

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. \_\_\_\_\_**  
**OFFERED BY MR. GOODLATTE OF VIRGINIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as—

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

4 (2) the “AG Act”.

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

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

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

1       “(53) The term ‘agricultural labor or services’ has  
2 the meaning given such term by the Secretary of Agri-  
3 culture in regulations and includes—

4           “(A) agricultural labor as defined in section  
5 3121(g) of the Internal Revenue Code of 1986;

6           “(B) agriculture as defined in section 3(f) of  
7 the Fair Labor Standards Act of 1938 (29 U.S.C.  
8 203(f));

9           “(C) the handling, planting, drying, packing,  
10 packaging, processing, freezing, or grading prior to  
11 delivery for storage of any agricultural or horti-  
12 cultural commodity in its unmanufactured state;

13           “(D) all activities required for the preparation,  
14 processing or manufacturing of a product of agri-  
15 culture (as such term is defined in such section 3(f))  
16 for further distribution;

17           “(E) forestry-related activities;

18           “(F) aquaculture activities; and

19           “(G) the primary processing of fish or shell-  
20 fish.”.

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

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

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

2 “(a) DEFINITIONS.—In this section and section  
3 218B:

4 “(1) DISPLACE.—The term ‘displace’ means to  
5 lay off a United States worker from the job for  
6 which H-2C workers are sought.

7 “(2) JOB.—The term ‘job’ refers to all posi-  
8 tions with an employer that—

9 “(A) involve essentially the same respon-  
10 sibilities;

11 “(B) are held by workers with substan-  
12 tially equivalent qualifications and experience;  
13 and

14 “(C) are located in the same place or  
15 places of employment.

16 “(3) EMPLOYER.—The term ‘employer’ includes  
17 a single or joint employer, including an association  
18 acting as a joint employer with its members, who  
19 hires workers to perform agricultural labor or serv-  
20 ices.

21 “(4) FORESTRY-RELATED ACTIVITIES.—The  
22 term ‘forestry-related activities’ includes tree plant-  
23 ing, timber harvesting, logging operations, brush  
24 clearing, vegetation management, herbicide applica-  
25 tion, the maintenance of rights-of-way (including for  
26 roads, trails, and utilities), regardless of whether

1 such right-of-way is on forest land, and the har-  
2 vesting of pine straw.

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

6 “(6) LAY OFF.—

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

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

17 “(ii) does not include any situation in  
18 which the worker is offered, as an alter-  
19 native to such loss of employment, a simi-  
20 lar position with the same employer at  
21 equivalent or higher wages and benefits  
22 than the position from which the employee  
23 was discharged, regardless of whether or  
24 not the employee accepts the offer.

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

5           “(7) UNITED STATES WORKER.—The term  
6 ‘United States worker’ means any worker who is—

7           “(A) a citizen or national of the United  
8 States; or

9           “(B) an alien who is lawfully admitted for  
10 permanent residence, is admitted as a refugee  
11 under section 207, or is granted asylum under  
12 section 208.

13           “(8) SPECIAL PROCEDURES INDUSTRY.—The  
14 term ‘special procedures industry’ includes sheep-  
15 herding, goat herding, and the range production of  
16 livestock, itinerant commercial beekeeping and polli-  
17 nation, itinerant animal shearing, and custom com-  
18 bining and harvesting.

19           “(b) PETITION.—An employer that seeks to employ  
20 aliens as H–2C workers under this section shall file with  
21 the Secretary of Homeland Security a petition attesting  
22 to the following:

23           “(1) OFFER OF EMPLOYMENT.—The employer  
24 will offer employment to the aliens on a contractual  
25 basis as H–2C workers under this section for a spe-

1       cific period of time during which the aliens may not  
2       work on an at-will basis (as provided for in section  
3       218B), and such contract shall only be required to  
4       include a description of each place of employment,  
5       period of employment, wages and other benefits to  
6       be provided, and the duties of the positions.

7               “(2) TEMPORARY LABOR OR SERVICES.—

8                       “(A) IN GENERAL.—The employer is seek-  
9                       ing to employ a specific number of H-2C work-  
10                      ers on a temporary basis and will provide com-  
11                      pensation to such workers at a wage rate no  
12                      less than that set forth in subsection (k)(2).

