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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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# A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Specialty  
5 Agriculture Act”.

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

8 Section 101(a)(15)(H) of the Immigration and Na-  
9 tionality Act (8 U.S.C. 1101(a)(15)(H)) is amended by

1 striking “; or (iii)” and inserting “, or (c) having a resi-  
2 dence in a foreign country which he has no intention of  
3 abandoning who is coming temporarily to the United  
4 States to perform agricultural labor or services that are  
5 defined as agricultural labor in section 3121(g) of the In-  
6 ternal Revenue Code of 1986, as agriculture in section 3(f)  
7 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
8 203(f)), and the pressing of apples for cider on a farm;  
9 or (iii)”.

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

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

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

16 “(a) DEFINITIONS.—In this section:

17 “(1) AREA OF EMPLOYMENT.—The term ‘area  
18 of employment’ means the area within normal com-  
19 muting distance of the worksite or physical location  
20 where the work of the H-2C worker is or will be  
21 performed. If such work site or location is within a  
22 Metropolitan Statistical Area, any place within such  
23 area shall be considered to be within the area of em-  
24 ployment.

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

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

8                       “(B) was held by a United States worker  
9                       with substantially equivalent qualifications and  
10                      experience; and

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

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

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

20           “(5) H-2C WORKER.—The term ‘H-2C worker’  
21           means a nonimmigrant described in section  
22           101(a)(15)(H)(ii)(c).

23           “(6) LAY OFF.—

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

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

10           “(ii) does not include any situation in  
11           which the worker is offered, as an alter-  
12           native to such loss of employment, a simi-  
13           lar employment opportunity with the same  
14           employer (or, in the case of a placement of  
15           a worker with another employer under sub-  
16           section (b)(7), with either employer de-  
17           scribed in such subsection) at equivalent or  
18           higher compensation and benefits than the  
19           position from which the employee was dis-  
20           charged, regardless of whether or not the  
21           employee accepts the offer.

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

1           “(7) PREVAILING WAGE.—The term ‘prevailing  
2 wage’ means the wage rate paid to workers in the  
3 same occupation in the area of employment that is  
4 calculated using the same methodology used by the  
5 Department of Labor to determine prevailing wages  
6 for the purpose of the program described in section  
7 101(a)(15)(H)(ii)(b) on January 1, 2011, except  
8 that if the wage rate is determined by means of a  
9 governmental survey, the survey shall provide at  
10 least four levels of wages commensurate with factors  
11 such as experience, qualifications, and the level of  
12 supervision (except that where an existing govern-  
13 ment survey has only 2 levels, 2 intermediate levels  
14 may be created by dividing by 3, the difference be-  
15 tween the 2 levels offered, adding the quotient thus  
16 obtained to the first level and subtracting that  
17 quotient from the second level), and that if the wage  
18 rate is determined by a survey that provides at least  
19 four levels of wages commensurate with factors such  
20 as experience, qualifications and the level of super-  
21 vision, the prevailing wage shall be equal to the first  
22 wage level.

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

1           “(A) a citizen or national of the United  
2 States; or

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

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

14           “(1) TEMPORARY WORK OR SERVICES.—

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

20           “(B) DEFINITION.—For purposes of this  
21 paragraph, a worker is employed on a tem-  
22 porary basis if the employer intends to employ  
23 the worker for no longer than 10 months dur-  
24 ing any contract period.

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

8           “(3) NONDISPLACEMENT OF UNITED STATES  
9           WORKERS.—The employer did not displace and will  
10          not displace a United States worker employed by the  
11          employer during the period of employment of the H-  
12          2C worker and during the 30-day period imme-  
13          diately preceding such period of employment in the  
14          occupation at the place of employment for which the  
15          employer seeks approval to employ H-2C workers.

16          “(4) RECRUITMENT.—

17                 “(A) IN GENERAL.—The employer—

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

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

1           “(B) OTHER REQUIREMENTS.—The re-  
2           cruitment requirement under subparagraph (A)  
3           is satisfied if the employer places—

4                   “(i) a local job order with the State  
5                   workforce agency serving the local area  
6                   where the work will be performed, except  
7                   that nothing in this clause shall require the  
8                   employer to file an interstate job order  
9                   under section 653 of title 20, Code of Fed-  
10                  eral Regulations; and

11                  “(ii) a Sunday advertisement in a  
12                  newspaper of general circulation in the  
13                  area of intended employment.

