U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

June 17, 2026 PM-602-0200

Policy Memorandum

SUBJECT: Guidance on Temporary or Seasonal Need for H-2A Petitions for Dairying

Purpose

This policy memorandum (PM) provides guidance regarding the determination of temporary or seasonal need for H-2A petitions seeking workers for dairying. It does not impose new obligations on employers submitting H-2A petitions. This PM instead ensures that the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) adjudicates all H-2A dairying petitions on a case-by-case basis, taking into consideration the totality of the facts presented, and in the same manner as all other H-2A petitions. USCIS issues this PM to address temporary admission of aliens into the United States as H-2A dairying workers to fill temporary or seasonal positions for which domestic labor is unavailable because dairying and labor on a dairy farm are job occupations within the agricultural field which may be seasonal or temporary.

Effective Date

This PM applies to all USCIS employees. This new guidance will take effect June 17, 2026.

Authorities

- Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA); 8 U.S.C. 1101(a)(15)(H)(ii)(a).
- Section 218 of the INA; 8 U.S.C. 1188.
- Title 8 Code of Federal Regulations (CFR) 214.2(h).

Background

There are questions about whether dairies can access the H-2A program. This PM clarifies that dairy can involve H-2A eligible temporary or seasonal labor, no matter that dairy cows can require milking or other types of work year-round. In this regard, dairying is similar to range sheep or goat herding, which can also be eligible for H-2A. However, dairying work does not require special procedures apart from those available under existing statutes and regulations.

Congress Expressly Included Dairy/Dairying Labor as Agricultural Labor for Purposes of Eligibility for H-2A Classification:

The Immigration and Nationality Act (INA), as amended by Section 301 of the Immigration Reform and Control Act of 1986 (IRCA), allows for employers to bring nonimmigrant foreign workers temporarily into the United States to perform "agricultural labor or services" of a temporary or seasonal nature.[1] This temporary labor program authority is commonly referred to as "H-2A." Congress expressly included "dairying" and work on a "dairy" in the definition of "agricultural labor or services" eligible for H-2A:

> [H]aving a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform *agricultural labor or services,* as defined by the Secretary of Labor in regulations *and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986 [26 U.S.C. 3121(g)], agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 [29 U.S.C. 203(f)]* … of a temporary or seasonal nature ….[2]

Thus, although the INA provides the Secretary of Labor with broad authority to define "agricultural labor or services," Congress deemed "agricultural labor" as defined in the Internal Revenue Code of 1986 and "agriculture" as defined in the Fair Labor Standards Act (FLSA) eligible for the H-2A program at a minimum.

The Internal Revenue Code definition of "agricultural labor" that Congress adopted for the H-2A program in IRCA provided, in relevant part, that labor on a "farm"— including on a "dairy"—is "agricultural labor."[3] In addition, the FLSA definition of "agriculture" Congress also adopted for the H-2A program in IRCA provided, in relevant part, that "dairying" performed by a farmer or on a farm is "agriculture."[4]

While Congress expressly included "dairy" and "dairying" as types of "agricultural labor or services" eligible for H-2A, it also specified that the labor be "of a temporary or seasonal nature." The juxtaposition of these two statutory provisions clearly demonstrates that Congress concluded that "dairying" on a "dairy" can involve "temporary" or "seasonal" employment needs for purposes of the H-2A classification.

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[1] INA 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a).
[2] *Id.* (emphasis added).
[3] Section 3121(g) of the Internal Revenue Code, 26 U.S.C. 3121(g), provides, in part:
"(g) Agricultural labor
"For purposes of this chapter, the term 'agricultural labor' includes all service performed-
"(1) on a farm, in the employ of any person, in connection with cultivating the soil, or *in connection with raising or harvesting any agricultural* or horticultural *commodity, including the raising,* shearing*, feeding, caring for,* training, *and management of livestock …*;
As used in this subsection, *the term 'farm' includes* stock*, dairy*, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards." (emphasis added).
[4] Section 3(f) of the FLSA, 29 U.S.C. 203(f), provides:
"(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, *dairying*, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities …" (emphasis added).

Regulations Defining "Seasonal" and "Temporary":

DHS regulations describe the conditions upon which a petition may be considered for "temporary" or "seasonal" labor.[5] DHS regulations specify that "[a]n H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature" defined as follows:

> "Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year."[6]

U.S. Department of Justice Office of Legal Counsel Opinion Interpreting "Temporary" for Purposes of H-2A Eligibility:

In April 1987, shortly after IRCA's enactment in 1986, the U.S. Department of Justice Office of Legal Counsel (OLC) issued an opinion addressing on what constitutes "temporary" work for the purposes of section 101(a)(15)(H)(ii) of the INA.

