

The H-2A Visa Program in Tennessee: General Overview

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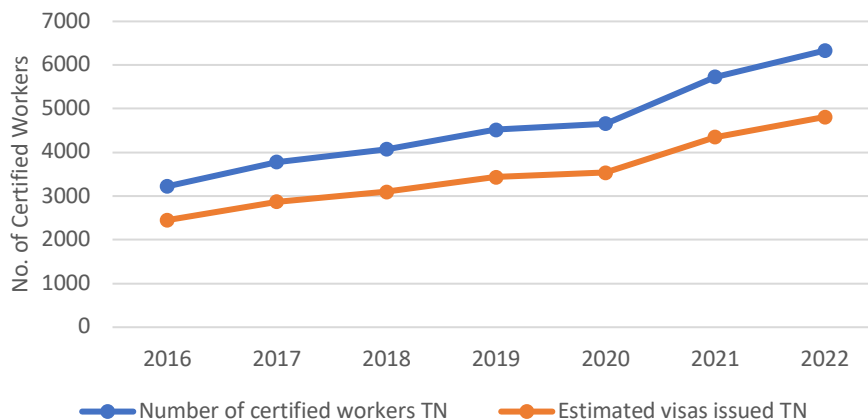
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This publication aims to provide a general overview of the H-2A visa program in Tennessee, specifically the use of the program in terms of certified workers; the geographic distribution of these workers; the certification process, businesses or firms that could help with the certification process; and program costs for employers of H-2A workers. This publication is designed to provide an overview and should not be taken as a “How To” instructional document. For an overview of the steps to be completed during the application process, you can visit the US Department of Agriculture H-2A Visa Program website at tiny.utk.edu/jPzD9. Keep in mind that this website does not capture recent changes to the H-2A program.

The H-2A temporary agricultural program, also called the H-2A visa program, is a program that allows US agricultural employers experiencing a shortage of domestic workers to fill seasonal or temporary jobs with foreign nonimmigrant workers. The employment must involve agricultural work that is seasonal or temporary in nature, lasting no longer than one year, except in extraordinary circumstances (US Department of Labor, 2023a). For example, the harvesting of crops is seasonal in nature and requires higher labor levels than any other activities related to a crop’s growing cycle. Nonetheless, businesses that are not traditionally seasonal could also have seasonal needs that justify the use of H-2A workers.

In the U.S., the number of certified temporary jobs under the H-2A visa program has more than doubled since FY 2016, going from over 150,000 certified temporary jobs to 371,619 in FY 2022 (Castillo, 2023). In Tennessee, the US Department of Labor certified 6,331 temporary jobs under the H-2A visa program in FY 2022 (US Department of Labor, 2023b). This is a 96 percent increase from the 3,224 temporary jobs certified in Tennessee under the H-2A visa program in FY 2016 (Figure 1). Visas are not issued for every certified job. On average, between FYs 2016 and 2022, 76 percent of certified jobs under the H-2A program resulted in visa issuance (US Department of State – Bureau of Consular Affairs, 2023). We used this estimated percentage to approximate the number of H-2A visas issued for certified workers in Tennessee between FYs 2016 and 2022 (see Figure 1).