14           “(C) ADVERTISEMENT REQUIREMENT.—  
15           The advertisement requirement under subpara-  
16           graph (B)(ii) is satisfied if the advertisement—

17                   “(i) names the employer;

18                   “(ii) directs applicants to contact the  
19                   employer or their representative;

20                   “(iii) provides a description of the va-  
21                   cancy that is specific enough to apprise  
22                   United States workers of the job oppor-  
23                   tunity for which certification is sought;

24                   “(iv) describes the geographic area  
25                   with enough specificity to apprise appli-

1           cants of any travel requirements and where  
2           applicants will likely have to reside to per-  
3           form the job; and

4                   “(v) states the rate of pay, which  
5           shall not be less than the wage as de-  
6           scribed in subsection (k)(2)(A).

7                   “(D) END OF RECRUITMENT REQUIRE-  
8           MENT.—The requirement to recruit United  
9           States workers shall terminate on the first day  
10          of the contract period that work begins.

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

15                   “(A) applies;

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

17                   “(C) will be available at the time and place  
18          of need.

19          This requirement shall not apply to a United States  
20          worker who applies for the job on or after the first  
21          day of the contract period that work begins.

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

1 provides otherwise, insurance covering injury and  
2 disease arising out of, and in the course of, the  
3 worker's employment, which will provide benefits at  
4 least equal to those provided under the State work-  
5 ers' compensation law for comparable employment.

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

12 “(8) STRIKE OR LOCKOUT.—There is not a  
13 strike or lockout in the course of a labor dispute  
14 which, under regulations promulgated by the Sec-  
15 retary of Agriculture, precludes the hiring of H-2C  
16 workers.

17 “(9) HOUSING.—Except for H-2C workers who  
18 are reasonably able to return to their permanent res-  
19 idence (either within or outside the United States)  
20 within the same day, the employer will provide hous-  
21 ing to H-2C workers through one of the following  
22 means:

23 “(A) Employer-owned housing in accord-  
24 ance with regulations promulgated by the Sec-  
25 retary of Agriculture.

1           “(B) Rental or public accommodations or  
2 other substantially similar class of habitation in  
3 accordance with regulations promulgated by the  
4 Secretary of Agriculture.

5           “(C) Except where the Governor of the  
6 State has certified that there is inadequate  
7 housing available in the area of intended em-  
8 ployment for migrant farm workers and H-2C  
9 workers seeking temporary housing while em-  
10 ployed in agricultural work, the employer may  
11 furnish the worker with a housing voucher in  
12 accordance with regulations, if—

13           “(i) the employer has verified that  
14 housing is available for the period during  
15 which the work is to be performed, within  
16 a reasonable commuting distance of the  
17 place of employment, for the amount of the  
18 voucher provided, and that the voucher is  
19 useable for that housing;

20           “(ii) upon the request of a worker  
21 seeking assistance in locating housing for  
22 which the voucher will be accepted, the em-  
23 ployer makes a good faith effort to assist  
24 the worker in identifying, locating and se-

1 curing housing in the area of intended em-  
2 ployment; and

3 “(iii) payment for the housing is made  
4 with a housing voucher that is only re-  
5 deemable by the housing owner or their  
6 agent.

7 An employer who provides housing through one of  
8 the foregoing means shall not be deemed a housing  
9 provider under section 203 of the Migrant and Sea-  
10 sonal Agricultural Worker Protection Act (29 U.S.C.  
11 1823) by virtue of providing such housing.

