

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
2022 H-2A Final Rule FAQs

Round 6: H-2A Labor Contractors (H-2ALCs)
August 3, 2023

General

1. What is an H-2A Labor Contractor (H-2ALC)?

An H-2ALC is any person who:

- Meets the definition of employer under 20 CFR 655.103(b);
- Is not a fixed-site employer, an agricultural association, or an employee of a fixed-site employer or agricultural association, as those terms are defined in 20 CFR 655.103(b); and
- Recruits, solicits, hires, employs, furnishes, houses, or transports any worker(s) subject to section 218 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1188) or the Department’s regulations at 29 CFR part 501 or 20 CFR part 655, subpart B.

Any employer who fits the definition of an H-2ALC—whether for some or all of the work to be performed under an H-2A temporary labor certification, if issued—must identify itself as an H-2ALC on the Form ETA-9142A, *H-2A Application for Temporary Employment Certification* and meet all of the obligations and requirements applicable to H-2ALCs.

2. What is the difference between a Farm Labor Contractor (FLC) and an H-2ALC?

An FLC, as defined by statute under the Migrant and Seasonal Worker Protection Act (MSPA), is any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

Under the requirements of the MSPA, FLCs (and any employee who performs farm labor contracting functions) must register with the Department before recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker. Agricultural employers and associations (and their employees) generally need not register as FLCs under MSPA. However, persons providing services on land that they do not own or operate are generally subject to MSPA FLC registration requirements. The MSPA applies separately, and often in addition to, the Department’s H-2A regulations at 20 CFR part 655, subpart B.

An H-2ALC, is defined by the Department's H-2A program regulations, as any person who meets the definition of employer under 20 CFR 655.103(b) and is not a fixed-site employer, an agricultural association, or an employee of a fixed-site employer or agricultural association, who recruits, solicits, hires, employs, furnishes, houses, or transports any worker(s) subject to section 218 of the INA (8 U.S.C. § 1188) or the Department's regulations at 29 CFR part 501 or 20 CFR part 655, subpart B.

Unless one of the exemptions from MSPA is applicable, for example, for custom combine labor and animal shearing operations, an H-2ALC must register as an FLC. Where an H-2ALC includes a combination of non-exempt and exempt work in an H-2A application, H-2A certification cannot be issued unless the H-2ALC provides evidence of compliance with the FLC registration requirement with regard to the non-exempt work.

Farm Labor Contractor (FLC) and Farm Labor Contractor Employee (FLCE) Certificate(s) of Registration

3. What is an FLC Certificate of Registration?

An FLC Certificate of Registration is a requirement of the Migrant and Seasonal Worker Protection Act, 29 U.S.C. 1801 *et seq.* (MSPA). If required under MSPA, an FLC must obtain a Certificate of Registration from the U.S. Department of Labor's Wage and Hour Division (WHD) before engaging in recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker.

Important Note: Most H-2ALCs are required to obtain an FLC Certificate of Registration and submit it with their *H-2A Application for Temporary Employment Certification*. However, certain persons and organizations are exempt from MSPA and are not required to obtain an FLC Certificate of Registration (such as those solely engaged in certain activities (*e.g.*, custom combine activities)). In addition, those who meet the MSPA definition of an "agricultural association" or "agricultural employer" are generally not required to register as FLCs. If you have questions as to whether you must register as an FLC, contact WHD at 1-866-4US-WAGE (1-866-487-9243), if you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

4. What is an FLCE Certificate of Registration?

Persons who may be employed to perform farm labor contracting activities (*e.g.*, driving covered workers) on behalf of their employer, which is itself required under MSPA at 29 U.S.C. § 1801 *et seq.* to register as an FLC, must apply to the U.S. Department of Labor's WHD for an FLCE Certificate of Registration before engaging in such activities.

