

## Frequently Asked Questions Regarding the H-2A Temporary Guest Worker Program

Below are answers to select frequently asked questions. For more information about the program and answers to frequently asked questions please visit: [www.foreignlaborcert.doleta.gov](http://www.foreignlaborcert.doleta.gov)

### **1. How do growers amend their orders once they are submitted but before the workers are sent over?**

The amendment process depends on the timing of the amendment request. Please see below for the different scenarios.

- ❖ **After the job order is submitted to the State Workforce Agency but before the H-2A application is filed with the Chicago National Processing Center (CNPC).** If the employer wishes to amend the job order after submission to the State Workforce Agency (SWA) but before the H-2A application is filed with the CNPC, the employer should contact the SWA to which the job order was submitted.
- ❖ **After the H-2A application is filed with the Chicago National Processing Center but before the final decision is reached.** If the employer wishes to amend the job order after filing an H-2A application, the employer should send a request by email to [h2a.amend&extend.chicago@dol.gov](mailto:h2a.amend&extend.chicago@dol.gov), by facsimile to (312) 886-1688 (Attn: H-2A Amendment Request), or by mail to U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 536 South Clark Street, 9<sup>th</sup> floor, Chicago, Illinois 60605-1509; Attn.: H-2A Amendment Request.

The employer's request must include a statement or other documentation (for example state/local weather reports, crop yield data, or other applicable documentation) demonstrating how the change in need (period of employment or number of workers) could not have been foreseen and an explanation of how the crops or commodities will be affected if the amendment is not granted immediately.

### **2. How do growers terminate the work contracts both when they are and when they are not able to fulfill the three-fourths guarantee?**

Employers who wish to terminate their work contracts before the end of the certified period of need may request that the Department make a finding of contract impossibility in the manner specified below.

- ❖ **Contract Termination after Final Determination: Contract Impossibility.** If the employer wishes to terminate a work contract with a worker before the end of the certified period of employment without being required to fulfill the three fourths guarantee in its entirety, the employer must send a request to the Chicago National Processing Center:
  - By email to [h2a.amend&extend.chicago@dol.gov](mailto:h2a.amend&extend.chicago@dol.gov), with the words "H-2A Contract Impossibility Request" contained in the subject line of the e-mail; or,
  - If the employer does not have internet access by fax to (312) 886-1688 (ATTN: H-2A Contract Impossibility Request) or by U.S. mail to the: U.S. Department of Labor; Employment and Training Administration Office of Foreign Labor Certification; Chicago National Processing Center; 536 South Clark Street, 9th floor; Chicago, Illinois 60605–

1509; ATTN: H-2A Contract Impossibility Request.

The employer's request must be supported by evidence that the circumstances creating the impossibility are beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible.

***Important Note: Compliance with Program Obligations:*** In the event of early termination of a work contract, the employer must comply with specific H-2A program requirements (see 20 CFR 655.122(o)) and should document its compliance efforts consistent with the Department's regulations and OFLC's [Frequently Asked Question](#) on contract impossibility.

### **3. Is the Department required to respond to an employer's application within a specific number of days?**

Yes. The Department is bound by the statute and regulations to specific timeframes as follows:

- ❖ ***Initial Review Timeframe.*** After the employer submits the H-2A application, the CNPC has 7 calendar days to either issue a Notice of Acceptance or identify any deficiencies and issue a Notice of Deficiency. The employer has 5 days to respond to a notice of deficiency.
- ❖ ***Final Determination Timeframe.*** If the employer's application meets the criteria for certification, the CNPC is required to issue a final determination 30 days before the employer's start date of need. Incomplete or otherwise deficient applications are not subject to this timeframe and employers are provided additional time (up to 5 days) to submit the documentation required to receive a certification.

### **4. Does online advertising count toward the 50 percent rule requirement?**

No. Online advertising cannot be substituted for newspaper advertisements or for the requirement that the employer contact its former U.S. workers since the Department's H-2A regulations make these specific efforts mandatory. The fifty percent rule simply requires the employer to continue to accept referrals of U.S. workers and hire all who are qualified and eligible to perform the work. The fifty percent rule begins on the employer's start date of need listed under the job order filed with the State Workforce Agency, and continues until the end of the first half of the work contract period. This process is facilitated by the SWA on behalf of the employer and is not connected to any other advertising requirement.

### **5. Is there anything that can be done to allow dairy farmers into the program without legislation?**

No. Whether a particular dairy farm is eligible for H-2A certification is based on whether or not that activity is temporary or seasonal in nature. For seasonal employment, the employer must be able to demonstrate that the employment of nonimmigrant workers is tied to a certain time of year by an event or pattern and requires higher labor levels far above those that are necessary for normal production; for a temporary need, the employer must demonstrate a need for workers that lasts no longer than 1 year. The Department's program experience has consistently shown that the majority of dairy activities, and milk production, in particular, are year-round and therefore cannot be classified as temporary.