DEPARTM

8 CFR Part 214

[CIS No. 2854-26; DHS Docket No. USCIS-2026-0034]

RIN 1615-AD16

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA-2026-0034]

RIN 1205-AC32

Exercise of Time-Limited Authority to Increase the Fiscal Year 2026 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS) and Employment and Training Administration and Wage and Hour Division, Department of Labor (DOL).

ACTION: Temporary rule.

SUMMARY: The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising time-limited Fiscal Year (FY) 2026 authority to issue up to, but not more than, an additional 64,716 visas for the fiscal year. All of these supplemental visas will be available only to those American businesses that are suffering or will suffer impending irreparable harm, *i.e.*, those facing permanent and severe financial loss, as attested by the employer. These supplemental visas will be distributed in three allocations based on the petitioner's start date of need through the end of the fiscal year.

DATES: *Effective Dates***:** This final rule is effective from January 30, 2026, through September 30, 2026, except for 20 CFR 655.69, which is effective from January 30, 2026, through September 30, 2029.

*Petition dates***:** DHS will not accept any H-2B petitions under provisions related to the FY 2026 supplemental numerical allocations after September 15, 2026, and will not approve any such H-2B petitions after September 30, 2026.

*Comments on the Information Collection***:** DOL's Office of Foreign Labor Certification (OFLC) will accept comments in connection with the new information collection Form ETA-9142-B-CAA-10 associated with this rule until [INSERT DATE 60 DAYS FROM THE PUBLICATION OF THIS RULE]. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit written comments on the new information collection Form ETA-9142-B-CAA-10, identified by Regulatory Information Number (RIN) 1205-AC32, electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and the RIN 1205-AC32 in your submission. All comments received will become a matter of public record and may be posted without change to https://www.regulations.gov. Comments submitted after the deadline for submission will not be considered. Please do not submit comments containing trade secrets, confidential or proprietary commercial or financial information, personal health information, sensitive personally identifiable information (for example, social security numbers, driver's license or state identification numbers, passport numbers, or financial account numbers), or other information that you do not want to be made available to the public. The agency reserves the right to redact or refrain from posting such personally sensitive or other sensitive information or comments that contain threatening language. Please note that depending on how information is submitted through regulations.gov, the agency may not be able to redact the information and instead reserves the right to refrain from posting the information or comment in such situations.

FOR FURTHER INFORMATION CONTACT: Regarding 8 CFR Part 214: Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721-3000 (not a toll-free number).

Regarding 20 CFR Part 655 and Form ETA-9142-B-CAA-10: Brian D. Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Ave NW, Room N-5311, Washington, DC 20210, email: OFLC.Regulations@dol.gov.

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

FY 2026 H-2B Supplemental Cap

The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising time-limited Fiscal Year (FY) 2026 authority to issue up to, but not more than, an additional 64,716 visas for the fiscal year. All of these supplemental visas will be available only to those American businesses that are suffering or will suffer impending irreparable harm, *i.e.*, those facing permanent and severe financial loss, as attested by the employer. These supplemental visas will be distributed in three allocations based on the petitioner's start date of need through the end of the fiscal year:

(1) 18,490 immediately available visas limited to returning workers, that is, aliens who were issued an H-2B visa or otherwise granted H-2B status in FY 2023, 2024, or 2025, and who will be available for eligible employers with a need for workers to begin work between January 1, 2026 through March 31, 2026. Employers must file these petitions no later than 14 days after the second half of the statutory cap is reached;

(2) 27,736 visas, plus any unused visas from the first allocation, limited to returning workers, that is, aliens who were issued an H-2B visa or otherwise granted H-2B status in FY 2023, 2024, or 2025, and who will be available for eligible employers with a need for workers to begin work between April 1, 2026 and April 30, 2026. Employers must file these petitions no earlier than 15 days after the second half of the statutory cap[1] is reached; and

(3) 18,490 visas, plus any unused visas from the first or second allocations, for aliens who will be available for eligible employers with a need for workers to begin work between May 1, 2026 and September 30, 2026. These petitions are exempt from the returning worker requirement. Employers must file these petitions no earlier than 45 days after the second half of the statutory cap is reached.

To qualify for the FY 2026 supplemental caps provided by this temporary final rule, eligible petitioners must:

- Meet all existing H-2B eligibility requirements, including obtaining an approved Temporary Labor Certification (TLC) from DOL before filing the Form I-129, Petition for a Nonimmigrant Worker, with USCIS;
- Properly file the Form I-129 with USCIS at the current filing location, during the appropriate filing period. USCIS will reject any petitions filed after September 15, 2026;

[1] The term "statutory cap" refers to the 66,000 cap set forth at INA section 214(g)(1)(B) or the 33,300 semiannual caps at INA section 214(g)(10).

- Submit an attestation affirming, under the penalty of perjury, that the employer is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested on the petition, and that they are seeking to employ returning workers only, unless the H-2B worker is counted towards the 18,490 allocation, plus any rollover from the first and second allocations, for employment start dates between May 1 and September 30, 2026 (third allocation).
- Prepare and retain a detailed written statement describing how the employer is suffering irreparable harm or will suffer impending irreparable harm with evidence demonstrating irreparable harm supporting their petition.

Petitioners filing H-2B petitions under this FY 2026 supplemental cap must retain documentation of compliance with the attestation requirements for three years from the date DOL approved the TLC and must provide the documents and records upon the request of DHS and/or DOL, as well as fully cooperate with any compliance reviews.

DHS will not approve H-2B petitions filed in connection with the FY 2026 supplemental cap authority on or after October 1, 2026.

II. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended, establishes the H-2B nonimmigrant classification for a nonagricultural temporary worker "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country." INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition DHS in such form and containing such information as the Secretary prescribes for classification of prospective temporary workers as H-2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

Generally, DHS must approve this petition before the beneficiary can be considered eligible for an H-2B visa. And the INA requires that "[t]he question of importing any alien as [an H-2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[2] after consultation with appropriate agencies of the Government." INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

In addition, the INA generally charges the Secretary of Homeland Security with the administration and enforcement of the nation's immigration laws, and provides that the Secretary "shall establish such regulations . . . and perform such other acts as [she] deems necessary for carrying out [her] authority" under the INA. *See* INA section 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); *see also* 6 U.S.C. 202(4) (charging the Secretary with "[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States"). With respect to nonimmigrants in particular, the INA provides that "[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary] may by regulations prescribe." INA section 214(a)(1), 8 U.S.C. 1184(a)(1). The Secretary may designate officers or employees to take and consider evidence concerning any matter that is material or relevant to the enforcement of the INA. INA sections 287(a)(1), (b), 8 U.S.C. 1357(a)(1), (b), and INA section 235(d)(3), 8 U.S.C. 1225(d)(3). INA section 291, 8 U.S.C. 1361, establishes that the petitioner or applicant for a visa or other immigration document bears the burden of proof with respect to eligibility and inadmissibility, including that the alien is eligible for the immigration status being sought.

DHS regulations provide that an approved TLC from DOL, issued pursuant to regulations established at 20 CFR part 655, or from the Guam Department of Labor if the workers will be

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[2] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, § 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

employed on Guam, must accompany an H-2B petition for temporary employment in the United States. 8 CFR 214.2(h)(6)(iii)(A) and (C) through (E), (h)(6)(iv)(A); see also INA section 103(a)(6), 8 U.S.C. 1103(a)(6). The TLC serves as DHS's consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H-2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages and working conditions of similarly-employed U.S. workers. *See* INA section 214(c)(1); 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D).

To determine whether to issue a TLC, the Departments have established regulatory procedures under which DOL certifies whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. The regulations establish the process by which employers obtain a TLC and the rights and obligations of workers and employers.

Once the H-2B petition is approved, under the INA and current DHS regulations, H-2B workers are limited to employment with the H-2B petitioner and do not have employment authorization outside of the validity period listed on the approved petition unless otherwise authorized. *See* 8 U.S.C. 1184(c)(1), 8 CFR 274a.12(b)(9). An employer or U.S. agent generally may submit a new H-2B petition, with a new, approved TLC, to USCIS to request an extension of H-2B nonimmigrant status for the validity of the TLC or for a period of up to 1 year. 8 CFR 214.2(h)(15)(ii)(C).

The INA also authorizes DHS to impose appropriate remedies against an employer for a substantial failure to meet the terms and conditions of employing an H-2B worker, or for a willful misrepresentation of a material fact in a petition for an H-2B worker. INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A). The INA expressly authorizes DHS to delegate certain enforcement authority to DOL. INA section 214(c)(14)(B), 8 U.S.C. 1184(c)(14)(B); *see also*

INA section 103(a)(6), 8 U.S.C. 1103(a)(6). DHS has delegated its authority under INA section 214(c)(14)(A)(i), 8 U.S.C. 1184(c)(14)(A)(i) to DOL. *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the INA (Jan. 16, 2009); *see also* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of, among other things, an H-2B petition and a DOL-approved TLC). This enforcement authority has been delegated within DOL to the Wage and Hour Division (WHD) and is governed by regulations at 29 CFR part 503.

B. H-2B Numerical Limitations Under the INA

The INA sets the maximum annual number ("statutory cap") of aliens who may be issued H-2B visas or otherwise provided H-2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually beginning in October and April. *See* INA sections 214(g)(1)(B) and (g)(10), 8 U.S.C. 1184(g)(1)(B) and (g)(10). Accordingly, with certain exceptions, described below, up to 33,000 aliens may be issued H-2B visas or provided H-2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation, including any unused nonimmigrant H-2B visas from the first half of a fiscal year, will be available for employers seeking to hire H-2B workers during the second half of the fiscal year.[3] If the full statutory cap of H-2B visas are not utilized in a given fiscal year, DHS cannot carry over the unused numbers for petition approvals for employment start dates beginning on or after the start of the next fiscal year.

In FYs 2005, 2006, 2007, and 2016, Congress exempted H-2B workers identified as returning workers from the annual H-2B cap of 66,000.[4] A returning worker is defined by statute as an H-2B worker who was previously counted against the annual H-2B cap during a designated

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[3] The Federal Government's fiscal year runs from October 1 of the budget's prior year through September 30 of the year being described. For example, FY 2026 is from October 1, 2025, through September 30, 2026.

[4] *See* INA 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), *see also* Consolidated Appropriations Act, 2016, Public Law 114-113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law. 109-13, div. B, tit. IV, sec. 402.

period of time.[5] For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015 to qualify for the exemption.[6] During each of the years Congress exempted returning workers from the annual H-2B cap, DHS and Department of State (DOS) worked together to confirm that all workers requested under the returning worker provision in fact were eligible for exemption from the annual cap (*i.e.*, were issued an H-2B visa or provided H-2B status during one of the prior three fiscal years) and were otherwise eligible for H-2B classification.

Because of the strong demand for H-2B visas in recent years, the statutorily-determined semi-annual visa allocation, the DOL regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work,[7] and the DHS regulatory requirement that all H-2B petitions be accompanied by an approved TLC,[8] employers that wish to obtain visas for their workers under the semiannual allotment must act early to receive a TLC and file a petition with USCIS. As a result, the date on which USCIS has reached sufficient H-2B petitions to reach the first half of the fiscal year statutory cap has generally trended earlier in recent years.[9] For FY 2022, for the first time in more than a decade, USCIS received sufficient H-2B petitions to reach the first half of the fiscal year statutory cap before the start of the fiscal year.[10] This occurred even earlier in FY 2023, when USCIS received enough H-2B petitions to reach the FY 2023

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[5] *See* INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A).
[6] *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565.
[7] *See* 20 CFR 655.15(b).
[8] *See* 8 CFR 214.2(h)(6)(vi)(A).
[9] In fiscal years 2017 through 2021, USCIS received a sufficient number of H-2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019, and November 16, 2020, respectively. *See* USCIS, USCIS Reaches the H-2B Cap for the First Half of Fiscal Year 2017, https://www.uscis.gov/archive/uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017 (Jan. 13, 2017); USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2018, https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018 (Dec. 21, 2017); USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2019, https://www.uscis.gov/news/news-releases/ uscis-reaches-h-2b-cap-for-first-half-of-fy-2019 (Dec. 12, 2018); USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2020, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020 (Nov. 20, 2019); USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2021, https://www.uscis.gov/news/ alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021 (Nov. 18, 2020).
[10] On October 12, 2021, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of FY 2022, and that September 30, 2021, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2022. *See* USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2022, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022 (October 12, 2021).

first-half statutory cap on September 12, 2022.[11] For FY 2024, USCIS received sufficient H-2B petitions to reach the first half of the fiscal year statutory cap on October 11, 2023.[12] For FY 2025, USCIS received sufficient H-2B petitions to reach the first half of the fiscal year statutory cap on September 18, 2024.[13] For FY 2026, USCIS received sufficient H-2B petitions to reach the first half of the fiscal year statutory cap on September 12, 2025.[14] This trend in recent years of increased demand for H-2B workers is even more apparent in the second half of the fiscal year.[15] For example, during the three-day filing window of January 1 through 3, 2026 for H-2B

[11] On September 14, 2022, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of FY 2023, and that September 12, 2022, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2023. *See* USCIS, USCIS Reaches H-2B Cap for the First Half of Fiscal Year 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023 (September 14, 2022).

[12] On October 13, 2023, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of FY 2024, and that October 11, 2023, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2024. *See* USCIS, USCIS Reaches H-2B Cap for First Half of FY 2024, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2024 (October 13, 2023). While this date was slightly later than the prior two years, the Departments note that DOL received 2,157 applications for the first half of the FY 2024 statutory cap during the initial three-day filing window of July 3–5, 2023, covering 40,947 worker positions; a 59% increase in TLC workload when compared to the same time period in 2022. *See* DOL, OFLC Publishes List of Randomized H-2B Applications Submitted July 3–5, 2023, for Employers Seeking H-2B Workers Starting October 1, 2023, https://www.dol.gov/agencies/eta/foreign-labor/news (July 10, 2023).

[13] On September 19, 2024, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H-2B visas for temporary nonagricultural workers for the first half of FY 2025, and that September 18, 2024, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date before April 1, 2025. *See* USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2025, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2025 (September 19, 2024). While this date was slightly later than in FY 2023, the Departments note that DOL received 2,158 applications for the first half of the FY 2025 statutory cap during the initial three-day filing window of July 3–5, 2024, covering 44,238 worker positions; a 59% increase in TLC workload and 48% increase in requested worker positions when compared to the same time period for fiscal year 2023. *See* DOL, OFLC Publishes List of Randomized H-2B Applications Submitted July 3–5, 2024, for Employers Seeking H-2B Workers Starting October 1, 2024, https://www.dol.gov/agencies/eta/foreign-labor/news (July 9, 2024).

[14] On September 16, 2025, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the first half of FY 2026. *See* USCIS, "USCIS Reaches H-2B Cap for First Half of FY 2026," https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026 (last modified Sept. 16, 2025). On September 12, 2025, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H-2B visas available against the H-2B statutory cap for the first half of FY 2026. In accordance with regulations, USCIS determined it was necessary to use a computer-generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H-2B visa numbers to meet, but not exceed, the remainder of the FY 2026 statutory cap. 8 CFR 214.2(h)(8)(vii). USCIS conducted a lottery to randomly select petitions from those received. As a result, USCIS assigned all petitions selected in the lottery the receipt date of September 12, 2025.

[15] In recent years, DOL has received an increasing number of TLC applications for an increasing number of H-2B workers with April 1 start dates: DOL received 4,500 applications on January 1, 2018, covering more than 81,600 worker positions; DOL received 5,276 applications by January 8, 2019, covering more than 96,400 worker positions; DOL received 5,677 applications during the initial three-day filing window in 2020 covering 99,362 worker positions; DOL received 5,377 applications during the initial three-day filing window in 2021 covering 96,641 worker positions; DOL received 7,875 applications by January 4, 2022, covering 136,555 worker positions; DOL received 8,693 applications during the initial three-day filing window in 2023, covering 142,796 worker

TLCs for the second half of FY 2026, DOL's Office of Foreign Labor Certification (OFLC) received requests to certify 162,603 worker positions for start dates of work on April 1, 2026.[16]

Congress, in recognition of historical and current demand has, for the last several fiscal years, authorized supplemental visas.[17] The authority for the current supplemental cap is under section 101of the Continuing Appropriations Act, 2026, Public Law 119-37 (FY 2026 authority), as discussed below.

C. FY 2026 Public Law 119-37

Congress passed the FY 2026 authority, Public Law 119-37, which President Donald J. Trump signed on November 12, 2025. This law extends the authority under the same terms and conditions provided in section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47 (Mar. 23, 2024) ("FY 2024 Omnibus"),[18] permitting the Secretary of Homeland Security to increase the number of H-2B visas available to

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positions; DOL received 8,817 H-2B applications by January 8, 2024, covering 138,847 worker positions; and DOL received 8,759 H-2B applications by January 4, 2025, covering 149,953 worker positions. *See* DOL, Announcements, https://www.dol.gov/agencies/eta/foreign-labor/news.

[16] DOL announcement on January 5, 2026. *See* https://www.foreignlaborcert.doleta.gov/.

[17] *See* section 543 of Division F of the Consolidated Appropriations Act, 2017, Public Law 115-31 (FY 2017 Omnibus); section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115-141 (FY 2018 Omnibus); section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (FY 2019 Omnibus); section 105 of Division I of the Further Consolidated Appropriations Act, 2020, Public Law 116-94 (FY 2020 Omnibus); section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus); section 105 of Division O of the Consolidated Appropriations Act, 2021, FY 2021 Omnibus, sections 101 and 106(3) of Division A of Public Law 117-43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117-70, Further Continuing Appropriations Act, 2022 through February 18, 2022 (together, FY 2022 authority); section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117-103 (FY 2022 Omnibus); section 303 of Division O of the Consolidated Appropriations Act, 2023, Public Law 117-328 (FY 2023 Omnibus); Division A of Public Law 118-15, Continuing Appropriations Act, 2024 and Other Extensions Act, through November 17, 2023, as well as section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47 (FY 2024 Omnibus); and the Continuing Appropriations and Extensions Act, 2025, sections 101(6) and 106 of Division A, Title I of Public Law 118-83 (Sept. 26, 2024) (FY 2025 Omnibus), which extended the authorization previously provided in section 105 of Division G, Title I of the FY 2024 Omnibus.

[18] Further Consolidated Appropriations Act, 2024, Public Law 118–47 (Mar. 23, 2024). Specifically, Division G, section 105 provides that "the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon determining that the needs of American businesses cannot be satisfied in [FY] 2024 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor," may increase the total number of aliens who may receive an H-2B visa in FY 2024 by the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from the H-2B numerical limitation.

U.S. employers in FY 2026.[19] In other words, Public Law 119-37[20] permits the Secretary of Homeland Security, after consultation with the Secretary of Labor, to provide up to 64,716 additional H-2B visas for the remainder of FY 2026, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA, for eligible employers whose employment needs for FY 2026 cannot be met.[21] Under the Public Law 119-37 authority, DHS and DOL are jointly publishing this temporary final rule to authorize the issuance of up to 64,716 additional visas for the remainder of FY 2026 to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. The authority to approve H-2B petitions under this FY 2026 supplemental cap expires at the end of the fiscal year. Therefore, USCIS will not approve H-2B petitions filed in connection with the FY 2026 supplemental cap authority on or after October 1, 2026.

As noted above, since FY 2017, Congress has enacted a series of public laws providing the Secretary of Homeland Security with the discretionary authority to increase the H-2B cap beyond that set forth in section 214 of the INA. The previous statutory provisions were materially identical to section 105 of the FY 2024 Omnibus, which is the same authority provided for FY 2026 by the recent continuing resolution. During each fiscal year from FY 2017 through FY 2019, and FY 2021 through FY 2025, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that the needs of some American businesses

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[19] *See* secs. 101(6) and 106, Div. A, Title I, Pub. L. 118–83 (Sept. 26, 2024), and section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47 (Mar. 23, 2024) (FY 2024 Omnibus); and section 1101(6) of Division A, Tittle I, the Full-Year Continuing Appropriations Act, 2025, Pub. L. 119-4 (Mar. 15, 2025).

[20] *See* section 101, Div. A, Title I, Pub. L. 119-37, Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026.

[21] Appropriations and authorities provided by the continuing resolutions are available for the needs of the entire fiscal year to which the continuing resolution applies, although DHS's ability to obligate funds or exercise such authorities may lapse at the sunset of such resolution. *See*, e.g., Comments on Due Date and Amount of District of Columbia's Contributions to Special Employee Retirement Funds, B-271304 (Comp. Gen. Mar. 19, 1996) (explaining that '"'a continuing resolution appropriates the full annual amount regardless of its period of duration…Standard continuing resolution language makes it clear that the appropriations are available to the extent and in the manner which would be provided by the pertinent appropriations act that has yet to be enacted (unless otherwise provided in the continuing resolution).)."'"'). Consistent with this principle, DHS interprets the current continuing resolution to provide DHS with the discretion to authorize additional H-2B visa numbers with respect to all of FY 2026 subject to the same terms and conditions as the FY 2024 authority at any time before the continuing resolution expires, notwithstanding the reference to FY 2024 in the FY 2024 Omnibus.

could not be satisfied in such year with U.S. workers who were willing, qualified, and able to perform temporary nonagricultural labor. Based on these determinations, on July 19, 2017, and May 31, 2018, DHS and DOL jointly published temporary final rules for FY 2017 and FY 2018, respectively, each of which allowed an increase of up to 15,000 additional H-2B visas for those businesses that attested that if they did not receive all of the workers requested on the Form I-129, Petition for a Nonimmigrant Worker, they were likely to suffer irreparable harm, *i.e.*, suffer a permanent and severe financial loss.[22] USCIS approved a total of 12,294 H-2B workers under petitions filed pursuant to the FY 2017 supplemental cap increase.[23] In FY 2018, USCIS received petitions for more than 15,000 beneficiaries during the first five business days of filing for the supplemental cap, and held a lottery on June 7, 2018. The total number of H-2B workers approved toward the FY 2018 supplemental cap increase was 15,788.[24] The vast majority of the H-2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing (Form I-907, Request for Premium Processing)[25] and were adjudicated within 15 calendar days.

On May 8, 2019, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 30,000 additional H-2B visas for the remainder of FY 2019.[26] The additional visas were limited to returning workers who had been counted against the H-2B cap or were otherwise granted H-2B status in the previous three fiscal years, and for those businesses that attested to a level of need such that, if they did not receive all of the workers requested on the

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[22] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 82 FR 32987, 32998 (July 19, 2017); Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 FR 24905, 24917 (May 31, 2018).

