

Index of OFLC FAQ Rounds

Click **Ctrl + F** keys to perform a key word search. Click the number in the FAQ Round column to launch that round of FAQs.

OFLC Program	FAQ Round	Date Published	Topic(s)
H-2A	11	June 3, 2016	<ul style="list-style-type: none"> • ETA 9142A, Appendix A • Item 8(vii) of the new Appendix A and the 2015 H-2A Herder Rule
H-2A	10	January 22, 2016	<ul style="list-style-type: none"> • Corporate restructuring / Sale of the business / Successor in Interest
H-2A	9	October 30, 2015	<ul style="list-style-type: none"> • Productivity standard on the ETA 790 • Productivity level on the ETA 790 • Productivity standard on the ETA 9142
H-2A	8	February 2013	<ul style="list-style-type: none"> • Special procedures: Itinerant custom combine • Housing • Filing: quick processing of application • ETA 9142: Fixing typographical errors on the ETA 9142 • ETA 9142: Farms with operations in two States with the same crop and period of need • ETA 9142: Association with members in two States with the same crop and period of need • Required wage for H-2A shepherders • Transportation and subsistence costs reimbursement • Pre-employment cost reimbursement and the Fair Labor Standards Act (FLSA) • Worker passport cost reimbursement • Surety Bonds • Positive recruitment and hiring of U.S. workers • Recruitment Report: Newspaper ad requirements

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H-2A	7	January 2013	<ul style="list-style-type: none"> • Attorney/Agent signing the ETA 790 on the employer's behalf • Attorney/Agent signing the ETA 9142 or recruitment report on the employer's behalf • Job qualification preferences and requirements • Job qualification preferences in job orders and newspaper advertisements • Prevailing wage determination in a State with insufficient wage data • Prevailing wage rate changes after certification • Fee in connection with H-2A filing • H-2A fee and agricultural association members • Process for paying H-2A labor certification fee • Deadline for paying H-2A labor certification fee • Dairy farmers (milking) and H-2A labor certification
H-2A	6	February 2012	<ul style="list-style-type: none"> • Surety Bonds • Recruitment/Recruitment Report • Newspaper advertising when no Sunday edition is available • Amending a temporary labor certification • Job abandonment • Contract Impossibility • Staggered Dates of Need

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H-2A	5	February 2012	<ul style="list-style-type: none"> • Essential information in the ETA 790 • Wage assurances • Frequency of pay • Job qualifications and requirements • Experience requirements • Transportation and Daily Subsistence • Travel-related payments/reimbursements • Positive Recruitment and Hiring U.S. Workers • Notice of Acceptance • Job Order number and State Workforce Agency (SWA) contact information in advertisements • Number of workers certified is less than requested • Adverse Effect Wage Rate (AEWR) • Duplicate certified ETA 9142
H-2A	4	December 2011	<ul style="list-style-type: none"> • Job qualifications and requirements • Background checks and drug tests • Job offers, assurances, and obligations • Contract Impossibility Provision • H-2A Labor Contractors • Minimum requirements for obtaining a surety bond • Amount of coverage for surety bonds
H-2A	Clarification of the Fifty Percent Rule	October 1, 2010	<ul style="list-style-type: none"> • Duration period to receive U.S. worker referrals under the 2010 Final Rule • Hiring U.S. workers during the first 50 percent of the contract period • U.S. workers become unavailable under the 50 percent rule

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H-2A	3	2010	<ul style="list-style-type: none"> • 2010 Final Rule • Required attachments for the ETA 790 submitted to the State Workforce Agency (SWA) • SOC Code and SOC Occupation Title on the ETA 9142 • Public rental housing and SWA inspection • H-2A Labor Contractor designation and obligations exemptions • Transportation/Daily Subsistence • Small business exemption to the 50 percent rule • H-2A Labor Contractors and surety bonds • Withdrawal of a Job Order and Application for Temporary Employment

