

Affordable and Secure Food Act of 2022

Section by Section

Section 1. Short Title and Table of Contents

The title of this bill is the “Affordable and Secure Food Act of 2022.”

Title I. Securing the Domestic Agricultural Workforce

Subtitle A—Temporary Status for Certified Agricultural Workers

SEC. 101. Certified Agricultural Worker Status

Subsection (a). Requirements for Certified Agricultural Worker Status.

Establishes a new certified agricultural worker (CAW) status for current farm workers who have worked in agricultural labor or services in the U.S. for at least 2 years, if they are not ineligible under subsection (b). A spouse or child of such individual with CAW status may be granted a newly established certified agricultural dependent (CAD) status, if they are not ineligible until subsection (b).

Subsection (b). Grounds for Ineligibility.

Establishes strict national security and criminal bars, including being convicted of any felony offense, with appropriate humanitarian waivers, for individuals that apply for CAW or CAD status.

Subsection (c). Application.

Determines the application rules and submission, filing, and withdrawal processes. Includes a \$250 application processing fee.

Subsection (d). Adjudication and Decision.

Establishes a timeline for adjudication and decision regarding the application for CAW and CAD status. Ensures that an applicant, when appropriate, may amend their application.

Subsection (e). Alternative H-2A Status.

Creates an Alternative H-2A status for farm workers who do not meet the time requirements under subsection (a), but still have worked in agricultural labor or services, without having to leave the United States to re-obtain a visa.

SEC. 102. Terms and Conditions of Certified Status.

Subsection (a). In General.

Requires the Department of Homeland Security (DHS) to provide individuals approved for CAW and CAD status with documentary evidence of legal status. Such status is valid for 5 ½ years and allows for travel in and out of the United States.

Subsection (b). Ability to Change Status.

Clarifies that an individual with CAD status may change their status to CAW status, if

appropriate.

Subsection (c). Public Benefits, Tax Benefits, and Health Care Subsidies.

Provides individuals with CAW and CAD status with access to certain public benefits, tax benefits, and health insurance subsidies.

Subsection (d). Revocation of Status.

Authorizes the DHS Secretary to revoke CAW or CAD status and invalidate their documentation when appropriate.

SEC. 103. Extension of Certified Status.

Subsection (a). Requirements for Extension of Status.

Creates a process for the DHS Secretary to extend CAW status for an addition 5 ½ year periods if the worker submits an application and can prove they have worked at least 690 hours/120 work days in each of the last five years when they had CAW status. Should the extension be approved, an individual with CAD status may also be granted an extension.

Subsection (b). Status for Workers With Pending Applications.

Ensures that a worker can maintain legal status to work while the extension process happens until a decision is made.

Subsection (c). Notice.

Requires the DHS Secretary to provide a notice ahead of time in the case that an extension application is denied.

SEC. 104. Determination of Continuous Presence.

Ensures an individual with CAW status can maintain CAW status when served with a notice to appear. Provides clarifications on how some breaks in presence effect legal status.

SEC. 105. Employer Obligations.

Requires an employer to provide an individual with CAW status annual records of employment. Creates civil penalties, including a \$400 fine, if the employer knowingly fails to provide or provides a false record.

SEC. 106. Administrative and Judicial Review.

Establishes process for administrative and judicial review of a CAW status application denial. Clarifies that the application may be used in immigration court.

Subtitle B— Optional Earned Residence for Long-Term Workers

SEC. 111. Optional Adjustment of Status for Long-Term Agricultural Workers

Subsection (a). Requirements for Adjustment of Status.

Authorizes the DHS Secretary to adjust the status of an individual with CAW status to that of a lawful permanent resident (LPR) if that individual has worked in agricultural labor or services

for at least 690 hours (or 120 work days) for each year the last 10 years and has maintained CAW status for at least 4 years. The DHS Secretary may also adjust an individual with CAD status to LPR the individual with CAW status that they have a relationship to was granted adjustment of status. It clarifies the process by which documentation of work history is proved.

Subsection (b). Penalty Fee.

Requires an individual to pay a \$750 penalty fee to adjust their status from CAW to LPR.

Subsection (c). Effect of Pending Application.