13                     “(B) DEFINITION.—For purposes of this  
14                     paragraph, a worker is employed on a tem-  
15                     porary basis if the employer intends to employ  
16                     the worker for no longer than the time period  
17                     set forth in subsection (n)(1) (subject to the ex-  
18                     ceptions in subsection (n)(3)).

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

24                     “(4) NONDISPLACEMENT OF UNITED STATES  
25                     WORKERS.—The employer did not displace and will

1 not displace United States workers employed by the  
2 employer during the period of employment of the H-  
3 2C workers and during the 30-day period imme-  
4 diately preceding such period of employment in the  
5 job for which the employer seeks approval to employ  
6 H-2C workers.

7 “(5) RECRUITMENT.—

8 “(A) IN GENERAL.—The employer—

9 “(i) conducted adequate recruitment  
10 before filing the petition; and

11 “(ii) was unsuccessful in locating suf-  
12 ficient numbers of willing and qualified  
13 United States workers for the job for  
14 which the H-2C workers are sought.

15 “(B) OTHER REQUIREMENTS.—The re-  
16 cruitment requirement under subparagraph (A)  
17 is satisfied if the employer places a local job  
18 order with the State workforce agency serving  
19 each place of employment, except that nothing  
20 in this subparagraph shall require the employer  
21 to file an interstate job order under section 653  
22 of title 20, Code of Federal Regulations. The  
23 State workforce agency shall post the job order  
24 on its official agency website for a minimum of  
25 30 days and not later than 3 days after receipt

1 using the employment statistics system author-  
2 ized under section 15 of the Wagner-Peyser Act  
3 (29 U.S.C. 491-2). The Secretary of Labor  
4 shall include links to the official Web sites of all  
5 State workforce agencies on a single webpage of  
6 the official Web site of the Department of  
7 Labor.

8 “(C) END OF RECRUITMENT REQUIRE-  
9 MENT.—The requirement to recruit United  
10 States workers for a job shall terminate on the  
11 first day that work begins for the H-2C work-  
12 ers.

13 “(6) OFFERS TO UNITED STATES WORKERS.—  
14 The employer has offered or will offer the job for  
15 which the H-2C workers are sought to any eligible  
16 United States workers who—

17 “(A) apply;

18 “(B) are qualified for the job; and

19 “(C) will be available at the time, at each  
20 place, and for the duration, of need.

21 This requirement shall not apply to United States  
22 workers who apply for the job on or after the first  
23 day that work begins for the H-2C workers.

24 “(7) PROVISION OF INSURANCE.—If the job for  
25 which the H-2C workers are sought is not covered

1 by State workers' compensation law, the employer  
2 will provide, at no cost to the workers unless State  
3 law provides otherwise, insurance covering injury  
4 and disease arising out of, and in the course of, the  
5 workers' employment, which will provide benefits at  
6 least equal to those provided under the State work-  
7 ers compensation law for comparable employment.

8 “(8) STRIKE OR LOCKOUT.—The job that is the  
9 subject of the petition is not vacant because the  
10 former workers in that job are on strike or locked  
11 out in the course of a labor dispute.

12 “(c) PUBLIC EXAMINATION.—Not later than 1 work-  
13 ing day after the date on which a petition under this sec-  
14 tion is filed, the employer shall make the petition available  
15 for public examination, at the employer's principal place  
16 of employment.

17 “(d) LIST.—

18 “(1) IN GENERAL.—The Secretary of Homeland  
19 Security shall maintain a list of the petitions filed  
20 under this subsection, which shall—

21 “(A) be sorted by employer; and

22 “(B) include the number of H-2C workers  
23 sought, the wage rate, the period of employ-  
24 ment, each place of employment, and the date  
25 of need for each alien.

1           “(2) AVAILABILITY.—The Secretary of Home-  
2 land Security shall make the list available for public  
3 examination.