After examining the statutory language, legislative history, and contemporary regulations, case law, and dictionary definitions, OLC concluded that the "temporary" standard could be met so long as the employer's need, as set forth in its petition, is temporary, regardless of whether the underlying job could be described as permanent or temporary:

> "Temporary" work under […IRCA], which permits aliens to enter the United States temporarily to perform "temporary" services or labor, refers to any job where the employer's need for the employee is temporary. The nature of the underlying job and, in particular, whether the underlying job itself can be described as permanent or temporary, is irrelevant.[7]

OLC advised that "in order to determine whether a particular job is 'temporary' within the meaning of [the H-2A statute], INS and the [DOL] must focus on the employer's need." OLC opined that "[i]f an employer makes a *bona fide* application showing that he needs to fill a job on a temporary basis, the work is "of a temporary or seasonal nature."[8] Finally, OLC concluded that

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[5] Before USCIS approves an H-2A petition, the U.S. Department of Labor (DOL) must approve a temporary labor certification (TLC). DOL defines by regulation employment to be of a "temporary" nature where "the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year." DOL's regulation defines employment to be "seasonal" in nature where "it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. *See* 20 CFR 655.103(d). DOL's regulation contains substantively the same definitions that are set forth by DHS in its H-2A regulation.

[6] 8 C.F.R. 214.2(h)(5)(iv)(A).

[7] *Temporary Workers Under § 301 of the Immigration Reform & Control Act*, 11 U.S. Op. Off. Legal Counsel 39, 41-42 (1987) (*Temp. Workers*).

[8] *Temp. Workers* at 41. OLC issued an opinion in 2008 addressing the permissibility of a proposed definition of "temporary" for purposes of a rulemaking in the H-2B non-agricultural worker context. *See Meaning of "Temporary" Work Under 8 U.S.C. § 1101(a)(15)(H)(ii)(b)*, 32 U.S. Op. Off. Legal Counsel 159 (Dec. 18, 2008). In its 2008 opinion, OLC discussed and distinguished its 1987 opinion but did not rescind or abrogate it.

an agricultural job qualifies as temporary under H-2A "where the employer needs a worker for a limited period of time, generally of less than one year's duration."[9]

Policy

The analysis in this PM aligns with the text of the INA, as amended by IRCA, and the guidance set forth in OLC's 1987 *Temporary Workers* opinion. The INA and OLC guidance informed the USCIS in Policy Memorandum PM-602-0176.1, *Updated Guidance on Temporary or Seasonal Need for H-2A Petitions Seeking Workers for Range Sheep and/or Goat Herding or Production* (Feb. 28, 2020). This PM also relies on PM-602-0176.1's guidance regarding the determination of temporary or seasonal need for range sheep or goat herding or production.

Unlike herding and range livestock occupations, dairying occupations on a dairy do not require special procedures or requirements—such as range housing or a distinct adverse effect wage rate (AEWR)—that are unique to those off-farm herding positions. This PM does not impose new burdens on employers. Instead, employers seeking to use the H-2A program to fill positions related to dairying may rely on existing standard procedures for H-2A workers.

Temporary or Seasonal Need Analysis:

All H-2A petitions, including H-2A dairying petitions, are subject to the same statutory standards and DHS regulatory standards requiring that the H-2A employer establish temporary or seasonal need. Specifically, section 101(a)(15)(H)(ii)(a) of the INA states, in relevant part, that an alien seeking to come to the United States as an H-2A nonimmigrant must be "coming temporarily to the United States to perform agricultural labor or services … of a temporary or seasonal nature."

As provided in the statute, not only must the alien be coming "temporarily" to the United States, but also the agricultural labor or services that the alien is performing must be "temporary or seasonal."

DHS regulations state that, "[a]n H-2A *petitioner* must establish that the employment proposed in the certification is of a temporary or seasonal nature."[10]

The regulations further define temporary and seasonal employment needs:

> *Temporary:* "Employment is of a temporary nature where *the employer's need to fill the position with a temporary worker* will, except in extraordinary circumstances, last no longer than one year."
>
> *Seasonal:* Employment is of a seasonal nature where it is tied to a certain time of year by an *event or pattern*, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.[11]

[9] *Temp. Workers* at 40, 43.
[10] 8 CFR 214.2(h)(5)(iv)(A) (emphasis added).
[11] *Id.* (emphasis added).