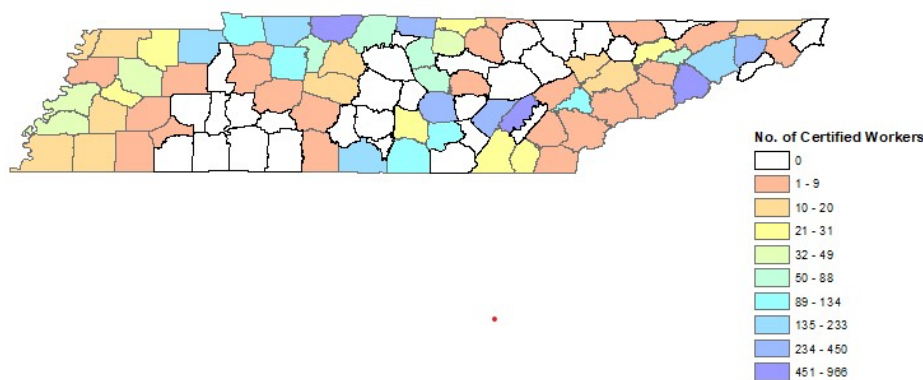


Source: US Department of Labor, and author calculations

Figure 1. Number of H-2A certified jobs in TN between FYs 2016 and 2022

H-2A workers in Tennessee are concentrated in counties with a large percentage of labor-intensive crop production. In FY 2022, the top ten counties representing more than 70 percent of the total H-2A certifications were Rhea, Robertson, Cocke, Warren, Macon, Washington, Bledsoe, Henry, Greene and Lincoln, each of them with anywhere between 200 and 966 certified jobs (Figure 2). Rhea was the county with the highest number of certified H-2A workers in Tennessee in FY 2022 (i.e., 966). According to the 2017 US Census of Agriculture, these top counties represent about 16 percent of the total vegetable production and 14 percent of the total vegetable operations in Tennessee. Furthermore, acreage under tobacco production in Roberson, Macon, Washington, Henry and Greene counties represents about 56 percent of the total tobacco acreage in Tennessee. Warren County represents 29 percent of the total nursery operations and 63 percent of the total acreage in nursery production in Tennessee (USDA NASS, 2023).

Notably, about 54 percent of total agricultural employers in Tennessee requested less than ten workers, and about 25 percent requested less than five workers in FY 2022.



Source: US Department of Labor (2023)

Figure 2. Number of H-2A certified jobs in TN by county in FY 2022

Under the Standard Occupation Classification, about 97 percent of the certified jobs in Tennessee are classified as Farmworkers and Laborers, Crop, Nursery and Greenhouse workers. According to the US Bureau of Labor Statistics (2023), workers under this classification:

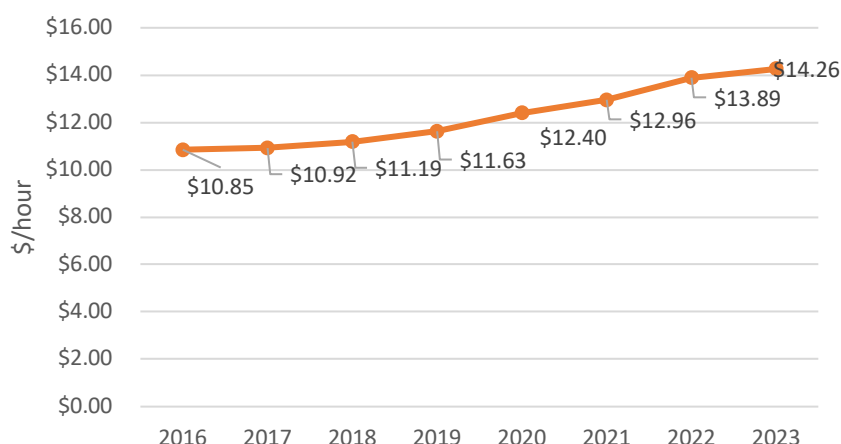
“Manually plant, cultivate, and harvest vegetables, fruits, nuts, horticultural specialties, and field crops. Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives. Duties may include tilling soil and applying fertilizers; transplanting, weeding, thinning, or pruning crops; applying pesticides; or cleaning, grading, sorting, packing, and loading harvested products. May construct trellises, repair fences and farm buildings, or participate in irrigation activities.”

Other occupations employed in Tennessee using the H-2A program include agricultural equipment operators and first-line supervisors of farming, fishing, and forestry workers.

The Adverse Effect Wage Rate

To protect US workers from adverse effects on their wages from hiring foreign workers, the US Department of Labor established a minimum hourly wage rate that employers of H-2A workers must offer and pay (US Department of Labor, 2023c). This hourly wage rate is called the adverse effect wage rate (AEWR). An

employer seeking to employ H-2A workers is required to pay them a wage at least equal to the AEWR if this is the highest applicable rate for the job offered by the employer. The AEWR is adjusted yearly using wage data from the US Department of Agriculture Farm Labor Survey. Figure 3 shows the Tennessee AEWR from FYs 2016 to 2023. Notably, even as the AEWR increased each year during this period, the number of certified workers in Tennessee has markedly increased, as shown in Figure 1.



