

113TH CONGRESS  
1ST SESSION

# H. R. 1773

To create a nonimmigrant H–2C work visa program for agricultural workers,  
and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. GOODLATTE (for himself, Mr. SMITH of Texas, Mr. GOWDY, Mr. FARENTHOLD, Mr. WESTMORELAND, Mr. POE of Texas, Mr. HOLDING, Mr. PETERSON, and Mr. HURT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To create a nonimmigrant H–2C work visa program for  
agricultural workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as—

5 (1) the “Agricultural Guestworker Act”; or

6 (2) the “AG Act”.

1 **SEC. 2. H-2C TEMPORARY AGRICULTURAL WORK VISA PRO-**  
2 **GRAM.**

3 (a) IN GENERAL.—Section 101(a)(15)(H) of the Im-  
4 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H))  
5 is amended by striking “; or (iii)” and inserting “, or (c)  
6 having a residence in a foreign country which he has no  
7 intention of abandoning who is coming temporarily to the  
8 United States to perform agricultural labor or services; or  
9 (iii)”.

10 (b) DEFINITION.—Section 101(a) of such Act (8  
11 U.S.C. 1101(a)) is amended by adding at the end the fol-  
12 lowing:

13 “(53) The term ‘agricultural labor or services’ has  
14 the meaning given such term by the Secretary of Agri-  
15 culture in regulations and includes agricultural labor as  
16 defined in section 3121(g) of the Internal Revenue Code  
17 of 1986, agriculture as defined in section 3(f) of the Fair  
18 Labor Standards Act of 1938 (29 U.S.C. 203(f)), the han-  
19 dling, planting, drying, packing, packaging, processing,  
20 freezing, or grading prior to delivery for storage of any  
21 agricultural or horticultural commodity in its unmanufac-  
22 tured state, all activities required for the preparation,  
23 processing or manufacturing of a product of agriculture  
24 (as such term is defined in such section 3(f)) for further  
25 distribution, and activities similar to all the foregoing as  
26 they relate to fish or shellfish in aquaculture facilities.”.

1 **SEC. 3. ADMISSION OF TEMPORARY H-2C WORKERS.**

2 (a) PROCEDURE FOR ADMISSION.—Chapter 2 of title  
3 II of the Immigration and Nationality Act (8 U.S.C. 1181  
4 et seq.) is amended by inserting after section 218 the fol-  
5 lowing:

6 **“SEC. 218A. ADMISSION OF TEMPORARY H-2C WORKERS.**

7 “(a) DEFINITIONS.—In this section and section  
8 218B:

9 “(1) AREA OF EMPLOYMENT.—The term ‘area  
10 of employment’ means the area within normal com-  
11 muting distance of the worksite or physical location  
12 where the work of the H-2C worker is or will be  
13 performed. If such work site or location is within a  
14 Metropolitan Statistical Area, any place within such  
15 area shall be considered to be within the area of em-  
16 ployment.

17 “(2) DISPLACE.—The term ‘displace’ means to  
18 lay off a worker from a job that is essentially equiv-  
19 alent to the job for which an H-2C worker is  
20 sought. A job shall not be considered to be ‘essen-  
21 tially equivalent’ to another job unless the job—

22 “(A) involves essentially the same respon-  
23 sibilities as such other job;

24 “(B) was held by a United States worker  
25 with substantially equivalent qualifications and  
26 experience; and

1           “(C) is located in the same area of employ-  
2           ment as the other job.

3           “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
4           individual’ means an individual who is not an unau-  
5           thorized alien (as defined in section 274A(h)(3))  
6           with respect to the employment of the individual.

7           “(4) EMPLOYER.—The term ‘employer’ means  
8           an employer who hires workers to perform agricul-  
9           tural employment.

10          “(5) H-2C WORKER.—The term ‘H-2C worker’  
11          means a nonimmigrant described in section  
12          101(a)(15)(H)(ii)(c).

13          “(6) LAY OFF.—

14               “(A) IN GENERAL.—The term ‘lay off’—

15                       “(i) means to cause a worker’s loss of  
16                       employment, other than through a dis-  
17                       charge for inadequate performance, viola-  
18                       tion of workplace rules, cause, voluntary  
19                       departure, voluntary retirement, or the ex-  
20                       piration of a grant or contract (other than  
21                       a temporary employment contract entered  
22                       into in order to evade a condition described  
23                       in paragraph (3) of subsection (b)); and

24                       “(ii) does not include any situation in  
25                       which the worker is offered, as an alter-

1           native to such loss of employment, a simi-  
2           lar employment opportunity with the same  
3           employer (or, in the case of a placement of  
4           a worker with another employer under sub-  
5           section (b)(7), with either employer de-  
6           scribed in such subsection) at equivalent or  
7           higher compensation and benefits than the  
8           position from which the employee was dis-  
9           charged, regardless of whether or not the  
10          employee accepts the offer.

11           “(B) CONSTRUCTION.—Nothing in this  
12          paragraph is intended to limit an employee’s  
13          rights under a collective bargaining agreement  
14          or other employment contract.

15           “(7) PREVAILING WAGE.—The term ‘prevailing  
16          wage’ means the wage rate paid to workers in the  
17          same occupation in the area of employment as com-  
18          puted pursuant to section 212(p).

19           “(8) UNITED STATES WORKER.—The term  
20          ‘United States worker’ means any worker who is—

21           “(A) a citizen or national of the United  
22          States; or

23           “(B) an alien who is lawfully admitted for  
24          permanent residence, is admitted as a refugee  
25          under section 207, is granted asylum under sec-

1           tion 208, or is an immigrant otherwise author-  
2           ized, by this Act or by the Secretary of Home-  
3           land Security, to be employed.

4           “(b) PETITION.—An employer, or an association act-  
5           ing as an agent or joint employer for its members, that  
6           seeks the admission into the United States of an H-2C  
7           worker shall file with the Secretary of Agriculture a peti-  
8           tion attesting to the following:

9           “(1) TEMPORARY WORK OR SERVICES.—

10           “(A) IN GENERAL.—The employer is seek-  
11           ing to employ a specific number of agricultural  
12           workers on a temporary basis and will provide  
13           compensation to such workers at a specified  
14           wage rate.

15           “(B) DEFINITION.—For purposes of this  
16           paragraph, a worker is employed on a tem-  
17           porary basis if the employer intends to employ  
18           the worker for no longer than 18 months (ex-  
19           cept for shepherders) during any contract pe-  
20           riod.

21           “(2) BENEFITS, WAGES, AND WORKING CONDI-  
22           TIONS.—The employer will provide, at a minimum,  
23           the benefits, wages, and working conditions required  
24           by subsection (k) to all workers employed in the jobs  
25           for which the H-2C worker is sought and to all

1 other temporary workers in the same occupation at  
2 the place of employment.

3 “(3) NONDISPLACEMENT OF UNITED STATES  
4 WORKERS.—The employer did not displace and will  
5 not displace a United States worker employed by the  
6 employer during the period of employment of the H–  
7 2C worker and during the 30-day period imme-  
8 diately preceding such period of employment in the  
9 occupation at the place of employment for which the  
10 employer seeks approval to employ H–2C workers.

11 “(4) RECRUITMENT.—

12 “(A) IN GENERAL.—The employer—

13 “(i) conducted adequate recruitment  
14 in the area of intended employment before  
15 filing the attestation; and

16 “(ii) was unsuccessful in locating a  
17 qualified United States worker for the job  
18 opportunity for which the H–2C worker is  
19 sought.