5. How does someone obtain an FLC or FLCE Certificate of Registration?

The Department of Labor's WHD oversees the FLC and FLCE Certificate of Registration process. To obtain an FLC or FLCE Certificate of Registration, submit the appropriate forms

to WHD (e.g., Form WH-530, *Initial or Renewal Application for a Farm Labor Contractor Certificate of Registration*; Form WH-535, *Initial or Renewal Application for a Farm Labor Contractor Employee Certificate of Registration*; or Form WH-540, *Application to Amend a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration, or to Request a Duplicate Certificate*), along with additional forms and documentation, as required, depending on the specific activities involved (e.g., housing, transporting, or driving covered workers).

Information on how to apply for FLC and FLCE Certificates of Registration may be found on WHD's website (<https://www.dol.gov/agencies/whd/forms/wh530> and <https://www.dol.gov/agencies/whd/agriculture/mspa/certificate-registration-resources>) or by phone at 415-241-3505, if you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Important Note: Where required under MSPA, an H-2ALC is responsible for submitting timely and complete FLC and/or FLCE Certificate of Registration applications to WHD. In addition, the H-2ALC is responsible for submitting evidence of valid FLC Certificates of Registration to the Certifying Officer (CO), including those temporarily extended during WHD processing. **Communication regarding the status of any application for FLC and/or FLCE Certificate of Registration, including the receipt and processing of any application, should be directed to WHD, not the CO.**

Filing

6. What supporting documentation is an H-2ALC required to submit with an H-2A application?

All employers are required to submit several documents to the National Processing Center (NPC) in addition to the Form ETA-790/790A, *H-2A Agricultural Clearance Order* and the Form ETA-9142A, *H-2A Application for Temporary Employment Certification*:

- Proof that the employer's housing is in compliance with applicable program requirements (*see* 20 CFR 655.122(d));
- Proof of workers' compensation insurance coverage (*see* 20 CFR 655.122(e)); and
- A written recruitment report, signed by the employer, submitted on the date specified by the CO in the Notice of Acceptance (NOA) (*see* 20 CFR 655.156).

An employer may also choose to submit justification for any qualifications required for the position that are listed on its job order and/or application at the time of filing. The CO has the authority, through a Notice of Deficiency (NOD), to request that the employer provide documentation evidencing the appropriateness of these job qualifications. *See* 20 CFR 655.122(b).

H-2ALCs must further include in or with their *Applications for Temporary Employment Certification*, the following:

- The full legal name and full trade names or “Doing Business As” names (DBAs) (if applicable) and location of each fixed-site agricultural business to which the H-2ALC expects to provide H-2A workers, the expected beginning and ending dates when the H-2ALC will be providing the workers to each fixed-site, and a description of the crops and activities the workers are expected to perform at each fixed-site. *See* 20 CFR 655.132(a). Form ETA-790A, Addendum B, provides text fields for the H-2ALC to enter the required information regarding each fixed-site agricultural business client;
- A copy of the MSPA FLC Certificate of Registration, if required under MSPA at 29 U.S.C. § 1801 *et seq.*, that identifies the specific farm labor contracting activities the H-2ALC is authorized to perform as an FLC (*e.g.*, transportation authorization) (*see* 20 CFR 655.132(b));
- Proof of the H-2ALC’s ability to discharge financial obligations under the H-2A program using Form ETA-9142A, Appendix B, *H-2A Labor Contractor Surety Bond* to provide an original surety bond that meets the requirements of 20 CFR 655.132(c);
- A copy of the fully-executed work contract(s) with each the fixed-site agricultural business identified on the Form ETA-790A, Addendum B. This filing requirement is discussed in further detail in a separate FAQ [“What documentation must an H-2ALC provide to the NPC as evidence of work contract\(s\) with each fixed-site agricultural business listed on the H-2A job order?”](#) (*see* 20 CFR 655.132(d));
- An explanation and supporting documentation that demonstrates the H-2ALC’s compliance with its obligation to provide daily transportation to the workers between places of employment and the workers’ living quarters. This filing requirement is discussed in further detail in a separate FAQ [“What must an H-2ALC submit with the H-2A Application for Temporary Employment Certification related to its obligation to provide daily transportation to all H-2A workers and those workers in corresponding employment who reside in the housing provided or secured by the H-2ALC?”](#) (*see* 20 CFR 655.122(h), 655.132(b) and (e));
- If any of the fixed-site agricultural businesses will provide housing to or secure housing for the workers, proof that the housing complies with the applicable standards as set forth in § 655.122(d) and certified by the SWA. This filing requirement is discussed in further detail in a separate FAQ [“If a fixed-site agricultural business listed on the Form ETA-790A, Appendix B, will provide housing to the H-2ALC’s workers, what additional documentation or information does the H-2ALC need to submit to the NPC related to that housing?”](#) (*see* 20 CFR 655.132(e)).

