

1 *subject to review under the National Environmental Policy*
2 *Act of 1969 (42 U.S.C. 4321 et seq.).*

3 **SEC. 2111. STATUTORY CONSTRUCTION.**

4 *Except as specifically provided, nothing in this sub-*
5 *title, or any amendment made by this subtitle, may be con-*
6 *strued to create any substantive or procedural right or ben-*
7 *efit that is legally enforceable by any party against the*
8 *United States or its agencies or officers or any other person.*

9 ***Subtitle B—Agricultural Worker***
10 ***Program***

11 **SEC. 2201. SHORT TITLE.**

12 *This subtitle may be cited as the “Agricultural Worker*
13 *Program Act of 2013”.*

14 **SEC. 2202. DEFINITIONS.**

15 *In this subtitle:*

16 (1) *BLUE CARD STATUS.*—*The term “blue card*
17 *status” means the status of an alien who has been*
18 *lawfully admitted into the United States for tem-*
19 *porary residence under section 2211.*

20 (2) *AGRICULTURAL EMPLOYMENT.*—*The term*
21 *“agricultural employment” has the meaning given*
22 *such term in section 3 of the Migrant and Seasonal*
23 *Agricultural Worker Protection Act (29 U.S.C. 1802),*
24 *without regard to whether the specific service or activ-*
25 *ity is temporary or seasonal.*

1 (3) *CHILD*.—The term “child” has the meaning
2 given the term in section 101(b)(1) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

4 (4) *EMPLOYER*.—The term “employer” means
5 any person or entity, including any farm labor con-
6 tractor and any agricultural association, that em-
7 ploys workers in agricultural employment.

8 (5) *QUALIFIED DESIGNATED ENTITY*.—The term
9 “qualified designated entity” means—

10 (A) a qualified farm labor organization or
11 an association of employers designated by the
12 Secretary; or

13 (B) any other entity that the Secretary des-
14 ignates as having substantial experience, dem-
15 onstrated competence, and a history of long-term
16 involvement in the preparation and submission
17 of application for adjustment of status under
18 title II of the Immigration and Nationality Act
19 (8 U.S.C. 1151 et seq.).

20 (6) *WORK DAY*.—The term “work day” means
21 any day in which the individual is employed 5.75 or
22 more hours in agricultural employment.

1 **CHAPTER 1—PROGRAM FOR EARNED STA-**
2 **TUS ADJUSTMENT OF AGRICULTURAL**
3 **WORKERS**

4 **Subchapter A—Blue Card Status**

5 **SEC. 2211. REQUIREMENTS FOR BLUE CARD STATUS.**

6 (a) *REQUIREMENTS FOR BLUE CARD STATUS.—Not-*
7 *withstanding any other provision of law, the Secretary,*
8 *after conducting the national security and law enforcement*
9 *clearances required under section 245B(c)(4), may grant*
10 *blue card status to an alien who—*

11 (1)(A) *performed agricultural employment in the*
12 *United States for not fewer than 575 hours or 100*
13 *work days during the 2-year period ending on Decem-*
14 *ber 31, 2012; or*

15 (B) *is the spouse or child of an alien described*
16 *in subparagraph (A) and was physically present in*
17 *the United States on or before December 31, 2012,*
18 *and has maintained continuous presence in the*
19 *United States from that date until the date on which*
20 *the alien is granted blue card status, with the excep-*
21 *tion of absences from the United States that are brief,*
22 *casual, and innocent, whether or not such absences*
23 *were authorized by the Secretary;*

24 (2) *submits a completed application before the*
25 *end of the period set forth in subsection (b)(2); and*

1 (3) is not ineligible under paragraph (3) or (4)
2 of section 245B(b) of the Immigration and Nation-
3 ality Act (other than a nonimmigrant alien admitted
4 to the United States for agricultural employment de-
5 scribed in section 101(a)(15)(H)(vi)(a) of such Act.

6 (b) APPLICATION.—

7 (1) IN GENERAL.—An alien who meets the eligi-
8 bility requirements set forth in subsection (a)(1), may
9 apply for blue card status and that alien's spouse or
10 child may apply for blue card status as a dependent,
11 by submitting a completed application form to the
12 Secretary during the application period set forth in
13 paragraph (2) in accordance with the final rule pro-
14 mulgated by the Secretary pursuant to subsection (e).

15 (2) SUBMISSION.—The Secretary shall provide
16 that the alien shall be able to submit an application
17 under paragraph (1)—

18 (A) if the applicant is represented by an at-
19 torney or a nonprofit religious, charitable, social
20 service, or similar organization recognized by the
21 Board of Immigration Appeals under section
22 292.2 of title 8, Code of Federal Regulations; or

23 (B) to a qualified entity if the applicant
24 consents to the forwarding of the application to
25 the Secretary.

1 (3) *APPLICATION PERIOD.*—

2 (A) *INITIAL PERIOD.*—*Except as provided*
3 *in subparagraph (B), the Secretary may only ac-*
4 *cept applications for blue card status for a 1-*
5 *year period from aliens in the United States be-*
6 *ginning on the date on which the final rule is*
7 *published in the Federal Register pursuant to*
8 *subsection (f), except that qualified non-*
9 *immigrants who have participated in the H-2A*
10 *Program may apply from outside of the United*
11 *States.*

12 (B) *EXTENSION.*—*If the Secretary deter-*
13 *mines, during the initial period described in*
14 *subparagraph (A), that additional time is re-*
15 *quired to process applications for blue card sta-*
16 *tus or for other good cause, the Secretary may*
17 *extend the period for accepting applications for*
18 *an additional 18 months.*

19 (4) *APPLICATION FORM.*—

20 (A) *REQUIRED INFORMATION.*—*The appli-*
21 *cation form referred to in paragraph (1) shall*
22 *collect such information as the Secretary deter-*
23 *mines necessary and appropriate.*

24 (B) *FAMILY APPLICATION.*—*The Secretary*
25 *shall establish a process through which an alien*

1 *may submit a single application under this sec-*
2 *tion on behalf of the alien, his or her spouse, and*
3 *his or her children, who are residing in the*
4 *United States.*

5 (C) *INTERVIEW.*—*The Secretary may inter-*
6 *view applicants for blue card status to determine*
7 *whether they meet the eligibility requirements set*
8 *forth in subsection (a)(1).*

9 (5) *ALIENS APPREHENDED BEFORE OR DURING*
10 *THE APPLICATION PERIOD.*—*If an alien, who is ap-*
11 *prehended during the period beginning on the date of*
12 *the enactment of this Act and ending on the applica-*
13 *tion period described in paragraph (3), appears*
14 *prima facie eligible for blue card status, the Sec-*
15 *retary—*

16 (A) *shall provide the alien with a reason-*
17 *able opportunity to file an application under*
18 *this section during such application period; and*

19 (B) *may not remove the individual until a*
20 *final administrative determination is made on*
21 *the application.*

22 (6) *SUSPENSION OF REMOVAL DURING APPLICA-*
23 *TION PERIOD.*—

24 (A) *PROTECTION FROM DETENTION OR RE-*
25 *MOVAL.*—*An alien granted blue card status may*

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1 *not be detained by the Secretary or removed from*
2 *the United States unless—*

3 *(i) such alien is, or has become, ineli-*
4 *gible for blue card status; or*

5 *(ii) the alien's blue card status has*
6 *been revoked.*

7 *(B) ALIENS IN REMOVAL PROCEEDINGS.—*
8 *Notwithstanding any other provision of the Im-*
9 *migration and Nationality Act (8 U.S.C. 1101 et*
10 *seq.)—*

11 *(i) if the Secretary determines that an*
12 *alien, during the period beginning on the*
13 *date of the enactment of this section and*
14 *ending on the last day of the application*
15 *period described in paragraph (2), is in re-*
16 *moval, deportation, or exclusion proceedings*
17 *before the Executive Office for Immigration*
18 *Review and is prima facie eligible for blue*
19 *card status under this section—*

20 *(I) the Secretary shall provide the*
21 *alien with the opportunity to file an*
22 *application for such status; and*

23 *(II) upon motion by the Secretary*
24 *and with the consent of the alien or*
25 *upon motion by the alien, the Execu-*

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1 *tive Office for Immigration Review*
2 *shall—*

3 *(aa) terminate such pro-*
4 *ceedings without prejudice to fu-*
5 *ture proceedings on any basis;*
6 *and*

7 *(bb) provide the alien a rea-*
8 *sonable opportunity to apply for*
9 *such status; and*

10 *(ii) if the Executive Office for Immi-*
11 *gration Review determines that an alien,*
12 *during the application period described in*
13 *paragraph (2), is in removal, deportation,*
14 *or exclusion proceedings before the Execu-*
15 *tive Office for Immigration Review and is*
16 *prima facie eligible for blue card status*
17 *under this section—*

18 *(I) the Executive Office of Immi-*
19 *gration Review shall notify the Sec-*
20 *retary of such determination; and*

21 *(II) if the Secretary does not dis-*
22 *pute the determination of prima facie*
23 *eligibility within 7 days after such no-*
24 *tification, the Executive Office for Im-*

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1 *migration Review, upon consent of the*
2 *alien, shall—*

3 *(aa) terminate such pro-*
4 *ceedings without prejudice to fu-*
5 *ture proceedings on any basis;*
6 *and*

7 *(bb) permit the alien a rea-*
8 *sonable opportunity to apply for*
9 *such status.*

10 *(C) TREATMENT OF CERTAIN ALIENS.—*

11 *(i) IN GENERAL.—If an alien who*
12 *meets the eligibility requirements set forth*
13 *in subsection (a) is present in the United*
14 *States and has been ordered excluded, de-*
15 *ported, or removed, or ordered to depart vol-*
16 *untarily from the United States under any*
17 *provision of this Act—*

18 *(I) notwithstanding such order or*
19 *section 241(a)(5) of the Immigration*
20 *and Nationality Act (8 U.S.C.*
21 *1231(a)(5)), the alien may apply for*
22 *blue card status under this section; and*

23 *(II) if the alien is granted such*
24 *status, the alien shall file a motion to*
25 *reopen the exclusion, deportation, re-*

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1 *moval, or voluntary departure order,*
2 *which motion shall be granted unless 1*
3 *or more of the grounds of ineligibility*
4 *is established by clear and convincing*
5 *evidence.*

6 *(ii) LIMITATIONS ON MOTIONS TO RE-*
7 *OPEN.—The limitations on motions to re-*
8 *open set forth in section 240(c)(7) of the*
9 *Immigration and Nationality Act (8 U.S.C.*
10 *1229a(c)(7)) shall not apply to motions*
11 *filed under clause (i)(II).*

12 *(D) PERIOD PENDING ADJUDICATION OF AP-*
13 *PLICATION.—*

14 *(i) IN GENERAL.—During the period*
15 *beginning on the date on which an alien*
16 *applies for blue card status under this sub-*
17 *section and the date on which the Secretary*
18 *makes a final decision regarding such ap-*
19 *plication, the alien—*

20 *(I) may receive advance parole to*
21 *reenter the United States if urgent hu-*
22 *manitarian circumstances compel such*
23 *travel;*

24 *(II) may not be detained by the*
25 *Secretary or removed from the United*

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1 *States unless the Secretary makes a*
2 *prima facie determination that such*
3 *alien is, or has become, ineligible for*
4 *blue card status;*

5 *(III) shall not be considered un-*
6 *lawfully present for purposes of section*
7 *212(a)(9)(B) of the Immigration and*
8 *Nationality Act (8 U.S.C.*
9 *1182(a)(9)(B)); and*

10 *(IV) shall not be considered an*
11 *unauthorized alien (as defined in sec-*
12 *tion 274A(h)(3) of the Immigration*
13 *and Nationality Act (8 U.S.C.*
14 *1324a(h)(3))).*

15 *(ii) EVIDENCE OF APPLICATION FIL-*
16 *ING.—As soon as practicable after receiving*
17 *each application for blue card status, the*
18 *Secretary shall provide the applicant with a*
19 *document acknowledging the receipt of such*
20 *application.*

21 *(iii) CONTINUING EMPLOYMENT.—An*
22 *employer who knows an alien employee is*
23 *an applicant for blue card status or will*
24 *apply for such status once the application*
25 *period commences is not in violation of sec-*

tion 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)) if the employer continues to employ the alien pending the adjudication of the alien employee's application.

(iv) *EFFECT OF DEPARTURE.*—Section 101(g) of the Immigration and Nationality Act (8 U.S.C. 1101(g)) shall not apply to an alien granted—

(I) advance parole under clause

(i)(I) to reenter the United States; or

(II) blue card status.

(7) *SECURITY AND LAW ENFORCEMENT CLEARANCES.*—

(A) *BIOMETRIC AND BIOGRAPHIC DATA.*—

The Secretary may not grant blue card status to an alien or an alien dependent spouse or child under this section unless such alien submits biometric and biographic data in accordance with procedures established by the Secretary.

(B) *ALTERNATIVE PROCEDURES.*—The Secretary shall provide an alternative procedure for applicants who cannot provide the standard biometric data required under subparagraph (A) because of a physical impairment.