Source: US Department of Labor

Figure 3. Tennessee Adverse Effect Wage Rate 2016-2022

The US Department of Labor published a final rule in February of 2023 describing a new methodology for determining hourly AEWRs that was implemented on March 30, 2023, for certain non-range occupations (i.e., all occupations other than herding and production of livestock on the range) for temporary labor certification in the H-2A program (US Department of Labor, 2023d). This new methodology uses a combination of wage data reported by the Farm Labor Survey and the Department's Bureau of Labor Statistics Occupational Employment and Wage Statistics survey. Examples of those jobs that may be affected include jobs or roles related to worker supervision (i.e., SOC code 45-1011: First-Line Supervisors of Farm Workers) and jobs that entailed driving duties depending on the type of equipment involved and the location of the work. Whether the new rule applies will depend on how the job order is structured and how the worker performs the job. To learn more about the final rule and the new methodology, visit the US Department of Labor's website, where more information is available, including a summary of the final rule and frequently asked questions with examples.¹

Employer Costs Beyond Wages

An example of the estimated employer costs associated with sourcing workers through the H-2A program in FY 2023 is listed in Table 1 for an employer requesting four workers. Costs presented in Table 1 were estimated using information from five operations in Tennessee using the H-2A program in FY 2023. These costs include application, filing, consulate, border stamp and agent fees (US Department of Agriculture, 2023). Additionally, there are costs associated with the transportation of workers from and to their home country and transportation for travel to and from the grocery store and bank. Employers should provide housing for workers, which is an additional cost for employers. All worker housing must be safe, clean and inspected before occupancy by federal or state inspectors to ensure housing meets all applicable safety standards. Other costs included workers' compensation, house and vehicle insurance, house repairs, and

¹H-2A Temporary Agricultural program, available at tiny.utk.edu/5zML2; 2023 H-2A Adverse Effect Wage Rate (AEWR) Final Rule FAQs - Round 2: AEWR Determination Guidance. Available at tiny.utk.edu/af2pR

house water testing as part of the housing requirements. Labor certification, nonimmigrant worker petition filling, visa application and border stamp fees are the same regardless of the operation. In contrast, agent fees; inbound, outbound, and daily transportation; worker compensation; and housing will vary greatly from operation to operation depending on the agent, worker country of origin, transportation mode, type of work and crop workers are working with, number of workers employed, and type of housing provided.

Agent Fees

Agent fees are paid to authorized individuals and businesses that complete the necessary documentation and help complete the certification process on behalf of the employee. An employer can directly complete the H-2A certification process, but given the number of steps and documentation requirements, a large percentage of the petitions or worker certifications in Tennessee are handled by an authorized attorney, agent, firm or business specializing in H-2A worker applications. These authorized individuals and businesses complete the necessary documentation and help complete the certification process on behalf of the employer. These businesses or firms charge fees for their services (see agent fees in Table 1). In FY 2022, about 88 percent of the certified jobs in Tennessee were handled by an agent, 9 percent by an attorney, and only about 3 percent of the job certifications were handled by the employer without any representation. For comparison purposes, during the same fiscal year in the US, about 60 percent of the certified jobs were handled by an agent, and about 20 percent were handled by an attorney (US Department of Labor, 2023b).

Transportation and Travel Costs

There are costs associated with workers traveling from their home country to the work site and back to their country, including transportation and subsistence costs. There are also costs associated with workers' transportation for traveling to and from the living quarters, the grocery store, and the bank (US Department of Labor, 2023e). These costs will vary depending on the worker's country of origin, mode of transportation, distance to the grocery store and bank, and distance from the living quarters to the worksite. We added this cost in Table 1 but did not provide a specific estimate because of the great variation related to these costs.

Workers Compensation

There are worker compensation costs associated with employing H-2A workers. These costs will vary greatly depending on the type of work performed by workers and the type of crops workers are working with.