Important Note: Required documents should be submitted at the time of filing the H-2A application, if available, using the electronic filing system’s document upload feature. If the employer does not have the documentation ready at the time it submits the H-2A application, the CO will direct the employer to submit each of these documents before certification may be granted. The CO may issue a NOA when an H-2A application is complete and compliant for recruitment purposes, even though requirements for certification that are unrelated to recruitment (*e.g.*, final housing approval) may not have been completed yet.

7. What documentation must an H-2ALC provide to the NPC as evidence of work contract(s) with each fixed-site agricultural business listed on the H-2A job order?

An H-2ALC is required to submit a fully-executed work contract with each fixed-site agricultural business it identifies in the *Application for Temporary Employment Certification*. See 20 CFR 655.132(d).

A fully-executed work contract contains the signature of each party entering into the agreement (e.g., H-2ALC and fixed-site agricultural business owner). In the event the documentation the H-2ALC submits to the NPC fails to satisfy this requirement (e.g., letters of intent to secure a work contract or other incomplete or informal agreements; fully-executed contracts with terms inconsistent with the *Application for Temporary Employment Certification*), the CO will issue a NOD soliciting documentation to demonstrate compliance.

8. What must an H-2ALC submit with the *H-2A Application for Temporary Employment Certification* related to its obligation to provide daily transportation to all H-2A workers and those workers in corresponding employment who reside in the housing provided or secured by the H-2ALC?

In Item F.1 of the Form ETA-790A, *H-2A Agricultural Clearance Order*, the H-2ALC must describe how the employer will provide daily transportation between the housing and the place(s) of employment at no cost to the workers and for other purposes (e.g., access to grocery stores), to all H-2A workers and those workers in corresponding employment who reside in the employer's housing. See 20 CFR 655.122(h)(4). The employer may also describe additional daily transportation it will provide from centralized pick-up points to the places of employment at the beginning of each workday and back at the end of each workday. At minimum, the description in Item F.1, must include the following information:

- Identify the mode(s) of transportation (e.g., vans, buses) that will be used each day, if known, as well as the daily transportation schedule;
- Identify the number of vehicles to be used and type of vehicle and seating capacity for each vehicle;
- State whether the vehicles to be used will be provided by the fixed-site grower(s), are authorized for use under a valid FLC Certificate of Registration, or belong to a common carrier, identifying the common carrier by name.
- Identify whether the daily transportation at no cost to workers is available to workers who do not reside in employer-provided housing. Similarly, describe any other transportation the employer will provide (e.g., for personal errands).

If the H-2ALC will provide the daily transportation described in Item F.1 itself, in any manner (e.g., providing only a vehicle, available for the workers to drive themselves), the H-2ALC must submit a valid FLC Certificate of Registration that demonstrates the H-2ALC is authorized to transport workers, unless the H-2ALC is not subject to MSPA. See 20 CFR 655.132(b).