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H-2A	2	September 15, 2010	<ul style="list-style-type: none"> • Using “n/a” on the ETA 790 • State Workforce Agency (SWA), Notice of Deficiency, and Notice of Acceptance • Job Order and/or application postmark date vs. the date it was received by the Department • Determining whether an application was filed 45 days prior to the date of need • ETA 9142 and the North American Industry Classification System (NAICS) Code • New questions to the ETA 9142 • Non-family full-time equivalent (FTE) employees • Worksite location on the ETA 9142 • Required housing and U.S. workers • SWA refusal to perform housing inspection • Proof of workers’ compensation insurance coverage • Meals under the 2010 Final Rule • Definition of daily subsistence for purposes of travel payments/reimbursement • Fifty Percent Rule • Fifty Percent Rule and the small business exemption • H-2A Labor Contractor (H-2ALC) vs. Farm Labor Contractor (FLC) • Positive Recruitment and hiring of U.S. workers • Post-filing amendments and withdrawals

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H-2A	1	March 2010	<ul style="list-style-type: none"> • 2010 Final Rule vs. 2008 Final Rule • Transition period for the 2010 Final Rule • Special procedures for sheepherders, custom harvesters, and other unique agricultural occupations • Pre-filing recruitment of U.S. workers • Job order submission to the State Workforce Agency (SWA) • Wage rates on the job order • AEWB requirement • Wage requests • Wage rates on work contracts • Wage rate increases during the contract period • Productivity standards and piece-rates • Appealing wage determinations • SWA job order acceptance and changes • Employment eligibility of applicants referred by SWA • Required time frame for H-2A filing • How to file an H-2A application • Forms and supporting documentation • Multiple work locations • Associations, joint employers, and master applications • Itineraries • Appealing a Notice of Deficiency or Final Determination • Validity period
2015 H-2A Herder Rule	2		<ul style="list-style-type: none"> • Filing the application (ETA 9142A) and the job order (ETA 790) • Submitting an application under the H-2A Herder Rule • Prevailing Wage Determination • Job orders • Processing applications • Posting job orders • Local newspaper advertisements • Wage rates for range workers under the H-2A Herder Rule

OFLC Program	FAQ Round	Date Published	Topic(s)
2015 H-2A Herder Rule	1		<ul style="list-style-type: none"> • Reason for the new H-2A Herder Rule • Types of job opportunities covered by the new H-2A Herder Rule • Certification for range workers issued prior to the H-2A Herder Rule • Pending H-2A range worker application on effective date of the H-2A Herder Rule • Major provisions of the H-2A Herder Rule • Differences between the previous Training and Employment Guidance Letters (TEGLs) and the H-2A Herder Rule • Worker pay under the H-2A Range Rule
PERM	14	March 6, 2017	<ul style="list-style-type: none"> • Actual Minimum Requirements • Section H-14
PERM	13	October 6, 2016	<ul style="list-style-type: none"> • Recruitment Reports
PERM	12	October 12, 2010	<ul style="list-style-type: none"> • Employer point of contact on the ETA 9089
PERM	11	August 3, 2010	<ul style="list-style-type: none"> • Expediting applications • Employee referral program documentation • Employer submission of unsolicited documentation • Notice of Filing and the definition of “business day”
PERM	10	May 2007	<ul style="list-style-type: none"> • Language on the electronic in-house Notice of Filing vs. physical in-house Notice of Filing • Advertisements and “Kellog” language • Advertising through an on-campus placement office • “any suitable combination of experience of education, training, or experience is acceptable” and experience in an alternate occupation • Alternative evidence in the absence of primary evidence in an audit response • Employer/company name in the recruitment advertisements vs. employer/company name on the ETA 9089

OFLC Program	FAQ Round	Date Published	Topic(s)
PERM	9	November 29, 2006	<ul style="list-style-type: none"> • Withdrawing a PERM application • Withdrawal and filing a new application for the same alien beneficiary • Alien Experience: minimum requirements include some period of training • Counting days with regard to recruitment timelines and time periods • Electronic national professional or trade journal advertisements
PERM	8	March 2006	<ul style="list-style-type: none"> • Requesting a duplicate labor certification ETA 750 • Requesting a duplicate labor certification ETA 9089
PERM	7	February 2006	<ul style="list-style-type: none"> • Indefinite Notice of Filing • Single Notice of Filing for multiple positions of the same occupation and job classification • Notice of Filing posting location for roving employees
PERM	6	February 14, 2006	<ul style="list-style-type: none"> • Re-applying after denial • Request for review pending to Board of Alien Labor Certification Appeals (BALCA) • Prevailing Wage Determination by State Workforce Agency (SWA) incorrect or incomplete • Entering years of experience, education, or training on the ETA 9089
PERM	5	August 8, 2005	<ul style="list-style-type: none"> • Emailing questions • Multiple applications for the same foreign worker • Withdrawing a PERM application • Corrections to a filed application • Statuses of electronically filed applications

