

**U.S. Department of Labor**  
**Employment and Training Administration**  
**OFFICE OF FOREIGN LABOR CERTIFICATION**

**H-2A Program FAQs**

**Round 11**

**June 3, 2016**

*On May 18, 2016, OFLC announced the Office of Management and Budget (OMB) approved the Department's request to update the Appendix A in two ways: (1) to reflect new regulatory requirements contained in the 2015 H-2A Herder Final Rule; and (2) to simplify the H-2A process for employers submitting this document alongside their I-129 petitions to the United States Citizenship and Immigration Services (USCIS). This approval came as part of the Department's 3-year extension of the Form ETA-9142A and Appendix A. The remainder of the data collected on the Form ETA-9142A remains unchanged.*

**GENERAL**

**1. How has OFLC streamlined the H-2A process for employers by implementing the new Form ETA-9142A, Appendix A?**

When filing an H-2A application, an employer is required to submit, among other things, a signed and dated copy of the ETA Form 9142A -- Appendix A, which contains the requisite program assurances and obligations. Prior to the May 18, 2016 announcement, when the OFLC granted a temporary labor certification application, the Chicago National Processing Center (NPC) sent the employer a certified H-2A application containing a second copy of the Appendix A issued on "blue security paper." The employer and its authorized attorney or agent were then each required to sign and date this second copy of Appendix A and submit it to the USCIS along with its certified H-2A application.

The Department's revised Appendix A makes it unnecessary for the Chicago NPC to send and the employer and its authorized attorney or agent to sign a second copy of the Appendix A issued on "blue security paper." As of May 19, 2016, an employer is only required to sign and date this newly revised Appendix A once at the time of filing the H-2A application. A copy of the signed Appendix is to be sent to the Chicago NPC with the H-2A application. The employer is to retain the original in its administrative file. Once the OFLC grants a temporary labor certification, the Chicago NPC will send to the employer, or its authorized attorney or agent, a certified Form ETA-9142A issued on "blue security paper" and a Final Determination

letter. The employer and its authorized attorney or agent will be instructed to complete three steps:

- Step 1 Complete the newly modified footer on each page of the original Appendix A (retained in the employer's administrative file), adding the case number, status, and period of employment from the certified Form ETA-9142A;
- Step 2 Retain the original Appendix A along with a copy of the certified Form ETA-9142A, as required by 20 CFR 655.167; and
- Step 3 Submit a signed and dated copy of the Appendix A, together with the original certified Form ETA-9142A issued by the OFLC, directly to the USCIS.

This change will save employers and their agents or attorneys from mailing each other paper forms to have them signed a second time - which is effectively required without the revised Appendix A.

## **2. What will happen if I submit an H-2A application to the Chicago NPC with the old Appendix A?**

Employers with either a currently pending H-2A application or those who file a new H-2A application prior to June 15, 2016, containing the previous Appendix A will be provided with a copy of the revised Appendix A at the time the Chicago NPC grants a temporary labor certification. They will receive instructions from the Chicago NPC regarding how to complete the revised Appendix A for submission to the USCIS.

On or after June 15, 2016, employers or their authorized representatives filing a new H-2A application must submit a signed and dated copy of the revised Appendix A containing the program assurances and obligations that comply with the 2010 H-2A Final Rule and 2015 H-2A Herder Final Rule. In the event an employer fails to submit a signed and dated copy of the revised Appendix A, the Chicago NPC will issue either a Minor Deficiency Email or a Notice of Deficiency requesting that the employer provide a signed and dated copy of the revised Appendix A.

To obtain a copy of the revised Appendix A, please click [here](#).

## **3. Does Item 8(vii) of the new Appendix A apply to all H-2A employers or only those subject to the 2015 H-2A Herder Rule?**

Item 8(vii) of the new Appendix A states the employer "will provide meals and potable water, without charge to the worker." This obligation applies only to employers subject to the requirements at 20 CFR 655.200-235 (i.e., the 2015 H-2A Herder Rule). To avoid any confusion regarding the scope of this requirement, the Department has sought OMB approval to revise Appendix A to clarify to whom Item

8(vii) applies. Once this non-substantive change has been approved, the Department will post a modified Appendix A on its Web site at <https://www.foreignlaborcert.doleta.gov/form.cfm>.