WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #26H: H-2A Labor Contractor (H-2ALC) Surety Bonds

August 2023

On April 29, 2024, The U.S. Department of Labor published a final rule, "Improving Protections for Workers in Temporary Agricultural Employment in the United States" Further information on the final rule is found here.

This fact sheet provides general information on the requirements for H-2ALCs to obtain appropriate surety bonds to participate in the H-2A nonimmigrant temporary visa program. H-2ALC surety bond requirements under both the 2010 Final Rule and 2022 Final Rule are explained below. When information within a section refers to a specific final rule (2010 or 2022), it means that specific requirement is applicable only to an H-2A Application for Temporary Employment Certification (application or labor certification) filed under the indicated final rule. Please consult the chart below to determine the applicable requirement.

Application and Start Dates	Applicable requirement
Application is filed on or after March 15, 2010 and before October 12, 2022	2010 Final Rule
Application is filed on or after October 12, 2022, but before November 14, 2022 *and* - includes a job order with start dates before November 14, 2022 - includes a job order with start dates on or after November 14, 2022	2010 Final Rule 2022 Final Rule
Application is filed on or after November 14, 2022	2022 Final Rule

The Immigration and Nationality Act (INA) authorizes the admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services that are temporary or seasonal in nature. Employers of such workers and of workers in corresponding employment (workers who perform work that is included in the job order or agricultural work that is also performed by the H-2A workers) are obligated to comply with the terms and conditions specified in the job order/work contract, and all applicable statutory and regulatory requirements. One such condition that is specific to H-2ALCs is the requirement that they obtain a surety bond.

For additional general information on the obligations of H-2A program, please see Fact Sheet #26.

What is an H-2ALC surety bond?

An H-2ALC must obtain a surety bond to demonstrate its ability to meet its financial obligations under the H-2A program. The bond is a contract in which a surety (typically an insurance or bonding company) assumes liability for the H-2ALC's financial obligations to its workers when the H-2ALC fails to pay the wages and benefits as required.

Each bond is payable to the Administrator of the Wage and Hour Division (WHD) and requires the surety to pay any amount, up to the face value of the bond, for wages and benefits owed to an H-2A worker or worker engaged in corresponding employment, or to a U.S. worker improperly rejected, laid off, or displaced based on a final decision finding H-2A violation(s). Bonds subject to the 2022 Final Rule must use standard bond, Form ETA-9142A—Appendix B.

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The original surety bond must be submitted with each *H-2A Application for Temporary Employment Certification* (Form ETA-9142A) to the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC). If OFLC approves the application, then the employer may proceed to file a petition to employ foreign nationals as H-2A workers with the Department of Homeland Security.

Who needs to obtain a surety bond?

Every H-2A program applicant that meets the definition of an H-2ALC must obtain and maintain a surety bond throughout the period of time the certification is in effect. Bonds subject to the 2010 Final Rule must be amended (or a new bond must be obtained) to cover any extension of the certification period. Bonds subject to the 2022 Final Rule cover any extension of the certification period.

An H-2ALC is defined as any person who:

- meets the definition of employer under 29 CFR part 501;
- is not a fixed-site employer, an agricultural association, or an employee of a fixed-site employer or agricultural association, as those terms are used in part 501; and
- recruits, solicits, hires, employs, furnishes, houses, or transports any worker subject to 8 U.S.C. 1188, 20 CFR part 655, subpart B or part 501.

What is the required amount for an H-2ALC's surety bond?

The standard bond amounts are available online by visiting OFLC's H-2A website. However, please note that the WHD Administrator may require that an H-2ALC obtain a bond in a higher amount after providing notice and an opportunity for hearing when objective criteria show that the amount of the bond is not sufficient to meet potential wage and benefit obligations or liabilities.

How long does a surety bond remain in force?

For bonds subject to the 2010 Final Rule, the bond must remain in force, i.e., be available to cover to a claim for payment from the WHD Administrator, for at least two years after the expiration of the labor certification, including any extensions. For example, if a labor certification's period of validity starts on March 15, 2023 and expires on September 15, 2023, the bond must remain in force until at least September 14, 2025. However, if WHD has started any enforcement proceedings, including an investigation or litigation before an administrative tribunal or court, the bond must remain in force until the conclusion of the proceedings and any related appeals or litigation.

For bonds subject to the 2022 Final Rule, the bond will remain in force for three years after the expiration of the labor certification, including any extensions, and this period will extend until any enforcement proceeding initiated during that three-year period is concluded, as described above.