Clarifies the legal status of an individual who is waiting for an LPR decision.

Subsection (d). Evidence of Application Filing.

Requires the DHS Secretary to provide the applicant with documented evidence that their LPR application has been filed and is pending.

Subsection (e). Withdrawal of Application.

Clarifies that DHS may stop processing an application if the applicants makes the request to withdraw their LPR status application.

SEC. 112. Payment of Taxes.

Prohibits the granting of LPR status to those who have not paid their Federal taxes.

SEC. 113. Adjudication and Decision; Review.

Establishes the timeline and process for DHS to provide a decision on an LPR application. The administrative and judicial review of the decision processes are outlined.

Subtitle C— General Provisions

SEC. 121. Definitions.

Provides the definitions for agricultural labor or services, applicable federal tax liability, appropriate United States District Court, child, convicted or conviction, employer, qualified designated entity, secretary, and work day.

SEC. 122. Rulemaking; Fees.

Authorizes DHS to promulgate rulemaking and fees to implement this Title.

SEC. 123. Background Checks.

Establishes background check requirements necessary to grant or extend CAW, CAD, or LPR status.

SEC. 124. Protection for Children.

Clarifies how to determine whether an individual who is applying for CAD or LPR status is a child.

SEC. 125. Limitation on Removal.

Clarifies when an individual who may qualify for CAW, CAS, or LPR status may be removed.

SEC. 126. Documentation of Agricultural Work History.

Establishes what documentation an individual applying for CAW status can use to prove their agricultural work history. Clarifies how COVID-19, extraordinary circumstances, and hardships may affect the requirements.

SEC. 127. Employer Protections.

Provides explicit protections from civil and criminal penalties for employers of individuals with CAW status who may previously have violated immigration law.

SEC. 128. Correction of Social Security Records; Conforming Amendments.

Adjusts the record keeping requirements at the Social Security Administration (SSA) to account for newly legal individuals with CAW, CAD, and LPR status.

SEC. 129. Disclosures and Privacy.

Prohibits DHS from using information in applications inappropriately, including referral to U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, for immigration enforcement action. Creates certain exceptions, like for national security reasons. Establishes privacy requirements for the personally identifiable information collected.

SEC. 130. Penalties for False Statements in Applications.

Establishes criminal penalties for individuals who make false statements in a CAW, CAD, or LPR application. Deems these applicants inadmissible to the United States under Section 212 of the Immigration and Nationality Act (INA).

SEC. 131. Dissemination of Information.

Requires the Secretaries of Homeland Security and Agriculture to disseminate benefits and requirement information to individuals with CAW and CAD status.

SEC. 132. Exemption from Numerical Limitations.

Ensures that numerical limitations under title II of the INA do not apply to individuals who adjust their status to LPR.

SEC. 133. Reports to Congress.

Requires the DHS to produce an annual report to Congress with data and information, including number of applicants to CAW, CAD, and LPR status and those who were granted such statuses.

SEC. 134. Grant Program to Assist Eligible Applicants.

Establishes and funds a grant program for nonprofit organizations who can help assist eligible applicants under this title.

SEC. 135. Authorization of Appropriations.

Authorizes appropriations for fiscal year 2023 to 2025 to implement this title.

Title II. Ensuring an Agricultural Workforce for the Future

Subtitle A—Reforming the H-2A Temporary Worker Program

SEC. 201. Comprehensive and Streamlined Electronic H-2A Platform

Subsection (a). Streamlined H-2A Platform.

Requires DHS, in consultation with the Department of Labor (DOL), the Department of Agriculture (USDA), the Department of State (DOS), and the U.S. Digital Service, to establish an electronic platform to petition for an H-2A worker no later than 1 year after implementation. The objectives are to streamline the H-2A process, reduce redundancy and errors, and ensure compliance with other H-2A reforms under this Act. DHS must provide progress reports to Congress until fully developed.

Subsection (b). Online Job Registry.

Requires the DOL to establish and maintain a user friendly, national, publicly-accessible online job registry and database.

SEC. 202. H-2A Program Requirements.

Replaces Section 218 of the INA to reform the H-2A program:

Section 218. Admission of Temporary H-2A Workers.

