

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2015 H-2B Interim Final Rule and Wage Final Rule FAQs

Round 2: Transition Procedures

- 1. I received my H-2B temporary non-agricultural labor certification before April 29, 2015. What will happen to my certification now that the Department of Labor has published the new H-2B 2015 Interim Final Rule?**

All H-2B temporary employment certifications issued before the publication date of the H-2B 2015 Interim Final Rule under the provisions of the 2008 Final Rule, will continue to be valid for the number of job opportunities, work locations and period of employment certified, and will be governed by that regulation.

- 2. I filed my H-2B application before the effective date of the H-2B 2015 Interim Final Rule, April 29, 2015. What is going to happen to my pending H-2B application?**

Any Application for Temporary Employment Certification, ETA Form 9142B (H-2B application) that was filed before April 29, 2015 will be processed in accordance with the 2008 H-2B Final Rule.

- 3. I submitted my Application for Prevailing Wage Determination, ETA Form 9141 (PWD application) before April 29, 2015. What will happen with my pending PWD application?**

Any PWD application submitted before April 29, 2015 will be processed under the 2008 Final Rule, as modified by the 2013 Wage Methodology Interim Final Rule. The new 2015 regulations will not apply to those pending PWD applications.

- 4. On April 29, 2015 the Departments of Labor and Homeland Security jointly published the H-2B 2015 Interim Final Rule with an immediate effective date. The 2015 IFR includes a new H-2B registration process. Will I be required to obtain an H-2B Registration before I file my H-2B application?**

No. Given the immediate effective date of the 2015 H-2B Interim Final Rule, the Department of Labor (Department) will need a period of time to operationalize the H-2B registration process. As a result, the Department will announce separately in the Federal Register the initiation of this requirement, consistent with 20 CFR 655.11(j). In the meantime, the Office of Foreign Labor Certification will assess the employer's temporary need during the adjudication of the H-2B application.

5. On April 29, 2015 the Departments of Labor and Homeland Security jointly published the H-2B 2015 Interim Final Rule with an immediate effective date. I have not yet filed my H-2B application and my start date of need is before October 1, 2015. How should I file my H-2B application?

An employer with a start date of need before October 1, 2015 may file its H-2B application and job order under 20 CFR 655.17 Emergency Situations. The following documentation must be filed with the Department's Chicago National Processing Center:

Employers	Job Contractors
Copy of State Workforce Agency job order, containing the requisite program assurances and obligations under 20 CFR 655.18	Copy of State Workforce Agency job order, containing the requisite program assurances and obligations under 20 CFR 655.18
Copy of signed and dated Appendix B	Copy of signed and dated Appendix B
Completed ETA Form 9141 or, if it was already submitted to OFLC, make sure the prevailing wage case number is entered into Section G.3 of ETA Form 9142B	Completed ETA Form 9141 or, if it was submitted to OFLC, make sure the prevailing wage case number is entered into Section G.3 of ETA Form 9142B
Statement of temporary need <i>(if not enough room in section B.9)</i>	Statements of temporary need must be presented for the job contractor <u>and separately</u> for the employer-client <i>(if not enough room in Item B.9)</i>
If applicable, copy of the MSPA Farm Labor Contractor Certificate	If applicable, copy of the MSPA Farm Labor Contractor Certificate
Other required documentation for occupations involving special procedures (e.g., itineraries)	Other required documentation for occupations involving special procedures (e.g., itineraries)
	<p>Additional Documentation</p> <p>Completed Sections C and D of the ETA Form 9142 for the employer-client</p> <p>Copy of signed and dated Appendix B for the employer-client</p> <p>Copy of an executed contract between job contractor and employer-client</p>

The ETA Form 9142B and attachments may be filed electronically through the Department's iCERT Visa Portal System (<https://icert.doleta.gov/>) or by mail to:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, Illinois 60604

Important Note: Please note that no justification for a waiver of the required filing time period need be submitted for applications with a start date of need before October 1, 2015. In addition, employers with start dates of need before October 1, 2015 are exempted from submitting copies of agreements with agents and/or foreign labor recruiters, executed in connection with the H-2B application, as required by 20 CFR 655.8 and 655.9.

6. My date of need is before October 1, 2015 and I filed my H-2B application after the effective date of the 2015 H-2B Interim Final Rule (IFR). What recruitment am I required to do for U.S. workers?

Upon receipt of the employer's application filed under 20 CFR 655.17 of the 2015 IFR and reflecting a start date of need before October 1, 2015, the Chicago National Processing Center will require the employer to conduct recruitment of U.S. workers on an expedited basis consistent with 20 CFR 655.4, and 655.17. Expedited recruitment will consist of placing a new job order with the State Workforce Agency (SWA) serving the area of intended employment for at least 10 days. In addition, employers who have not yet placed any newspaper advertisements under the 2008 Final Rule will be required to place one newspaper advertisement on any day of the week, meeting advertising content requirements under 20 CFR 655.41 during the period the SWA is actively circulating the job order for intrastate clearance.