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1 (C) *CLEARANCES.*—

2 (i) *DATA COLLECTION.*—*The Secretary*
3 *shall collect, from each alien applying for*
4 *status under this section, biometric, bio-*
5 *graphic, and other data that the Secretary*
6 *determines to be appropriate—*

7 (I) *to conduct national security*
8 *and law enforcement clearances; and*

9 (II) *to determine whether there*
10 *are any national security or law en-*
11 *forcement factors that would render an*
12 *alien ineligible for such status.*

13 (ii) *PREREQUISITE.*—*The required*
14 *clearances described in clause (i)(I) shall be*
15 *completed before the alien may be granted*
16 *blue card status.*

17 (8) *DURATION OF STATUS.*—*After the date that*
18 *is 8 years after the date regulations are published*
19 *under this section, no alien may remain in blue card*
20 *status.*

21 (9) *FEES AND PENALTIES.*—

22 (A) *STANDARD PROCESSING FEE.*—

23 (i) *IN GENERAL.*—*Aliens who are 16*
24 *years of age or older and are applying for*
25 *blue card status under paragraph (2), or for*

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1 *an extension of such status, shall pay a*
2 *processing fee to the Department in an*
3 *amount determined by the Secretary.*

4 (ii) *RECOVERY OF COSTS.—The proc-*
5 *essing fee authorized under clause (i) shall*
6 *be set at a level that is sufficient to recover*
7 *the full costs of processing the application,*
8 *including any costs incurred—*

9 *(I) to adjudicate the application;*

10 *(II) to take and process bio-*
11 *metrics;*

12 *(III) to perform national security*
13 *and criminal checks, including adju-*
14 *dication;*

15 *(IV) to prevent and investigate*
16 *fraud; and*

17 *(V) to administer the collection of*
18 *such fee.*

19 (iii) *AUTHORITY TO LIMIT FEES.—The*
20 *Secretary, by regulation, may—*

21 *(I) limit the maximum processing*
22 *fee payable under this subparagraph*
23 *by a family, including spouses and un-*
24 *married children younger than 21*
25 *years of age; and*

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1 (II) *exempt defined classes of in-*
2 *dividuals from the payment of the fee*
3 *authorized under clause (i).*

4 (B) *DEPOSIT AND USE OF PROCESSING*
5 *FEES.—Fees collected pursuant to subparagraph*
6 *(A)(i)—*

7 *(i) shall be deposited into the Immi-*
8 *gration Examinations Fee Account pursu-*
9 *ant to section 286(m); and*

10 *(ii) shall remain available until ex-*
11 *pendent pursuant to section 286(n).*

12 (C) *PENALTY.—*

13 (i) *PAYMENT.—In addition to the*
14 *processing fee required under subparagraph*
15 *(A), aliens who are 21 years of age or older*
16 *and are applying for blue card status under*
17 *paragraph (2) shall pay a \$100 penalty to*
18 *the Department.*

19 (ii) *DEPOSIT.—Penalties collected pur-*
20 *suant to clause (i) shall be deposited into*
21 *the Comprehensive Immigration Reform*
22 *Trust Fund established under section*
23 *6(a)(1).*

24 (10) *ADJUDICATION.—*

1 (A) *FAILURE TO SUBMIT SUFFICIENT EVIDENCE.*—*The Secretary shall deny an application submitted by an alien who fails to submit—*

2 (i) *requested initial evidence, including*
3 *requested biometric data; or*

4 (ii) *any requested additional evidence*
5 *by the date required by the Secretary.*

6 (B) *AMENDED APPLICATION.*—*An alien*
7 *whose application for blue card status is denied*
8 *under subparagraph (A) may file an amended*
9 *application for such status to the Secretary if the*
10 *amended application—*

11 (i) *is filed within the application pe-*
12 *riod described in paragraph (3); and*

13 (ii) *contains all the required informa-*
14 *tion and fees that were missing from the*
15 *initial application.*

16 (11) *EVIDENCE OF BLUE CARD STATUS.*—

17 (A) *IN GENERAL.*—*The Secretary shall issue*
18 *documentary evidence of blue card status to each*
19 *alien whose application for such status has been*
20 *approved.*

21 (B) *DOCUMENTATION FEATURES.*—*Docu-*
22 *mentary evidence provided under subparagraph*
23 (A)—
24
25

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1 (i) shall be machine-readable and tam-
2 per-resistant, and shall contain a digitized
3 photograph;

4 (ii) shall, during the alien's authorized
5 period of admission, and any extension of
6 such authorized admission, serve as a valid
7 travel and entry document for the purpose
8 of applying for admission to the United
9 States;

10 (iii) may be accepted during the period
11 of its validity by an employer as evidence
12 of employment authorization and identity
13 under section 274A(b)(1)(B) of the Immi-
14 gration and Nationality Act (8 U.S.C.
15 1324a(b)(1)(B)); and

16 (iv) shall include such other features
17 and information as the Secretary may pre-
18 scribe.

19 (c) *TERMS AND CONDITIONS OF BLUE CARD STA-*
20 *TUS.—*

21 (1) *CONDITIONS OF BLUE CARD STATUS.—*

22 (A) *EMPLOYMENT.—Notwithstanding any*
23 *other provision of law, including section*
24 *241(a)(7) of the Immigration and Nationality*
25 *Act (8 U.S.C. 1231(a)(7)), an alien with blue*

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1 *card status shall be authorized to be employed in*
2 *the United States while in such status.*

3 (B) TRAVEL OUTSIDE THE UNITED
4 *STATES.—An alien with blue card status may*
5 *travel outside of the United States and may be*
6 *admitted, if otherwise admissible, upon return-*
7 *ing to the United States without having to ob-*
8 *tain a visa if—*

9 (i) *the alien is in possession of—*

10 (I) *valid, unexpired documentary*
11 *evidence of blue card status that com-*
12 *plies with subsection (b)(11); or*

13 (II) *a travel document that has*
14 *been approved by the Secretary and*
15 *was issued to the alien after the alien's*
16 *original documentary evidence was*
17 *lost, stolen, or destroyed;*

18 (ii) *the alien's absence from the United*
19 *States did not exceed 180 days, unless the*
20 *alien's failure to timely return was due to*
21 *extenuating circumstances beyond the*
22 *alien's control; and*

23 (iii) *the alien establishes that the alien*
24 *is not inadmissible under subparagraph*
25 *(A)(i), (A)(iii), (B), or (C) of section*

1 212(a)(3) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1182(a)(3)).

3 (C) *ADMISSION.*—An alien granted blue
4 card status shall be considered to have been ad-
5 mitted in such status as of the date on which the
6 alien's application was filed.

7 (D) *CLARIFICATION OF STATUS.*—An alien
8 granted blue card status—

9 (i) is lawfully admitted to the United
10 States; and

11 (ii) may not be classified as a non-
12 immigrant or as an alien who has been
13 lawfully admitted for permanent residence.

14 (2) *REVOCATION.*—

15 (A) *IN GENERAL.*—The Secretary may re-
16 voke blue card status at any time after providing
17 appropriate notice to the alien, and after the ex-
18 haustion or waiver of all applicable administra-
19 tive review procedures under section 245E(c) of
20 the Immigration and Nationality Act, as added
21 by section 2104(a) of this Act, if the alien—

22 (i) no longer meets the eligibility re-
23 quirements for blue card status;

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1 (ii) knowingly used documentation
2 issued under this section for an unlawful or
3 fraudulent purpose; or

4 (iii) was absent from the United States
5 for—

6 (I) any single period longer than
7 180 days in violation of the require-
8 ment under paragraph (1)(B)(ii); or

9 (II) for more than 180 days in the
10 aggregate during any calendar year,
11 unless the alien's failure to timely re-
12 turn was due to extenuating cir-
13 cumstances beyond the alien's control.

14 (B) ADDITIONAL EVIDENCE.—

15 (i) IN GENERAL.—In determining
16 whether to revoke an alien's status under
17 subparagraph (A), the Secretary may re-
18 quire the alien—

19 (I) to submit additional evidence;
20 or

21 (II) to appear for an interview.

22 (ii) EFFECT OF NONCOMPLIANCE.—The
23 status of an alien who fails to comply with
24 any requirement imposed by the Secretary
25 under clause (i) shall be revoked unless the

1 *alien demonstrates to the Secretary's satis-*
2 *faction that such failure was reasonably ex-*
3 *cusable.*

4 (C) *INVALIDATION OF DOCUMENTATION.—If*
5 *an alien's blue card status is revoked under sub-*
6 *paragraph (A), any documentation issued by the*
7 *Secretary to such alien under subsection (b)(11)*
8 *shall automatically be rendered invalid for any*
9 *purpose except for departure from the United*
10 *States.*

11 (3) *INELIGIBILITY FOR PUBLIC BENEFITS.—An*
12 *alien who has been granted blue card status is not eli-*
13 *gible for any Federal means-tested public benefit (as*
14 *such term is defined and implemented in section 403*
15 *of the Personal Responsibility and Work Opportunity*
16 *Reconciliation Act of 1996 (8 U.S.C. 1613)).*

17 (4) *TREATMENT OF BLUE CARD STATUS.—A*
18 *noncitizen granted blue card status shall be consid-*
19 *ered lawfully present in the United States for all pur-*
20 *poses while such noncitizen remains in such status,*
21 *except that the noncitizen—*

22 (A) *is not entitled to the premium assist-*
23 *ance tax credit authorized under section 36B of*
24 *the Internal Revenue Code of 1986 for his or her*
25 *coverage;*

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

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

9 (D) shall be subject to the rules applicable
10 to individuals not lawfully present set forth in
11 section 5000A(d)(3) of the Internal Revenue Code
12 of 1986.

13 (5) *ADJUSTMENT TO REGISTERED PROVISIONAL*
14 *IMMIGRANT STATUS.*—The Secretary may adjust the
15 status of an alien who has been granted blue card sta-
16 tus to the status of a registered provisional immi-
17 grant under section 245B of the Immigration and
18 Nationality Act if the Secretary determines that the
19 alien is unable to fulfill the agricultural service re-
20 quirement set forth in section 245F(a)(1) of such Act.
21 (d) *RECORD OF EMPLOYMENT.*—

22 (1) *IN GENERAL.*—Each employer of an alien
23 granted blue card status shall annually provide—

24 (A) a written record of employment to the
25 alien; and

1 (B) a copy of such record to the Secretary
2 of Agriculture.

3 (2) *CIVIL PENALTIES.*—

4 (A) *IN GENERAL.*—If the Secretary finds,
5 after notice and an opportunity for a hearing,
6 that an employer of an alien granted blue card
7 status has knowingly failed to provide the record
8 of employment required under paragraph (1) or
9 has provided a false statement of material fact in
10 such a record, the employer shall be subject to a
11 civil penalty in an amount not to exceed \$500
12 per violation.

13 (B) *LIMITATION.*—The penalty under sub-
14 paragraph (A) for failure to provide employment
15 records shall not apply unless the alien has pro-
16 vided the employer with evidence of employment
17 authorization provided under subsection (c).

18 (C) *DEPOSIT OF CIVIL PENALTIES.*—Civil
19 penalties collected under this paragraph shall be
20 deposited in the Comprehensive Immigration Re-
21 form Trust Fund established under section
22 6(a)(1).

23 (3) *TERMINATION OF OBLIGATION.*—The obliga-
24 tion under paragraph (1) shall terminate on the date

1 *that is 8 years after the date of the enactment of this*
2 *Act.*

3 (4) *EMPLOYER PROTECTIONS.*—

4 (A) *USE OF EMPLOYMENT RECORDS.*—Cop-
5 *ies of employment records or other evidence of*
6 *employment provided by an alien or by an*
7 *alien's employer in support of an alien's appli-*
8 *cation for blue card status may not be used in*
9 *a civil or criminal prosecution or investigation*
10 *of that employer under section 274A of the Im-*
11 *migration and Nationality Act (8 U.S.C. 1324a)*
12 *or the Internal Revenue Code of 1986 for the*
13 *prior unlawful employment of that alien regard-*
14 *less of the adjudication of such application or re-*
15 *consideration by the Secretary of such alien's*
16 *prima facie eligibility determination. Employers*
17 *that provide unauthorized aliens with copies of*
18 *employment records or other evidence of employ-*
19 *ment pursuant to an application for blue card*
20 *status shall not be subject to civil and criminal*
21 *liability pursuant to such section 274A for em-*
22 *ploying such unauthorized aliens.*

23 (B) *LIMIT ON APPLICABILITY.*—The protec-
24 *tions for employers and aliens under subpara-*
25 *graph (A) shall not apply if the aliens or em-*

1 *employers submit employment records that are*
2 *deemed to be fraudulent.*

3 *(e) RULEMAKING.—Not later than 1 year after the date*
4 *of the enactment of this Act, the Secretary, in consultation*
5 *with the Secretary of Agriculture, shall issue final regula-*
6 *tions to implement this chapter.*

7 **SEC. 2212. ADJUSTMENT TO PERMANENT RESIDENT STA-**
8 **TUS.**

9 *(a) IN GENERAL.—Chapter 5 of title II (8 U.S.C. 1255*
10 *et seq.) is amended by inserting after section 245E, as*
11 *added by section 2104 of this Act, the following:*

12 **“SEC. 245F. ADJUSTMENT TO PERMANENT RESIDENT STA-**
13 **TUS FOR AGRICULTURAL WORKERS.**

14 *“(a) IN GENERAL.—Except as provided in subsection*
15 *(b), and not earlier than 5 years after the date of the enact-*
16 *ment of the Border Security, Economic Opportunity, and*
17 *Immigration Modernization Act, the Secretary shall adjust*
18 *the status of an alien granted blue card status to that of*
19 *an alien lawfully admitted for permanent residence if the*
20 *Secretary determines that the following requirements are*
21 *satisfied:*

22 *“(1) QUALIFYING EMPLOYMENT.—Except as pro-*
23 *vided in paragraph (3), the alien—*

24 *“(A) during the 8-year period beginning on*
25 *the date of the enactment of the Border Security,*

1 *Economic Opportunity, and Immigration Mod-*
2 *ernization Act, performed not less than 100 work*
3 *days of agricultural employment during each of*
4 *5 years; or*

5 “(B) *during the 5-year period beginning on*
6 *such date of enactment, performed not less than*
7 *150 work days of agricultural employment dur-*
8 *ing each of 3 years.*

9 “(2) *EVIDENCE.—An alien may demonstrate*
10 *compliance with the requirement under paragraph (1)*
11 *by submitting—*

12 “(A) *the record of employment described in*
13 *section 2211(d) of the Border Security, Economic*
14 *Opportunity, and Immigration Modernization*
15 *Act;*

16 “(B) *documentation that may be submitted*
17 *under subsection (e)(4); or*

18 “(C) *any other documentation designated*
19 *by the Secretary for such purpose.*

20 “(3) *EXTRAORDINARY CIRCUMSTANCES.—*

21 “(A) *IN GENERAL.—In determining whether*
22 *an alien has met the requirement under para-*
23 *graph (1), the Secretary may credit the alien*
24 *with not more than 12 additional months of ag-*
25 *ricultural employment in the United States to*

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1 *meet such requirement if the alien was unable to*
2 *work in agricultural employment due to—*

3 *“(i) pregnancy, disabling injury, or*
4 *disease that the alien can establish through*
5 *medical records;*

6 *“(ii) illness, disease, or other special*
7 *needs of a child that the alien can establish*
8 *through medical records;*

9 *“(iii) severe weather conditions that*
10 *prevented the alien from engaging in agri-*
11 *cultural employment for a significant pe-*
12 *riod of time; or*

13 *“(iv) termination from agricultural*
14 *employment, if the Secretary determines*
15 *that—*

16 *“(I) the termination was without*
17 *just cause; and*

18 *“(II) the alien was unable to find*
19 *alternative agricultural employment*
20 *after a reasonable job search.*

21 *“(B) EFFECT OF DETERMINATION.—A de-*
22 *termination under subparagraph (A)(iv), with*
23 *respect to an alien, shall not be conclusive, bind-*
24 *ing, or admissible in a separate or subsequent*
25 *judicial or administrative action or proceeding*