[23] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[24] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. The number of approved workers exceeded the number of additional visas authorized for FY 2018 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

[25] Premium processing allows for expedited processing for an additional fee. *See* INA 286(u), 8 U.S.C. 1356(u).

[26] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 84 FR 20005, 20021 (May 8, 2019).

Form I-129, they were likely to suffer irreparable harm, *i.e.*, suffer a permanent and severe financial loss.[27] The Secretary determined that limiting returning workers to those who were issued an H-2B visa or granted H-2B status in the past three fiscal years was appropriate, as it mirrored the standard that Congress designated in previous returning worker provisions. On June 5, 2019, approximately 30 days after the supplemental visas became available, USCIS announced that it received sufficient petitions filed pursuant to the FY 2019 supplemental cap increase. USCIS did not conduct a lottery for the FY 2019 supplemental cap increase. The total number of H-2B workers approved towards the FY 2019 supplemental cap increase was 32,680.[28] The vast majority of these petitions requested premium processing and were adjudicated within 15 calendar days.

Although Congress provided the Secretary of Homeland Security with the discretionary authority to increase the H-2B cap in FY 2020, the Secretary did not exercise that authority. DHS initially intended to exercise its authority and, on March 4, 2020, announced that it would make available 35,000 supplemental H-2B visas for the second half of the fiscal year.[29] On March 13, 2020, then-President Trump declared a National Emergency concerning COVID-19, a communicable disease caused by the coronavirus SARS-CoV-2.[30] On April 2, 2020, DHS announced that the rule to increase the H-2B cap was on hold due to economic circumstances, and that DHS would not release additional H-2B visas until further notice.[31] DHS also noted that the Department of State had suspended routine visa services.[32]

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[27] *See* 84 FR at 20021.
[28] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. The number of approved workers exceeded the number of additional visas authorized for FY 2019 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.
[29] *See* DHS, DHS to Improve Integrity of Visa Program for Foreign Workers (March 5, 2020), https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.
[30] *See* Proclamation 9994 of Mar. 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (March 18, 2020).
[31] *See* https://twitter.com/DHSgov/status/ 1245745115458568192?s=20.
[32] *See* https://twitter.com/DHSgov/status/1245745116528156673.

In FY 2021, DHS in consultation with DOL determined it was appropriate to increase the H-2B cap for FY 2021 coupled with additional protections (for example, post-adjudication audits, investigations, and compliance checks), based on the demand for H-2B workers in the second half of FY 2021, continuing economic growth, the improving job market, and increased visa processing capacity by the Department of State. Accordingly, on May 25, 2021, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 22,000 additional H-2B visas for the remainder of FY 2021.[33] The supplemental visas were available only to employers that attested they were likely to suffer irreparable harm without the additional workers. The allocation of 22,000 additional H-2B visas under that rule consisted of 16,000 visas available only to H-2B returning workers from one of the last three fiscal years (FY 2018, 2019, or 2020) and 6,000 visas that were initially reserved for nationals of the Northern Central American countries of El Salvador, Guatemala, and Honduras, who were exempt from the returning worker requirement. By August 13, 2021, USCIS had received enough petitions for returning workers to reach the additional 22,000 H-2B visas made available under the FY 2021 H-2B supplemental visa temporary final rule.[34] The total number of H-2B workers approved towards the FY 2021 supplemental cap increase was 30,707.[35] This total number included approved H-2B petitions for 23,937 returning workers, as well as 6,805 beneficiaries from the Northern Central American countries.[36]

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[33] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 86 FR 28198 (May 25, 2021).

[34] *See* USCIS, Cap Reached for Remaining H-2B Visas for Returning Workers for FY 2021, https://www.uscis.gov/news/alerts/cap-reached-for-remaining-h-2b-visas-for-returning-workers-for-fy-2021 (August 19, 2021).

[35] The number of approved workers exceeded number of additional visas authorized for FY 2021 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023.

[36] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023.

On January 28, 2022, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 20,000 additional H-2B visas for FY 2022 positions with start dates on or before March 31, 2022.[37] These supplemental visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The allocation of 20,000 additional H-2B visas under that rule consisted of 13,500 visas available only to H-2B returning workers from one of the last three fiscal years (FY 2019, 2020, or 2021) and 6,500 visas reserved for Salvadoran, Guatemalan, Honduran, and Haitian nationals, who were exempted from the returning worker requirement. USCIS data show that the total number of H-2B workers approved towards the first half FY 2022 supplemental cap increase was 17,381, including 14,150 workers under the returning worker allocation, as well as 3,231 workers approved towards the Haitian/Northern Central American allocation.[38] For the second half of FY 2022, DHS in consultation with DOL determined it was appropriate to increase the H-2B cap for FY 2022 positions with start dates beginning on April 1, 2022 through September 30, 2022, based on the continued demand for H-2B workers for the remainder of FY 2022, continuing economic growth, increased labor demand, and increased visa processing capacity by the Department of State. Accordingly, on May 18, 2022, DHS and DOL jointly published a temporary final rule authorizing an increase of no more than 35,000 additional H-2B visas for the second half of FY 2022.[39] As in the January 2022 temporary final rule, the supplemental visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The allocation of 35,000 additional H-2B visas under the rule applicable to the second half of FY 2022 consisted of

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[37] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 4722 (Jan. 28, 2022); 87 FR 6017 (Feb. 3, 2022) (correction).

[38] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023.

[39] *See* Temporary Final Rule, Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 30334 (May 18, 2022).

23,500 visas available only to H-2B returning workers from one of the last three fiscal years (FY 2019, 2020, or 2021) and 11,500 visas reserved for Salvadoran, Guatemalan, Honduran, and Haitian nationals, who were exempted from the returning worker requirement. By May 25, 2022, USCIS had received enough petitions for returning workers to reach the additional 23,500 H-2B visas made available under the second half FY 2022 H-2B supplemental visa temporary final rule.[40] USCIS data show that the total number of H-2B workers approved towards the second half FY 2022 supplemental cap increase was 43,798, including 31,480 workers under the returning worker allocation, as well as 12,318 workers approved towards the Haitian/Northern Central American allocation.[41]

On December 15, 2022, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 64,716 additional H-2B visas for the entirety of FY 2023.[42] As in the FY 2022 temporary final rules, the additional visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The 64,716 additional visas included 44,716 reserved for returning workers from one of the last three fiscal years (FY 2020, 2021, or 2022), which were distributed in several allocations based on date of employer need: 18,216 for employers with requested employment start dates on or before March 31, 2023; 16,500 for employers with requested employment start dates from April 1, 2023, to May 14, 2023 (early second half allocation); and 10,000 for employers with requested employment start dates from May 15, 2023, to Sept. 30, 2023 (late second half allocation). The remaining 20,000 visas were available for the entirety of FY 2023, and were set aside for nationals of El Salvador, Guatemala, Honduras, and Haiti, who were

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[40] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022 (May 31, 2022).

[41] The number of approved workers exceeded the number of additional visas authorized for the second half of FY 2022 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023.

[42] *See* Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 76816 (Dec. 15, 2022); 87 FR 77979 (Dec. 21, 2022) (correction).

exempt from the returning worker requirement. By January 30, 2023, USCIS received enough petitions to reach the cap for the additional 18,216 H-2B visas made available for returning workers for the first half of fiscal year, and by March 30, 2023, USCIS received enough petitions to reach the cap for the additional 16,500 H-2B visas made available for returning workers for the early second half of fiscal year.[43] USCIS data show that the total number of H-2B workers approved towards the FY 2023 supplemental cap increase was 78,302, including 54,470 workers under the returning worker allocation, as well as 23,832 workers approved towards the Haitian/Northern Central American allocation.[44]

On November 17, 2023, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 64,716 additional H-2B visas for the entirety of FY 2024.[45] As in the FY 2023 temporary final rule, the additional visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The 64,716 additional visas included 44,716 reserved for returning workers from one of the last three fiscal years (FY 2021, 2022, or 2023), which were distributed in several allocations based on date of employer need: 20,716 for employers with requested employment start dates on or before March 31, 2024; 19,000 for employers with requested employment start dates from April 1, 2024, to May 14, 2024 (early second half allocation); and 5,000 for employers with requested employment start dates from May 15, 2024, to September 30, 2024 (late second half allocation). The remaining 20,000 visas were available for the entirety of FY 2024, and were set aside for nationals of El Salvador, Guatemala, Honduras, Haiti, Colombia,

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[43] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/ cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2023 (Jan. 31, 2023); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2023, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2023 (Mar. 31, 2023).

[44] The number of approved workers exceeded the number of additional visas authorized for FY 2023 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. *See* DHS, USCIS, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data, queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023.

[45] Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 88 FR 80394 (Nov. 17, 2023).

Ecuador, and Costa Rica, who were exempt from the returning worker requirement. By January 9, 2024, USCIS received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year, and by April 17, 2024, USCIS received enough petitions to reach the cap for the additional 19,000 H-2B visas made available for returning workers for the early second half of fiscal year.[46] USCIS data show that the total number of H-2B workers approved towards the FY 2024 supplemental cap increase was 85,577, including 61,102 workers under the returning worker allocation, as well as 24,475 workers approved towards the country-specific allocation.[47]

On December 2, 2024, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 64,716 additional H-2B visas for the entirety of FY 2025.[48] Similar to the previous temporary final rules, the additional visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The 64,716 additional visas included 44,716 reserved for returning workers from one of the last three fiscal years (FY 2022, 2023, or 2024), which were distributed in several allocations based on date of employer need: 20,716 for employers with requested employment start dates on or before March 31, 2025; 19,000 for employers with requested employment start dates from April 1, 2025, to May 14, 2025 (early second half allocation); and 5,000 for employers with requested employment start dates from May 15, 2025, to September 30, 2025 (late second half allocation). The remaining 20,000 visas were available for the entirety of FY 2025, and were set aside for nationals of El Salvador, Guatemala, Honduras, Haiti,

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[46] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2024, https://www.uscis.gov/newsroom/alerts/ cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2024 (Jan. 12, 2024); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2024, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2024 (Apr. 18, 2024).

[47] The number of approved workers exceeded the number of additional visas authorized for FY 2024 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. *See* DHS, USCIS, Office of Performance and Quality, ELIS, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2024, PAER0016221.

[48] Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2025 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 89 FR 95626 (Dec. 2, 2024).

Colombia, Ecuador, and Costa Rica, who were exempt from the returning worker requirement. By January 7, 2025, USCIS received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year, and by April 18, 2025, USCIS received enough petitions to reach the cap for the additional 19,000 H-2B visas made available for returning workers for the early second half of fiscal year.[49] USCIS data show that the total number of H-2B workers approved towards the FY 2025 supplemental cap increase was 87,067, including 60,941 workers under the returning worker allocations, as well as 26,126 workers approved towards the country-specific allocation.[50]

DHS, in consultation with DOL, believes that it is appropriate to increase the H-2B cap for FY 2026 based on the demand for H-2B workers in the first half of FY 2026, demand for the second half of FY 2026, and recent economic and labor market data.[51]

D. Joint Issuance of the Final Rule

As in prior years, DHS and DOL (the Departments) have determined that it is appropriate to jointly issue this temporary rule.[52] The determination to issue the temporary final rule jointly

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[49] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2025, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2025 (Jan. 10, 2025); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2025, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2025 (Apr. 23, 2025).

[50] The number of approved workers exceeded the number of additional visas authorized for FY 2025 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. *See* USCIS OPQ H2B Cap Tracking Dashboard (as of December 30, 2025).

[51] The BLS Job Openings and Labor Turnover Survey (JOLTS) reports 7.1million job openings in November 2025. *See* DOL, BLS, Job Openings and Labor Turnover—November 2025, https://www.bls.gov/news.release/archives/jolts_01072026.htm

[52] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 82 FR 32987 (Jul. 19, 2017); Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 FR 24905 (May 31, 2018); Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 84 FR 20005 (May 8, 2019); Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 86 FR 28198 (May 25, 2021); Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 4722 (Jan. 28, 2022); Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 30334 (May 18, 2022); Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H-2B Temporary

follows conflicting court decisions concerning DOL's authority to independently issue legislative rules to carry out its consultative and delegated functions pertaining to the H-2B program under the INA.[53] Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H-2B program,[54] the Departments are implementing the numerical increase in this manner to ensure there can be no question about the authority underlying the administration and enforcement of the temporary cap increase. This approach is consistent with rules implementing DOL's general consultative role under section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), and delegated functions under sections 103(a)(6) and 214(c)(14)(B) of the INA, 8 U.S.C. 1103(a)(6), 1184(c)(14)(B). *See* 8 CFR 214.2(h)(6)(iii)(A) & (C), (iv)(A).

II. Discussion

A. Statutory Determination

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that the needs of some U.S. employers cannot be satisfied for the remainder of FY 2026 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with the FY 2026 continuing resolution extending the authority provided in section 105 of the FY 2024 Omnibus, the Secretary of Homeland Security has determined that it is appropriate, for the reasons stated below, to raise the numerical limitation on H-2B nonimmigrant visas by up to 64,716 additional visas, the maximum authorized, for those American businesses that attest that they are suffering irreparable harm or will suffer impending irreparable harm, in other words, a permanent and severe financial loss,

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Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 76816 (Dec. 15, 2022); Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 88 FR 80394 (Nov. 17, 2023); and Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2025 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 89 FR 95626 (Dec. 2, 2024).

[53] *See Outdoor Amusement Bus. Ass'n v. Dep't of Homeland Sec.*, 334 F. Supp. 3d 697 (D. Md. 2018), *appeal docketed*, No. 18-2370 (4th Cir. Nov. 15, 2018)*; see also* Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 80 FR 24042, 24045 (Apr. 29, 2015).

[54] *See Outdoor Amusement Bus. Ass'n*, 983 F.3d at 684–89.

without the ability to employ all of the H-2B workers requested on their petition. These businesses must retain documentation, as described below, supporting this attestation.

As in connection with H-2B supplemental visa temporary final rules in previous years, and consistent with existing authority, DHS and/or DOL may conduct audits with respect to petitions filed under this temporary final rule requesting supplemental H-2B visas during the period of temporary need. Contingent on the availability of resources, the Departments will use their discretion to select which petitions to audit, and the Departments will use the audits to verify compliance with H-2B program requirements. If the Departments find that an employer's documentation does not meet the irreparable harm standard, or that the employer fails to provide evidence demonstrating irreparable harm or comply with the audit process, the Departments may consider it to be a willful violation resulting in an adverse agency action against the employer, including revocation of the TLC or program debarment.

DHS will not accept, and will reject, H-2B supplemental cap petitions submitted with a start date of need between January 1 and March 31, 2026, that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 15 days or later after the FY 2026 second half statutory cap has been met. If DHS determines by this latter date that it has received fewer petitions than needed to reach the cap for the first supplemental allocation, DHS will make the unused visas from this first allocation available under the second supplemental allocation for aliens who are returning workers with employment start dates between April 1 and 30, 2026. A similar filing deadline also applies for the second supplemental allocation where any unused visas from the second supplemental allocation (involving employment start dates between April 1 and 30, 2026) will be carried over to the third supplemental allocation for aliens with employment start dates between May 1 and September 30, 2026. DHS believes the established filing windows after which it will make any remaining visas available to the next immediate allocation will provide sufficient opportunity for

their use by employers who need these H-2B workers while also providing a greater likelihood that supplemental H-2B visas do not go unused.

DHS will not accept, and will reject, H-2B supplemental cap petitions submitted with a date of need between April 1 and 30, 2026 (second allocation), that are received earlier than 15 days after the FY 2026 second half statutory cap is met. DHS will also not accept, and will reject, such petitions that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 45 days or later after the FY 2026 second half statutory cap is met. For H-2B supplemental cap petitions with a date of need between May 1 and September 30, 2026 (third allocation), DHS will not accept, and will reject such petitions that are received earlier than 45 days after the FY 2026 second half statutory cap is met or that are received after the applicable numerical limitation has been reached or after September 15, 2026. Requiring petitioners to wait to submit H-2B supplemental cap petitions for these allocations is consistent with the supplemental cap authority in section 105 of the FY 2024 Omnibus, as extended to FY 2026 by Public Law 119-37 (November 12, 2025), and will facilitate the orderly intake and processing of supplemental cap petitions for American businesses to meet their temporary and seasonal labor needs.

Similar to previous temporary final rules, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has determined to limit 46,226 supplemental visas to H-2B returning workers.[55] Because American businesses who need workers to fill temporary or seasonal labor during the summer months of May 1 through September 30 have historically been shut out of receiving H-2B workers under the statutory cap, the Secretary, in consultation with the Secretary of Labor, has also determined that the remaining 18,490 supplemental visas reserved for petitions requesting employment start dates between May 1 and September 30,

[55] For purposes of this rule, these returning workers could have been H-2B cap exempt or extended H-2B status in FY 2023, 2024, or 2025. Additionally, they may have been previously counted against the annual H-2B cap of 66,000 visas during FY 2023, 2024, or 2025, or the supplemental caps in FY 2023, 2024, or 2025.

2026, plus any rollover unused visas from the first and second allocations, will be exempt from the returning worker requirement.

The Secretary of Homeland Security's determination to increase the numerical limitation is based, in part, on the conclusion that some American businesses, including those with late-season needs, particularly those who support the critical infrastructure sectors of the U.S. economy,[56] may not be able to meet their business needs without the ability to employ all of the H-2B workers requested on their H-2B petition. The determination supports President Trump's domestic policy goal to make the United States "the investment capital of the world and ensuring that expansion remains the hallmark of American manufacturing for decades to come"[57] while ensuring available U.S. workers continue to have the opportunity to seek employment in positions that support our nation's critical infrastructure. As stated in prior temporary final rules, in the past, members of Congress have informed the Secretaries of Homeland Security and Labor about the needs of some American businesses for H-2B workers (after the statutory cap for the relevant half of the fiscal year has been reached) and about the potentially negative impact on state and local economies if the cap is not increased.[58] American businesses, chambers of commerce, employer organizations, and state and local elected officials have also previously expressed concerns to the Secretaries of Homeland Security and Labor regarding the unavailability of H-2B visas after the statutory cap was reached, and have urged the Departments

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[56] These businesses include, but are not limited to, American businesses that support our manufacturing, food supply (e.g., seafood), hospitality and tourism, forestry, and transportation, particularly as the United States readies itself for celebrating America's 250th anniversary and hosts the World Cup 2026 this summer. President Trump has issued several executive orders and proclamations aimed at building and protecting these industries. *See, e.g.*, Proclamation 10977, "National Manufacturing Day, 2026," 90 FR 48159 (Oct. 3, 2025). "…manufacturing has always been the foundation of our prosperity, the strength of our communities, the safeguard of our independence, and the engine of our greatness." *See also* Executive Order 14225, "Immediate Expansion of American Timber Production," 90 FR 11365 (Mar. 1, 2025). "…The production of timber, lumber, paper, bioenergy, and other wood products (timber production) is critical to our Nation's well-being. Timber production is essential for crucial human activities like construction and energy production..."

[57] Proclamation 10977, "National Manufacturing Day, 2025," 90 FR 48159 (Oct. 3, 2025).

[58] *See, e.g.*, Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, 87 FR 76816 (Dec. 15, 2022). These documents were retained in the administrative record for those rules.

to publish one rule covering the release of supplemental visas for the entire fiscal year in order to save time, conserve limited agency resources, and reduce uncertainty for employers.[59]

Based on the most recent labor market and DOL H-2B worker demand data, the Secretary of Homeland Security, following consultation with the Secretary of Labor, has determined that it is appropriate to provide a one-time increase of H-2B supplemental visas for the remainder of FY 2026 and to publish one rule covering the entire fiscal year for 2026. Given President Trump's focus on strengthening the U.S. industrial base by securing historic investments, the Departments deemed this action as appropriate to support American businesses with seasonal or temporary workforce needs, such as those in critical infrastructure sectors of the U.S. economy, that are suffering or will suffer impending irreparable harm if they are unable to obtain H-2B workers under the statutory cap.[60]

DOL data identifies six industry sectors – administrative/landscaping services, accommodation and food services, entertainment and recreation, construction, agriculture and forestry, and manufacturing – requested almost 95 percent of H-2B TLC applications in FY 2025.[61] The most recent DOL's Bureau of Labor Statistics (BLS) data shows weaker unemployment rates across the top industries relative to prior years,[62] and DOL OFLC's data

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[59] These letters were retained in the administrative record for those rules.

[60] The Cybersecurity & Infrastructure Security Agency (CISA) has identified 16 critical infrastructure sectors. *See* https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors. The first 2-digits of the North American Industry Classification System (NAICS) code identifies the industry associated for a specific employer. For example, 23 is for Construction and 72 is for Accommodation and Food Services. *See* U.S. Census Bureau, North American Industry Classification System, https://www.census.gov/naics/.

[61] Based on an analysis of OFLC H-2B Performance data for FY 2025 available at https://www.dol.gov/agencies/eta/foreign-labor/performance for all TLCs listed as having a case status of "Determination - Certification" or "Determination – Partial Certification" and using the first 2-digit economic sector designation of the North American Industrial Classification System (NAICS) self-reported by the employer on the DOL Form ETA-9142B that best represents its primary business activity. Out of more than 232,400 H-2B worker positions certified during FY 2025, 95.1 percent of H-2B filings were certified for positions within just the following 6 industry sectors: NAICS 56 (Administrative and Support and Waste Management and Remediation Services, which includes landscaping services) accounted for 42.6 percent of labor demand; NAICS 71 (Arts, Entertainment, and Recreation) accounted for 15.3 percent of labor demand; NAICS 72 (Accommodation and Food Services) accounted for 13.8 percent of labor demand; NAICS 23, (Construction) accounted for 9.2 percent of labor demand; NAICS 11 (Agriculture, Forestry, Fishing, and Hunting) accounted for 8.1 percent of labor demand; and NAICS 31-33 (Manufacturing) accounted for 6.0 percent of labor demand.

[62] BLS data indicates current labor market conditions are comparable to the labor market conditions in FY 2020 when 35,000 supplemental visas were initially announced (but not released due to the National Emergency concerning COVID-19). BLS, The Employment Situation, December 2025. https://www.bls.gov/news.release/archives/empsit_01092026.htm.

shows a strong demand for H-2B workers to supplement their business needs for positions with employment start dates under the FY 2026 statutory cap.[63] The decision to release additional H-2B visas for FY 2026 under the time-limited authority represents an important step to help American businesses in industry sectors experiencing labor shortages due to seasonal workforce needs while supporting President Trump's domestic policy agenda to strengthen the U.S. economy and its industrial base.