If the H-2ALC will use transportation provided by one or more fixed-site agricultural businesses to transport workers between the place(s) of employment and the workers' living quarters, such transportation must comply with all applicable local, State, or Federal laws and regulations and the H-2ALC must secure and submit to the CO:

- a written statement from each of the fixed-site agricultural businesses stating that “all vehicles and drivers used to transport workers and owned, operated, or secured by [it] comply with all applicable local, State, or Federal laws and regulations and provide, at minimum, the same vehicle safety standards, driver licensure, and vehicle insurance required under 29 U.S.C. 1841 and 29 CFR 500.104 or 500.105 and 500.120 through 500.128, except where workers' compensation is used to cover such transportation.”

The CO must receive the statement in order to issue a favorable determination. *See* 20 CFR 655.132(e)(2); *see also* Form ETA-9142A, Appendix A, Section B.17(v). In addition, the H-2ALC must retain the statement and documentation demonstrating compliance (e.g., copies of all drivers' licenses, vehicle registration, and insurance policies for all drivers and vehicles used to transport H-2A workers) in its file and be prepared to submit such documentation, if requested, in response to a NOD from the CO prior to issuing a Final Determination, or in the event of an audit or investigation.

If the H-2ALC will use a common carrier to transport workers between the place(s) of employment and the workers' living quarters, the H-2ALC must secure and submit to the CO:

- a copy of the agreement between the H-2ALC and common carrier, which identifies the mode(s) of transportation (e.g., vans, buses) that will be used, the number of vehicles to be used, and seating capacity for each vehicle and the dates the agreement covers.

The CO must receive a copy of the agreement in order to issue a favorable determination. *See* 20 CFR 655.132(e)(2); *see also* Form ETA-9142A, Appendix A, Section B.17(v).

In the event the documentation the H-2ALC submits to the NPC fails to contain the required information and/or fails to establish that the transportation complies with applicable standards, the CO will issue a NOD soliciting additional documentation to demonstrate compliance.

9. If a fixed-site agricultural business listed on the Form ETA-790A, Addendum B, will provide housing to the H-2ALC's workers, what additional documentation or information does the H-2ALC need to submit to the NPC related to that housing?

If an H-2ALC will use housing owned, operated, or secured by one or more fixed-site agricultural businesses, such housing must comply with the applicable standards set forth in 20 CFR 655.122(d) and be certified by the SWA. *See* 20 CFR 655.132(e)(1); *see also* Form ETA-9142A, Appendix A, Section B.17(v). In support of its application, the H-2ALC must

secure a written statement from each of the fixed-site agricultural businesses stating that “[a]ll housing used by workers and owned, operated, or secured by [it] complies with the applicable housing standards in 20 CFR 655.122(d) or, if applicable, 655.235 or 655.304.” In addition, the H-2ALC must secure the SWA’s certification of the housing. The CO must receive both the fixed-site agricultural business’ statement and the SWA certification demonstrating compliance for all such housing in order to issue a favorable determination.

In the event the documentation the H-2ALC submits to the NPC fails to contain the required information and/or fails to establish that the housing or accommodations comply with applicable standards, the CO will issue a NOD soliciting additional documentation to demonstrate compliance.

Important Reminder: Where required by the applicable local, State, or Federal housing standards, the employer will need to make a timely request for a preoccupancy inspection from the appropriate authority and receive documentation demonstrating that the housing or accommodations it plans to use are compliant.

10. If an H-2ALC is subject to MSPA, what should it submit with the *H-2A Application for Temporary Employment Certification* as evidence of its FLC Certificate of Registration?

The H-2ALC should submit a copy of the valid FLC Certificate of Registration that shows it is authorized by WHD to perform all farm labor contracting activities that it will be required to perform if the CO certifies the *H-2A Application for Temporary Employment Certification*.

