

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
H-2B Non-Agricultural Labor Certification Program
Frequently Asked Questions

**Staggered Crossing of H-2B Nonimmigrants Working in the Seafood Industry as
Established by Section 113 of the Consolidated Appropriations Act, 2014,
Extended by Continuing Appropriations Resolution, 2015**

Preliminary Note: On January 17, 2014, the President signed into law the Consolidated Appropriations Act of 2014 (the “2014 Appropriations Act”), Pub. L. 113-76, which includes a provision permitting staggered entry of H-2B workers employed by employers in the seafood industry under certain conditions. Following passage of the Continuing Appropriations Resolution, 2015, Pub. L. 113-164, this provision expires on December 11, 2014; accordingly, no staggered entry of H-2B workers after December 11, 2014 will be permitted, absent further legislative extensions. The following Frequently Asked Questions clarify the Office of Foreign Labor Certification’s (OFLC) role with respect to the implementation of the new provision.

1. What is the “staggered crossing” provision established by the 2014 Appropriations Act and what employers does it apply to?

All employers submitting an H-2B Application for Temporary Employment Certification must accurately indicate their temporary need, including the starting and ending dates of need for the period which they intend to employ H-2B nonimmigrant workers. However, the 2014 Appropriations Act permits employers in the seafood industry to bring into the United States, in accordance with an approved H-2B petition, nonimmigrant workers at any time during the 120 day period on or after the employer’s certified start date of need if certain conditions are met.

2. How is “seafood” defined for purposes of the new provision?

Seafood is defined as fresh or saltwater finfish, crustaceans, other forms of aquatic animal life, including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals, and all mollusks.

3. I am an employer in the seafood industry filing in the H-2B program; what new or additional information or documentation should I include with my H-2B Application for Temporary Employment Certification in order to be able to use the “staggered crossing” provision established by the 2014 Appropriations Act?

No additional information or documentation related to this new provision should be submitted with an H-2B application to the Office of Foreign Labor Certification's Chicago National Processing Center. However, as discussed below, in order for employers to use this provision, H-2B nonimmigrant workers must show to the Department of State's Consular Officers and to the Department of Homeland Security's Customs and Border Protection Officers, as necessary, the employer's attestation that the conditions contained in the statute have been met.

4. Does the H-2B staggered crossing provision applicable to seafood industry employers include any additional requirements?

Yes. The 2014 Appropriations Act contained two primary conditions that employers must meet in order to benefit from this statute. First, this rule applies only to employers engaged in a business in the seafood industry, as defined above, that permit or require their H-2B nonimmigrant workers to enter the United States up to 120 days after the certified start date of need. Second, any seafood industry employer that permits or requires its H-2B nonimmigrant workers to enter the United States between 90 and 120 days after the certified start date of need must complete a new assessment of the local labor market during the period that begins **at least 45 days after the certified start date of need and ends before the 90th day after the certified start date of need**, which must include:

- (A) Listing the job in local newspapers on two separate Sundays;
- (B) Placing new job orders for the job opportunity with the State Workforce Agency serving the area of intended employment and posting the job opportunity at the place of employment for at least 10 days.
- (C) Offering the job to any equally or better qualified U.S. worker who applies for the job and who will be available at the time and place of need.

5. I am an employer in the seafood industry and I want to use the “staggered crossings” provision with respect to the H-2B nonimmigrant workers entering the United States to work for my business. What must I do to comply with this statutory provision?

A seafood industry employer must prepare a written, signed attestation indicating its compliance with the statutory conditions outlined above in response to Question No. 3. The official attestation is available in PDF-format on OFLC's website at <http://www.foreignlaborcert.doleta.gov/form.cfm>. Employers must download the official attestation, review the conditions contained in the attestation, and indicate compliance by signing and dating the attestation. An employer seeking to use this statutory provision must provide each H-2B nonimmigrant worker seeking entry into the United States a copy of the signed and dated attestation, with instructions that the worker must present the documentation upon request to the Department of State's Consular Officers when they apply for a visa, and/or the Department of Homeland Security's Customs and Border Protection officers when seeking entry into the United States. Without this attestation, an H-2B nonimmigrant may be denied entry into the United States if seeking to cross the border at any time other than the start date stated in the petition. (The

attestation is not necessary when filing an amended petition based on a worker that is being substituted under 8 CFR 214.2(h)(6)(viii)). The attestation presented by an H-2B nonimmigrant worker in order to cross the border must be the official attestation downloaded from OFLC's website and may not be altered or revised in any manner.

6. I have conducted the additional recruitment necessary to bring my H-2B workers into the United States 90 days after my certified start date of need. Should I send proof of the additional recruitment to the Office of Foreign Labor Certification's Chicago National Processing Center?

No. Seafood industry employers who conduct additional recruitment required by the 2014 Appropriations Act should not submit proof of the additional recruitment to the Office of Foreign Labor Certification. However, seafood industry employers must retain the additional recruitment documentation, along with their pre-filing recruitment documentation, for a period of 3 years from the date of certification, consistent with the document retention requirements under 20 CFR 655.15(c).