

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
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ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 33-10**

TO: CHICAGO NATIONAL PROCESSING CENTER PROGRAM DIRECTOR
 STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: JANE OATES /S/
 Assistant Secretary

SUBJECT: Special Procedures: Labor Certification Process for Itinerant Commercial
 Beekeeping Employers in the H-2A Program

1. **Purpose.** To establish special procedures for itinerant commercial beekeeper employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers to perform work in the United States.
2. **References.** 20 CFR Part 655, Subpart B; 20 CFR Part 653, Subparts B and F; and 20 CFR Part 654, Subpart E.
3. **Background.** In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. and established the H-2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H-2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496 (Jun. 1, 1987). The 1987 regulations provided for the administration of the H-2A Program by the Employment and Training Administration (ETA) Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. Additionally, the 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H-2A regulations on December 18, 2008. 73 FR 77110 (Dec. 18, 2008) (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet policy objectives of the H-2A Program, the Department commenced another rulemaking process culminating in the publication of new H-2A regulations on February 12, 2010. 75 FR 6884 (Feb. 12, 2010) (the 2010 Final Rule). Section 20 CFR 655.102 provides the

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Administrator of the Office of Foreign Labor Certification (OFLC) with authority to establish, continue, revise or revoke special procedures for processing certain H-2A applications, as long as those procedures do not deviate from statutory requirements under the INA.

After receiving a request from the American Beekeeping Federation and in consideration of the unique characteristics of itinerant commercial beekeeping operations, the Department is exercising its authority to establish certain special procedures for processing H-2A applications for itinerant commercial beekeeping occupations. The Department recognizes that an industry-wide standard exists among commercial beekeeping employers to transport honey bee colonies to farms and orchards throughout the U.S. Itinerant commercial beekeepers typically transport their honey bee colonies north in the summer and south in the winter, stopping as needed to pollinate crops in bloom. For both commercial beekeepers and farmers, the need to move bees from one state to another throughout the growing season has intensified as the number of bees and beekeepers decline and agricultural methods evolve.

Large farms and orchards require a large concentration of healthy, active pollinators during specific periods when crops are in flower. In addition, beekeepers have determined that they can maintain stronger, healthier honey bee colonies by transporting their colonies to warmer, southern states during the cold months. Providing flexibility in the H-2A Program for itinerant commercial beekeepers to move honey bee colonies to various parts of the U.S. will enable this industry to maintain strong, healthy honey bee colonies and provide the pollination services which are vital to successful crop production. Accordingly, the Department is establishing special procedures enabling itinerant commercial beekeeper employers to use the H-2A Program while moving their beekeeping activities among farms and orchards located in multiple areas of intended employment throughout the U.S.

4. **Special Procedures.** Attachment A outlines special procedures for applications submitted by itinerant commercial beekeeping employers under the H-2A Program. Unless otherwise specified in Attachment A, applications submitted by itinerant commercial beekeeper employers must comply with the requirements for H-2A applications contained at 20 CFR Part 655, Subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR Parts 655, Subpart B, 653 subparts B and F, and 654.
5. **Action Requested.** The Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H-2A applications from itinerant commercial beekeeping employers. The special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.
6. **Inquiries.** Questions from SWA staff should be directed to the Chicago NPC. Questions from Chicago NPC staff should be directed to the Office of Foreign Labor Certification (OFLC) National Office.

7. Attachments.

Attachment A - Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers under the H-2A Program