If the H-2ALC timely filed an application to renew an FLC Certificate of Registration for farm labor contracting activities it will be required to perform if the H-2A application is certified, the H-2ALC may submit a copy of the FLC Certificate of Registration for which the H-2ALC is seeking renewal and evidence of an application submitted to WHD that extends the prior registration’s validity, including any authorizations, while pending. For example, the employer should submit a letter issued by WHD that acknowledges receipt of the FLC Certificate of Registration renewal application and states that the FLC may continue operating (*i.e.*, performing the FLC activities authorized) under the previously approved certificate until such time as a determination is issued on the pending renewal application. If the employer submits a WHD letter acknowledging receipt of an FLC Certificate of Registration renewal that is not recent, the CO may issue a NOD requesting information regarding status of the renewal.

Important Note: The CO may not certify an *H-2A Application for Temporary Employment Certification* unless the H-2ALC submits evidence of the FLC Certificates of Registration that demonstrate the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (*e.g.*, if the H-2ALC will transport workers, evidence of transportation authorization for vehicles with sufficient capacity).

11. What will happen if an H-2ALC does not submit a required FLC Certificate of Registration with its *H-2A Application for Temporary Employment Certification*?

H-2ALCs and their agents performing farm labor contracting activities must submit evidence of their FLC Certificate of Registration, if required under MSPA at 29 U.S.C. 1801 *et seq.*, when filing an *H-2A Application for Temporary Employment Certification*. See, e.g., 20 CFR 655.132(b) and 655.133(b). The CO must receive evidence of the FLC Certificate of Registration that demonstrates the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (e.g., if the H-2ALC will transport workers, transportation authorization for vehicles with sufficient capacity).

The CO will issue a NOD under 20 CFR 655.141, notifying the employer that the *H-2A Application for Temporary Employment Certification* is incomplete or does not meet the requirements of 20 CFR part 655, subpart B when an employer has not submitted with the *H-2A Application for Temporary Employment Certification* either:

- 1) the valid, unexpired FLC Certificate of Registration; or
- 2) a copy of the current FLC Certificate of Registration for which the H-2ALC is seeking renewal and evidence of an application submitted to WHD that extends the prior registration's validity while pending. For example, the employer should submit a letter issued by WHD that acknowledges receipt of the FLC Certificate of Registration renewal application and states that the FLC may continue operating under the previously approved certificate until such time as a determination is issued on the pending renewal application.

An employer or agent may respond to the NOD with submission of either of the above sets of documents. If the employer's application meets program requirements such that recruitment activities can begin, the CO may issue a NOA. However, the CO may not certify an *H-2A Application for Temporary Employment Certification* unless the H-2ALC submits evidence of the required FLC Certificate of Registration that demonstrates the H-2ALC, its agents, and/or its employees are authorized to perform the farm labor contracting activities that will be performed under the *H-2A Application for Temporary Labor Certification* (e.g., if the H-2ALC will transport workers, evidence of transportation authorization for vehicles with sufficient capacity).

The CO will not hold a final determination on the *H-2A Application for Temporary Employment Certification* in abeyance if the employer or agent fails to provide sufficient evidence of an FLC Certificate of Registration, as described above, demonstrating the H-2ALC's authorization to perform the farm labor contracting activities required for certification. As a general matter, the CO will issue a final determination, which may be a denial, as appropriate, no later than 30 calendar days before the start date of need identified in the *H-2A Application for Temporary Employment Certification*.

Important Note: In the event the CO denies certification due to failure to provide a copy of an FLC Certificate of Registration, the employer may submit a new *H-2A Application for*

Temporary Employment Certification that includes the FLC Certificate of Registration in compliance with normal timeframes. Failure to timely renew an FLC Certificate of Registration does not constitute an emergency situation under 20 CFR 655.134.

Surety Bond

12. What is a surety bond and why is an H-2ALC required to submit an original surety bond with its H-2A application?

A surety bond is a binding legal contract between three parties—the principal, the surety, and the obligee. For a surety bond submitted for compliance with H-2A program requirements:

- The principal is the H-2ALC who purchases the bond for submission to the NPC;
- The surety is the insurer who financially guarantees the H-2ALC’s compliance with H-2A program requirements; and
- The obligee is the WHD Administrator who may make a claim to the surety for sums up to the face amount of the bond following a final finding of a violation.