20 “(B) OTHER REQUIREMENTS.—The re-  
21 cruitment requirement under subparagraph (A)  
22 is satisfied if the employer places a local job  
23 order with the State workforce agency serving  
24 the local area where the work will be performed,  
25 except that nothing in this subparagraph shall

1           require the employer to file an interstate job  
2           order under section 653 of title 20, Code of  
3           Federal Regulations. The State workforce agen-  
4           cy shall post the job order on its official agency  
5           website for a minimum of 30 days and not later  
6           than 3 days after receipt using the employment  
7           statistics system authorized under section 15 of  
8           the Wagner-Peyser Act (29 U.S.C. 491–2). The  
9           Secretary of Labor shall include links to the of-  
10          ficial Web sites of all State workforce agencies  
11          on a single webpage of the official Web site of  
12          the Department of Labor.

13                 “(C) END OF RECRUITMENT REQUIRE-  
14                 MENT.—The requirement to recruit United  
15                 States workers shall terminate on the first day  
16                 that work begins for the H–2C worker.

17                 “(5) OFFERS TO UNITED STATES WORKERS.—  
18                 The employer has offered or will offer the job for  
19                 which the H–2C worker is sought to any eligible  
20                 United States worker who—

21                         “(A) applies;

22                         “(B) is qualified for the job; and

23                         “(C) will be available at the time and place  
24                         of need.

1 This requirement shall not apply to a United States  
2 worker who applies for the job on or after the first  
3 day that work begins for the H-2C worker.

4 “(6) PROVISION OF INSURANCE.—If the job for  
5 which the H-2C worker is sought is not covered by  
6 State workers’ compensation law, the employer will  
7 provide, at no cost to the worker unless State law  
8 provides otherwise, insurance covering injury and  
9 disease arising out of, and in the course of, the  
10 worker’s employment, which will provide benefits at  
11 least equal to those provided under the State work-  
12 ers compensation law for comparable employment.

13 “(7) REQUIREMENTS FOR PLACEMENT OF H-2C  
14 WORKERS WITH OTHER EMPLOYERS.—A non-  
15 immigrant who is admitted into the United States as  
16 an H-2C worker may be transferred to another em-  
17 ployer that has filed a petition under this subsection  
18 and is in compliance with this section.

19 “(8) STRIKE OR LOCKOUT.—There is not a  
20 strike or lockout in the course of a labor dispute  
21 which, under regulations promulgated by the Sec-  
22 retary of Agriculture, precludes the hiring of H-2C  
23 workers.

24 “(9) PREVIOUS VIOLATIONS.—The employer  
25 has not, during the previous two-year period, em-

1 employed H-2C workers and knowingly violated a ma-  
2 terial term or condition of approval with respect to  
3 the employment of domestic or nonimmigrant work-  
4 ers, as determined by the Secretary of Agriculture  
5 after notice and opportunity for a hearing.

6 “(c) PUBLIC EXAMINATION.—Not later than 1 work-  
7 ing day after the date on which a petition under this sec-  
8 tion is filed, the employer shall make a copy of each such  
9 petition available for public examination, at the employer’s  
10 principal place of business or worksite.

11 “(d) LIST.—

12 “(1) IN GENERAL.—The Secretary of Agri-  
13 culture shall maintain a list of the petitions filed  
14 under subsection (b), which shall—

15 “(A) be sorted by employer; and

16 “(B) include the number of H-2C workers  
17 sought, the wage rate, the period of intended  
18 employment, and the date of need for each  
19 alien.

20 “(2) AVAILABILITY.—The Secretary of Agri-  
21 culture shall make the list available for public exam-  
22 ination.

23 “(e) PETITIONING FOR ADMISSION.—

24 “(1) CONSIDERATION OF PETITIONS.—For peti-  
25 tions filed and considered under subsection (b)—

1           “(A) the Secretary of Agriculture may not  
2 require such petition to be filed more than 28  
3 calendar days before the first date the employer  
4 requires the labor or services of the H-2C  
5 worker;

6           “(B) unless the Secretary of Agriculture  
7 determines that the petition is incomplete or ob-  
8 viously inaccurate, the Secretary, not later than  
9 10 business days after the date on which such  
10 petition was filed, shall either approve or reject  
11 the petition and provide the petitioner with no-  
12 tice of such action by means ensuring same or  
13 next day delivery; and

14           “(C) if the Secretary determines that the  
15 petition is incomplete or obviously inaccurate,  
16 the Secretary shall—

17           “(i) within 5 business days of receipt  
18 of the petition, notify the petitioner of the  
19 deficiencies to be corrected by means en-  
20 suring same or next day delivery; and

21           “(ii) within 10 business days of re-  
22 ceipt of the corrected petition, approve or  
23 deny the petition and provide the petitioner  
24 with notice of such action by means ensur-  
25 ing same or next day delivery.

1           “(2) PETITION AGREEMENTS.—By filing an H–  
2           2C petition, a petitioner and each employer consents  
3           to allow access to the site where the labor is being  
4           performed to the Department of Agriculture and the  
5           Department of Homeland Security for the purpose  
6           of investigations to determine compliance with H–2C  
7           requirements and the immigration laws. Notwith-  
8           standing any other provision of law, the Depart-  
9           ments of Agriculture and Homeland Security cannot  
10          delegate their compliance functions to other agencies  
11          or Departments.

12          “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

13           “(1) PERMITTING FILING BY AGRICULTURAL  
14          ASSOCIATIONS.—A petition under subsection (b) to  
15          hire an alien as a temporary agricultural worker  
16          may be filed by an association of agricultural em-  
17          ployers which use agricultural services.

18           “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
19          EMPLOYERS.—If an association is a joint employer  
20          of temporary agricultural workers, such workers may  
21          be transferred among its members to perform agri-  
22          cultural services of a temporary nature for which the  
23          petition was approved.

24          “(3) TREATMENT OF VIOLATIONS.—

1           “(A) INDIVIDUAL MEMBER.—If an indi-  
2           vidual member of a joint employer association  
3           violates any condition for approval with respect  
4           to the member’s petition, the Secretary of Agri-  
5           culture shall consider as an employer for pur-  
6           poses of subsection (b)(9) and invoke penalties  
7           pursuant to subsection (i) against only that  
8           member of the association unless the Secretary  
9           of Agriculture determines that the association  
10          or other member participated in, had knowledge  
11          of, or had reason to know of the violation.

12          “(B) ASSOCIATION OF AGRICULTURAL EM-  
13          PLOYERS.—If an association representing agri-  
14          cultural employers as a joint employer violates  
15          any condition for approval with respect to the  
16          association’s petition, the Secretary of Agri-  
17          culture shall consider as an employer for pur-  
18          poses of subsection (b)(9) and invoke penalties  
19          pursuant to subsection (i) against only the as-  
20          sociation and not any individual member of the  
21          association, unless the Secretary determines  
22          that the member participated in, had knowledge  
23          of, or had reason to know of the violation.

1       “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The  
2 Secretary of Agriculture shall promulgate regulations to  
3 provide for an expedited procedure—

4               “(1) for the review of a denial of a petition  
5 under this section by the Secretary; or

6               “(2) at the petitioner’s request, for a de novo  
7 administrative hearing at which new evidence may  
8 be introduced.