Section 218(a). Labor Certification Requirements.

Prevents DHS from approving an H-2A visa unless DOL has certified that there are not sufficient domestic workers to fill the job and that the worker will not adversely affect the wages of U.S. workers.

Section 218(b). H-2A Petition Requirements.

An employer filing a petition for an H-2A worker must attest to requirements, including the need for labor or services, recruitment of domestic workers, certain wages and benefits. They must also comply with worker protection and foreign labor recruitment requirements.

Section 218(c). Recruiting Requirements.

Establishes certain recruiting process requirements for employers filing a petition for H-2A workers.

Section 218 (d). Wage Requirements.

Establishes wage requirements for H-2A workers and other employer and worker requirements for the job order and job. The worker must be paid the greater for the collective bargaining wage,

the adverse effect wage rate (AEWR), the prevailing wage, or the Federal or State minimum wage.

The AEWR is the annual average hourly gross wage for the occupational classification in the State or region as reported by the USDA and the DOL based on the Farm Labor Survey. The AEWR would be frozen in 2023 and increases would be capped for 2024 to 2034 at 3%. The AEWR could not decrease by more than 1.25% compared to any previous year. Following 2034, the DOL would determine the AEWR based on a study conducted by the USDA and DOL published in 2032.

Section 218(e). Housing Requirements.

Establishes employer requirements for housing for H-2A workers and their families.

Section 218(f). Transportation Requirements.

Establishes employer requirements for transportation to and from the country of origin and the U.S. and to and from the worker living quarters and place of employment.

Section 218(g). Heat Illness Prevention Plan.

Requires an employer to maintain a heat illness prevention plan. Requires the DOL to publish a template that may be used by employers.

Section 218(h). H-2A Petition Procedures.

Establishes the procedures, with time requirements, by which an employer can petition for an H-2A worker with the DOL. The DOL is required to review and certify or deny a petition and job order in a timely manner.

Section 218(i). Non-temporary or Non-seasonal Needs.

Allows, for the first time, for DHS to approve an H-2A visa for agricultural services or labor that is not temporary or seasonal in nature. Non-temporary or non-seasonal (year-round) visas may not exceed 26,000 for the first three years as a numerical limitation. For the following six years, the numerical limitation may be increased by up to 15 percent over the previous year.

Half of the year-round visas are reserved for the dairy industry. A fifth of the visas are reserved for small employers with under 50 domestic employees. Should the dairy industry or small farmer not use reserved visas, they will be released to other industries and larger employers.

DHS, USDA, and DOL must establish regulations to automatically trigger an increase in year-round visas available based on significant labor shortages to go into effect in the fourth year. Starting in the ninth year, USDA and DOL may choose to maintain the numerical limitation or to lift the cap completely.

Employers must provide an annual trip home, family housing, and a workplace safety plan for year-round employees.

Section 218(j). Eligibility for H–2A Status and Admission to the United States.

An individual who violated provisions of this section in the previous five years will be disqualified from being admitted to the United States as an H-2A worker. Any H-2A visa issued will be valid for three years. Establishes the process for what happens should an H-2A worker abandon their place of employment.

Section 218(k). Required Disclosure.

Outlines the documents, information, and rights employers are required to share with their H-2A worker.

Section 218(l). Labor Contractors; Foreign Labor Recruiters; Prohibition on Fees.

Establishes bond requirements for labor contractors, requires the use of registered foreign labor recruiters, and prohibits workers from being charged fees.

Section 218(m). Enforcement Authority.

Authorizes the DOL to take actions to enforce provisions of this section. Establishes a complaint process, with remedies, for workers to utilize when alleging an employer is failing to comply with requirements of this section. Prohibits retaliation towards an employee for utilizing established complaint process.

Section 218(n). Definitions.

Establishes definitions for displaced, H-2A worker, job order, online job registry, similarly employed, and United States worker.

Section 218(n). Fees. Authorization of Appropriations.

Authorizes DHS and DOL to collect fees to help process H-2A petitions and labor certification, respectively. Authorizes appropriations to carry out this section.

SEC. 203. Agency Roles and Responsibilities.