4           “(e) PETITIONING FOR ADMISSION.—

5           “(1) CONSIDERATION OF PETITIONS.—For peti-  
6 tions filed and considered under this subsection—

7           “(A) the Secretary of Homeland Security  
8 may not require such petition to be filed more  
9 than 28 days before the first date the employer  
10 requires the labor or services of H–2C workers;

11           “(B) within the appropriate time period  
12 under subparagraph (C) or (D), the Secretary  
13 of Homeland Security shall—

14           “(i) approve the petition;

15           “(ii) reject the petition; or

16           “(iii) determine that the petition is in-  
17 complete or obviously inaccurate;

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

21           “(i) within 5 business days of receipt  
22 of the petition, notify the petitioner of the  
23 deficiencies to be corrected by means en-  
24 suring same or next day delivery; and

1           “(ii) within 5 business days of receipt  
2           of the corrected petition, approve or reject  
3           the petition and provide the petitioner with  
4           notice of such action by means ensuring  
5           same or next day delivery; and

6           “(D) if the Secretary does not determine  
7           that the petition is incomplete or obviously inac-  
8           curate, the Secretary shall not later than 10  
9           business days after the date on which such peti-  
10          tion was filed, either approve or reject the peti-  
11          tion and provide the petitioner with notice of  
12          such action by means ensuring same or next  
13          day delivery.

14          “(2) ACCESS.—By filing an H-2C petition, the  
15          petitioner and each employer (if the petitioner is an  
16          association that is a joint employer of workers who  
17          perform agricultural labor or services) consent to  
18          allow access to each place of employment to the De-  
19          partment of Agriculture and the Department of  
20          Homeland Security for the purpose of investigations  
21          and audits to determine compliance with the immi-  
22          gration laws (as defined in section 101(a)(17)).

23          “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

24                 “(1) TREATMENT OF ASSOCIATIONS ACTING AS  
25          EMPLOYERS.—If an association is a joint employer

1 of workers who perform agricultural labor or serv-  
2 ices, H-2C workers may be transferred among its  
3 members to perform the agricultural labor or serv-  
4 ices on a temporary basis for which the petition was  
5 approved.

6 “(2) TREATMENT OF VIOLATIONS.—

7 “(A) INDIVIDUAL MEMBER.—If an indi-  
8 vidual member of an association that is a joint  
9 employer commits a violation described in para-  
10 graph (2) or (3) of subsection (i) or subsection  
11 (j)(1), the Secretary of Agriculture shall invoke  
12 penalties pursuant to subsections (i) and (j)  
13 against only that member of the association un-  
14 less the Secretary of Agriculture determines  
15 that the association participated in, had knowl-  
16 edge of, or had reason to know of the violation.

17 “(B) ASSOCIATION OF AGRICULTURAL EM-  
18 PLOYERS.—If an association that is a joint em-  
19 ployer commits a violation described in sub-  
20 sections (i)(2) and (3) or (j)(1), the Secretary  
21 of Agriculture shall invoke penalties pursuant  
22 to subsections (i) and (j) against only the asso-  
23 ciation and not any individual members of the  
24 association, unless the Secretary determines  
25 that the member participated in the violation.

1       “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The  
2 Secretary of Homeland Security shall promulgate regula-  
3 tions to provide for an expedited procedure for the review  
4 of a denial of a petition under this section by the Sec-  
5 retary. At the petitioner’s request, the review shall include  
6 a de novo administrative hearing at which new evidence  
7 may be introduced.

8       “(h) FEES.—The Secretary of Homeland Security  
9 shall require, as a condition of approving the petition, the  
10 payment of a fee to recover the reasonable cost of proc-  
11 essing the petition.

12       “(i) ENFORCEMENT.—

13               “(1) INVESTIGATIONS AND AUDITS.—The Sec-  
14 retary of Agriculture shall be responsible for con-  
15 ducting investigations and audits, including random  
16 audits, of employers to ensure compliance with the  
17 requirements of the H-2C program. All monetary  
18 fines levied against employers shall be paid to the  
19 Department of Agriculture and used to enhance the  
20 Department of Agriculture’s investigative and audit-  
21 ing abilities to ensure compliance by employers with  
22 their obligations under this section.

23               “(2) VIOLATIONS.—If the Secretary of Agri-  
24 culture finds, after notice and opportunity for a  
25 hearing, a failure to fulfill an attestation required by

1       this subsection, or a material misrepresentation of a  
2       material fact in a petition under this subsection, the  
3       Secretary—

4               “(A) may impose such administrative rem-  
5       edies (including civil money penalties in an  
6       amount not to exceed \$1,000 per violation) as  
7       the Secretary determines to be appropriate; and

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

11              “(3) WILLFUL VIOLATIONS.—If the Secretary  
12      of Agriculture finds, after notice and opportunity for  
13      a hearing, a willful failure to fulfill an attestation re-  
14      quired by this subsection, or a willful misrepresenta-  
15      tion of a material fact in a petition under this sub-  
16      section, the Secretary—