9       “(h) MISCELLANEOUS PROVISIONS.—

10               “(1) ENDORSEMENT OF DOCUMENTS.—The  
11 Secretary of Homeland Security shall provide for the  
12 endorsement of entry and exit documents of H-2C  
13 workers as may be necessary to carry out this sec-  
14 tion and to provide notice for purposes of section  
15 274A.

16               “(2) FEES.—

17                       “(A) IN GENERAL.—The Secretary of Ag-  
18 riculture shall require, as a condition of approv-  
19 ing the petition, the payment of a fee, in ac-  
20 cordance with subparagraph (B), to recover the  
21 reasonable cost of processing petitions filed by  
22 employers or associations of employers seeking  
23 H-2C workers for jobs of a temporary or sea-  
24 sonal nature, but may not require the payment  
25 of such fees to recover the costs of processing

1 petitions filed by employers or associations of  
2 employers seeking H-2C workers for jobs not of  
3 a temporary or seasonal nature.

4 “(B) FEE BY TYPE OF EMPLOYEE.—

5 “(i) SINGLE EMPLOYER.—An em-  
6 ployer whose petition for temporary alien  
7 agricultural workers is approved shall, for  
8 each approved petition, pay a fee that—

9 “(I) subject to subclause (II), is  
10 equal to \$100 plus \$10 for each ap-  
11 proved H-2C worker; and

12 “(II) does not exceed \$1,000.

13 “(ii) ASSOCIATION.—Each employer-  
14 member of a joint employer association  
15 whose petition for H-2C workers is ap-  
16 proved shall, for each such approved peti-  
17 tion, pay a fee that—

18 “(I) subject to subclause (II), is  
19 equal to \$100 plus \$10 for each ap-  
20 proved H-2C worker; and

21 “(II) does not exceed \$1,000.

22 “(iii) LIMITATION ON ASSOCIATION  
23 FEES.—A joint employer association under  
24 clause (ii) shall not be charged a separate  
25 fee.

1           “(C) METHOD OF PAYMENT.—The fees  
2           collected under this paragraph shall be paid by  
3           check or money order to the Department of Ag-  
4           riculture. In the case of employers of H–2C  
5           workers that are members of a joint employer  
6           association petitioning on their behalf, the ag-  
7           gregate fees for all employers of H–2C workers  
8           under the petition may be paid by 1 check or  
9           money order.

10          “(i) ENFORCEMENT.—

11                 “(1) INVESTIGATIONS AND AUDITS.—The Sec-  
12                 retary of Agriculture shall be responsible for con-  
13                 ducting investigations and random audits of employ-  
14                 ers to ensure compliance with the requirements of  
15                 the H–2C program. All monetary fines levied against  
16                 violating employers shall be paid to the Department  
17                 of Agriculture and used to enhance the Department  
18                 of Agriculture’s investigatory and auditing power.

19                 “(2) FAILURE TO MEET CONDITIONS.—If the  
20                 Secretary of Agriculture finds, after notice and op-  
21                 portunity for a hearing, a failure to meet a condition  
22                 of subsection (b), or a material misrepresentation of  
23                 fact in a petition under subsection (b), the Sec-  
24                 retary—

1           “(A) may impose such other administrative  
2 remedies (including civil money penalties in an  
3 amount not to exceed \$1,000 per violation) as  
4 the Secretary determines to be appropriate; and

5           “(B) may disqualify the employer from the  
6 employment of H-2C workers for a period of 1  
7 year.

8           “(3) PENALTIES FOR WILLFUL FAILURE.—If  
9 the Secretary of Agriculture finds, after notice and  
10 opportunity for a hearing, a willful failure to meet  
11 a material condition of subsection (b), or a willful  
12 misrepresentation of a material fact in a petition  
13 under subsection (b), the Secretary—

14           “(A) may impose such other administrative  
15 remedies (including civil money penalties in an  
16 amount not to exceed \$5,000 per violation) as  
17 the Secretary determines to be appropriate;

18           “(B) may disqualify the employer from the  
19 employment of H-2C workers for a period of 2  
20 years;

21           “(C) may, for a subsequent violation not  
22 arising out of the prior incident, disqualify the  
23 employer from the employment of H-2C work-  
24 ers for a period of 5 years; and

1           “(D) may, for a subsequent violation not  
2           arising out of the prior incident, permanently  
3           disqualify the employer from the employment of  
4           H–2C workers.

5           “(4) PENALTIES FOR DISPLACEMENT OF  
6           UNITED STATES WORKERS.—If the Secretary of Ag-  
7           riculture finds, after notice and opportunity for a  
8           hearing, a willful failure to meet a material condition  
9           of subsection (b) or a willful misrepresentation of a  
10          material fact in a petition under subsection (b), in  
11          the course of which failure or misrepresentation the  
12          employer displaced a United States worker employed  
13          by the employer during the period of employment of  
14          the H–2C worker or during the 30-day period pre-  
15          ceding such period of employment, the Secretary—

16               “(A) may impose such other administrative  
17               remedies (including civil money penalties in an  
18               amount not to exceed \$15,000 per violation) as  
19               the Secretary determines to be appropriate;

20               “(B) may disqualify the employer from the  
21               employment of H–2C workers for a period of 5  
22               years; and

23               “(C) may, for a second violation, perma-  
24               nently disqualify the employer from the employ-  
25               ment of H–2C workers.

1       “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-  
2 FITS.—

3           “(1) ASSESSMENT.—If the Secretary of Agri-  
4 culture finds, after notice and opportunity for a  
5 hearing, that the employer has failed to provide the  
6 benefits, wages, and working conditions attested by  
7 the employer under subsection (b), the Secretary  
8 shall assess payment of back wages, or such other  
9 required benefits, due any United States worker or  
10 H-2C worker employed by the employer in the spe-  
11 cific employment in question.

12           “(2) AMOUNT.—The back wages or other re-  
13 quired benefits described in paragraph (1)—

14           “(A) shall be equal to the difference be-  
15 tween the amount that should have been paid  
16 and the amount that was paid to such worker;  
17 and

18           “(B) shall be distributed to the worker to  
19 whom such wages or benefits are due.

20       “(k) MINIMUM WAGES, BENEFITS, AND WORKING  
21 CONDITIONS.—

22           “(1) PREFERENTIAL TREATMENT OF ALIENS  
23 PROHIBITED.—

24           “(A) IN GENERAL.—Each employer seek-  
25 ing to hire United States workers shall offer

1 such workers not less than the same benefits,  
2 wages, and working conditions that the em-  
3 ployer is offering, intends to offer, or will pro-  
4 vide to H-2C workers. No job offer may impose  
5 on United States workers any restrictions or  
6 obligations which will not be imposed on the  
7 employer's H-2C workers.

8 “(B) INTERPRETATION.—Every interpreta-  
9 tion and determination made under this section  
10 or under any other law, regulation, or interpre-  
11 tative provision regarding the nature, scope,  
12 and timing of the provision of these and any  
13 other benefits, wages, and other terms and con-  
14 ditions of employment shall be made so that—

15 “(i) the services of workers to their  
16 employers and the employment opportuni-  
17 ties afforded to workers by the employers,  
18 including those employment opportunities  
19 that require United States workers or H-  
20 2C workers to travel or relocate in order to  
21 accept or perform employment—

22 “(I) mutually benefit such work-  
23 ers, as well as their families, and em-  
24 ployers; and

1                   “(II) principally benefit neither  
2                   employer nor employee; and

3                   “(ii) employment opportunities within  
4                   the United States benefit the United  
5                   States economy.