7. I have a start date of need before October 1, 2015. Do I have to apply for a prevailing wage determination before submitting my H-2B application?

No. The emergency situation provision permits an employer who did not previously apply for a PWD to simultaneously submit the Application for Prevailing Wage Determination, ETA Form 9141 (PWD application) with its H-2B application. Upon receipt, the Chicago National Processing Center will transmit on behalf of the employer a copy of the PWD application to the National Prevailing Wage Center for processing and issuance of the PWD, using the wage methodology under the 2015 H-2B Wage Final Rule.

8. On April 29, 2015, the Departments of Labor and Homeland Security jointly published companion H-2B 2015 Interim Final and Wage Final Rules. The Wage Final Rule identifies instances in which certain types of surveys may be used. Can I request a Supplemental Prevailing Wage Determination (SPWD) even if I have already applied for or been issued a PWD?

Some employers may request a supplemental prevailing wage determinations (SPWD) for certain workers. Consistent with 20 CFR 655.4(f) of the 2015 Interim Final Rule, an employer who was issued a PWD by the National Prevailing Wage Center, or who has a pending or an approved H-2B temporary employment certification may request a supplemental prevailing wage determination (SPWD) to obtain a prevailing wage based on an alternate wage source under the 2015 IFR and the companion 2015 wage rule.

When issued, the SPWD will apply during the validity period of the H-2B temporary employment certification **only to those H-2B workers who were not yet employed in certified positions as of the date the SPWD was issued.** The SPWD will not apply to H-2B workers who were already working for the employer on or before the date of the SPWD, nor to U.S. workers who were recruited and hired under the original job order.

An H-2B SPWD issued to a seafood employer who is staggering the entry of its H-2B workers, consistent with 20 CFR 655.15(f) of the 2015 H-2B Interim Final Rule, will only apply to those H-2B workers who have not yet entered the United States are therefore not employed in certified positions, as of the date of the issuance of the SPWD.

Important Note: The employer must provide to an H-2B worker outside of the U.S. no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the job order including any approved modifications, reflecting the offered wage and all other information required by 20 CFR 655.18.

9. How do I request a Supplemental Prevailing Wage (SPWD) determination under the 2015 H-2B regulations?

An employer seeking an SPWD under 20 CFR 655.4 of the H-2B 2015 Interim Final Rule, must submit a new Application for Prevailing Wage Determination, ETA Form 9141 (PWD application) to the National Prevailing Wage Center. The employer's PWD application must contain in Section E.a.5. Job Duties the original PWD tracking number (starting with P-400), and the H-2B application number (starting with H-400), and the words "Request for a Supplemental Prevailing Wage Determination." Electronic submission through the iCERT Visa Portal System is preferred.

After the NPWC receives the employer's request, it will issue to the employer, or if applicable, the employer's attorney or agent, an SPWD in an expedited manner and provide a copy to the Chicago National Processing Center.

10. My start date of need is after October 1, 2015. How should I file my H-2B application?

Employers with a start date of need **on or after October 1, 2015** must file their H-2B applications under the regular filing procedures of the H-2B 2015 IFR and comply with all program requirements under 20 CFR part 655, subpart A.

Important Note: If the employer's H-2B application is filed before the Department announces that it has initiated the H-2B registration process under 20 CFR 655.11 of the H-2B 2015 Interim Final Rule, the employer will not be required to apply for an *H-2B Registration* and will have its temporary need assessed by the Chicago National Processing Center during the adjudication of the H-2B application.

11. If the Chicago National Processing Center (NPC) certifies my H-2B application, how will I be notified?

If the Chicago NPC grants an H-2B temporary employment certification, the employer will receive an original certified ETA Form 9142B and a Final Determination letter. Upon receipt of the original certified ETA Form 9142B, the employer or its agent or attorney, if applicable, must complete the footer on the original Appendix B, *retain* the original Appendix B, and submit a signed copy of Appendix B, together with the original certified ETA Form 9142B directly to the appropriate Service Center of the United States Citizenship and Immigration Services (USCIS) along with the *Petition for a Nonimmigrant Worker* USCIS Form I-129 (see, <http://www.uscis.gov/i-129-addresses>). Under the document retention requirements 20 CFR 655.56 of the 2015 IFR, the employer must retain a copy of the approved H-2B temporary employment certification and the original signed Appendix B.

Important Note: A job contractor filing jointly with an employer client must retain both its own and, its employer-client's original signed and dated Appendix B, reflecting the validity period of the approved H-2B temporary employment certification.