OFLC Program	FAQ Round	Date Published	Topic(s)
PERM	4	June 1, 2005	<ul style="list-style-type: none"> • Online registration process • Online application process • Attorney or Agent sub-accounts • Unauthorized use of personal identification number (PIN), usernames, passwords • Parent companies and subsidiary sub-accounts • Confirmations of receipt for mail-in applications • Mail-in vs. electronically submitted applications • How to withdraw a pending application • Guidelines for drafting PERM advertisements • Considering/contacting applicants who responded to Job Order • Alternative steps listed in the professional occupations recruitment provision • Withdrawing an audited application
PERM	3	May 4, 2005	<ul style="list-style-type: none"> • Applications filed under the regulation in effect prior to March 28, 2005 • Saving/Storing documentation to support a labor certification application • Priority dates for refiling a reduction-in-recruitment (RIR) conversion application • Refiling an application under the PERM optional special recruiting provision for college and university teachers • Advertising timeframe for a national professional journal (optional special recruitment provision) • Prevailing Wage Determination and optional recruitment for college and university teachers and/or Schedule A

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PERM	2	April 7, 2005	<ul style="list-style-type: none"> • PERM processing as of March 28, 2005 for previously filed applications • Provisions changed in the new system • Attorney/Agent/Law Firm registration to use the PERM online case management system • Withdrawing and refileing under PERM • Attorney/Agent role • Notice of Filing in employer's in-house media • Notice of Filing and the rate of pay for an application filed on behalf of a college or university teacher selected in a competitive selection and recruitment process • Sequencing and timeframe requirements for additional recruitment steps • Advertisement medium and additional steps • Use of electronic national professional journals • Placement of job orders from the State Workforce Agency (SWA) • Wage range vs. single wage rate in advertisements • Domestic worker applicants • Contract employee • Commission on Graduates of Foreign Nursing Schools (CGFNS) exam and Schedule A • Documentation for Schedule A labor certification for a professional nurse • Schedule B provision – household domestic service workers, bookkeepers, laborers, etc. • Electronic national professional journal and college and university teachers' special recruitment and documentation provision • Notice of Filing and rate of pay for college or university teachers selected in competitive selection and recruitment process • Prevailing wage appeals – 30 day clock

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PERM	Fraud Rule	July 2007	<ul style="list-style-type: none"> • Prohibition on substitution • Prohibition on improper payments and transactions • Sale, barter, or purchase of a labor certification • Activity related to obtaining a permanent labor certification • Reimbursement agreements • Payments from foreign workers • Dual representation • Debarment of an employer, attorney, or agent • Labor certification expiration
PERM	Fraud Rule Round 2		<ul style="list-style-type: none"> • Employer recourse for denial after July 16, 2007 • Error on the permanent labor certification • Schedule A occupations and substitution • Schedule A occupations and payments related to obtaining permanent labor certification • Schedule A occupations and the validity period
PERM	Supervised Recruitment	January 2009	<ul style="list-style-type: none"> • Authority for Supervised Recruitment • Notification of Supervised Recruitment • Supervised Recruitment process • Supervised Recruitment processing time • Failure to respond to Supervised Recruitment • Supervised Recruitment and change of attorney/agent • Wage range in advertisements • Resumes and responses received during Supervised Recruitment • Application withdrawal during Supervised Recruitment