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

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

24 “(d) LIST.—

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

4                   “(A) be sorted by employer; and

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

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

12          “(e) PETITIONING FOR ADMISSION.—

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

15                   “(A) the Secretary of Agriculture may not  
16          require such petition to be filed more than 28  
17          calendar days before the first date the employer  
18          requires the labor or services of the H-2C  
19          worker;

20                   “(B) unless the Secretary of Agriculture  
21          determines that the petition is incomplete or ob-  
22          viously inaccurate, the Secretary, not later than  
23          10 business days after the date on which such  
24          petition was filed, shall either approve or reject  
25          the petition and provide the petitioner with no-

1           tice of such action by means ensuring same or  
2           next day delivery; and

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

6                   “(i) within 5 business days of receipt  
7                   of the petition, notify the petitioner of the  
8                   deficiencies to be corrected by means en-  
9                   suring same or next day delivery; and

10                   “(ii) within 10 business days of re-  
11                   ceipt of the corrected petition, approve or  
12                   deny the petition and provide the petitioner  
13                   with notice of such action by means ensur-  
14                   ing same or next day delivery.

15           “(2) PETITION AGREEMENTS.—By filing an H-  
16           2C petition, a petitioner and each employer consents  
17           to allow access to the site where the labor is being  
18           performed to the Department of Agriculture or the  
19           Department of Homeland Security for the purpose  
20           of investigations to determine compliance with H-2C  
21           requirements and the immigration laws. Notwith-  
22           standing any other provision of law, the Depart-  
23           ments of Agriculture and Homeland Security cannot  
24           delegate their compliance functions to other agencies  
25           or Departments.

1 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

2 “(1) PERMITTING FILING BY AGRICULTURAL  
3 ASSOCIATIONS.—A petition under subsection (b) to  
4 hire an alien as a temporary agricultural worker  
5 may be filed by an association of agricultural em-  
6 ployers which use agricultural services.

7 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
8 EMPLOYERS.—If an association is a joint employer  
9 of temporary agricultural workers, such workers may  
10 be transferred among its members to perform agri-  
11 cultural services of a temporary nature for which the  
12 petition was approved.

13 “(3) TREATMENT OF VIOLATIONS.—

14 “(A) INDIVIDUAL MEMBER.—If an indi-  
15 vidual member of a joint employer association  
16 violates any condition for approval with respect  
17 to the member’s petition, the Secretary of Agri-  
18 culture shall consider as an employer for pur-  
19 poses of subsection (b)(10) and invoke penalties  
20 pursuant to subsection (i) against only that  
21 member of the association unless the Secretary  
22 of Agriculture determines that the association  
23 or other member participated in, had knowledge  
24 of, or had reason to know of the violation.

1           “(B) ASSOCIATION OF AGRICULTURAL EM-  
2           PLOYERS.—If an association representing agri-  
3           cultural employers as a joint employer violates  
4           any condition for approval with respect to the  
5           association’s petition, the Secretary of Agri-  
6           culture shall consider as an employer for pur-  
7           poses of subsection (b)(10) and invoke penalties  
8           pursuant to subsection (i) against only the as-  
9           sociation and not any individual member of the  
10          association, unless the Secretary determines  
11          that the member participated in, had knowledge  
12          of, or had reason to know of the violation.

13          “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The  
14          Secretary of Agriculture shall promulgate regulations to  
15          provide for an expedited procedure—

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

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

21          “(h) MISCELLANEOUS PROVISIONS.—

22                 “(1) ENDORSEMENT OF DOCUMENTS.—The  
23                 Secretary of Homeland Security shall provide for the  
24                 endorsement of entry and exit documents of H-2C  
25                 workers as may be necessary to carry out this sec-

1       tion and to provide notice for purposes of section  
2       274A.

3           “(2) FEES.—

4                   “(A) IN GENERAL.—The Secretary of Ag-  
5       riculture shall require, as a condition of approv-  
6       ing the petition, the payment of a fee, in ac-  
7       cordance with subparagraph (B), to recover the  
8       reasonable cost of processing petitions.

9                   “(B) FEE BY TYPE OF EMPLOYEE.—

10                           “(i) SINGLE EMPLOYER.—An em-  
11       ployer whose petition for temporary alien  
12       agricultural workers is approved shall, for  
13       each approved petition, pay a fee that—

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

17                                   “(II) does not exceed \$1,000.