Outlines the specific responsibilities of the Secretary of Labor and the Secretary of Homeland Security. Establishes an account to collect fees related to labor certification and how funds can be used.

SEC. 204. Worker Protection and Compliance.

Clarifies that H-2A workers are protected by protections under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Mandates mediation before a worker can bring a lawsuit against their employer under MSPA. Prohibits frivolous lawsuits and certain demand letters. Clarifies separate enforcement mechanics for H-2A violations versus MSPA violations and ensures that named plaintiffs in lawsuits may not be a third party.

Establishes requirements for farm labor contractors regarding surety bonds, registration determinations, successors in interest, and rebuttable presumption.

SEC. 205. Report on Wage Protections.

Requires USDA and DOL to produce a report every three years on the AEWRR with recommendations on whether the AEWRR methodology needs to be changed and other wage protections.

SEC. 206. Portable H-2A Visa Pilot Program.

Establishes a six-year pilot program to facilitate the free movement of temporary or seasonal H-2A workers. DHS, USDA, and DOL will promulgate rulemaking, establish an online platform, and must limit the pilot program to 10,000 workers. 30 months after the program, the agencies must issue a report to Congress on the pilot program with recommendations.

SEC. 207. Improving Access to Permanent Residence.

Increases the number of green cards that are available for agricultural specific employer sponsorship by 50,000. These visas are not subject to the per country limits. Authorizes DHS, DOL, and DOS, to develop tools, resources, and procedures to connect workers prospective workers from Western Hemisphere countries with large flows of migration outside of normal trade and travel routes to the United States.

Subtitle B—Preservation and Construction of Farmworker Housing

SEC. 220. Short Title.

The title of this subtitle is the “Strategy and Investment in Rural Housing Preservation Act of 2022.”

SEC. 221. New Farmworker Housing.

Creates a new program to establish and invest in farmworker housing under Section 514 loans and Section 516 grants.

SEC. 222. Loan and Grant Limitations.

Ensures that if limitations are set on assistance under Section 514 loans or Section 516 grants, that loan award or grant per project cannot be less than \$5,000,000.

SEC. 223. Operating Assistance Subsidies.

Allows operating assistance subsidies to apply to housing for migrant farmworkers and other farm labor.

SEC. 224. Rental Assistance Contract Authority.

Improves the USDA’s authority to provide rental assistance.

SEC. 225. Eligibility for Rural Housing Vouchers.

Authorizes the USDA to provide rural housing vouchers for low-income households residing in properties financed or assisted under Sections 514, 515, and 516.

SEC. 226. Permanent Establishment of Housing Preservation and Revitalization Program.

Permanently establishes the USDA program that preserves and revitalizes multifamily rental housing projects. Available restructuring tools include reducing or eliminating interest, the deferral of current debt, and grants.

SEC. 227. Amount of Voucher Assistance.

Aligns monthly assistance payments for a household on whose behalf a rural housing voucher is provided with section 542(a).

SEC. 228. Funding for Multifamily Technical Improvements.

Authorizes appropriations for the USDA to improve technology used to process loans for multifamily housing and managing such housing.

SEC. 229. Plan for preserving affordability of rental projects.

Requires the USDA to submit a plan to Congress for preserving the affordability for low-income families of rental projects for which loans were made under section 514 or 515 and avoiding the displacement of tenant households.

SEC. 230. Covered Housing Programs.

Ensures rural development housing voucher assistance provided by the USDA have to abide by housing protections for victims of domestic violence, dating violence, sexual assault, and stalking under the Violence Against Women Act.

SEC. 231. Eligibility of Certified Workers.

Ensures that individuals with CAW and CAD status can access assisted housing under the Housing and Community Development Act.

Subtitle C— Foreign Labor Recruiter Accountability

SEC. 251. Definitions.

Establishes definitions for foreign labor recruiter, foreign labor recruiting activity, person, and recruitment fees.

SEC. 252. Registration of Foreign Labor Recruiters.

Requires DOL, with DOS and DHS, to establish procedures for the electronic registration of foreign labor recruiters (FLR) engaged in the recruitment of nonimmigrant workers. This includes procedural, attestations, two year terms of registration, application fees, and notification requirements. DOS is required to make available the registered FLRs online.