Due to the relatively complex and transient nature of H-2ALC business operations and concerns about undercapitalization, the Department requires H-2ALCs to submit enhanced documentation to the NPC as a requirement of H-2A temporary labor certification. *See* 20 CFR 655.132. The enhanced documentation requirements, which include the requirement to provide an original surety bond, are intended to ensure that basic program requirements are met and, in some instances, to protect the safety and security of workers. The required surety bond is proof of an H-2ALC’s ability to discharge its financial obligations under the H-2A program (*e.g.*, meet payroll obligations). In addition, following a final finding of violation, the WHD Administrator may make a claim to the surety for payment of wages and benefits owed to H-2A workers, workers in corresponding employment, and U.S. workers improperly rejected from employment, laid off, or displaced, up to the face amount of the bond. *See* 29 CFR 501.9(b).

Important Reminder: All H-2ALCs must submit an original surety bond meeting the requirements of 20 CFR 655.132(c) to the NPC in connection with each *H-2A Application for Temporary Employment Certification*.

13. What must an H-2ALC submit to the NPC to satisfy the surety bond requirement?

To satisfy the surety bond requirements of 20 CFR 655.132(c), an H-2ALC must submit to the NPC an original Form ETA-9142A, Appendix B, *H-2A Labor Contractor Surety Bond*, with valid power of attorney attached. The Form ETA-9142A, Appendix B, *H-2A Labor Contractor Surety Bond*) is the Department’s standardized H-2ALC surety bond form. This form contains information necessary to identify the bond (*i.e.*, the bond identification number), the principal (*i.e.*, the H-2ALC), the surety, and the amount of the bond. In addition, Appendix B, contains text to ensure the bond satisfies the parameters and purpose

of the surety bond requirement. For example, Appendix B specifies that the bond must remain in full force and effect for all liabilities incurred during the period of the certification, including any extension thereof, and may not be cancelled absent a finding by the WHD Administrator that the labor certification has been revoked.

Unless a higher amount is sought by the WHD Administrator pursuant to 29 CFR 501.9(a), the Appendix B submitted to the NPC must identify a bond amount no less than the amount specified in 20 CFR 655.132(c)(2) for the number of H-2A workers requested on the related *Application for Temporary Employment Certification*. Separate FAQs discuss calculation of the bond amount required for an employer's *Application for Temporary Employment Certification*: ["How does an H-2ALC requesting certification for up to 149 H-2A workers determine the amount of coverage required for the surety bond?"](#) and ["How does an H-2ALC requesting certification for 150 or more H-2A workers determine the amount of coverage required for the surety bond?"](#)

Until such time as the OFLC Administrator directs employers to submit original electronic surety bonds, as provided at 20 CFR 655.132(c)(3)(i), the NPC will accept the submission of a scanned copy of the original Appendix B and attached power of attorney with the *Application for Temporary Employment Certification*, provided that the original bond is received within 30 days of the date that the temporary agricultural labor certification is issued. *See* 20 CFR 655.132(c)(3)(ii). The copy submitted must be a scanned copy of the Appendix B with valid power of attorney, signed and dated by both the H-2ALC and the surety using "wet" signatures.

If the H-2ALC uploaded a scanned copy of the original surety bond in FLAG and receives certification, the H-2ALC must then mail the original surety bond to the NPC for receipt within 30 days of the date the certification is issued:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
Attention: H-2A Surety Bond: ###caseNumber###
11 West Quincy Court
Chicago, IL 60604

Important Reminder: The CO may issue a NOA when an H-2A application is complete and compliant for recruitment purposes, even though requirements for certification that are unrelated to recruitment (*e.g.*, original surety bond submission) may not have been completed yet. Failure to timely submit the required original surety bond to the NPC constitutes a substantial violation of program requirements, providing grounds for debarment or revocation of the temporary agricultural labor certification.