Housing

Employers of H-2A workers must provide housing at no cost to workers (US Department of Labor, 2023e). If the employer decides to secure rental accommodations, such as apartments, hotels or motels, the employer is required to pay all housing-related charges directly to the housing's management. Employer-provided or secured housing must meet all applicable safety standards. In addition, employers are required to either provide each worker with three meals per day or to facilitate a free and convenient cooking and kitchen space where workers can prepare their meals. Housing costs include repairs, water testing and utilities if the employer is providing housing on-site instead of securing rental accommodations. In Tennessee, the type of housing provided by employers to H-2A workers varies greatly depending on the number of workers. Examples of housing types used in Tennessee for H-2A workers include mobile homes, wood frame bunkhouses, trailers, metal frame houses, single-family houses, hotels, motels and apartments (US Department of Labor, 2023b). For example, a farmer in Tennessee employing four H-2A workers indicated that a wood frame 12x28 portable building housing for four workers could cost about \$25,000. He estimated repair costs at \$500 per year and water testing at anywhere between \$150 to \$200 per year. Another farmer estimated housing costs at \$1,000 per worker per month. US Department of Agriculture estimates

that housing costs are around \$9,000 to \$13,000 per worker (US Department of Agriculture, 2023), which seems to be high. It is unclear if this cost includes investment costs, as well as utility and repair costs. Furthermore, it is unclear what type of housing these estimates are associated with. ***Housing tends to be the highest expense for employers, especially if one is built on-site, as this will imply an investment for the employer and will imply utilities and maintenance costs.***

Taxes

Workers under the H-2A program are exempt from US Social Security and Medicare taxes on compensation paid to them for work or services provided under this program (IRS, 2023). There are other unique tax implications for workers and employees under the H-2A program that should be consulted with an accountant. For additional information about tax implications for workers and employers under the H-2A program, you can visit the IRS website at tiny.utk.edu/yRJal.

Table 1. Example of Estimated Employer Costs Requesting Four H-2A Workers in FY 2023.

Expense	Description	Example of Estimated Costs for four H-2A workers
H-2A labor certification filing fee (to DOL)	\$100 per application plus \$10 per certified worker (max of \$1,000 total). One application will be \$100 plus \$40 (\$10/worker x 4 workers)	\$140
Nonimmigrant worker petition filing fee (to USCIS)	\$460 per application	\$460
H-2A visa application consulate fee	\$205 per worker. Must be reimbursed to the worker in the first paycheck. For a four-worker application, this will be \$820.	\$820
US border stamp fee	\$6 per worker, for a total of \$24 (\$6/worker x 4 workers)	\$24
Agent fee	Varies by the agent. For example, the agent's fee for four workers could be between \$400 and \$600 per worker. This cost might decrease depending on the number of workers certified. The estimated cost for four workers in this example is \$2,400 (\$600/worker x 4 workers).	\$2,400
Transportation country-worksite-country (e.g., transportation, lodging and per-diem)	Cost varies depending on the country of origin. In this example, we estimated \$1,200/worker x 4 workers = \$4,800	\$4,800
Weekly travel to and from the grocery store, bank and/or worksite	Cost varies. A farmer we interviewed suggested \$0.4 to \$0.5 per mile for town, bank, farm trips, etc. Because these costs would vary greatly depending on the farm location, distance to the worksite, grocery store, and bank, we did not estimate this cost, but it needs to be considered by employers of H-2A workers.	Varies greatly but needs to be included in total costs.

Table 1. Continuation

Workers Compensation	Required to have in order to employ H2A workers. The rates vary greatly depending on the type of work and crop the workers are working with. In this example, we estimated this cost to be \$2,900 based on information from a grower using the H-2A program in Tennessee.	\$2,900
Housing and other living expenses	Varies by type of housing provided by employer. Examples of types of housing include mobile homes and apartment-style housing. Some employers subcontract housing with hotels or motels.	Varies greatly but needs to be included in total costs.
Estimated total without housing and daily transportation expenses.	This estimated total does not include housing and weekly transportation expenses. Housing is one of the highest expenses associated with using the H-2A program.	\$11,544

The H-2A Certification Process and Who Can Help?