1 *between the alien and a current or prior em-*
2 *ployer of the alien or any other party.*

3 “(4) *APPLICATION PERIOD.*—*The alien applies*
4 *for adjustment of status before the alien’s blue card*
5 *status expires.*

6 “(5) *FINE.*—*The alien pays a fine of \$400 to the*
7 *Secretary, which shall be deposited into the Com-*
8 *prehensive Immigration Reform Trust Fund estab-*
9 *lished under section 6(a)(1) of the Border Security,*
10 *Economic Opportunity, and Immigration Moderniza-*
11 *tion Act.*

12 “(b) *GROUND FOR DENIAL OF ADJUSTMENT OF STA-*
13 *TUS.*—

14 “(1) *IN GENERAL.*—*The Secretary may not ad-*
15 *just the status of an alien granted blue card status if*
16 *the alien—*

17 “(A) *is no longer eligible for blue card sta-*
18 *tus; or*

19 “(B) *failed to perform the qualifying em-*
20 *ployment requirement under subsection (a)(1),*
21 *considering any amount credited by the Sec-*
22 *retary under subsection (a)(3).*

23 “(2) *MAINTENANCE OF WAIVERS OF INADMIS-*
24 *SIBILITY.*—*The grounds of inadmissibility set forth in*
25 *section 212(a) that were previously waived for the*

1 *alien or made inapplicable shall not apply for pur-*
2 *poses of the alien's adjustment of status under this*
3 *section.*

4 *“(3) PENDING REVOCATION PROCEEDINGS.—If*
5 *the Secretary has notified the applicant that the Sec-*
6 *retary intends to revoke the applicant's blue card sta-*
7 *tus, the Secretary may not approve an application*
8 *for adjustment of status under this section unless the*
9 *Secretary makes a final determination not to revoke*
10 *the applicant's status.*

11 *“(4) PAYMENT OF TAXES.—*

12 *“(A) IN GENERAL.—An applicant may not*
13 *file an application for adjustment of status*
14 *under this section unless the applicant has satis-*
15 *fied any applicable Federal tax liability.*

16 *“(B) DEFINITION OF APPLICABLE FEDERAL*
17 *TAX LIABILITY.—In this paragraph, the term*
18 *‘applicable federal tax liability’ means all Fed-*
19 *eral income taxes assessed in accordance with*
20 *section 6203 of the Internal Revenue Code of*
21 *1986 since the date on which the applicant was*
22 *authorized to work in the United States in blue*
23 *card status.*

24 *“(C) COMPLIANCE.—The applicant may*
25 *demonstrate compliance with subparagraph (A)*

1 *by submitting such documentation as the Sec-*
2 *retary, in consultation with the Secretary of the*
3 *Treasury, may require by regulation.*

4 “(c) *SPOUSES AND CHILDREN.*—*Notwithstanding any*
5 *other provision of law, the Secretary shall grant permanent*
6 *resident status to the spouse or child of an alien whose sta-*
7 *tus was adjusted under subsection (a) if—*

8 “(1) *the spouse or child (including any indi-*
9 *vidual who was a child on the date such alien was*
10 *granted blue card status) applies for such status;*

11 “(2) *the principal alien includes the spouse and*
12 *children in an application for adjustment of status to*
13 *that of a lawful permanent resident; and*

14 “(3) *the spouse or child is not ineligible for such*
15 *status under section 245B.*

16 “(d) *NUMERICAL LIMITATIONS DO NOT APPLY.*—*The*
17 *numerical limitations under sections 201 and 202 shall not*
18 *apply to the adjustment of aliens to lawful permanent resi-*
19 *dent status under this section.*

20 “(e) *SUBMISSION OF APPLICATIONS.*—

21 “(1) *INTERVIEW.*—*The Secretary may interview*
22 *applicants for adjustment of status under this section*
23 *to determine whether they meet the eligibility require-*
24 *ments set forth in this section.*

25 “(2) *FEEES.*—

1 “(A) *IN GENERAL.*—Applicants for adjust-
2 ment of status under this section shall pay a
3 processing fee to the Secretary in an amount
4 that will ensure the recovery of the full costs of
5 adjudicating such applications, including—

6 “(i) the cost of taking and processing
7 biometrics;

8 “(ii) expenses relating to prevention
9 and investigation of fraud; and

10 “(iii) costs relating to the administra-
11 tion of the fees collected.

12 “(B) *AUTHORITY TO LIMIT FEES.*—The Sec-
13 retary, by regulation—

14 “(i) may limit the maximum proc-
15 essing fee payable under this paragraph by
16 a family, including spouses and unmarried
17 children younger than 21 years of age; and

18 “(ii) may exempt individuals described
19 in section 245B(c)(10) and other defined
20 classes of individuals from the payment of
21 the fee under subparagraph (A).

22 “(3) *DISPOSITION OF FEES.*—All fees collected
23 under paragraph (2)(A)—

1 “(A) shall be deposited into the Immigra-
2 tion Examinations Fee Account pursuant to sec-
3 tion 286(m); and

4 “(B) shall remain available until expended
5 pursuant to section 286(n).

6 “(4) DOCUMENTATION OF WORK HISTORY.—

7 “(A) BURDEN OF PROOF.—An alien apply-
8 ing for blue card status under section 2211 of the
9 Border Security, Economic Opportunity, and
10 Immigration Modernization Act or for adjust-
11 ment of status under subsection (a) shall provide
12 evidence that the alien has worked the requisite
13 number of hours or days required under sub-
14 section (a)(1) of such section 2211 or subsection
15 (a)(3) of this section, as applicable.

16 “(B) TIMELY PRODUCTION OF RECORDS.—If
17 an employer or farm labor contractor employing
18 such an alien has kept proper and adequate
19 records respecting such employment, the alien’s
20 burden of proof under subparagraph (A) may be
21 met by securing timely production of those
22 records under regulations to be promulgated by
23 the Secretary.

24 “(C) SUFFICIENT EVIDENCE.—An alien
25 may meet the burden of proof under subpara-

1 *graph (A) to establish that the alien has per-*
2 *formed the days or hours of work referred to in*
3 *subparagraph (A) by producing sufficient evi-*
4 *dence to show the extent of that employment as*
5 *a matter of just and reasonable inference.*

6 “(f) *PENALTIES FOR FALSE STATEMENTS IN APPLICA-*
7 *TIONS.—*

8 “(1) *CRIMINAL PENALTY.—Any person who—*

9 “(A) *files an application for blue card sta-*
10 *tus under section 2211 of the Border Security,*
11 *Economic Opportunity, and Immigration Mod-*
12 *ernization Act or an adjustment of status under*
13 *this section and knowingly and willfully falsifies,*
14 *conceals, or covers up a material fact or makes*
15 *any false, fictitious, or fraudulent statements or*
16 *representations, or makes or uses any false writ-*
17 *ing or document knowing the same to contain*
18 *any false, fictitious, or fraudulent statement or*
19 *entry; or*

20 “(B) *creates or supplies a false writing or*
21 *document for use in making such an application,*
22 *shall be fined in accordance with title 18, United*
23 *States Code, imprisoned not more than 5 years, or*
24 *both.*

1 “(2) *INADMISSIBILITY.*—An alien who is con-
2 victed of a crime under paragraph (1) shall be
3 deemed inadmissible to the United States on the
4 ground described in section 212(a)(6)(C)(i).

5 “(3) *DEPOSIT.*—Fines collected under paragraph
6 (1) shall be deposited into the Comprehensive Immi-
7 gration Reform Trust Fund established under section
8 6(a)(1) of the Border Security, Economic Oppor-
9 tunity, and Immigration Modernization Act.

10 “(g) *ELIGIBILITY FOR LEGAL SERVICES.*—Section
11 504(a)(11) of the Departments of Commerce, Justice, and
12 State, the Judiciary, and Related Agencies Appropriations
13 Act, 1996 (Public Law 104–134; 110 Stat. 1321–55) may
14 not be construed to prevent a recipient of funds under the
15 Legal Services Corporation Act (42 U.S.C. 2996 et seq.)
16 from providing legal assistance directly related to an appli-
17 cation for blue card status under section 2211 of the Border
18 Security, Economic Opportunity, and Immigration Mod-
19 ernization Act, to an individual who has been granted blue
20 card status, or for an application for an adjustment of sta-
21 tus under this section.

22 “(h) *ADMINISTRATIVE AND JUDICIAL REVIEW.*—Aliens
23 applying for blue card status under section 2211 of the Bor-
24 der Security, Economic Opportunity, and Immigration
25 Modernization Act or adjustment to permanent resident

1 *status under this section shall be entitled to the rights and*
2 *subject to the conditions applicable to other classes of aliens*
3 *under sections 242(h) and 245E.*

4 “(i) *APPLICABILITY OF OTHER PROVISIONS.—The*
5 *provisions set forth in section 245E which are applicable*
6 *to aliens described in section 245B, 245C, and 245D shall*
7 *apply to aliens applying for blue card status under section*
8 *2211 of the Border Security, Economic Opportunity, and*
9 *Immigration Modernization Act or adjustment to perma-*
10 *nent resident status under this section.*

11 “(j) *LIMITATION ON BLUE CARD STATUS.—An alien*
12 *granted blue card status under section 2211 of the Border*
13 *Security, Economic Opportunity, and Immigration Mod-*
14 *ernization Act may only adjust status to an alien lawfully*
15 *admitted for permanent residence under this section, section*
16 *245C of this Act, or section 2302 of the Border Security,*
17 *Economic Opportunity, and Immigration Modernization*
18 *Act.*

19 “(k) *DEFINITIONS.—In this section:*

20 “(1) *BLUE CARD STATUS.—The term ‘blue card*
21 *status’ means the status of an alien who has been*
22 *lawfully admitted into the United States for tem-*
23 *porary residence under section 2211 of the Border Se-*
24 *curity, Economic Opportunity, and Immigration*
25 *Modernization Act.*

1 “(2) *AGRICULTURAL EMPLOYMENT.*—The term
2 ‘agricultural employment’ has the meaning given such
3 term in section 3 of the Migrant and Seasonal Agri-
4 cultural Worker Protection Act (29 U.S.C. 1802),
5 without regard to whether the specific service or activ-
6 ity is temporary or seasonal.

7 “(3) *EMPLOYER.*—The term ‘employer’ means
8 any person or entity, including any farm labor con-
9 tractor and any agricultural association, that em-
10 ploys workers in agricultural employment.

11 “(4) *WORK DAY.*—The term ‘work day’ means
12 any day in which the individual is employed 5.75 or
13 more hours in agricultural employment.”.

14 (b) *CONFORMING AMENDMENT.*—Section 201(b)(1) (8
15 U.S.C. 1151(b)(1), as amended by section 2103(c), is further
16 amended by adding at the end the following:

17 “(G) Aliens granted lawful permanent resi-
18 dent status under section 245F.”.

19 (c) *CLERICAL AMENDMENT.*—The table of contents, as
20 amended by section 2104(e), is further amended by insert-
21 ing after the item relating to section 245E the following:

 “Sec. 245F. Adjustment to permanent resident status for agricultural workers.”.

22 **SEC. 2213. USE OF INFORMATION.**

23 Beginning not later than the first day of the applica-
24 tion period described in section 2211(b)(3), the Secretary,
25 in cooperation with qualified designated entities, shall

1 *broadly disseminate information respecting the benefits that*
2 *aliens may receive under this subchapter and the require-*
3 *ments that an alien is required to meet to receive such bene-*
4 *fits.*

5 **SEC. 2214. REPORTS ON BLUE CARDS.**

6 *Not later than September 30, 2013, and annually*
7 *thereafter for the next 8 years, the Secretary shall submit*
8 *a report to Congress that identifies, for the previous fiscal*
9 *year—*

10 *(1) the number of aliens who applied for blue*
11 *card status;*

12 *(2) the number of aliens who were granted blue*
13 *card status;*

14 *(3) the number of aliens who applied for an ad-*
15 *justment of status pursuant to section 245F(a) of the*
16 *Immigration and Nationality Act, as added by sec-*
17 *tion 2212; and*

18 *(4) the number of aliens who received an adjust-*
19 *ment of status pursuant such section 245F(a).*

20 **SEC. 2215. AUTHORIZATION OF APPROPRIATIONS.**

21 *There are authorized to be appropriated to the Sec-*
22 *retary such sums as may be necessary to implement this*
23 *subchapter, including any sums needed for costs associated*
24 *with the initiation of such implementation, for fiscal years*
25 *2013 and 2014.*

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1 ***Subchapter B—Correction of Social Security***
2 ***Records***

3 ***SEC. 2221. CORRECTION OF SOCIAL SECURITY RECORDS.***

4 (a) *IN GENERAL.*—Section 208(e)(1) of the Social Se-
5 curity Act (42 U.S.C. 408(e)(1)) is amended—

6 (1) in subparagraph (B)(ii), by striking “or” at
7 the end;

8 (2) in subparagraph (C), by inserting “or” at
9 the end;

10 (3) by inserting after subparagraph (C) the fol-
11 lowing:

12 “(D) who is granted blue card status under
13 the Agricultural Worker Program Act of 2013,”;
14 and

15 (4) by striking “1990.” and inserting “1990, or
16 in the case of an alien described in subparagraph
17 (D), if such conduct is alleged to have occurred before
18 the date on which the alien was granted blue card
19 status under section 2211(a) of the Agricultural
20 Worker Program Act of 2013.”.

21 (b) *EFFECTIVE DATE.*—The amendments made by sub-
22 section (a) shall take effect on the first day of the seventh
23 month that begins after the date of the enactment of this
24 Act.

**CHAPTER 2—NONIMMIGRANT
AGRICULTURAL VISA PROGRAM**

**SEC. 2231. NONIMMIGRANT CLASSIFICATION FOR NON-
IMMIGRANT AGRICULTURAL WORKERS.**

*Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended
by adding at the end the following:*

“(W) an alien having a residence in a foreign country who is coming to the United States for a temporary period—

“(iii)(I) to perform services or labor in agricultural employment and who has a written contract that specifies the wages, benefits, and working conditions of such full-time employment in an agricultural occupation with a designated agricultural employer for a specified period of time; and

“(II) who meets the requirements under section 218A for a nonimmigrant visa described in this clause; or

“(iv)(I) to perform services or labor in agricultural employment and who has an offer of full-time employment in an agricultural occupation from a designated agricultural employer for such employment and is not described in clause (i); and

1 “(II) who meets the requirements
2 under section 218A for a nonimmigrant
3 visa described in this clause.”.