14. How does an H-2ALC requesting certification for up to 149 H-2A workers determine the amount of coverage required for the surety bond?

The amount of coverage required on the surety bond depends on the number of H-2A workers the H-2ALC plans to employ under the H-2A temporary labor certification, if issued, and will vary based on changes in the average AEW. OFLC will announce adjustments to the average AEW in the *Federal Register* and will post adjustments to the average AEW and required bond amounts on its FLAG website (<https://flag.dol.gov/>).

Required bond amounts for *Applications for Temporary Employment Certification* seeking up to 149 H-2A workers are determined by identifying the “base amount” of the bond, which depends on the number of H-2A workers sought, and making adjustments to reflect changes in the average AEW.

Table A below provides the base amount of coverage required in relation to the number of H-2A workers to be employed.

Table A

Base Amount	Number of H-2A Workers Requested
\$5,000	less than 25 workers
\$10,000	25 to 49 workers
\$20,000	50 to 74 workers
\$50,000	75 to 99 workers
\$75,000	100 or more workers

The required bond amount for an H-2ALC’s *Application for Temporary Employment Certification* seeking 1 through 149 workers is calculated by multiplying the base amount (shown in Table A) by the average AEW in effect at the time of bond submission, and dividing by \$9.25. Table B provides the required bond amounts calculated using the average AEW of \$16.13, which is in effect until annual adjustment on or around January 1, 2024.

Table B

Required Bond Amount	Number of H-2A Workers Requested
$\$8,719 = \$5,000 \times \$16.13/\9.25	less than 25 workers
$\$17,438 = \$10,000 \times \$16.13/\9.25	25 to 49 workers
$\$34,876 = \$20,000 \times \$16.13/\9.25	50 to 74 workers
$\$87,189 = \$50,000 \times \$16.13/\9.25	75 to 99 workers

$\$130,784 = \$75,000 \times \$16.13 / \9.25	100 to 149 workers
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For example, as shown in Table B, while \$16.13 is the average AEW in effect, the required bond amount for an H-2ALC’s *Application for Temporary Employment Certification* for 30 H-2A workers is \$17,438, and for an H-2ALC seeking certification for 85 H-2A workers, the required bond amount is \$87,189.

A separate FAQ [“How does an H-2ALC requesting certification for 150 or more H-2A workers determine the amount of coverage required for the surety bond?”](#) discusses the additional calculations required for *Applications for Temporary Employment Certification* for 150 or more H-2A workers.

Important Reminder: The WHD Administrator may require that an H-2ALC obtain a bond with a higher face value amount after notice and opportunity for hearing when it is shown based on objective criteria that the amount of the bond is insufficient to meet potential liabilities.

15. How does an H-2ALC requesting certification for 150 or more H-2A workers determine the amount of coverage required for the surety bond?

The amount of coverage required on the surety bond depends on the number of H-2A workers the H-2ALC plans to employ under the H-2A temporary labor certification, if issued, and will vary based on changes in the average AEW. OFLC will announce adjustments to the average AEW in the *Federal Register* and will post adjustments to the average AEW and required bond amounts on its FLAG website (<https://flag.dol.gov>).

The bond amount for 150 or more H-2A workers will be the required bond amount for the first 100 H-2A workers, plus an additional amount **per each full set** of 50 additional H-2A workers beyond the first 100. In other words, the additional surety bond amount is assessed upon requesting the last worker for each full set of 50 above 100 workers, starting with the 150th worker, and then an additional surety bond amount for every 50th worker thereafter (e.g. 200th, 250th, etc.). Required bond amounts for *Applications for Temporary Employment Certification* seeking 150 or more H-2A workers are calculated by following the steps below:

Step 1: Identify the required bond amount for the first 100 H-2A workers, as discussed in a separate FAQ [“How does an H-2ALC requesting certification for up to 149 H-2A workers determine the amount of coverage required for the surety bond?”](#)

Step 2: Based on the number of H-2A workers sought, determine the number of additional full sets of 50 workers beyond the first 100 H-2A workers sought.

