

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION

2010 H-2A Program FAQs

Round 12

June 16, 2017

JOB OFFERS, ASSURANCES, AND OBLIGATIONS

Housing

1. I plan to use rental housing or public accommodations. Is a SWA inspection required?

The Department's regulations do not require SWA inspection of housing available for rent to the general public (as opposed to housing used mainly by migrant agricultural workers) or public accommodations, such as hotels or motels, available to the general public (as opposed to accommodations used mainly by migrant agricultural workers). Rather, the regulations require that such housing or accommodations comply with local standards if there are such standards, and if there are not, then with applicable State standards. In the event there are no applicable local or State standards, then DOL OSHA standards at 29 CFR 1910.142 will apply. Only if the applicable standard requires SWA inspection, must you provide a SWA certification.

2. I plan to use rental housing or public accommodations. What do I need to submit to demonstrate the housing complies with applicable housing standards?

Employers using rental housing or public accommodations, available to the general public must comply with applicable local, state or Federal standards as described in 20 CFR 655.122(d)(ii). This obligation requires employers to submit documentation to the Certifying Officer (CO) that informs the CO which standards (i.e., local, State, or Federal) apply to the rental housing or public accommodations it will use, and demonstrate that the housing or accommodations comply with those standards. Employers are encouraged to submit this documentation when filing the *H-2A Application for Temporary Employment Certification*, Form ETA-9142A. The type of documentation an employer will need to submit before certification may be granted will depend on the particular circumstances and applicable housing standards. Acceptable documentation includes, but is not limited to, the following:

- If the applicable rental housing or public accommodation standards require SWA inspection, the employer must submit a copy of the SWA inspection report or certification.
- If the applicable rental housing or public accommodation standards require inspection by a local, State, or Federal authority other than the SWA, the employer must submit a copy of official documentation from that authority. This documentation may include, but is not limited to, a certificate from the local or State Department of Health or building department (e.g., the current certificate of occupancy).
- If the applicable rental housing or public accommodation standards do not require inspection by the SWA or another local, State, or Federal authority, the employer must submit a written statement, signed and dated, identifying the applicable housing standards; confirming that no local, State, or Federal inspection is required; and attesting that the accommodations are compliant with applicable standards. The written statement may be prepared and signed either by the employer itself or the employer's attorney or agent, or by the person or entity that owns, controls, or otherwise operates the rental housing or public accommodation.
- If an H-2A Labor Contractor 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(b)(5)(i). In support of its application, the H-2A Labor Contractor 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) and, if applicable, 655.235” and attach to this statement a copy of the SWA certification. See Form ETA-9142A, Appendix A, Section B.16(v).

In the event the documentation submitted 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 Notice of Deficiency soliciting additional documentation to demonstrate compliance.

The CO must receive documentation demonstrating compliance in order to issue a favorable determination.

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.