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

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

1 “(II) does not exceed \$1,000.

2 “(iii) LIMITATION ON ASSOCIATION  
3 FEES.—A joint employer association under  
4 clause (ii) shall not be charged a separate  
5 fee.

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

15 “(i) ENFORCEMENT.—

16 “(1) INVESTIGATIONS AND AUDITS.—The Sec-  
17 retary of Agriculture shall be responsible for con-  
18 ducting investigations and random audits of em-  
19 ployer work sites to ensure compliance with the re-  
20 quirements of the H-2C program. All monetary  
21 fines levied against violating employers shall be paid  
22 to the Department of Agriculture and used to en-  
23 hance the Department of Agriculture’s investigatory  
24 and auditing power.

1           “(2) FAILURE TO MEET CONDITIONS.—If the  
2           Secretary of Agriculture finds, after notice and op-  
3           portunity for a hearing, a failure to meet a condition  
4           of subsection (b), or a material misrepresentation of  
5           fact in a petition under subsection (b), the Sec-  
6           retary—

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

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

14           “(3) PENALTIES FOR WILLFUL FAILURE.—If  
15           the Secretary of Agriculture finds, after notice and  
16           opportunity for a hearing, a willful failure to meet  
17           a material condition of subsection (b), or a willful  
18           misrepresentation of a material fact in a petition  
19           under subsection (b), the Secretary—

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

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

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

8           “(D) may, for a subsequent violation not  
9           arising out of the prior incident, permanently  
10          disqualify the employer from the employment of  
11          H-2C workers.

12          “(4) PENALTIES FOR DISPLACEMENT OF  
13          UNITED STATES WORKERS.—If the Secretary of Ag-  
14          riculture finds, after notice and opportunity for a  
15          hearing, a willful failure to meet a material condition  
16          of subsection (b) or a willful misrepresentation of a  
17          material fact in a petition under subsection (b), in  
18          the course of which failure or misrepresentation the  
19          employer displaced a United States worker employed  
20          by the employer during the period of employment on  
21          the employer’s petition under subsection (b) or dur-  
22          ing the period of 30 days preceding such period of  
23          employment, the Secretary—

24                 “(A) may impose such other administrative  
25                 remedies (including civil money penalties in an

1 amount not to exceed \$15,000 per violation) as  
2 the Secretary determines to be appropriate; and

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

6 “(C) may, for a second violation, perma-  
7 nently disqualify the employer from the employ-  
8 ment of H-2C workers.

9 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-  
10 FITS.—

11 “(1) ASSESSMENT.—If the Secretary of Agri-  
12 culture finds, after notice and opportunity for a  
13 hearing, that the employer has failed to pay the  
14 wages, transportation, subsistence reimbursement, or  
15 guarantee of employment attested by the employer  
16 under subsection (b)(2), the Secretary shall assess  
17 payment of back wages, or such other required bene-  
18 fits, due any United States worker or H-2C worker  
19 employed by the employer in the specific employment  
20 in question.

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

23 “(A) shall be equal to the difference be-  
24 tween the amount that should have been paid

1           and the amount that was paid to such worker;  
2           and

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

5           “(k) MINIMUM WAGES, BENEFITS, AND WORKING  
6   CONDITIONS.—

7                   “(1) PREFERENTIAL TREATMENT OF ALIENS  
8   PROHIBITED.—

9                   “(A) IN GENERAL.—Each employer seek-  
10           ing to hire United States workers shall offer  
11           such workers not less than the same benefits,  
12           wages, and working conditions that the em-  
13           ployer is offering, intends to offer, or will pro-  
14           vide to H-2C workers. No job offer may impose  
15           on United States workers any restrictions or  
16           obligations which will not be imposed on the  
17           employer’s H-2C workers.

