish greater transparency in the Department's decisions.

  Electronic filing in the H-2B program will begin on October 15, 2012. Electronic filing in the H-2A program will begin on December 10, 2012. In advance of these implementation dates, the Department will publish a *Federal Register* notice formally announcing implementation of electronic filing, and then conduct four webinar training sessions to orient the public to electronic filing in the H-2A and H-2B programs. To learn more about the implementation of electronic filing, including how to participate in the upcoming webinar training sessions, please click here.

- **August 16, 2012.**

  The OFLC PERM, H-2A, H-2B, Prevailing Wage, and H-1B program disclosure data files for Quarter 3 of FY 2012 are now available in CSV format. Click here to access the disclosure files and corresponding record layouts. Historical OFLC program disclosure files for prior fiscal years are available on our Foreign Labor Certification Data Center website at www.flcdatacenter.com.

- **August 15, 2012.**

  A *Federal Register* notice was published today soliciting comment from the public regarding the merger of two Information Collection Requests (ICR) and the creation of two additional ICRs. OMB control number 1205-0466 contains ETA Form 9141, *Application for Prevailing Wage Determination*, and ETA Form 9142, *Application for Temporary Employment Certification*. These forms are set to expire on October 31, 2012. OMB control number 1205-0404 contains the H-2A Certification Letter. This information collection is also set to expire on October 31, 2012. The Department is proposing to separate out the three different ICRs that were formerly all contained in 1205-0466 as well as discontinue 1205-0404 by merging it into the new 1205-0466. Obtain a copy of the notice here. Comments are due by October 15, 2012.

- **August 3, 2012. The Chicago National Processing Center has moved!**

  The Chicago National Processing Center (CNPC) has a new address. Beginning on August 2, 2012, please direct your hard copy filings for the D-1, H-2A and H-2B programs to the CNPC's new addresses provided below. Please note that the CNPC move does not affect the electronic filing of LCAs but any employer with permission to file by hard copy should direct its LCA filing(s) to the new address.

  Please also remember to direct your payments of H-2A labor certification fees to the new P.O. Box address (also listed below).

  For application filings:
  U.S. Department of Labor
  Employment and Training Administration
  Office of Foreign Labor Certification
  Chicago National Processing Center
  11 West Quincy Court
  Chicago, IL 60604-2105

  P.O. Box Address for the Receipt of H-2A Related Filing Fees:
  U.S. Department of Labor
  Employment and Training Administration
  Office of Foreign Labor Certification
  Chicago National Processing Center
  PO Box A3804
  Chicago, IL 60690-3804

  Note: Archived H-2A Program News is available at here.

AILA InfoNet Doc. No. 13111444. (Posted 11/14/13)