

From: E-VERIFY <E-Verify.USCIS@public.govdelivery.com>
Sent: Thursday, April 30, 2020 12:33 PM
To:
Subject: Temporary Rules in Effect For Certain H-2A Nonimmigrants



Form I-9 Announcements

Form I-9 Completion by Non-E-Verify Agricultural Employers of Certain H-2A Nonimmigrants

On April 20, the Department of Homeland Security published a [temporary final rule](#) to amend certain H-2A requirements to help U.S. agricultural employers avoid disruptions in lawful agricultural-related employment during the coronavirus (COVID-19) public health emergency. The temporary final rule expires on August 18, 2020.

The [temporary final rule](#) allows non-E-Verify employers that have properly filed H-2A extension of stay petitions between certain dates for workers who are currently in H-2A status but working for a different employer to begin employing such H-2A workers on or after the date that USCIS receives the extension of stay petition (as stated on the

Form I-797 receipt notice) but no earlier than the start date of employment listed on the H-2A petition.

The temporary rule applies if:

USCIS received the new employer's extension of stay H-2A petition on or after March 1, and it remains pending as of April 20 (the effective date of the rule), or USCIS receives the H-2A petition between April 20 and Aug. 18.

Under this [temporary final rule](#), you, the **new, non-E-Verify employer** may employ the H-2A worker while the extension petition is pending, for a period not to exceed 45 days starting from the date of the receipt notice, or until USCIS denies your petition or you withdraw the petition, whichever comes first. The H-2A employee's unexpired Form I-94, Arrival/Departure Record, indicating his or her H-2A status, along with the employee's foreign passport, qualify as a Form I-9 List A document.

To complete Section 2, you should enter under List A:

- The unexpired foreign passport information;
- Unexpired Form I-94 information; and
- "45-Day Ext." and the date you submitted Form I-129 to USCIS in the Additional Information field.

If USCIS denies the new petition, or if you withdraw the new petition before the 45-day period expires, USCIS will automatically terminate the H-2A worker's employment authorization within 15 calendar days of its denial decision or the withdrawal request. You must reverify the employee's employment authorization in Section 3 either by the end of the 45-day period from the date USCIS receives your Form I-129 or once you receive a decision on the H-2A petition, whichever comes first. If your petition is denied or withdrawn, count 15 days from the date of the denial or withdrawal request for the date the employee's employment authorization expires.

Employers of H-2A workers continuing employment with the *same employer* or with a *new employer that is enrolled in E-Verify* should continue to follow current Form I-9 guidance provided in the [M-274, Handbook for Employers](#).

For more information on H-2A temporary agricultural workers see the [USCIS website](#).