6                   “(2) REQUIRED WAGES.—

7                   “(A) IN GENERAL.—Each employer peti-  
8                   tioning for workers under subsection (b) shall  
9                   pay not less than the greater of—

10                   “(i) the prevailing wage level for the  
11                   occupational classification in the area of  
12                   employment; or

13                   “(ii) the applicable Federal, State, or  
14                   local minimum wage, whichever is greatest.

15                   “(B) SPECIAL RULE.—An employer can  
16                   utilize a piece rate or other alternative wage  
17                   payment system as long as the employer guar-  
18                   antees each worker a wage rate that equals or  
19                   exceeds the amount required under subpara-  
20                   graph (A).

21                   “(3) EMPLOYMENT GUARANTEE.—

22                   “(A) IN GENERAL.—

23                   “(i) REQUIREMENT.—Each employer  
24                   petitioning for workers under subsection  
25                   (b) shall guarantee to offer the worker em-

1           employment for the hourly equivalent of not  
2           less than 50 percent of the work hours  
3           during the total anticipated period of em-  
4           ployment, beginning with the first work  
5           day after the arrival of the worker at the  
6           place of employment and ending on the ex-  
7           piration date specified in the job offer.

8           “(ii) FAILURE TO MEET GUAR-  
9           ANTEE.—If the employer affords the  
10          United States worker or the H-2C worker  
11          less employment than that required under  
12          this subparagraph, the employer shall pay  
13          such worker the amount which the worker  
14          would have earned if the worker had  
15          worked for the guaranteed number of  
16          hours.

17          “(iii) PERIOD OF EMPLOYMENT.—For  
18          purposes of this subparagraph, the term  
19          ‘period of employment’ means the total  
20          number of anticipated work hours and  
21          workdays described in the job offer and  
22          shall exclude the worker’s Sabbath and  
23          Federal holidays.

24          “(B) CALCULATION OF HOURS.—Any  
25          hours which the worker fails to work, up to a

1 maximum of the number of hours specified in  
2 the job offer for a work day, when the worker  
3 has been offered an opportunity to do so, and  
4 all hours of work actually performed (including  
5 voluntary work in excess of the number of  
6 hours specified in the job offer in a work day,  
7 on the worker's Sabbath, or on Federal holi-  
8 days) may be counted by the employer in calcu-  
9 lating whether the period of guaranteed employ-  
10 ment has been met.

11 “(C) LIMITATION.—If the worker volun-  
12 tarily abandons employment before the end of  
13 the contract period, or is terminated for cause,  
14 the worker is not entitled to the 50 percent  
15 guarantee described in subparagraph (A).

16 “(D) TERMINATION OF EMPLOYMENT.—

17 “(i) IN GENERAL.—If, before the expi-  
18 ration of the period of employment speci-  
19 fied in the job offer, the services of the  
20 worker are no longer required due to any  
21 form of natural disaster, including flood,  
22 hurricane, freeze, earthquake, fire,  
23 drought, plant or animal disease, pest in-  
24 festation, regulatory action, or any other  
25 reason beyond the control of the employer

1 before the employment guarantee in sub-  
2 paragraph (A) is fulfilled, the employer  
3 may terminate the worker's employment.

4 “(ii) REQUIREMENTS.—If a worker's  
5 employment is terminated under clause (i),  
6 the employer shall—

7 “(I) fulfill the employment guar-  
8 antee in subparagraph (A) for the  
9 work days that have elapsed during  
10 the period beginning on the first work  
11 day after the arrival of the worker  
12 and ending on the date on which such  
13 employment is terminated;

14 “(II) make efforts to transfer the  
15 United States worker to other com-  
16 parable employment acceptable to the  
17 worker; and

18 “(III) not later than 24 hours  
19 after termination, notify (or have an  
20 association acting as an agent for the  
21 employer notify) the Secretary of  
22 Homeland Security of such termi-  
23 nation.

24 “(l) PERIOD OF ADMISSION.—

1           “(1) IN GENERAL.—An H-2C worker shall be  
2 admitted for a period of employment, not to exceed  
3 18 months (or 36 months as provided in subsection  
4 (o)(3)(A) for a worker employed in a job that is not  
5 of a temporary or seasonal nature), and except for  
6 shepherders, that includes—

7           “(A) a period of not more than 7 days  
8 prior to the beginning of the period of employ-  
9 ment for the purpose of travel to the work site;  
10 and

11           “(B) a period of not more than 14 days  
12 following the period of employment for the pur-  
13 pose of departure or a period of not more than  
14 30 days following the period of employment for  
15 the purpose of seeking a subsequent offer of  
16 employment by an employer pursuant to a peti-  
17 tion under this section (or pursuant to at-will  
18 employment pursuant to section 218B during  
19 such time as that section is in effect). An H-  
20 2C worker who does not depart within these pe-  
21 riods will be considered to have failed to main-  
22 tain nonimmigrant status as an H-2C worker  
23 and shall be subject to removal under section  
24 237(a)(1)(C)(i). Such alien shall be considered  
25 to be inadmissible pursuant to section

1           212(a)(9)(B)(i) for having been unlawfully  
2           present, with the alien considered to have been  
3           unlawfully present for 180 days as of the 15th  
4           day following the period of employment for the  
5           purpose of departure or as of the 31st day fol-  
6           lowing the period of employment for the pur-  
7           pose of seeking a subsequent offer of employ-  
8           ment where the alien has not found at-will em-  
9           ployment with a registered agricultural em-  
10          ployer pursuant to section 218B or employment  
11          pursuant to this section.

12           “(2) EMPLOYMENT LIMITATION.—An alien may  
13          not be employed during the 14-day period described  
14          in paragraph (1)(B) except in the employment for  
15          which the alien is otherwise authorized.

16          “(m) ABANDONMENT OF EMPLOYMENT.—

17           “(1) IN GENERAL.—An alien admitted or pro-  
18          vided status under section 101(a)(15)(H)(ii)(c) who  
19          abandons the employment which was the basis for  
20          such admission or status—

21           “(A) shall have failed to maintain non-  
22          immigrant status as an H-2C worker;

23           “(B) shall depart the United States or be  
24          subject to removal under section  
25          237(a)(1)(C)(i); and

1           “(C) shall be considered to be inadmissible  
2           pursuant to section 212(a)(9)(B)(i) for having  
3           been unlawfully present, with the alien consid-  
4           ered to have been unlawfully present for 180  
5           days as of the 15th day following the date of  
6           the abandonment of employment.

7           “(2) REPORT BY EMPLOYER.—Not later than  
8           24 hours after an employer learns of the abandon-  
9           ment of employment by an H-2C worker, the em-  
10          ployer or association acting as an agent for the em-  
11          ployer, shall notify the Secretary of Homeland Secu-  
12          rity of such abandonment.

13          “(3) REMOVAL.—The Secretary of Homeland  
14          Security shall promptly remove from the United  
15          States any H-2C worker who violates any term or  
16          condition of the worker’s nonimmigrant status.

17          “(4) VOLUNTARY TERMINATION.—Notwith-  
18          standing paragraph (1), an alien may voluntarily  
19          terminate the alien’s employment if the alien  
20          promptly departs the United States upon termi-  
21          nation of such employment. An alien who voluntarily  
22          terminates the alien’s employment and who does not  
23          depart within 14 days shall be considered to have  
24          failed to maintain nonimmigrant status as an H-2C  
25          worker and shall be subject to removal under section

1       237(a)(1)(C)(i). Such alien shall be considered to be  
2       inadmissible pursuant to section 212(a)(9)(B)(i) for  
3       having been unlawfully present, with the alien con-  
4       sidered to have been unlawfully present for 180 days  
5       as of the 15th day following the voluntary termi-  
6       nation of employment.

