

[SEC. 3. DEFINITIONS.]

Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H))

§1101. Definitions

(a) As used in this chapter—

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

.....

(H) an alien (i) [(a) Repealed. Pub. L. 106–95, §2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title, or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the facility (as defined in section 1182(m)(6) of this title) for which the alien will perform the services; or

(ii)(a) having 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 title 26, agriculture as defined in section 203(f) of title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature,~~ of a temporary nature or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed

persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or

(iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

.....

(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(53) The term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes—

(A) agricultural labor (as such term is defined in section 3121(g) of the Internal Revenue Code of 1986, notwithstanding the limitations set forth in paragraphs (4)(A) or (4)(B) of such section);

(B) agriculture (as such term is defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)));

(C) the handling, planting, drying, packing, packaging, processing, freezing, or grading of any agricultural or horticultural commodity in its unmanufactured state, without regard to the ownership or location of such facilities or activities;

(D) the transportation and preparation for transportation of any agricultural or horticultural commodity, in its unmanufactured state from the farm to the place of storage, first processing or first marketing;

(E) pine straw gathering and reforestation activities;

(F) aquaculture activities, including the primary processing of seafood;

(G) activities related to the management and training of equines;

(H) the pressing of apples for cider on a farm, or logging employment;

(I) the installation of horticulture commodities; and

(J) the harvest and processing of meat and poultry, which shall only include the slaughter of animals and the breakdown of carcasses.

(54) The term 'temporary' means, for the purposes of paragraph (15)(H)(ii)(a), work performed pursuant to a contract with a term of less than 350 days, without regard to the approved employer's underlying need or nature of the job.

[SEC. 2. MODERNIZING THE H-2A VISA PROGRAM FOR NON-IMMIGRANT AGRICULTURAL LABOR] [SEC. 4. STREAMLINED ONLINE H-2A PLATFORM.]

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

(a) Conditions for approval of H–2A petitions.—

~~(1) A petition~~ A petition to import an alien as an H–2A worker (as defined in subsection (i)(2)) may not be approved by the ~~Attorney General~~ Secretary of Homeland Security unless the petitioner has applied to the Secretary of Labor for a certification that—

~~(A)~~ (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

~~(B)~~ (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

~~(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.~~

(b) Conditions for denial of labor certification.—

The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts and within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. ~~Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer.~~ The obligation to engage in positive recruitment under this paragraph shall ~~terminate on the date the H-2A workers depart for the employer's place of employment~~ begin on the date the job opportunity is posted on the electronic job registry maintained by the Secretary under this section and terminate on the date on which the final H-2A worker whose position is covered by a petition approved in connection with a labor certification departs for the employer's place of employment.

(c) Special rules for consideration of applications.—

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications.—

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H-2A worker.

(2) Notice within seven days of deficiencies.—

(A) The employer shall be notified ~~in writing~~ within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity ~~for the prompt resubmission of a modified application~~ to submit a modified application within 7 days of date of receipt of such notice.

(3) Issuance of certification.—

(A) In General.— The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

- (i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and
- (ii) the employer does not actually have, or has not been provided with referrals of, a sufficient number of qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

(B) Job Qualifications.— An employer may establish specific qualifications in a job offer that are normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

(C) Duration.— The Secretary of Labor may issue labor certifications under this paragraph that are valid for up to three consecutive years from the date of certification.

~~In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.~~

~~(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.~~

~~—(ii) The requirement of clause (i) shall not apply to any employer who—~~

~~(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,~~

~~(II) is not a member of an association which has petitioned for certification under this section for its members, and~~

~~(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.~~

~~(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of~~

~~Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.~~

~~(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.~~

~~(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.~~

~~(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.~~

~~(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the _____ arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).~~

~~(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.~~

(4) Housing.—

~~Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment~~

~~to provide family housing, family housing shall be provided to workers with families who request it: And provided further, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H-2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) with respect to a petition for the importation of such worker.~~

(A) In General.— An employer employing H-2A workers under this section shall provide housing to such workers in accordance with this paragraph.

(B) Rulemaking.— The Secretary of Labor shall make rules to ensure that housing provided under this paragraph meets applicable local standards (or the applicable alternative standards under paragraph (D)) for rental, public accommodations, or other substantially similar class of habitation, related to essential health and safety.