18                   “(B) INTERPRETATION.—Every interpreta-  
19           tion and determination made under this section  
20           or under any other law, regulation, or interpre-  
21           tative provision regarding the nature, scope,  
22           and timing of the provision of these and any  
23           other benefits, wages, and other terms and con-  
24           ditions of employment shall be made so that—

1           “(i) the services of workers to their  
2           employers and the employment opportuni-  
3           ties afforded to workers by the employers,  
4           including those employment opportunities  
5           that require United States workers or H-  
6           2C workers to travel or relocate in order to  
7           accept or perform employment—

8                       “(I) mutually benefit such work-  
9                       ers, as well as their families, and em-  
10                      ployers; and

11                     “(II) principally benefit neither  
12                     employer nor employee; and

13                     “(ii) employment opportunities within  
14                     the United States benefit the United  
15                     States economy.

16           “(2) REQUIRED WAGES.—

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

20                       “(i) the prevailing wage; or

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

23                     “(B) SPECIAL RULE.—An employer can  
24                     utilize a piece rate or other alternative wage  
25                     payment system as long as the employer guar-

1           antees each worker a wage rate that equals or  
2           exceeds the amount required under subpara-  
3           graph (A).

4           “(3) REIMBURSEMENT OF TRANSPORTATION  
5           COSTS.—

6                   “(A) REQUIREMENT FOR REIMBURSE-  
7                   MENT.—

8                           “(i) IN GENERAL.—Except for H-2C  
9                           workers who are reasonably able to return  
10                           to their permanent residence (either within  
11                           or outside the United States) within the  
12                           same day, an H-2C worker who completes  
13                           50 percent of the period of employment of  
14                           the job for which the worker was hired, be-  
15                           ginning on the first day of such employ-  
16                           ment, shall be reimbursed by the employer  
17                           for the cost of the worker’s transportation  
18                           and subsistence from—

19                                   “(I) the place from which the H-  
20                                   2C worker was approved to enter the  
21                                   United States to the location at which  
22                                   the work for the employer is per-  
23                                   formed; or

24                                   “(II) if the H-2C worker trav-  
25                                   eled from a place in the United States

1 at which the H-2C worker was last  
2 employed, from such place of last em-  
3 ployment to the location at which the  
4 work for the employer is performed.

5 “(ii) CONSTRUCTION.—Notwith-  
6 standing the Fair Labor Standards Act of  
7 1938 (29 U.S.C. 201 et seq.), the employer  
8 need not reimburse the cost of the H-2C  
9 worker’s transportation and subsistence  
10 unless the worker has completed 50 per-  
11 cent of the period of employment of the job  
12 for which the workers was hired.

13 “(B) TIMING OF REIMBURSEMENT.—Reim-  
14 bursement to the worker of expenses for the  
15 cost of the worker’s transportation and subsist-  
16 ence to the place of employment under subpara-  
17 graph (A) shall be considered timely if such re-  
18 imbursement is made not later than the work-  
19 er’s first regular payday after a worker com-  
20 pletes 50 percent of the period of employment  
21 of the job opportunity as provided under this  
22 paragraph.

23 “(C) ADDITIONAL REIMBURSEMENT.—Ex-  
24 cept for H-2C workers who are reasonably able  
25 to return to their permanent residence (either

1           within or outside the United States) within the  
2           same day, an H-2C worker who completes the  
3           period of employment for the job opportunity  
4           involved shall be reimbursed by the employer  
5           for the cost of the worker's transportation and  
6           subsistence from the work site to the place  
7           where the worker was approved to enter the  
8           United States to work for the employer. If the  
9           worker has contracted with a subsequent em-  
10          ployer, the previous and subsequent employer  
11          shall share the cost of the worker's transpor-  
12          tation and subsistence from work site to work  
13          site.

14                   “(D) LIMITATION.—

15                           “(i) AMOUNT OF REIMBURSEMENT.—

16                           The amount of reimbursement provided to  
17                           a worker or alien under this paragraph  
18                           shall be equal to the lesser of—

19                                   “(I) the actual cost to the worker  
20                                   or alien of the transportation and sub-  
21                                   sistence involved; or

22   “(II) the most economical and  
23   reasonable common carrier transpor-  
24   tation charges and subsistence costs  
25   for the distance involved.

1                   “(ii) DISTANCE TRAVELED.—No reim-  
2                   bursement under subparagraph (A) or (B)  
3                   shall be required if the distance traveled is  
4                   100 miles or less.