7       “(n) REPLACEMENT OF ALIEN.—An employer may  
8       designate an eligible alien to replace an H-2C worker who  
9       abandons employment notwithstanding the numerical limi-  
10      tation found in section 214(g)(1)(C).

11      “(o) EXTENSION OF STAY OF H-2C WORKERS IN  
12      THE UNITED STATES.—

13           “(1) EXTENSION OF STAY.—If an employer  
14      seeks approval to employ an H-2C worker who is  
15      lawfully present in the United States, the petition  
16      filed by the employer or an association pursuant to  
17      subsection (b) shall request an extension of the  
18      alien’s stay and, if applicable, a change in the alien’s  
19      employment.

20           “(2) WORK AUTHORIZATION UPON FILING PE-  
21      TITION FOR EXTENSION OF STAY.—

22           “(A) IN GENERAL.—An alien who is law-  
23      fully present in the United States on the date  
24      of the filing of a petition to extend the stay of  
25      the alien may commence or continue the em-

1           employment described in a petition under para-  
2           graph (1) until and unless the petition is de-  
3           nied. The employer shall provide a copy of the  
4           employer’s petition for extension of stay to the  
5           alien. The alien shall keep the petition with the  
6           alien’s identification and employment eligibility  
7           document, as evidence that the petition has  
8           been filed and that the alien is authorized to  
9           work in the United States.

10           “(B) EMPLOYMENT ELIGIBILITY DOCU-  
11           MENT.—Upon approval of a petition for an ex-  
12           tension of stay or change in the alien’s author-  
13           ized employment, the Secretary of Homeland  
14           Security shall provide a new or updated employ-  
15           ment eligibility document to the alien indicating  
16           the new validity date, after which the alien is  
17           not required to retain a copy of the petition.

18           “(C) FILE DEFINED.—In this paragraph,  
19           the term ‘file’ means sending the petition by  
20           certified mail via the United States Postal Serv-  
21           ice, return receipt requested, or delivering by  
22           guaranteed commercial delivery which will pro-  
23           vide the employer with a documented acknowl-  
24           edgment of the date of receipt of the petition  
25           for an extension of stay.

1           “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN  
2 STATUS.—

3           “(A) MAXIMUM PERIOD.—The maximum  
4 continuous period of authorized status as an  
5 H-2C worker (including any extensions) is 18  
6 months for a worker employed in a job that is  
7 of a temporary or seasonal nature. For an H-  
8 2C worker employed in a job that is not of a  
9 temporary or seasonal nature, the initial max-  
10 imum continuous period of authorized status is  
11 36 months and subsequent maximum contin-  
12 uous periods of authorized status are 18  
13 months. There is no maximum continuous pe-  
14 riod of authorized status for a shepherd.

15           “(B) REQUIREMENT TO REMAIN OUTSIDE  
16 THE UNITED STATES.—In the case of an alien  
17 outside the United States who was employed in  
18 a job of a temporary or seasonal nature pursu-  
19 ant to section 101(a)(15)(H)(ii)(c) whose period  
20 of authorized status as an H-2C worker (in-  
21 cluding any extensions) has expired, the alien  
22 may not again be admitted to the United States  
23 as an H-2C worker unless the alien has re-  
24 mained outside the United States for a contin-  
25 uous period equal to at least  $\frac{1}{6}$  the duration of

1 the alien's previous period of authorized status  
2 as an H-2C worker. For an alien outside the  
3 United States who was employed in a job not  
4 of a temporary or seasonal nature pursuant to  
5 section 101(a)(15)(H)(ii)(c) whose period of au-  
6 thorized status as an H-2C worker (including  
7 any extensions) has expired, the alien may not  
8 again be admitted to the United States as an  
9 H-2C worker unless the alien has remained  
10 outside the United States for a continuous pe-  
11 riod equal to at least the lesser of  $\frac{1}{6}$  the dura-  
12 tion of the alien's previous period of authorized  
13 status as an H-2C worker or 3 months. There  
14 is no requirement to remain outside the United  
15 States for shepherders.

16 “(p) ADJUSTMENT OF STATUS.—Notwithstanding  
17 any other provision of law, an alien who is unlawfully  
18 present in the United States on April 25, 2013, is eligible  
19 to adjust status to that of an H-2C worker.

20 “(q) TRUST FUND TO ASSURE WORKER RETURN.—

21 “(1) ESTABLISHMENT.—There is established in  
22 the Treasury of the United States a trust fund (in  
23 this section referred to as the ‘Trust Fund’) for the  
24 purpose of providing a monetary incentive for H-2C

1 workers to return to their country of origin upon ex-  
2 piration of their visas.

3 “(2) WITHHOLDING OF WAGES; PAYMENT INTO  
4 THE TRUST FUND.—

5 “(A) IN GENERAL.—Notwithstanding the  
6 Fair Labor Standards Act of 1938 (29 U.S.C.  
7 201 et seq.), all employers of H–2C workers  
8 shall withhold from the wages of the workers an  
9 amount equivalent to 10 percent of the wages  
10 of each worker and pay such withheld amount  
11 into the Trust Fund.

12 “(B) JOBS THAT ARE NOT OF A TEM-  
13 PORARY OR SEASONAL NATURE.—Employers of  
14 H–2C workers employed in jobs that are not of  
15 a temporary or seasonal nature shall pay into  
16 the Trust Fund an amount equivalent to the  
17 Federal tax on the wages paid to H–2C workers  
18 that the employer would be obligated to pay  
19 under chapters 21 and 23 of the Internal Rev-  
20 enue Code of 1986 had the H–2C workers been  
21 subject to such chapters.

22 Amounts withheld under this paragraph shall be  
23 maintained in such interest bearing account with  
24 such a financial institution as the Secretary of Agri-  
25 culture shall specify.

1           “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
2           into the Trust Fund on behalf of an H-2C worker,  
3           and held pursuant to paragraph (2)(A) and interest  
4           earned thereon, shall be paid by the Secretary of  
5           State to the worker if—

6                   “(A) the worker applies to the Secretary of  
7                   State (or the designee of such Secretary) for  
8                   payment within 30 days of the expiration of the  
9                   alien’s last authorized stay in the United States  
10                  as an H-2C worker at a United States embassy  
11                  or consulate in the worker’s home country;

12                  “(B) in such application the worker estab-  
13                  lishes that the worker has complied with the  
14                  terms and conditions of the H-2C program;  
15                  and

16                  “(C) in connection with the application,  
17                  the H-2C worker confirms their identity.

18           “(4) ADMINISTRATIVE EXPENSES.—The  
19           amounts paid into the Trust Fund and held pursu-  
20           ant to paragraph (2)(B), and interest earned there-  
21           on, shall be paid to the Secretary of State, the Sec-  
22           retary of Agriculture, and the Secretary of Home-  
23           land Security in amounts equivalent to the expenses  
24           incurred by such officials in the administration of

1 the H-2C program not reimbursed pursuant to sub-  
2 section (h)(2) or section 218B(b).

