

Employment and Training Administration
Office of Foreign Labor Certification
Frequently Asked Questions
H-2A Temporary Agricultural Foreign Labor Certification Program
2010 Final Rule, Round 3

Filing

Question: When the employer submits the ETA Form 790 to the State Workforce Agency (SWA) during the requisite 60-75 day timeframe, what should the employer include along with it?

Answer: The employer is required to submit to the SWA the original ETA Form 790 along with all required attachments, as specified in the instructions to the form. The required attachments include, if applicable, an attachment describing special work schedule situations, an attachment describing in detail the job tasks and duties, and an attachment explaining the employer's handling of wage rate for each activity. The employer should also submit any additional attachments it creates to complete its response to one of the question(s) on the form or otherwise document its compliance with the required assurances described in 20 CFR 653.501 and 655.122. Upon receiving the ETA Form 790, the SWA may require the employer to submit documentation substantiating the appropriateness of any qualification(s) contained in the ETA Form 790.

Please note:

The employer must also send a copy of the ETA Form 790 submitted to the SWA with its *Application for Temporary Employment Certification* to the Chicago National Processing Center.

ETA Form 9142

Question: Where do I find the SOC Code and SOC Occupation Title requested in Section B, questions 2 and 3 of the ETA Form 9142?

Answer: The Standard Occupational Classification (SOC) system is a numerical code that classifies job opportunities into occupational categories for the purpose of collecting, calculating, or disseminating data. An employer may search the Bureau of Labor Statistics' 2010 SOC list, which lists occupations in alphabetical order (http://www.bls.gov/soc/2010/soc_alpha.htm#F), or may search the Department's wage wizard at <http://www.flcdatacenter.com/OesQuick.aspx> to obtain the appropriate code. The code and occupation title selected by the employer should reflect the nature of the position for which certification is sought.

The SOC categories of occupations that are most likely to be identified with H-2A agricultural workers are:

45-2092.01	Nursery Workers
45-2092.02	Farmworkers and Laborers, Crop
45-2041.00	Graders and Sorters
45-2091.00	Agricultural Equipment Operators
45-2093.00	Farm Workers, Farm and Ranch Animals
45-2099.00	Agricultural Workers, All Other

Housing:

Question: Does public rental housing need to be inspected by the SWA?

Answer: No, as long as the public rental housing meets applicable local, state or federal standards. The employer must provide documentation to the satisfaction of the Certifying Officer that the housing complies with the applicable standard. At a minimum, the employer must provide a written assurance that the public rental housing provided meets all local, State, and Federal standards for such accommodations.

H-2A Labor Contractors

Question: Are employers who are engaged in certain occupations exempt from the H-2A Labor Contractor designation and obligations?

Answer: No. Any employer who fits the definition of an H-2ALC must identify itself as such on both the ETA Form 790 and the ETA Form 9142 and meet all of the obligations and requirements applicable to H-2ALCs, as set out in 20 CFR 655.132. Employers who are H-2ALCs and who belong to occupations for which special procedures have been established will continue to submit their applications in accordance with those special procedures. However, the H-2ALC must comply with all the requirements set forth in § 655.132, unless the particular requirement is superseded by the special procedures.

Job Offers, Assurances and Obligations

Transportation/Daily Subsistence

Question: Will I have to pay for the worker’s daily subsistence before the worker begins his or her inbound trip to my worksite?

Answer: No. The employer is only responsible for the cost of the worker’s daily subsistence from the time the worker departs the place from which the worker has come to work for the employer (generally, the worker’s home or place from which the worker was recruited) until the time the worker arrives at the employer’s worksite.

Fifty Percent Rule

Question: What is a small business exemption to the 50 percent rule?

Answer: The small business exemption allows certain employers to forgo compliance with the requirement to consider for employment and hire qualified and eligible U.S. workers during the first half of the contract period. The exemption is available to an employer who 1) did not use more than 500 man-days (defined at 29 U.S.C. § 203(u)) of agricultural labor during each calendar quarter of the preceding calendar year, 2) is not a member of an association that is applying for temporary employment certifications under the H-2A program on behalf of its members, and 3) has not otherwise associated with other employers who are applying to the Department to import H-2A workers.

Surety bond

Question: May an H-2A Labor Contractor use one surety bond to cover all workers employed during a season, or is a separate bond required for each *Application for Temporary Employment Certification*?

Answer: The regulations governing the H-2A temporary agricultural foreign labor certification program require an H-2A Labor Contractor (H-2ALC) to submit an original surety bond, i.e. one with a raised seal or other indicator evidencing it is an original, for each *Application for Temporary Employment Certification* it files with the Department. Submitting a copy of a surety bond or a surety bond without an original indicator is not sufficient to satisfy the regulations. This requirement allows the Chicago National Processing Center (NPC) to ensure that the amount of the bond coverage appropriately corresponds to the number of workers requested on the employer's ETA Form 9142, as outlined in 29 CFR 501.9(c). Additionally, in the event there is a finding of a violation, requiring a separate bond for each application becomes critical to the effective enforcement of the H-2ALCs' wage obligations against the surety that agreed to be legally responsible.

Each surety bond must comply with all requirements outlined in 29 CFR 501.9 and 20 CFR 655.132(b)(3). These requirements include the bond: (1) identifying the issuer, the name, address, phone number, and contact person for the surety; (2) specifying the amount of the bond (as required in 29 CFR 501.9(c)), the date of issuance and expiration and any identifying designation used by the surety for the bond; (3) being payable to the Administrator, Wage and Hour Division, United States Department of Labor; and (4) remaining in force for a period of no less than 2 years from the date on which the labor certification expires. The employer must submit the original surety bond to the Chicago NPC at the time of filing its *Application for Temporary Employment Certification*.

Post-Filing

Withdrawal of a Job Order and Application for Temporary Employment Certification

Question: May I withdraw my *Application for Temporary Employment Certification* and job order after I receive a certification from the Chicago NPC?

Answer: Yes. An employer may withdraw its *Application for Temporary Employment Certification* and job order submitted in connection with the application after the Certifying Officer grants the certification, as long as the employer returns the original certified ETA Form 9142. The employer, however, will be required to comply with the terms and conditions of employment contained in the application and job order with respect to workers recruited or offered employment in connection with that application and/or job order.