5                   “(E) REIMBURSEMENT FOR LAID OFF  
6                   WORKERS.—If the worker is laid off or employ-  
7                   ment is terminated for contract impossibility  
8                   (as described in paragraph (5)(D)) before the  
9                   anticipated ending date of employment, the em-  
10                  ployer shall provide—

11                  “(i) the transportation and subsist-  
12                  ence reimbursement required under sub-  
13                  paragraph (C); and

14                  “(ii) notwithstanding whether the  
15                  worker has completed 50 percent of the pe-  
16                  riod of employment, the transportation and  
17                  subsistence reimbursement required under  
18                  subparagraph (A).

19                  “(F) CONSTRUCTION.—Notwithstanding  
20                  the Fair Labor Standards Act of 1938 (29  
21                  U.S.C. 201 et seq.), the employer is not re-  
22                  quired to reimburse visa, passport, consular, or  
23                  international border crossing fees or any other  
24                  fees associated with the H-2C worker’s lawful  
25                  admission into the United States to perform

1 employment that may be incurred by the work-  
2 er.

3 “(4) EMPLOYMENT GUARANTEE.—

4 “(A) IN GENERAL.—

5 “(i) REQUIREMENT.—Each employer  
6 petitioning for workers under subsection  
7 (b) shall guarantee to offer the worker em-  
8 ployment for the hourly equivalent of not  
9 less than 50 percent of the work hours  
10 during the total anticipated period of em-  
11 ployment, beginning with the first work  
12 day after the arrival of the worker at the  
13 place of employment and ending on the ex-  
14 piration date specified in the job offer.

15 “(ii) FAILURE TO MEET GUAR-  
16 ANTEE.—If the employer affords the  
17 United States worker or the H-2C worker  
18 less employment than that required under  
19 this subparagraph, the employer shall pay  
20 such worker the amount which the worker  
21 would have earned if the worker had  
22 worked for the guaranteed number of  
23 hours.

24 “(iii) PERIOD OF EMPLOYMENT.—For  
25 purposes of this subparagraph, the term

1           ‘period of employment’ means the total  
2           number of anticipated work hours and  
3           workdays described in the job offer and  
4           shall exclude the worker’s Sabbath and  
5           Federal holidays.

6           “(B) CALCULATION OF HOURS.—Any  
7           hours which the worker fails to work, up to a  
8           maximum of the number of hours specified in  
9           the job offer for a work day, when the worker  
10          has been offered an opportunity to do so, and  
11          all hours of work actually performed (including  
12          voluntary work in excess of the number of  
13          hours specified in the job offer in a work day,  
14          on the worker’s Sabbath, or on Federal holi-  
15          days) may be counted by the employer in calcu-  
16          lating whether the period of guaranteed employ-  
17          ment has been met.

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

23          “(D) TERMINATION OF EMPLOYMENT.—

24                  “(i) IN GENERAL.—If, before the expi-  
25                  ration of the period of employment speci-

1           fied in the job offer, the services of the  
2           worker are no longer required due to any  
3           form of natural disaster, including flood,  
4           hurricane, freeze, earthquake, fire,  
5           drought, plant or animal disease, pest in-  
6           festation, regulatory action, or any other  
7           reason beyond the control of the employer  
8           before the employment guarantee in sub-  
9           paragraph (A) is fulfilled, the employer  
10          may terminate the worker’s employment.

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

14                           “(I) fulfill the employment guar-  
15                           antee in subparagraph (A) for the  
16                           work days that have elapsed during  
17                           the period beginning on the first work  
18                           day after the arrival of the worker  
19                           and ending on the date on which such  
20                           employment is terminated;

21                                   “(II) make efforts to transfer the  
22                                   United States worker to other com-  
23                                   parable employment acceptable to the  
24                                   worker; and

1                   “(III) not later than 24 hours  
2                   after termination, notify (or have an  
3                   association acting as an agent for the  
4                   employer notify) the Secretary of  
5                   Homeland Security of such termi-  
6                   nation.

