

News for Beekeepers: Government

DHS and USDA Move to Protect American Farmers and Ensure Continued Flow of America's Food Supply

Thursday, April 16, 2020

On April 15, 2020, the Department of Homeland Security (DHS) announced it is providing some flexibility for H-2A employers during the Coronavirus pandemic in order to protect the nation's food supply chain. The rule (posted below) will make two different temporary changes in their regulations. The first change will allow H-2A workers that are transferred from a prior employer to begin work sooner with their new employer.

Under current regulations, an H-2A worker transferred from employer 1 to employer 2 usually cannot begin working for employer 2 until that employer's petition is approved by USCIS. That process typically takes a couple of weeks. Under the change announced, after the new employer files a petition with USCIS, the H-2A workers can begin working on the start date listed on the petition even before the petition is approved. This benefit is already available to H-2A employers that are enrolled in E-Verify, but with this change, all H-2A employers can take advantage of this flexibility.

The second change relates to the maximum amount of time an H-2A worker can be present in the U.S. over a 3-year period. Currently, an H-2A worker must be outside of the U.S. for at least 90 consecutive days every three years. This requirement is temporarily being waived to allow H-2A workers to remain in the U.S. if they are needed to perform additional agricultural work.

U.S. DEPARTMENT OF HOMELAND SECURITY
Office of Public Affairs

DHS and USDA Move to Protect American Farmers and Ensure Continued Flow of America's Food Supply
Department to Temporarily Amend Certain H-2A Requirements During COVID-19 National Emergency

WASHINGTON—The Department of Homeland Security, with the support of the U.S. Department of Agriculture (USDA), has announced a temporary final rule to change certain H-2A requirements to help U.S. agricultural employers avoid disruptions in lawful agricultural-related employment, protect the nation's food supply chain, and lessen impacts from the coronavirus (COVID-19) public health emergency. These temporary flexibilities will not weaken or eliminate protections for U.S. workers.

Under this temporary final rule, an H-2A petitioner with a valid temporary labor certification who is concerned that workers will be unable to enter the country due to travel restrictions can start employing certain foreign workers who are currently in H-2A status in the United States immediately after United States Citizenship and Immigration Services (USCIS) receives the H-2A petition, but no earlier than the start date of employment listed on the petition. To take advantage of this time-limited change in regulatory requirements, the H-2A worker seeking to change employers must already be in the United States and in valid H-2A status.

Additionally, USCIS is temporarily amending its regulations to protect the country's food supply chain by allowing H-2A workers to stay beyond the three-year maximum allowable period of stay in the United States. These temporary changes will encourage and facilitate the continued lawful employment of foreign temporary and seasonal agricultural workers during the COVID-19 national emergency. Agricultural employers should utilize this streamlined process if they are concerned with their ability to bring in the temporary workers who were previously authorized to work for the employer in H-2A classification. At no point is it acceptable for employers to hire illegal aliens.

"This Administration has determined that continued agricultural employment, currently threatened by the COVID-19 pandemic, is vital to maintaining and securing the country's critical food supply chain. The temporary changes announced by USCIS provide the needed stability during this unprecedented crisis," said Acting Secretary of Homeland Security Chad F. Wolf.

"USDA welcomes these additional flexibilities provided by the Department of Homeland Security today," said Secretary of Agriculture Sonny Perdue. "Providing flexibility for H-2A employers to utilize H-2A workers that are currently in the United States is critically important as we continue to see travel and border restrictions as a result of COVID-19. USDA continues to work with the Department of Homeland Security, the Department of Labor and the Department of State to minimize disruption and make sure farmers have access to these critical workers necessary to maintain the integrity in our food supply."

The temporary final rule is effective immediately upon publication in the Federal Register. If the new petition is approved, the H-2A worker will be able to stay in the United States for a period of time not to exceed the validity period of the Temporary Labor Certification. DHS will issue a new temporary final rule in the Federal Register to amend the termination date of these new procedures in the event DHS determines that circumstances demonstrate a continued need for the temporary changes to the H-2A regulations.

The H-2A nonimmigrant classification applies to alien workers seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States, usually lasting no longer than one year, for which able, willing, and qualified U.S. workers are not available.