



UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

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Foreign Labor Certification

H-2B Temporary Non-agricultural Program 2015 Interim Final Rule Resources

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Updated with New 2015 Interim Final Rule and 2015 Final Wage Rule Information and Resources for applications filed on or after April 29, 2015!

- Contains Announcement Language announcing IFR and companion Final Wage Rule
- Contains links for
 - Transition Procedures for apps subject to 2008 rule (Links to description below)
 - Transition Procedures for apps subject to 2015 IFR (Links to description below)

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Program Overview

In order to issue an H-2B certification to an employer, the Department of Labor (Department) must determine that:

1. there are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers, and that
2. the employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

To participate in the H-2B program, an applicant must be:

- an employer possessing a valid Federal Employer Identification Number (FEIN),
- that has a place of business (i.e., physical location) in the United States, and
- a means by which it may be contacted for employment.

The employer's job opportunity (opportunities) must be:

- temporary (9 months or less, except one-time occurrences),
- full-time (35 or more hours per week), and
- non- agricultural employment within a specified area(s) of intended employment.

The H-2B temporary non-agricultural program permits employers who meet the program requirements to hire nonimmigrant workers to temporarily come to the U.S. and perform non-agricultural services or labor based on the employer's temporary need. The employer applicant must establish that its need for non-agricultural services or labor is temporary in nature, regardless of whether the underlying job is permanent or temporary.

Temporary need must be established as one of the following:

1. one-time occurrence;
2. seasonal need;
3. peakload need; or
4. intermittent need.

With the exception of a one-time occurrence need which can last up to 3 years, temporary need will not be approved for longer than 9 months.

The Immigration and Nationality Act (INA) and Departmental regulations issued jointly with DHS establish employer requirements and numerous worker protections with respect to wages and working conditions. The Department's [Wage and Hour Division \(WHD\)](#) has responsibility for enforcing provisions of worker contracts and applicable employment laws.

Detailed Program Description available [here](#).

How and When to Apply

Prior to filing a petition with DHS' U.S. Citizenship and Immigration Services (USCIS), an employer must obtain an approved temporary labor certification from the Department:

Transition Procedures for Applications with Dates of Need Before October 1, 2015:

Important Note: The Department will process all applications in accordance with the rules in effect on the date the application was submitted.

1. Pending Applications:

- If you filed your H-2B application before April 29, 2015, and your application is still with the Chicago NPC for processing (and has not been withdrawn), the Chicago NPC will continue to process your application in accordance with the 2008 Final Rule, which can be found [here](#).

For additional information on whether your application will be processed under the 2008 Final Rule and what to expect with processing, please see the [Frequently Asked Questions on Transition Procedures](#) [here](#).

For additional information on the prevailing wage process for temporary labor certification applications processed under the 2008 Final Rule (and the 2013 Interim Final Wage Rule), please see the [Frequently Asked Questions](#) [here](#).

2. **New Applications with a start date of need prior to October 1, 2015:** For applications submitted on or after April 29, 2015 with start dates of need prior to October 1, 2015, employers will be permitted to file **under emergency procedures** of 20 CFR § 655.17.
 - All applications for prevailing wage determination and certification filed on or after April 29, 2015 will be processed under the 2015 IFR. Further, for H-2B applications with a start date of need before October 1, 2015, DOL will waive the required filing time frames and process these applications under its emergency filing procedures, including expedited recruitment of U.S. workers;
 - Finally, employers with Prevailing Wage Determinations or either pending or approved H-2B temporary employment certifications will be able to request Supplemental Prevailing Wage Determinations (SPWDs) based on an alternate wage source under the new H-2B regulations. When issued, SPWDs will apply to H-2B workers who were not yet employed in certified positions as of the date the SPWD was issued. They will not apply to H-2B workers already working for the employer nor to U.S. workers recruited and hired under the original job order;

Important Note: No justification for a waiver of the required filing time period must be submitted for applications with a start date of need **before October 1, 2015** because the Department has already determined that the issuance of a new H-2B rule with an immediate effective date constitutes good and substantial cause for using the application filing procedures under 20 CFR § 655.17 Emergency Situations. In addition, employers with start dates of need before October 1, 2015 are exempt from complying with the requirements of 20 CFR §§ 655.8 and 655.9 and do not need to provide copies of agreements with any agent and/or foreign labor recruiters, executed in connection with the H-2B application.