7           “(1) PERIOD OF ADMISSION.—

8                   “(1) IN GENERAL.—An H-2C worker shall be  
9                   admitted for a period of employment, not to exceed  
10                  10 months, that includes—

11                   “(A) a period of not more than 7 days  
12                   prior to the beginning of the period of employ-  
13                   ment for the purpose of travel to the work site;  
14                   and

15                   “(B) a period of not more than 14 days  
16                   following the period of employment for the pur-  
17                   pose of departure or extension based on a sub-  
18                   sequent offer of employment.

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

23                  “(m) ABANDONMENT OF EMPLOYMENT.—

24                   “(1) IN GENERAL.—An alien admitted or pro-  
25                  vided status under section 101(a)(15)(H)(ii)(c) who

1       abandons the employment which was the basis for  
2       such admission or status—

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

5               “(B) shall depart the United States or be  
6       subject to removal under section  
7       237(a)(1)(C)(i).

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

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

18              “(4) VOLUNTARY TERMINATION.—Notwith-  
19      standing paragraph (1), an alien may voluntarily  
20      terminate the alien’s employment if the alien  
21      promptly departs the United States upon termi-  
22      nation of such employment.

23              “(n) REPLACEMENT OF ALIEN.—An employer may  
24      designate an eligible alien to replace an H-2C worker who

1 abandons employment notwithstanding the numerical limi-  
2 tation found in section 214(g)(1)(C).

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

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

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

14 “(A) IN GENERAL.—An alien who is law-  
15 fully present in the United States on the date  
16 of the filing of a petition to extend the stay of  
17 the alien may commence or continue the em-  
18 ployment described in a petition under para-  
19 graph (1) until and unless the petition is de-  
20 nied. The employer shall provide a copy of the  
21 employer’s petition for extension of stay to the  
22 alien. The alien shall keep the petition with the  
23 alien’s identification and employment eligibility  
24 document, as evidence that the petition has

1           been filed and that the alien is authorized to  
2           work in the United States.

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

11          “(C) FILE DEFINED.—In this paragraph,  
12          the term ‘file’ means sending the petition by  
13          certified mail via the United States Postal Serv-  
14          ice, return receipt requested, or delivering by  
15          guaranteed commercial delivery which will pro-  
16          vide the employer with a documented acknowl-  
17          edgment of the date of receipt of the petition  
18          for an extension of stay.

19          “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN  
20          STATUS.—

21          “(A) MAXIMUM PERIOD.—The maximum  
22          continuous period of authorized status as an  
23          H-2C worker (including any extensions) is 10  
24          months.

1           “(B) REQUIREMENT TO REMAINS OUTSIDE  
2           THE UNITED STATES.—In the case of an alien  
3           outside the United States whose period of au-  
4           thorized status as an H-2C worker (including  
5           any extensions) has expired, the alien may not  
6           again apply for admission to the United States  
7           as an H-2C worker unless the alien has re-  
8           mained outside the United States for a contin-  
9           uous period equal to at least  $\frac{1}{5}$  the duration of  
10          the alien’s previous period of authorized status  
11          as an H-2C worker (including any exten-  
12          sions).”.

13          (b) PROHIBITION ON FAMILY MEMBERS.—Section  
14          101(a)(15)(H) of the Immigration and Nationality Act (8  
15          U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
16          the end and inserting “him, except that no spouse or child  
17          may be admitted under clause (ii)(c);”.

18          (c) NUMERICAL CAP.—Section 214(g)(1) of the Im-  
19          migration and Nationality Act (8 U.S.C. 1184(g)(1)) is  
20          amended—

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

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

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

1                   “(C) under section 1101(a)(15)(H)(ii)(c)  
2                   may not exceed 500,000.”.

