



## U.S. Citizenship and Immigration Services

# USCIS Publishes Guidance on H-2A Petitions for Sheep/Goat Herders

U.S. Citizenship and Immigration Services today [published a policy memorandum \(PDF, 408 KB\)](#) (PM) that requires requests for temporary foreign workers for range sheep or goat herding or production be subject to the same requirements as other temporary agricultural workers.

USCIS is issuing this PM to ensure that H-2A nonimmigrant sheep/goat herders may only fill temporary and/or seasonal herder positions, and that petitioners filing petitions for permanent sheep/goat herders comply with the requirements applicable to permanent positions.

Under the PM, H-2A sheep/goat herder petitions will be subject to the same temporary or seasonal need analysis that applies to all other H-2A petitions, and petitions seeking to hire H-2A sheep/goat herders for 364-day back-to-back periods (or similarly lengthy, consecutive periods for the same job duties for a sheep/goat herder position) with no material or meaningful break between them will not be approved if the petitioner cannot prove it has a temporary or seasonal need for the workers. This PM will ensure that USCIS consistently applies H-2A regulations on temporariness and seasonality to H-2A sheep/goat herder petitions, and that the wages and working conditions of similarly situated U.S. workers are not depressed by the employment of H-2A temporary workers.

This PM will assist in safeguarding the integrity of the H-2A program, which was intended for agricultural labor or services that are temporary or seasonal in nature. Adjudicating the temporariness and seasonality of H-2A sheep/goat herder petitions with the same criteria as other H-2A petitions will also support consistency and fairness while protecting the interests of U.S. workers (for example, their wages and job opportunities). The PM is not intended to alter current policy or practice for the adjudication of non-sheep herding or goat herding H-2A petitions, but to ensure that USCIS adjudicates all H-2A sheep/goat herder petitions on a case-by-case basis, considering the totality of the facts presented, and in the same manner as all other H-2A petitions, consistent with the Immigration and Nationality Act (INA) and existing regulations.

Effective June 1, 2020, USCIS will adjudicate any [Form I-129, Petition for Nonimmigrant Worker](#), filed by petitioners seeking H-2A sheep/goat herder positions in line with this PM. USCIS believes the future effective date allows H-2A petitioners to amend their practices, as necessary.

This PM is being issued in response to a lawsuit brought by worker advocates challenging USCIS adjudications of H-2A sheep herding and goat herding petitions and the D.C. Circuit's order in that case. *Hispanic Affairs Project v. Acosta*, 901 F.3d 378, 386 (D.C. Cir. 2018). USCIS agrees with the order and interprets the D.C. Circuit Court's opinion as indicating that consecutive, back-to-back 364-day approvals of H-2A sheep/goat herder petitions (or similarly lengthy, consecutive periods for the same job duties for a sheep/goat herder position) with no material or meaningful break between them would violate the INA and Department of Homeland Security regulations, absent a petitioner establishing that its need is in fact seasonal or temporary.

USCIS welcomes comments on the PM, the proposed effective date, potential cost savings or increases, impacts on filing practices, and other topics that are the focus of this PM via the [Policy Memoranda for Comment](#) page. USCIS will review and consider all comments received during the 30-day comment period from Nov. 14 to Dec. 14, 2019, and may subsequently publish a revised PM, as needed. The guidance

contained in the PM will be controlling and will supersede any prior guidance regarding the determination of temporary or seasonal need for H-2A sheep and goat herder petitions.

Last Reviewed/Updated: 11/14/2019