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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

U.S. Customs and Border Protection

U.S. Immigration and Customs Enforcement

CIS No. 2461-08

DHS Docket No. USCIS-2008-0065

RIN 1615-ZA75

H-2A Petitioner's Employment-Related or Fee-Related Notification

AGENCY: U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, DHS.

ACTION: Notice.

SUMMARY: This Notice announces the manner in which petitioners must notify U.S. Citizenship and Immigration Services regarding their employment of agricultural workers in H-2A nonimmigrant status or job placement fee information. These procedures are necessary to enable petitioners to comply with the notification requirements established by the Department of Homeland Security's regulations governing the H-2A nonimmigrant classification.

DATES: This Notice is effective [Insert date 30 days from date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

USCIS: Hiroko Witherow, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272-8410.

USICE: Joe Jeronimo, National Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street, SW., Washington, DC 20024, telephone (202) 732-3978.

USCBP: Bruce Ingalls, Chief, Debt Management Branch, U.S. Customs and Border Protection, Revenue Division, Attn: H-2 Team, Suite 100, 6650 Telecom Drive, Indianapolis, IN 46278, telephone (317) 298-1307.

SUPPLEMENTARY INFORMATION:

I. Background

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 on a temporary basis. Immigration and Nationality Act (INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); see 8 CFR 214.1(a)(2) (H-2A classification designation). Aliens seeking H-2A nonimmigrant status must be petitioned for by a U.S. employer. However, prior to filing the petition, the U.S. employer must complete a temporary agricultural labor certification process with the Department of Labor (DOL) for the job opening the employer seeks to fill with an H-2A worker.

After receiving a temporary labor certification, the U.S. employer files Form I-129, “Petition for Nonimmigrant Worker,” with the appropriate USCIS office. See 8 CFR 214.2(h)(5)(i)(A). Once a petition has been granted, the regulations impose additional

responsibilities on such H-2A petitioners. These responsibilities include notifying DHS of certain occurrences related to their H-2A workers, as discussed below.

A. Employment-Related Notifications.

The regulations require H-2A petitioners to provide notification to DHS within 2 work days in the following instances:

- When an H-2A worker fails to report to work within 5 work days of the employment start date on the H-2A petition or within 5 work days of the start date established by the petitioner, whichever is later;
- When the agricultural labor or services for which H-2A workers were hired is completed more than 30 days early; or
- When the H-2A worker absconds from the worksite or is terminated prior to the completion of agricultural labor or services for which he or she was hired.

8 CFR 214.2(h)(5)(vi)(B). The regulations also require that petitioners retain evidence of the notification filed with DHS for a one-year period beginning from the date of the notification. 8 CFR 214.2(h)(5)(vi)(B)(2). Those petitioners that use a different employment start date than the start date stated on the H-2A petition must retain evidence of the changed start date and make such evidence available for inspection by DHS officers for a one-year period beginning on the newly established employment start date. Id. An H-2A petitioner that fails to meet these requirements is subject to liquidated damages in the amount of \$10. 8 CFR 214.2(h)(5)(vi)(B)(3).

B. Fee-Related Notifications.

The regulations provide petitioners with the opportunity to avoid denial or revocation (on notice) of their H-2A petition if they notify DHS regarding information they obtained following the filing of their H-2A petition concerning the beneficiary's payment or agreement to pay a fee or compensation in connection to any facilitator, recruiter, or similar employment service as a condition of obtaining the H-2A employment. 8 CFR 214.2(h)(5)(xi)(A)(4). The regulations prohibit such payments and agreements. 8 CFR 214.2(h)(5)(xi)(A). Notification of a beneficiary's payment or agreement to pay the prohibited fees must be made within 2 work days of gaining such knowledge. 8 CFR 214.2(h)(5)(xi)(A)(4).

This Notice specifies the manner in which H-2A petitioners must file employment-related and fee-related notifications with DHS in order to comply with the regulations. 8 CFR 214.2(h)(5)(vi)(B) and 8 CFR 214.2(h)(5)(xii)(A)(4).

II. Employment-Related Notifications

A. Filing Notifications.

This Notice announces that beginning on [Insert date 30 days from the date of publication in the FEDERAL REGISTER], H-2A petitioners must provide employment-related notifications to USCIS within 2 work days of an event specified in 8 CFR 214.2(h)(5)(vi)(B). The petitioner must include the following information in the notification.

- (1) The reason for the notification;
- (2) The reason for untimely notification and evidence for good cause, if applicable;
- (3) The USCIS receipt number of the approved H-2A petition;

- (4) The petitioner's name, address, telephone number, and employer identification number (EIN);
- (5) The employer's name, address, and telephone number, if it is different from that of the petitioner;
- (6) The name of the H-2A worker in question;
- (7) The date and place of birth of the H-2A worker in question; and
- (8) The last known physical address and telephone number of the H-2A worker in question.

USCIS acknowledges that where an H-2A petitioner is reporting the failure of an H-2A worker to report to work within the prescribed time frame, petitioners may not know the names of H-2A workers who fail to report to the employment site if the workers are unnamed beneficiaries of the H-2A petition. In such cases, USCIS requires the petitioner to supply only the number of workers who failed to report to work within the prescribed time frame instead of such workers' names, dates of birth, and places of birth. USCIS encourages the petitioner to submit notification electronically by email. However, USCIS realizes that in certain instances electronic notification may not be possible or feasible for the H-2A petitioner. Accordingly, the following two methods for notification are acceptable. Notification by mail must be postmarked before the end of the 2 work day reporting window.

