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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as—

(1) the “Agricultural Guestworker Act”; or

(2) the “AG Act”.

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SEC. 2. H–2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

(a) IN GENERAL.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking “; or (iii)” and inserting “, or (c) 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; or (iii)”.

(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities.”.
SEC. 3. ADMISSION OF TEMPORARY H–2C WORKERS.

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

“SEC. 218A. ADMISSION OF TEMPORARY H–2C WORKERS.

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

“(1) AREA OF EMPLOYMENT.—The term ‘area of employment’ means the area within normal commuting distance of the worksite or physical location where the work of the H–2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

“(2) DISPLACE.—The term ‘displace’ means to lay off a worker from a job that is essentially equivalent to the job for which an H–2C worker is sought. A job shall not be considered to be ‘essentially equivalent’ to another job unless the job—

“(A) involves essentially the same responsibilities as such other job;

“(B) was held by a United States worker with substantially equivalent qualifications and experience; and
“(C) is located in the same area of employ-
ment as the other job.

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

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

“(5) H–2C WORKER.—The term ‘H–2C worker’
means a nonimmigrant described in section

“(6) LAY OFF.—

“(A) IN GENERAL.—The term ‘lay off’—

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

“(ii) does not include any situation in
which the worker is offered, as an alter-
native to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (b)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

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

"(7) PREVAILING WAGE.—The term ‘prevailing wage’ means the wage rate paid to workers in the same occupation in the area of employment as computed pursuant to section 212(p).

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

"(A) a citizen or national of the United States; or

"(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under sec-
tion 208, or is an immigrant otherwise author-
ized, by this Act or by the Secretary of Home-
land Security, to be employed.

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

“(1) TEMPORARY WORK OR SERVICES.—

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

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

“(2) BENEFITS, WAGES, AND WORKING CONDI-
tions.—The employer will provide, at a minimum,
the benefits, wages, and working conditions required
by subsection (k) to all workers employed in the jobs
for which the H–2C worker is sought and to all
other temporary workers in the same occupation at
the place of employment.

“(3) Nondisplacement of United States
workers.—The employer did not displace and will
not displace a United States worker employed by the
employer during the period of employment of the H–
2C worker and during the 30-day period imme-
diately preceding such period of employment in the
occupation at the place of employment for which the
employer seeks approval to employ H–2C workers.

“(4) Recruitment.—

“(A) In general.—The employer—

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

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

“(B) Other requirements.—The re-
cruitment requirement under subparagraph (A)
is satisfied if the employer places a local job
order with the State workforce agency serving
the local area where the work will be performed,
except that nothing in this subparagraph shall
require the employer to file an interstate job
order under section 653 of title 20, Code of
Federal Regulations. The State workforce agen-
cy shall post the job order on its official agency
website for a minimum of 30 days and not later
than 3 days after receipt using the employment
statistics system authorized under section 15 of
the Wagner-Peyser Act (29 U.S.C. 49l–2). The
Secretary of Labor shall include links to the of-
ficial Web sites of all State workforce agencies
on a single webpage of the official Web site of
the Department of Labor.

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

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

“(A) applies;

“(B) is qualified for the job; and

“(C) will be available at the time and place
of need.
This requirement shall not apply to a United States worker who applies for the job on or after the first day that work begins for the H–2C worker.

“(6) PROVISION OF INSURANCE.—If the job for which the H–2C worker is sought is not covered by State workers’ compensation law, the employer will provide, at no cost to the worker unless State law provides otherwise, 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.

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

“(8) STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Agriculture, precludes the hiring of H–2C workers.

“(9) PREVIOUS VIOLATIONS.—The employer has not, during the previous two-year period, em-
ployed H–2C workers and knowingly violated a ma-
terial term or condition of approval with respect to
the employment of domestic or nonimmigrant work-
ers, as determined by the Secretary of Agriculture
after notice and opportunity for a hearing.