The decision to afford the benefits of this temporary cap increase to American businesses that need workers because they are suffering irreparable harm or will suffer impending irreparable harm, rather than applying the cap increase to any and all businesses seeking temporary workers, is consistent with DHS's time-limited authority to increase the cap, as explained below. The Secretary of Homeland Security, in implementing section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, and determining the scope of any such increase, has broad discretion, following consultation with the Secretary of Labor, to identify the business needs that are most relevant, while bearing in mind the need to protect U.S. workers.[64] Within that context, for the below reasons, the Secretary of Homeland Security has determined to allow an increase of up to 64,716 additional visas solely for American businesses facing permanent, severe financial loss or those who will face such loss in the near future.[65]

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[63] DOL OFLC received 2,421 H-2B applications covering 47,488 worker positions with a work start date of October 1, 2025, and 10,062 H-2B applications covering 162,603 worker positions with a work start date of April 1, 2026. *See* DOL Announcement, "July 9, 2025. OFLC Publishes List of Randomized H-2B Applications Submitted July 3-5, 2025, for Employers Seeking H-2B Workers Starting October 1, 2025" and "January 5, 2026. OFLC Publishes List of Randomized H-2B Applications Submitted January 1-3 for Employers Seeking H-2B Workers Starting April 1, 2026," respectively.

[64] Congress has delegated to DHS the broad authority to administer and enforce the immigration laws in title 8 of the U.S.C. as well as other immigration and naturalization laws. *See, e.g.*, INA sec. 103(a)(1), 214(a)(1), (c)(1); 8 U.S.C. 1103(a)(1), 1184(a)(1), (c)(1); *see Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes 'expressly delegate' to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to fill up the details of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'") (cleaned up and internal citations omitted).

[65] The statute explicitly provides that the Secretary of Homeland Security, after consulting with the Secretary of Labor, and upon the determination that the needs of United States businesses cannot be satisfied during FY 2026 with U.S. workers to perform temporary nonagricultural labor, may determine the appropriate number of H-2B supplemental visas to be issued in FY 2026, limited to the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program. Consistent with the discretion afforded thereunder by Congress, and

As explained in earlier temporary final rules, DHS has long interpreted the reference to "the needs of American businesses" reiterated in section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, as describing a need different from the need ordinarily required of employers in petitioning for an H-2B worker. Under the generally applicable H-2B program, each individual H-2B employer must demonstrate that it has a temporary need for the services or labor for which it seeks to hire H-2B workers. *See* 8 CFR 214.2(h)(6)(ii); 20 CFR 655.6. The use of the phrase "needs of American businesses," which is not found in INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), or the regulations governing the standard H-2B cap, authorizes the Secretary of Homeland Security in allocating additional H-2B visas under section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, to require that employers establish a need above and beyond the normal standard under the H-2B program, that is, an inability to find sufficient qualified U.S. workers willing and available to perform temporary services or labor and that the employment of the H-2B worker will not adversely affect the wages and working conditions of U.S. workers, *see* 8 CFR 214.2(h)(6)(i)(A). DOL concurs with this interpretation. Accordingly, the Secretaries have determined that it is appropriate, within the limits discussed below, to tailor the availability of this temporary cap increase to those American businesses that are suffering irreparable harm or will suffer impending irreparable harm, in other words, those facing permanent and severe financial loss.

In sum, this rule increases the numerical limitation by up to 64,716 additional H-2B visas for FY 2026, but also restricts the availability of those additional visas by prioritizing only the most significant business needs, and limiting eligibility to H-2B returning workers, unless the worker will start work on or after May 1 through September 30, 2026. This rule also distributes

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commensurate with authorities including those afforded under sections 103 and 214 of the INA, 8 U.S.C. 1103 and 1184, DHS, in consultation with DOL, is making available up to an additional 64,716 H-2B visas for FY 2026 to employers who are suffering irreparable harm or will suffer impending irreparable harm. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. at 2263 (2024).

the supplemental visas in three allocations to assist American businesses that need workers to begin work on different start dates. These provisions are each described in turn below.

B. Numerical Increase and Allocations for Fiscal Year 2026

The increase of up to 64,716 visas will help address the urgent needs of eligible U.S. employers for additional H-2B workers with employment needs in FY 2026.[66] The determination to make available up to 64,716 additional H-2B visas reflects a balancing of a number of factors including: the demand for H-2B visas during the first half of FY 2026 and expected demand for the second half of FY 2026; current labor market conditions; the general trend of increased demand for H-2B visas from FY 2018 to FY 2025; H-2B returning worker data; the amount of time for employers to hire and obtain H-2B workers in this fiscal year; and President Trump's focus on strengthening the U.S. industrial base and securing America's dominance. DHS believes the numerical increase addresses the needs of American businesses.

Section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, sets the highest number of H-2B returning workers who were exempt from the cap in certain previous years as the maximum limit for any increase in the H-2B numerical limitation for FY 2026.[67] Consistent with the statute's reference to H-2B returning workers, in determining the appropriate number by which to increase the H-2B numerical limitation, the Secretary of Homeland Security focused on the number of visas allocated to such workers in years in which Congress enacted returning

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[66] In contrast with section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1), which establishes a cap on the number of individuals who may be issued visas or otherwise provided H-2B status (emphasis added), and section 214(g)(10) of the INA, 8 U.S.C. 1184(g)(10), which imposes a first half of the fiscal year cap on H-2B issuance with respect to the number of aliens who may be issued visas or are accorded H-2B status (emphasis added), section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, only authorizes DHS to increase the number of available H-2B visas. Accordingly, DHS will not permit aliens authorized for H-2B status pursuant to an H-2B petition approved under section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, to change to H-2B status from another nonimmigrant status. *See* INA section 248, 8 U.S.C. 1258; *see also* 8 CFR part 248. If a petitioner files a petition seeking H-2B workers in accordance with this rule and requests a change of status on behalf of someone in the United States, the change of status request will be denied, but the petition will be adjudicated in accordance with applicable DHS regulations. Any alien authorized for H-2B status under the approved petition would need to obtain the necessary H-2B visa at a consular post abroad and then seek admission to the United States in H-2B status at a port of entry.

[67] During fiscal years 2005 to 2007, and 2016, Congress enacted "returning worker" exemptions to the H-2B visa cap, allowing workers who were counted against the H-2B cap in one of the three preceding fiscal years not to be counted against the upcoming fiscal year cap. Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, Sec. 402 (May 11, 2005); John Warner National Defense Authorization Act, Public Law 109-364, Sec. 1074 (Oct. 17, 2006); Consolidated Appropriations Act of 2016, Public Law 114-113, Sec. 565 (Dec. 18, 2015).

worker exemptions from the H-2B numerical limitation. During each of the years the returning worker provision was in force, U.S. employers' standard business needs for H-2B workers exceeded the statutory 66,000 cap. The highest number of H-2B returning workers approved was 64,716 in FY 2007. In setting the number of additional H-2B visas to be made available for FY 2026, DHS considered this number, overall indications of increased need, weakening unemployment numbers, and the availability of U.S. workers, as discussed below. On the basis of these considerations, DHS determined that it is appropriate to make available 64,716 additional visas, the maximum authorized, under the FY 2026 authority.

In past years, the number of beneficiaries covered by H-2B petitions submitted exceeded the number of additional visas allocated under recent supplemental caps. For example, in FY 2018, USCIS received petitions for approximately 29,000 beneficiaries during the first five business days of filing for the 15,000 supplemental cap. USCIS therefore conducted a lottery on June 7, 2018, to randomly select petitions that it would accept under the supplemental cap. Of the selected petitions, USCIS issued approvals for 15,672 beneficiaries.[68] In FY 2019, USCIS received sufficient petitions for the 30,000 supplemental cap on June 5, 2019, but did not conduct a lottery to randomly select petitions that it would accept under the supplemental cap. Of the petitions received, USCIS issued approvals for 32,717 beneficiaries. In FY 2021, USCIS received a sufficient number of petitions for the 22,000 supplemental cap on August 13, 2021, including a significant number for workers from Northern Central American countries.[69] Of the

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[68] USCIS recognizes it has approved petitions for more than the number of supplemental H-2B workers authorized under the relevant fiscal year supplemental cap. This is because DHS estimates that not all of the workers requested in the approved petitions will eventually obtain a visa. For instance, although DHS approved petitions for 15,672 beneficiaries under the FY 2018 cap increase, the Department of State data shows that as of January 15, 2019, it issued only 12,243 visas under that cap increase. Similarly, DHS approved petitions for 12,294 beneficiaries under the FY 2017 cap increase, but the Department of State data shows that it issued only 9,160 visas.

[69] On June 3, 2021, USCIS announced that it had received enough petitions to reach the cap for the additional 16,000 H-2B visas made available for returning workers only, but that it would continue accepting petitions for the additional 6,000 visas allotted for nationals of the Northern Central American countries. *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for FY 2021, https://www.uscis.gov/news/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-fy-2021 (Jun. 3, 2021). On July 23, 2021, USCIS announced that, because it did not receive enough petitions to reach the allocation for the Northern Central American countries by the July 8 filing deadline, the remaining visas were available to H-2B returning workers regardless of their country of origin. *See* USCIS, Employers May File H-2B Petitions for Returning Workers for FY 2021,

petitions received, USCIS issued approvals for 30,707 beneficiaries, including approvals for 6,805 beneficiaries under the allocation for the nationals of the Northern Central American countries.[70]

In FY 2022, DHS made the supplemental cap available twice, once in January 2022 and again in May 2022. Under the earlier FY 2022 supplemental cap for petitions with start dates in the first half of FY 2022, USCIS had issued approvals for 17,381 beneficiaries, including approvals for 3,231 beneficiaries under the allocation for nationals of the Northern Central American countries and Haiti.[71] For the second half of FY 2022, within the first five business days of filing, USCIS received petitions for more beneficiaries than the additional 23,500 supplemental visas made available for returning workers, thus necessitating a random selection of petitions to meet the returning worker allotment.[72] Of the FY 2022, USCIS issued approvals for 43,798 beneficiaries, including approvals for 12,318 beneficiaries under the allocation for nationals of the Northern Central American countries and Haiti.[73]

In FY 2023, USCIS received enough petitions to reach the cap for the additional 18,216 H-2B visas made available for returning workers for the first half of fiscal year by January 30, 2023, and USCIS received enough petitions to reach the cap for the additional 16,500 H-2B visas made available for returning workers for the early second half of fiscal year by March 30,

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https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021 (Jul. 23, 2021).

[70] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2023, TRK 13122. The number of approved workers exceeded the number of additional visas authorized for FY 2018, FY 2019, as well as for FY 2021 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. Unlike these past supplemental cap temporary final rules, petitions filed under the first half FY 2022 temporary final rule did not exceed the additional allocation of 20,000 H-2B visas provided by that rule.

[71] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2023, TRK 13122.

[72] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022 (May 31, 2022).

[73] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, queried 10/2023, TRK 13122, FY 2023 H-2B Northern Central American Cap Approvals by Validity Start Date Month. The number of approved workers exceeded the number of additional visas authorized for the second half of FY 2022 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

2023.[74] Of the petitions for supplemental H-2B visas in FY 2023, USCIS issued approvals for 78,302 beneficiaries, including 7,157 beneficiaries under the allocation of 10,000 visas made available for returning workers for the late second half of the fiscal year and 23,832 beneficiaries under the allocation of 20,000 visas reserved for nationals of the Northern Central American countries and Haiti.[75]

In FY 2024, USCIS received a sufficient number of H-2B petitions to reach the first half of the FY 2024 fiscal year statutory cap on October 11, 2023.[76] USCIS received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year by January 9, 2024, and USCIS received enough petitions to reach the cap for the additional 19,000 H-2B visas made available for returning workers for the early second half of fiscal year by April 17, 2024.[77] Of the petitions for supplemental H-2B visas in FY 2024, USCIS issued approvals for 85,577 beneficiaries, including 6,314 beneficiaries under the allocation of 5,000 visas made available for returning workers for the late second half of the fiscal year and 24,475 beneficiaries under the allocation of 20,000 visas reserved for nationals of Guatemala, El Salvador, Honduras, Haiti, Colombia, Ecuador, or Costa Rica.[78]

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[74] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/ cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2023 (Jan. 31, 2023); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2023, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2023 (Mar. 31, 2023).

[75] *See* DHS, USCIS, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data, queried 10/2023, TRK 13122, H-2B Visa Issuance Report September 30, 2023. The number of approved workers exceeded the number of additional visas authorized for FY 2023 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

[76] *See* USCIS, USCIS Reaches H-2B Cap for First Half of FY 2024, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2024 (Oct. 13, 2023).

[77] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2024, https://www.uscis.gov/newsroom/alerts/ cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2024 (Jan. 12, 2024); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2024, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2024 (Apr. 18, 2024).

[78] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, ELIS, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2024, PAER0016221. The number of approved workers exceeded the number of additional visas authorized for FY 2024 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

In FY 2025, USCIS received a sufficient number of H-2B petitions to reach the first half of the FY 2025 fiscal year statutory cap on September 18, 2024.[79] USCIS received enough petitions to reach the cap for the additional 20,716 H-2B visas made available for returning workers for the first half of fiscal year by January 7, 2025, and USCIS received enough petitions to reach the cap for the additional 19,000 H-2B visas made available for returning workers for the early second half of fiscal year by April 18, 2025.[80] Of the petitions for supplemental H-2B visas in FY 2025, USCIS issued approvals for 87,067 beneficiaries, including 5,347 beneficiaries under the allocation of 5,000 visas made available for returning workers for the late second half of the fiscal year and 26,126 beneficiaries under the allocation of 20,000 visas reserved for nationals of Guatemala, El Salvador, Honduras, Haiti, Colombia, Ecuador, or Costa Rica.[81]

Data for the first half of FY 2026 indicates an immediate need for additional supplemental H-2B visas for U.S. employers with start dates between January 1 and March 31, 2026 (the last date of the first half of FY 2026 statutory cap). USCIS received a sufficient number of H-2B petitions to reach the first half of the FY 2026 statutory cap on September 12, 2025.[82] On July 9, 2025, DOL OFLC announced that it received 2,421 H-2B TLC applications covering 47,488 workers with an employment start date of October 1, 2025.[83] Further, the date on which USCIS received sufficient H-2B petitions to reach the first half semiannual statutory cap has generally trended earlier in recent years. In fiscal years 2017 through 2026, USCIS received a sufficient number of H-2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019,

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[79] *See* USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2025, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2025 (Sept. 19, 2024).
[80] *See* USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the First Half of FY 2025, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-first-half-of-fy-2025 (Jan. 10, 2026); USCIS, Cap Reached for Additional Returning Worker H-2B Visas for the Early Second Half of FY 2025, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-the-early-second-half-of-fy-2025 (Apr. 23, 2025).
[81] USCIS OPQ H2B Cap Tracking Dashboard (as of Dec. 30, 2025).
[82] *See* USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2026, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026 (Sept. 16, 2025).
[83] *See* DOL, Announcements, https://www.dol.gov/agencies/eta/foreign-labor/news.

November 16, 2020, September 30, 2021, September 12, 2022, October 11, 2023, September 18, 2024, and September 12, 2025, respectively.[84]

Most American businesses in these top industry sectors support one of the 16 critical infrastructure sectors that have a significant impact on national economic security. Given these trends in program usage and the documented need for H-2B workers among American businesses that continue to support economic recovery and growth across the U.S. industrial base, DHS believes it is appropriate to release the additional visas for FY 2026.[85] For example, American businesses classified under NAICS 31-33 (Manufacturing) may be considered to fall under the Critical Manufacturing Sector,[86] while NAICS 71 (Arts, Entertainment, and Recreation) and 72 (Accommodation and Food Services) may fall under one of the eight subsectors that comprise the Commercial Facilities Sector.[87]

The 2025[88] numbers are higher than the historical trend but are generally consistent with what the current unemployment rate alone would predict. The data presented in Chart 1 is meant to provide additional context and to demonstrate that the total allocation of H-2B visas is

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[84] *See* USCIS, USCIS Reaches H-2B Cap for First Half of FY 2017, https://www.uscis.gov/archive/ uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017 (Jan. 13, 2017); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2018, https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018 (Dec. 21, 2017); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2019, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2019 (Dec. 12, 2018); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2020, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020 (Nov. 20, 2019); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2021, https:// www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021 (Nov. 18, 2020); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2022, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022 (Oct. 12, 2021); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2023, https://www.uscis.gov/newsroom/ alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023 (Sept. 14, 2022); USCIS, USCIS Reaches H-2B Cap for First Half of FY 2024, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2024; USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2025, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2025 (Sept. 19, 2024); and USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2026, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026 (Sept. 16, 2025).

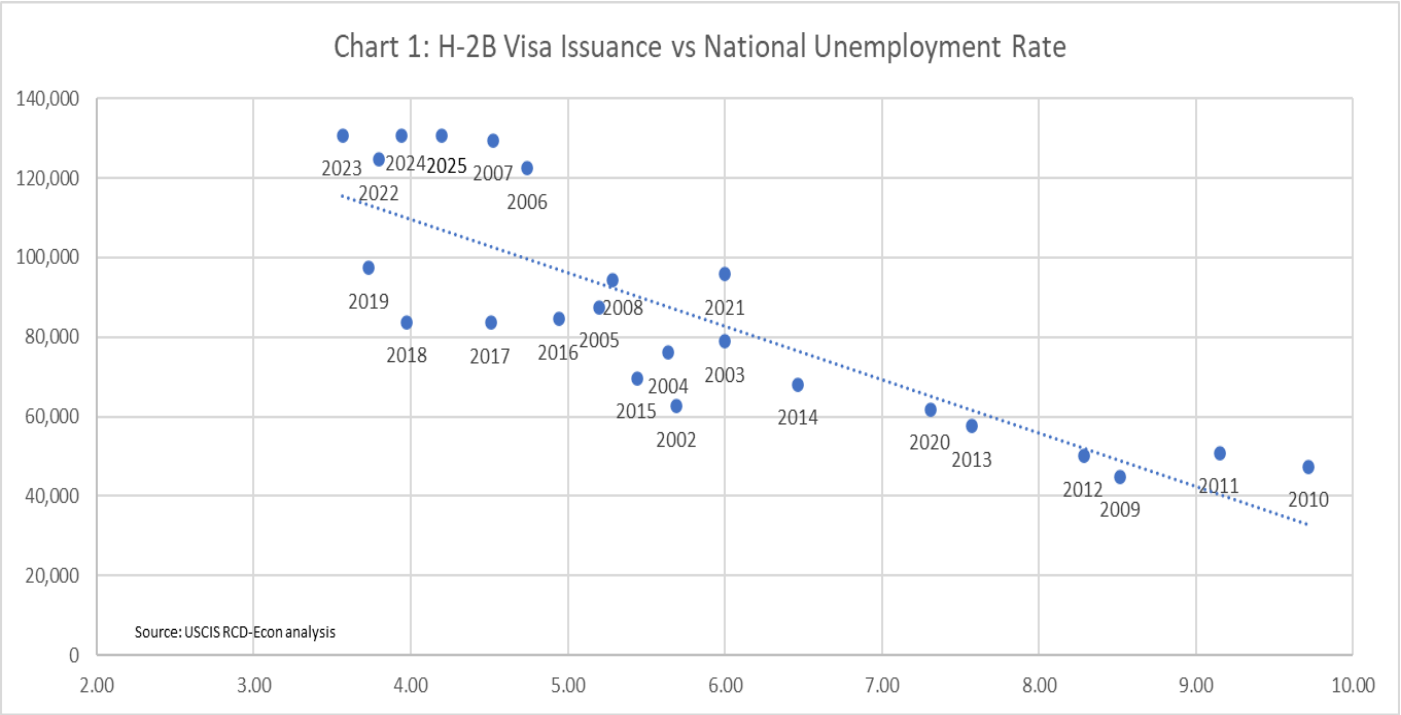
[85] *See* CISA, Critical Infrastructure Sectors, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors.

[86] *See* CISA, Critical Manufacturing Sector, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/critical-manufacturing-sector.

[87] *See* CISA, Commercial Facilities Sector, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/commercial-facilities-sector.

[88] The number of estimated visas issued for FY 2025 is based on the sum of the fiscal year statutory cap for H-2B workers (66,000) and the supplemental allocation for FY 2025 (64,716), for a total H-2B visa allocation of 130,716.

reasonable given labor market conditions.



Returning Worker Allocation and Filing Deadline for Employment Start Dates Between January 1 and March 31, 2026 (First Allocation)

For the first half of FY 2026, DHS will make 18,490 visas immediately available upon publication of this temporary final rule that are limited to returning workers, in other words, those workers who were issued H-2B visas or held H-2B status in fiscal years 2023, 2024, or 2025. These petitions must request a date of need starting between January 1 and March 31, 2026. *See* new 8 CFR 214.2(h)(6)(xvi). Petitions filed for supplemental allocations under this rule requesting a date of need before January 1, 2026 will be rejected and the filing fees will be returned.

DHS anticipates that U.S. employers will use all of the first allocation for returning workers starting between January 1 and March 31, 2026 (the last day of the first half of FY 2026), given how quickly USCIS reached the FY 2026 first half statutory cap. As noted previously, USCIS received enough H-2B petitions to reach the FY 2026 first half statutory cap

on September 12, 2025.[89] Because of the regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work and the strong demand for H-2B workers in recent years to begin work on the earliest employment start date (i.e., October 1), employers with late-winter employment start dates were likely unable to receive cap-subject H-2B workers and/or did not have a fair opportunity to file visa petitions for cap-subject H-2B workers before the first half statutory cap was reached. Thus, this first allocation would provide these late-winter season employers an opportunity to access the H-2B program.[90]

To mitigate complications from concurrent administration of multiple supplemental allocations and to permit this carry over, petitions for the first supplemental allocation must be filed before petitions for the second allocation may be filed. DHS will not accept, and will reject, H-2B supplemental cap petitions submitted with a start date of need between January 1 and March 31, 2026, that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 15 days or later after the FY 2026 second half statutory cap has been met. In the event that USCIS approves insufficient petitions to use all 18,490 supplemental visas under this first allocation, the unused numbers will carry over to the second allocation under this rule.

