



U.S. Citizenship and Immigration Services

DHS Offers Flexibilities to Increase Food Security, Stabilize U.S. Supply Chain During COVID-19

WASHINGTON—The Department of Homeland Security (DHS) has announced a [temporary final rule](#) to change certain H-2B requirements to help support the U.S. food supply chain, maintain essential infrastructure operations and reduce the impact from the coronavirus (COVID-19) public health emergency.

These temporary measures apply solely to aliens already present in the United States with a valid H-2B nonimmigrant status, and the temporary final rule does not increase H-2B visas above the congressionally mandated 66,000 visa cap through the remainder of fiscal year (FY) 2020.

"These necessary flexibilities will safeguard a critical U.S. infrastructure sector; reinforce security of the nation's food supply chain; and encourage key American businesses to maintain essential operations currently threatened by the COVID-19 public health emergency," said USCIS Deputy Director for Policy, Joseph Edlow. "Importantly, these measures protect U.S. workers by not adding supplemental H-2B visas during the national emergency."

Under this temporary final rule, a petitioner will have additional flexibilities for employing workers essential to the U.S. food supply chain. To take advantage of this time-limited change in regulatory requirements, the H-2B worker must already be in the United States and in valid H2B status.

As part of the TLC process, the petitioning employer must have demonstrated to the satisfaction of the Secretary of Labor that there is not a sufficient supply of qualified U.S. workers who will be available at the time and place needed to perform the labor or services involved in the petition. The employment of the alien(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

There are two flexibilities in the temporary final rule. First, the rule allows an H-2B employer to employ an H-2B nonimmigrant physically present in the United States while the employer's H-2B petition on behalf of that nonimmigrant is still pending before USCIS. The rule only provides this flexibility if the employer attests that the worker will perform temporary services or labor that is essential to the U.S. food supply chain. The temporary employment authorization will last for up to 60 days. Second, the rule allows H-2B workers essential to the U.S. food supply chain to stay beyond the three-year maximum allowable period of stay in the United States. This flexibility applies to petitions filed by the H-2B nonimmigrant's current employer, as well as petitions filed by a potential new employer. The rule only provides this flexibility if the employer attests that the worker will perform temporary services or labor that is essential to the U.S. food supply chain. It is not acceptable for employers to hire illegal aliens.

A petitioner seeking the flexibilities under this temporary final rule will be required to submit an attestation, swearing under penalty of perjury, that the H-2B worker(s) will be performing temporary nonagricultural services or labor or that is essential to the U.S. food supply chain.

The temporary final rule is effective immediately upon publication in the Federal Register.

DHS [previously announced](#) similar protections for American agricultural employers in order to secure the nation's food supply chain. The H-2B nonimmigrant classification applies to alien workers seeking to perform nonagricultural services or labor of a temporary nature in the United States, usually lasting no longer than one year, for which able, willing and qualified U.S. workers are not available.

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