

Transition Procedures for Applications with Dates of Need Before October 1, 2015:

Important Note: The Department will process all applications in accordance with the rules in effect on the date the application was submitted.

Applications Submitted before April 29, 2015 (2008 Final Rule):

- **Pending Applications:**

- If you filed your H-2B application before April 29, 2015, and your application is still with the Chicago NPC for processing (and has not been withdrawn), the Chicago NPC will continue to process your application in accordance with the 2008 Final Rule, which can be found [here](#).
For additional information on whether your application will be processed under the 2008 Final Rule and what to expect with processing, please see the Frequently Asked Questions on Transition Procedures [here](#).

- **Certifications Granted under the 2008 Final Rule:**

- Section 20 CFR 655.4(c) of the 2015 Interim Final Rule (IFR) provides that, "The NPC shall continue to process an Application for Temporary Employment Certification submitted prior to April 29, 2015, in accordance with 20 CFR part 655, subpart A, revised as of April 1, 2009." As explained in the preamble, under this provision of the 2015 IFR, the NPC will continue to process all applications for certification submitted prior to the effective date of the 2015 rule in accordance with the 2008 Final Rule. 80 FR 24042, 24051 (Apr. 29, 2015). Included within the NPC's continuation of processing are its ongoing audits of those cases certified under the 2008 Final Rule, and specifically its use of the provisions of 20 CFR 655.24 of the 2008 Rule. Section 655.4(c) of the 2015 IFR was jointly issued by both DOL and the Department of Homeland Security, and fully incorporates the provisions of the 2008 Final Rule to the limited extent necessary, as set forth in the 2015 IFR, for the NPC to manage and make decisions about cases certified under the 2008 Final Rule.
- For applications submitted on or after April 29, 2015 with start dates of need prior to October 1, 2015, employers will be permitted to file **under emergency procedures** of 20 CFR § 655.17.
- All applications for prevailing wage determination and certification filed on or after April 29, 2015 will be processed under the 2015 IFR. Further, for H-2B applications with a start date of need before October 1, 2015, Department will waive the required filing time frames and process these applications under its emergency filing procedures, including expedited recruitment of U.S. workers.
- Finally, employers with Prevailing Wage Determinations or either pending or approved H-2B temporary employment certifications will be able to request Supplemental Prevailing Wage Determinations (SPWDs) based on an alternate wage source under the new H-2B regulations. When issued, SPWDs will apply to H-2B workers who were not yet employed in certified positions as of the date the SPWD was issued. They will not apply to H-2B workers already working for the employer nor to U.S. workers recruited and hired under the original job order.

Important Note: No justification for a waiver of the required filing time period must be submitted for applications with a start date of need **before October 1, 2015** because the Department has already determined that the issuance of a new H-2B rule with an immediate effective date constitutes good and substantial cause for using the application filing procedures under 20 CFR § 655.17 Emergency Situations. In addition, employers with start dates of need before October 1, 2015 are exempt from complying with the requirements of 20 CFR §§ 655.8 and 655.9 and do not need to provide copies of agreements with any agent and/or foreign labor recruiters, executed in connection with the H-2B application.