Returning Worker Allocation and Filing Deadline for Employment Start Dates Between April 1 and April 30, 2026 (Second Allocation)

For the early second half of FY 2026, DHS will initially make available 27,736 visas, plus any unused visas from the first allocation, limited to returning workers, in other words, those workers who were issued H-2B visas or held H-2B status in fiscal years 2023, 2024, or 2025. These petitions must request a date of need starting between April 1 and April 30, 2026. *See* new 8 CFR 214.2(h)(6)(xvi).

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[89] *See* USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2026, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026 (Sept. 16, 2025).
[90] DOL announcement on July 9, 2025. *See* https://www.dol.gov/agencies/eta/foreign-labor/news.

DHS cannot predict with certainty when the FY 2026 second half statutory cap will be reached (or if it will be reached), and therefore, did not specify a date for when to first allow petitioners to file for FY 2026 second allocation of supplemental visas. In the event that the statutory second half FY 2026 cap is not reached, the supplemental allocations for the second half of FY 2026 will not become available.

To mitigate complications from concurrent administration of the statutory second half cap, these petitions must be filed no earlier than 15 days after the second half statutory cap is reached, a date that USCIS will identify in a public announcement.[91] When USCIS announces that it has received a sufficient number of petitions to reach the second half statutory cap, it will also announce the earliest possible filing date (15 days after the second half statutory cap) for this allocation. Concurrent administration of the second half statutory cap with the second half supplemental cap would pose significant operational challenges, particularly considering the volume of H-2B petitions USCIS would have to process at the same time. A cushion of 15 days after the second half statutory cap is reached should provide USCIS with sufficient time to process H-2B petitions filed under the second half statutory cap and prepare to process petitions under this second allocation of the supplemental cap, and should also provide petitioners not selected under the statutory cap with enough time to refile under this second allocation of the supplemental cap. Furthermore, making this allocation available *after* the second half statutory cap has been reached builds in flexibility to account for variations in the timing of that cap being reached.

Based on historical data showing increasingly high demand for H-2B workers with April 1 start dates, DHS expects all 27,736 visas to be used quickly once the second allocation becomes available as occurred in FY 2024 and FY 2025. However, in the event that USCIS

[91] Pursuant to new 8 CFR 214.2(h)(6)(xvi)(C)(*2*), USCIS will reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section requesting employment start dates from April 1, 2026 to April 30, 2026 that are received earlier than 15 days after the INA section 214(g) cap for the second half of FY 2026 has been met.

approves insufficient petitions to use all 27,736 visas, the unused numbers will carry over for petition approvals for employment start dates beginning on or after May 1, 2026.

DHS will not accept, and will reject, H-2B supplemental cap petitions submitted with a date of need between April 1 and 30, 2026 (second allocation), that are received earlier than 15 days after the FY 2026 second half statutory cap is met. DHS will also not accept, and will reject, such petitions that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 45 days or later after the FY 2026 second half statutory cap is met.

Allocation and Filing Deadline for Employment Start Dates Between May 1 and September 30, 2026 (Third Allocation)

For the late second half of FY 2026, DHS will make available an additional allocation of 18,490 visas, plus any unused visas from the first and second allocations. In past years, because of the regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work and the strong demand for H-2B workers in recent years to begin work on the earliest employment start date (i.e., April 1), late-season employers[92] were likely unable to receive cap-subject H-2B workers and/or did not have an opportunity to file visa petitions for cap-subject H-2B workers before the second half statutory cap was reached. Employers who need workers to begin work on or after May 1 are not eligible to file TLC applications until on or after February 1. Furthermore, these employers who filed TLC applications on or after February 1 may not have received their approved TLC in time to file an H-2B petition before the statutory cap for the second half of FY 2025 is met,[93] and may not have identified workers to supplement their business needs. Therefore, the Secretary has determined that it is appropriate that this third

[92] Employers needing workers to begin work during the late spring and summer seasons in the fiscal year are also referred to as "late season employers."

[93] In FY 2025, USCIS announced that it received sufficient petitions to meet the H-2B statutory cap for the second half of FY 2025 on March 5, 2025. *See* USCIS, USCIS Reaches H-2B Cap for Second Half of FY 2025 and Filing Dates Now Available for Supplemental Visas, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-second-half-of-fy-2025-and-filing-dates-now-available-for-supplemental (Mar. 26, 2025).

allocation be available for U.S. employers with a need for workers to begin work on or after May 1 through the end of the fiscal year and that the 18,490 additional visas will be exempt from the returning worker requirement to provide these U.S. employers, especially those in critical infrastructure sectors, with late-season needs a better opportunity to receive H-2B workers to avoid irreparable harm and continue to contribute to the U.S. economy.

To mitigate complications from concurrent administration of the returning worker allocations, these petitions must be filed no earlier than 45 days after the second half statutory cap is reached, a date that USCIS will identify in a public announcement.[94] When USCIS announces that it has received a sufficient number of petitions to reach the second half statutory cap, it will also announce the earliest possible filing date (45 days after the second half statutory cap) for this third allocation. Concurrent administration of the second half statutory cap with the second supplemental allocation cap would pose significant operational challenges, particularly considering the volume of H-2B petitions USCIS would have to process at the same time. A cushion of 45 days after the second half statutory cap is reached should provide USCIS with sufficient time to process H-2B petitions filed under the second half statutory cap and prepare to process petitions under this third allocation of the supplemental cap. Furthermore, making this allocation available *after* the second half statutory cap has been reached builds in flexibility to account for variations in the timing of that cap being reached. DHS cannot predict with certainty when the FY 2026 second half statutory cap will be reached (or if it will be reached), and therefore, did not specify a date in this rule for when to first allow petitioners to file for FY 2026 third allocation of supplemental visas. In the event that the statutory second half of FY 2026 cap is not reached, the supplemental allocations for the second half of FY 2026 will not become available. In the event that USCIS approves insufficient petitions to use all 18,490 visas, the unused numbers will not carry over to FY 2027.

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[94] Pursuant to new 8 CFR 214.2(h)(6)(xvi)(C)(*2*), USCIS will reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section requesting employment start dates from April 1, 2026 to April 30, 2026 that are received earlier than 15 days after the INA section 214(g) cap for the second half FY 2026 has been met.

C. Returning Workers

The Secretary of Homeland Security, in consultation with the Secretary of Labor, has determined that the supplemental visas should be granted to returning workers from the past three fiscal years, unless the H-2B worker is counted towards the separate 18,490 cap available to employers with employment start dates between May 1 and September 30, 2026. The Secretaries have determined that, for purposes of this program, H-2B returning workers include those aliens who were issued an H-2B visa or were otherwise granted H-2B status in FY 2023, 2024, or 2025. As discussed above, the Secretaries determined that limiting returning workers to those who were issued an H-2B visa or granted H-2B status in the past three fiscal years is appropriate as it mirrors the standard that Congress designated in previous returning worker provisions. Returning workers have previously obtained H-2B visas and therefore been vetted by DOS and DHS,[95] would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.

Limiting the supplemental cap mostly to returning workers is beneficial because these workers have generally followed immigration law in good faith and demonstrated their willingness to return home after they have completed their temporary labor or services or their period of authorized stay, which is a condition of H-2B status. The returning worker condition therefore provides a basis to believe that H-2B workers under this cap increase will abide by terms and conditions of their H-2B nonimmigrant status and return home again after another temporary stay in the United States.

To ensure compliance with the requirement that additional visas be made available to returning workers, petitioners seeking H-2B workers under the supplemental cap will be required

[95] Employers may file one H-2B petition to request all of their H-2B workers associated with one TLC (with a limit of 25 named workers per petition). USCIS vets all named H-2B workers prior to issuing a decision. DOS vets all named and unnamed H-2B workers during the visa application process at the U.S. Embassy or Consulate.

to attest that each employee requested or instructed to apply for a visa under the FY 2026 supplemental cap was issued an H-2B visa or otherwise granted H-2B status in FY 2023, 2024, or 2025, unless the H-2B worker is counted towards the separate 18,490 cap available to employers with employment start dates between May 1 and September 30, 2026. This attestation will serve as prima facie initial evidence to DHS that each worker, unless an H-2B worker who is counted against the 18,490 cap for those that will start work between May 1 and September 30, 2026 (third allocation), meets the returning worker requirement. DHS retains the right to review and verify that each beneficiary under this supplemental rule is in fact a returning worker any time before and after approval of the petition.

Employers requesting H-2B workers subject to the returning worker requirement must maintain evidence that the employer requested and/or instructed that each of the workers petitioned by the employer in connection with this temporary rule were issued H-2B visas or otherwise granted H-2B status in FY 2023, 2024, or 2025. As with previous years, such evidence would include, but is not limited to, a date-stamped written communication from the employer to its agent(s) and/or recruiter(s) that instructs the agent(s) and/or recruiter(s) to only recruit and provide instruction regarding an application for an H-2B visa to those foreign workers who were previously issued an H-2B visa or granted H-2B status in FY 2023, 2024, or 2025.

D. Returning Worker Exemption for up to 18,490 Visas for Employment Start Dates Between May 1 and September 30, 2026 (Third Allocation)

The Secretary of Homeland Security, in consultation with the Secretary of Labor, has determined that 18,490 additional H-2B visas will be exempt from the returning worker requirement only if the employment start date on the H-2B petition is between May 1 and September 30, 2026. In the event the limit for the supplemental visas available in the first and

second allocations are not reached, DHS will make the unused visas available to employers requesting employment start dates between May 1 and September 30, 2026. Because these unused visas will be made available as part of the third allocation, they will also be exempt from the returning worker requirement. As described above, these late-season employers were likely unable to receive cap-subject H-2B workers and/or did not have an opportunity to file visa petitions for cap-subject H-2B workers before the second half statutory cap was reached due to the regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work and the strong demand for H-2B workers in recent years to begin work on the earliest employment start date (i.e., April 1).

E. Business Need Standard – Irreparable Harm and FY 2026 Attestation

To file any H-2B petition under this rule during the remainder of FY 2026, petitioners must meet all existing H-2B eligibility requirements, including having an approved, valid, and unexpired TLC. *See* 8 CFR 214.2(h)(6) and 20 CFR part 655 subpart A. The TLC process focuses on establishing whether a petitioner has a temporary need for workers and whether there are U.S. workers who are able, willing qualified, and available to perform the temporary service or labor, and does not address the harm a petitioner is facing or will face in the absence of such workers; the attestation addresses this question. In addition, under this rule, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of perjury, that it meets the business need standard. Under this standard, the petitioner must be able to establish that, if it does not receive all of the workers requested under the cap increase,[96] it is suffering irreparable harm or will suffer impending irreparable harm, that is, permanent and severe financial loss. In addition to asserting that it meets the business need standard, the U.S.

[96] An employer may request fewer workers on the H-2B petition than the number of workers listed on the TLC. *See* Instructions for Petition for Nonimmigrant Worker, providing that "[t]he total number of workers you request on an H2B petition must not exceed the number of workers approved by the Department of Labor on the temporary labor certification."

employer must attest that, by the time of submission of the petition to USCIS, they have prepared and retained a detailed written statement describing how the evidence gathered in support of their H-2B petition demonstrates that irreparable harm is occurring or impending. The employer must also attest that, upon request, it will provide to DHS and/or DOL all of the types of documentary evidence it selected in the attestation form that support its claim of irreparable harm, along with the detailed written statement it prepared by the time of submitting the petition to USCIS describing how such evidence demonstrates irreparable harm. The petitioner must submit the attestation directly to USCIS, together with Form I-129, the approved and valid TLC,[97] and any other necessary documentation. As in prior temporary final rules, employers will be required to complete the new attestation form which can be found at: https://www.foreignlaborcert.doleta.gov/form.cfm.

The irreparable harm standard is the same as in previous temporary final rules for recent years. The irreparable harm standard requires U.S. employers to attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested on the petition filed under this rule. The irreparable harm standard in this rule aligns with this determination that Congress requires DHS to make before increasing the number of H-2B visas available to U.S. employers. In particular, requiring U.S. employers to attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the requested H-2B workers is directly relevant to the needs of the business—if an employer is suffering or will suffer irreparable harm, then their needs are not being satisfied. Because the authority to increase the statutory cap is tied to the needs of businesses, as it has been since 2017, the Departments think, as a policy matter, that it is reasonable to require employers to attest that they are suffering irreparable harm or that they

[97] Since July 26, 2019, USCIS has been accepting a printed copy of the electronic one-page ETA-9142B, Final Determination: H-2B Temporary Labor Certification Approval, as an original, approved TLC. See Notice of DHS' Requirement of the Temporary Labor Certification Final Determination Under the H-2B Temporary Worker Program, 85 FR 13178, 13179 (Mar. 6, 2020).

will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested on their petition. If such employers are unable to attest to such harm and retain and produce (upon request) documentation of that harm, it calls into question whether the need set forth in this rule cannot in fact be satisfied without the ability to employ H-2B workers. This requirement falls within the broad discretion Congress gave to the Secretary to, in consultation with the Secretary of Labor, increase the number of H-2B workers in order to meet the needs of American businesses.[98] As discussed in the Legal Framework section, DHS has broad delegation to administer and enforce U.S. immigration laws and issue regulations regarding the same, as well as broad discretion to establish conditions on the admission of nonimmigrants, and over the adjudication of nonimmigrant petitions, after consultation with other agencies, including DOL. *See* INA sec. 103(a)(1), 214(a)(1), (c)(1); 8 U.S.C. 1103(a)(1), 1184(a)(1), (c)(1). In addition, through the temporary enactment authorizing the Secretary of DHS to increase the number of H-2B visas,[99] Congress delegated to the Secretary of DHS, after consultation with the Secretary of Labor, the discretion to establish a framework for determining that the needs of American businesses cannot be satisfied with the existing workforce and the conditions under which to authorize additional visas to further the purpose of the enactment. In the most recent, as well as each prior annual enactment,[100] Congress has consistently used the word "may" when describing the Secretary's authority, and the use of the word "may" indicates a grant of discretion,

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[98] *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2263 (2024).

[99] Public Law 118-47, Division G, Title I, sec. 105, states: "Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of United States businesses cannot be satisfied during fiscal year 2024 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor, may increase the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) in such fiscal year by not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation."

[100] *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change.").

absent contrary legislative intent, structure and purpose of the statute.[101] As in prior years, the Departments have determined that the irreparable harm standard falls within the discretionary authority of the Secretary of DHS and furthers the legislative purpose behind the temporary enactment by making visas available to those American businesses that are most likely to be severely impacted by a lack of an able, willing, and qualified workforce.

This rule also requires an employer to attest that it has prepared a detailed written statement describing (i) how the employer's business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all H-2B workers requested on the I-129 petition, and (ii) how each type of evidence selected in the attestation form and relied upon by the employer demonstrates the applicable irreparable harm. The employer will not submit this detailed written statement to DHS with its petition for supplemental visas, but will attest on the attestation form to having prepared a detailed written statement. The detailed written statement must be provided to DHS and/or DOL upon request in the event of an audit or during the course of an investigation.

The attestation that irreparable harm is occurring or is impending cannot be based on a speculative analysis that permanent and severe financial loss "may occur" or "is likely to occur." Rather, as of the time of submission to DHS, U.S. employers must have concrete evidence establishing that severe and permanent financial loss is occurring, with the scope and severity of harm clearly articulable, or that severe and permanent financial loss will occur in the near future without access to the supplemental visas. Even if no irreparable harm ultimately occurs because the employer is approved for supplemental visas under this rule, the U.S. employer must be able to articulate how permanent and severe financial loss was impending at the time of filing.

Additionally, in DOL's experience, employers sometimes do not retain the documentation they specifically attested they would retain, or will not or cannot explain how this

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[101] *See generally U.S. v. Rodgers*, 461 U.S. 677, 706 (1983) (The word "may," when used in a statute, usually implies some degree of discretion unless there is indication of contrary legislative intent, or an obvious inference from the structure and purpose of the statute.).

documentation demonstrates the relevant irreparable harm to which they attested, which indicates that some of the employers seeking to benefit from hiring H-2B workers are not thoughtfully considering, or considering at all, whether their business needs qualify them for supplemental H-2B visas under these rules.

The Departments continue to believe that the written statement is necessary in the case of an audit or investigation to explain, in detail, the employer's reasoning as to why irreparable harm was occurring or impending without the ability to employ H-2B workers, and how the evidence supports the employer's reasoning. In audits and investigations, some employers have provided hundreds of pages of evidence without any explanation as to how this evidence demonstrates irreparable harm, leaving DOL or DHS to determine how a voluminous compilation of complex and, sometimes, seemingly unrelated documents demonstrates irreparable harm without any understanding of the employer's intent when providing the documents. A detailed, thoughtful explanation from the employer will clarify the purpose of these documents and allow the employer to clearly make their case that the business was experiencing irreparable harm or would experience impending irreparable harm at the time of petitioning for supplemental visas.

As such, the Departments believe that it is prudent to continue to require employers to identify how they are suffering irreparable harm (that is, permanent and severe financial loss), or will suffer impending irreparable harm, and how the evidence they will maintain shows that harm was occurring or impending, at the time they petition for H-2B visas under this rule. The written statement should identify, in detail, the severe and permanent financial loss that is occurring or will occur in the near future without access to the supplemental visas and should describe how the information contained in the documentary evidence demonstrates this severe and permanent financial loss. A written statement explaining that no irreparable harm occurred because the employer was approved for supplemental H-2B visas is insufficient; if no irreparable harm actually occurred, the U.S. employer must be

able to show that irreparable harm was impending at the time of the petition's filing. Supporting evidence of the employer's irreparable harm (either occurring or impending) maintained and discussed in the detailed written statement may include, but is not limited to, the following types of documentation:

(1) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss due to the inability to meet financial or existing contractual obligations because they were unable to employ all of the requested H-2B workers, including evidence of executed contracts, reservations, orders, or other business arrangements that have been or would be cancelled, and evidence demonstrating an inability to pay debts/bills;

(2) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss, as compared to prior years, such as financial statements (including profit / loss statements) comparing the employer's period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to the current year;

(3) Evidence showing the number of workers needed in the previous three seasons (FY 2023, 2024, and 2025) to meet the employer's need as compared to those currently employed or expected to be employed at the beginning of the start date of need. Such evidence must indicate the dates of their employment, and their hours worked (for example, payroll records) and evidence showing the number of H-2B workers it claims are needed, and the workers' actual dates of employment and hours worked; and/or

(4) Evidence that the petitioner is reliant on obtaining a certain number of workers to operate, based on the nature and size of the business, such as documentation showing the number of workers it has needed to maintain its operations in the past, or will in the near future need, including but not limited to: a detailed business plan, copies of purchase orders or other requests for good and services, or other reliable forecast of an impending need for

workers.

As with the attestation requirement in prior temporary final rules, these examples are not exhaustive, nor will they necessarily establish that the business meets the irreparable harm standard; petitioners may retain other types of evidence they believe will satisfy these standards. Such evidence must be maintained and provided, with the written statement, to DOL and/or DHS upon request. It has been DOL's experience when reviewing documentation submitted to establish irreparable harm that employers commonly provide unexecuted contracts or letters of intent; contracts with redacted financial terms or dates of performance; or written statements memorializing verbal agreements that are not signed by all parties and thus may be insufficient evidence of the terms of such agreements and may call into question their credibility. In addition, DOL has encountered contracts among related entities that are owned, operated, or otherwise controlled by the employer or an individual with ownership interest in the employer. Such contracts may lack credibility as evidence of irreparable harm because the employer and related parties may share the same interest in obtaining H-2B workers even in situations where the employer is not suffering irreparable harm or will not suffer impending irreparable harm. In those instances, DOL may request that an employer provide additional credible evidence to demonstrate that it has met the legal standard. In other situations, the only documentation offered by the employer is a declaration, without any supporting documentary evidence. Given that the employer must establish that they are suffering irreparable harm or will suffer impending irreparable harm, in other words, a permanent and severe financial loss without the ability to employ all of the H-2B workers requested on their petition, an employer's irreparable harm cannot be properly assessed without evidence of its financial business needs. As such, DOL is clarifying that merely asserting irreparable harm, or providing documentation that lacks sufficient facts or indicia of validity (e.g., signatures) for DOL to determine that the employer was suffering or would suffer impending irreparable harm without the ability to

employ all of the H-2B workers requested under the supplemental cap at the time of filing their petition, will be insufficient to make an irreparable harm determination. In such instances where the evidence is insufficient or the petitioner merely submits a declaration without supporting documentation, DOL may require the employer to provide additional credible evidence. This is because mere assertions or the absence of key financial terms or dates of performance in a contract due to redaction, for example, hinder the Department's ability to evaluate whether the employer was in fact suffering irreparable harm or would have suffered impending irreparable harm without the ability to employ all of the H-2B workers it requested for a given period. Factors that can demonstrate the credibility of a contract or similar commitment or obligation may include evidence of an agreement, preferably in writing, that includes the financial terms, dates of performance, and evidence it was signed and/or agreed upon before the petition was filed.

While the employer will not submit the detailed written statement nor the supporting evidence to DHS at the time of filing a petition for H-2B visas under this rule, the Departments emphasize that the employer must prepare the detailed written statement and compile the evidence at the time of filing. The employer must complete the analysis as to whether the employer is experiencing irreparable harm or will experience impending irreparable harm at the time the employer petitions for supplemental visas using evidence available at this time. In the interest of efficiency, the Departments do not require the submission of this statement to DHS at the time of filing the petition. Instead, the employer must attest that it has prepared the detailed written statement and that it will keep it as part of its records, to be provided to the Departments, upon request.

As the burden rests with the petitioner to prove eligibility for supplemental H-2B visas under the time-limited authority implemented with this temporary final rule by a preponderance of the evidence, it is the petitioner's burden to establish that it meets the irreparable harm standard. INA sec. 291, 8 U.S.C. 1361; *Matter of Chawathe,* 25 I&N

Dec. 369, 375-76 (AAO 2010). The attestation form will serve as prima facie initial evidence to DHS that the petitioner's business is suffering irreparable harm or will suffer impending irreparable harm. USCIS will reject in accordance with 8 CFR 103.2(a)(7)(ii) or may deny in accordance with 8 CFR 103.2(b)(8)(ii), as applicable, any petition requesting H-2B workers under this FY 2026 supplemental cap that is lacking the requisite attestation form. Although this rule does not require submission of the evidence selected in the attestation and/or a detailed written statement at the time of filing of the petition, other than an attestation, the employer must have the evidence selected in the attestation and the accompanying detailed written statement on hand and ready to present to DHS and/or DOL at any time starting with the date of filing the I-129 petition, through the prescribed document retention period discussed below.