The US Department of Labor is in charge of certifying all H-2A temporary positions. In Tennessee, 6,467 positions were requested, and 6,331 were certified in FY 2022 (US Department of Labor, 2023b). The process of applying to hire H-2A workers involves several steps and requirements:

Step 1: Filing a Job Order (H-2A Agricultural Clearance Order Form ETA-790/790A) for an H-2A Job Opportunity with the local State Workforce Agency. The job order should be filed 75 to 60 calendar days before the employer's first date of need.

Step 2: Filing an H-2A Application for Temporary Employment Certification (Form ETA-9142A) and all required appendices and documentation with the Department of Labor's Chicago National Processing Center. The application should be filed no less than 45 calendar days before the employer's first date of need.

Step 3: Conducting recruitment for US Workers. Farmers are required to recruit US workers following instructions for how to prepare and when to submit a recruitment report to the Office of Foreign Labor Certification National Processing Center.

Step 4: If temporary agricultural labor certification is granted, the Office of Foreign Labor Certification will provide the farmer with its final determination notice.

After the final determination notice, the farmer will complete an H-2A visa petition with the US Citizenship and Immigration Services. Workers will apply for the H-2A visa with the Department of State and complete consulate interviews. Approved workers will travel to the worksite and arrive on the start date with an arrival/departure record.

Figure 4 is an H-2A application process flowchart for employers provided by the US Department of Labor that shows the steps and timing of the process. Employers who are considering the H-2A program should review the resources and references provided at the end of this publication, including US Department of Labor and US Department of Agriculture Farmers.gov websites that have detailed information on how and where to apply along with the option to create a personalized H-2A visa checklist to help with the process.

Table 2 presents the top 10 businesses/firms in terms of certified jobs used by Tennessee employers to handle H-2A job certifications in FY 2022.² Employers should conduct their research before using an attorney, agent, or H-2A labor contractor to handle the certification and hiring process.

Table 2. Agents or attorneys who helped Tennessee employers with the H-2A applications, FY 2022

Law firm/Business	Email or Website	Phone Number	Certified Workers
Agriculture Workforce Management Association	h2a@awmalabor.com	(859) 233-7845	1,840
National Agricultural Consultants LLC	theresa@nach2a.com	(910) 947-6004	1,094
AgWorks H2, LLC	https://www.maslabor.com/agworks	(434) 263-4300	822
Low Country Labor Company	ck@lowcountrylabor.com , https://lowcountrylabor.com/	(843) 200-4263	697
Andrew Jackson Law PC.	https://legalfarmworkersh2avisas.com/	(910) 592-4124	250
Signature Staffing Inc.	stephanie@signaturestaffinginc.com	(863) 201-9211	167
Mas Labor H2A, LLC (They merged with AgWorks H2, LLC in 2022)	https://www.maslabor.com/agworks	(434) 263-4300	152
Florida Fruit and Vegetable Association	h2.labor@ffva.com	Not Available	144
KY FARMERS AID INC	kfainc2@gmail.com	(270) 489-2378	121
YOUNGBLOOD & ASSOCIATES, PLLC	H2@YOUNGBLOODASSOCIATES.COM	(931) 274-7811	114