OFLC Program	FAQ Round	Date Published	Topic(s)
PERM	Appeals Best Practices	December 1, 2009	<ul style="list-style-type: none"> • Best practices for filing a PERM appeal request • Options for appeal • Request for Reconsideration • Request for Review before the Board of Alien Labor Certification Appeals (BALCA) • Request for Reconsideration based on alleged Department Error • What to include in your appeal
PERM	Change of Address /Representation Update	December 1, 2009	<ul style="list-style-type: none"> • Notifying DOL of change in employer mailing address • Employer moving to a new area of intended employment • Notifying DOL of change in attorney mailing address • Change of attorney on pending applications • Attorney filing change of address request on behalf of the employer • Change of address for cases sent to BALCA • Mailing address for the Atlanta National Processing Center
H-1B, H-1B1, E-3	3	July 31, 2015	<ul style="list-style-type: none"> • Situations in which an employer may enter its own standard default prevailing wage on the ETA 9035/9035E • How an employer should identify a prevailing wage survey on the LCA • How an employer can enter an untitled custom survey on the LCA • List of acceptable prevailing wage source surveys for Section G of the ETA 9035/9035E
H-1B, H-1B1, E-3	2	March 27, 2012	<ul style="list-style-type: none"> • Fee for filing a Labor Condition Application (LCA) • Changing your iCERT System account information • Entering an untitled custom survey on the ETA 9035/9035E • List of acceptable prevailing wage source surveys for Section G of the ETA 9035/9035E

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H-1B, H-1B1, E-3	1	February 17, 2011	<ul style="list-style-type: none"> • Labor Condition Application (LCA) and visa classifications • Definition of “specialty occupation” • File an LCA by fax? • Obtaining H-1B Disclosure Information • Filing an H-1B complaint • Hiring an H-1B, H-1B1, or E-3 worker • Petitioning to file an LCA by mail • Using the same LCA request for multiple positions • Multiple places/locations of employment • Employers in the Commonwealth of Northern Mariana Islands (CNMI) • iCERT Portal System • Notification of the status of your application • Denial of an LCA for invalid Federal Employer Identification Number (FEIN) • Filing on behalf of a new company created by a recent merger • Contact information in Section D (Employer Point of Contact Information) of the ETA 9035/9035E • LCA requirements • H-1B1: Employer’s obligations with respect to hiring a national of Chile or Singapore • E-3: Employer’s obligations with respect to hiring an Australian national • Required wage and the LCA program • Determining the prevailing wage for the LCA program • Obtaining a prevailing wage determination (PWD) from the National Prevailing Wage Center (NPWC) • Entering the prevailing wage determination on the LCA • Marking the box for “Other” in item G.11 (prevailing wage source) on the ETA 9035/9035E • “independent authoritative sources” • Identifying a prevailing wage survey on the LCA

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			<ul style="list-style-type: none"> • Listing the prevailing wage on the ETA 9035/9035E • H-1B employer's pay obligations and nonproductive status • Employer compliance with the notice requirement when there is no bargaining representative • Minimum number of hours for the H-1B, H-1B1, or E-3 worker • Employer change of permanent work location but same Metropolitan Statistical Area (MSA) • Change in area of intended employment • Change in period of employment • Change in employer's corporate structure or identity • Withdrawing a certified LCA (ETA 9035/9035E) • Employer obligations when employment ends (e.g. termination, resignation, move) prior to the end of the LCA validity period
H-2B	15		<ul style="list-style-type: none"> • Mobile workforce lodging requirement • Mobile workforce lodging obligation and the job order
H-2B	14		<ul style="list-style-type: none"> • Employer Declaration amended on ETA - 9142B, Appendix B • Time period covered by the "recruitment period"
H-2B	13		<ul style="list-style-type: none"> • Filing an H-2B application when the ETA 9141 Application for Prevailing Wage Determination is still pending or has expired • Request for emergency situations processing without a valid Prevailing Wage Determination (PWD) on the ETA 9141
H-2B	12		<ul style="list-style-type: none"> • Filing a new H-2B application when the USCIS H-2B cap reached • Requesting an amendment to a certified H-2B application to change the start date when the USCIS H-2B cap is reached

OFLC Program	FAQ Round	Date Published	Topic(s)
H-2B	11		<ul style="list-style-type: none"> • Minimum content required for job order • Minimum language for transportation and subsistence costs in the job order • Amending the period of employment or number of workers requested or other changes to an H-2B application while it is pending • Employer-conducted recruitment timeframe and the Notice of Acceptance (NOA)
H-2B	10		<ul style="list-style-type: none"> • Audit selection in the H-2B program • Auditing of denied H-2B applications • Notice of Audit Examination • Consequences of not responding or not fully complying with an audit • Assisted Recruitment • Revocation • Notice of Revocation • Submitting rebuttal evidence • Employer obligations in revocation • Debarment • Substantial failure to meet the required terms and conditions • Willful violation • Significant violation • Notice of Debarment
H-2B	9		<ul style="list-style-type: none"> • “Staggered Crossing” provision • Seafood definition • Seafood industry
H-2B	8		<ul style="list-style-type: none"> • Appeal procedures • Decisions subject to appeal under the 2015 Interim Final Rule • Receiving an appeal decision from the Board of Alien Labor Certification Appeals (BALCA)