As emphasized in the prior paragraph, the occupation or the job itself does not determine the temporary or seasonal nature of an agricultural position; the employer's need for the duties to be performed is decisive for whether it is characterized as temporary or seasonal.[12]

As articulated by the Department of Justice's Office of Legal Counsel:

> [I]n order to determine whether a particular job is "temporary" within the meaning of [8 U.S.C. §] 1101(a)(15)(H)(ii)(a), [DHS] and the Department of Labor must focus upon the employer's need. If an employer makes a bona fide application showing that he needs to fill a job on a temporary basis, the work is "of a temporary or seasonal nature." It is irrelevant whether the job is for three weeks to harvest a crop or for six months to replace a sick worker or for a year to help handle an unusually large lumber contract. What is relevant is the employer's assessment -- evaluated, as required by statute, by the Department of Labor and [DHS] --of his [sic] need for a short-term (as opposed to a permanent) employee. The issue to be decided is whether the employer has demonstrated a temporary need for a worker in some area of agriculture. *The nature of the job itself is irrelevant.* What is relevant is whether the employer's need is truly temporary.[13]

The Role of Department of Labor's Temporary Labor Certification and USCIS Adjudicating Temporary or Seasonal Need on a Case-by-Case Basis:

Before USCIS can approve a Form I-129 H-2A petition, DOL must approve the temporary labor certification (TLC).[14] DOL's finding that employment qualifies as temporary or seasonal is "normally sufficient" for the purpose of an H-2A petition.[15] An H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature.[16] However, eligibility will not be found, notwithstanding the issuance of a TLC, where there is "substantial evidence" that the employment is not temporary or seasonal.[17] Otherwise stated, if the record on the whole reflects that the need is not temporary or seasonal, the petitioner will not have met their burden to establish eligibility for a nonimmigrant H-2A position.

USCIS, as the final adjudicator of temporary or seasonal need, could reach a different conclusion from DOL's certification based on substantial evidence that the employment does not qualify for H-2A nonimmigrant status because of the petitioner's lack of temporary or seasonal need.[18] USCIS, for instance, may have information regarding an employer's petition filing history that

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[12] The Board of Immigration Appeals' interpretation of temporary need in *Matter of Artee, Corp.*, 18 I&N Dec. 366 (BIA 1982), applies to the H-2 classification. That 1982 decision preceded enactment of the IRCA, which moved agricultural employment from the pre-IRCA H-2 classification into a separate H-2A classification. See also *Temp. Workers Under Section 301 of the Immigration Reform and Control Act*, 11 U.S. Op. Off. Legal Counsel 39 (Apr. 23, 1987) (applying *Matter of Artee* standard to the H-2A classification); *Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States*, 52 FR 20496, 20498 (June 1, 1987) (DOL interim final rule) (citing favorably to *Matter of Artee* for the proposition that the relevant test in determining whether employer has temporary need in the H-2A context is "whether the employer's need is truly temporary").

[13] *Temp. Workers* at 39, 41–42 (emphasis added).

[14] See section 218(a) of the INA; see also 8 CFR 214.2(h)(5)(i).

[15] 8 CFR 214.2(h)(5)(iv)(B).

[16] 8 CFR 214.2(h)(5)(iv).

[17] 8 CFR 214.2(h)(5)(iv)(B).

[18] See generally section 214(c) of the INA, 8 U.S.C. 1184(c).

DOL did not have at the time it adjudicated the TLC application, indicating that the employer's purported need is, in fact, an ongoing permanent need and therefore, not temporary or seasonal in nature. What constitutes a temporary or seasonal need is inherently fact driven and can only be determined on a case-by-case basis; the petitioner, for an H-2A dairying position, as in other H-2A petitions, bears the burden of establishing the temporary or seasonal need.

Adjudicating Consecutive or Near-Consecutive, Back-to-Back H-2A Dairying Petitions:

Absent a showing of extraordinary circumstances demonstrating a one-time need, a petitioner requesting H-2A workers to perform the same dairying position and job duties for a back-to-back lengthy consecutive or near-consecutive period for the same job duties for a dairying position without a meaningful break in employment, so as to indicate an ongoing permanent need, would generally constitute substantial evidence supporting the denial of the H-2A petition, notwithstanding the existence of DOL TLCs for such periods.[19]

As part of the case-by-case analysis, the dairying petitioner's filing history, with regard to a given position or alien, is a relevant consideration with respect to determining whether the petitioner can meet its burden of establishing that its current need to fill a position is in fact temporary or seasonal, but the weight USCIS will afford such filing history will necessarily depend on the totality of the employer's circumstances.