By email: CSC-X.H-2AAbs@dhs.gov

By mail: California Service Center
 Attn: Div X/BCU ACD
 P.O. Box 30050
 Laguna Niguel, CA 92607-3004

B. Failure to Comply with the Requirements.

In cases where an H-2A petitioner makes an admission of an untimely notification (for example, a notification letter admitting that the notification is being sent after the close of the 2 work days window), USCIS will make a determination of liability for liquidated damages. Untimely notification must be accompanied by evidence of good cause. Failure to notify timely may be excused in the discretion of USCIS if it is demonstrated that the delay was due to extraordinary circumstances beyond the control of the H-2A petitioner, and USCIS finds the delay commensurate with the circumstances. If the H-2A petitioner fails to demonstrate good cause for failure to make a timely notification, USCIS will communicate liability for liquidated damages to the H-2A petitioner and inform the petitioner that it will receive a demand letter for payment directly from U.S. Customs and Border Protection (CBP). H-2A petitioners must not send checks to USCIS when sending untimely notifications.

In any situation where U.S. Immigration and Customs Enforcement (ICE) uncovers evidence of liability for H-2A liquidated damages in the course of its investigatory work, ICE will make a determination of liability. ICE will provide the petitioner with written notice of non-compliance as well as the petitioner's liability for liquidated damages. If the petitioner wishes to contest the allegations set forth in the notice of non-compliance, written notice must be received by ICE within 30 days of receipt of the notice of non-compliance. 8 CFR 214.2(h)(5)(vi)(C). If the petitioner fails to contest the finding of non-compliance, or the petitioner's response fails to raise an issue of material fact, ICE will communicate liability for liquidated damages to the H-2A petitioner and inform the petitioner that it will receive a demand letter for payment for liquidated damages directly from CBP.

CBP will collect all liquidated damage payments. The CBP demand letter will specify the manner in which payment must be made.

III. Fee-Related Notifications.

This Notice announces that on [Insert date 30 days from the date of publication in the FEDERAL REGISTER], H-2A petitioners may begin filing fee-related notifications to USCIS pursuant to 8 CFR 214.2(h)(5)(xi)(A)(4). The notification must include the following information:

- (1) The USCIS receipt number of the H-2A petition;
- (2) The petitioner's name, address, and telephone number;
- (3) The employer's name, address, and telephone number, if it is different from that of the petitioner; and the
- (4) Name and address of the facilitator, recruiter, or placement service to which alien beneficiaries paid or agreed to pay the prohibited fees.

As previously stated, USCIS encourages the petitioner to submit notification electronically by email. However, USCIS realizes that in certain instances, electronic notification may not be possible or feasible for the H-2A petitioner. Accordingly, the following two methods for notification are acceptable. Notification by mail must be postmarked before the end of the 2 work day reporting window.

By email: CSC.H2AFee@dhs.gov

By mail: California Service Center
P.O. Box 10695
Laguna Niguel, CA 92607-1095

IV. Paperwork Reduction Act.

This Notice sets forth the procedures for H-2A petitioners to notify USCIS when:

- An H-2A worker fails to report to work within 5 work days of the employment start date on the H-2A petition or within 5 work days of the start date established by the petitioner, whichever is later;
- When the agricultural labor or services for which H-2A workers were hired is completed more than 30 days early; or
- When the H-2A worker absconds from the worksite or is terminated prior to the completion of agricultural labor or services for which he or she was hired.

H-2A petitioners must retain evidence of any such notification sent to USCIS, as well as evidence of an employment start date if different from the start date stated on the H-2A petition, for a one-year period.

This Notice further provides the procedures for H-2A petitioners to notify USCIS, after an H-2A petition has been filed, within 2 work days of learning that an H-2A alien worker paid a fee or other compensation to a facilitator, recruiter, or similar employment service as a condition of obtaining the H-2A employment.

These notification requirements are considered information collections covered under the Paperwork Reduction Act (PRA).

Since implementation will begin 30 days from the date of publication of this notice in the **Federal Register**, this new information collection has been submitted and approved by OMB under the emergency review and clearance procedures covered under the PRA. USCIS is requesting comments on this new information collection no later than [Insert date 30 days from date of publication in the FEDERAL REGISTER]. When submitting comments on the information collection, your comments should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection

- a. Type of information collection: New information collection.
- b. Title of Form/Collection: H-2A's Petitioners Employment-Related or Fee-Related Notification
- c. Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: No form number. U.S. Citizenship and Immigration Services.
- d. Affected public who will be asked or required to respond, as well as a brief abstract: Individuals or Households. This information collection is necessary to provide employment related or fee related notification by an H-2A petitioner.
- e. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,000 respondents at .50 (30 minutes) per response.

f. An estimate of the total of public burden (in hours) associated with the collection: Approximately 500 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, Attention: Chief, 202-272-8377.

Dated:

Michael Chertoff,
Secretary.