

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule FAQs
Round 13: Job Order and Application Filing and Processing: Prevailing Wage
Determinations and Emergency Procedures

JOB ORDERS AND APPLICATION FILING AND PROCESSING

Prevailing Wage Determination

- 1. May an employer file an *Application for Temporary Employment Certification* with the Chicago National Processing Center Certifying Officer (CO) if the ETA Form 9141, *Application for Prevailing Wage Determination*, is still pending with the National Prevailing Wage Center (NPWC) or has already expired at the time the employer submits its H-2B application?**

No. Pursuant to the Department's H-2B regulations at 20 CFR § 655.15, except for employers that qualify for emergency procedures under 20 CFR § 655.17, an employer is not eligible to file an *Application for Temporary Employment Certification* if it fails to submit a valid Prevailing Wage Determination (PWD) on ETA Form 9141 at the time of filing. If an employer submits an H-2B application without a valid PWD the regulation requires the Certifying Officer to return the application to the employer without review. See 20 CFR § 655.15.

Note: The CO will accept the ETA Form 9141 case number (e.g., P-400-XXXXX-XXXXX) identifying the employer's valid PWD, entered in Section G.3 of the ETA Form 9142B, *Application for Temporary Employment Certification*, as evidence of the employer's valid PWD issued by the NPWC.

Emergency Procedures

- 2. I submitted a request for emergency situations processing without a valid Prevailing Wage Determination (PWD) on ETA Form 9141. If my emergency request is denied, what will happen to my H-2B application?**

Where the Certifying Officer (CO) determines a request for processing under the emergency situations provisions at 20 CFR § 655.17 has not been justified and/or there is not sufficient time to make a determination of temporary need or to ensure compliance with the criteria for certification, the CO will deny the emergency waiver request and send a Final Determination letter to the employer.

Reminder: Pursuant to the Department's H-2B regulations at 20 CFR § 655.15, except for employers that qualify for emergency procedures under 20 CFR § 655.17, an employer is not eligible to file an *Application for Temporary Employment Certification* if it fails to submit a valid PWD on ETA Form 9141 at the time of filing.