4 **SEC. 2232. ESTABLISHMENT OF NONIMMIGRANT AGRICUL-**
5 **TURAL WORKER PROGRAM.**

6 (a) *IN GENERAL.*—Chapter 2 of title II (8 U.S.C. 1181
7 *et seq.*) is amended by inserting after section 218 the fol-
8 lowing:

9 **“SEC. 218A. NONIMMIGRANT AGRICULTURAL WORKER PRO-**
10 **GRAM.**

11 “(a) *DEFINITIONS.*—In this section and in clauses (iii)
12 and (iv) of section 101(a)(15)(W):

13 “(1) *AGRICULTURAL EMPLOYMENT.*—The term
14 ‘agricultural employment’ has the meaning given such
15 term in section 3 of the Migrant and Seasonal Agri-
16 cultural Worker Protection Act (29 U.S.C. 1802),
17 without regard to whether the specific service or activ-
18 ity is temporary or seasonal.

19 “(2) *AT-WILL AGRICULTURAL WORKER.*—The
20 term ‘at-will agricultural worker’ means an alien
21 present in the United States pursuant to section
22 101(a)(15)(W)(iv).

23 “(3) *BLUE CARD.*—The term ‘blue card’ means
24 an employment authorization and travel document
25 issued to an alien granted blue card status under sec-

1 *tion 2211(a) of the Agricultural Worker Program Act*
2 *of 2013.*

3 “(4) *CONTRACT AGRICULTURAL WORKER.*—*The*
4 *term ‘contract agricultural worker’ means an alien*
5 *present in the United States pursuant to section*
6 *101(a)(15)(W)(iii).*

7 “(5) *DESIGNATED AGRICULTURAL EMPLOYER.*—
8 *The term ‘designated agricultural employer’ means an*
9 *employer who is registered with the Secretary of Agri-*
10 *culture pursuant to subsection (e)(1).*

11 “(6) *ELECTRONIC JOB REGISTRY.*—*The term*
12 *‘Electronic Job Registry’ means the Electronic Job*
13 *Registry of a State workforce agency (or similar suc-*
14 *cessor registry).*

15 “(7) *EMPLOYER.*—*Except as otherwise provided,*
16 *the term ‘employer’ means any person or entity, in-*
17 *cluding any farm labor contractor and any agricul-*
18 *tural association, that employs workers in agricul-*
19 *tural employment.*

20 “(8) *NONIMMIGRANT AGRICULTURAL WORKER.*—
21 *The term ‘nonimmigrant agricultural worker’ mean a*
22 *nonimmigrant described in clause (iii) or (iv) of sec-*
23 *tion 101(a)(15)(W).*

1 “(9) *PROGRAM*.—The term ‘Program’ means the
2 *Nonimmigrant Agricultural Worker Program* estab-
3 *lished under subsection (b).*

4 “(10) *SECRETARY*.—Except as otherwise specifi-
5 *cally provided, the term ‘Secretary’ means the Sec-*
6 *retary of Agriculture.*

7 “(11) *UNITED STATES WORKER*.—The term
8 ‘*United States worker*’ means an individual who—

9 “(A) *is a national of the United States; or*

10 “(B) *is an alien who—*

11 “(i) *is lawfully admitted for perma-*
12 *nent residence;*

13 “(ii) *is admitted as a refugee under*
14 *section 207;*

15 “(iii) *is granted asylum under section*
16 *208;*

17 “(iv) *holds a blue card; or*

18 “(v) *is an immigrant otherwise author-*
19 *ized by this Act or by the Secretary of*
20 *Homeland Security to be employed in the*
21 *United States.*

22 “(b) *REQUIREMENTS*.—

23 “(1) *EMPLOYER*.—An employer may not employ
24 an alien for agricultural employment under the Pro-
25 gram unless such employer is a designated agricul-

1 *tural employer and complies with the terms of this*
2 *section.*

3 “(2) *WORKER.*—*An alien may not be employed*
4 *for agricultural employment under the Program un-*
5 *less such alien is a nonimmigrant agricultural worker*
6 *and complies with the terms of this section.*

7 “(c) *NUMERICAL LIMITATION.*—

8 “(1) *FIRST 5 YEARS OF PROGRAM.*—

9 “(A) *IN GENERAL.*—*Subject to paragraph*
10 *(2), the worldwide level of visas for non-*
11 *immigrant agricultural workers for the fiscal*
12 *year during which the first visa is issued to a*
13 *nonimmigrant agricultural worker and for each*
14 *of the following 4 fiscal years shall be equal to—*

15 “(i) *112,333; and*

16 “(ii) *the numerical adjustment made*
17 *by the Secretary for such fiscal year in ac-*
18 *cordance with paragraph (2).*

19 “(B) *QUARTERLY ALLOCATION.*—*The an-*
20 *nuual allocation of visas described in subpara-*
21 *graph (A) shall be evenly allocated between the*
22 *4 quarters of the fiscal year unless the Secretary*
23 *determines that an alternative allocation would*
24 *better accommodate the seasonal demand for*
25 *visas. Any unused visas in a quarter shall be*

1 *added to the allocation for the subsequent quarter*
2 *of the same fiscal year.*

3 “(C) *EFFECT OF 2ND OR SUBSEQUENT DES-*
4 *IGNATED AGRICULTURAL EMPLOYER.—A non-*
5 *immigrant agricultural worker who has a valid*
6 *visa issued under this section that counted*
7 *against the allocation described in subparagraph*
8 *(A) shall not be recounted against the allocation*
9 *if the worker is petitioned for by a subsequent*
10 *designated agricultural employer.*

11 “(2) *ANNUAL ADJUSTMENTS FOR FIRST 5 YEARS*
12 *OF PROGRAM.—*

13 “(A) *IN GENERAL.—The Secretary, in con-*
14 *sultation with the Secretary of Labor, and after*
15 *reviewing relevant evidence submitted by agricul-*
16 *tural producers and organizations representing*
17 *agricultural workers, may increase or decrease,*
18 *as appropriate, the worldwide level of visas*
19 *under paragraph (1) for each of the 5 fiscal*
20 *years referred to in paragraph (1) after consid-*
21 *ering appropriate factors, including—*

22 “(i) *a demonstrated shortage of agri-*
23 *cultural workers;*

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1 “(ii) the level of unemployment and
2 underemployment of agricultural workers
3 during the preceding fiscal year;

4 “(iii) the number of applications for
5 blue card status;

6 “(iv) the number of blue card visa ap-
7 plications approved;

8 “(v) the number of nonimmigrant ag-
9 ricultural workers sought by employers dur-
10 ing the preceding fiscal year;

11 “(vi) the estimated number of United
12 States workers, including blue card workers,
13 who worked in agriculture during the pre-
14 ceding fiscal year;

15 “(vii) the number of nonimmigrant ag-
16 ricultural workers issued a visa in the most
17 recent fiscal year who remain in the United
18 States in compliance with the terms of such
19 visa;

20 “(viii) the number of United States
21 workers who accepted jobs offered by em-
22 ployers using the Electronic Job Registry
23 during the preceding fiscal year;

24 “(ix) any growth or contraction of the
25 United States agricultural industry that

1 *has increased or decreased the demand for*
2 *agricultural workers; and*

3 “(x) *any changes in the real wages*
4 *paid to agricultural workers in the United*
5 *States as an indication of a shortage or sur-*
6 *plus of agricultural labor.*

7 “(B) *NOTIFICATION; IMPLEMENTATION.—*
8 *The Secretary shall notify the Secretary of*
9 *Homeland Security of any change to the world-*
10 *wide level of visas for nonimmigrant agricul-*
11 *tural workers. The Secretary of Homeland Secu-*
12 *rity shall implement such changes.*

13 “(C) *EMERGENCY PROCEDURES.—The Sec-*
14 *retary shall establish, by regulation, procedures*
15 *for immediately adjusting an annual allocation*
16 *under paragraph (1) for labor shortages, as de-*
17 *termined by the Secretary. The Secretary shall*
18 *make a decision on a petition for an adjustment*
19 *of status not later than 30 days after receiving*
20 *such petition.*

21 “(3) *SIXTH AND SUBSEQUENT YEARS OF PRO-*
22 *GRAM.—The Secretary, in consultation with the Sec-*
23 *retary of Labor, shall establish the worldwide level of*
24 *visas for nonimmigrant agricultural workers for each*
25 *fiscal year following the fiscal years referred to in*

1 *paragraph (1) after considering appropriate factors,*
2 *including—*

3 “(A) *a demonstrated shortage of agricul-*
4 *tural workers;*

5 “(B) *the level of unemployment and under-*
6 *employment of agricultural workers during the*
7 *preceding fiscal year;*

8 “(C) *the number of applications for blue*
9 *card status;*

10 “(D) *the number of blue card visa applica-*
11 *tions approved;*

12 “(E) *the number of nonimmigrant agricul-*
13 *tural workers sought by employers during the*
14 *preceding fiscal year;*

15 “(F) *the estimated number of United States*
16 *workers, including blue card workers, who*
17 *worked in agriculture during the preceding fiscal*
18 *year;*

19 “(G) *the number of nonimmigrant agricul-*
20 *tural workers issued a visa in the most recent*
21 *fiscal year who remain in the United States in*
22 *compliance with the terms of such visa;*

23 “(H) *the number of United States workers*
24 *who accepted jobs offered by employers using the*

1 *Electronic Job Registry during the preceding fis-*
2 *cal year;*

3 “(I) *any growth or contraction of the*
4 *United States agricultural industry that has in-*
5 *creased or decreased the demand for agricultural*
6 *workers; and*

7 “(J) *any changes in the real wages paid to*
8 *agricultural workers in the United States as an*
9 *indication of a shortage or surplus of agricul-*
10 *tural labor.*

11 “(4) *EMERGENCY PROCEDURES.—The Secretary*
12 *shall establish, by regulation, procedures for imme-*
13 *diately adjusting an annual allocation under para-*
14 *graph (3) for labor shortages, as determined by the*
15 *Secretary. The Secretary shall make a decision on a*
16 *petition for an adjustment of status not later than 30*
17 *days after receiving such petition*

18 “(d) *REQUIREMENTS FOR NONIMMIGRANT AGRICUL-*
19 *TURAL WORKERS.—*

20 “(1) *ELIGIBILITY FOR NONIMMIGRANT AGRICUL-*
21 *TURAL WORKER STATUS.—*

22 “(A) *IN GENERAL.—An alien is not eligible*
23 *to be admitted to the United States as a non-*
24 *immigrant agricultural worker if the alien—*

1 “(i) violated a material term or condi-
2 tion of a previous admission as a non-
3 immigrant agricultural worker during the
4 most recent 3-year period (other than a con-
5 tract agricultural worker who voluntarily
6 abandons his or her employment before the
7 end of the contract period or whose employ-
8 ment is terminated by the employer for
9 cause);

10 “(ii) has not obtained successful clear-
11 ance of any security and criminal back-
12 ground checks required by the Secretary of
13 Homeland Security or any other examina-
14 tion required under this Act; or

15 “(iii)(I) departed from the United
16 States while subject to an order of exclusion,
17 deportation, or removal, or pursuant to an
18 order of voluntary departure; and

19 “(II)(aa) is outside of the United
20 States; or

21 “(bb) has reentered the United States
22 illegally after December 31, 2012, without
23 receiving consent to the alien’s reapplica-
24 tion for admission under section 212(a)(9).

1 “(B) *WAIVER.*—*The Secretary of Homeland*
2 *Security may waive the application of subpara-*
3 *graph (A)(iii) on behalf of an alien if the*
4 *alien—*

5 “(i) *is the spouse or child of a United*
6 *States citizen or lawful permanent resident;*

7 “(ii) *is the parent of a child who is a*
8 *United States citizen or lawful permanent*
9 *resident;*

10 “(iii) *meets the requirements set forth*
11 *in clause (ii) or (iii) of section*
12 *245D(b)(1)(A); or*

13 “(iv)(I) *meets the requirements set*
14 *forth in section 245D(b)(1)(A)(ii);*

15 “(II) *is 16 years or older on the date*
16 *on which the alien applies for non-*
17 *immigrant agricultural status; and*

18 “(III) *was physically present in the*
19 *United States for an aggregate period of not*
20 *less than 3 years during the 6-year period*
21 *immediately preceding the date of the enact-*
22 *ment of this section.*

23 “(2) *TERM OF STAY FOR NONIMMIGRANT AGRI-*
24 *CULTURAL WORKERS.—*

25 “(A) *IN GENERAL.—*

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1 “(i) *INITIAL ADMISSION.*—A non-
2 immigrant agricultural worker may be ad-
3 mitted into the United States in such status
4 for an initial period of 3 years.

5 “(ii) *RENEWAL.*—A nonimmigrant ag-
6 ricultural worker may renew such worker’s
7 period of admission in the United States for
8 1 additional 3-year period.

9 “(B) *BREAK IN PRESENCE.*—A non-
10 immigrant agricultural worker who has been ad-
11 mitted to the United States for 2 consecutive pe-
12 riods under subparagraph (A) is ineligible to
13 renew the alien’s nonimmigrant agricultural
14 worker status until such alien—

15 “(i) returns to a residence outside the
16 United States for a period of not less than
17 3 months; and

18 “(ii) seeks to reenter the United States
19 under the terms of the Program as a non-
20 immigrant agricultural worker.

21 “(3) *LOSS OF STATUS.*—

22 “(A) *IN GENERAL.*—An alien admitted as a
23 nonimmigrant agricultural worker shall be ineli-
24 gible for such status and shall be required to de-
25 part the United States if such alien—

1 “(i) after the completion of his or her
2 contract with a designated agricultural em-
3 ployer, is not employed in agricultural em-
4 ployment by a designated agricultural em-
5 ployer; or

6 “(ii) is an at-will agricultural worker
7 and is not continuously employed by a des-
8 ignated agricultural employer in agricul-
9 tural employment as an at-will agricultural
10 worker.

11 “(B) *EXCEPTION.*—Subject to subparagraph
12 (C), a nonimmigrant agricultural worker has
13 not violated subparagraph (A) if the non-
14 immigrant agricultural worker is not employed
15 in agricultural employment for a period not to
16 exceed 60 days.

17 “(C) *WAIVER.*—Notwithstanding subpara-
18 graph (B), the Secretary of Homeland Security
19 may waive the application of clause (i) or (ii)
20 of subparagraph (A) for a nonimmigrant agri-
21 cultural worker who was not employed in agri-
22 cultural employment for a period of more than
23 60 days if such period of unemployment was due
24 to—

25 “(i) the injury of such worker; or

1 “(ii) a natural disaster declared by the
2 Secretary.

