



USCIS Update

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USCIS PROPOSES CHANGES TO IMPROVE THE H-2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today a series of proposed rule changes that will streamline procedures for hiring workers under the H-2B program. These changes are being proposed in further fulfillment of the commitment made by the Administration last August, after the failure of Congress to pass comprehensive immigration reform, to review and improve temporary worker visa programs using existing authorities. The [proposed rule](#), which has been sent to the *Federal Register*, supplements the extensive reforms of the H-2B program already proposed by the Department of Labor in its proposed rule [published](#) on May 22.

The H-2B nonimmigrant temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural temporary jobs for which U.S. workers are not available. The proposed changes to the H-2B program, discussed by Homeland Security Secretary Michael Chertoff on June 10, will encourage and facilitate the lawful employment of foreign temporary workers while ensuring the integrity of the H-2B program.

The proposed rule is designed to remove unnecessary limitations on H-2B employers while both preventing fraud and abuse and protecting the rights of temporary workers. The proposed rule will:

- Reduce from six months to three months the time H-2B workers must wait outside the United States before they are eligible to re-obtain status under the H or L classification;
- Require employer attestations on the scope of the H-2B employment and the use of recruiters to locate H-2B workers;
- Crack down on employers and recruiters who impose fees on prospective H-2B workers in connection with or as a condition of an offer of H-2B employment;
- Require an approved temporary labor certification in connection with all H-2B petitions;
- Preclude, with limited exception, the change of the employment start date after the grant of the temporary labor certification;
- Require employers to notify DHS when H-2B workers fail to show up for work, are terminated, or abscond from the worksite;
- Change the definition of “temporary employment” to provide that a job is of a temporary nature when the worker will end in the near, definable future and to eliminate the requirement that employers show “extraordinary circumstances” to be eligible to hire H-2B workers where a one-time need for the workers is longer than one year but shorter than three years;
- Prohibit the approval of H-2B petitions for nationals of countries that are determined to be consistently refusing or unreasonably delaying repatriation of their nationals; and
- Establish a land-border exit system pilot program, which requires H-2B workers admitted through a port of entry participating in the pilot H-program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

USCIS will accept public comments 30 days following publication of the proposed rule in the *Federal Register*.