

SECTION-BY-SECTION FOR THE SECURING AGRICULTURE’S WORKFORCE ACT

Sec. 1. Short Title.

Section 1 provides the short title of the Act.

Sec. 2. Modernizing the H-2A Visa Program for Non-Immigrant Agricultural Labor.

Section 2 amends Section 218 of the Immigration and Nationality Act (INA)(8 U.S.C. 1188).

Paragraph (1) replaces references to the “Attorney General” with the “Secretary of Homeland Security.” This change aligns the statute with the current federal immigration framework, in which the Department of Homeland Security (DHS) holds primary administrative authority over immigration matters.

Paragraph (2) makes technical and conforming amendments to subsection (a) of Section 218 of the INA.

Paragraph (3) amends subsection (b)(4) of Section 218 of the INA by clarifying that the obligation for positive recruitment ends upon the departure of the final H-2A worker covered by an approved labor certification for the employer’s place of employment.

Paragraph (4)(A) amends subsection (c)(2)(A)-(B) of Section 218 of the INA by striking the written notification requirement when a labor certification application fails to meet standards and mandates that employers may submit a revised application within seven days of notice. Subparagraph (B) amends subsection (c)(3) of Section 218 of the INA to direct the Secretary of Labor to issue labor certifications within 30 days of the date that the labor is first needed if certification requirements are met, allowing certifications to be valid for up to three consecutive years. Subparagraph (C) strikes, formats, and restates existing law requiring employers of H-2A workers to provide housing that complies with local health and safety standards established by the Secretary of Labor, and grants the Secretary of Labor the authority to issue multi-year housing certifications and to delegate housing inspection authority to appropriate state agencies. It also directs the Secretary of Labor to establish a maximum daily housing charge that can be deducted from H-2A workers’ wages which shall be disclosed in the job offer connected to the petition. Subparagraph (D), directs the Secretary of Homeland Security to establish a streamlined process that allows H-2A workers employed by the same employer to enter and exit the United States on staggered schedules when their employment entails intermittent start and end dates as well as provides a process for employers seeking a subsequent period of employment for H-2A workers.

Paragraph (5), amends existing law relating to associations that are permitted to file labor certification applications on behalf of their members by extending that authority to joint employers and other entities permitted by the Secretary of Labor to file joint labor certification applications and stipulates conditions under which violations shall apply to other members. It

also limits the application of required hours to joint employers to no more than 1 hour per employer, per worker in a 30-day period.

Paragraph (6) amends subsection (h) of Section 218 of the INA by adding new paragraphs to: authorize the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Homeland Security, to establish alternative H-2A procedures for industries with unique labor needs; require employers maintain a heat illness prevention plan; allow for early termination of a contract following a natural disaster; streamline the process of transferring H-2A workers between employers; authorize a waiver of certain provisions of inadmissibility for conduct related to unlawful presence and obtaining employment for certain aliens; requires employers to provide documentation for workers seeking a waiver and limits such documentation to only be used for the adjustment of status, unless such records are fraudulent; and provides that, during a lapse in appropriations, functions necessary for the processing, certification, and admission of H-2A workers shall be deemed essential and continue without interruption.

Paragraph (7) redesignates subsection (i) as subsection (m).

Paragraph (8) inserts a new subsection (i) under Section 218 of the INA to clarify the respective authorities and responsibilities of the Department of Homeland Security, the Department of Labor, the Department of State, and the Department of Agriculture in the administration and adjudication of the H-2A program. The new subsection (j) requires that an employer offer a minimum contract wage that is the highest of a collective bargaining wage, Federal, State, or Local minimum wage, or an adverse effect wage rate determined under subsection (k). Subsection (k) requires the Secretary of Labor make an annual determination if H-2A workers adversely affect the wages of U.S. workers and prescribes the methodology to determine the applicable wage rate if an adverse effect is found. It also limits the fluctuations in such wage rate to not exceed a 3.5 percent increase or a 1.5 percent decrease from the preceding year.

Paragraph (9) defines “employer” to include persons or entities that hire workers to perform agriculture labor and services, including individual employers, associations, farm labor contractors, agricultural cooperative associations, and other persons or entities as determined by the Secretary of Labor.

Sec. 3. Definitions.

Section 3 amends Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

Paragraph (1) amends paragraph (15)(H)(ii)(a) of Section 101(a) of the INA to broaden eligibility by striking the requirement that work be “of a temporary or seasonal nature” with the requirement that it be “of a temporary nature.”

Paragraph (2) amends the definition of “agricultural labor or services” to include a broad range of agricultural, horticultural, transportation, forestry, aquaculture, equines, and certain

meat and poultry processing activities. It also defines “temporary” as work performed under a contract with a duration of less than 350 days.

Sec. 4. Streamlined Online H-2A Platform.

Section 4 adds a new subsection (l) to Section 218 of the INA requiring the establishment of a streamlined online H-2A platform within one year of enactment of this Act. Such platform shall act as a single point of access for employers to submit all information and documentation required for labor certification and H-2A petition adjudication and participating agencies are authorized to concurrently conduct their respective review and adjudicatory responsibilities through the online platform.

Sec. 5. Government Accountability Office Reviews.

Section 5 directs the Comptroller General to submit a report to Congress within two years of enactment of this Act that evaluates the availability and affordability of H-2A worker housing, employer challenges in providing compliant housing, Department of Labor enforcement of housing requirements, and the availability and use of federal housing assistance programs.

Sec. 6. Effective Date.

Section 6 establishes an effective date of one year after enactment of this Act and authorizes agencies to implement the amendments made in this Act through interim final rules.