3 “(D) TOLLING OF EMPLOYMENT REQUIRE-
4 MENT.—A nonimmigrant agricultural worker
5 may leave the United States for up to 60 days
6 in any fiscal year while in such status. During
7 the period in which the worker is outside of the
8 United States, the 60-day limit specified in sub-
9 paragraph (B) shall be tolled.

10 “(4) *PORTABILITY OF STATUS.*—

11 “(A) CONTRACT AGRICULTURAL WORK-
12 ERS.—

13 “(i) *IN GENERAL.*—*Except as provided*
14 *in clause (ii), an alien who entered the*
15 *United States as a contract agricultural*
16 *worker may—*

“(I) seek employment as a non-immigrant agricultural worker with a designated agricultural employer other than the designated agricultural employer with whom the employee had a contract described in section 101(a)(15)(W)(iii)(I); and

24 “(II) accept employment with
25 such new employer after the date the

1 *contract agricultural worker completes*
2 *such contract.*

3 “(ii) *VOLUNTARY ABANDONMENT; TER-*
4 *MINATION FOR CAUSE.*—A contract agricul-
5 *tural worker who voluntarily abandons his*
6 *or her employment before the end of the con-*
7 *tract period or whose employment is termi-*
8 *nated for cause by the employer—*

9 “(I) *may not accept subsequent*
10 *employment with another designated*
11 *agricultural employer without first de-*
12 *parting the United States and reen-*
13 *tering pursuant to a new offer of em-*
14 *ployment; and*

15 “(II) *is not entitled to the 75 per-*
16 *cent payment guarantee described in*
17 *subsection (e)(4)(B).*

18 “(iii) *TERMINATION BY MUTUAL*
19 *AGREEMENT.*—The termination of an em-
20 *ployment contract by mutual agreement of*
21 *the designated agricultural employer and*
22 *the contract agricultural worker shall not be*
23 *considered voluntary abandonment for pur-*
24 *poses of clause (ii).*

1 “(B) *AT-WILL AGRICULTURAL WORKERS.*—

2 *An alien who entered the United States as an at-*
3 *will agricultural worker may seek employment*
4 *as an at-will agricultural worker with any other*
5 *designated agricultural employer referred to in*
6 *section 101(a)(15)(W)(iv)(I).*

7 “(5) *PROHIBITION ON GEOGRAPHIC LIMITA-*
8 *TION.*—*A nonimmigrant visa issued to a non-*
9 *immigrant agricultural worker—*

10 “(A) *shall not limit the geographical area*
11 *within which such worker may be employed;*

12 “(B) *shall not limit the type of agricultural*
13 *employment such worker may perform; and*

14 “(C) *shall restrict such worker to employ-*
15 *ment with designated agricultural employers.*

16 “(6) *TREATMENT OF SPOUSES AND CHILDREN.*—
17 *A spouse or child of a nonimmigrant agricultural*
18 *worker—*

19 “(A) *shall not be entitled to a visa or any*
20 *immigration status by virtue of the relationship*
21 *of such spouse or child to such worker; and*

22 “(B) *may be provided status as a non-*
23 *immigrant agricultural worker if the spouse or*
24 *child is independently qualified for such status.*

25 “(e) *EMPLOYER REQUIREMENTS.*—

1 “(1) *DESIGNATED AGRICULTURAL EMPLOYER*
2 *STATUS*.—

3 “(A) *REGISTRATION REQUIREMENT.*—Each
4 *employer seeking to employ nonimmigrant agri-*
5 *cultural workers shall register for designated ag-*
6 *ricultural employer status by submitting to the*
7 *Secretary, through the Farm Service Agency in*
8 *the geographic area of the employer or electroni-*
9 *cally to the Secretary, a registration that in-*
10 *cludes—*

11 “(i) the employer’s employer identifica-
12 tion number; and

“(ii) a registration fee, in an amount determined by the Secretary, which shall be used for the costs of administering the program.

17 “(B) *CRITERIA.*—*The Secretary shall grant*
18 *designated agricultural employer status to an*
19 *employer who submits a registration for such*
20 *status that includes—*

21 “(i) documentation that the employer
22 is engaged in agriculture;

23 “(ii) the estimated number of non-
24 immigrant agricultural workers the em-
25 ployer will need each year;

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1 “(iii) the anticipated periods during
2 which the employer will need such workers;
3 and

4 “(iv) documentation establishing need
5 for a specified agricultural occupation or
6 occupations.

7 “(C) DESIGNATION.—

8 “(i) REGISTRATION NUMBER.—The
9 Secretary shall assign each employer that
10 meets the criteria established pursuant to
11 subparagraph (B) with a designated agri-
12 cultural employer registration number.

13 “(ii) TERM OF DESIGNATION.—Each
14 employer granted designated agricultural
15 employer status under this paragraph shall
16 retain such status for a term of 3 years. At
17 the end of such 3-year term, the employer
18 may renew the registration for another 3-
19 year term if the employer meets the require-
20 ments set forth in subparagraphs (A) and
21 (B).

22 “(D) ASSISTANCE.—In carrying out the
23 functions described in this subsection, the Sec-
24 retary may work through the Farm Service

1 *Agency, or any other agency in the Department*
2 *of Agriculture—*

3 “(i) *to assist agricultural employers*
4 *with the registration process under this*
5 *paragraph by providing such employers*
6 *with—*

7 “(I) *technical assistance and ex-*
8 *pertise;*

9 “(II) *internet access for submit-*
10 *ting such applications; and*

11 “(III) *a nonelectronic means for*
12 *submitting such registrations; and*

13 “(ii) *to provide resources about the*
14 *Program, including best practices and com-*
15 *pliance related assistance and resources or*
16 *training to assist in retention of such work-*
17 *ers to agricultural employers.*

18 “(E) *DEPOSIT OF REGISTRATION FEE.—*
19 *Fees collected pursuant to subparagraph*
20 *(A)(ii)—*

21 “(i) *shall be deposited into the Immi-*
22 *gration Examinations Fee Account pursu-*
23 *ant to section 286(m); and*

24 “(ii) *shall remain available until ex-*
25 *pended pursuant to section 286(n).*

1 “(2) *NONIMMIGRANT AGRICULTURAL WORKER*
2 *PETITION PROCESS.*—

3 “(A) *IN GENERAL.*—*Not later than 45 days*
4 *before the date on which nonimmigrant agricul-*
5 *tural workers are needed, a designated agricul-*
6 *tural employer seeking to employ such workers*
7 *shall submit a petition to the Secretary of Home-*
8 *land Security that includes the employer’s des-*
9 *ignated agricultural employer registration num-*
10 *ber.*

11 “(B) *ATTESTATION.*—*An petition submitted*
12 *under subparagraph (A) shall include an attesta-*
13 *tion of the following:*

14 “(i) *The number of named or unnamed*
15 *nonimmigrant agricultural workers the des-*
16 *ignated agricultural employer is seeking to*
17 *employ during the applicable period of em-*
18 *ployment.*

19 “(ii) *The total number of contract ag-*
20 *ricultural workers and of at-will agricul-*
21 *tural workers the employer will require for*
22 *each occupational category.*

23 “(iii) *The anticipated period, includ-*
24 *ing expected beginning and ending dates,*
25 *during which such employees will be needed.*

1 “(iv) *Evidence of contracts or written*
2 *disclosures of employment terms and condi-*
3 *tions in accordance with the Migrant and*
4 *Seasonal Agricultural Worker Protection*
5 *Act (29 U.S.C. 1801 et seq.), which have*
6 *been disclosed or provided to the non-*
7 *immigrant agricultural workers, or a sam-*
8 *ple of such contract or disclosure for*
9 *unnamed workers.*

10 “(v) *The information submitted to the*
11 *State workforce agency pursuant to para-*
12 *graph (3)(A)(i).*

13 “(vi) *The record of United States work-*
14 *ers described in paragraph (3)(A)(iii) on*
15 *the date of the request.*

16 “(vii) *Evidence of offers of employment*
17 *made to United States workers as required*
18 *under paragraph (3)(B).*

19 “(viii) *The employer will comply with*
20 *the additional program requirements for*
21 *designated agricultural employers described*
22 *in paragraph (4).*

23 “(C) *EMPLOYMENT AUTHORIZATION WHEN*
24 *CHANGING EMPLOYERS.—Nonimmigrant agricul-*
25 *tural workers in the United States who are iden-*

1 *tified in a petition submitted pursuant to sub-*
2 *paragraph (A) and are in lawful status may*
3 *commence employment with their designated ag-*
4 *ricultural employer after such employer has sub-*
5 *mitted such petition to the Secretary of Home-*
6 *land Security.*

7 *“(D) REVIEW.—The Secretary of Homeland*
8 *Security shall review each petition submitted by*
9 *designated agricultural employers under this*
10 *paragraph for completeness or obvious inaccura-*
11 *cies. Unless the Secretary of Homeland Security*
12 *determines that the petition is incomplete or ob-*
13 *viously inaccurate, the Secretary shall accept the*
14 *petition. The Secretary shall establish a proce-*
15 *dure for the processing of petitions filed under*
16 *this subsection. Not later than 7 working days*
17 *after the date of the filing, the Secretary, by elec-*
18 *tronic or other means assuring expedited deliv-*
19 *ery, shall submit a copy of notice of approval or*
20 *denial of the petition to the petitioner and, in*
21 *the case of approved petitions, to the appropriate*
22 *immigration officer at the port of entry or*
23 *United States consulate, as appropriate, if the*
24 *petitioner has indicated that the alien bene-*

1 *ficiary or beneficiaries will apply for a visa or*
2 *admission to the United States.*

3 “(3) *EMPLOYMENT OF UNITED STATES WORK-*
4 *ERS.—*

5 “(A) *RECRUITMENT.—*

6 “(i) *FILING A JOB OPPORTUNITY WITH*
7 *LOCAL OFFICE OF STATE WORKFORCE AGEN-*
8 *CY.—Not later than 60 days before the date*
9 *on which the employer desires to employ a*
10 *nonimmigrant agricultural worker, the em-*
11 *ployer shall submit the job opportunity for*
12 *such worker to the local office of the State*
13 *workforce agency where the job site is lo-*
14 *cated and authorize the posting of the job*
15 *opportunity on the appropriate Department*
16 *of Labor Electronic Job Registry for a pe-*
17 *riod of 45 days.*

18 “(ii) *CONSTRUCTION.—Nothing in*
19 *clause (i) may be construed to cause a post-*
20 *ing referred to in clause (i) to be treated as*
21 *an interstate job order under section*
22 *653.500 of title 20, Code of Federal Regula-*
23 *tions (or similar successor regulation).*

24 “(iii) *RECORD OF UNITED STATES*
25 *WORKERS.—An employer shall keep a*

1 *record of all eligible, able, willing, and*
2 *qualified United States workers who apply*
3 *for agricultural employment with the em-*
4 *ployer for the agricultural employment for*
5 *which the nonimmigrant agricultural non-*
6 *immigrant workers are sought.*

7 *“(B) REQUIREMENT TO HIRE.—*

8 *“(i) UNITED STATES WORKERS.—An*
9 *employer may not seek a nonimmigrant ag-*
10 *ricultural worker for agricultural employ-*
11 *ment unless the employer offers such em-*
12 *ployment to any equally or better qualified*
13 *United States worker who will be available*
14 *at the time and place of need and who ap-*
15 *plies for such employment during the 45-*
16 *day recruitment period referred to in sub-*
17 *paragraph (A)(i).*

18 *“(ii) EXCEPTION.—Notwithstanding*
19 *clause (i), the employer may offer the job to*
20 *a nonimmigrant agricultural worker in-*
21 *stead of an alien in blue card status if—*

22 *“(I) such worker was previously*
23 *employed by the employer as an H-2A*
24 *worker;*

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1 “(II) *such worker worked for the*
2 *employer for 3 years during the most*
3 *recent 4-year period; and*

4 “(III) *the employer pays such*
5 *worker the adverse effect wage rate cal-*
6 *culated under subsection (f)(5)(B).*

7 “(4) *ADDITIONAL PROGRAM REQUIREMENTS FOR*
8 *DESIGNATED AGRICULTURAL EMPLOYERS.—Each des-*
9 *ignated agricultural employer shall comply with the*
10 *following requirements:*

11 “(A) *NO DISPLACEMENT OF UNITED STATES*
12 *WORKERS.—*

13 “(i) *IN GENERAL.—The employer shall*
14 *not displace a United States worker em-*
15 *ployed by the employer, other than for good*
16 *cause, during the period of employment of*
17 *the nonimmigrant agricultural worker and*
18 *for a period of 30 days preceding such pe-*
19 *riod in the occupation and at the location*
20 *of employment for which the employer seeks*
21 *to employ nonimmigrant agricultural work-*
22 *ers.*

23 “(ii) *LABOR DISPUTE.—The employer*
24 *shall not employ a nonimmigrant agricul-*
25 *tural worker for a specific job for which the*

1 *employer is requesting a nonimmigrant ag-*
2 *ricultural worker because the former occu-*
3 *pant of the job is on strike or being locked*
4 *out in the course of a labor dispute.*

5 “(B) *GUARANTEE OF EMPLOYMENT FOR*
6 *CONTRACT AGRICULTURAL WORKERS.—*

7 “(i) *OFFER TO CONTRACT WORKER.—*

8 *The employer shall guarantee to offer con-*
9 *tract agricultural workers employment for*
10 *the hourly equivalent of at least 75 percent*
11 *of the work days of the total period of em-*
12 *ployment, beginning with the first work day*
13 *after the arrival of the worker at the place*
14 *of employment and ending on the expira-*
15 *tion date specified in the job offer. In this*
16 *clause, the term ‘hourly equivalent’ means*
17 *the number of hours in the work days as*
18 *stated in the job offer and shall exclude the*
19 *worker’s Sabbath and Federal holidays. If*
20 *the employer affords the contract agricul-*
21 *tural worker less employment than the*
22 *number of hours required under this sub-*
23 *paragraph, the employer shall pay such*
24 *worker the amount the worker would have*

1 *earned had the worker worked the guaran-*
2 *teed number of hours.*

3 “(ii) *FAILURE TO WORK.*—*Any hours*
4 *which the worker fails to work, up to a*
5 *maximum of the number of hours specified*
6 *in the job offer for a work day, when the*
7 *worker has been offered an opportunity to*
8 *do so, and all hours of work actually per-*
9 *formed (including voluntary work in excess*
10 *of the number of hours specified in the job*
11 *offer in a work day, on the worker’s Sab-*
12 *bath, or on Federal holidays) may be count-*
13 *ed by the employer in calculating whether*
14 *the period of guaranteed employment has*
15 *been met.*

