



Stakeholder webinar H-2A

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

Structure of this webinar.

- Two Parts –
 - 1. Streamlining requests outside of normal processing, and;
 - 2. Ensuring faster processing of all applications.

Outside of normal processing – Contract Impossibility

- 20 CFR 655.122(o) *Contract impossibility. If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (j)(1) of this section. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must:*
 - (1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H-2A employer, whichever the worker prefers;
 - (2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and
 - (3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

Outside of normal processing – Emergency Processing

- 20 CFR 655.134(a) Waiver of time period. The CO may waive the time period for filing for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the CO has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by §655.100.
- (b) Employer requirements. The employer requesting a waiver of the required time period must concurrently submit to the NPC and to the SWA serving the area of intended employment a completed Application for Temporary Employment Certification, a completed job order on the Form ETA-790, and a statement justifying the request for a waiver of the time period requirement. **The statement must indicate whether the waiver request is due to the fact that the employer did not use H-2A workers during the prior agricultural season or whether the request is for good and substantial cause. If the waiver is requested for good and substantial cause, the employer's statement must also include detailed information describing the good and substantial cause which has necessitated the waiver request. Good and substantial cause may include, but is not limited to, the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions.**

Outside of normal processing – Long Term Extension Requests

- 20 CFR 655.122(b) Long-term extension. Employers seeking extensions of more than 2 weeks may apply to the CO. **Such requests must be related to weather conditions or other factors beyond the control of the employer (which may include unforeseen changes in market conditions). Such requests must be supported in writing, with documentation showing that the extension is needed and that the need could not have been reasonably foreseen by the employer.** The CO will notify the employer of the decision in writing if time allows, or will otherwise notify the employer of the decision. The CO will not grant an extension where the total work contract period under that Application for Temporary Employment Certification and extensions would be 12 months or more, except in extraordinary circumstances. The employer may appeal a denial of a request for an extension by following the procedures in §655.171.

Inside of normal processing – general tips

1. When submitting applications electronically, please a cover sheet that outlines all items submitted.
2. Please file as early as the regulations allow to allow as much time as possible for potential problems
3. Please check the OFLC website on regular basis for updates and changes as well as updated forms
4. H-2ALC's should acknowledge and prepare for the amount of time it will take to renew their FLC documents with Wage and Hour
5. Stakeholders should provide legible copies of documents - this is a particular problem with FLC documents

Inside of normal processing – general tips

H-2ALCs should have all required documents ready before submitting case (chronic problem)

Required information and submissions. An H-2ALC must include in or with its Application for Temporary Employment Certification the following:

1. The name and location of each fixed-site agricultural business to which the H-2ALC expects to provide H-2A workers, the expected beginning and ending dates when the H-2ALC will be providing the workers to each fixed site, and a description of the crops and activities the workers are expected to perform at such fixed site.
2. A copy of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor (FLC) Certificate of Registration, if required under MSPA at 29 U.S.C. 1801 et seq., identifying the specific farm labor contracting activities the H-2ALC is authorized to perform as an FLC.
3. Proof of its ability to discharge financial obligations under the H-2A program by including with the Application for Temporary Employment Certification the original surety bond as required by 29 CFR 501.9. The bond document must clearly identify the issuer, the name, address, phone number, and contact person for the surety, and provide the amount of the bond (as calculated pursuant to 29 CFR 501.9) and any identifying designation used by the surety for the bond.
4. Copies of the fully-executed work contracts with each fixed-site agricultural business identified under paragraph (b)(1) of this section.

Inside of normal processing – general tips

1. Stakeholders should keep their Workers comp current and provide the current policies
2. **Stakeholders with worksites in 2 or more states must demonstrate that they have coverage in each state.**

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