17              “(A) may impose such administrative rem-  
18      edies (including civil money penalties in an  
19      amount not to exceed \$5,000 per violation, or  
20      not to exceed \$15,000 per violation if in the  
21      course of such failure or misrepresentation the  
22      employer displaced one or more United States  
23      workers employed by the employer during the  
24      period of employment of H-2C workers or dur-  
25      ing the 30-day period immediately preceding

1 such period of employment) in the job the H-  
2 2C workers are performing as the Secretary de-  
3 termines to be appropriate;

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

7 “(C) may, for a subsequent failure to fulfill  
8 an attestation required by this subsection, or a  
9 misrepresentation of a material fact in a peti-  
10 tion under this subsection, disqualify the em-  
11 ployer from the employment of H-2C workers  
12 for a period of 5 years; and

13 “(D) may, for a subsequent willful failure  
14 to fulfill an attestation required by this sub-  
15 section, or a willful misrepresentation of a ma-  
16 terial fact in a petition under this subsection,  
17 permanently disqualify the employer from the  
18 employment of H-2C workers.

19 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-  
20 FITS.—

21 “(1) IN GENERAL.—If the Secretary of Agri-  
22 culture finds, after notice and opportunity for a  
23 hearing, that the employer has failed to provide the  
24 benefits, wages, and working conditions that the em-  
25 ployer has attested that it would provide under this

1 subsection, the Secretary shall require payment of  
2 back wages, or such other required benefits, due any  
3 United States workers or H-2C workers employed  
4 by the employer.

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

7 “(A) shall be equal to the difference be-  
8 tween the amount that should have been paid  
9 and the amount that was paid to such workers;  
10 and

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

13 “(k) MINIMUM WAGES, BENEFITS, AND WORKING  
14 CONDITIONS.—

15 “(1) PREFERENTIAL TREATMENT OF H-2C  
16 WORKERS PROHIBITED.—

17 “(A) IN GENERAL.—Each employer seek-  
18 ing to hire United States workers for the job  
19 the H-2C workers will perform shall offer such  
20 United States workers not less than the same  
21 benefits, wages, and working conditions that the  
22 employer will provide to the H-2C workers. No  
23 job offer may impose on United States workers  
24 any restrictions or obligations which will not be  
25 imposed on H-2C workers.

1           “(B) INTERPRETATION.—Every interpreta-  
2           tion and determination made under this section  
3           or under any other law, regulation, or interpre-  
4           tative provision regarding the nature, scope,  
5           and timing of the provision of these and any  
6           other benefits, wages, and other terms and con-  
7           ditions of employment shall be made so that—

8                   “(i) the services of workers to their  
9                   employers and the employment opportuni-  
10                  ties afforded to workers by the employers,  
11                  including those employment opportunities  
12                  that require United States workers or H-  
13                  2C workers to travel or relocate in order to  
14                  accept or perform employment—

15                          “(I) mutually benefit such work-  
16                          ers, as well as their families, and em-  
17                          ployers; and

18                          “(II) principally benefit neither  
19                          employer nor employee; and  
20                          “(ii) employment opportunities within  
21                          the United States benefit the United  
22                          States economy.

23           “(2) REQUIRED WAGES.—

24                   “(A) IN GENERAL.—Each employer peti-  
25                   tioning for H-2C workers under this subsection

1 will offer the H-2C workers, during the period  
2 of authorized employment as H-2C workers,  
3 wages that are at least the greatest of—

4 “(i) the applicable State or local min-  
5 imum wage;

6 “(ii) 115 percent of the Federal min-  
7 imum wage, or 150 percent of the Federal  
8 minimum wage in the case of H-2C work-  
9 ers who perform agricultural labor or serv-  
10 ices consisting of meat or poultry proc-  
11 essing; or

12 “(iii) the actual wage level paid by the  
13 employer to all other individuals in the job.

14 “(B) SPECIAL RULE.—An employer can  
15 utilize a piece rate or other alternative wage  
16 payment system so long as the employer guar-  
17 antees each worker a wage rate that equals or  
18 exceeds the amount required under subpara-  
19 graph (A) for the total hours worked in each  
20 pay period. Compensation from a piece rate or  
21 other alternative wage payment system shall in-  
22 clude time spent during rest breaks, moving  
23 from job to job, clean up, or any other non-  
24 productive time, provided that such time does

1 not exceed 20 percent of the total hours in the  
2 work day.