OFLC Program	FAQ Round	Date Published	Topic(s)
H-2B	7		<ul style="list-style-type: none"> • Recruitment procedures under the 2015 H-2B Interim Final Rule (IFR) • Recruitment Report under the 2015 H-2B IFR • Post-filing recruitment • Recruitment obligations • Recruitment responsibilities as a job contractor • Print advertisement content under the 2015 H-2B IFR • Employer's recruitment obligations with respect to contacting unions • Additional recruitment activities • Notice of Acceptance recruitment activities and timeframe • State Workforce Agency (SWA), Certifying Officer (CO), and the job order
H-2B	6		<ul style="list-style-type: none"> • Clarification of handling special procedure occupations under the 2015 H-2B IFR
H-2B	5		<ul style="list-style-type: none"> • Job offer vs. job order • Employer obligations under the 2015 H-2B Interim Final Rule • Enforcement of employer assurances and obligations • Required experience qualification on the H-2B application and job order • Minimum job requirements and qualifications • Daily subsistence rates • Transportation to the worksite • On-the-job training

OFLC Program	FAQ Round	Date Published	Topic(s)
H-2B	4		<ul style="list-style-type: none"> • H-2B Registration and date of need • Prevailing Wage Determination and date of need • Job order form for the State Workforce Agency (SWA) • Where to send the job order • Length of posting for job order • Job order content • How to file an H-2B application (ETA 9142B) • Agent authorization for filing an H-2B application • Current version of the ETA 9142 • Certificate of Registration under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) • Worksite locations on the H-2B application • Submitting an application by courier and the “postmark” date • Foreign Labor recruiter agreements • Waiver of the filing time period requirement under the emergency situations provision • H-2B applications under Emergency Situations • Processing of the H-2B application • Notice of Acceptance • Final Determinations
H-2B	3		<ul style="list-style-type: none"> • Electronic filing of the ETA 9142B under the H-2B Interim Final Rule (IFR) • Establishing an iCERT account • Appendix B • Re-using previously entered information in iCERT • Submitting supporting documentation electronically • Application signature • Withdrawing an application through iCERT • Questions regarding the electronic filing process in the H-2B program

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H-2B	2		<ul style="list-style-type: none"> • 2015 H-2B Interim Final Rule (IFR) Transition Procedures • Dates of need • Recruitment for U.S. workers • Prevailing Wage Determination • Wage Final Rule • Supplemental Prevailing Wage Determination (SPWD) • Notification of certification
H-2B	1		<ul style="list-style-type: none"> • 2008 Final Rule vs. 2015 H-2B Interim Final Rule (IFR) • Reason for the 2015 H-2B Interim Final Rule (IFR) • Differences in the 2015 H-2B Interim Final Rule (IFR) • Temporary need for workers und the 2015 H-2B Interim Final Rule (IFR) • Period of need • Staffing companies

OFLC Program	FAQ Round	Date Published	Topic(s)
National Prevailing Wage Center (NPWC)	1	March 2010	<ul style="list-style-type: none"> • Labor certification programs affected by the new prevailing wage process • Requesting a Prevailing Wage Determination (PWD) • ETA 9141 • Electronic submission of the ETA 9141 • Assistance in preparing a PWD request • Receiving a PWD • PWD Processing time • After receiving a PWD • Problems with PWD requests • Duplicate PWDs • PWDs based on source other than OES • Supporting documentation and the ETA 9141 • McNamara-O’Hara Service Contract Act (SCA) • David-Bacon Act (DBA) • Collective Bargaining Agreement (CBA) • Employer surveys • Higher Education American Competitiveness and Workforce Improvement Act (ACWIA) • Using applicable H-2B special procedures for itineraries • Alternative job requirements • Incomplete ETA 9141 • Job duties not specific enough on the ETA 9141 • PWD request voided • Lack of OES wage for certain occupations • High paying professional occupations