16 “(iii) *CONTRACT IMPOSSIBILITY.*—*If,*
17 *before the expiration of the period of em-*
18 *ployment specified in the job offer, the serv-*
19 *ices of a contract agricultural worker are no*
20 *longer required for reasons beyond the con-*
21 *trol of the employer due to any form of nat-*
22 *ural disaster, including a flood, hurricane,*
23 *freeze, earthquake, fire, drought, plant or*
24 *animal disease or pest infestation, or regu-*

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1 *latory drought, before the guarantee in*
2 *clause (i) is fulfilled, the employer—*

3 *“(I) may terminate the worker’s*
4 *employment;*

5 *“(II) shall fulfill the employment*
6 *guarantee described in clause (i) for*
7 *the work days that have elapsed from*
8 *the first work day after the arrival of*
9 *the worker to the termination of em-*
10 *ployment;*

11 *“(III) shall make efforts to trans-*
12 *fer the worker to other comparable em-*
13 *ployment acceptable to the worker; and*

14 *“(IV) if such a transfer does not*
15 *take place, shall provide the return*
16 *transportation required under sub-*
17 *paragraph (J).*

18 “(C) *WORKERS’ COMPENSATION.—*

19 *“(i) REQUIREMENT TO PROVIDE.—If a*
20 *job referred to in paragraph (3) is not cov-*
21 *ered by the State workers’ compensation*
22 *law, the employer shall provide, at no cost*
23 *to the nonimmigrant agricultural worker,*
24 *insurance covering injury and disease aris-*
25 *ing out of, and in the course of, such job.*

1 “(ii) *BENEFITS.*—*The insurance re-*
2 *quired to be provided under clause (i) shall*
3 *provide benefits at least equal to those pro-*
4 *vided under and pursuant to the State*
5 *workers’ compensation law for comparable*
6 *employment.*

7 “(D) *PROHIBITION FOR USE FOR NON-*
8 *AGRICULTURAL SERVICES.*—*The employer may*
9 *not employ a nonimmigrant agricultural worker*
10 *for employment other than agricultural employ-*
11 *ment.*

12 “(E) *WAGES.*—*The employer shall pay not*
13 *less than the wage required under subsection (f).*

14 “(F) *DEDUCTION OF WAGES.*—*The employer*
15 *shall make only deductions from a non-*
16 *immigrant agricultural worker’s wages that are*
17 *authorized by law and are reasonable and cus-*
18 *tomary in the occupation and area of employ-*
19 *ment of such worker.*

20 “(G) *REQUIREMENT TO PROVIDE HOUSING*
21 *OR A HOUSING ALLOWANCE.*—

22 “(i) *IN GENERAL.*—*Except as provided*
23 *in clauses (iv) and (v), a designated agri-*
24 *cultural employer shall offer to provide a*
25 *nonimmigrant agricultural worker with*

1 *housing at no cost in accordance with*
2 *clause (ii) or (iii).*

3 “(ii) *HOUSING.*—An employer may
4 *provide housing to a nonimmigrant agricul-*
5 *tural worker that meets—*

6 “(I) *applicable Federal standards*
7 *for temporary labor camps; or*

8 “(II) *applicable local standards*
9 *(or, in the absence of applicable local*
10 *standards, State standards) for rental*
11 *or public accommodation housing or*
12 *other substantially similar class of*
13 *habitation.*

14 “(iii) *HOUSING PAYMENTS.*—

15 “(I) *PUBLIC HOUSING.*—If the
16 *employer arranges public housing for*
17 *nonimmigrant agricultural workers*
18 *through a State, county, or local gov-*
19 *ernment program and such public*
20 *housing units normally require pay-*
21 *ments from tenants, such payments*
22 *shall be made by the employer directly*
23 *to the landlord.*

24 “(II) *DEPOSITS.*—Deposits for
25 *bedding or other similar incidentals re-*

1 lated to housing shall not be collected
2 from workers by employers who pro-
3 vide housing for such workers.

4 “(III) DAMAGES.—The employer
5 may require any worker who is respon-
6 sible for damage to housing that did
7 not result from normal wear and tear
8 related to habitation to reimburse the
9 employer for the reasonable cost of re-
10 pairing such damage.

11 “(iv) HOUSING ALLOWANCE ALTER-
12 NATIVE.—

13 “(I) IN GENERAL.—The employer
14 may provide a reasonable housing al-
15 lowance instead of providing housing
16 under clause (i). Upon the request of a
17 worker seeking assistance in locating
18 housing, the employer shall make a
19 good faith effort to assist the worker in
20 identifying and locating housing in the
21 area of intended employment. An em-
22 ployer who offers a housing allowance
23 to a worker or assists a worker in lo-
24 cating housing, which the worker occu-
25 pies, shall not be deemed a housing

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1 *provider under section 203 of the Mi-*
2 *grant and Seasonal Agricultural Work-*
3 *er Protection Act (29 U.S.C. 1823)*
4 *solely by virtue of providing such hous-*
5 *ing allowance. No housing allowance*
6 *may be used for housing that is owned*
7 *or controlled by the employer.*

8 “(II) *CERTIFICATION REQUIRE-*
9 *MENT.—Contract agricultural workers*
10 *may only be provided a housing allow-*
11 *ance if the Governor of the State in*
12 *which the place of employment is lo-*
13 *cated certifies to the Secretary that*
14 *there is adequate housing available in*
15 *the area of intended employment for*
16 *migrant farm workers and contract ag-*
17 *ricultural workers who are seeking*
18 *temporary housing while employed in*
19 *agricultural work. Such certification*
20 *shall expire after 3 years unless re-*
21 *newed by the Governor of the State.*

22 “(III) *AMOUNT OF ALLOWANCE.—*

23 “(aa) *NONMETROPOLITAN*
24 *COUNTIES.—If the place of em-*
25 *ployment of the workers provided*

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1 *an allowance under this clause is*
2 *a nonmetropolitan county, the*
3 *amount of the housing allowance*
4 *under this clause shall be equal to*
5 *the average fair market rental for*
6 *existing housing in nonmetropoli-*
7 *tan counties in the State in which*
8 *the place of employment is lo-*
9 *cated, as established by the Sec-*
10 *retary of Housing and Urban De-*
11 *velopment pursuant to section*
12 *8(c) of the United States Housing*
13 *Act of 1937 (42 U.S.C. 1437f(c)),*
14 *based on a 2-bedroom dwelling*
15 *unit and an assumption of 2 per-*
16 *sons per bedroom.*

17 *“(bb) METROPOLITAN COUN-*
18 *TIES.—If the place of employment*
19 *of the workers provided an allow-*
20 *ance under this clause is a metro-*
21 *politan county, the amount of the*
22 *housing allowance under this*
23 *clause shall be equal to the aver-*
24 *age fair market rental for existing*
25 *housing in metropolitan counties*

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1 *in the State in which the place of*
2 *employment is located, as estab-*
3 *lished by the Secretary of Housing*
4 *and Urban Development pursuant*
5 *to section 8(c) of the United*
6 *States Housing Act of 1937 (42*
7 *U.S.C. 1437f(c)), based on a 2-*
8 *bedroom dwelling unit and an as-*
9 *sumption of 2 persons per bed-*
10 *room.*

11 “(v) *EXCEPTION FOR COMMUTING*
12 *WORKERS.—Nothing in this subparagraph*
13 *may be construed to require an employer to*
14 *provide housing or a housing allowance to*
15 *workers who reside outside of the United*
16 *States if their place of residence is within*
17 *normal commuting distance and the job site*
18 *is within 50 miles of an international land*
19 *border of the United States.*

20 “(H) *WORKSITE TRANSPORTATION FOR*
21 *CONTRACT WORKERS.—During the period a des-*
22 *ignated agricultural employer employs a con-*
23 *tract agricultural worker, such employer shall, at*
24 *the employer’s option, provide or reimburse the*
25 *contract agricultural worker for the cost of daily*

1 *transportation from the contract worker's living*
2 *quarters to the contract agricultural worker's*
3 *place of employment.*

4 “(I) *REIMBURSEMENT OF TRANSPORTATION*
5 *TO THE PLACE OF EMPLOYMENT.—*

6 “(i) *IN GENERAL.—A nonimmigrant*
7 *agricultural worker shall be reimbursed by*
8 *the first employer for the cost of the worker's*
9 *transportation and subsistence from the*
10 *place from which the worker came from to*
11 *the place of first employment.*

12 “(ii) *LIMITATION.—The amount of re-*
13 *imbursement provided under clause (i) to a*
14 *worker shall not exceed the lesser of—*

15 “(I) *the actual cost to the worker*
16 *of the transportation and subsistence*
17 *involved; or*

18 “(II) *the most economical and*
19 *reasonable common carrier transpor-*
20 *tation charges and subsistence costs for*
21 *the distance involved.*

22 “(J) *REIMBURSEMENT OF TRANSPORTATION*
23 *FROM PLACE OF EMPLOYMENT.—*

24 “(i) *IN GENERAL.—A contract agricul-*
25 *tural worker who completes at least 27*

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1 *months under his or her contract with the*
2 *same designated agricultural employer shall*
3 *be reimbursed by that employer for the cost*
4 *of the worker's transportation and subsist-*
5 *ence from the place of employment to the*
6 *place from which the worker came from*
7 *abroad to work for the employer.*

8 “(i) *LIMITATION.*—*The amount of re-*
9 *imbursement required under clause (i) shall*
10 *not exceed the lesser of—*

11 “(I) *the actual cost to the worker*
12 *of the transportation and subsistence*
13 *involved; or*

14 “(II) *the most economical and*
15 *reasonable common carrier transpor-*
16 *tation charges and subsistence costs for*
17 *the distance involved.*

18 “(f) *WAGES.*—

19 “(1) *WAGE RATE REQUIREMENT.*—

20 “(A) *IN GENERAL.*—*A nonimmigrant agri-*
21 *cultural worker employed by a designated agri-*
22 *cultural employer shall be paid not less than the*
23 *wage rate for such employment set forth in para-*
24 *graph (3).*

1 “(B) *WORKERS PAID ON A PIECE RATE OR*
2 *OTHER INCENTIVE BASIS.—If an employer pays*
3 *by the piece rate or other incentive method and*
4 *requires 1 or more minimum productivity stand-*
5 *ards as a condition of job retention, such stand-*
6 *ards shall be specified in the job offer and be no*
7 *more than those which have been normally re-*
8 *quired (at the time of the employee’s first appli-*
9 *cation for designated employer status) by other*
10 *employers for the activity in the geographic area*
11 *of the job, unless the Secretary approves a higher*
12 *standard.*

13 “(2) *JOB CATEGORIES.—*

14 “(A) *IN GENERAL.—For purposes of para-*
15 *graph (1), each nonimmigrant agricultural*
16 *worker employed by such employer shall be as-*
17 *signed to 1 of the following standard occupa-*
18 *tional classifications, as defined by the Bureau*
19 *of Labor Statistics:*

20 “(i) *First-Line Supervisors of Farm-*
21 *ing, Fishing, and Forestry Workers (45–*
22 *1011).*

23 “(ii) *Animal Breeders (45–2021).*

24 “(iii) *Graders and Sorters, Agricul-*
25 *tural Products (45–2041).*

1 “(iv) *Agricultural equipment operator*
2 *(45–2091).*

3 “(v) *Farmworkers and Laborers, Crop,*
4 *Nursery, and Greenhouse (45–2092).*

5 “(vi) *Farmworkers, Farm, Ranch and*
6 *Aquacultural Animals (45–2093).*

7 “(B) *DETERMINATION OF CLASSIFICA-*
8 *TION.—A nonimmigrant agricultural worker is*
9 *employed in a standard occupational classifica-*
10 *tion described in clause (i), (ii), (iii), (iv), (v),*
11 *or (vi) of subparagraph (A) if the worker per-*
12 *forms activities associated with that occupa-*
13 *tional classification, as specified on the employ-*
14 *er’s petition, for at least 75 percent of the time*
15 *in a semiannual employment period.*

16 “(3) *DETERMINATION OF WAGE RATE.—*

17 “(A) *CALENDAR YEARS 2014 THROUGH*
18 *2016.—The wage rate under this subparagraph*
19 *for calendar years 2014 through 2016 shall be*
20 *the higher of—*

21 “(i) *the applicable Federal, State, or*
22 *local minimum wage; or*

23 “(ii)(I) *for the category described in*
24 *paragraph (2)(A)(iii)—*

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1 “(aa) \$9.37 for calendar year
2 2014;

3 “(bb) \$9.60 for calendar year
4 2015; and

5 “(cc) \$9.84 for calendar year
6 2016;

7 “(II) for the category described in
8 paragraph (2)(A)(iv)—

9 “(aa) \$11.30 for calendar year
10 2014;

11 “(bb) \$11.58 for calendar year
12 2015; and

13 “(cc) \$11.87 for calendar year
14 2016;

15 “(III) for the category described in
16 paragraph (2)(A)(v)—

17 “(aa) \$9.17 for calendar year
18 2014;

19 “(bb) \$9.40 for calendar year
20 2015; and

21 “(cc) \$9.64 for calendar year
22 2016; and

23 “(IV) for the category described in
24 paragraph (2)(A)(vi)—

1119

1 “(aa) \$10.82 for calendar year
2 2014;

3 “(bb) \$11.09 for calendar year
4 2015; and

5 “(cc) \$11.37 for calendar year
6 2016.

7 “(B) *SUBSEQUENT YEARS.*—*The Secretary*
8 *shall increase the hourly wage rates set forth in*
9 *clauses (i) through (iv) of subparagraph (A), for*
10 *each calendar year after the calendar years de-*
11 *scribed in subparagraph (A) by an amount equal*
12 *to—*

13 “(i) *1.5 percent, if the percentage in-*
14 *crease in the Employment Cost Index for*
15 *wages and salaries during the previous cal-*
16 *endar year, as calculated by the Bureau of*
17 *Labor Statistics, is less than 1.5 percent;*

18 “(ii) *the percentage increase in such*
19 *Employment Cost Index, if such percentage*
20 *increase is between 1.5 percent and 2.5 per-*
21 *cent, inclusive; or*

22 “(iii) *2.5 percent, if such percentage*
23 *increase is greater than 2.5 percent.*

24 “(C) *AGRICULTURAL SUPERVISORS AND*
25 *ANIMAL BREEDERS.*—*Not later than September*

1 1, 2015, and annually thereafter, the Secretary,
2 in consultation with the Secretary of Labor,
3 shall establish the required wage for the next cal-
4 endar year for each of the job categories set out
5 in clauses (i) and (ii) of paragraph (2)(A).

