

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. Department of Labor Washington, D. C. 20210	CLASSIFICATION H-2A Program
	CORRESPONDENCE SYMBOL OFLC
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**ADVISORY: FOREIGN LABOR CERTIFICATION
TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-01, Change 1**

**TO: OFLC-NATIONAL PROCESSING CENTER DIRECTORS
STATE WORKFORE AGENCY ADMINISTRATORS**

**FROM: EMILY STOVER DeROCCO /s/
Assistant Secretary**

**SUBJECT: Notification Regarding Worker Abandonment, Rejection or Termination from
H-2A Temporary Agricultural Employment**

1. **Purpose.** To update guidance to reflect the processing of H-2A applications through ETA's National Processing Centers and provide clarification regarding the information employers must report to State Workforce Agencies regarding worker abandonment, rejection or termination.
2. **References.** 20 C.F.R. Part 655, Subpart B; 20 C.F.R. 655.102(b)(11); and 20 C.F.R. 655.103(c); Training and Employment Guidance Letter (TEGL) No. 21-01, Notification Regarding Worker Abandonment, Rejection or Termination from H-2A Temporary Agricultural Employment (April 2002); and Federal Register Notice (Vol. 70, No. 137, pages 41430-41438).
3. **Background.** The Department issued a notice in the Federal Register (Vol. 70, No. 137, pages 41430-41438) on July 19, 2005, clarifying that, effective August 1, 2005, employers must file original copies of their H-2A applications directly with the appropriate National Processing Centers (NPCs), coinciding with the area of intended employment, and simultaneously file a copy with the appropriate State Workforce Agency (SWA). The H-2A regulations at 20 C.F.R. 655.103(c) and 20 C.F.R. 655.102 (b)(11) require employers to report to SWA offices in a timely manner any workers who voluntarily abandon employment before the end of the contract period or are terminated for cause.

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4. **Procedural Guidance.** The H-2A regulations at 20 C.F.R. 655.103(c) state, in pertinent part, that "no U.S. worker will be rejected for or terminated from employment for other than a lawful related reason, and notification of all rejections or terminations shall be made to the local office." Additionally, the regulations at 20 C.F.R. 655.102(b)(11) require that "if the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the local office of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section, and that worker is not entitled to the three-fourths guarantee."

- a) In the event an employer terminates one or more workers, the employer must provide written notification of the termination within two (2) business days to the appropriate SWA office(s). Such written notification must, at a minimum, include the name(s) of the worker(s), name and location of the assigned grower, and the date of termination from employment. A list of SWA contacts for the H-2A program can be found at the following Web site address:

<http://www.foreignlaborcert.doleta.gov/contacts.cfm#statecont>

- b) In the case of worker abandonment, the employer must provide written notification within two (2) business days of discovering the abandonment from employment to the appropriate SWA office(s). Such written notification must, at a minimum, include the name of the worker, name and location of the assigned grower, and the date of departure from employment. The Department has determined that two (2) business days is appropriate and should not place an unnecessary burden on the employer, since the United States Citizenship and Immigration Service (USCIS) generally requires, per 8 C.F.R. 214.2(h)(5)(vi)(A), that the employer notify the USCIS within 24 hours of the foreign worker leaving employment.

5. **Action Required.** NPC Directors and State Workforce Agency Administrators are directed to provide all staff involved in the processing of H-2A applications and, to the extent practicable, the employer community with a copy of this guidance.

6. **Inquiries.** Questions from employers should be directed to the appropriate SWA staff involved in the processing of H-2A applications. Questions from SWA staff should be directed to the appropriate NPC operated by the Office of Foreign Labor Certification.