

# United States Senate

WASHINGTON, DC 20510

April 8, 2020

**RECEIVED**

**By ESEC at 3:44 pm, Apr 08, 2020**

The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Ave, N.W.  
Washington, D.C. 20210

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr. Ave, S.E.  
Washington, D.C. 20032

Dear Secretary Scalia and Acting Secretary Wolf:

We write to request that you develop and implement guidance that will provide flexibility in your administration of the H-2A temporary agricultural worker program during the COVID-19 crisis. These processing flexibilities will protect our nation's food security by ensuring that our farmers have the workers they need. We believe that providing these flexibilities in the H-2A program during this national emergency will allow farmers to continue to produce and maintain an abundant food supply for all Americans.

Many of our country's farmers rely on the H-2A program for assistance in planting and harvesting operations. By law, our farmers can only receive H-2A workers if they certify that there are not "sufficient able, willing, and qualified U.S. workers available" and that "the employment of an alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed" (8 U.S.C. §1188 and 20 C.F.R. §655.100) Through these necessary provisions, farmers will have access to additional workers, which are crucial to ensure timely crop production.

Our nation is working around the clock to address the COVID-19 crisis, and our farmers are on the front lines of our country's response. The U.S. Department of State has already recognized the vital role our farmers play in our response efforts and has taken steps to provide temporary flexibilities in the H-2A program to make sure our farmers have the workers they need. These steps include:

- Expanding the categories of H-2 applicants whose applications can be adjudicated without an in-person interview;
- Allowing consular officers to waive the visa interview requirement for some first-time and returning H-2 applicants who have no potential ineligibility; *and*
- Increasing the period in which returning workers may qualify for an interview waiver.

As the State Department noted in its fact-sheet announcing these changes: "The H-2 program is essential to the economy and food security of the United States and is a national security priority." We commend the State Department for its efforts to uphold our food security and national security through these flexibilities.

President Trump is using a whole-of-government approach to fight the coronavirus. The State Department's efforts will go a long way in protecting our nation's food supply, but we believe that there is still more that needs to be done.

Your agencies have equities in the functioning of our nation's immigration system, and we urge you to adopt flexibilities that will protect our country's food supply as you administer the H-2A temporary agricultural worker program during this crisis. These flexibilities will ensure that the components of our country's immigration system will operate in harmony with each other as the Federal government responds to this crisis.

We specifically ask that your agencies develop and implement guidance that will:

- Allow approved H-2A workers at the end of a contract period to extend their contracts if they are impacted by travel restrictions imposed by the U.S. government or by the government of their country of origin;
- Increase the maximum length of time for H-2A visas holders to stay in the United States to mitigate the effects of U.S. Citizenship and Immigration Services service center closures during the COVID-19 crisis; *and*
- Allow H-2A employers to share available workers among farms until the Federal government is able to resume normal operations.

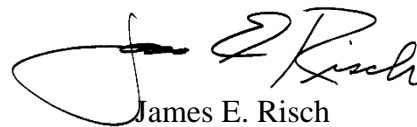
We recognize that this guidance will require significant interagency coordination, and we ask that you prioritize this guidance as you continue your agencies' work to lead our nation through this crisis. We must ensure that our farmers can continue to rely on the H-2A program during this time. It is important that we do everything we can mitigate the potential food shortage that could occur if these changes are not put into place.

Thank you for your leadership during this critical time as our nation continues to combat the coronavirus. We look forward to working with you to ensure food security in United States.

Sincerely,



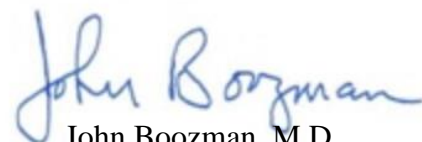
David A. Perdue  
United States Senator



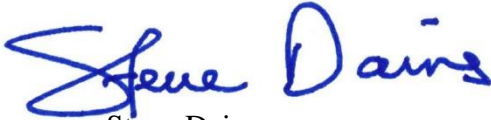
James E. Risch  
United States Senator



Mike Crapo  
United States Senator



John Boozman, M.D.  
United States Senator



Steve Daines  
United States Senator



M. Michael Rounds  
United States Senator



Martha McSally  
United States Senator



Jerry Moran  
United States Senator



Thom Tillis  
United State Senator



John Cornyn  
United States Senator



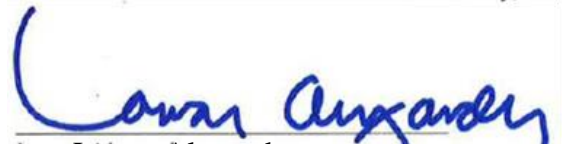
Kelly Loeffler  
United States Senator



Marsha Blackburn  
United States Senator



Richard Burr  
United States Senator



Lamar Alexander  
United States Senator



**U.S. Citizenship  
and Immigration  
Services**

May 20, 2020

The Honorable David Perdue  
United States Senate  
Washington, DC 20510

Dear Senator Perdue:

Thank you for your April 8, 2020 letter. The Acting Secretary has asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

On April 20, 2020, DHS and U.S. Citizenship and Immigration Services (USCIS) published a temporary final rule to amend certain H-2A requirements to help U.S. agricultural employers avoid disruptions in lawful agricultural-related employment, protect the nation's food supply chain, and lessen impacts from the coronavirus (COVID-19) public health emergency. Due to travel restrictions and visa processing limitations as a result of actions taken to mitigate the spread of COVID-19 (as well as the possibility that some H-2A workers may become unavailable due to COVID-19 related illness), U.S. employers who have approved H-2A petitions or who will be filing H-2A petitions might not receive all of the workers requested to fill the temporary positions – and similarly, employers that currently employ H-2A workers may lose the services of workers due to COVID-19 related illness. Under this temporary final rule, all H-2A petitioners with a valid temporary labor certification (TLC) can now start employing certain foreign workers who are currently in the United States and in valid H-2A status immediately after USCIS receives the H-2A petition, but no earlier than the start date of employment listed on the petition. Additionally, USCIS is temporarily amending its regulations to allow H-2A workers to stay beyond the three-year maximum allowable period of stay in the United States. These temporary changes will encourage and facilitate the lawful employment of foreign temporary and seasonal agriculture workers during the COVID-19 national emergency.

The temporary final rule was effective immediately upon publication in the Federal Register. If the new petition is approved, the H-2A worker will be able to stay in the United States for a period of time not to exceed the validity period of the Temporary Labor Certification. The Department will issue a new temporary final rule in the Federal Register to amend the termination date in the event it determines that circumstances demonstrate a continued need for the temporary changes to the H-2A regulations. This temporary final rule does not amend the Department of Labor's (DOL's) regulations covering the labor market test and recruitment of U.S. workers for the H-2A process. Before filing an H-2A petition with USCIS, the H-2A petitioner must have obtained a valid TLC from DOL for the job opportunity the employer seeks to fill with an H-2A worker(s). This final rule is not a joint rule with DOL, and USCIS is not proposing changes to DOL's H-2A TLC process or its regulations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. For policy updates, operational changes, and COVID-19 information, please visit [uscis.gov/coronavirus](https://uscis.gov/coronavirus).

Thank you again for your letter and interest in this important matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Sincerely,



Joseph Edlow  
Deputy Director for Policy