(C) Duration.— The Secretary of Labor shall inspect and certify housing provided to workers under this section, which may be valid for a period of up to 3 years after the date of certification. The Secretary of Labor may delegate authority to conduct housing inspection to appropriate State agencies.

(D) Alternative Standards.—

(i) Absence of Local Standards.— If no local standards described in subparagraph (B) exist, the Secretary shall ensure such housing meets applicable State standards related to essential health and safety.

(ii) Absence of State Standards.— If no such State standards exist, the Secretary shall ensure that such housing meets applicable Federal standards related to essential health and safety; and

(E) Provision Expense.—

(i) In General.— The Secretary of Labor shall establish a maximum daily charge an employer may deduct from the wages of an H-2A worker for the provision of housing.

(ii) Calculation.— The maximum daily charge established under clause (i) shall be calculated by dividing—

(I) the Statewide average of fair market rent for a 4-bedroom housing unit weighted by population, and determined by the Secretary of Labor, using data reported by the Department of Housing and Urban Developed; by

(II) 240.

(iii) Disclosure.— A job offer submitted in connection with a petition under subsection (a) shall clearly state the daily charge, if any, that will be applied to the wages of the H-2A worker for the provision of housing; and

(5) Staggered Entry and Exit of Workers.— The Secretary of Homeland Security shall authorize an employer to stagger the entry and exit of H-2A workers for a job offer submitted in connection with a petition under subsection (a) with multiple start or end dates, if—

(A) the employment is in the same occupational classification, as determined by the Secretary of Labor;

(B) no more than 180 days separate the first start date and the final start date or the first end date and last end date, listed in the job offer;

(C) the need for multiple dates arises from variations in labor needs associated with the job offer identified in the petition; and

(D) the employer will continue to accept referrals of all eligible United States workers who apply until the final H-2A worker whose position is covered by the petition departs for the employer's place employment.

(6) Subsequent Employment of Workers.—

(A) In General.— Beginning on the date that is 90 days before the end of the authorized period of employment for H-2A workers, an employer seeking a subsequent period of employment for such workers shall post the job opportunity on the online job registry created under this section, and may submit a petition to the Secretary of Homeland Security for such subsequent period of employment for such workers.

(B) Approval.— The Secretary of Homeland Security shall approve a petition submitted under subparagraph (A) unless—

(i) the employer makes a substantial change to the petition that was approved;

(ii) the requirements of this section are no longer met;

(iii) a condition in subsection (b) is met; or

(iv) the employer is found to be in substantial violation of this section.

(d) Roles of agricultural associations and joint employers.—

(1) Permitting filing ~~by agricultural associations.~~—

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by ~~an association of agricultural producers which use agricultural services.~~

(A) an association (including a cooperative association) of agricultural producers which use agricultural labor or services;

(B) two or more employers that use agricultural labor or services and that submit a joint application for a labor certification; or

(C) other entities that use agricultural labor or services and that submit a joint application for a labor certification, as determined appropriate by the Secretary of Labor, in consultation with the Secretary of Homeland Security.

(2) Treatment of permitted filers ~~associations~~ acting as employers.—

~~If an association~~ If a permitted filer under paragraph (1) is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to ~~the association~~ such filer may be used for the certified job opportunities of any of its ~~producer~~ members and such workers may be transferred among its ~~producer~~ members to perform agricultural services ~~of a temporary or seasonal nature~~ of a temporary nature for which the certifications were granted.

(3) Treatment of violations.—

(A) Individual Violations.—

Member's violation does not necessarily disqualify association or other members

If an individual ~~producer member of a joint employer association~~ member of a permitted filer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member ~~of the association unless the Secretary determines that the association~~ unless the Secretary of Labor determines that the permitted filer or other member participated in, had knowledge of, or reason to know of, the violation.

(B) ~~Association's violation does not necessarily disqualify members~~ Permitted filer's violations.— (i) ~~If an association representing agricultural producers as a joint employer is determined to~~ a permitted filer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the ~~association~~ permitted filer, the denial shall apply only to the ~~association~~ permitted filer and does not apply to any individual ~~producer~~ member of the ~~association~~ permitted filer unless the Secretary of Labor determines that the member participated in, had knowledge of, or reason to know of, the violation.