There is a **new** Appendix B for the H-2B Program with assurances and obligations for the program. The new Appendix B may be found [here](#).

▪ **Filing:**

An employer must submit to the Chicago NPC:

- An Application for Temporary Employment Certification (ETA Form 9142B);
- The job order filed with the State Workforce Agency (SWA) serving the area of intended employment. The job order must contain the assurances found in 20 CFR § 655.18;
- A signed and dated **copy** of Appendix B (new form); and
- A completed Application for Prevailing Wage Determination ([ETA Form 9141](#)) which the Chicago NPC will transmit for the employer to the National Prevailing Wage Center (NPWC) for processing. **If you received a prevailing wage determination prior to April 29, 2015, please see the [Frequently Asked Questions](#) [here](#).**

In addition, a job contractor filing as a joint employer must also submit:

- A separate attachment containing the business and contact information (i.e. Sections C. and D. of the ETA Form 9142B) of the employer- client; and
- A separate signed and dated **copy** of the Appendix B for its employer-client

Where to file:

Application packages may be submitted to the Chicago NPC by electronic iCERT System filing (recommended) or paper filing:

- Electronic Filing through the iCERT System at <http://icert.doleta.gov>
- Paper Filing by Mail to the Chicago NPC:

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
Attn: H-2B Application

▪ **Recruitment:**

- Recruitment will be on an expedited basis.
- Recruitment will consist of placement of a new job order containing job assurances and contents of 20 CFR § 655.18 with the SWA serving the area of intended employment.

- The job order will remain open for not less than 10 calendar days.
- Employers who have not placed any newspaper advertisements as part of the recruitment obligations under the predecessor rule must place one (1) newspaper advertisement which meets the requirements of 20 CFR § 655.41. The advertisement may be published on any day of the week. If ads were placed under the 2008 Rule please see the Frequently Asked Questions, [here](#)
- **Processing:**
 - If certification is granted, the employer will receive an original certified ETA Form 9142B and a Final Determination letter by next day mail.
- **Upon Receipt of Certification:**
 - The employer must complete the footer on the original Appendix B, retain the original Appendix B, and **submit a signed copy of Appendix B** with the **original certified ETA Form 9142B** directly to the U.S. Citizenship and Immigration Services as a part of the petition package.
 - The employer must retain in its records a copy of the temporary labor certification and the original signed Appendix B for 3 years from the date of certification.

For additional information applications with start dates of need prior to October 1, 2015, please see the Frequently Asked Questions on Transition Procedures [here](#).

For additional information on the prevailing wage process for temporary labor certification applications with dates of need prior to October 1, 2015, please see the Frequently Asked Questions [here](#).

For additional information on electronic filing through the iCERT System, please see the Frequently Asked Questions on the iCERT System [here](#).

3. New Applicants with Dates of Need on or After October 1, 2015 MUST:

1. **Register** - 150-120 calendar days before the date of need will be required.
OFLC will announce in the **Federal Register** a separate transition period for the registration process, and until that time, will continue to adjudicate temporary need during the processing of applications..
 - Registration is not required for start dates of need **before October 1, 2015**. If your start date of need is before October 1, 2015, additional action for the registration process is not needed at this time.
2. **Obtain a Prevailing Wage Determination (PWD)** - at least 60 calendar days before it is needed. Obtain a PWD from the National Prevailing Wage Center (NPWC) using the *Application for Prevailing Wage Determination* (ETA Form 9141). The PWD application is available for electronic filing on the [iCERT System](#) and filing by mail. **For additional details about the PWD process, please see the NPWC web page [here](#) and the PWD FAQs [here](#).**
3. **File a job order and H-2B application** - 90 to 75 days prior to the date of need. File a job order with the State Workforce Agency (SWA) **AND** Submit the H-2B application (ETA Form 9142B) with supporting documents and a copy of the job order filed with the SWA to the Chicago National Processing Center (Chicago NPC)

When to submit your application package to the Chicago NPC:

90-75 calendar days before the start date of need, the employer **concurrently submits** the job order to the SWA and submits the H-2B application package to the Chicago NPC

What to submit to the Chicago NPC:

- **H-2B Application for Temporary Employment Certification** (ETA Form 9142B)
- **Copy** of signed Appendix B (new form)
- A valid PWD tracking number issued by the NPWC
- A copy of the job order submitted to the SWA
- Copies of all contracts and agreements with the employer demonstrating the authority to represent the employer (agents and/ or recruiters)
- Contact information for all persons and entities hired by or working for recruiters or agents including any subagents or employees of such persons and entities (as applicable)
- Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor Certificate of Registration (agents, as applicable)
- Any applicable supporting documentation (documentation substantiating temporary need is recommended)
- A valid H-2B registration number (for applications submitted with dates of need on or after October 1, 2015).