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

“(d) LIST.—

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

“(A) be sorted by employer; and

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

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

“(e) PETITIONING FOR ADMISSION.—

“(1) CONSIDERATION OF PETITIONS.—For peti-
tions filed and considered under subsection (b)—
“(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H–2C worker;

“(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

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

“(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

“(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.
“(2) Petition Agreements.—By filing an H–2C petition, a petitioner and each employer consents to allow access to the site where the labor is being performed to the Department of Agriculture and the Department of Homeland Security for the purpose of investigations to determine compliance with H–2C requirements and the immigration laws. Notwithstanding any other provision of law, the Departments of Agriculture and Homeland Security cannot delegate their compliance functions to other agencies or Departments.

“(f) Roles of Agricultural Associations.—

“(1) Permitting filing by agricultural associations.—A petition under subsection (b) to hire an alien as a temporary agricultural worker may be filed by an association of agricultural employers which use agricultural services.

“(2) Treatment of associations acting as employers.—If an association is a joint employer of temporary agricultural workers, such workers may be transferred among its members to perform agricultural services of a temporary nature for which the petition was approved.

“(3) Treatment of violations.—
“(A) INDIVIDUAL MEMBER.—If an individual member of a joint employer association violates any condition for approval with respect to the member’s petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only that member of the association unless the Secretary of Agriculture determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

“(B) ASSOCIATION OF AGRICULTURAL EMPLOYERS.—If an association representing agricultural employers as a joint employer violates any condition for approval with respect to the association’s petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(9) and invoke penalties pursuant to subsection (i) against only the association and not any individual member of the association, unless the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation.
“(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Agriculture shall promulgate regulations to provide for an expedited procedure—

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

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

“(h) MISCELLANEOUS PROVISIONS.—

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

“(2) FEES.—

“(A) IN GENERAL.—The Secretary of Agriculture shall require, as a condition of approving the petition, the payment of a fee, in accordance with subparagraph (B), to recover the reasonable cost of processing petitions filed by employers or associations of employers seeking H–2C workers for jobs of a temporary or seasonal nature, but may not require the payment of such fees to recover the costs of processing
petitions filed by employers or associations of
employers seeking H–2C workers for jobs not of
a temporary or seasonal nature.

“(B) Fee by type of employee.—

“(i) Single employer.—An em-
ployer whose petition for temporary alien
agricultural workers is approved shall, for
each approved petition, pay a fee that—

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

“(II) does not exceed $1,000.

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

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

“(II) does not exceed $1,000.

“(iii) Limitation on association
fees.—A joint employer association under
clause (ii) shall not be charged a separate
fee.
“(C) Method of Payment.—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H–2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H–2C workers under the petition may be paid by 1 check or money order.

“(i) Enforcement.—

“(1) Investigations and Audits.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of the H–2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture’s investigatory and auditing power.

“(2) Failure to Meet Conditions.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—
“(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

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

“(3) Penalties for Willful Failure.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b), or a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

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

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

“(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H–2C workers for a period of 5 years; and
“(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H–2C workers.

“(4) Penalties for displacement of United States workers.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment of the H–2C worker or during the 30-day period preceding such period of employment, the Secretary—

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

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

“(C) may, for a second violation, permanently disqualify the employer from the employment of H–2C workers.
“(j) Failure To Pay Wages or Required Benefits.—

“(1) Assessment.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to provide the benefits, wages, and working conditions attested by the employer under subsection (b), the Secretary shall assess payment of back wages, or such other required benefits, due any United States worker or H–2C worker employed by the employer in the specific employment in question.

“(2) Amount.—The back wages or other required benefits described in paragraph (1)—

“(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

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

“(k) Minimum Wages, Benefits, and Working Conditions.—

“(1) Preferential Treatment of Aliens Prohibited.—

“(A) In General.—Each employer seeking to hire United States workers shall offer
such workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2C workers. No job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer’s H–2C workers.