Step 3: For *each* additional set of 50 workers beyond the first 100 (determined in Step 2), increase the bond amount from Step 1 by a value which represents 2 weeks of

wages for 50 workers. This value will vary each year based on the average AEW; using the average AEW in effect for 2023 (*i.e.*, \$16.13), the bond amount from Step 1 is increased by a value of \$64,520 (*i.e.*, 80 hours x 50 workers x \$16.13 = \$64,520) for **each** additional set of 50 H-2A workers from Step 2.

Table C provides the required bond amount calculation for an H-2ALC’s *Application for Temporary Employment Certification* seeking 150 or more H-2A workers in 2023, using the average AEW and required bond amount for 100 workers, calculated as shown in Table B of a separate FAQ [“How does an H-2ALC requesting certification for up to 149 H-2A workers determine the amount of coverage required for the surety bond?”](#)

Table C

Required Bond Amount	Number of H-2A Workers Requested
\$130,784 for 100 workers + \$64,520 for each full additional set of 50 H-2A workers over 100	150 or more workers

Example showing the required bond amount calculation in Table C applied to an H-2ALC’s Application for Temporary Employment Certification for 275 H-2A workers:

First, the bond amount required for 100 H-2A workers in 2023 is \$130,784. Refer to the separate FAQ [“How does an H-2ALC requesting certification for up to 149 H-2A workers determine the amount of coverage required for the surety bond?”](#)

Second, determine the number of additional full sets of 50 H-2A workers beyond the first 100 H-2A workers sought:

275 total workers – first 100 workers = 175 additional workers
 175 additional workers ÷ 50 = 3.5 additional sets of 50 workers (Do not round up, as the additional bond amount is based on full sets of 50 workers)
There are 3 full sets of 50 additional workers.

Third, increase the bond amount from step one for **each** full additional set of 50 workers by a value representing 2 weeks of wages for 50 workers; in 2023, this value is \$64,520 (*i.e.*, 80 hours × 50 workers × Average AEW of \$16.13):

3 x \$64,520 = \$193,560
\$193,560 is the additional bond adjustment required for the additional 175 workers.

This amount is added to the required bond amount for the first 100 workers (*i.e.*, \$130,784):

\$130,784 + \$193,560 = \$324,344
\$324,344 is the total bond required in this example.

Important Reminder: The WHD Administrator may require that an H-2ALC obtain a bond with a higher face value amount after notice and opportunity for hearing when it is shown based on objective criteria that the amount of the bond is insufficient to meet potential liabilities.

16. Can I ask the NPC to return my original surety bond after my *H-2A Application for Temporary Labor Certification* is denied or withdrawn?

Yes. If an *Application for Temporary Labor Certification* is denied or withdrawn and the NPC receives a written request from the employer or the employer's authorized agent for the original surety bond that was submitted with the application, the NPC will return the original surety bond using regular mail.

17. Is a separate original surety bond required to support each *H-2A Application for Temporary Employment Certification*?

Yes. The regulations governing the H-2A program require an H-2ALC to submit an original surety bond (*i.e.*, completed, signed, and dated Form ETA-9142A, Appendix B, with valid power of attorney) for each *H-2A Application for Temporary Employment Certification* filed with the Department. The requirement of a new original surety bond to support each *H-2A Application for Temporary Employment Certification* allows the NPC to ensure that the amount of the bond coverage appropriately corresponds to the number of workers requested on the employer's Form ETA-790A, as outlined in 20 CFR 655.132(c)(2). Additionally, in the event there is a finding of a violation, the requirement that a separate bond meet the face value parameters specified in 20 CFR 655.132(c)(2) for each application is critical to the effective enforcement of an H-2ALC's wage obligations against the surety that agreed to be legally responsible with regard to the wages owed to the workers under that particular application.