~~(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in~~

~~the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.~~

(4) Minimum and Maximum Hours.— In the case of a permitted filer under subparagraph (B) or (C) of paragraph (1) there shall be no weekly minimum or maximum hours required for each employer to employ an H-2A worker, except that each employer shall employ such worker for at least one hour during every 30-day period.

(e) Expedited administrative appeals of certain determinations.—

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years.—

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations.—

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, \$10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to

make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions.—

(1) The ~~Attorney General~~ Secretary of Homeland Security shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(3) Special Procedures.—The Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Homeland Security, may establish, by regulation, alternate procedures that modify the requirements under this section (including the requirements under subsection (c)(4) (related to housing)) when the Secretary of Labor determines that such a modification is necessary due to the unique nature of the work involved, which may include herding, care, or production of livestock on the range, commercial beekeeping, and itinerant custom harvesting.

(4) Heat Illness Prevention Plan.—

(A) In General.—An employer that employs H-2A workers under this section shall maintain a plan to prevent heat illness for workers of that employer, which plan shall include—

(i) prevention measures that are at least as protective as the applicable Federal and State requirements;

(ii) training for workers; and

(iii) protocols for—

(I) workers' access to water and shade;

(II) the provision of breaks; and

(III) emergency response.

(B) Posting Requirement.—An employer that employs H-2A workers under this section shall make the plan required under this paragraph available to employees in English and, if a significant portion of such workers are not fluent in English, in a language that such workers understand, by—

(i) posting the plan in a conspicuous location at the worksite; and

(ii) making the plan available to such workers prior to the date on which they start work.

(5) Force Majeure Termination.—

(A) In General.—If, before the expiration of the period of employment specified in a work contract for H-2A workers, the services of the workers are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest infestation, or any other reason that the Secretary of Labor, in consultation with the Secretary of Agriculture, determines is beyond the control of the employer, the employer may terminate the workers' employment.

(B) Requirements.—If a worker's employment is terminated under subparagraph (A), the employer shall—

(i) make efforts to transfer the worker to other comparable employment permitted by the Secretary of Labor and acceptable to the worker; and

(ii) no later than 72 hours after termination, notify the Secretary of Labor and Secretary of Agriculture of such termination and state the nature of the contract impossibility.

(6) Transfer Of H-2A Workers.—

(A) In General.—An H-2A worker may begin employment with a new employer on the date that the employer files a non-frivolous petition with the Secretary of Homeland Security.

(B) Eligible Employer.—A transfer of an H-2A worker under this paragraph may only occur between agricultural employers that possess a valid labor certification approved by the Secretary of Labor under this section.

(C) Timing.—The H-2A worker shall be considered authorized to be employed by the petitioning employer until the earlier of the end date of the employment contract pursuant to which the H-2A worker was working prior to the transfer under this paragraph or the receipt of a notice of denial for the petition.

(D) Petition Denial Or Withdrawal.—If the petition under subparagraph (A) is denied or withdrawn the H-2A worker's employment authorization shall be terminated and such worker shall voluntarily depart the United States within 30 days after the date of denial or withdrawal, unless such worker is employed by an H-2A employer prior to that date.

(7) Waiver.—The grounds of inadmissibility under paragraphs (5)(A), (6)(A), (6)(C), (7), (9)(B), and (9)(C) of section 212(a), and the grounds of deportability under paragraphs (1)(A) (with respect to the grounds of inadmissibility waived under this paragraph), (1)(B), (1)(C), (3)(A), and (3)(C) of section 237(a) shall be waived with respect to conduct that

occurred prior to the alien first receiving status as an H-2A worker, for the purpose of providing the alien with such status.

(8) Essential Functions.—In the case of a lapse of government appropriations, all functions necessary for the processing, certification, and admission of H-2A workers shall be deemed essential to the protection of life and property and such functions shall continue uninterrupted for the duration of such lapse.

(i) Roles Of Federal Agencies and States in the H-2A Program.—

(1) Department Of Homeland Security.—

(A) In General.—The authority of the Secretary of Homeland Security under this section does not include the authority that is specifically reserved for the head of another Federal agency under this subsection.

(B) Fees.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, may require by regulation, as a condition of issuing a certification under subsection (a)(1), the payment of a fee to recover the reasonable costs of processing applications and certifications by the Department of Homeland Security and Department of Labor with respect to H-2A workers, and shall not include any costs of processing other visa categories, asylum or refugee processing, or any other functions of the Department of Homeland Security or Department of Labor other than those which are applicable to the admission of H-2A workers.