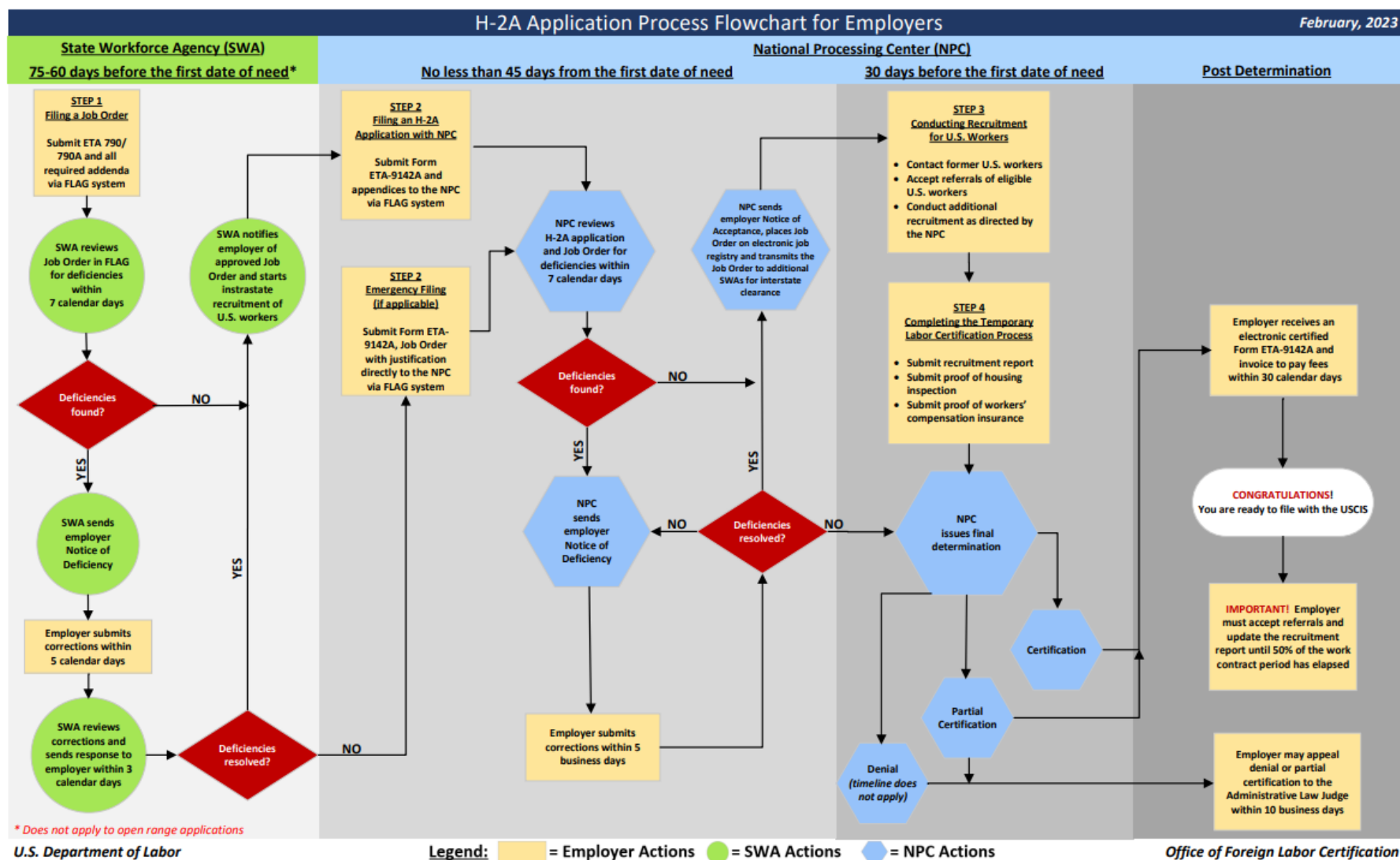
Source: US Department of Labor

Updates

The H-2A program is a federal program subject to changes from federal and state agencies and legislation. Those considering the H-2A program should review the latest information on the US Department of Labor's website before applying to ensure the latest updates and changes are considered in the decision to use the program. As of the time of this publication, there is a Notice of Proposed Rulemaking (NPRM) provided by the US Department of Labor on September 12, 2023, Improving Protections for Workers in Temporary Agricultural Employment in the United States. The proposed rulemaking focuses on strengthening protections for agricultural workers under the H-2A program and enhancing the US Department of Labor's capabilities to monitor program compliance and take necessary enforcement actions against program violators.

² The University of Tennessee does not endorse the businesses/firms presented in this publication.

Figure 4. H-2A Application Process Flowchart for Employers



Source: US Department of Labor, Available at tiny.utk.edu/xGd6n

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