“(B) INTERPRETATION.—Every interpretation and determination made under this section or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made so that—

“(i) the services of workers to their employers and the employment opportunities afforded to workers by the employers, including those employment opportunities that require United States workers or H–2C workers to travel or relocate in order to accept or perform employment—

“(I) mutually benefit such workers, as well as their families, and employers; and
“(II) principally benefit neither
employer nor employee; and
“(ii) employment opportunities within
the United States benefit the United
States economy.
“(2) REQUIRED WAGES.—
“(A) IN GENERAL.—Each employer peti-
tioning for workers under subsection (b) shall
pay not less than the greater of—
“(i) the prevailing wage level for the
occupational classification in the area of
employment; or
“(ii) the applicable Federal, State, or
local minimum wage, whichever is greatest.
“(B) SPECIAL RULE.—An employer can
utilize a piece rate or other alternative wage
payment system as long as the employer guar-
antees each worker a wage rate that equals or
exceeds the amount required under subpara-
graph (A).
“(3) EMPLOYMENT GUARANTEE.—
“(A) IN GENERAL.—
“(i) REQUIREMENT.—Each employer
petitioning for workers under subsection
(b) shall guarantee to offer the worker em-
ployment for the hourly equivalent of not less than 50 percent of the work hours during the total anticipated period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

“(ii) Failure to meet guarantee.—If the employer affords the United States worker or the H–2C worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

“(iii) Period of employment.—For purposes of this subparagraph, the term ‘period of employment’ means the total number of anticipated work hours and workdays described in the job offer and shall exclude the worker’s Sabbath and Federal holidays.

“(B) Calculation of hours.—Any hours which the worker fails to work, up to a
maximum of the number of hours specified in
the job offer for a work day, when the worker
has been offered an opportunity to do so, and
all hours of work actually performed (including
voluntary work in excess of the number of
hours specified in the job offer in a work day,
on the worker’s Sabbath, or on Federal holi-
days) may be counted by the employer in calcu-
lating whether the period of guaranteed employ-
ment has been met.

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

“(D) TERMINATION OF EMPLOYMENT.—

“(i) IN GENERAL.—If, before the expi-
ration of the period of employment speci-
fied in the job offer, the services of the
worker are no longer required due to any
form of natural disaster, including flood,
hurricane, freeze, earthquake, fire,
drought, plant or animal disease, pest in-
festation, regulatory action, or any other
reason beyond the control of the employer
before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment.

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

“(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day after the arrival of the worker and ending on the date on which such employment is terminated;

“(II) make efforts to transfer the United States worker to other comparable employment acceptable to the worker; and

“(III) not later than 24 hours after termination, notify (or have an association acting as an agent for the employer notify) the Secretary of Homeland Security of such termination.

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

“(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

“(B) a period of not more than 14 days following the period of employment for the purpose of departure or a period of not more than 30 days following the period of employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment pursuant to section 218B during such time as that section is in effect). An H–2C worker who does not depart within these periods will be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section
212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent offer of employment where the alien has not found at-will employment with a registered agricultural employer pursuant to section 218B or employment pursuant to this section.

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

“(m) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—

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

“(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i); and
“(C) shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the date of the abandonment of employment.

“(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H–2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.

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

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien’s employment if the alien promptly departs the United States upon termination of such employment. An alien who voluntarily terminates the alien’s employment and who does not depart within 14 days shall be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section
237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the voluntary termination of employment.

“(n) REPLACEMENT OF ALIEN.—An employer may designate an eligible alien to replace an H–2C worker who abandons employment notwithstanding the numerical limitation found in section 214(g)(1)(C).

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

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

“(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

“(A) IN GENERAL.—An alien who is lawfully present in the United States on the date of the filing of a petition to extend the stay of the alien may commence or continue the em-
ployment described in a petition under para-
graph (1) until and unless the petition is de-
nied. The employer shall provide a copy of the
employer’s petition for extension of stay to the
alien. The alien shall keep the petition with the
alien’s identification and employment eligibility
document, as evidence that the petition has
been filed and that the alien is authorized to
work in the United States.