As with petitions filed under the supplemental TFRs in recent years, the Departments may select a random number of petitions for audit examination to verify compliance with program requirements, including the irreparable harm standard implemented through this rule. The Departments may consider failure to provide evidence demonstrating irreparable harm, to prepare or provide the detailed written statement explaining irreparable harm, or to comply with the audit process to be a willful violation resulting in an adverse agency action on the employer, including revocation of the TLC or program debarment. Similarly, failure to cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS and/or DOL as required by 8 CFR 214.2(h)(6)(xvi)(B)(*2*)(*i*) and (*ii*) may constitute a violation of the terms and conditions of an approved petition and lead to petition revocation under 8 CFR 214.2(h)(11)(iii)(A)(*3*).

The attestation submitted to USCIS will also state that the employer:

(1) meets all other eligibility criteria for the available visas, including the returning worker requirement, unless exempt because the H-2B worker is counted against the 18,490 visas reserved for workers with employment start dates between May 1 and September 30, 2026;

(2) will comply with all assurances, obligations, and conditions of employment set forth in the Application for Temporary Employment Certification (Form ETA-9142B and appendices) certified by DOL for the job opportunity (which serves as the TLC); and

(3) will document and retain evidence of such compliance.

Because petitioners will submit the attestation to USCIS as initial evidence with Form I-129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, USCIS may deny or revoke, as applicable, a petition based on or related to statements made in the attestation, including but not limited to the following grounds: (1) the employer failed to demonstrate employment of all of the requested workers is necessary under the appropriate business need standard; or (2) the employer failed to demonstrate that it requested and/or instructed that each worker petitioned for is a returning worker, or is exempt because of an employment start date between May 1 and September 30, 2026, as required by this rule. The petitioner may appeal any denial or revocation on such basis, however, under 8 CFR part 103, consistent with DHS regulations and existing USCIS procedures.

It is the view of the Secretaries of Homeland Security and Labor that requiring a post-TLC attestation to USCIS is both practical, given the time remaining in FY 2026 and the need to assemble the necessary documentation, as well as sufficiently protective of U.S. workers given that the employer, in completing the TLC process, is required to conduct a labor market test to determine whether a sufficient number of qualified U.S. workers will be available at the time and place needed to perform the nonagricultural work. In addition, the employer is required to retain documentation, which must be provided upon request, supporting the new attestations regarding (1) the irreparable harm standard and (2) the returning worker requirement where required, or, alternatively, documentation supporting that the H-2B worker(s) requested has an employment start date between May 1 and September 30, 2026 and counted against the 18,490 cap (which may be satisfied by the separate Form I-129 that employers are required to file for such workers

in accordance with this rule). Although the employer must have such documentation on hand at the time it files the petition, the Departments have determined that, if employers were required to submit the attestation form to DOL before filing a petition with DHS, the attendant delays would render any visas unlikely to satisfy the needs of American businesses given processing timeframes and the time remaining in this fiscal year. USCIS may issue a notice of intent to revoke and request additional evidence, or issue a revocation notice, based on such documentation, and DOL's OFLC and WHD will be able to review this documentation and enforce the attestations during the course of an audit examination or investigation. *See* 8 CFR 103.2(b) or 8 CFR 214.2(h)(11).

In accordance with the attestation requirements, under which petitioners attest that they meet the irreparable harm standard, that they are seeking to employ only returning workers (unless exempt as described above), and that they meet the document retention requirements at 20 CFR 655.69, petitioners must retain documents and records meeting their burden to demonstrate compliance with this rule for three years from the date of the attestation, and must provide the documents and records upon the request of DHS or DOL, such as in the event of an audit or investigation. As mentioned above, the employer bears the burden of establishing that they are suffering or will suffer impending irreparable harm. With regard to the irreparable harm standard, employers attesting that they are suffering irreparable harm must be able to provide concrete evidence establishing severe and permanent financial loss that is occurring; the scope and severity of the harm must be clearly articulable. Employers attesting that they will suffer impending irreparable harm must be able to demonstrate that severe and permanent financial loss will occur in the near future without access to the supplemental visas. It will not be enough to provide evidence suggesting that such harm may or is likely to occur; rather, the documentary evidence must show that impending harm is occurring or will occur and document the form of such harm. Examples of possible types of evidence to be maintained are listed earlier in this section.

When a petition is selected for audit examination, or investigation, DHS and / or DOL will review all evidence available to it to confirm that the petitioner properly attested to DHS, at the time of filing the petition, that their business was suffering irreparable harm or would suffer impending irreparable harm, and that they petitioned for and employed only returning workers, unless the H-2B worker is exempt from the returning worker requirement as described above, among other attestations. If DHS subsequently finds that the evidence does not support the employer's attestations, DHS may deny or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. DHS may also, or alternatively, refer the petitioner to DOL for further investigation. In addition, DOL may independently take enforcement action, including by, among other things, debarring the petitioner from the H-2B program for not less than one year or more than five years from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision. *See, e.g.,* 20 CFR 655.73; 29 CFR 503.20, 503.24.[102]

Evidence reflecting a preference for hiring H-2B workers over U.S. workers may warrant an investigation by additional agencies enforcing employment and labor laws, such as the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division. INA section 274B, 8 U.S.C. 1324b (prohibiting certain types of employment discrimination based on citizenship status or national origin). Moreover, DHS and DOL may refer potential discrimination to IER pursuant to applicable interagency agreements.[103] In addition, if members of the public have information that a

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[102] Pursuant to the statutory provisions governing enforcement of the H-2B program, INA section 214(c)(14), 8 U.S.C. 1184(c)(14), a violation exists for purposes of DOL enforcement actions in the H-2B program where there has been a willful misrepresentation of a material fact in the petition or a substantial failure to meet any of the terms and conditions of the petition. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions. *See*, e.g., INA section 214(c)(14)(D), 8 U.S.C. 1184(c)(14)(D); *see also* 29 CFR 503.19.

[103] *See* IER, Partnerships, https://www.justice.gov/crt/partnerships (last visited Jan. 9, 2026).

participating employer may be abusing this program, DHS invites them to notify U.S. Immigration and Customs Enforcement (ICE) by completing the online ICE Tip Form[104] or alternately, via the toll-free ICE Tip Line, (866) 347-2423.[105]

DHS, in exercising its statutory authority under INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and section 105 of the FY 2024 Omnibus, as extended by Public Law 119-37, is responsible for adjudicating eligibility for H-2B classification. As in all cases, the burden rests with the petitioner to establish eligibility by a preponderance of the evidence. INA section 291, 8 U.S.C. 1361. *Matter of Chawathe,* 25 I&N Dec. 369, 375-76 (AAO 2010).

Accordingly, as noted above, where the petition lacks initial evidence, such as a properly completed attestation, USCIS will, as applicable, reject the petition in accordance with 8 CFR 103.2(a)(7)(ii) or may deny the petition in accordance with 8 CFR 103.2(b)(8)(ii). Further, where the initial evidence submitted with the petition contains inconsistencies or is inconsistent with other evidence in the petition and the underlying TLC, USCIS may issue a Request for Evidence, Notice of Intent to Deny, or Denial in accordance with 8 CFR 103.2(b)(8). In addition, where it is determined that an H-2B petition filed pursuant to the FY 2024 Omnibus, as extended by Public Law 119-37, was granted erroneously, the H-2B petition approval may be revoked. *See* 8 CFR 214.2(h)(11).

F. DHS Petition Procedures

To petition for H-2B workers under this rule, the petitioner must file a Form I-129 at the current filing location in accordance with applicable regulations and form instructions, an unexpired TLC, and the attestation form ETA-9142-B-CAA-10. If filing multiple Forms I-129

[104] ICE Tip Form, https://www.ice.gov/webform/ice-tip-form.
[105] DHS may publicly disclose information regarding the H-2B program consistent with applicable law and regulations. For information about DHS disclosure of information contained in a system of records, see https://www.dhs.gov/ system-records-notices-sorns. Additional general information about DHS privacy policy can be accessed at https://www.dhs.gov/policy.

based on the same TLC, each H-2B petition must include a copy of the TLC and reference all previously-filed petitions associated with the same TLC. The total number of requested workers may not exceed the total number of workers indicated on the approved TLC. In addition, the USCIS Fee Schedule Final Rule, 89 FR 6194 (January 31, 2024), which took effect on April 1, 2024, imposed a limit of 25 named beneficiaries per petition.[106]

Petitions filed for supplemental allocations under this rule at any location other than the current filing location will be rejected and the filing fees will be returned. For all petitions filed under this rule and the H-2B program, generally, employers must establish, among other requirements, that insufficient qualified U.S. workers are available to fill the petitioning H-2B employer's job opportunity and that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly-employed U.S. workers.[107] To meet this standard of protection for U.S. workers and, in order to be eligible for additional visas under this rule, employers must have applied for and received a valid TLC in accordance with 8 CFR 214.2(h)(6)(iv)(A) and (D) and 20 CFR part 655, subpart A. Under DOL's H-2B regulations, TLCs are valid only for the period of employment certified by DOL and expire on the last day of authorized employment.[108]

In order to have a valid TLC, the employment start date on the employer's H-2B petition must not be different from the employment start date certified by DOL on the TLC.[109] Under generally applicable DHS regulations, the only exception to this requirement applies when an employer files an amended H-2B petition, accompanied by a copy of the previously approved TLC and a copy of the initial visa petition approval notice, at a later date to substitute workers as set forth under 8 CFR 214.2(h)(6)(viii)(B).

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[106] *See* 8 CFR 214.2(h)(2)(ii).
[107] INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D); 20 CFR 655.1.
[108] 20 CFR 655.55(a).
[109] *See* 8 CFR 214.2(h)(6)(iv)(D).

The attestations must be filed on Form ETA-9142-B-CAA-10, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37.[110] Petitioners are required to retain a copy of such attestations and all supporting evidence for 3 years from the date the associated TLC was approved, consistent with 20 CFR 655.56 and 29 CFR 503.17.[111] Petitions submitted to DHS pursuant to Public Law 119-37, which extended the FY 2024 Omnibus, will be processed in the order in which they were received within the relevant supplemental allocation, and pursuant to processes parallel to those in place for when numerical limitations are reached under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10). Petitioners may also choose to request premium processing of their petitions under 8 CFR 103.7(e), which allows for expedited processing for an additional fee.

USCIS will reject petitions filed under the supplemental allocations in this rule at any location other than the current filing location and will return the filing fees for any such petition.

Immediately upon publication of the rule, but no earlier than that date, USCIS will begin accepting returning worker H-2B petitions requesting employment start dates between January 1 and March 31, 2026. Beginning no earlier than 15 days after the second half statutory cap is reached, USCIS will begin accepting returning worker H-2B petitions requesting employment start dates between April 1 and April 30, 2026. Finally, beginning no earlier than 45 days after the second half statutory cap is reached, USCIS will begin accepting H-2B petitions exempt from the returning worker requirement for employment start dates between May 1 and September 30, 2026.

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[110] *See* 20 CFR 655.64.
[111] *See* new 20 CFR 655.69.

USCIS will reject H-2B supplemental cap petitions submitted with a start date of need between January 1 and March 31, 2026 (first allocation), that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 15 days or later after the FY 2026 second half statutory cap has been met. USCIS will not accept, and will reject, H-2B supplemental cap petitions submitted with a date of need between April 1 and 30, 2026 (second allocation), that are received earlier than 15 days after the FY 2026 second half statutory cap is met. USCIS will also not accept, and will reject, such petitions that are received after the applicable numerical limitation has been reached or, if the numerical limitation for this allocation has not been met, 45 days or later after the FY 2026 second half statutory cap is met. For H-2B supplemental cap petitions with a date of need between May 1 and September 30, 2026 (third allocation), USCIS will not accept, and will reject such petitions that are received earlier than 45 days after the FY 2026 second half statutory cap is met or that are received after the applicable numerical limitation has been reached or after September 15, 2026. DHS believes that 15 days from the end of the fiscal year is the minimum time needed for petitions filed under the third allocation to be adjudicated, although USCIS cannot guarantee the time period will be sufficient in all cases. *See* new 8 CFR 214.2(h)(6)(xvi)(C). Such petitions will be rejected and the filing fees will be returned. Petitioners may choose to request premium processing of their petitions under 8 CFR 106.4, which allows for expedited processing for an additional fee.

Based on the time-limited authority granted to DHS by section 101 of Division A, Title I of the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Public Law 119-37, on the same terms as section 105 of the FY 2024 Omnibus, DHS is notifying the public that USCIS cannot approve petitions seeking H-2B workers under this rule on or after October 1, 2026. *See* new 8 CFR 214.2(h)(6)(xvi)(C). Petitions pending with USCIS that are not approved

before October 1, 2026 will be denied and any fees will not be refunded. *See* new 8 CFR 214.2(h)(6)(xvi)(C).

Nothing in this rule will limit the authority of DHS or DOS to deny, rescind, revoke, or take any other action with respect to an H-2B petition or visa application at any time before or after approval of the H-2B petition or visa application.

G. DOL Procedures

All employers are required to have an approved and valid TLC from DOL in order to file a Form I-129 petition with DHS. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D). The standards and procedures governing the submission and processing of Applications for Temporary Employment Certification for employers seeking to hire H-2B workers are set forth in 20 CFR part 655, subpart A. An employer that seeks to hire H-2B workers must request a TLC in compliance with the application filing requirements set forth in 20 CFR 655.15 and meet all the requirements of 20 CFR part 655, subpart A, to obtain a valid TLC, including the criteria for certification set forth in 20 CFR 655.51. *See* 20 CFR 655.64(a) and 655.50(b). Employers with an approved TLC have conducted recruitment, as set forth in 20 CFR 655.40 through 655.49, to determine whether U.S. workers are qualified and available to perform the work for which employers sought H-2B workers.

The H-2B regulations require, among other things, an employer with a non-emergency situation that seeks to hire H-2B workers must file a completed Application for Temporary Employment Certification with the National Processing Center (NPC) designated by the OFLC Administrator no more than 90 calendar days and no fewer than 75 calendar days before the employer's date of need (start date for the work). *See* 20 CFR 655.15.

Emergency Procedures

Under 20 CFR 655.17, an employer may request a waiver of the time period(s) for filing an Application for Temporary Employment Certification based on "good and

substantial" cause, provided that the employer has sufficient time to thoroughly test the domestic labor market on an expedited basis and the OFLC certifying officer (CO) has sufficient time to make a final determination as required by the regulation. To rely on this provision, as the Departments explained in the 2015 H-2B Interim Final Rule, the employer must provide the OFLC CO with detailed information describing the "good and substantial cause" necessitating the waiver. Such cause may include the substantial loss of U.S. workers due to Acts of God, or a similar unforeseeable human-made catastrophic event that is wholly outside the employer's control, unforeseeable changes in market conditions, or pandemic health issues. Thus, to ensure an adequate test of the domestic labor market and to protect the integrity of the H-2B program, the Departments clearly intended that use of emergency procedures must be narrowly construed and permitted in extraordinary and unforeseeable catastrophic circumstances that have a direct impact on the employer's need for the specific services or labor to be performed. Even under the existing H-2B statutory visa cap structure, DOL considers USCIS' announcement(s) that the statutory cap(s) on H-2B visas has been reached, which may occur with regularity every six months depending on H-2B visa need, as foreseeable, and therefore not within the meaning of "good and substantial cause" that would justify a request for emergency procedures. Accordingly, employers cannot rely solely on the supplemental H-2B visas made available through this rule as good and substantial cause to use emergency procedures under 20 CFR 655.17.

H. Non-severability

Because of the particular circumstances of this regulation, and because the attestation and other requirements of this rule play a vital role in achieving the purposes of this rule, DHS and DOL intend that the attestation requirement, DOL procedures, and other aspects of this rule be non-severable from the remainder of the rule, including the increase in the numerical

allocations.[112] Thus, if the attestation requirement or any other part of this rule is enjoined or held invalid, the Departments intend for the remainder of the rule, with the exception of the retention requirements being codified in 20 CFR 655.69, to cease operation in the relevant jurisdiction, without prejudice to workers already present in the United States under this regulation, as consistent with law.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

1. Good cause to forgo notice and comment rulemaking.

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Among other things, the good cause exception for forgoing notice and comment rulemaking "excuses notice and comment in emergency situations, or where delay could result in serious harm." *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004). Courts have found "good cause" under the APA in similar situations when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. *See, e.g.*, *Nat'l Fed'n of Fed. Emps. v. Devine*, 671 F.2d 607, 611 (D.C. Cir. 1982) (holding that an agency may use the good cause exception to address "a serious threat to the financial stability of [a government] benefit program"); *Am. Fed'n of Gov't Emps. v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (finding good cause when an agency bypassed notice and comment to avoid "economic harm and disruption" to a given industry, which would likely result in higher consumer prices).

[112] The Departments' intentions with respect to non-severability extend to all features of this rule.

Although the good-cause exception is "narrowly construed and only reluctantly countenanced," *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir. 1992), the Departments have appropriately invoked the exception in this case due to the time exigencies resulting from the unique procedural history of the Department's authority for this action and the ongoing economic need for this rulemaking, as described further below. Overall, the Departments are bypassing notice and comment to prevent "serious economic harm to the H-2B community," including U.S. employers, associated U.S. workers, and related professional associations, that could result from the failure to provide supplemental visas as authorized by Congress. *See Bayou Lawn & Landscape Servs. v. Johnson*, 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). The Departments note that this action is temporary in nature, and limits eligibility for H-2B supplemental visas to only those businesses most in need, and also protects H-2B and U.S. workers.

With respect to the supplemental allocations provisions in 8 CFR 214.2 and 20 CFR part 655, subpart A, as explained above, the Departments are acting pursuant to the extension of supplemental cap authority in Section 105 of the FY 2024 Omnibus by sections 101(6) and Section 101, Division A, Title I of Public Law 119-37 (Nov. 12, 2025) to FY 2026. The deadline for exercising the FY 2026 supplemental cap authority under the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, is January 30, 2026, the date on which the FY 2026 continuing resolution expires. This timing concern is critical since the Departments are bypassing advance notice and comment in order to authorize the additional visas before this deadline.

Acting expeditiously is intended to prevent economic harm resulting from American businesses suffering irreparable harm due to a lack of a sufficient labor force. This harm would ensue if the Departments do not exercise the authority provided by the extension of supplemental cap authority. USCIS received more than enough petitions to meet the H-2B

visa statutory cap for the first half of FY 2026 on September 12, 2025.[113] Based on past years' experience, DHS anticipates that it will also receive sufficient petitions to meet the semiannual cap for the second half of the FY 2026. USCIS received sufficient petitions to meet the H-2B visa statutory cap for the second half of FY 2025 on March 5, 2025.[114] Given the continued high demand of American businesses for H-2B workers (as discussed in this preamble), rapidly evolving economic conditions, low unemployment rates, and the limited time remaining until the expiration of the continuing resolution authorizing supplemental cap authority to help prevent further irreparable harm currently experienced by some U.S. employers or avoid impending economic harm for others, a decision to undertake notice and comment rulemaking, which would delay final action on this matter by months, would greatly complicate and potentially preclude the Departments from successfully exercising the authority created by Section 105 of the FY 2024 Omnibus as extended by Section 101, Division A, Title I of Public Law 119-37 (Nov. 12, 2025). If the Departments are precluded from exercising this authority, substantial economic harm will result for the reasons stated above.

2. Good cause to proceed with an immediate effective date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for foregoing notice and comment rulemaking. *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps.*, *AFL–CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp. v. EPA*, 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it

[113] *See* USCIS, USCIS Reaches H-2B Cap for First Half of Fiscal Year 2026, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026 (Sept. 16, 2025).
[114] *See* USCIS, USCIS Reaches H-2B Cap for Second Half of FY 2025 and Filing Dates Now Available for Supplemental Visas, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-second-half-of-fy-2025-and-filing-dates-now-available-for-supplemental (Mar. 26, 2025).

demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.*, 605 F.2d at 290; *United States v. Gavrilovic*, 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above expressing the need for immediate action, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 ("Unleashing Prosperity Through Deregulation")

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with the new regulations shall, to the extent permitted by law be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has designated this temporary final rule a "significant regulatory action" under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1), because its annual effects on the economy do not exceed $100 million in any year of the analysis. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in

INA sec. 101(a)(17), 8 U.S.C. sec. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled "Unleashing Prosperity Through Deregulation" (Mar. 26, 2025).

1. Summary

With this temporary final rule (TFR), DHS is authorizing the release of up to an additional 64,716 total H-2B visas to be allocated for FY 2026. In accordance with the authority given under the FY 2024 Omnibus as extended by Public Law 119-37, which President Donald J. Trump signed on November 12, 2025, DHS is allocating the supplemental visas in the following manner (see Table 1a):

Table 1a: Allocation of Supplement Visas	
FY 2026 Supplement	**Number of Visas**
Returning Worker Allocation Between January 1 and March 31, 2026	18,490
Returning Worker Allocation Between April 1 and April 30, 2026	27,736
Allocation Between May 1 and September 30, 2026	18,490
FY 2026 Total Supplemental Visas	**64,716**

These visas will be available to businesses that: (1) show that there are an insufficient number of U.S. workers to meet their needs throughout FY 2026; (2) attest that their businesses are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested on their petition; and (3) petition for returning workers who were issued an H-2B visa or were otherwise granted H-2B status in FY 2023, 2024, or 2025, unless requesting a start date between May 1 and September 30, 2026. This TFR aims to prevent irreparable harm to certain American businesses by allowing them to hire additional H-2B workers within FY 2026.

The estimated total costs to petitioners range from $4,576,426 to $6,018,119. Estimated total transfers from filing fees made by petitioners to the Government are $13,495,220. The

benefits of this rule are diverse, though some of them are difficult to quantify. Some of these benefits include:

- Employers benefit from this rule significantly through increased access to H-2B workers;
- Customers and others benefit directly or indirectly from increased access;
- Some U.S. workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H-2B workers were available;
- The Federal Government benefits from increased evidence regarding attestations.

Table 1b provides a summary of the provisions in this rule and some of their impacts.