3 “(3) EMPLOYMENT GUARANTEE.—

4 “(A) IN GENERAL.—

5 “(i) REQUIREMENT.—Each employer  
6 petitioning for workers under this sub-  
7 section shall guarantee to offer the H-2C  
8 workers and United States workers per-  
9 forming the same job employment for the  
10 hourly equivalent of not less than 50 per-  
11 cent of the work hours set forth in the  
12 work contract.

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

22 “(B) CALCULATION OF HOURS.—Any  
23 hours which workers fail to work, up to a max-  
24 imum of the number of hours specified in the  
25 work contract for a work day, when the workers

1           have been offered an opportunity to do so, and  
2           all hours of work actually performed (including  
3           voluntary work in excess of the number of  
4           hours specified in the work contract in a work  
5           day) may be counted by the employer in calcu-  
6           lating whether the period of guaranteed employ-  
7           ment has been met.

8           “(C) LIMITATION.—If the workers aban-  
9           don employment before the end of the work  
10          contract period, or are terminated for cause,  
11          the workers are not entitled to the 50 percent  
12          guarantee described in subparagraph (A).

13          “(D) TERMINATION OF EMPLOYMENT.—

14                 “(i) IN GENERAL.—If, before the expi-  
15                 ration of the period of employment speci-  
16                 fied in the work contract, the services of  
17                 the workers are no longer required due to  
18                 any form of natural disaster, including  
19                 flood, hurricane, freeze, earthquake, fire,  
20                 drought, plant or animal disease, pest in-  
21                 festation, regulatory action, or any other  
22                 reason beyond the control of the employer  
23                 before the employment guarantee in sub-  
24                 paragraph (A) is fulfilled, the employer  
25                 may terminate the workers’ employment.

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

4                               “(I) fulfill the employment guar-  
5                               antee in subparagraph (A) for the  
6                               work days that have elapsed during  
7                               the period beginning on the first work  
8                               day and ending on the date on which  
9                               such employment is terminated;

10                              “(II) make efforts to transfer the  
11                              worker to other comparable employ-  
12                              ment acceptable to the worker; and

13                              “(III) not later than 72 hours  
14                              after termination, notify the Secretary  
15                              of Agriculture of such termination  
16                              and stating the nature of the contract  
17                              impossibility.

18           “(l) NONDELEGATION.—The Department of Agri-  
19           culture and the Department of Homeland Security shall  
20           not delegate their investigatory, enforcement, or adminis-  
21           trative functions relating to this section or section 218B  
22           to other agencies or departments of the Federal govern-  
23           ment.

24           “(m) COMPLIANCE WITH BIO-SECURITY PROTO-  
25           COLS.—Except in the case of an imminent threat to health

1 or safety, any personnel from a Federal agency or Federal  
2 grantee seeking to determine the compliance of an em-  
3 ployer with the requirements of this section or section  
4 218B shall, when visiting such employer's place of employ-  
5 ment, make their presence known to the employer and  
6 sign-in in accordance with reasonable bio-security proto-  
7 cols before proceeding to any other area of the place of  
8 employment.

9 “(n) LIMITATION ON H-2C WORKERS’ STAY IN STA-  
10 TUS.—

11 “(1) MAXIMUM PERIOD.—The maximum con-  
12 tinuous period of authorized status as an H-2C  
13 worker (including any extensions) is 18 months for  
14 workers employed in a job that is of a temporary or  
15 seasonal nature. For H-2C workers employed in a  
16 job that is not of a temporary or seasonal nature,  
17 the initial maximum continuous period of authorized  
18 status is 36 months and subsequent maximum con-  
19 tinuous periods of authorized status are 18 months.

20 “(2) REQUIREMENT TO REMAIN OUTSIDE THE  
21 UNITED STATES.—In the case of H-2C workers who  
22 were employed in a job of a temporary or seasonal  
23 nature whose maximum continuous period of author-  
24 ized status as H-2C workers (including any exten-  
25 sions) have expired, the aliens may not again be eli-

1 gible to be H-2C workers until they remain outside  
2 the United States for a continuous period equal to  
3 at least  $\frac{1}{12}$ th of the duration of their previous period  
4 of authorized status as H-2C workers. For H-2C  
5 workers who were employed in a job not of a tem-  
6 porary or seasonal nature whose maximum contin-  
7 uous period of authorized status as H-2C workers  
8 (including any extensions) have expired, the aliens  
9 may not again be eligible to be H-2C workers until  
10 they remain outside the United States for a contin-  
11 uous period equal to at least the lesser of  $\frac{1}{12}$ th of  
12 the duration of their previous period of authorized  
13 status as H-2C workers or 45 days.