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

“(C) FILE DEFINED.—In this paragraph,
the term ‘file’ means sending the petition by
certified mail via the United States Postal Serv-
ice, return receipt requested, or delivering by
guaranteed commercial delivery which will pro-
vide the employer with a documented acknowledg-
ment of the date of receipt of the petition
for an extension of stay.
“(3) **Limitation on an Individual’s Stay in Status.**—

“(A) **Maximum Period.**—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 18 months for a worker employed in a job that is of a temporary or seasonal nature. For an H–2C worker employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months. There is no maximum continuous period of authorized status for a sheepherder.

“(B) **Requirement to Remain Outside the United States.**—In the case of an alien outside the United States who was employed in a job of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least 1⁄6 the duration of
the alien’s previous period of authorized status as an H–2C worker. For an alien outside the United States who was employed in a job not of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least the lesser of 1⁄6 the duration of the alien’s previous period of authorized status as an H–2C worker or 3 months. There is no requirement to remain outside the United States for sheepherders.

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

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

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the ‘Trust Fund’) for the purpose of providing a monetary incentive for H–2C
workers to return to their country of origin upon ex-
piration of their visas.

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

“(A) IN GENERAL.—Notwithstanding the
201 et seq.), all employers of H–2C workers
shall withhold from the wages of the workers an
amount equivalent to 10 percent of the wages
of each worker and pay such withheld amount
into the Trust Fund.

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

Amounts withheld under this paragraph shall be
maintained in such interest bearing account with
such a financial institution as the Secretary of Agri-
culture shall specify.
“(3) DISTRIBUTION OF FUNDS.—Amounts paid into the Trust Fund on behalf of an H–2C worker, and held pursuant to paragraph (2)(A) and interest earned thereon, shall be paid by the Secretary of State to the worker if—

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

“(B) in such application the worker establishes that the worker has complied with the terms and conditions of the H–2C program; and

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

“(4) ADMINISTRATIVE EXPENSES.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(B), and interest earned thereon, shall be paid to the Secretary of State, the Secretary of Agriculture, and the Secretary of Homeland Security in amounts equivalent to the expenses incurred by such officials in the administration of
the H–2C program not reimbursed pursuant to sub-
section (h)(2) or section 218B(b).

“(r) INVESTMENT OF TRUST FUND.—

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

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

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

The purposes for which obligations of the United
States may be issued under chapter 31 of title 31,
United States Code, are hereby extended to author-
ize the issuance at par of special obligations exclu-
sively to the Trust Fund. Such special obligations
shall bear interest at a rate equal to the average
rate of interest, computed as to the end of the cal-
endar month next preceding the date of such issue,
borne by all marketable interest-bearing obligations
of the United States then forming a part of the pub-
lic debt, except that where such average rate is not a multiple of \(\frac{1}{s}\) of 1 percent, the rate of interest of such special obligations shall be the multiple of \(\frac{1}{s}\) of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

“(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

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

“(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each
year on the financial condition and the results of the
operations of the Trust Fund during the preceding
fiscal year and on its expected condition and oper-
ations during the next fiscal year. Such report shall
be printed as both a House and a Senate document
of the session of the Congress to which the report
is made.”.

(b) At-Will Employment.—Chapter 2 of title II of
the Immigration and Nationality Act (8 U.S.C. 1181 et
seq.) is amended by inserting after section 218A (as in-
serted by subsection (a)) the following:

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

“(a) At-Will Employment.—

“(1) In General.—An H–2C worker may per-
form agricultural labor or services for any employer
that is designated as a ‘registered agricultural em-
ployer’ pursuant to subsection (b). However, an H–
2C worker may only perform labor or services pursu-
ant to this section if the worker is already lawfully
present in the United States as an H–2C worker,
having been admitted or otherwise provided non-
immigrant status pursuant to section 218A, and has
completed the period of employment specified in the
job offer the worker accepted pursuant to section
218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i).