(C) Prioritization.—Not later than 15 days after receiving a petition for an H-2A worker, the Secretary of Homeland Security shall approve, deny, or request additional information from the employer.

(2) Department of Labor.—

(A) In General.—The Secretary of Labor shall—

- (i) establish standards for the recruitment of United States workers, that are reasonable and cost effective;
- (ii) ensure employer compliance with the requirements under this section; and
- (iii) determine the labor needs of agricultural employers in the United States.

(B) Post Certification Amendments.—The Secretary of Labor shall create an expedited process to allow an employer to file an amendment to a labor certification that has been approved, including an amendment to—

- (i) the dates of employment;
- (ii) the places of employment, due to unforeseen circumstances;
- (iii) the housing provided, due to unforeseen circumstances;

(iv) the modes of daily transportation; and

(v) the agricultural activities that will be performed by an H-2A worker, if such activities are substantially similar to the activities included in the approved labor certification.

(C) Housing.—The Secretary of Labor shall make rules under subsection (c)(4).

(D) Online Job Registry.—The Secretary of Labor shall maintain a national, publicly accessible online job registry and database of all job offers submitted by employers seeking a labor certification required to employ H-2A workers under this section.

(3) Department of State.—

(A) In General.—The Secretary of State shall prioritize the adjudication of visa issuance for H-2A workers and shall ensure sufficient and trained staffing at consulates through which a significant number of applications by H-2A workers originate during periods of increased H-2A visa applications.

(B) Returning Workers.—The Secretary of State may waive the interview requirement under section 222(h)(1) for an alien seeking admission to the United States as an H-2A worker if the alien has been previously admitted to the United States as an H-2A worker, and appears to be eligible for such status.

(4) Department of Agriculture.—The Secretary of Agriculture shall—

(A) provide input and comment to the Secretary of Homeland Security and the Secretary of Labor regarding the implementation of the requirements under this section; and

(B) make rules to define the term ‘agricultural labor or services’ under section 101.

(j) Applicable Wage.—

(1) In General.—An employer shall offer at minimum a contract wage to an H-2A worker that is the highest of—

(A) the agreed-upon collective bargaining wage;

(B) the Federal, State, or local minimum wage; or

(C) the adverse effect wage rate determined under subsection (k), if applicable.

(2) Limitation On Mid-Contract Wage Changes.—The wage agreed upon at the time of the acceptance of a contract shall remain in effect for the entire contract period, notwithstanding adjustments to the adverse effect wage rate determined and published pursuant to subsection (k).

(3) Use of Federal Survey Data.—To calculate an adverse effect wage rate, the Secretary of Labor shall use data that is available pursuant to a Federal government survey of base wages paid to domestic workers in the occupational classification and may not consider in the

calculation additional forms of compensation, such as shift differential pay, on-call pay, special assignments, overtime, bonuses, incentive-based pay, or piece rates.

(k) Determination Of Adverse Effect On Wages.—

(1) In General.—The Secretary of Labor shall make an annual determination as to whether the employment of H–2A workers from the prior year adversely affected the wages and working conditions of workers in the United States similarly employed. Such determination shall be subject to review under chapter 7 of title 5, United States Code.

(2) Contracting Authority.—The Secretary of Labor may enter into a contract with an independent entity to assist in making the determination under paragraph (1).

(3) Publication of Rate.—The Secretary of Labor, on making a determination under paragraph (1) that an adverse effect existed from the prior year, shall calculate and publish in the Federal Register, an adverse effect wage rate, in accordance with this subsection.

(4) Calculation.—The Secretary shall calculate an adverse effect wage rate as follows:

(A) Entry-Level Occupations.—For occupations that the Secretary of Labor determines the qualifications of the job offer are entry-level (including field and livestock worker occupations combined), as compared to the qualifications possessed by an average worker in such occupation, the adverse effect wage rate shall be equal to—

(i) if a statewide annual hourly gross wage in the State for the occupation described in the job offer is reported in the Occupational Employment and Wage Statistics survey, the required minimum hourly wage for entry-level qualifications shall be the 17th percentile of the wage distribution for the occupation in that State; or

(ii) if a statewide annual hourly gross wage in the State for the occupation described in the job offer is not reported in the Occupational Employment and Wage Statistics survey, the required minimum hourly wage for entry-level qualifications shall be the 17th percentile of the wage distribution for the occupation on a nationwide basis, as reported in such survey.