6 “(D) *SURVEY BY BUREAU OF LABOR STA-*
7 *TISTICS.*—Not later than April 15, 2015, the Bu-
8 reau of Labor Statistics shall consult with the
9 Secretary to expand the Occupational Employ-
10 ment Statistics Survey to survey agricultural
11 producers and contractors and produce improved
12 wage data by State and the job categories set out
13 in clauses (i) through (vi) of subparagraph (A).

14 “(4) *CONSIDERATION.*—In determining the wage
15 rate under paragraph (3)(C), the Secretary may con-
16 sider appropriate factors, including—

17 “(A) *whether the employment of additional*
18 *alien workers at the required wage will adversely*
19 *affect the wages and working conditions of work-*
20 *ers in the United States similarly employed;*

21 “(B) *whether the employment in the United*
22 *States of an alien admitted under section*
23 *101(a)(15)(H)(ii)(a) or unauthorized aliens in*
24 *the agricultural workforce has depressed wages of*
25 *United States workers engaged in agricultural*

1 *employment below the levels that would otherwise*
2 *have prevailed if such aliens had not been em-*
3 *ployed in the United States;*

4 “(C) *whether wages of agricultural workers*
5 *are sufficient to support such workers and their*
6 *families at a level above the poverty thresholds*
7 *determined by the Bureau of Census;*

8 “(D) *the wages paid workers in the United*
9 *States who are not employed in agricultural em-*
10 *ployment but who are employed in comparable*
11 *employment;*

12 “(E) *the continued exclusion of employers of*
13 *nonimmigrant alien workers in agriculture from*
14 *the payment of taxes under chapter 21 of the In-*
15 *ternal Revenue Code of 1986 (26 U.S.C. 3101 et*
16 *seq.) and chapter 23 of such Code (26 U.S.C.*
17 *3301 et seq.);*

18 “(F) *the impact of farm labor costs in the*
19 *United States on the movement of agricultural*
20 *production to foreign countries;*

21 “(G) *a comparison of the expenses and cost*
22 *structure of foreign agricultural producers to the*
23 *expenses incurred by agricultural producers*
24 *based in the United States; and*

1 “(H) the accuracy and reliability of the Oc-
2 cupational Employment Statistics Survey.

3 “(5) ADVERSE EFFECT WAGE RATE.—

4 “(A) PROHIBITION OF MODIFICATION.—The
5 adverse effect wage rates in effect on April 15,
6 2013, for nonimmigrants admitted under
7 101(a)(15)(H)(ii)(a)—

8 “(i) shall remain in effect until the
9 date described in section 2233 of the Agri-
10 cultural Worker Program Act of 2013; and

11 “(ii) may not be modified except as
12 provided in subparagraph (B).

13 “(B) EXCEPTION.—Until the Secretary es-
14 tablishes the wage rates required under para-
15 graph (3)(C), the adverse effect wage rates in ef-
16 fect on the date of the enactment of the Agricul-
17 tural Worker Program Act of 2013 shall be—

18 “(i) deemed to be such wage rates; and

19 “(ii) after September 1, 2015, adjusted
20 annually in accordance with paragraph
21 (3)(B).

22 “(C) NONPAYMENT OF FICA AND FUTA
23 TAXES.—An employer employing nonimmigrant
24 agricultural workers shall not be required to pay
25 and withhold from such workers—

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1 “(i) *the tax required under section*
2 *3101 of the Internal Revenue Code of 1986;*
3 *or*

4 “(ii) *the tax required under section*
5 *3301 of the Internal Revenue Code of 1986.*

6 “(6) *PREFERENTIAL TREATMENT OF ALIENS*
7 *PROHIBITED.—*

8 “(A) *IN GENERAL.—Except as provided in*
9 *subparagraph (B), employers seeking to hire*
10 *United States workers shall offer the United*
11 *States workers not less than the same benefits,*
12 *wages, and working conditions that the employer*
13 *is offering, intends to offer, or will provide to*
14 *nonimmigrant agricultural workers. No job offer*
15 *may impose on United States workers any re-*
16 *strictions or obligations that will not be imposed*
17 *on the employer’s nonimmigrant agricultural*
18 *workers.*

19 “(B) *EXCEPTION.—Notwithstanding sub-*
20 *paragraph (A), a designated agricultural em-*
21 *ployer is not required to provide housing or a*
22 *housing allowance to United States workers.*

23 “(g) *WORKER PROTECTIONS AND DISPUTE RESOLU-*
24 *TION.—*

1 “(1) *EQUALITY OF TREATMENT.*—Nonimmigrant
2 *agricultural workers shall not be denied any right or*
3 *remedy under any Federal, State, or local labor or*
4 *employment law applicable to United States workers*
5 *engaged in agricultural employment.*

6 “(2) *APPLICABILITY OF THE MIGRANT AND SEA-*
7 *SONAL AGRICULTURAL WORKER PROTECTION ACT.*—

8 “(A) *MIGRANT AND SEASONAL AGRICUL-*
9 *TURAL WORKER PROTECTION ACT.*—Non-
10 *immigrant agricultural workers shall be consid-*
11 *ered migrant agricultural workers for purposes*
12 *of the Migrant and Seasonal Agricultural Work-*
13 *er Protection Act (29 U.S.C. 1801 et seq.).*

14 “(B) *ELIGIBILITY OF NONIMMIGRANT AGRI-*
15 *CULTURAL WORKERS FOR CERTAIN LEGAL AS-*
16 *SISTANCE.*—A nonimmigrant agricultural work-
17 *er shall be considered to be lawfully admitted for*
18 *permanent residence for purposes of establishing*
19 *eligibility for legal services under the Legal Serv-*
20 *ices Corporation Act (42 U.S.C. 2996 et seq.) on*
21 *matters relating to wages, housing, transpor-*
22 *tation, and other employment rights.*

23 “(C) *MEDIATION.*—

24 “(i) *FREE MEDIATION SERVICES.*—The
25 *Federal Mediation and Conciliation Service*

1 *shall be available to assist in resolving dis-*
2 *putes arising under this section between*
3 *nonimmigrant agricultural workers and*
4 *designated agricultural employers without*
5 *charge to the parties.*

6 “(ii) *COMPLAINT.*—*If a nonimmigrant*
7 *agricultural worker files a complaint under*
8 *section 504 of the Migrant and Seasonal*
9 *Agricultural Worker Protection Act (29*
10 *U.S.C. 1854), not later than 60 days after*
11 *the filing of proof of service of the com-*
12 *plaint, a party to the action may file a re-*
13 *quest with the Federal Mediation and Con-*
14 *ciliation Service to assist the parties in*
15 *reaching a satisfactory resolution of all*
16 *issues involving all parties to the dispute.*

17 “(iii) *NOTICE.*—*Upon filing a request*
18 *under clause (ii) and giving of notice to the*
19 *parties, the parties shall attempt mediation*
20 *within the period specified in clause (iv).*

21 “(iv) *90-DAY LIMIT.*—*The Federal Me-*
22 *diation and Conciliation Service may con-*
23 *duct mediation or other nonbinding dispute*
24 *resolution activities for a period not to ex-*
25 *ceed 90 days beginning on the date on*

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1 *which the Federal Mediation and Concilia-*
2 *tion Service receives a request for assistance*
3 *under clause (ii) unless the parties agree to*
4 *an extension of such period.*

5 “(v) *AUTHORIZATION OF APPROPRIA-*
6 *TIONS.—*

7 “(I) *IN GENERAL.—*Subject to
8 *clause (II), there are authorized to be*
9 *appropriated to the Federal Mediation*
10 *and Conciliation Service \$500,000 for*
11 *each fiscal year to carry out this sub-*
12 *paragraph.*

13 “(II) *MEDIATION.—*Notwith-
14 *standing any other provision of law,*
15 *the Director of the Federal Mediation*
16 *and Conciliation Service is author-*
17 *ized—*

18 “(aa) *to conduct the medi-*
19 *ation or other dispute resolution*
20 *activities from any other account*
21 *containing amounts available to*
22 *the Director; and*

23 “(bb) *to reimburse such ac-*
24 *count with amounts appropriated*
25 *pursuant to subclause (I).*

1 “(vi) *PRIVATE MEDIATION.*—If all par-
2 ties agree, a private mediator may be em-
3 ployed as an alternative to the Federal Me-
4 diation and Conciliation Service.

5 “(3) *OTHER RIGHTS.*—Nonimmigrant agricul-
6 tural workers shall be entitled to the rights granted to
7 other classes of aliens under sections 242(h) and
8 245E.

9 “(4) *WAIVER OF RIGHTS.*—Agreements by non-
10 immigrant agricultural workers to waive or modify
11 any rights or protections under this section shall be
12 considered void or contrary to public policy except as
13 provided in a collective bargaining agreement with a
14 bona fide labor organization.

15 “(h) *ENFORCEMENT AUTHORITY.*—

16 “(1) *INVESTIGATION OF COMPLAINTS.*—

17 “(A) *AGGRIEVED PERSON OR THIRD-PARTY*
18 *COMPLAINTS.*—

19 “(i) *PROCESS.*—The Secretary of
20 Labor shall establish a process for the re-
21 ceipt, investigation, and disposition of com-
22 plaints respecting a designated agricultural
23 employer’s failure to meet a condition speci-
24 fied in subsection (e), or an employer’s mis-

1 *representation of material facts in a peti-*
2 *tion under subsection (e)(2).*

3 “(ii) *FILING.*—*Any aggrieved person*
4 *or organization, including bargaining rep-*
5 *resentatives, may file a complaint referred*
6 *to in clause (i) not later than 1 year after*
7 *the date of the failure or misrepresentation,*
8 *respectively.*

9 “(iii) *INVESTIGATION OR HEARING.*—
10 *The Secretary of Labor shall conduct an in-*
11 *vestigation if there is reasonable cause to be-*
12 *lieve that such failure or misrepresentation*
13 *has occurred.*

14 “(B) *DETERMINATION ON COMPLAINT.*—
15 *Under such process, the Secretary of Labor shall*
16 *provide, not later than 30 days after the date on*
17 *which such a complaint is filed, for a determina-*
18 *tion as to whether or not a reasonable basis ex-*
19 *ists to make a finding described in subparagraph*
20 *(C), (D), (E), or (F). If the Secretary of Labor*
21 *determines that such a reasonable basis exists,*
22 *the Secretary of Labor shall provide for notice of*
23 *such determination to the interested parties and*
24 *an opportunity for a hearing on the complaint,*
25 *in accordance with section 556 of title 5, United*

1 *States Code, within 60 days after the date of the*
2 *determination. If such a hearing is requested, the*
3 *Secretary of Labor shall make a finding con-*
4 *cerning the matter not later than 60 days after*
5 *the date of the hearing. In the case of similar*
6 *complaints respecting the same applicant, the*
7 *Secretary of Labor may consolidate the hearings*
8 *under this subparagraph on such complaints.*

9 “(C) *FAILURE TO MEET CONDITIONS.—If*
10 *the Secretary of Labor finds, after notice and op-*
11 *portunity for a hearing, a failure to meet a con-*
12 *dition under subsection (e) or (f), or a material*
13 *misrepresentation of fact in a petition under*
14 *subsection (e)(2)—*

15 “(i) *the Secretary of Labor shall notify*
16 *the Secretary of such finding and may, in*
17 *addition, impose such other administrative*
18 *remedies (including civil money penalties*
19 *in an amount not to exceed \$1,000 per vio-*
20 *lation) as the Secretary of Labor determines*
21 *to be appropriate; and*

22 “(ii) *the Secretary may disqualify the*
23 *designated agricultural employer from the*
24 *employment of nonimmigrant agricultural*
25 *workers for a period of 1 year.*

1 “(D) *WILLFUL FAILURES AND WILLFUL*
2 *MISREPRESENTATIONS.—If the Secretary of*
3 *Labor finds, after notice and opportunity for*
4 *hearing, a willful failure to meet a condition*
5 *under subsection (e) or (f) or a willful misrepre-*
6 *sentation of a material fact in an registration or*
7 *petition under paragraph (1) or (2) of subsection*
8 *(e)—*

9 “(i) *the Secretary of Labor shall notify*
10 *the Secretary of such finding and may, in*
11 *addition, impose such other administrative*
12 *remedies (including civil money penalties*
13 *in an amount not to exceed \$5,000 per vio-*
14 *lation) as the Secretary of Labor determines*
15 *to be appropriate;*

16 “(ii) *the Secretary of Labor may seek*
17 *appropriate legal or equitable relief; and*

18 “(iii) *the Secretary may disqualify the*
19 *designated agricultural employer from the*
20 *employment of nonimmigrant agricultural*
21 *workers for a period of 2 years.*

22 “(E) *DISPLACEMENT OF UNITED STATES*
23 *WORKERS.—If the Secretary of Labor finds, after*
24 *notice and opportunity for hearing, a willful*
25 *failure to meet a condition under subsection (e)*

1 or (f) or a willful misrepresentation of a mate-
2 rial fact in an registration or petition under
3 paragraph (1) or (2) of subsection (e), in the
4 course of which failure or misrepresentation the
5 employer displaced a United States worker em-
6 ployed by the employer during the period of em-
7 ployment on the employer's petition under sub-
8 section (e)(2) or during the period of 30 days
9 preceding such period of employment—

10 “(i) the Secretary of Labor shall notify
11 the Secretary of such finding and may, in
12 addition, impose such other administrative
13 remedies (including civil money penalties
14 in an amount not to exceed \$15,000 per vio-
15 lation) as the Secretary of Labor determines
16 to be appropriate; and

17 “(ii) the Secretary may disqualify the
18 employer from the employment of non-
19 immigrant agricultural workers for a pe-
20 riod of 3 years.