14 “(3) EXCEPTIONS.—

15 “(A) The Secretary of Homeland Security  
16 shall deduct absences from the United States  
17 that take place during an H-2C worker’s period  
18 of authorized status from the period that the  
19 alien is required to remain outside the United  
20 States under paragraph (2), if the alien or the  
21 alien’s employer requests such a deduction, and  
22 provides clear and convincing proof that the  
23 alien qualifies for such a deduction. Such proof  
24 shall consist of evidence such as arrival and de-

1 parture records, copies of tax returns, and  
2 records of employment abroad.

3 “(B) There is no maximum continuous pe-  
4 riod of authorized status as set forth in para-  
5 graph (1) or a requirement to remain outside  
6 the United States as set forth in paragraph (2)  
7 for H-2C workers employed as a shepherd,  
8 goatherder, in the range production of livestock,  
9 or who return to the workers’ permanent resi-  
10 dence outside the United States each day.

11 “(o) PERIOD OF ADMISSION.—

12 “(1) IN GENERAL.—In addition to the max-  
13 imum continuous period of authorized status, work-  
14 ers’ authorized period of admission shall include—

15 “(A) a period of not more than 7 days  
16 prior to the beginning of authorized employ-  
17 ment as H-2C workers for the purpose of travel  
18 to the place of employment; and

19 “(B) a period of not more than 14 days  
20 after the conclusion of their authorized employ-  
21 ment for the purpose of departure from the  
22 United States or a period of not more than 30  
23 days following the employment for the purpose  
24 of seeking a subsequent offer of employment by  
25 an employer pursuant to a petition under this

1 section (or pursuant to at-will employment  
2 under section 218B during such times as that  
3 section is in effect) if they have not reached  
4 their maximum continuous period of authorized  
5 employment under subsection (n) (subject to  
6 the exceptions in subsection (n)(3)) unless they  
7 accept subsequent offers of employment as H-  
8 2C workers or are otherwise lawfully present.

9 “(2) FAILURE TO DEPART.—H-2C workers  
10 who do not depart the United States within the peri-  
11 ods referred to in paragraph (1) will be considered  
12 to have failed to maintain nonimmigrant status as  
13 H-2C workers and shall be subject to removal under  
14 section 237(a)(1)(C)(i). Such aliens shall be consid-  
15 ered to be inadmissible pursuant to section  
16 212(a)(9)(B)(i) for having been unlawfully present,  
17 with the aliens considered to have been unlawfully  
18 present for 181 days as of the 15th day following  
19 their period of employment for the purpose of depar-  
20 ture or as of the 31st day following their period of  
21 employment for the purpose of seeking subsequent  
22 offers of employment.

23 “(p) ABANDONMENT OF EMPLOYMENT.—

24 “(1) REPORT BY EMPLOYER.—Not later than  
25 72 hours after an employer learns of the abandon-

1       ment of employment by H-2C workers before the  
2       conclusion of their work contracts, the employer  
3       shall notify the Secretary of Agriculture and the  
4       Secretary of Homeland Security of such abandon-  
5       ment.

6               “(2) REPLACEMENT OF ALIENS.—An employer  
7       may designate eligible aliens to replace H-2C work-  
8       ers who abandon employment notwithstanding the  
9       numerical limitation found in section 214(g)(1)(C).

10       “(q) CHANGE TO H-2C STATUS.—

11               “(1) IN GENERAL.—An alien described in para-  
12       graph (4) is eligible for status as an H-2C worker  
13       despite their unlawful presence.

14               “(2) WAIVER.—In the case of an alien de-  
15       scribed in paragraph (4), the Secretary of Homeland  
16       Security shall waive the grounds of inadmissibility  
17       under paragraphs (5), (6), (7), and (9)(B) of section  
18       212(a), and the grounds of deportability under sub-  
19       paragraphs (A) through (D) of paragraph (1), and  
20       paragraph (3), of section 237(a), with respect to  
21       conduct that occurred prior to the alien first seeking  
22       status as an H-2C worker, solely in order to provide  
23       the alien with such status.