Where to Apply:

Prevailing Wage Determinations - Electronic filing is strongly recommended. The PWD application may be submitted electronically through the iCERT System at <http://icert.doleta.gov>. The application may also be submitted by mail to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
National Prevailing Wage Center
1341 G Street, NW-Suite 201
Washington, DC 20005-3105
Attn: H-2B Prevailing Wage Determinations

Job Order - The job order must be filed with the SWA serving the area of intended employment. The list of SWA contacts can be found [here](#).

H-2B Application Package - The H-2B Application package which includes the ETA Form 9142B, copy of Appendix B, the Prevailing Wage Determination issued by the National Prevailing Wage Center or tracking number, a copy of the job order, and any applicable supporting documentation **may be filed electronically** through the iCERT System at <http://icert.doleta.gov>. **Assistance with setting up an iCERT System account may be found at the iCERT System link.**

Applications may also be filed with the Chicago NPC by mail at the following address:

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
Attn: H-2B Application

What Happens Next:

- The SWA reviews the job order for compliance with program requirements as soon as possible but no later than 6 business days of receipt.
- The Chicago NPC reviews the H-2B application and job order for compliance with program requirements within 7 business days of receipt.
- Within 7 business days of receipt of the application, the Chicago NPC will notify the employer in writing of the decision to either accept (Notice of Acceptance) or not accept (Notice of Deficiency) the employer's application and/ or job order.
 - A Notice of Deficiency identifies the deficiencies found by the SWA and Chicago NPC and provides the employer the opportunity to address those deficiencies with the application and/ or job order.
 - Each notification will also provide next steps for the employer to take.
- Within 14 days of receipt of a Notice of Acceptance, the employer must follow the instructions provided in the Notice of Acceptance and conduct recruitment, including:
 - placing newspaper advertisements,
 - contacting former U.S. workers,
 - contacting the bargaining representative (if any) or posting notice of the job opportunity to the employer's current employees, and
 - conducting any additional recruitment, if directed by the Certifying Officer.
- The Certifying Officer in the Notice of Acceptance will specify a date for the employer's initial recruitment report.
- The Certifying Officer will place a copy of the SWA job order on the iCERT Public Job Registry.
- After receipt of the initial recruitment report the Chicago NPC will determine whether to certify or deny the application and issue the final determination.
- The final determination will be sent to the employer and, if applicable, the employer's attorney or agent by means normally assuring next day delivery.
- The employer completes the footer of Appendix B and submits the certified ETA Form 9142B with a copy of Appendix B with the petition package to the USCIS Service Center. The original Appendix B is retained in the employer's retention file.
- The employer is obligated to continue to update the recruitment report and prepare a final recruitment report.
- The updated report need not be submitted to the Department, but must be retained in the employer's retention file and made available in the event of a post-certification audit or upon request by the Department.
- The employer must also continue to accept referrals of U.S. applicants until 21 days before the date of need.
- Employers may request redeterminations from the Certifying Officer on partial certifications and denials.
- Employers may appeal for administrative review of Notices of deficiency, partial certifications, denials of labor certification, denials of redetermination requests, denials of modified applications or job orders and denials of extension requests.

FAQs

- Round 1: [Implementation, Major Changes \(2008 Final Rule v. IFR\)](#)
- Round 2: [Transition Procedures](#)
- Round 3: [Electronic Filing under the 2015 H-2B Interim Final Rule](#)
- Round 4: [Job Order and Application Filing and Processing, including Emergency Procedures](#)
- Round 5: [Job Offers and Employer Obligations](#)
- Round 6: [Clarification of Handling Special Procedure Occupations under the 2015 H-2B IFR](#)

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