A prior revocation or denial based on a determination that the preponderance of the evidence established that an H-2A dairying petitioner's need was permanent does not preclude approval of subsequent petitions from the same petitioner, so long as the facts in a subsequent petition show that the petitioner has a temporary or seasonal need for the duties of the position. Conversely, prior approvals of H-2A dairying petitions do not alone preclude a denial or revocation based on a petitioner's lack of temporary or seasonal need for the same or a similar position. In all cases, the determination of temporary or seasonal need would be based on the facts presented at the time any later petition is filed.[20]

Considerations:

USCIS has interpreted H-2A statutory and regulatory authorities to allow H-2A petitioners to file consecutive, back-to-back petitions seeking the same or different workers if they can establish that an employer's needs for the job duties are demonstrably different or that each consecutive petition is tied to a specific event or pattern. In accordance with 8 CFR 214.2(h)(5)(iv)(A) and (h)(15)(ii)(C) (recognizing that H-2A employees typically may be granted extensions of stay for "a period of up to one year"), USCIS evaluates all H-2A petitions based on the facts presented in the petitions as well as the past filings of the petitioner, as appropriate. For example, USCIS may, depending on the totality of the circumstances, consider the need in consecutively filed petitions to be temporary or seasonal, so long as the jobs in each petition entail different duties or, in the case of a claimed seasonal need, can each be tied to a certain time of year by an event or

[19] 8 CFR 214.2(h)(5)(iv).
[20] *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988) (USCIS is not required to approve petitions where eligibility has not been demonstrated merely because of prior approvals which may have been erroneous); *Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987) (neither USCIS nor any other agency must treat acknowledged errors as binding precedent).

pattern.[21] In all cases, whether the claim is of a temporary or seasonal need, the petitioner must establish that its need is temporary or seasonal in nature.

A non-exhaustive list of relevant inquiries, depending on the specific facts presented, in determining whether the employer's need is "temporary" or "seasonal" includes the following:

- Whether two or more Form I-129 H-2A petitions reflect the employer's need for different job duties to be performed, or whether they in fact reflect the same need.

  This can be determined by examining the tools used and individual tasks performed by the workers. If the job duties being performed are the same, or are of a sufficiently similar nature to call into question whether the petitioner's need for such worker is in fact permanent rather than temporary or seasonal in nature, USCIS may reasonably inquire whether the total period of time reflected on two or more approved TLCs supporting Form I-129 H-2A petitions reflects a permanent, year-round need. In this regard, it is worth reiterating, the burden is on the petitioner to establish the requisite need.

- Whether the separate Form I-129 H-2A petitions cover separate temporary work.

  Supplementary evidence may include, among other things, work contracts, invoices, client documents, or employees' work schedules, and similar documents showing:
  - The work recurs on the same cycle each year;
  - The work will be performed in certain months each year only; and/or
  - There are more than token gaps each year when services are not needed.

- Whether the petitioner is employing different beneficiaries for each distinct period of need.

  Different beneficiaries required for work on separate petitions may, but do not, standing alone, indicate that the employer's need is for distinct services or labor, including duties and skills, rather than a continuation of the same type of work. Supplementary evidence may include payroll records, staffing/workload data, or employment contracts showing that the petitioner has different workers and that the positions in question are materially different from each other and require distinctly separate skills.

It is possible for a petitioner to meet its burden of demonstrating that its need is "more likely than not" temporary or seasonal by satisfactorily addressing one (or more) of the inquiries described above or any other relevant inquiry raised by the facts presented in a given case. Conversely, in certain circumstances, a petitioner may be able to present evidence in response to several of the factors above yet still be unable to show that its need is "more likely than not" temporary or seasonal.

Examples Applying the Above-Mentioned Considerations:

If the job duties being performed, as described on consecutive or near-consecutive H-2A petitions, are the same or the petitioner is unable to establish a specific, seasonal event or pattern that is tied to an employer's need for the services or labor as reflected on the consecutive or near

[21] 8 CFR 214.2(h)(5)(iv)(A) and 20 CFR 655.103(d).

consecutive petitions, then USCIS adjudicators will consider whether the need identified on those petitions, taken together, shows a permanent, non-seasonal need. When evaluating a petition, USCIS would generally consider the examples described below as substantial evidence to overcome DOL's temporary or seasonal need determination, unless there is additional evidence in the record that outweighs these examples and supports DOL's determination that the petitioner's need is temporary or seasonal. The following is a non-exhaustive list of examples of when USCIS may request additional evidence to establish that the employer's need is temporary or seasonal, or in the absence of such evidence, deny a petition for failure to establish a temporary or seasonal need:[22]