What is WHD's process for making a claim on a surety bond?

Once there is a final decision finding H-2A violation(s), WHD may issue a demand letter to the surety to recover unpaid wages and benefits, including interest, the H-2ALC owes its workers, up to the face value of the bond. The letter will contain information about the principal/H-2ALC, a summary of investigative findings, copies of correspondence advising the H-2ALC of back wages due, a copy of each surety bond, and a list of the corresponding Form ETA-9142A numbers.

A demand letter will also include instructions on how to remit payment to the appropriate WHD regional office with jurisdiction over the case.

Note: WHD makes every effort to locate and notify all employees owed back wages for direct payment of the collected funds. In instances where workers cannot be contacted immediately, WHD retains the back wages for three years while continuing efforts to locate those workers. Workers may check to see if they are owed back wages collected by WHD by searching the Workers Owed Wages database.

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How does the insurance or bonding company request cancellation of a surety bond under the 2010 Final Rule?

Only bonds subject to the 2010 Final Rule may be canceled. Bonds subject to the 2022 Final Rule utilize the standard form ETA-9142A – Appendix B and may not be canceled.

For bonds subject to the 2010 Final Rule, a request to cancel an H-2ALC surety bond, i.e., to end the period in which the WHD Administrator may make a claim against the bond after the two-year period in which the bond must remain in force, must be sent to the WHD Administrator at the following address at least 45 days in advance of the requested cancellation or termination date:

> Administrator, Wage and Hour Division
> United States Department of Labor
> 200 Constitution Avenue, NW, Room S-3502
> Washington, DC 20210

The request to cancel should include the name of the principal (the H-2ALC named on the bond and Form ETA-9142A), bond number, requested date of cancellation, Form ETA-9142A number, and the labor certification validity dates. Requests to cancel that are missing one or more of these elements will be returned as WHD is unable to determine if the bond may be canceled without this information. Form ETA-9142A number and labor certification validity dates may be obtained from the principal or from OFLC's H-2A Disclosure Data available at: https://www.dol.gov/agencies/eta/foreign-labor/performance.

Providing point of contact information in the cancellation request, such as name and email address, will assist WHD in timely processing these requests and asking any necessary follow-up questions.

Important: A requested cancellation of an H-2ALC surety bond is not effective unless and until WHD responds to the cancellation request with an approval of cancellation (see below).

Will the insurance or bonding company receive a response from WHD to my surety bond cancellation request?

Yes, WHD will send a response. However, the response may not be received before the requestor's requested cancellation date. A requested cancellation is not effective unless and until WHD approves the cancellation request.

In some cases, WHD cannot determine whether a specific bond may be canceled because the request for cancellation is missing essential information regarding the labor certification for which the bond was issued, e.g., the Form ETA-9142A certification number and validity dates. The surety's primary source of information in this regard is the principal, who has direct access to such information. WHD will also examine the request for cancellation and corresponding labor certification to verify that all cancellation criteria have been met and issue a response.

There are four categories of responses WHD will issue:

1. **Cancellation request not approved - No Form ETA-9142A number**
    a. The Form ETA-9142A number corresponding to the bond to be canceled was not provided on the cancellation request. WHD reviews the bond number against available bond data in an attempt to obtain the Form ETA-9142A number; however, when the Form ETA-9142A number is unavailable, WHD is unable to verify that all bond requirements for cancellation have been met.
    b. An example Form ETA-9142A number is H-300-21321-987654.
2. **Cancellation request not approved - Open enforcement proceeding**
    a. The bond cannot be canceled due to an ongoing enforcement proceeding related to the principal's participation in the H-2A program. Once the enforcement proceeding and all related appeals and litigation are concluded, the bond may be canceled provided that all other cancellation criteria have been met.
3. **Cancellation request not approved - Required claims period has not elapsed**
    a. The bond cannot be canceled because two years have not elapsed from the expiration date of the labor certification and any extension. Once the two years have elapsed, the bond may be canceled provided that all other cancellation criteria have been met.
4. **Approval of cancellation request**

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a. The cancellation request has met all criteria and is approved. The surety may cancel or terminate the bond.

Resources

20 CFR 655 Subpart B

29 CFR 501 Subpart A

ETA OFLC Frequently Asked Questions on the H-2A 2010 Final Rule (see rounds 3, 4, 6, and 8)

Form ETA-9142A—Appendix B

H-2ALC Surety Bond Amounts and Adverse Effect Wage Rates

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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