3 “(r) INVESTMENT OF TRUST FUND.—

4 “(1) IN GENERAL.—It shall be the duty of the  
5 Secretary of the Treasury to invest such portion of  
6 the Trust Fund as is not, in the Secretary’s judg-  
7 ment, required to meet current withdrawals. Such  
8 investments may be made only in interest-bearing  
9 obligations of the United States or in obligations  
10 guaranteed as to both principal and interest by the  
11 United States. For such purpose, such obligations  
12 may be acquired—

13 “(A) on original issue at the price; or

14 “(B) by purchase of outstanding obliga-  
15 tions at the market price.

16 The purposes for which obligations of the United  
17 States may be issued under chapter 31 of title 31,  
18 United States Code, are hereby extended to author-  
19 ize the issuance at par of special obligations exclu-  
20 sively to the Trust Fund. Such special obligations  
21 shall bear interest at a rate equal to the average  
22 rate of interest, computed as to the end of the cal-  
23 endar month next preceding the date of such issue,  
24 borne by all marketable interest-bearing obligations  
25 of the United States then forming a part of the pub-

1       lic debt, except that where such average rate is not  
2       a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest of  
3       such special obligations shall be the multiple of  $\frac{1}{8}$   
4       of 1 percent next lower than such average rate. Such  
5       special obligations shall be issued only if the Sec-  
6       retary of the Treasury determines that the purchase  
7       of other interest-bearing obligations of the United  
8       States, or of obligations guaranteed as to both prin-  
9       cipal and interest by the United States on original  
10      issue or at the market price, is not in the public in-  
11      terest.

12           “(2) SALE OF OBLIGATION.—Any obligation ac-  
13      quired by the Trust Fund (except special obligations  
14      issued exclusively to the Trust Fund) may be sold by  
15      the Secretary of the Treasury at the market price,  
16      and such special obligations may be redeemed at par  
17      plus accrued interest.

18           “(3) CREDITS TO TRUST FUND.—The interest  
19      on, and the proceeds from the sale or redemption of,  
20      any obligations held in the Trust Fund shall be  
21      credited to and form a part of the Trust Fund.

22           “(4) REPORT TO CONGRESS.—It shall be the  
23      duty of the Secretary of the Treasury to hold the  
24      Trust Fund, and (after consultation with the Sec-  
25      retary of Agriculture) to report to the Congress each

1 year on the financial condition and the results of the  
2 operations of the Trust Fund during the preceding  
3 fiscal year and on its expected condition and oper-  
4 ations during the next fiscal year. Such report shall  
5 be printed as both a House and a Senate document  
6 of the session of the Congress to which the report  
7 is made.”.

8 (b) **AT-WILL EMPLOYMENT.**—Chapter 2 of title II of  
9 the Immigration and Nationality Act (8 U.S.C. 1181 et  
10 seq.) is amended by inserting after section 218A (as in-  
11 serted by subsection (a)) the following:

12 **“SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C**  
13 **WORKERS.**

14 “(a) **AT-WILL EMPLOYMENT.**—

15 “(1) **IN GENERAL.**—An H-2C worker may per-  
16 form agricultural labor or services for any employer  
17 that is designated as a ‘registered agricultural em-  
18 ployer’ pursuant to subsection (b). However, an H-  
19 2C worker may only perform labor or services pursu-  
20 ant to this section if the worker is already lawfully  
21 present in the United States as an H-2C worker,  
22 having been admitted or otherwise provided non-  
23 immigrant status pursuant to section 218A, and has  
24 completed the period of employment specified in the  
25 job offer the worker accepted pursuant to section

1 218A or the employer has terminated the worker's  
2 employment pursuant to section 218A(k)(3)(D)(i).  
3 An H-2C worker who abandons the employment  
4 which was the basis for admission or status pursu-  
5 ant to section 218A may not perform labor or serv-  
6 ices pursuant to this section until the worker has re-  
7 turned to their home country, been readmitted as an  
8 H-2C worker pursuant to section 218A and has  
9 completed the period of employment specified in the  
10 job offer the worker accepted pursuant to section  
11 218A or the employer has terminated the worker's  
12 employment pursuant to section 218A(k)(3)(D)(i).

13 “(2) PERIOD OF STAY.—An H-2C worker per-  
14 forming such labor or services for a registered agri-  
15 cultural employer is subject to the period of admis-  
16 sion, limitation of stay in status, and requirement to  
17 remain outside the United States contained in sub-  
18 sections (l) and (o)(3) of section 218A.

19 “(3) TERMINATION OF EMPLOYMENT.—At the  
20 conclusion of at-will employment with a registered  
21 agricultural employer or the conclusion of employ-  
22 ment pursuant to section 218A qualifying an H-2C  
23 worker to perform at-will work pursuant to this sec-  
24 tion, an H-2C worker shall find at-will employment  
25 with a registered agricultural employer or employ-

1       ment pursuant to section 218A within 30 days or  
2       will be considered to have failed to maintain non-  
3       immigrant status as an H-2C worker and shall de-  
4       part from the United States or be subject to removal  
5       under section 237(a)(1)(C)(i). An H-2C worker who  
6       does not so depart shall be considered to be inadmis-  
7       sible pursuant to section 212(a)(9)(B)(i) for having  
8       been unlawfully present, with the alien considered to  
9       have been unlawfully present for 180 days as of the  
10      31st day after conclusion of employment where the  
11      alien has not found at-will employment with a reg-  
12      istered agricultural employer or employment pursu-  
13      ant to section 218A. However, an alien may volun-  
14      tarily terminate the alien's employment if the alien  
15      promptly departs the United States upon termi-  
16      nation of such employment. Either a registered agri-  
17      cultural employer or an H-2C worker may volun-  
18      tarily terminate the worker's at-will employment at  
19      any time. The H-2C worker then shall find addi-  
20      tional at-will employment with a registered agricul-  
21      tural employer or employment pursuant to section  
22      218A within 30 days or will be considered to have  
23      failed to maintain nonimmigrant status as an H-2C  
24      worker and shall depart from the United States or  
25      be subject to removal under section 237(a)(1)(C)(i).

1 An H-2C worker who does not so depart shall be  
2 considered to be inadmissible pursuant to section  
3 212(a)(9)(B)(i) for having been unlawfully present,  
4 with the alien considered to have been unlawfully  
5 present for 180 days as of the 31st day after conclu-  
6 sion of employment where the alien has not found  
7 at-will employment with a registered agricultural  
8 employer or employment pursuant to section 218A.

9 “(b) REGISTERED AGRICULTURAL EMPLOYERS.—  
10 The Secretary of Agriculture shall establish a process to  
11 accept and adjudicate applications by employers to be des-  
12 ignated as registered agricultural employers. The Sec-  
13 retary shall require, as a condition of approving the peti-  
14 tion, the payment of a fee to recover the reasonable cost  
15 of processing the application. The Secretary shall des-  
16 ignate an employer as a registered agricultural employer  
17 if the Secretary determines that the employer—

18 “(1) employs individuals who perform agricul-  
19 tural labor or services;

20 “(2) has not been subject to debarment from  
21 receiving future temporary agricultural labor certifi-  
22 cations pursuant to section 101(a)(15)(H)(ii)(a)  
23 within the last five years;

1           “(3) has not been subject to disqualification  
2           from the employment of H-2C workers within the  
3           last five years,

4           “(4) agrees to, if employing an H-2C worker  
5           pursuant to this section, abide by the terms of the  
6           attestations contained in section 218A(b) and the  
7           obligations contained in subsections (k) (excluding  
8           paragraph (3) of such subsection) and (q) of section  
9           218A as if it had submitted a petition making those  
10          attestations and accepting those obligations, and

11          “(5) agrees to notify the Secretary of Agri-  
12          culture and the Secretary of Homeland Security  
13          each time it employs an H-2C worker pursuant to  
14          this section within 24 hours of the commencement of  
15          employment and each time an H-2C worker ceases  
16          employment within 24 hours of the cessation of em-  
17          ployment.