- A petitioner files consecutive Form I-129 H-2A petitions for the same type of position, including job duties covering a continuous period that, in totality, lasts more than a year without detailing extraordinary circumstances that may apply; or
- A petitioner files consecutive Form I-129 H-2A petitions for workers performing the same job duties that cover a continuous period of time lasting more than a year, without detailing how the length of time requested constitutes a distinct period of temporary need, or is seasonal in that it is tied to a certain time each year by a predictable event or pattern.[23]

Conversely, applying the temporary or seasonal need considerations mentioned above, it is plausible that consecutive Form I-129 H-2A dairying petitions may still be approvable where an H-2A petitioner establishes that its need for H-2A dairying positions truly is temporary or seasonal. Examples of such instances might include circumstances such as:[24]

- Establishing a seasonal need for the dairy work, such as dairy herdsmen that have some duties that are different in the spring/summer than they do in the fall/winter even though the dairy herdsmen may have some duties, like milking, that are consistent through those seasons;
- Filling a need lasting for more than a year, albeit not indefinitely, after establishing, by preponderance of the evidence, that extraordinary circumstances exist.

These facts, specific to dairy, should frame considerations related to the temporary or seasonal nature of dairy work:

- Dairy cows are typically milked for approximately 10 months after calving before they are "dried off" for two months before calving again.[25] For dairies that implement distinct breeding seasons each year, employers may be able to file separate H-2A petitions (for up to 10 months each) for dairy herdsmen for each calving season to provide the needed labor to address the different needs by the employer in relation to the cadence for the cattle in each herd.

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[22] There may be circumstances not outlined in these examples when USCIS will find it necessary to request that the petitioner provide additional evidence to establish the petitioner's temporary or seasonal need.
[23] Again, DHS regulations at 8 CFR 214.2(h)(5)(iv)(A) provide that the proposed employment described in the temporary labor certification must be of a temporary or seasonal nature.
[24] These examples are also non-exhaustive, and employers filing other H-2A dairying petitions that do not fall within these examples may be able to establish temporary or seasonal need. These examples presume compliance with DOL regulations.
[25] See https://extension.unh.edu/blog/2025/09/understanding-lactation-curve-dairy-cows

- Dairies that do not implement distinct breeding or calving seasons may still prove a temporary or seasonal need where it can be demonstrated that workers will perform different duties during specific seasons or other temporary periods. For example, while dairy herdsmen will have some duties that are consistent throughout seasons, other duties performed by dairy herdsmen change throughout the year. In such instances, employers may be able to file separate H-2A petitions to provide the employer's need for labor that is substantially different between seasons even though some tasks, like milking, are consistent.

In *Hispanic Affairs Project v. Acosta*, 901 F.3d 378, 386 (D.C. Cir. 2018) (*HAP*), which concerned USCIS's H-2A policies and practices in relation to sheepherders, the D.C. Circuit Court of Appeals held that DHS's "*de facto* policy of authorizing long-term visas [wa]s arbitrary, capricious, and contrary to law . . . because it authorized the creation of permanent herder jobs that are not temporary or seasonal" (quotation marks omitted). In light of *HAP* and the statutory and regulatory requirements that an H-2A employer's need be temporary or seasonal, filing consecutive, back-to-back H-2A petitions for substantially the same type of position, will be reviewed to determine whether, as a factual matter, the petitioner's need is temporary or seasonal in nature.

In cases where the adjudicating officer determines that there are insufficient facts to support approval of a petition, the officer may issue a request for evidence that explains why the officer believes more evidence is necessary to determine whether the employer's need is in fact temporary or seasonal in nature. On the other hand, since each case must be adjudicated based on all the facts presented, the filing of consecutive H-2A dairying positions would not necessarily result in a request for evidence or a denial based on the lack of temporary or seasonal need, if the petitioner can show that it has the requisite temporary or seasonal need. Consistent with this PM, such petitions should be reviewed to evaluate whether substantial evidence exists that the need is neither temporary nor seasonal.

Implementation and Reliance

USCIS believes that the interpretations in this PM comply with pertinent provisions of the INA and applicable implementing regulations. This guidance helps ensure that petitioners filing H-2A petitions on behalf of dairies are held to the same legal standards with respect to temporariness and seasonality as all other H-2A petitioners while protecting the interests of similarly situated U.S. workers (for example, their wages and working conditions). This PM does not impose new obligations on employers submitting H-2A petitions.

Use

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.