Table 1b: Summary of the TFR's Provisions and Economic Impact			
Current Provision	**Changes Resulting from the Provisions of the TFR**	**Expected Costs of the Provisions of the TFR**	**Expected Benefits of the Provisions of the TFR**
The current statutory cap limits H-2B visa allocations to 66,000 workers a year.	The amended provisions will allow for an additional 64,716 H-2B temporary workers.	• The total opportunity cost of time to file Form I-129 petitions if filed by HR specialists is $497,495 (rounded). • The total opportunity cost of time to file Form I-129 petitions and Form G-28 if filed by lawyers will range from $1,730,496 (rounded) if only in-house lawyers file these forms, to $2,963,074 (rounded) if only outsourced lawyers file them.	• Form I-129 petitioners would be able to hire temporary workers needed to prevent their businesses from suffering irreparable harm. • Businesses that are dependent on the success of other businesses that are dependent on H-2B workers would be protected from the repercussions of local business failures. • Some U.S. workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if additional H-2B workers were not available.

		• DHS estimates the total opportunity cost of time associated with Form I-907 filed by HR specialists is about $35,311 (rounded). • DHS estimates the total opportunity cost of time to file Form I-907 filed by lawyers range from about $104,839 (rounded) for only in-house lawyers, to $179,525 (rounded) for only outsourced lawyers.	
n/a	Petitioners will be required to fill out Form ETA-9142B in order to utilize the 18,490 late season H-2B visas allocated under the rule.	• The total opportunity cost of time for Form ETA-9142B filed by HR specialists is about $63,631 (rounded). • The total opportunity cost of time to file Form ETA-9142B by lawyers range from about $188,733 (rounded) for only in-house lawyers, to $323,162 (rounded) for only outsourced lawyers.	• An approved Form ETA-9142B is required before filing a Form I-129 to request H-2B workers.
n/a	Petitioners will be required to fill out the newly created Form ETA-9142-B-CAA-10, Attestation for Employers Seeking	• The estimated total opportunity cost of time to file Form ETA-9142-B-CAA-10 and comply with the attestation is	• Form ETA-9142-B-CAA-10 will serve as initial evidence to DHS that the petitioner meets the irreparable harm standard and

	to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37 signed November 12, 2025.	approximately $1,955,921.	applicable returning worker requirements.
Total Costs		• The total estimated cost to petitioners ranges from $4,576,426* to $6,018,119**, depending on the filer.	
Source: USCIS and DOL analysis. *Calculation: $497,495 + $1,730,496 + $35,311 + $104,839 + $63,631 + $188,733 + $1,955,921 = $4,576,426. **Calculation: $497,495 + $2,963,074 + $35,311 + $179,525 + $63,631 + $323,162 + $1,955,921 = $6,018,119.			

2. Background and Purpose of the Temporary Rule

The H-2B visa classification program was designed to serve American businesses that are unable to find enough U.S. workers to perform nonagricultural work of a temporary nature. For a nonimmigrant worker to be admitted into the United States under this visa classification, the hiring employer is required to: (1) receive a temporary labor certification (TLC) from the Department of Labor (DOL); and (2) file Form I-129 with DHS. The temporary nature of the services or labor described on the approved TLC is subject to DHS review during adjudication of Form I-129.[115] The INA sets the annual number of H-2B visas for workers performing

[115] Revised effective 1/18/2009; *Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers; Correction,* 73 FR 78104 (Jan. 19, 2009)*; Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers; Correction*, 74 FR 2837 (Jan 18, 2009).

temporary nonagricultural work at 66,000 to be distributed semiannually beginning in October (33,000) and in April (33,000).[116] Any unused H-2B visas from the first half of the fiscal year are available for employers seeking to hire H-2B workers during the second half of the fiscal year. However, any unused H-2B visas from one fiscal year do not carry over into the next and would therefore not be made available.[117] Once the statutory H-2B visa cap limit has been reached, petitioners must wait until the next half of the fiscal year, or the beginning of the next fiscal year, for additional visas to become available.

On November 12, 2025, the President signed Public Law 119-37. This law extends authorization under the same terms and conditions provided in section 105 of Division G, Title I of the FY 2024 Omnibus[118] authorizing the Secretary of Homeland Security to increase the number of H-2B visas available to U.S. employers in FY 2026, and expires on January 30, 2026.[119] After consulting with the Secretary of Labor, the Secretary of Homeland Security has determined it is appropriate to exercise her discretion and raise the H-2B cap by up to a total of 64,716 visas for FY 2026. The total supplemental allocation will be divided into three separate allocations. One allocation for 18,490 immediately available visas for returning workers issued H-2B visas in FY 2023, FY 2024, or FY 2025 with a need for workers to begin between January 1 through March 31, 2026. And two allocations for the second half of FY 2026 (a first one for 27,736 visas for returning workers issued H-2B visas in FY 2023, FY 2024, and FY 2025 with a need for workers to begin between April 1 through April 30, 2026; and a second one for 18,490 visas for workers to begin between May 1 through September 30, 2026). As with previous

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[116] *See* INA 214(g)(1)(B), 8 U.S.C. 1184(g)(1)(B) and INA 214(g)(4), 8 U.S.C. 1184(g)(4).
[117] A TLC approved by DOL must accompany an H-2B petition. The employment start date stated on the petition must match the start date listed on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D).
[118] Further Consolidated Appropriations Act, 2024, Public Law 118–47 (Mar. 23, 2024). Specifically, section 105 provides that "the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon determining that the needs of American businesses cannot be satisfied in [FY] 2024 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor," may increase the total number of aliens who may receive an H-2B visa in FY 2024 by the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from the H-2B numerical limitation.
[119] *See* secs. 101(6) and 106, Div. A, Title I, Pub. L. 118–83 (Sept. 26, 2024), and section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47 (Mar. 23, 2024) (FY 2024 Omnibus).

supplemental allocations, USCIS will make these supplemental visas available only to businesses that qualify and meet the requirements for the supplemental visas. These businesses must attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested on their petition.

This TFR will cover FY 2026. While the Departments cannot predict with certainty what labor market conditions will be during the second half of FY 2026, they believe that the structure of this TFR is reasonable because: (1) the availability of the second half FY supplemental visas is contingent on the exhaustion of the second half FY statutory cap, (2) strong historical demand for H-2B workers, and (3) mainstream estimates of labor market conditions for FY 2026 indicate a general continuation of labor market tightness from a historical perspective.[120]

Table 2: DOL Certified Worker Demand*, FY 2021 through FY 2025

Fiscal Year	Number of Certifications	Number of DOL Certified Workers Requested	DOL Certified Workers with Requested Start Dates April 1 or later
2021	7,772	159,081	100,522
2022	10,674	205,037	127,654
2023	12,126	220,552	128,115
2024	13,115	227,277	127,383
2025	13,310	226,558	118,252
5-year Average**	**11,399**	**207,701**	**120,385**

Source: USCIS analysis of DOL Office of Foreign Labor Certification (OFLC) Performance data, available at https://www.dol.gov/agencies/eta/foreign-labor/performance (accessed Jan. 8, 2026).
Note:
* All data are for applications listed as having a case status of "Certification", "Partial Certification", "Determination - Certification", or "Determination – Partial Certification." Furthermore, data have been adjusted to a fiscal year using the employment begin date provided on the TLC application. As such, counts differ from counts based on the Disclosure Files of OFLC H-2B Performance data. This adjustment was made so that the OFLC data more closely aligns to USCIS I-129 data.
** Averages are rounded to the nearest whole number.

With respect to historical demand for H-2B workers, Table 2 makes two important points. First, Table 2 shows that H-2B demand, as represented by the number of workers

[120] December 2025 Federal Open Market Committee (FOMC) projections for unemployment rate in 2026 were a median of 4.4% with a central tendency between 4.3 and 4.4%. *See* https://www.federalreserve.gov/monetarypolicy/fomcprojtabl20251210.htm (last accessed Jan. 8, 2026).

requested on certified TLCs, has outpaced the statutorily capped allotment of H-2B visas, which demonstrates that, in aggregate, sufficient demand exists for the entire supplementary allocation that the Departments are making available. To that end, the 5-year average of workers requested on certified TLCs, 207,701, would exhaust the total supplemental allocation made available by the TFR. Second, Table 2 demonstrates that within a given fiscal year, demand for H-2B workers is particularly strong in the second half of the fiscal year. On average over the last 5 fiscal years, H-2B employers have requested 120,385 employees with start dates on April 1 or later, which would exhaust the 46,226 total supplemental H-2B visas[121] explicitly set aside for workers with employment start dates in the second half of FY 2026. Given these conditions, the Departments believe that the decision to authorize a second half supplement is reasonable.

For the visas being made available by the rule, the Departments have determined that up to 46,226 of the 64,716 supplemental visas will be limited to returning H-2B returning workers. These aliens must be workers who were issued H-2B visas or were otherwise granted H-2B status in fiscal years 2023, 2024, or 2025. The 46,226 visas for returning workers will be divided into two separate allocations that will be available to petitioners over the fiscal year. The first allocation is comprised of 18,490 immediately available visas for returning workers with requested start dates between January 1 and March 31, 2026. These visas will be available to petitioners immediately upon the publication of the rule. The second allocation is comprised of 27,736 visas for returning workers with requested start dates between April 1 and April 30, 2026. These visas will be available to petitioners 15 calendar days after the second half statutory cap of 33,000 visas is reached. The third allocation is comprised of 18,490 visas with requested start dates between May 1 and September 30, 2026. These visas will be available to petitioners 45 calendar days after the second half statutory cap of 33,000 visas is reached.

[121] 27,736 visas for returning workers between April 1, 2026 and April 30, 2026, and 18,490 visas for filers with employment start dates on or after May 1, 2026.

The inclusion of an allocation of visas starting on or after May 1 specifically for those petitioners with employment needs is in response to trends in TLC data and conclusions gleaned from the three years that a late season filer allocation has been available to petitioners with late season employment needs. As stated in the FY 2023 H-2B TFR, the relative demand in FY 2016 for workers with start dates later in the fiscal year was higher relative to recent years. More specifically, data for FY 2016 show that approximately 45.51 percent of certified TLCs requested workers with start dates in April while 17.93 percent of certified TLCs requested workers with start dates after April.[122] Table 3 and Table 4 in this rule demonstrate that the 5-year average for these values has moved away from April start dates after the implementation of a late season filer allocation. The decrease in the relative prevalence of April 1 start dates since the implementation of a late season filer allocation supports the rationale for providing such an allocation in response to concerns that, absent such an allocation, employers with late season employment needs could be effectively shut out of the H-2B program.

Under DOL regulations, employers must apply for a TLC 75 to 90 days before the start date of work.[123] Employers must have a DOL-approved TLC before filing their Form I-129 request for H-2B workers with USCIS. Because the availability of H-2B visas is limited by statute and regulation, USCIS generally announces to the public when it has received a sufficient number of I-129 petitions, and by extension H-2B beneficiaries, to exhaust the respective H-2B visa allocation.[124] USCIS rejects H-2B I-129 petitions that are received after USCIS has determined that a given allocation has been fully utilized. Functionally, this means a subset of petitioners who would employ H-2B workers, given the chance, may not be able to do so because the available visas have already been allocated before they can petition USCIS for the necessary workers.

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[122] *See* Table 4 and Table 5, https://www.federalregister.gov/documents/2022/12/15/2022-27236/exercise-of-time-limited-authority-to-increase-the-numerical-limitation-for-fy-2023-for-the-h-2b (accessed January 8, 2026).
[123] *See* 20 CFR 655.15(b).
[124] *See* USCIS, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026, for example (accessed January 8, 2026).

Using OFLC TLC data, Table 3 illustrates that relative to previous fiscal years that did *not* include a late-season filer allocation, requested H-2B employment start dates have become less concentrated in April.[125] Table 4 details DOL certified worker demand, for post-April start dates.

Table 3: DOL Certified Worker Demand for April Start Dates, FY 2021 through FY 2025

Fiscal Year	Certified DOL Workers Requested	DOL Certified Workers with Requested Start Dates *in* April	Percentage of DOL Certified Workers with Requested Start Dates in April
2021	159,081	94,656	59.50%
2022	205,037	118,381	57.74%
2023	220,552	112,639	51.07%
2024	227,277	112,931	49.69%
2025	226,558	105,417	46.53%

Source: USCIS analysis of OFLC Performance data.

Table 4: DOL Certified Worker Demand for Post-April Start Dates, FY 2021 through FY 2025

Fiscal Year	Certified DOL Workers Requested	DOL Certified Workers with Requested Start Dates *after* April	Percentage of DOL Certified Workers with Requested Start Dates after April
2021	159,081	5,866	3.69%
2022	205,037	9,273	4.52%
2023	220,552	15,476	7.02%
2024	227,277	14,452	6.36%
2025	226,558	12,835	5.67%

Source: USCIS analysis of OFLC Performance data.

As seen in Table 4, DOL certified workers with requested start dates after April averaged 14,254 for FY 2023 through FY 2025. Given the demand for late season workers, a late season filer allocation of 18,490 visas for FY 2026 is reasonable.

[125] Tables 3 and 4 contain USCIS analysis of OFLC Performance data. All data are for applications listed as having a case status of "Certification", "Partial Certification", "Determination - Certification", or "Determination – Partial Certification." Furthermore, data have been adjusted to a fiscal year using the employment begin date provided on the TLC application. As such, counts differ from counts based on the Disclosure Files of OFLC H-2B Performance data. This adjustment was made so that the OFLC data more closely align to USCIS I-129 data.

3. Population

This rule will affect those employers that file Form I-129 on behalf of nonimmigrant workers they seek to hire under the H-2B visa program. More specifically, this rule will affect those employers that can establish that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested on their petition and without the exercise of authority that is the subject of this rule. Due to historical trends and demand for the H-2B program (see Table 2), the Departments believe it is reasonable to assume that the population of eligible petitioners for these additional 64,716 visas will generally be the same population as those employers that would already complete the steps to receive an approved TLC irrespective of this rule. One exception is the population of late season employers, described below.

a. Population That Will File Form I-129, Petition for a Nonimmigrant Worker

As discussed above, the population that will file a Form I-129 is necessarily limited to those business that have already established that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested on their petition and without the exercise of authority that is the subject of this rule. Because the number of supplementary visas available is finite, USCIS has generally informed the public when the number of submitted Form I-129 petitions and, by extension, the number of respective beneficiaries is enough to exhaust the supply of supplemental visas.[126]

Table 5: Form I-129 Petitions per Supplemental H-2B Visa Allocation, FY 2021 through FY 2025

Supplement	Supplement Amount	Total Form I-129 Petitions Received	Total Form I-129 Beneficiaries	Beneficiaries per Form I-129 Petition
2021 Supplement*	22,000	2,180	31,274	14.35
2022 Supplement**	55,000	4,046	61,873	15.29

[126] *See, e.g.,* https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fiscal-year-2026.

2023 Supplement	64,716	4,901	79,050	16.13
2024 Supplement	64,716	5,426	86,221	15.89
2025 Supplement	64,716	5,794	88,318	15.24
Average				**15.38**

Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Jan. 2026, PAER0020038.

Notes:
* In Fiscal Year 2021, the Departments authorized a single supplemental allocation which was divided between returning workers and workers from specific countries. *See* https://www.federalregister.gov/documents/2021/05/25/2021-11048/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2021-numerical-limitation-for-the (accessed January 8, 2025).
** In Fiscal Year 2022, the Departments authorized two separate supplemental allocations of H-2B Visas, with each being further divided between returning workers and workers from specific countries. *See* https://www.federalregister.gov/documents/2022/01/28/2022-01866/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2022-numerical-limitation-for-the (accessed January 8, 2026); https://www.federalregister.gov/documents/2022/05/18/2022-10631/exercise-of-time-limited-authority-to-increase-the-numerical-limitation-for-second-half-of-fy-2022 (accessed January 8, 2026).

Table 5 above shows the total supplemental H-2B visa allocations issued by the Departments in each fiscal year since FY 2021, including the total number of petitions and the total number of beneficiaries submitted under a supplement in each fiscal year. Using the historical average of 15.38 beneficiaries per petition for supplemental visas derived in Table 5, USCIS anticipates that 4,208 Forms I-129 will be submitted as a result of this TFR.[127]

Using the estimates in Table 5, the Departments further estimate that the allocation of 18,490 visas for late season filers made by this TFR, addressing the disadvantage these employers face in accessing scarce H-2B visas, will result in 1,202 additional Form ETA-9142B requests[128] to DOL, assuming each late season visa requestor submits a TLC and Form I-129 for the historic average of 15.38 beneficiaries.[129] The number of additional Form ETA-9142B

[127] Calculation for expected petitions. If each Form I-129 petition requests 15.38 workers, we'd expect to see petitioners exhausting the 64,716 supplement allocated this year: 64,716 / 15.38 = 4,208 (rounded).
[128] Calculation for expected late season TLCs: 18,490 visas / 15.38 beneficiaries per petition = 1,202 TLCs (rounded).
[129] In the event that USCIS approves insufficient petitions to use all 27,736 visas, the unused numbers will carry over for petition approvals for employment start dates beginning on or after May 1, 2026 (late season filers). In which case, there would possibly be more Form ETA-9142B requests, making the estimated 1,202 additional requests an underestimate.

requests could be lower if some petitioners that would have filed for April 1 start dates in the absence of this TFR change their behavior to request late season workers as a result of this allocation. Alternatively, this number could be higher if late season filers are at a larger disadvantage in accessing H-2B workers than recent data suggests.

b. Population That Files Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

If a lawyer or accredited representative submits Form I-129 on behalf of the petitioner, Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, must accompany the Form I-129 submission.[130] Table 6 shows the percentage of Form I-129 H-2B petitions that were accompanied by a Form G-28. Using data from FY 2021 through FY 2025, we estimate that a lawyer or accredited representative will file 56.44 percent of Form I-129 petitions. Therefore, we estimate that in-house or outsourced lawyers will file 2,375 Forms I-129 and Forms G-28, and that human resources (HR) specialists will file 1,833 Forms I-129.[131]

Table 6: Form I-129 H-2B Petition Receipts that Were Accompanied by Form G-28, FY 2021 through FY 2025

Fiscal Year	Number of Form I-129 H-2B Petitions Accompanied by a Form G-28	Total Number of Form I-129 H-2B Petitions Received	Percent of Form I-129 H-2B Petitions Accompanied by a Form G-28
2021	4,228	9,160	46.16%
2022	5,984	12,392	48.29%
2023	6,837	13,744	49.75%
2024	8,316	15,693	52.99%
2025	12,699	16,448	77.21%
Total	**38,064**	**67,437**	**56.44%***

[130] USCIS, *Filing Your Form G-28*, https://www.uscis.gov/forms/filing-your-form-g-28 (last updated Aug. 29, 2024).

[131] Calculation: 4,208 estimated additional petitions * 56.44 percent of petitions filed by a lawyer = 2,375 (rounded) petitions filed by a lawyer.
Calculation: 4,208 estimated additional petitions – 2,375 petitions filed by a lawyer = 1,833 petitions filed by an HR specialist.

Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Jan. 2026, PAER0020038.
*Calculation: 38,064/67,437 = 56.44%.

c. Population That Files Form I-907, Request for Premium Processing Service

Employers may use Form I-907, Request for Premium Processing Service, to request faster processing of their Form I-129 petitions for H-2B visas. Table 7 shows the percentage of Form I-129 H-2B petitions that were filed with a Form I-907. Using data from FY 2021 through FY 2025, DHS estimates that approximately 93.01 percent of Form I-129 H-2B petitioners will file a Form I-907 requesting premium processing. Based on this historical data, DHS estimates that 3,914 Form I-907's will be filed with the Form I-129 as a result of this rule.[132] Of these 3,914 premium processing requests, we estimate that in-house or outsourced lawyers will file 2,209 Forms I-907 and HR specialists or an equivalent occupation will file 1,705.[133]

Table 7: Form I-129 H-2B Petition Receipts that Were Accompanied by Form I-907, FY 2021 through FY2025

Fiscal Year	Number of Form I-129 H-2B Petitions Accompanied by Form I-907	Total Number of Form I-129 H-2B Petitions Received	Percent of Form I-129 H-2B Petitions Accompanied by Form I-907
2021	8,650	9,160	94.43%
2022	11,773	12,392	95.00%
2023	12,078	13,744	87.88%
2024	14,706	15,693	93.71%
2025	15,519	16,448	94.35%
5-Year Total	**62,726**	**67,437**	**93.01%**

Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Jan. 2026, PAER0020038.
*Calculation: 62,726/67,437 = 93.01%.

[132] Calculation: 4,208 estimated additional petitions * 93.01 percent premium processing filing rate = 3,914 (rounded) additional Form I-907.
[133] Calculation: 3,914 additional Form I-907 * 56.44 percent of petitioners represented by a lawyer = 2,209 (rounded) additional Form I-907 filed by a lawyer.
Calculation: 3,914 additional Form I-907 – 2,209 additional Form I-907 filed by a lawyer = 1,705 additional Form I-907 filed by an HR specialist.

d. Population That Files Form ETA-9142-B-CAA-10

Petitioners seeking to take advantage of this FY 2026 H-2B supplemental visa cap will need to file a Form ETA-9142-B-CAA-10 attesting that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested on the petition, comply with third-party notification if applicable, and maintain required records, among other requirements. DOL estimates that each of the 4,208 petitions will need to be accompanied by Form ETA-9142-B-CAA-10 and petitioners filing these petitions and attestations will incur burdens complying with the evidentiary requirements.

4. Cost-Benefit Analysis

The provisions of this rule require the submission of a Form I-129 H-2B petition. The costs for this form include the opportunity cost of time to complete and submit the form.[134] The estimated time to complete and file Form I-129 for H-2B classification is 4.85 hours.[135] A U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent must file the petition. DHS estimates that an in-house or outsourced lawyer will file 56.44 percent of Form I-129 H-2B petitions, and an HR specialist or equivalent occupation will file the remainder (43.56 percent). DHS presents estimated costs for HR specialists filing Form I-129 petitions and an estimated range of costs for in-house lawyers or outsourced lawyers filing Form I-129 petitions.

To estimate the total opportunity cost of time to HR specialists who complete and file Form I-129, DHS uses the mean hourly wage rate of HR specialists of $38.33 as the base wage rate.[136] If petitioners hire an in-house or outsourced lawyer to file Form I-129 on their behalf,

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[134] Filing fees are not considered costs to society. These fees have been accounted for as a transfer from petitioners to USCIS.

[135] The public reporting burden for this form is 2.55 hours for Form I-129 and an additional 2.3 hours for H Classification Supplement, totaling 4.85 hours. *See* Form I-129 instructions at https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf (accessed Jan. 8, 2026).

