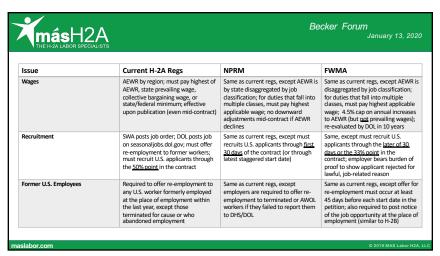




másH2	A	De	cker Forum January 13, 202		
Current H-2A Regs v. NPRM v. FWMA					
Issue	Current H-2A Regs	NPRM	FWMA		
Eligibility	Ag employers with temporary or seasonal labor need	No change	Ag employers with temporary or seasonal labor need (uncapped); year-round ag employers (capped at 20,000 visas annually for first 3 years).		
Application Process	File with SWA up to 75 days before date of need (no later than 60 days). File with DOL upon SWA approval or no later than 45 days before date of need. File visa petition with CIS upon DOL certification.	No change, although DOL acts as intermediary between employer and SWA (NOTE: Currently in practice with new FLAG system).	No change to process, but requires DOL/CIS to create a single electronic filing system for all steps in the process.		
Start Dates	One start date per application; staggered start dates require multiple labor market tests	Permits staggered start dates in first 120 days if employer provides notice to DOL; recruitment extends through last staggered start date	Permits staggered start dates in first 120 days if employer provides notice to DHS; all staggered start dates must have the same end date; FLCs not eligible unless they are joint employers or obtain "premium surety bond"		

másH2A	5	January 13, 202		
Issue	Current H-2A Regs	NPRM	FWMA	
Hours Guarantee	Must offer three-fourths of the work hours specified in the H-2A contract	No change	No change	
Corresponding Employment	Workers are "corresponding" if they perform any duty listed in the job order, or any job duty performed by H-2A workers	No change	Changes term to "similarly employed"; workers are similarly employed if they are in the same occupational classification as the H-2A worker	
Housing	Must provide housing at no cost to all non-local workers, inspected annually by the SWA	Same as current regs, but allows for 2-year certifications by the SWA on compliance and has provision for self-inspection	Same as current regs, except that year-round employers must provide family housing; federal grants for farmworker housing	
Transportation	Must pay/reimburse inbound travel (transportation, subsistence, lodging) from worker's home to consulate, and from consulate to place of employment.	Same as current regs, except employer not responsible for worker's travel to consulate.	Same as current regs, except employer not responsible for worker's travel to consulate if worke lives within 50 miles of consulate	



Becker Forum másH2A January 13, 2020 **FWMA** Current H-2A Regs NPRM Area of Intended Employment Geographic area within normal Re-evaluating criteria for area of No change commuting distance of place of intended employment; all employers employment (based on MSA and limited to one area of intended other factors); only FLCs restricted to employment; pickup/delivery points one area of intended employment in for truck drivers considered a single application "worksites" for this purpose Post-Certification Amendments Employers may add housing units if Same as current regs, except that all Requires DOL to allow non-material certified housing becomes employers may add worksites within changes to the labor certification unavailable; custom combine same area of intended employment (likely worksites, number of workers, operators may add worksites within upon showing of good and same area of intended employment substantial cause Early Departure Notice Must notify DHS if foreign worker Same as current regs, except early Appears to remove the notice separates employment more than 30 departure notice added as document requirement from the three-fourths days before contract end date; must notify DOL if any worker (foreign or retention requirement guarantee provision corresponding) is terminated for cause or abandons employment; employers bound by three-fourths guarantee and return travel if they fail to report within 2 working days

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másH2A THE H-2A LABOR SPECIALISTS		Becker Forum January 13, 202		
Issue	Current H-2A Regs	NPRM	FWMA	
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	H-2A workers excluded from MSPA	Explicitly applies MSPA transportation safety requirements to H-2A employers (NOTE: DOL currently enforces this, even though existing regs are ambiguous)	Applies MSPA to H-2A workers; provides express private right of action for employees to sue H-2A employers; third-party groups (legal services) can file complaints against H-2A employers with DOL; new authority for DOL to sue employers	
Foreign Recruitment	Recruiters prohibited from seeking or receiving fees from workers	No change	Creates FLC-like registration/licensing for foreign recruiters; requires recruiters to post bonds based on # of workers; recruiters must file annual report to DOL; private right of action to sue employers for recruiting violations	
Appeals	De novo hearing or expedited admin review of deficiencies and denials	Eliminates appeal process for deficiencies	Eliminates appeal process for deficiencies AND eliminates de novo hearings for denials	
Visa Term	Length of certified period of employment + 30 days to find subsequent employment	No change	Length of certified period of employment + 45 days to find subsequent employment	

Becker Forum másH2A Current H-2A Regs NPRM **FWMA** Issue Heat-Illness Plans/Training N/A N/A Employers must create plans and provide training on heat illness, access to water, shade, breaks, and emergency response At-Will Employment Creates 5-year pilot program for N/A N/A portable H-2A visas, capped at 10,000 workers Mandatory for agriculture, phased E-Verify N/A N/A on by size of farm (all farms required to use E-Verify in Year 4 after bill signed into law) Legalization N/A N/A Current undocumented workers legalized as "Certified Agricultural Workers" (CAWs) if they worked 180 days in agriculture in the 2 preceding years; CAWs considered "U.S. workers" for purposes of H-2A recruitment: eligible to apply for Green Cards as early as Year 4

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