21 “(F) *FAILURES TO PAY WAGES OR RE-*
22 *QUIRED BENEFITS.*—If the Secretary of Labor
23 finds, after notice and opportunity for a hearing,
24 that the employer has failed to pay the wages, or
25 provide the housing allowance, transportation,

1 *subsistence reimbursement, or guarantee of em-*
2 *ployment required under subsections (e)(4) and*
3 *(f), the Secretary of Labor shall assess payment*
4 *of back wages, or other required benefits, due any*
5 *United States worker or nonimmigrant agricul-*
6 *tural worker employed by the employer in the*
7 *specific employment in question. The back wages*
8 *or other required benefits required under sub-*
9 *sections (e) and (f) shall be equal to the dif-*
10 *ference between the amount that should have been*
11 *paid and the amount that actually was paid to*
12 *such worker.*

13 “(G) *DISPOSITION OF PENALTIES.—Civil*
14 *penalties collected under this paragraph shall be*
15 *deposited into the Comprehensive Immigration*
16 *Reform Trust Fund established under section*
17 *6(a)(1) of the Border Security, Economic Oppor-*
18 *tunity, and Immigration Modernization Act.*

19 “(2) *LIMITATIONS ON CIVIL MONEY PEN-*
20 *ALTIES.—The Secretary of Labor shall not impose*
21 *total civil money penalties with respect to a petition*
22 *under subsection (e)(2) in excess of \$90,000.*

23 “(3) *ELECTION.—A nonimmigrant agricultural*
24 *worker who has filed an administrative complaint*
25 *with the Secretary of Labor may not maintain a civil*

1 *action unless a complaint based on the same violation*
2 *filed with the Secretary of Labor under paragraph (1)*
3 *is withdrawn before the filing of such action, in which*
4 *case the rights and remedies available under this sub-*
5 *section shall be exclusive.*

6 *“(4) PRECLUSIVE EFFECT.—Any settlement by a*
7 *nonimmigrant agricultural worker, a designated agri-*
8 *cultural employer, or any person reached through the*
9 *mediation process required under subsection (g)(2)(C)*
10 *shall preclude any right of action arising out of the*
11 *same facts between the parties in any Federal or*
12 *State court or administrative proceeding, unless spe-*
13 *cifically provided otherwise in the settlement agree-*
14 *ment.*

15 *“(5) SETTLEMENTS.—Any settlement by the Sec-*
16 *retary of Labor with a designated agricultural worker*
17 *on behalf of a nonimmigrant agricultural worker of*
18 *a complaint filed with the Secretary of Labor under*
19 *this section or any finding by the Secretary of Labor*
20 *under this subsection shall preclude any right of ac-*
21 *tion arising out of the same facts between the parties*
22 *under any Federal or State court or administrative*
23 *proceeding, unless specifically provided otherwise in*
24 *the settlement agreement.*

1 “(6) *STATUTORY CONSTRUCTION.*—*Nothing in*
2 *this subsection may be construed as limiting the au-*
3 *thority of the Secretary of Labor to conduct any com-*
4 *pliance investigation under any other labor law, in-*
5 *cluding any law affecting migrant and seasonal agri-*
6 *cultural workers, or, in the absence of a complaint*
7 *under this section.*

8 “(7) *DISCRIMINATION PROHIBITED.*—*It is a vio-*
9 *lation of this subsection for any person who has filed*
10 *a petition under subsection (e) or (f) to intimidate,*
11 *threaten, restrain, coerce, blacklist, discharge, or in*
12 *any other manner discriminate against an employee,*
13 *including a former employee or an applicant for em-*
14 *ployment, because the employee—*

15 “(A) *has disclosed information to the em-*
16 *ployer, or to any other person, that the employee*
17 *reasonably believes evidences a violation of sub-*
18 *section (e) or (f), or any rule or regulation relat-*
19 *ing to subsection (e) or (f); or*

20 “(B) *cooperates or seeks to cooperate in an*
21 *investigation or other proceeding concerning the*
22 *employer’s compliance with the requirements*
23 *under subsection (e) or (f) or any rule or regula-*
24 *tion pertaining to subsection (e) or (f).*

25 “(8) *ROLE OF ASSOCIATIONS.*—

1 “(A) VIOLATION BY A MEMBER OF AN ASSO-
2 CIATION.—

3 “(i) IN GENERAL.—If an association
4 acting as the agent of an employer files an
5 application on behalf of such employer, the
6 employer is fully responsible for such appli-
7 cation, and for complying with the terms
8 and conditions of subsection (e). If such an
9 employer is determined to have violated any
10 requirement described in this subsection, the
11 penalty for such violation shall apply only
12 to that employer except as provided in
13 clause (ii).

14 “(ii) COLLECTIVE RESPONSIBILITY.—If
15 the Secretary of Labor determines that the
16 association or other members of the associa-
17 tion participated in, had knowledge of, or
18 reason to know of a violation described in
19 clause (i), the penalty shall also be invoked
20 against the association and complicit asso-
21 ciation members.

22 “(B) VIOLATIONS BY AN ASSOCIATION ACT-
23 ING AS AN EMPLOYER.—

24 “(i) IN GENERAL.—If an association
25 filing an application as a sole or joint em-

1 *ployer is determined to have violated any*
2 *requirement described in this section, the*
3 *penalty for such violation shall apply only*
4 *to the association except as provided in*
5 *clause (ii).*

6 “(ii) *MEMBER RESPONSIBILITY.—If*
7 *the Secretary of Labor determines that 1 or*
8 *more association members participated in,*
9 *had knowledge of, or reason to know of the*
10 *violation described in clause (i), the penalty*
11 *shall be invoked against all complicit asso-*
12 *ciation members.*

13 “(i) *SPECIAL NONIMMIGRANT VISA PROCESSING AND*
14 *WAGE DETERMINATION PROCEDURES FOR CERTAIN AGRI-*
15 *CULTURAL OCCUPATIONS.—*

16 “(1) *FINDING.—Certain industries possess*
17 *unique occupational characteristics that necessitate*
18 *the Secretary of Agriculture to adopt special proce-*
19 *dures relating to housing, pay, and visa program ap-*
20 *plication requirements for those industries.*

21 “(2) *SPECIAL PROCEDURES INDUSTRY DE-*
22 *FINED.—In this subsection, the term ‘Special Proce-*
23 *dures Industry’ means—*

24 “(A) *sheepherding and goat herding;*

1 “(B) *itinerant commercial beekeeping and*
2 *pollination;*

3 “(C) *open range production of livestock;*

4 “(D) *itinerant animal shearing; and*

5 “(E) *custom combining industries.*

6 “(3) *WORK LOCATIONS.—The Secretary shall*
7 *allow designated agricultural employers in a Special*
8 *Procedures Industry that do not operate in a single*
9 *fixed-site location to provide, as part of its registra-*
10 *tion or petition under the Program, a list of antici-*
11 *pated work locations, which—*

12 “(A) *may include an anticipated itinerary;*
13 *and*

14 “(B) *may be subsequently amended by the*
15 *employer, after notice to the Secretary.*

16 “(4) *WAGE RATES.—The Secretary may establish*
17 *monthly, weekly, or biweekly wage rates for occupa-*
18 *tions in a Special Procedures Industry for a State or*
19 *other geographic area. For an employer in those Spe-*
20 *cial Procedures Industries that typically pay a*
21 *monthly wage, the Secretary shall require that work-*
22 *ers will be paid not less frequently than monthly and*
23 *at a rate no less than the legally required monthly*
24 *cash wage for such employer as of the date of the en-*
25 *actment of the Border Security, Economic Oppor-*

1 *tunity, and Immigration Modernization Act and in*
2 *an amount as re-determined annually by the Sec-*
3 *retary of Agriculture through rulemaking.*

4 “(5) *HOUSING.*—*The Secretary shall allow for*
5 *the provision of housing or a housing allowance by*
6 *employers in Special Procedures Industries and allow*
7 *housing suitable for workers employed in remote loca-*
8 *tions.*

9 “(6) *ALLERGY LIMITATION.*—*An employer en-*
10 *gaged in the commercial beekeeping or pollination*
11 *services industry may require that an applicant be*
12 *free from bee pollen, venom, or other bee-related aller-*
13 *gies.*

14 “(7) *APPLICATION.*—*An individual employer in*
15 *a Special Procedures Industry may file a program*
16 *petition on its own behalf or in conjunction with an*
17 *association of employers. The employer’s petition may*
18 *be part of several related petitions submitted simulta-*
19 *neously that constitute a master petition.*

20 “(8) *RULEMAKING.*—*The Secretary or, as appro-*
21 *priate, the Secretary of Homeland Security or the*
22 *Secretary of Labor, after consultation with employers*
23 *and employee representatives, shall publish for notice*
24 *and comment proposed regulations relating to hous-*

1 *ing, pay, and application procedures for Special Pro-*
2 *cedures Industries.*

3 “(j) MISCELLANEOUS PROVISIONS.—

4 “(1) DISQUALIFICATION OF NONIMMIGRANT AGRI-
5 *CULTURAL WORKERS FROM FINANCIAL ASSISTANCE.—*
6 *An alien admitted as a nonimmigrant agricultural*
7 *worker is not eligible for any program of financial as-*
8 *sistance under Federal law (whether through grant,*
9 *loan, guarantee, or otherwise) on the basis of finan-*
10 *cial need, as such programs are identified by the Sec-*
11 *retary in consultation with other agencies of the*
12 *United States.*

13 “(2) MONITORING REQUIREMENT.—

14 “(A) IN GENERAL.—The Secretary shall
15 *monitor the movement of nonimmigrant agricul-*
16 *tural workers through—*

17 “(i) the Employment Verification Sys-
18 *tem described in section 274A(b); and*

19 “(ii) the electronic monitoring system
20 *established pursuant to subparagraph (B).*

21 “(B) ELECTRONIC MONITORING SYSTEM.—

22 *Not later than 2 years after the effective date of*
23 *this section, the Secretary of Homeland Security,*
24 *through the Director of U.S. Citizenship and Im-*

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1 *migration Services, shall establish an electronic*
2 *monitoring system, which shall—*

3 *“(i) be modeled on the Student and*
4 *Exchange Visitor Information System*
5 *(SEVIS) and the SEVIS II tracking system*
6 *administered by U.S. Immigration and*
7 *Customs Enforcement;*

8 *“(ii) monitor the presence and employ-*
9 *ment of nonimmigrant agricultural work-*
10 *ers; and*

11 *“(iii) assist in ensuring the compliance*
12 *of designated agricultural employers and*
13 *nonimmigrant agricultural workers with*
14 *the requirements of the Program.”.*

15 ***(b) RULEMAKING.—The Secretary of Agriculture shall***
16 *issue regulations to carry out section 218A of the Immigra-*
17 *tion and Nationality Act, as added by subsection (a), not*
18 *later than 1 year after the date of the enactment of this*
19 *Act.*

20 ***(c) CLERICAL AMENDMENT.—The table of contents is***
21 *amended by inserting after the item relating to section 218*
22 *the following:*

“Sec. 218A. Nonimmigrant agricultural worker program.”.

23 ***(d) EFFECTIVE DATE.—The amendments made by this***
24 *section shall take effect on October 1, 2014.*

1 **SEC. 2233. TRANSITION OF H-2A WORKER PROGRAM.**

2 (a) *SUNSET OF PROGRAM.*—

3 (1) *IN GENERAL.*—*Except as provided in para-*
4 *graph (2), an employer may not petition to employ*
5 *an alien pursuant to section 101(a)(15)(H)(ii)(a) of*
6 *the Immigration and Nationality Act (8 U.S.C.*
7 *1101(a)(15)(H)(ii)(a)) after the date that is 1 year*
8 *after the date on which the regulations issued pursu-*
9 *ant to section 2241(b) become effective.*

10 (2) *EXCEPTION.*—*An employer may employ an*
11 *alien described in paragraph (1) for the shorter of—*

12 (A) *10 months; or*

13 (B) *the time specified in the position.*

14 (b) *CONFORMING AMENDMENTS.*—

15 (1) *REPEAL OF H-2A NONIMMIGRANT CAT-*
16 *EGORY.*—*Section 101(a)(15)(H)(ii) (8 U.S.C.*
17 *1101(a)(15)(H)(ii)) is amended by striking subclause*
18 *(a).*

19 (2) *REPEAL OF ADMISSION REQUIREMENTS FOR*
20 *H-2A WORKER.*—*Section 218 (8 U.S.C. 1188) is re-*
21 *pealed.*

22 (3) *CONFORMING AMENDMENTS.*—

23 (A) *AMENDMENT OF PETITION REQUIRE-*
24 *MENTS.*—*Section 214(c)(1) (8 U.S.C. 1184(c)(1))*
25 *is amended by striking “For purposes of this*
26 *subsection” and all that follows.*

1 (B) *CLERICAL AMENDMENT.*—*The table of*
2 *contents is amended by striking the item relating*
3 *to section 218.*

4 (4) *EFFECTIVE DATE.*—*The amendments made*
5 *by this subsection shall take effect on the date that is*
6 *1 year after the effective date of the regulations issued*
7 *pursuant to section 2241(b).*

8 **SEC. 2234. REPORTS TO CONGRESS ON NONIMMIGRANT AG-**
9 **RICULTURAL WORKERS.**

10 (a) *ANNUAL REPORT BY SECRETARY OF AGRI-*
11 *CULTURE.*—*Not later than September 30 of each year, the*
12 *Secretary of Agriculture shall submit a report to Congress*
13 *that identifies, for the previous year, the number,*
14 *disaggregated by State and by occupation, of—*

15 (1) *job opportunities approved for employment of*
16 *aliens admitted pursuant to clause (iii) or clause (iv)*
17 *of section 101(a)(15)(W) of the Immigration and Na-*
18 *tionality Act, as added by section 2231; and*

19 (2) *aliens actually admitted pursuant to each*
20 *such clause.*

21 (b) *ANNUAL REPORT BY SECRETARY OF HOMELAND*
22 *SECURITY.*—*Not later than September 30 of each year, the*
23 *Secretary shall submit a report to Congress that identifies,*
24 *for the previous year, the number of aliens described in sub-*
25 *section (a)(2) who—*

- 1 (1) *violated the terms of the nonimmigrant agri-*
2 *cultural worker program established under section*
3 *218A(b) of the Immigration and Nationality Act, as*
4 *added by section 2232; and*
5 (2) *have not departed from the United States.*

6 **CHAPTER 3—OTHER PROVISIONS**

7 **SEC. 2241. RULEMAKING.**

8 (a) *CONSULTATION REQUIREMENT.—In the course of*
9 *promulgating any regulation necessary to implement this*
10 *subtitle, or the amendments made by this subtitle, the Sec-*
11 *retary, the Secretary of Agriculture, the Secretary of Labor,*
12 *and the Secretary of State shall regularly consult with each*
13 *other.*

14 (b) *DEADLINE FOR ISSUANCE OF REGULATIONS.—Ex-*
15 *cept as provided in section 2232(b), all regulations to im-*
16 *plement this subtitle and the amendments made by this sub-*
17 *title shall be issued not later than 6 months after the date*
18 *of the enactment of this Act.*

19 **SEC. 2242. REPORTS TO CONGRESS.**

20 *Not later than 180 days after the date of the enactment*
21 *of this Act, the Secretary and the Secretary of Agriculture*
22 *shall jointly submit a report to Congress that describes the*
23 *measures being taken and the progress made in imple-*
24 *menting this subtitle and the amendments made by this*
25 *subtitle.*