(B) Experience-Level Occupations.—For any other occupation that the Secretary of Labor determines the qualifications of the job offer are representative of the qualifications possessed by an average worker in such occupation (including field and livestock worker occupations combined), the adverse effect wage rate shall be equal to—

(i) if a statewide annual hourly gross wage in the State for experience-level qualifications for the occupation described in the job offer is reported in the Occupational Employment and Wage Statistics survey, the required minimum hourly wage for experience-level qualifications shall be the 50th percentile of the wage distribution for the occupation for that State described in the job offer, as reported in such survey; or

(ii) if a statewide annual hourly gross wage in the State for experience-level qualifications for the occupation described in the job offer is not reported in such survey, the required minimum hourly wage shall be the 50th percentile of the national wage distribution for the occupation, as reported in such survey.

(C) Limitations On Fluctuations.—The adverse effect wage rate calculated under this paragraph may not—

(i) be more than 1.5 percent lower than the wage in effect for the immediately preceding calendar year; and

(ii) be more than 3.25 percent higher than the wage in effect for the preceding calendar year.

(5) Job Classification.—

(A) In General.—If the Secretary of Labor establishes an adverse effect wage rate under this subsection, the Secretary may aggregate occupational classifications for purposes of establishing such rate.

(B) Primary Duty.—When determining the occupation in which to classify an H-2A worker, the Secretary shall classify the worker in an occupation that reflects the duties and work tasks described in the employment contract that will constitute the greatest percentage of the worker's working hours.

(I) Streamlined Online H-2A.—

(1) In general.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and the Administrator of the Department of Government Efficiency, shall establish an online platform which shall serve as a single point of access—

(A) for an employer to input all information and supporting documentation required for—

(i) obtaining a labor certification from the Secretary of Labor; and

(ii) the adjudication of a petition for the admission of an H-2A worker.

(B) for the Secretary of Homeland Security, the Secretary of Labor, and State workforce agencies to concurrently perform their respective review and adjudicatory responsibilities related to the admission of H-2A workers; and

(C) to facilitate communication between employers and agency adjudicators, including by allowing employers to—

(i) receive and respond to notices of deficiency and requests for information;

(ii) submit requests for inspections and necessary approvals;

(iii) receive notices of approval and denial;

(iv) request reconsideration or appeal of agency decisions;

(v) provide information to the Secretary of State and U.S. Customs and Border Protection necessary for the efficient and secure processing of visas and applications for admission of H-2A workers;

(vi) receive and request documents, such as the I-94, I-797A, I-797B (or successor forms) of the H-2A worker, and any other form required for the admission of H-2A workers;

(vii) request updates on the status of the processing of applications for labor certifications, petitions, and applications for the admission of H-2A workers;

(viii) pay all fees associated with the admission and employment of H-2A workers, including fees imposed by the Secretary of Homeland Security, the Secretary of State, and the Secretary of Labor; and

(ix) file, or have filed on their behalf, Form G-28, or any successor form, from non-attorney agents to indicate representation of their clients, which shall send notice to non-attorney agents with respect to processing as would any other Form G-28, or any successor form, regarding said representation.

(2) Objectives.—In developing the platform described in subsection (a), the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and the Administrator of the Department of Government Efficiency, shall streamline and improve the process for the admission of H-2A workers, including by—

(A) eliminating the need for employers to submit duplicate information and documentation to multiple agencies;

(B) eliminating redundant processes, where a single matter in a petition is adjudicated by more than one agency;

(C) reducing the occurrence of common petition errors, and otherwise improving and expediting the processing of petitions for H-2A workers; and

(D) ensuring compliance with the requirements for the admission of H-2A workers and the protection of the wages and working conditions of workers.

(m) Definitions.—

For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term "H-2A worker" means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(3) The term ‘employer’ means a person or entity who hires workers to perform agricultural labor or services and includes—

(A) a single employer;

(B) an association or farm labor contractor;

(C) an agricultural cooperative association, as such term is defined in section 15 of the Agricultural Marketing Act (12 U.S.C. 1141j); and

(D) other persons or entities as determined by the Secretary of Labor.

Labor Stakeholders