24               “(3) REQUIREMENT TO REMAIN OUTSIDE THE  
25       UNITED STATES.—An alien granted status as an H-

1       2C worker under this subsection shall, after first  
2       being granted such status, depart the United States  
3       for a period by not later than 180 days after being  
4       issued a visa or otherwise being provided with status  
5       as an H–2C worker. Failure to comply with the re-  
6       quirement of the previous sentence shall be consid-  
7       ered failure to maintain nonimmigrant status, and  
8       beginning on the date that is 180 days after the  
9       date on which the alien was granted such status, the  
10      alien shall be subject to removal under section  
11      237(a)(1)(C)(i).

12           “(4) ALIEN DESCRIBED.—An alien described in  
13      this paragraph is an alien who—

14           “(A) was unlawfully present in the United  
15      States on October 23, 2017; and

16           “(B) performed agricultural labor or serv-  
17      ices in the United States for at least 5.75 hours  
18      during each of at least 180 days during the 2-  
19      year period ending on the date of the enactment  
20      of the Ag Act.

21      “(r) TRUST FUND TO ASSURE WORKER RETURN.—

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

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

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

5 “(A) IN GENERAL.—Notwithstanding the  
6 Fair Labor Standards Act of 1938 (29 U.S.C.  
7 201 et seq.) and State and local wage laws, all  
8 employers of H–2C workers shall withhold from  
9 the wages of all H–2C workers other than those  
10 employed as sheepherders, goatherders, in the  
11 range production of livestock, or who return to  
12 the their permanent residence outside the  
13 United States each day, an amount equivalent  
14 to 10 percent of the gross wages of each worker  
15 in each pay period and, on behalf of each work-  
16 er, transfer such withheld amount to the Trust  
17 Fund.

18 “(B) JOBS THAT ARE NOT OF A TEM-  
19 PORARY OR SEASONAL NATURE.—Employers of  
20 H–2C workers employed in jobs that are not of  
21 a temporary or seasonal nature, other than  
22 those employed as a sheepherder, goatherder, or  
23 in the range production of livestock, shall also  
24 pay into the Trust Fund an amount equivalent  
25 to the Federal tax on the wages paid to H–2C

1 workers that the employer would be obligated to  
2 pay under chapters 21 and 23 of the Internal  
3 Revenue Code of 1986 had the H-2C workers  
4 been subject to such chapters.

5 “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
6 into the Trust Fund on behalf of an H-2C worker,  
7 and held pursuant to paragraph (2)(A) and interest  
8 earned thereon, shall be transferred from the Trust  
9 Fund to the Secretary of Homeland Security, who  
10 shall distribute them to the worker if the worker—

11 “(A) applies to the Secretary of Homeland  
12 Security (or the designee of the Secretary) for  
13 payment within 120 days of the expiration of  
14 the alien’s last authorized stay in the United  
15 States as an H-2C worker, for which they seek  
16 amounts from the Trust Fund;

17 “(B) establishes to the satisfaction of the  
18 Secretary of Homeland Security that they have  
19 complied with the terms and conditions of the  
20 H-2C program;

21 “(C) once approved by the Secretary of  
22 Homeland Security for payment, physically ap-  
23 pears at a United States embassy or consulate  
24 in the worker’s home country; and

1           “(D) establishes their identity to the satis-  
2           faction of the Secretary of Homeland Security.

3           “(4)     ADMINISTRATIVE     EXPENSES.—The  
4           amounts paid into the Trust Fund and held pursu-  
5           ant to paragraph (2)(B), and interest earned there-  
6           on, shall be distributed annually to the Secretary of  
7           Agriculture and the Secretary of Homeland Security  
8           in amounts proportionate to the expenses incurred  
9           by such officials in the administration and enforce-  
10          ment of the terms of the H–2C program.

11          “(5)   LAW   ENFORCEMENT.—Notwithstanding  
12          any other provision of law, amounts paid into the  
13          Trust Fund under paragraph (2), and interest  
14          earned thereon, that are not needed to carry out  
15          paragraphs (3) and (4) shall, to the extent provided  
16          in advance in appropriations Acts, be made available  
17          until expended without fiscal year limitation to the  
18          Secretary of Homeland Security to apprehend, de-  
19          tain, and remove aliens inadmissible to or deportable  
20          from the United States.