SEC. 253. Enforcement.

Outlines the process of revoking registrations, administrative enforcements, and civil actions for FLRs who violate requirements under this subtitle. There is an employer safe harbor for violations and DHS may provide parole to any worker who may need to pursue legal relief.

SEC. 254. Authorization of Appropriations.

Authorizes appropriations for the DOL and DOS to carry out this subtitle.

Title III. Electronic Verification of Employment Eligibility.

SEC. 301. Electronic Employment Eligibility Verification System.

Inserts a new section under Chapter 8 of title II of the INA establishing an electronic verification (e-verify) system to be utilized by agricultural labor and services employers.

Section 274E(a). Employment Eligibility Verification System

Requires DHS to establish, design, and administer an e-verify system for identity verification and employment authorization of individuals hired for employment in the United States. The system will also maintain records of inquiries and verifications made. The system must be designed to be user friendly, reliable, and include designs and operations to prevent identity theft and fraud.

Safeguards are created to protect privacy and certify privacy and accuracy through regular audits. The Commissioner of Social Security and Secretaries of DHS and DOS are required to establish processes to integrate their current procedures with the e-verify system

Section 274E(b). New Hires, Recruitment, and Referral.

Requires that individuals using the system must attest that they, under the penalty of perjury, are authorized to work in the United States by providing specific documents. Employers must attest to verify that the workers they hire have attested using the system. Outlines the documents and processes, including confirmation and nonconfirmation, for verifying such individual for such in the United States.

Section 274E(c). Reverification of Previously Hired Individuals.

Requires employers to reverify individuals they have hired previously to rehire them. Outlines the procedures for reverification.

Section 274E(d). Good Faith Compliance.

Ensures that employers that try but fail to comply with the requirements of this title are deemed compliant. Outlines a process by which an employer can correct their errors after receiving a notice. Creates an exception to good faith compliance for pattern or practice violators.

Section 274E(e). Limitations.

Clarifies that this does not authorize the use or establishment of a national identification card system. Limits the use of the records to the provisions of this title.

Section 274E(f). Penalties.

Establishes civil and criminal penalties for violations and noncompliance of this title.

Section 274E(g). Unfair Immigration-Related Employment Practices and the System.

Prohibits employers using the system from using the system for unfair immigration-related employment practices.

Section 274E(h). Clarification.

Clarifies the rights and remedies under other laws related to workplace rights.

Section 274E(i). Conforming Amendment.

Defines date of hire.

SEC. 302. Mandatory Electronic Verification for the Agricultural Industry

Requires that agricultural labor or services employers use the e-verify system. Effective dates start the later of accuracy and privacy certification or 6 years after the enactment of this act for employers with 500 or more employees. Every three months on a rolling basis, employers with more than 100 employees, 20 employees, and fewer than 20 employees are required to comply. DHS, in consultation with USDA, may choose to further delay effective dates by a period of six months.

SEC. 303. Coordination with E-Verify Program.

Ensures a smooth transition of this newly established e-verify system from the existing program. Any users who are required or may voluntarily choose to use the previous program would transition to use this program.

SEC. 304. Fraud and Misuse of Documents.

Makes it a felony offense to falsify a document, or misuse a real one, for the purpose of satisfying the employment verification.

SEC. 305. Technical and Conforming Amendments.

Makes technical and conforming amendments under the INA to establish the system.

SEC. 306. Protection of Social Security Administration Programs.

Ensures that the SSA has the funds necessary, determined through an agreement with DHS, to carry out responsibilities that interact with the e-verify system.

SEC. 307. Report on the Implementation of the Electronic Employment Verification System.

Two years following final rules implementing this title, DHS and DOJ must begin submitting an annual report to Congress on the e-verify system, including assessment of accuracy rates, challenges facing users, and other components of the system.

SEC. 308. Modernizing and Streamlining the Employment Eligibility Verification Process.

Requires DHS, with SSA, to send a plan to Congress for modernizing and streamlining the employment eligibility verification process within one year of passage.

SEC. 309. Rulemaking; Paperwork Reduction Act.

Authorizes rulemaking to carry out this title, utilizing the Paperwork Reduction Act.