An H–2C worker who abandons the employment which was the basis for admission or status pursuant to section 218A may not perform labor or services pursuant to this section until the worker has returned to their home country, been readmitted as an H–2C worker pursuant to section 218A and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i).

“(2) PERIOD OF STAY.—An H–2C worker performing such labor or services for a registered agricultural employer is subject to the period of admission, limitation of stay in status, and requirement to remain outside the United States contained in subsections (l) and (o)(3) of section 218A.

“(3) TERMINATION OF EMPLOYMENT.—At the conclusion of at-will employment with a registered agricultural employer or the conclusion of employment pursuant to section 218A qualifying an H–2C worker to perform at-will work pursuant to this section, an H–2C worker shall find at-will employment with a registered agricultural employer or employ-
ment pursuant to section 218A within 30 days or
will be considered to have failed to maintain non-
immigrant status as an H–2C worker and shall de-
part from the United States or be subject to removal
under section 237(a)(1)(C)(i). An H–2C worker who
does not so depart shall be considered to be inadmis-
sible pursuant to section 212(a)(9)(B)(i) for having
been unlawfully present, with the alien considered to
have been unlawfully present for 180 days as of the
31st day after conclusion of employment where the
alien has not found at-will employment with a reg-
istered agricultural employer or employment pursu-
ant to section 218A. However, an alien may volun-
tarily terminate the alien’s employment if the alien
promptly departs the United States upon termi-
nation of such employment. Either a registered agri-
cultural employer or an H–2C worker may volun-
tarily terminate the worker’s at-will employment at
any time. The H–2C worker then shall find addi-
tional at-will employment with a registered agricul-
tural employer or employment pursuant to section
218A within 30 days or will be considered to have
failed to maintain nonimmigrant status as an H–2C
worker and shall depart from the United States or
be subject to removal under section 237(a)(1)(C)(i).
An H–2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A.

“(b) Registered Agricultural Employers.—

The Secretary of Agriculture shall establish a process to accept and adjudicate applications by employers to be designated as registered agricultural employers. The Secretary shall require, as a condition of approving the petition, the payment of a fee to recover the reasonable cost of processing the application. The Secretary shall designate an employer as a registered agricultural employer if the Secretary determines that the employer—

“(1) employs individuals who perform agricultural labor or services;

“(2) has not been subject to debarment from receiving future temporary agricultural labor certifications pursuant to section 101(a)(15)(H)(ii)(a) within the last five years;
“(3) has not been subject to disqualification from the employment of H–2C workers within the last five years,

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

“(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs an H–2C worker pursuant to this section within 24 hours of the commencement of employment and each time an H–2C worker ceases employment within 24 hours of the cessation of employment.

“(c) LENGTH OF DESIGNATION.—An employer’s designation as a registered agricultural employer shall be valid for 3 years, and the designation can be extended upon reapplication for additional 3-year terms. The Secretary shall revoke a designation before the expiration of its three year term if the employer is subject to disqualification from the employment of H–2C workers subse-
quent to being designated as a registered agricultural em-
ployer.

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

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

(e) PROHIBITION ON FAMILY MEMBERS.—Section
101(a)(15)(H) of the Immigration and Nationality Act (8
U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
the end and inserting “him, except that no spouse or child
may be admitted under clause (ii)(c);”.
(d) NUMERICAL CAP.—Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended—

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

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

(3) by adding at the end the following:

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

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

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

“(II) growth or contraction in the United States agricultural industry that has increased or decreased the demand for workers to perform agricultural labor or services;

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

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

“(IV) the number of non-immigrant workers employers sought during the preceding fiscal year pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii); 

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

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

“(VII) the number of non-immigrant agricultural workers issued a visa or otherwise provided non-
immigrant status pursuant to clause (a) or (e) of section 101(a)(15)(H)(ii) during preceding fiscal years who remain in the United States out of compliance with the terms of their status;

“(ii) during any fiscal year, the Secretary of Agriculture may increase such number on an emergency basis for severe shortages of agricultural labor or services; and

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

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

(1) by striking “The Attorney General” and inserting the following:
“(I) IN GENERAL.—The Secretary of Homeland Security”.