18          “(c) LENGTH OF DESIGNATION.—An employer’s des-  
19          ignation as a registered agricultural employer shall be  
20          valid for 3 years, and the designation can be extended  
21          upon reapplication for additional 3-year terms. The Sec-  
22          retary shall revoke a designation before the expiration of  
23          its three year term if the employer is subject to disquali-  
24          fication from the employment of H-2C workers subse-

1   quent to being designated as a registered agricultural em-  
2   ployer.

3           “(d) ENFORCEMENT.—The Secretary of Agriculture  
4   shall be responsible for conducting investigations and ran-  
5   dom audits of employers to ensure compliance with the  
6   requirements of this section. All monetary fines levied  
7   against violating employers shall be paid to the Depart-  
8   ment of Agriculture and used to enhance the Department  
9   of Agriculture’s investigatory and audit power. The Sec-  
10   retary of Agriculture’s enforcement powers and an em-  
11   ployer’s liability described in subsections (i) through (j)  
12   of section 218A are applicable to employers employing H-  
13   2C workers pursuant to this section.

14           “(e) REMOVAL OF H-2C WORKER.—The Secretary  
15   of Homeland Security shall promptly remove from the  
16   United States any H-2C worker who is or had been em-  
17   ployed pursuant to this section on an at-will basis who  
18   is who violates any term or condition of the worker’s non-  
19   immigrant status.”.

20           “(e) PROHIBITION ON FAMILY MEMBERS.—Section  
21   101(a)(15)(H) of the Immigration and Nationality Act (8  
22   U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
23   the end and inserting “him, except that no spouse or child  
24   may be admitted under clause (ii)(c);”.

1 (d) NUMERICAL CAP.—Section 214(g)(1) of the Im-  
2 migration and Nationality Act (8 U.S.C. 1184(g)(1)) is  
3 amended—

4 (1) in subparagraph (A), by striking “or” at  
5 the end;

6 (2) in subparagraph (B), by striking the period  
7 at the end and inserting “; or”; and

8 (3) by adding at the end the following:

9 “(C) under section 101(a)(15)(H)(ii)(c)  
10 may not exceed 500,000, except that—

11 “(i) the Secretary of Agriculture may  
12 increase or decrease such number based  
13 on—

14 “(I) a shortage or surplus of  
15 workers performing agricultural labor  
16 or services;

17 “(II) growth or contraction in  
18 the United States agricultural indus-  
19 try that has increased or decreased  
20 the demand for workers to perform  
21 agricultural labor or services;

22 “(III) the level of unemployment  
23 and underemployment of United  
24 States workers (as defined in section

1 218A(a)(8)) in agricultural labor or  
2 services;

3 “(IV) the number of non-  
4 immigrant workers employers sought  
5 during the preceding fiscal year pur-  
6 suant to clause (a) or (c) of section  
7 101(a)(15)(H)(ii);

8 “(V) the number of H-2C work-  
9 ers (as defined in section 218A(a)(5))  
10 who in the preceding fiscal year had  
11 to depart from the United States or  
12 be subject to removal under section  
13 237(a)(1)(C)(i) because they could  
14 not find additional at-will employment  
15 within 30 days pursuant to section  
16 218B;

17 “(VI) the estimated number of  
18 United States workers (as defined in  
19 section 218A(a)(8)) who worked in  
20 agriculture during the preceding fiscal  
21 year pursuant to clause (a) or (c) of  
22 section 101(a)(15)(H)(ii); and

23 “(VII) the number of non-  
24 immigrant agricultural workers issued  
25 a visa or otherwise provided non-

1 immigrant status pursuant to clause  
2 (a) or (c) of section 101(a)(15)(H)(ii)  
3 during preceding fiscal years who re-  
4 main in the United States out of com-  
5 pliance with the terms of their status;

6 “(ii) during any fiscal year, the Sec-  
7 retary of Agriculture may increase such  
8 number on an emergency basis for severe  
9 shortages of agricultural labor or services;  
10 and

11 “(iii) this numerical limitation shall  
12 not apply to any alien who performed agri-  
13 cultural labor or services for not fewer  
14 than 575 hours or 100 days in which the  
15 alien was employed 5.75 or more hours  
16 performing agricultural labor or services  
17 pursuant to section 7 of the AG Act during  
18 the 2-year period beginning on the date of  
19 the enactment of such Act and ending on  
20 the date that is 2 years after such date.”.

21 (e) WAIVER OF BARS TO ADMISSIBILITY.—Section  
22 212(a)(9)(B)(v) of the Immigration and Nationality Act  
23 (8 U.S.C. 1182(a)(9)(B)(v)) is amended—

24 (1) by striking “The Attorney General” and in-  
25 serting the following:

1                   “(I) IN GENERAL.—The Sec-  
2                   retary of Homeland Security”.

3                   (2) by striking “Attorney General” each place  
4                   it appears and inserting “Secretary of Homeland Se-  
5                   curity”; and

6                   (3) by adding at the end the following:

7                                 “(II) H-2C WORKERS.—The Sec-  
8                   retary of Homeland Security shall  
9                   waive clause (i) solely if necessary to  
10                  allow an alien to come temporarily to  
11                  the United States to perform agricul-  
12                  tural labor or services as provided in  
13                  section 101(a)(15)(H)(ii)(c), except to  
14                  the extent that the alien’s unlawful  
15                  presence followed after the alien’s  
16                  having the status of a nonimmigrant  
17                  under such section.”.

18                  (f) PREVAILING WAGE.—Section 212(p) of the Immi-  
19                  gration and Nationality Act (8 U.S.C. 1182(p)) is amend-  
20                  ed—

21                                 (1) in paragraph (1), by adding “and section  
22                                 218A” after “of this section”; and

23                                 (2) in paragraph (3), by adding “and section  
24                                 218A” after “of this section”.

1 (g) CLERICAL AMENDMENT.—The table of contents  
2 for the Immigration and Nationality Act (8 U.S.C. 1101  
3 et seq.) is amended by inserting after the item relating  
4 to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.

“Sec. 218B. At-will employment of temporary H-2C workers.”.

5 **SEC. 4. MEDIATION.**

6 A nonimmigrant having status under section  
7 101(a)(15)(H)(ii)(c) of the Immigration and Nationality  
8 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring a civil  
9 action for damages against the nonimmigrant’s employer,  
10 nor may any other attorney or individual bring a civil ac-  
11 tion for damages on behalf of such a nonimmigrant  
12 against the nonimmigrant’s employer, unless at least 90  
13 days prior to bringing the action a request has been made  
14 to the Federal Mediation and Conciliation Service to assist  
15 the parties in reaching a satisfactory resolution of all  
16 issues involving all parties to the dispute and mediation  
17 has been attempted.

18 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**  
19 **PROTECTION.**

20 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-  
21 cultural Worker Protection Act (29 U.S.C.  
22 1802(8)(B)(ii)) is amended by striking “under sections  
23 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and  
24 Nationality Act.” and inserting “under subclauses (a) and

1 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the  
2 Immigration and Nationality Act.”.