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

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

7 **SEC. 4. LEGAL ASSISTANCE.**

8           (a) IN GENERAL.—A nonimmigrant worker admitted  
9 to or permitted to remain in the United States under sec-  
10 tion 101(a)(15)(H)(ii)(c) of the Immigration and Nation-  
11 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) for agricultural  
12 labor or service shall be considered to be an alien described  
13 in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20))  
14 for purposes of establishing eligibility for legal assistance  
15 under the Legal Services Corporation Act (42 U.S.C. 2996  
16 et seq.), but only with respect to legal assistance on mat-  
17 ters relating to wages, housing, transportation, and other  
18 employment rights as provided in the job offer under  
19 which the nonimmigrant was admitted. The Legal Services  
20 Corporation may not provide legal assistance for or on be-  
21 half of any such alien, and may not provide financial as-  
22 sistance to any person or entity that provides legal assist-  
23 ance for or on behalf of such alien, unless the alien is  
24 present in the United States at the time the legal assist-  
25 ance is provided.

1 (b) MEDIATION.—An H–2C worker may not bring a  
2 civil action for damages against their employer, nor may  
3 the Legal Services Corporation or any other attorney or  
4 individual bring a civil action for damages on behalf of  
5 an H–2C worker, unless at least 90 days prior to bringing  
6 the action a request has been made to the Federal Medi-  
7 ation and Conciliation Service to assist the parties in  
8 reaching a satisfactory resolution of all issues involving  
9 all parties to the dispute and mediation has been at-  
10 tempted.

11 (c) CONDITION FOR ENTRY ONTO PROPERTY FOR  
12 LEGAL SERVICES CORPORATION REPRESENTATION.—No  
13 employer of a nonimmigrant having status under section  
14 101(a)(15)(H)(ii)(c) of the Immigration and Nationality  
15 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) shall be required to  
16 permit any recipient of a grant or contract under section  
17 1007 of the Legal Services Corporation Act (42 U.S.C.  
18 2996f), or any employee of such a recipient, to enter upon  
19 the employer’s property, unless such recipient or employee  
20 has a pre-arranged appointment with a specific non-  
21 immigrant having such status.

22 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**  
23 **PROTECTION.**

24 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-  
25 cultural Worker Protection Act (29 U.S.C.

1 1802(8)(B)(ii)) is amended by striking “under sections  
2 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and  
3 Nationality Act.” and inserting “under subclauses (a) and  
4 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the  
5 Immigration and Nationality Act.”.

6 **SEC. 6. ARBITRATION AND MEDIATION.**

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

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

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

19 (1) The term “condition of employment” means  
20 a term, condition, obligation, or requirement that is  
21 part of the job offer, such as the term of employ-  
22 ment, the job responsibilities, the employee conduct  
23 standards, and the grievance resolution process, and  
24 to which an applicant or prospective H–2C worker

1 must consent or accept in order to be hired for the  
2 position.

3 (2) The term “H-2C worker” means a non-  
4 immigrant described in section 101(a)(15)(H)(ii)(c)  
5 of the Immigration and Nationality Act (8 U.S.C.  
6 1101(a)(15)(ii)(c)).

7 **SEC. 7. EFFECTIVE DATE; SUNSET; REGULATIONS.**

8 (a) **EFFECTIVE DATE.**—The amendments made by  
9 this Act shall take effect on the date that is 2 years after  
10 the date of the enactment of this Act, and the Secretary  
11 of Agriculture shall accept petitions to import an alien  
12 under sections 101(a)(15)(H)(ii)(c) and 218A of the Im-  
13 migration and Nationality Act (as added by sections 2 and  
14 3 of this Act) beginning on such date.

15 (b) **SUNSET.**—Beginning on the date that is 2 years  
16 after the date of the enactment of this Act, no new petition  
17 to import an alien under sections 101(a)(15)(H)(ii)(a) and  
18 218 of the Immigration and Nationality Act (8 U.S.C.  
19 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be accepted.  
20 The Department of Labor H-2A program regulations  
21 published at 73 Fed. Reg. 77110 et seq. (2008) shall be  
22 in force for all petitions approved under such sections be-  
23 ginning on the date of the enactment of this Act.

24 (c) **REGULATIONS.**—Not later than 18 months after  
25 the date of the enactment of this Act, the Secretary of

1 Agriculture shall promulgate regulations, in accordance  
2 with the notice and comment provisions of section 553 of  
3 title 5, United States Code, to implement the Secretary's  
4 duties under this Act.