



# West Virginia Coal Association

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August 27, 2020

The Honorable Mike Pompeo  
Secretary of State  
2201 C St. NW  
Washington, DC 20520

The Honorable Eugene Scalia  
Secretary of Labor  
200 Constitution Avenue  
Washington, DC 20210

The Honorable Chad F. Wolf  
Acting Secretary of Homeland  
Security  
Washington, DC 20528

Dear Secretaries Pompeo, Scalia and Wolf:

The West Virginia Coal Association, as the trade organization representing 94 million tons of thermal and metallurgical coal produced in the Mountain State and 51,664 state residents employed directly by the coal industry, would like to make you aware of the potential negative impacts resulting from the President's Proclamation "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" dated June 22, 2020.

West Virginia is the nation's second largest coal producing state, the largest producer of metallurgical coal (an essential feedstock for the manufacturing of iron and steel) and the largest producer of coal destined for foreign exports. The West Virginia coal industry is directly responsible for over \$5 billion in economic activity in the state, including \$2 billion in wages and over \$250 million in local and state tax revenues.

Many H-2B employers contract their services to coal companies in West Virginia to perform forestry work. These reforestation efforts are central to the coal industry's compliance with federal and state mining laws governing the timely reclamation of sites once coal removal has been completed. The federal Surface Mining Control & Reclamation Act (30 USC 1201, *et. seq.*) and the corresponding federal regulations promulgated by the federal Office of Surface Mining (30 CFR 700, *et seq.*) require mine operators to complete reclamation, including reforestation efforts, within established timeframes to avoid regulatory violations and/or delays in moving coal production activities to new, undisturbed areas.

The State of West Virginia maintains similar, but more specific timeframes and requirements, referred to as "contemporaneous reclamation" under the West Virginia Surface Coal Mining & Reclamation Act (W.Va. Code 22-3-1, *et. seq.*) and its implementing state rules at 38 CSR 2, *et. seq.*

The inability to complete the timely reforestation efforts mandated by the federal and state regulatory programs places mine operators at risk for violations under those programs and could jeopardize continued coal production and employment since the ability to move active mining units to new areas is directly tied to the operator's completion of reclamation (including reforestation efforts ) on the previously mined and disturbed areas. Additionally, reforestation is a central component of reclamation- returning formerly mined areas to their pre-disturbance form and providing the highest-level environmental protection and remediation to the natural environment and communities in which we operate.

The unrealized reclamation activity from the suspension of H-2B non-immigrant labor that performs forestry work is significant and could potentially impact the nation's supply of thermal coal, used to produce electricity and the domestic production of iron and steel if metallurgical coal supplies are interrupted.

The West Virginia Coal Association urges the Administration to consider an exemption for H-2B guest workers that perform forestry work and reforestation / reclamation efforts at coal mining operations.

Respectfully Submitted,



Jason Bostic  
Vice President





U.S. Citizenship  
and Immigration  
Services

October 5, 2020

Mr. Jason Bostic  
Vice President  
West Virginia Coal Association  
P.O. Box 3923  
Charleston, West Virginia 25339

Dear Mr. Bostic:

Thank you for your August 27, 2020 letter regarding H-2B workers. Acting Secretary Wolf asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals and employers face immigration-related challenges as a direct result of the coronavirus (COVID-19) national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during the pandemic.

As you noted, on June 22, 2020, President Trump issued a "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" (Proclamation 10052).<sup>1</sup> The Presidential Proclamation temporarily restricts certain categories of visas from being issued to protect jobs for American workers while our economy recovers from the effects of COVID-19. This does not affect those currently working in the United States in valid nonimmigrant classifications. The Proclamation also does not prevent foreign workers in possession of valid H visas prior to the effective date of the Proclamation from entering or re-entering the country in these categories, if they have been abroad, provided they have not otherwise rendered themselves inadmissible.

It is also important for us to emphasize that the Proclamation does not affect U.S. Citizenship and Immigration Services (USCIS) processing or the adjudication of immigration benefit requests, including petitions and applications related to the H program. In addition, USCIS has taken decisive actions to help accommodate applicants and petitioners during the pandemic.<sup>2</sup>

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<sup>1</sup> On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

<sup>2</sup> For USCIS policy updates, operational changes, and COVID-19 information, please visit [uscis.gov/coronavirus](https://uscis.gov/coronavirus).

Mr. Jason Bostic

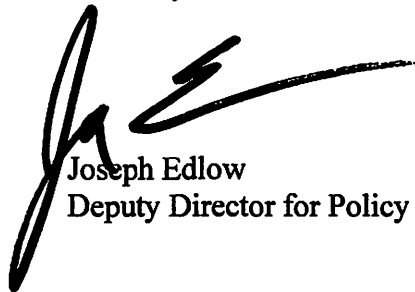
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You recommended that foreign workers performing forestry work and reclamation efforts at coal mining operations be exempt from the limitations imposed by the Proclamation. For individuals who are outside the United States without a valid work visa, we kindly defer to our colleagues at the Department of State on this issue, as visa processing and issuance is under their area of responsibility.

DHS appreciates the concerns you raise regarding the need for H-2B nonimmigrant labor to support the coal mining industry in West Virginia. We also recognize this industry's importance to West Virginia's, as well as the nation's, economy. We remain committed to protecting U.S. workers and businesses, while strengthening and lawfully administering our nation's immigration system. DHS will continue to monitor the rapidly evolving situation.

Thank you again for your letter and your interest in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Edlow', with a long horizontal stroke extending to the right.

Joseph Edlow  
Deputy Director for Policy