3 **SEC. 6. BINDING ARBITRATION.**

4 (a) **APPLICABILITY.**—Any H–2C worker may, as a  
5 condition of employment with an employer, be subject to  
6 mandatory binding arbitration and mediation of any griev-  
7 ance relating to the employment relationship. An employer  
8 shall provide any such worker with notice of such condi-  
9 tion of employment at the time the job offer is made.

10 (b) **ALLOCATION OF COSTS.**—Any cost associated  
11 with such arbitration and mediation process shall be  
12 equally divided between the employer and the H–2C work-  
13 er, except that each party shall be responsible for the cost  
14 of its own counsel, if any.

15 (c) **DEFINITIONS.**—As used in this section:

16 (1) The term “condition of employment” means  
17 a term, condition, obligation, or requirement that is  
18 part of the job offer, such as the term of employ-  
19 ment, the job responsibilities, the employee conduct  
20 standards, and the grievance resolution process, and  
21 to which an applicant or prospective H–2C worker  
22 must consent or accept in order to be hired for the  
23 position.

24 (2) The term “H–2C worker” means a non-  
25 immigrant described in section 101(a)(15)(H)(ii)(c)

1 of the Immigration and Nationality Act (8 U.S.C.  
2 1101(a)(15)(ii)(c)).

3 **SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR**  
4 **SERVICES BY ALIENS WHO ARE UNLAWFULLY**  
5 **PRESENT.**

6 The Secretary of Homeland Security shall waive the  
7 grounds of inadmissibility contained in paragraphs (5),  
8 (6), (7), and (9)(B) of section 212(a), and the grounds  
9 of deportability contained in subparagraphs (A) through  
10 (D) of paragraph (1), and paragraph (3), of section  
11 237(a), of the Immigration and Nationality Act (8 U.S.C.  
12 1101 et seq.) in the case of an alien physically present  
13 in the United States as of April 25, 2013, solely as may  
14 be necessary in order to allow the alien to perform agricul-  
15 tural labor or services. Such alien shall not be considered  
16 an unauthorized alien for purposes of section 274A(h)(3)  
17 of the Immigration and Nationality Act (8 U.S.C.  
18 1324a(h)(3)) or to be unlawfully present as long as the  
19 alien performs such labor or services.

20 **SEC. 8. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND**  
21 **REFUNDABLE TAX CREDITS.**

22 (a) FEDERAL PUBLIC BENEFITS.—H-2C workers  
23 (as defined in section 218A(a)(5) of the Immigration and  
24 Nationality Act, as inserted by section 3(a) of this Act)

1 and aliens performing agricultural labor or services pursu-  
2 ant to section 7 of this Act—

3 (1) are not entitled to the premium assistance  
4 tax credit authorized under section 36B of the Inter-  
5 nal Revenue Code of 1986;

6 (2) shall be subject to the rules applicable to in-  
7 dividuals who are not lawfully present set forth in  
8 subsection (e) of such section; and

9 (3) shall be subject to the rules applicable to in-  
10 dividuals who are not lawfully present set forth in  
11 section 1402(e) of the Patient Protection and Af-  
12 fordable Care Act (42 U.S.C. 18071(e)).

13 (b) REFUNDABLE TAX CREDITS.—H-2C workers (as  
14 defined in section 218A(a)(5) of the Immigration and Na-  
15 tionality Act, as inserted by section 3(a) of this Act) and  
16 aliens performing agricultural labor or services pursuant  
17 to section 7 of this Act shall not be allowed any credit  
18 under section 24 or 32 of the Internal Revenue Code of  
19 1986. In the case of a joint return, no credit shall be al-  
20 lowed under either such section if both spouses are such  
21 a worker or alien.

22 **SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.**

23 (a) EFFECTIVE DATES.—

24 (1) IN GENERAL.—The amendments made by  
25 sections 2 and 4 through 6, and subsections (a) and

1 (c) through (f) of section 3, of this Act shall take  
2 effect on the date that is 2 years after the date of  
3 the enactment of this Act, and the Secretary of Ag-  
4 riculture shall accept petitions to import an alien  
5 under sections 101(a)(15)(H)(ii)(c) and 218A of the  
6 Immigration and Nationality Act, as inserted by this  
7 Act, beginning on such date.

8 (2) AT-WILL EMPLOYMENT.—The amendment  
9 made by section 3(b) of this Act shall take effect on  
10 the date that it becomes unlawful for any person or  
11 other entity to hire, or to recruit or refer for a fee,  
12 for employment in the United States an individual  
13 (as provided in section 274A(a)(1) of the Immigra-  
14 tion and Nationality Act) (8 U.S.C. 1324a(a)(1))  
15 without participating in the E-Verify Program de-  
16 scribed in section 403(a) of the Illegal Immigration  
17 Reform and Immigrant Responsibility Act of 1996  
18 (8 U.S.C. 1324a note) or an employment eligibility  
19 verification system patterned on such program’s  
20 verification system, and only if at that time the E-  
21 Verify Program (or another program patterned after  
22 the E-Verify Program) responds to inquiries made  
23 by such persons or entities by providing confirma-  
24 tion, tentative nonconfirmation, and final noncon-  
25 firmation of an individual’s identity and employment

1 eligibility in such a way that indicates whether the  
2 individual is eligible to be employed in all occupa-  
3 tions or only to perform agricultural labor or serv-  
4 ices pursuant to section 101(a)(15)(H)(ii)(c) of the  
5 Immigration and Nationality Act (as inserted by this  
6 Act), and if the latter, whether the nonimmigrant  
7 would be in compliance with their maximum contin-  
8 uous period of authorized status and requirement to  
9 remain outside the United States pursuant to sec-  
10 tions 218A and 218B of such Act (as so added) and  
11 on what date the alien would cease to be in compli-  
12 ance with their maximum continuous period of au-  
13 thorized status.

14 (3) AGRICULTURAL LABOR OR SERVICES BY  
15 ALIENS UNLAWFULLY PRESENT.—Section 7 of this  
16 Act shall take effect on the date of the enactment  
17 of this Act and shall cease to be in effect on the date  
18 that is 2 years after such date.

19 (b) OPERATION AND SUNSET OF THE H-2A PRO-  
20 GRAM.—

21 (1) APPLICATION OF EXISTING REGULA-  
22 TIONS.—The Department of Labor H-2A program  
23 regulations published at 73 Federal Register 77110  
24 et seq. (2008) shall be in force for all petitions ap-  
25 proved under sections 101(a)(15)(H)(ii)(c) and

1 218A of the Immigration and Nationality Act, as in-  
2 serted by this Act, beginning on the date of the en-  
3 actment of this Act.

4 (2) ADJUSTMENT OF STATUS.—Notwith-  
5 standing any other provision of law, an alien who is  
6 unlawfully present in the United States on the date  
7 of the enactment of this Act is eligible to adjust sta-  
8 tus to that of an alien described in section  
9 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning  
11 on the date of the enactment of this Act and ending  
12 on the date that is 2 years after the date of the en-  
13 actment of this Act.

14 (3) SUNSET.—Beginning on the date that is 2  
15 years after the date of the enactment of this Act, no  
16 new petition to import an alien under sections  
17 101(a)(15)(H)(ii)(a) and 218 of the Immigration  
18 and Nationality Act (8 U.S.C.  
19 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-  
20 cepted.

21 (c) REGULATIONS.—Not later than 18 months after  
22 the date of the enactment of this Act, the Secretary of  
23 Agriculture shall promulgate regulations, in accordance  
24 with the notice and comment provisions of section 553 of

- 1 title 5, United States Code, to implement the Secretary's
- 2 duties under this Act.

○