(2) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and

(3) by adding at the end the following:

“(II) H–2C WORKERS.—The Secretary of Homeland Security shall waive clause (i) solely if necessary to allow an alien to come temporarily to the United States to perform agricultural labor or services as provided in section 101(a)(15)(H)(ii)(c), except to the extent that the alien’s unlawful presence followed after the alien’s having the status of a nonimmigrant under such section.”.

(f) PREVAILING WAGE.—Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended—

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

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

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

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

SEC. 4. MEDIATION.

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

SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION.

Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii)) is amended by striking “under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.” and inserting “under subclauses (a) and
SEC. 6. BINDING ARBITRATION.

(a) APPLICABILITY.—Any H–2C worker may, as a condition of employment with an employer, be subject to mandatory binding arbitration and mediation of any grievance relating to the employment relationship. An employer shall provide any such worker with notice of such condition of employment at the time the job offer is made.

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

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

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

(2) The term “H–2C worker” means a non-immigrant described in section 101(a)(15)(H)(ii)(c)
SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR SERVICES BY ALIENS WHO ARE UNLAWFULLY PRESENT.

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

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

(a) Federal Public Benefits.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act)
and aliens performing agricultural labor or services pursuant to section 7 of this Act—

(1) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986;

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

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

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

SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.

(a) Effective Dates.—

(1) In general.—The amendments made by sections 2 and 4 through 6, and subsections (a) and
(c) through (f) of section 3, of this Act shall take effect on the date that is 2 years after the date of the enactment of this Act, and the Secretary of Agriculture shall accept petitions to import an alien under sections 101(a)(15)(H)(ii)(c) and 218A of the Immigration and Nationality Act, as inserted by this Act, beginning on such date.

(2) AT-WILL EMPLOYMENT.—The amendment made by section 3(b) of this Act shall take effect on the date that it becomes unlawful for any person or other entity to hire, or to recruit or refer for a fee, for employment in the United States an individual (as provided in section 274A(a)(1) of the Immigration and Nationality Act) (8 U.S.C. 1324a(a)(1)) without participating in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) or an employment eligibility verification system patterned on such program’s verification system, and only if at that time the E-Verify Program (or another program patterned after the E-Verify Program) responds to inquiries made by such persons or entities by providing confirmation, tentative nonconfirmation, and final nonconfirmation of an individual’s identity and employment.
eligibility in such a way that indicates whether the
individual is eligible to be employed in all occupa-
tions or only to perform agricultural labor or serv-
ices pursuant to section 101(a)(15)(H)(ii)(e) of the
Immigration and Nationality Act (as inserted by this
Act), and if the latter, whether the nonimmigrant
would be in compliance with their maximum contin-
uous period of authorized status and requirement to
remain outside the United States pursuant to sec-
tions 218A and 218B of such Act (as so added) and
on what date the alien would cease to be in compli-
ance with their maximum continuous period of au-
thorized status.

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

(b) OPERATION AND SUNSET OF THE H–2A Pro-
gram.—

(1) APPLICATION OF EXISTING REGULA-
tIONS.—The Department of Labor H–2A program
regulations published at 73 Federal Register 77110
et seq. (2008) shall be in force for all petitions ap-
proved under sections 101(a)(15)(H)(ii)(e) and
218A of the Immigration and Nationality Act, as inserted by this Act, beginning on the date of the enactment of this Act.

(2) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on the date of the enactment of this Act is eligible to adjust status to that of an alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning on the date of the enactment of this Act and ending on the date that is 2 years after the date of the enactment of this Act.

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

(c) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of...
title 5, United States Code, to implement the Secretary’s duties under this Act.