[136] U.S. Department of Labor, Bureau of Labor Statistics, "May 2024 National Occupational Employment and Wage Statistics" Human Resources Specialist (13-1071), Mean Hourly Wage, available at https://www.bls.gov/news.release/archives/ocwage_04022025.htm and https://data.bls.gov/oes/#/industry/000000 (accessed Jan. 8, 2026).

DHS uses the mean hourly wage rate $87.86 as the base wage rate.[137] Using the most recent BLS data, DHS calculated a benefits-to-wage multiplier of 1.46 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.[138] DHS multiplied the average hourly U.S. wage rate for HR specialists and for in-house lawyers by the benefits-to-wage multiplier of 1.46 to estimate total compensation to employees. The total compensation for an HR specialist is $55.96 per hour, and the total compensation for an in-house lawyer is $128.28 per hour.[139]

In addition, DHS recognizes that an entity may not have an in-house lawyer and may seek outside counsel to complete and file Form I-129 on behalf of the petitioner. Therefore, DHS presents a second wage rate for lawyers labeled as outsourced lawyers. DHS recognizes that the wages for outsourced lawyers may be much higher than in-house lawyers and therefore uses a higher compensation-to-wage multiplier of 2.5 for outsourced lawyers.[140] DHS estimates the total compensation for an outsourced lawyer is $219.65 per hour.[141] If a lawyer submits

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[137] U.S. Department of Labor, Bureau of Labor Statistics. "May 2024 National Occupational Employment and Wage Estimates" Lawyers (23-1011), Mean Hourly Wage, available at https://www.bls.gov/news.release/archives/ocwage_04022025.htm and https://data.bls.gov/oes/#/industry/000000 (accessed Jan. 8, 2026).

[138] Calculation: $48.05 mean Total Employee Compensation per hour for civilian workers / $33.02 mean Wages and Salaries per hour for civilian workers = 1.46 benefits-to-wage multiplier. *See* Economic News Release, Bureau of Labor Statistics, U.S. Department of Labor, Employer Costs for Employee Compensation – June 2025 Table 1. Employer Costs for Employee Compensation by ownership, Civilian workers, available at https://www.bls.gov/news.release/archives/ecec_09122025.pdf (accessed Jan. 8, 2026).

[139] Calculation, HR specialist: $38.33 mean hourly wage * 1.46 benefits-to-wage multiplier = $55.96 hourly total compensation (hourly opportunity cost of time).
Calculation, In-house Lawyer: $87.86 mean hourly wage * 1.46 benefits-to-wage multiplier = $128.28 hourly total compensation (hourly opportunity cost of time).

[140] The DHS ICE "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter" acknowledges that "the cost of hiring services provided by an outside vendor or contractor is two to three times more expensive than the wages paid by the employer for that service produced by an in-house employee," based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis (SEIA) remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule: *Safe Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Final Regulatory Flexibility Analysis,* 73 FR 63843 (Oct. 28, 2008), available at https://www.regulations.gov/document/ICEB-2006-0004-0921 (accessed Jan. 8, 2026). *See also Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers*, 87 FR 4722 (Jan. 28, 2022), available at https://www.regulations.gov/document/DHS-2022-0010-0001 (accessed Jan. 8, 2026).

[141] Calculation, Outsourced Lawyer: $87.86 mean hourly wage * 2.5 benefits-to-wage multiplier = $219.65 hourly total compensation (hourly opportunity cost of time).

Form I-129 on behalf of the petitioner, Form G-28 must accompany the Form I-129 petition.[142] DHS estimates the time burden to complete and submit Form G-28 for a lawyer is 50 minutes (0.83 hour, rounded).[143] For this analysis, DHS adds the time to complete Form G-28 to the opportunity cost of time to lawyers for filing Form I-129 on behalf of a petitioner. This results in a time burden of 5.68 hours for in-house lawyers and outsourced lawyers to complete Form G-28 and Form I-129.[144] Therefore, the total opportunity cost of time per petition for an HR specialist to complete and file Form I-129 is approximately $271.41, for an in-house lawyer to complete and file Forms I-129 and G-28 is about $728.63, and for an outsourced lawyer to complete and file is approximately $1,247.61.[145]

a. Transfers from Petitioners to Government

The provisions of this rule require the submission of a Form I-129 H-2B petition. The transfers for this form include the filing costs to submit the form. As of April 1, 2024, the fee structure for I-129 H-2B petitions changed and now takes into account whether petitioners are named or unnamed, as well as the characteristics of the petitioner based on size. Additionally, petitioners pay a variable Asylum Processing Fee based on the identity of the petitioner based on entity type. All petitioners pay an additional Fraud Prevention and Detection Fee of $150.[146] The fee structure is summarized in Table 8 below. These filing fees are not a cost to society or an expenditure of new resources but a transfer from the petitioner to USCIS in exchange for

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[142] USCIS, Filing Your Form G-28, https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf (accessed Jan. 8, 2026).
[143] USCIS, G-28, Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative, https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf (accessed Jan. 8, 2026). Calculation: 50 minutes / 60 minutes per hour = 0.83 hour (rounded).
[144] Calculation: 0.83 hour to file Form G-28 + 4.85 hours to file Form I-129 = 5.68 hours to file both forms.
[145] Calculation, HR specialist files Form I-129: $55.96 hourly opportunity cost of time * 4.85 hours = $271.41 opportunity cost of time per petition.
Calculation, In-house Lawyer files Form I-129 and Form G-28: $128.28 hourly opportunity cost of time * 5.68 hours = $728.63 opportunity cost of time per petition.
Calculation, Outsourced Lawyer files Form I-129 and Form G-28: $219.65 hourly opportunity cost of time * 5.68 hours = $1,247.61 opportunity cost of time per petition.
[146] *See* Form I-129 instructions at https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf (accessed Jan. 8, 2026). *See also* 8 USC 1184(c)(13).

agency services. DHS anticipates that petitioners will file 4,208 Forms I-129 due to the rule's supplemental visa allocation.

Table 8: Form I-129 Filing Fees by Petitioner Type				
Petitioner Type	**Base Fee**	**Fraud Prevention and Detection Fee**	**Asylum Processing Fee**	**Total Fee**
H-2B Named Non-Small Employer or Nonprofit	$1,080	$150	$600	**$1,830**
H-2B Named Small Employer	$540	$150	$300	**$990**
H-2B Named Nonprofit	$540	$150	$0	**$690**
H-2B Unnamed Non-Small Employer or Nonprofit	$580	$150	$600	**$1,330**
H-2B Unnamed Small Employer	$460	$150	$300	**$910**
H-2B Unnamed Nonprofit	$460	$150	$0	**$610**
Source: USCIS, Form I-129 instructions at https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf (accessed Jan. 8, 2026). *See also* 8 USC 1184(c)(13).				

Using the total number of petitioners requesting named versus unnamed beneficiaries for H-2B visas during FY 2025, DHS estimates that 82.1 percent will request named beneficiaries and 17.9 percent will request unnamed beneficiaries.[147] Using the same H-2B visa data during FY 2025, DHS estimates that 75.3 percent of I-129 H-2B petitioners have 26 or more employees, 24.6 percent have 25 or fewer employees, and 0.1 percent have nonprofit status. This equates to 3,169 petitioners with 26 or more employees,[148] 1,035 petitioners with 25 or fewer employees,[149] and 4 non-profit petitioners filing Forms I-129 as part of the supplemental allocation.[150] USCIS assumes that the percentage of named versus unnamed beneficiaries does not vary by employer

[147] Source: DHS, USCIS, Office of Performance and Quality (OPQ); ELIS and CLAIMS3 databases, queried Jan. 2026, PAER0020038.
[148] Calculation: 4,208 expected additional Forms I-129 * 75.3 percent petitioners with 26 or more employees = 3,169 (rounded).
[149] Calculation: 4,208 expected additional Forms I-129 * 24.6 percent petitioners with 25 or fewer employees = 1,035 (rounded).
[150] Calculation: 4,208 expected additional Forms I-129 * 0.1 percent non-profit petitioners = 4 (rounded).

size or nonprofit status. Thus, by multiplying the percentages of requests of named versus unnamed beneficiaries by the number of petitioners by characteristic, this equates to 2,602 petitioners with 26 or more employees requesting named beneficiaries,[151] 567 petitioners with 26 or more employees requesting unnamed beneficiaries,[152] 850 petitioners with 25 or fewer employees requesting named beneficiaries, [153] 185 petitioners with 25 or fewer employees requesting unnamed beneficiaries,[154] 3 non-profit petitioners requesting named beneficiaries,[155] and 1 non-profit petitioner requesting unnamed beneficiaries as part of the supplemental allocation.[156]

The total transfers from petitioners to the government for filing Forms I-129 H-2B petitioners are $6,528,300.[157] Transfers from petitioners to the Government related to the filing of Forms I-907 as a result of the rule are $6,966,920.[158, 159] Total transfers from petitioners to the Government are $13,495,220.[160]

b. Cost to Petitioners

The estimated population impacted by this rule is 4,208 eligible petitioners that are projected to apply for the additional 64,716 H-2B visas.

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[151] Calculation: 3,169 petitioners with 26 or more employees * 82.1 percent named beneficiaries = 2,602 (rounded).
[152] Calculation: 3,169 petitioners with 26 or more employees * 17.9 percent unnamed beneficiaries = 567 (rounded).
[153] Calculation: 1,035 petitioners with 25 or fewer employees * 82.1 percent named beneficiaries = 850 (rounded).
[154] Calculation: 1,035 petitioners with 25 or fewer employees * 17.9 percent unnamed beneficiaries = 185 (rounded).
[155] Calculation: 4 non-profit petitioners * 82.1 percent named beneficiaries = 3 (rounded).
[156] Calculation: 4 non-profit petitioners * 17.9 percent unnamed beneficiaries = 1 (rounded).
[157] Calculation: 2,602 petitioners with 26 or more employees requesting named beneficiaries * $1,830 + 567 petitioners with 26 or more employees requesting unnamed beneficiaries * $1,330 + 850 petitioners with 25 or fewer employees requesting named beneficiaries * $990 + 185 petitioners with 25 or fewer employees requesting unnamed beneficiaries * $910 + 3 non-profits requesting named beneficiaries * $690 + 1 non-profit requesting unnamed beneficiaries * $610 = $6,528,300.
[158] Calculation: $1,780 per petition * 3,914 Forms I-907 = $6,966,920.
[159] The recently promulgated FY 2026 Adjustment to Premium Processing Fees Rule increased the premium processing fee for Forms I-907 from $1,685 to $1,780 per petition, with an effective date of March 1, 2026. USCIS acknowledges that there may be some H-2B supplement petitions requesting premium processing filed between the effective date of this rule and March 1, 2026, and that those petitions would be subject to the $1,685 rate. However, USCIS is unable to accurately project the number of petitions that would be filed during that time, and understand that the transfer estimate related to the filing of Forms I-907, as a result of this rule may be an overestimate.
[160] Calculation: $6,528,300 + $6,966,920 = $13,495,220.

i. Costs to Petitioners to File Form I-129, Petition for a Nonimmigrant Worker, Nonagricultural Worker and Form G-28, Notice of Entry of Appearance as attorney or Accredited Representative

As discussed above, DHS estimates that HR specialists will file an additional 1,833 petitions using Form I-129 and lawyers will file an additional 2,375 petitions using Form I-129 and Form G-28. DHS estimates the total cost to file Form I-129 petitions if filed by HR specialists is $497,495 (rounded).[161] DHS estimates the total cost to file Form I-129 petitions and Form G-28 if filed by lawyers will range from $1,730,496 (rounded) if only in-house lawyers file these forms, to $2,963,074 (rounded) if only outsourced lawyers file them.[162] Therefore, the estimated total cost to file Form I-129 and Form G-28 range from $2,227,991 and $3,460,569.[163]

ii. Costs to File Form I-907, Request for Premium Processing

Employers may use Form I-907 to request premium processing of Form I-129 petitions for H-2B visas. The filing fee for Form I-907 for H-2B petitions is $1,780, and the time burden for completing the form is 22 minutes (0.37 hour).[164] Using the wage rates established previously, the opportunity cost of time to file Form I-907 is approximately $20.71 for an HR specialist, $47.46 for an in-house lawyer, and $81.27 for an outsourced lawyer.[165]

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[161] Calculation, HR specialist: $271.41 cost per petition * 1,833 Form I-129 = $497,495 (rounded) total cost.
[162] Calculation, In-house Lawyer: $728.63 cost per petition * 2,375 Form I-129 and Form G-28 = $1,730,496 (rounded) total cost.
Calculation, Outsourced Lawyer: $1,247.61 cost per petition * 2,375 Form I-129 and Form G-28 = $2,963,074 (rounded) total cost.
[163] Calculation: $497,495 total cost of Form I-129 filed by HR specialists + $1,730,496 total cost of Form I-129 and Form G-28 filed by in-house lawyers = $2,227,991 estimated total costs to file Form I-129 and G-28
Calculation: $497,495 total cost of Form I-129 filed by HR specialists + $2,963,074 total cost of Form I-129 and G-28 filed by outsourced lawyers = $3,460,569 estimated total costs to file Form I-129 and G-28.
[164] The filing fee is a transfer from the petitioner requesting premium processing and proxy for the total costs to USCIS. Calculation: 22 minutes / 60 minutes per hour = 0.37 (rounded) hour.
[165] Calculation, HR specialist Form I-907: $55.96 hourly opportunity cost of time * 0.37 hour = $20.71 opportunity cost of time per request.
Calculation, In-house Lawyer Form I-907: $128.28 hourly opportunity cost of time * 0.37 hour = $47.46 opportunity cost of time per request.
Calculation, Outsourced Lawyer Form I-907: $219.65 hourly opportunity cost of time * 0.37 hour = $81.27 opportunity cost of time per request.

As discussed above, DHS estimates that HR specialists will file an additional 1,705 Form I-907 and lawyers will file an additional 2,209 Form I-907. DHS estimates the total cost of Form I-907 filed by HR specialists is about $35,311 (rounded).[166] DHS estimates the total cost to file Form I-907 filed by lawyers range from about $104,839 (rounded) for only in-house lawyers, to $179,525 (rounded) for only outsourced lawyers.[167] The estimated total cost to file Form I-907 range from $140,150 and $214,836.[168]

iii. Cost to Late Season Employers Filing Form ETA-9142B

In addition to the costs for employers projected to request TLCs irrespective of this rule, the population of 1,202 late season employers that would not otherwise request H-2B workers will file Form ETA-9142B as a precondition to utilizing the late season allocation of H-2B visas made available by the rule.[169] There is no filing fee for Form ETA-9142B, and the time burden for completing the form, including Appendix A, Appendix B, Appendix C, Appendix D, and record keeping, is 2 hours and 10 minutes (2.17 hours).[170] DOL estimates the total cost of Form ETA-9142B filed by HR specialists is about $63,631 (rounded).[171] DOL estimates the total cost to file Form ETA-9142B filed by lawyers range from about $188,733 (rounded) for only in-

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[166] Calculation, HR specialist: $20.71 opportunity cost of time per request * 1,705 Form I-907 = $35,311 (rounded) total cost of Form I-907 filed by HR specialists.

[167] Calculation, In-house Lawyer Form I-907: $47.46 hourly opportunity cost of time * 2,209 applications = $104,839.
Calculation, Outsourced Lawyer Form I-907: $81.27 hourly opportunity cost of time * 2,209 applications = $179,525.

[168] Calculation: $35,311 total cost of Form I-907 filed by HR specialists + $104,839 total cost of Form I-907 filed by in-house lawyers = $140,150 estimated total costs to file Form I-907.
Calculation: $35,311 total cost of Form I-129 filed by HR specialists + $179,525 total cost of Form I-907 filed by outsourced lawyers = $214,836 estimated total costs to file Form I-907.

[169] The estimated number represented by a lawyer = 678 = 1,202 * 56.44%. As previously mentioned, we estimate that a lawyer or accredited representative will file 56.44 percent of Form I-129 petitions, and we use this percentage as a proxy for those filing Form ETA-9142B. The estimated number represented by an HR specialist = 524 = 1,202 – 678.

[170] The time burden estimate of 130 minutes is as follows: 9142-B - 55 minutes, Appendix A - 15 minutes, Appendix B - 15 minutes, Appendix C - 20 minutes, Appendix D - 10 minutes, Record Keeping - 15 minutes. *See* Form ETA-9142-B at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Form-ETA-9142B-Instructions-1205-0509.pdf (accessed Jan. 8, 2026).

[171] Calculation, HR specialist: $55.96 per hour * 2.17 hours * 524 Form ETA-9142-B = $63,631 (rounded) total cost of Form ETA-9142-B filed by HR specialists.

house lawyers, to $323,162 (rounded) for only outsourced lawyers.[172] The estimated total cost to file Form ETA-9142B range from $252,364 and $386,793.[173]

iv. Cost To File Form ETA-9142-B-CAA-10

Form ETA-9142-B-CAA-10 is an attestation form that includes the irreparable harm standard and document retention obligations. DOL estimates the time burden for completing and signing the form is 0.25 hours, 0.25 hours for retaining records, and 0.50 hours to comply with the returning workers' attestation, for a total time burden of 1 hour. Using the $55.96 hourly total compensation for an HR specialist, the opportunity cost of time for an HR specialist to complete the attestation form, notify third parties, and retain records relating to the returning worker requirements is approximately $55.96.[174]

Additionally, the form requires that petitioners assess, prepare a detailed written statement, and document supporting evidence for meeting the irreparable harm standard, and retain those documents and records, which we assume will require the resources of a financial analyst (or another equivalent occupation). Using the same methodology previously described for wages, the mean hourly wage for a financial analyst is $56.01,[175] and the estimated hourly total compensation for a financial analyst is $81.77.[176] DOL estimates the time burden for these tasks is at least 4 hours, and 1 hour for gathering and retaining documents and records, for a total

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[172] Calculation, In-house Lawyer Form ETA-9142-B: $128.28 per hour * 2.17 hours * 678 applications = $188,733 (rounded). Calculation, Outsourced Lawyer Form ETA-9142-B: $219.65 per hour * 2.17 hours * 678 applications = $323,162 (rounded).

[173] Calculation: $63,631 total cost of Form ETA-9142-B filed by HR specialist + $188,733 total cost of Form ETA-9142-B filed by In-house Lawyer = $252,364 estimated total costs to file Form ETA-9142-B.
Calculation: $63,631 total cost of Form ETA-9142-B filed by HR specialist + $323,162 total cost of Form ETA-9142-B filed by Outsourced Lawyer = $386,793 estimated total costs to file Form ETA-9142-B.

[174] Calculation: $55.96 hourly opportunity cost of time * 1-hour time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements = $55.96.

[175] *See* U.S. Department of Labor, Bureau of Labor Statistics, "May 2024 National Occupational Employment and Wage Statistics" Financial and Investment Analysts (13-2051), https://www.bls.gov/news.release/archives/ocwage_04022025.htm and https://data.bls.gov/oes/#/industry/000000 (accessed Jan. 8, 2026).

[176] Calculation: $56.01 mean hourly wage for a financial analyst * 1.46 benefits-to-wage multiplier = $81.77 (rounded).

time burden of 5 hours. Therefore, the total opportunity cost of time for a financial analyst to assess, document, and retain supporting evidence is approximately $408.85.[177]

As discussed previously, DHS believes that the 4,208 Form I-129 petitions required to exhaust the number of supplemental visas made available in this rule represents the number of potential employers that will request to employ H-2B workers under this rule. This number of petitions is a reasonable proxy for the number of employers that may need to review and sign the attestation. Using this estimate for the total number of certifications, we estimate the opportunity cost of time for completing the attestation for HR specialists is approximately $235,480 (rounded) and for financial analysts is about $1,720,441 (rounded).[178]

The estimated total cost to file Form ETA-9142-B-CAA-10 and comply with the attestation is approximately $1,955,921.[179]

v. Estimated Total Costs to Petitioners

In sum, the monetized costs of this rule come from time spent filing and complying with Form I-129, Form G-28, Form I-907, and Form ETA-9142-B-CAA-10. The estimated total cost to file Form I-129 and an accompanying Form G-28 ranges from $2,227,991 to $3,460,569, depending on the filer. The estimated total cost of filing Form I-907 ranges from $140,150 to $214,836, depending on the filer. The estimated cost for late season employers to file Form ETA-9142B ranges from $252,364 to $386,793 depending on the filer. The estimated total cost

[177] Calculation: $81.77 estimated total compensation for a financial analyst * 5 hours to meet the requirements of the irreparable harm standard = $408.85.
[178] Calculations, HR specialists: $55.96 opportunity cost of time to comply with attestation requirements * 4,208 estimated additional petitions = $235,480 (rounded) total cost to comply with attestation requirements. Calculation, Financial Analysts: $408.85 opportunity cost of time to comply with attestation requirements * 4,208 estimated additional petitions = $1,720,441 (rounded) to comply with attestation requirements.
[179] Calculation: $235,480 total cost for HR specialist to comply with attestation requirement + $1,720,441 total cost for financial analysts to comply with attestation requirements = $1,955,921 total cost to comply with attestation requirements.

of filing and complying with Form ETA-9142-B-CAA-10 is $1,955,921. The total estimated cost to petitioners ranges from $4,576,426 to $6,018,119, depending on the filer.[180]

c. Cost to the Federal Government

USCIS will incur costs related to the adjudication of petitions as a result of this TFR. DHS expects USCIS to recover these costs by the fees associated with the forms, which have been accounted for as a transfer from petitioners to USCIS and serve as a proxy for the costs to the agency. The total filing fees associated with Form I-129 H-2B petitions are $6,528,300, and the total filing fees associated with premium processing are $6,966,920. Total transfers from petitioners to the Government are $13,495,220.[181]

The INA provides USCIS with the authority to collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs, and services provided without charge to certain applicants and petitioners.[182] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. USCIS establishes fees at an amount that is necessary to recover these assigned costs, such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (for example, facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charged. Consequently, since USCIS immigration fees are primarily based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS.

