



DHS Proposes Changes to Improve H-2A Temporary Agricultural Worker Program

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For Immediate Release
Office of the Press Secretary
Contact: 202-282-8010

Notice of Proposed Rulemaking: Changes to Requirements Affecting H-2A Nonimmigrants (PDF, 69 pages - 620 KB)

Fact Sheet: H-2A Temporary Agricultural Worker Program

The U.S. Department of Homeland Security announced today a series of proposed rule modifications to provide employers with a streamlined hiring process for temporary and seasonal agricultural workers under the H-2A program.

"These proposed changes are designed to provide an efficient and secure program for farmers to legally fulfill their need for agricultural workers within the law rather than outside the law," said Homeland Security Secretary Michael Chertoff. "This common-sense simplification of H-2A will provide farm employers with a more orderly and timely flow of legal workers, while continuing to protect the rights of laborers and promoting legal and secure methods for determining who is coming into the country."

The proposed modifications to the rule reduce current limitations and certain delays faced by U.S. employers and relax the current limitations on their ability to petition for multiple, unnamed agricultural workers. It extends from 10 to 30 days the time a temporary agricultural worker may remain in the U.S. after the end of employment. The rule also reduces from six to three months the time a temporary agricultural worker must wait outside the U.S. before he or she is eligible reenter the country under H-2A status. Additionally, under the proposed rule H-2A workers who are changing from one H-2A employer to another may begin work with the new petitioning employer before the change is approved by USCIS, provided the new employer participates in USCIS' E-Verify program.

To better ensure the integrity of the H-2A program, and encourage the lawful employment of foreign temporary and seasonal agricultural workers, the proposed rule would:

- Require an employer attestation regarding the scope of the H-2A employment and the use of recruiters to locate H-2A workers;
- Crack down on employers and recruiters who impose fees on prospective H-2A workers;
- Eliminate the ability of employers to file an H-2A petition without an approved temporary labor certification; and
- Prohibit the approval of H-2A petitions for nationals of countries determined to be consistently refusing or unreasonably delaying repatriation of their nationals.

The rule also proposes the establishment of a land-border exit system pilot program. Under the program, H-2A visa holders admitted through a port of entry participating in the program would also depart through a port of entry participating in the program and present upon departure designated biographical information, possibly including biometric identifiers.

The proposed rule is available at www.dhs.gov for public comment and will soon appear at www.regulations.gov under docket number "USCIS-2007-0055," until 60 days after publication in the *Federal Register*. More information regarding the proposed rule, plus instructions on submitting comments, is available through an accompanying Fact Sheet available at the USCIS website: www.uscis.gov.

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Employers in the United States have often faced a shortage of available domestic workers who are able, willing and qualified to fill seasonal agricultural jobs. The H-2A program was instituted to meet this need for seasonal and temporary labor, without adding permanent residents to the population.

The H-2A program is authorized by the *Immigration and Nationality Act*, (INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a), which permits U.S. employers to bring temporary foreign workers into the United States to perform seasonal agricultural work.

The H-2A program is managed by three federal agencies. The Department of Labor (DOL) issues the H-2 labor certifications and oversees compliance with labor laws; U.S. Citizenship and Immigration Services (USCIS) adjudicates the H-2 petitions, and the Department of State (DOS) issues the visas to the workers at consulates overseas..

There are no annual limitations on the number of temporary foreign H-2A workers that may be admitted into the United States. However, under the current DOL labor certification process, employers must certify that U.S. workers are not available to perform this work before they may hire a nonimmigrant worker. They must also certify that the wages and working conditions meet regional standards.

Since this is a temporary worker program, H-2A nonimmigrant workers coming to the United States to perform seasonal jobs must leave following a maximum period of stay. Some may apply to extend their stay or change/adjust status.

Background

The *Bracero* program of 1942-1964 was United States' first major temporary farm worker program. It permitted Mexicans to take temporary work in the U.S. agriculture industry. While the *Bracero* program succeeded in expanding the farm labor supply, it resulted in depressed wages in the Southwest and was eventually dissolved. It was replaced in 1964 by the H-2 program, which allowed employers to hire foreign workers for both agricultural and non-agricultural jobs in locations with a shortage of domestic workers. By 1986, this program was found to have similar problems as the *Bracero* program.

When the Immigration Reform and Control Act of 1986 (IRCA) was enacted, it divided H-2 workers into temporary agricultural workers (H-2A), and temporary non-agricultural workers (H-2B). IRCA also allowed special agricultural workers to legalize their status by proving they worked 90 days in U.S. agriculture between May 1, 1985 and May 1, 1986. Additionally, IRCA allowed additional replenishment agricultural workers to enter the United States as temporary residents between 1990 and 1993 if there was a shortage of farm workers during that time.

Statistics

Fiscal Year 2007

- USCIS received 6,212 H-2A I-129 petitions and approved 6,134 petitions for 78,089 beneficiaries.
- DOS issued 50,791 H-2A visas.

Fiscal Year 2006

- USCIS received 5,667 H-2A I-129 petitions and approved 5,448 petitions for 56,183 beneficiaries.
- DOS issued 37,149 H-2A visas.

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