DOL will also incur costs by the issuance of additional supplemental H-2B visas. While USCIS collects fees to cover the costs associated with the adjudication of petitions as a result of

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[180] Calculation of lower range: $2,227,991 + $140,150 + $252,364 + $1,955,921 = $4,576,426.
Calculation of upper range: $3,460,569 + $214,836 + $386,793 + $1,955,921 = $6,018,119.
[181] For more information, please see "Transfers from petitioners to the Government" section.
[182] *See* INA section 286(m), 8 U.S.C. 1356(m).

this TFR. DOL will also incur processing costs as result of the increase in workload from the additional H-2B visas.

d. Benefits to Petitioners

The Departments assume that employers will incur the costs of this rule and other costs associated with hiring H-2B workers if the expected benefits of those workers exceed the expected costs. We assume that employers expect some level of net benefit from being able to hire additional H-2B workers. However, the Departments do not collect or require data from H-2B employers on the profits from hiring these additional workers to estimate this increase in net benefits.

The inability to access H-2B workers for some entities is currently causing irreparable harm or will cause their businesses to suffer irreparable harm in the near future. Temporarily increasing the number of available H-2B visas for this fiscal year may result in a benefit, because it will allow some businesses to hire the additional labor resources necessary to avoid such harm. Preventing such harm may also result in cost savings by ultimately preserving the jobs of other employees (including U.S. workers) at that establishment. Additionally, returning workers are likely to be very familiar with the H-2B process and requirements, and may be positioned to begin work more expeditiously with these employers. Moreover, employers may already be familiar with returning workers as they have trained, vetted, and worked with some of these returning workers in past years. As such, limiting most of the supplemental visas to returning workers will assist employers that are suffering irreparable harm or will suffer impending irreparable harm.

e. Benefits to Workers

The Departments assume that workers will only incur the costs of this rule and other costs associated with obtaining an H-2B position if the expected benefits of that position exceed

the expected costs. We assume that H-2B workers expect some level of net benefit from being able to work for H-2B employers. However, the Departments do not have sufficient data to estimate this increase in net benefits and lack the necessary resources to investigate this in a timely manner. This rule is not expected to impact wages because DOL prevailing wage regulations apply to all H-2B workers covered by this rule. Additionally, this analysis shows that employers incur costs in attesting to irreparable harm from current labor shortfall.

The existence of this rule will benefit the workers who receive H-2B visas. According to Brodbeck et al. (2018):

> Participation in the H-2B guest worker program has become a vital part of the livelihood strategies of rural Guatemalan families and has had a positive impact on the quality of life in the communities where they live. Migrant workers who were landless, lived in isolated rural areas, had few economic opportunities, and who had limited access to education or adequate health care, now are investing in small trucks, building roads, schools, and homes, and providing employment for others in their home communities. …The impact has been transformative and positive.[183]

DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States. The current analysis does not seek to quantify or monetize costs or benefits that occur outside of the United States. U.S. workers will also benefit from this rule. The avoidance of current or impending irreparable harm made possible through the granting of supplemental visas in this rule could ensure that U.S. workers—who otherwise may be vulnerable if H-2B workers were not given visas—do not lose their jobs.

C. Regulatory Flexibility Act (RFA)

[183] *See* Arnold Brodbeck et al. (2018), Seasonal Migrant Labor in the Forest Industry of the United States: The Impact of H-2B Employment on Guatemalan Livelihoods, 31 Society & Natural Resources 1012.

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. *See* 5 U.S.C. 603(a), 604(a). This temporary final rule is exempt from notice and comment requirements for the reasons stated above. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this temporary final rule. Accordingly, the Departments are not required to either certify that the temporary final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. See 2 U.S.C. 1532(a). This rule is exempt from the written-statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the $100 million expenditure in any one year when adjusted for inflation ($213 million in 2025 based on the Consumer Price Index for All Urban Consumers (CPI-U)[184], and this rulemaking does not contain such a Federal mandate as the term

[184] *See* BLS, "Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month," https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202512.pdf (last visited Jan. 13, 2026). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2025); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100=[(Average monthly CPI-U for 2025–Average monthly CPI-U for 1995)÷(Average monthly CPI-U for 1995)]×100=[(324.054 –152.383) ÷152.383]=(171.671/152.383)= 1.126

is defined under UMRA.[185] The requirements of Title II of the Act; therefore, do not apply, and the Departments have not prepared a statement under the Act.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729 (Feb. 5, 1996).

G. Congressional Review Act (CRA)

The Congressional Review Act (CRA) enacted as part of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, 110 Stat. 847, 868 et seq., generally delays the effective date of a "major rule" as defined by the CRA for at least 60 days. *See* 5 U.S.C. 801(a)(3). Based on the Departments' assessment, the Office of Information and Regulatory Affairs has determined that this temporary final rule is not a major rule as defined under the CRA, as this rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or an ability of the United States-based

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×100=112.6 percent=113 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars×2.13=$213 million in 2025 dollars.

[185] The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

companies to compete with foreign-based companies in domestic and export markets. *See* 5 U.S.C. 804(2). On behalf of both Departments, DHS will submit this temporary final rule to both houses of Congress and the Comptroller General as required by 5 U.S.C. 801(a)(1).

H. National Environmental Policy Act (NEPA)

DHS and its components analyze regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 "Implementing the National Environmental Policy Act" (Dir. 023-01 Rev. 01) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual)[186] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[187]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[188]

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[186] The Instruction Manual, which contains DHS's procedures for implementing NEPA, was issued on November 6, 2014, and is available at https://www.dhs.gov/ocrso/eed/epb/nepa (last modified July 29, 2025).
[187] *See* Appendix A, Table 1.
[188] Instruction Manual 023-01 at V.B(2)(a)-(c).

This rule temporarily amends the regulations implementing the H-2B nonimmigrant visa program to increase the numerical limitation on H-2B nonimmigrant visas for FY 2026, based on the Secretary of Homeland Security's determination, in consultation with the Secretary of Labor, consistent with the FY 2024 Omnibus, and Public Law 119-37.

The amendments to DHS's existing regulations in 8 CFR part 214 would authorize up to an additional 64,716 visas for aliens who may receive H-2B nonimmigrant visas, of which 46,226 are for returning workers (persons issued H-2B visas or were otherwise granted H-2B status in Fiscal Years 2023, 2024, or 2025). The amendment's operative provisions approving H-2B petitions under the supplemental allocation would effectively terminate after September 30, 2026 for the cap increase.

DHS has reviewed this temporary final rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this final rule.

Accordingly, DHS finds that the promulgation of this temporary final rule's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

I. Paperwork Reduction Act (PRA)

Attestation for Employers Seeking to Employ H-2B Nonimmigrants Workers Under section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37, Form ETA-9142-B-CAA-10

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB

under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval using emergency clearance procedures outlined at 5 CFR 1320.13. The Departments note that while DOL submitted the ICR, both DHS and DOL will use the information.

Petitioners will use the new form, Form ETA-9142-B-CAA-10, to regarding, for example, irreparable harm and the returning worker requirement (unless exempt because the H-2B worker will start employment between May 1 and September 30, 2026) described above. Petitioners will need to file the attestation with DHS until DHS announces that the supplemental H-2B cap has been reached. In addition, the petitioner will need to retain documentation demonstrating compliance with this implementing rule, and must provide it to DHS and/or DOL in the event of an audit or investigation.

In addition to obtaining emergency approval pursuant to 5 CFR 1320.13, DOL is seeking comments on this information collection pursuant to 44 U.S.C. 3506(c)(2)(A). Comments on the information collection must be received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS RULE.] This process of engaging the public and other Federal agencies helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. *See* 44 U.S.C. 3501 *et seq*. In addition, notwithstanding any other provisions of law, no person must

generally be subject to a penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

In accordance with the PRA, DOL is affording the public with notice and an opportunity to comment on the new information collection, which is necessary to implement the requirements of this temporary rule. The information collection activities covered by this new OMB Control Number 1205-NEW are required under section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024 as extended by Public Law 119-37, which provides that "the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied . . . with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor," may increase the total number of aliens who may receive an H-2B visa in FY 2026 by not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from the H-2B numerical limitation. As previously discussed in the preamble of this rule, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has decided to increase the numerical limitation on H-2B nonimmigrant visas to authorize the issuance of an additional 64,716 visas, the maximum allowed, through the end of FY 2026 for American businesses who attest that they are suffering irreparable harm or will suffer impending irreparable harm. As with the previous supplemental rules, the Secretary has determined that the first 46,226 additional visas, distributed in two allocations based on start date of work, will only be available for returning workers, that is workers who were issued H-2B visas or otherwise granted H-2B status in FY 2023, 2024, or 2025, requested by employers with a need for work to beginning between January 1, 2026 and April 30, 2026. The remaining 18,490 additional visas, and any unused visas from the previous allocations, are exempt from the returning worker requirement and will only be available for employers with a need for work to begin on or after May 1 through September 30, 2026.

Commenters are encouraged to discuss the following:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The aforementioned information collection requirements are summarized as follows:

Agency: DOL-ETA.

Type of Information Collection: New Collection.

Title of the Collection: Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37.

Agency Form Number: Form ETA-9142-B-CAA-10.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 4,208.

Average Responses per Year per Respondent: 1.

Total Estimated Number of Responses: 4,208.

Average Time per Response: 6 hours per application.

Total Estimated Annual Time Burden: 25,248 hours.

Total Estimated Other Costs Burden: $0

Application for Premium Processing Service, Form I-907

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. Application for Premium Processing Service, Form I-907 has been approved by OMB and assigned OMB control number 1615-0048. DHS is making no changes to the Form I-907 in connection with this temporary rule implementing the time-limited authority pursuant to section 105 of Division G, Title I of the Further Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by Public Law 119-37 (which expires on January 30, 2026). However, DHS estimates that this temporary rule may result in approximately 3,914 additional filings of Form I-907 in fiscal year 2026. The current OMB-approved estimate of the number of annual respondents filing a Form I-907 for Form I-129 is 318,874.[189] DHS has determined that the OMB-approved estimate is sufficient to fully encompass the additional respondents who will be filing Form I-907 in connection with this temporary rule, which represents a small fraction of the overall Form I-907 population. Therefore, DHS is not changing the collection instrument or increasing its burden estimates in connection with this temporary rule, and is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615-0048.

List of Subjects

8 CFR Part 214

[189] *See* DHS, USCIS, FY 2026 Adjustment to Premium Processing Fees, Table 2 at https://www.federalregister.gov/documents/2026/01/12/2026-00321/adjustment-to-premium-processing-fees.

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Chapter I

For the reasons discussed in the joint preamble, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214 -- NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1188, 1221, 1281, 1282, 1301-1305, 1357, and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

2. Effective January 30, 2026, through September 30, 2026, amend § 214.2 by adding paragraph (h)(6)(xvi) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) * * *

(xvi) *Special requirements for additional cap allocations under the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Public Law 119-37*--(A) *Public Law 119-37*--(*1*) *General supplemental allocations.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2026 only, the Secretary has authorized up to an additional 64,716 aliens who may receive H-2B nonimmigrant visas pursuant to section 101 of Division A of the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Public Law 119-37. Except for visas made available under paragraph (h)(6)(xvi)(A)(*1*)(*iii*) of this section, an alien must be a returning worker to be eligible to receive an H-2B nonimmigrant visa under this paragraph (h)(6)(xvi)(A)(*1*). The term "returning worker" under this paragraph (h)(6)(xvi)(A)(*1*) means a person who was issued an H-2B visa or was otherwise granted H-2B status in fiscal year 2023, 2024, or 2025. Notwithstanding § 248.2 of this chapter, an alien may not change status to H-2B nonimmigrant under this paragraph (h)(6)(xvi)(A)(*1*). The additional H-2B visas authorized under this paragraph will be made available as follows:

(*i*) 18,490 visas immediately available for aliens who are returning workers with employment start dates between January 1 and March 31, 2026.

(*ii*) 27,736 visas available, plus any unused visas that were made available under (h)(6)(xvi)(A)(*1*)(*i*), for aliens who are returning workers with employment start dates between April 1 and 30, 2026.

(*iii*) 18,490 visas available plus any unused visas that were made available under (h)(6)(xvi)(A)(*1*)(*i*) or (*ii*), for aliens with employment start dates between May 1 and September 30, 2026.

(B) *Eligibility.* In order to file a petition with USCIS under this paragraph (h)(6)(xvi), the petitioner must:

(*1*) Comply with all other statutory and regulatory requirements for H-2B classification, including, but not limited to, requirements in this section, under part 103 of this chapter, and under parts 655 of Title 20 and 503 of Title 29; and

(*2*) Submit to USCIS, at the time the employer files its petition, a U.S. Department of Labor attestation, in compliance with this section and 20 CFR 655.64, evidencing that:

(*i*) Its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on the petition filed pursuant to this paragraph (h)(6)(xvi);

(*ii*) All workers requested and/or instructed to apply for a visa have been issued an H-2B visa or otherwise granted H-2B status in fiscal year 2023, 2024, or 2025, unless the H-2B worker is a beneficiary for an H-2B petition with employment start dates between May 1 and September 30, 2026;

(*iii*) The employer will provide documentary evidence of the facts in paragraphs (h)(6)(xvi)(B)(*2*)(*i*) through (*ii*) of this section to DHS and/or DOL upon request;

(*iv*) The employer will agree to fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2026 supplemental allocations outlined in paragraph (h)(6)(xvi)(B) of this section, as a condition for the approval of the petition; and

(*v*) The employer will fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting

the eligibility criteria for the FY 2026 supplemental allocations outlined in 20 CFR 655.64(a) and 655.69(a), as a condition for the approval of the H-2B petition. The employer must attest to this on Form ETA-9142-B-CAA-10 and must further attest on Form ETA-9142-B-CAA-10 that it will not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority pursuant to 20 CFR part 655, subpart A, and 29 CFR 503.25.

(C) *Processing—(1) Petitions filed pursuant to paragraph (h)(6)(xvi)(A)(1)(i) of this section requesting FY 2026 employment start dates from January 1, 2026 to March 31, 2026.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*i*) of this section requesting employment start dates before January 1, 2026. USCIS will also reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*i*) of this section requesting employment start dates between January 1 and March 31, 2026 that are received after the applicable numerical limitation has been reached or 15 days or later after the INA section 214(g) cap for the second half FY 2026 has been met. If USCIS determines by this latter date that it has received fewer petitions than needed to reach the USCIS projections for this supplemental allocation under paragraph (h)(6)(xvi)(A)(*1*)(*i*) of this section, it will make the unused visas from this allocation available under the allocation described in paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section for aliens who are returning workers with employment start dates between April 1 and 30, 2026.

(*2*) *Petitions filed pursuant to paragraph (h)(6)(xvi)(A)(1)(ii) of this section requesting FY 2026 employment start dates from April 1, 2026 to April 30, 2026.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section requesting employment start dates from April 1 to April 30, 2026 that are received earlier than 15 days after the INA section 214(g) cap for the second half FY 2026 has been met. USCIS will also reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section requesting employment start dates between April 1 and 30, 2026 that are received after the applicable numerical limitation has been reached, or 45 days or later after the INA section 214(g) cap for the second half FY 2026 has

been met. If USCIS determines by this latter date that it has received fewer petitions than needed to reach the USCIS projections for this supplemental allocation under paragraph (h)(6)(xvi)(A)(*1*)(*ii*) of this section, it will make the unused visas from this allocation available under the allocation described in paragraph (h)(6)(xvi)(A)(*1*)(*iii*) of this section for aliens with employment start dates between May 1 and September 30, 2026.

(*3*) *Petitions filed pursuant to paragraph (h)(6)(xvi)(A)(1)(iii) of this section requesting FY 2026 employment start dates from May 1, 2026 to September 30, 2026.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xvi)(A)(*1*)(*iii*) of this section requesting employment start dates from May 1, 2026 to September 30, 2026 that are received earlier than 45 days after the INA section 214(g) cap for the second half FY 2026 has been met, after the applicable numerical limitation has been reached, or after September 15, 2026.

(*4*) USCIS will not approve a petition filed pursuant to this paragraph (h)(6)(xvi) on or after October 1, 2026.

(D) *Numerical limitations under 8 CFR 214.2(h)(6)(xvi)(A)(1).* When calculating the numerical limitations under paragraph (h)(6)(xvi)(A)(*1*) of this section, as authorized under section 101 of Division A of Public Law 119-37, Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, USCIS will make numbers for each allocation available to petitions in the order in which the petitions subject to the respective limitation are received. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received (including the number of workers requested when necessary) and will notify the public of the dates that USCIS has received the necessary number of petitions (the "final receipt dates") under paragraph (h)(6)(xvi)(A)(*1*). The day the public is notified will not control the final receipt dates. When necessary to ensure the fair and orderly allocation of numbers subject to the numerical limitations in (h)(6)(xvi)(A)(*1*), USCIS may

randomly select from among the petitions received on the final receipt dates the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt dates that may be applicable under paragraph (h)(6)(xvi)(A)(*1*) will be rejected. If the final receipt date is any of the first five business days on which petitions subject to the applicable numerical limits described in paragraph (h)(6)(xvi)(A)(*1*) may be received, USCIS will randomly apply all of the numbers among the petitions received on any of those five business days.

(E) *Sunset*. This paragraph (h)(6)(xvi) expires on October 1, 2026.

(F) *Non-severability*. The requirement to file an attestation under paragraph (h)(6)(xvi)(B)(*2*) of this section is intended to be non-severable from the remainder of this paragraph (h)(6)(xvi), including, but not limited to, the numerical allocation provisions at paragraph (h)(6)(xvi)(A)(*1*) of this section. In the event that any part of this paragraph (h)(6)(xvi) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this paragraph (h)(6)(xvi) is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this paragraph (h)(6)(xvi), as consistent with law.

* * * * *

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Chapter V

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

PART 655--TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

3. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; sec. 412(e), Pub. L. 105-277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107-296, 116 Stat. 2135, as amended; Pub. L. 109-423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105-277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109-423, 120 Stat. 2900; and 8 CFR 214.2(h).

4. Effective January 30, 2026, through September 30, 2026, add § 655.64 to read as follows:

§ 655.64 Special application filing and eligibility provisions for Fiscal Year 2026 under the supplemental cap increase under Section 105 of Division G, Title I of the Further

Consolidated Appropriations Act, 2024, Public Law 118-47, as extended by the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Public Law 119-37.

(a) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(xvi) to request H-2B workers to begin employment from January 1, 2026, through September 30, 2026, must meet the following requirements:

(1) The employer must attest on the Form ETA-9142-B-CAA-10 that its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xvi). The employer's attestation must identify the types of evidence the employer is relying on and will retain to meet the irreparable harm standard. The employer must attest that it has created a detailed written statement describing how it is suffering irreparable harm or will suffer impending irreparable harm and describing how such evidence demonstrates irreparable harm. In addition, the employer must attest that it will provide to DHS and/or DOL upon request all of the documentation it relied upon and retained as evidence that it meets the irreparable harm standard, including all of the supporting documentation the employer committed to retain at the time of filing on the employer's attestation form by selecting a checkbox next to the applicable type of documentation in section C, and the written statement describing how such evidence demonstrates irreparable harm

(2) The employer must attest on Form ETA-9142-B-CAA-10 that each of the workers requested and/or instructed to apply for a visa, whether named or unnamed, on a petition filed pursuant to 8 CFR 214.2(h)(6)(xvi)(A)(*1*)(*i*) and (*ii*), have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (fiscal year 2023, 2024, or 2025), request and obtain a valid temporary labor certification in compliance with the application filing requirements set forth in 20 CFR 655.15.

(3) The employer must attest on Form ETA-9142-B-CAA-10 that the employer will comply with all the assurances, obligations, and conditions of employment set forth on its approved Application for Temporary Employment Certification

(b) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(xvi) to request H-2B workers who will begin employment on or after January 1, 2026, through September 30, 2026, must meet the following requirements:

(1) The employer must attest on Form ETA-9142-B-CAA-10 that without the ability to employ all of the H-2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xvi), its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss), and that the employer will provide documentary evidence of this fact to DHS or DOL upon request.

(2) The employer must attest on Form ETA-9142-B-CAA-10 that each of the workers requested and/or instructed to apply for a visa, whether named or unnamed, on a petition filed pursuant to 8 CFR 214.2(h)(6)(xvi)(A)(*1*)(*i*) and (*ii*), have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (Fiscal Years 2023, 2024, or 2025), unless the H-2B worker is counted towards the 18,490 cap described in 8 CFR (h)(6)(xvi)(A)(*1*)(*iii*).

(3) The employer must attest on Form ETA-9142-B-CAA-10 that it will comply with all the assurances, obligations, and conditions of employment set forth on its approved *Application for Temporary Employment Certification*.

(4) The employer must attest on Form ETA-9142-B-CAA-10 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification, or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2026

supplemental allocations outlined in this paragraph (a) and § 655.69(a), as a condition for the approval of the H-2B petition. Pursuant to this subpart A at § 655.73 and 29 CFR 503.25, the employer will not impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority. DOL may consider the failure to respond to and/or comply with an investigation or audit to be a willful misrepresentation of material fact or a substantial failure to meet the terms and conditions of the *H-2B Application for Prevailing Wage Determination*, or *Application for Temporary Employment Certification*, resulting in an adverse agency action on the employer, agent, or attorney, including assessment of a civil money penalty, revocation of the temporary labor certification, and/or program debarment for not less than one year or more than five years from the date of the final agency decision under 20 CFR 655.70, 655.72, 655.73 or 29 CFR part 503. A debarred party will be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, the debarred party for the same period of time set forth in the final debarment decision.

(d) This section expires on October 1, 2026.

(e) The requirements under paragraph (a) of this section are intended to be non-severable from the remainder of this section; in the event that paragraph (a)(1), (2), (3), (4), or (5) of this section is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this section is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

5. Effective January 30, 2026, through September 30, 2029, add § 655.69 to read as follows:

§ 655.69 Special document retention provisions for Fiscal Years 2026 through 2029 under the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Public Law 119-37.

(a) An employer who files a petition with USCIS to employ H-2B workers in fiscal year 2026 under authority of the temporary increase in the numerical limitation under section 101 of Division A, Public Law 119-37 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I-129 petition and as attested to in the attestation form, that the employer's business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xvi), including a detailed written statement describing the irreparable harm and how such evidence shows irreparable harm;

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xvi), have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (fiscal year 2023, 2024, or 2025), unless the H-2B worker is counted towards the 18,490 cap described in section (h)(6)(xvi)(A)(*1*)(*iii*); and

(b) DOL or DHS may inspect these documents upon request.

(c) This section expires on October 1, 2029.

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Kristi Noem,

Secretary of Homeland Security.

Lori Chavez-DeRemer,

Secretary of Labor.

[FR Doc. 2026-02131 Filed: 1/30/2026 4:15 pm; Publication Date: 2/3/2026]