21          “(6) INVESTMENT OF TRUST FUND.—

22                 “(A) IN GENERAL.—It shall be the duty of  
23                 the Secretary of the Treasury to invest such  
24                 portion of the Trust Fund as is not, in the Sec-  
25                 retary’s judgment, required to meet current

1           withdrawals. Such investments may be made  
2           only in interest-bearing obligations of the  
3           United States or in obligations guaranteed as to  
4           both principal and interest by the United  
5           States.

6           “(B) CREDITS TO TRUST FUND.—The in-  
7           terest on, and the proceeds from the sale or re-  
8           demption of, any obligations held in the Trust  
9           Fund shall be credited to and form a part of  
10          the Trust Fund.

11          “(C) REPORT TO CONGRESS.—It shall be  
12          the duty of the Secretary of the Treasury to  
13          hold the Trust Fund, and (after consultation  
14          with the Secretary of Homeland Security) to re-  
15          port to the Congress each year on the financial  
16          condition and the results of the operations of  
17          the Trust Fund during the preceding fiscal year  
18          and on its expected condition and operations  
19          during the next fiscal year. Such report shall be  
20          printed as both a House and a Senate docu-  
21          ment of the session of the Congress in which  
22          the report is made.

23          “(S) PROCEDURES FOR SPECIAL PROCEDURES IN-  
24          DUSTRIES.—

1           “(1) WORK LOCATIONS.—The Secretary of  
2 Homeland Security shall permit an employer in a  
3 Special Procedures Industry that does not operate at  
4 a single fixed place of employment to provide, as  
5 part of its petition, a list of places of employment,  
6 which—

7                   “(A) may include an itinerary; and

8                   “(B) may be subsequently amended at any  
9 time by the employer, after notice to the Sec-  
10 retary.

11           “(2) WAGES.—Notwithstanding subsection  
12 (k)(2), the Secretary of Agriculture may establish  
13 monthly, weekly, or biweekly wage rates for occupa-  
14 tions in a Special Procedures Industry for a State  
15 or other geographic area. For an employer in a Spe-  
16 cial Procedures Industry that typically pays a  
17 monthly wage, the Secretary shall require that H-  
18 2C workers be paid not less frequently than monthly  
19 and at a rate no less than the legally required  
20 monthly cash wage in an amount as re-determined  
21 annually by the Secretary.

22           “(3) ALLERGY LIMITATION.—An employer en-  
23 gaged in the commercial beekeeping or pollination  
24 services industry may require that job applicants be

1 free from bee-related allergies, including allergies to  
2 pollen and bee venom.”.

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

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

9 “(a) **IN GENERAL.**—An employer that is designated  
10 as a ‘registered agricultural employer’ pursuant to sub-  
11 section (c) may employ aliens as H-2C workers. However,  
12 an H-2C worker may only perform labor or services pur-  
13 suant to this section if the worker is already lawfully  
14 present in the United States as an H-2C worker, having  
15 been admitted or otherwise provided nonimmigrant status  
16 pursuant to section 218A, and has completed the period  
17 of employment specified in the job offer the worker accept-  
18 ed pursuant to section 218A or the employer has termi-  
19 nated the worker’s employment pursuant to section  
20 218A(k)(3)(D)(i). An H-2C worker who abandons the em-  
21 ployment which was the basis for admission or status pur-  
22 suant to section 218A may not perform labor or services  
23 pursuant to this section until the worker has returned to  
24 their home country, been readmitted as an H-2C worker  
25 pursuant to section 218A and has completed the period

1 of employment specified in the job offer the worker accept-  
2 ed pursuant to section 218A or the employer has termi-  
3 nated the worker's employment pursuant to section  
4 218A(k)(3)(D)(i).

5 “(b) PERIOD OF STAY.—H-2C workers performing  
6 at-will labor or services for a registered agricultural em-  
7 ployer are subject to the period of admission, limitation  
8 of stay in status, and requirement to remain outside the  
9 United States contained in subsections (o) and (n) of sec-  
10 tion 218A, except that subsection (n)(3)(A) does not  
11 apply.

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

21 “(1) employs (or plans to employ) individuals  
22 who perform agricultural labor or services;

23 “(2) has not been subject to debarment from  
24 receiving temporary agricultural labor certifications

1       pursuant to section 101(a)(15)(H)(ii)(a) within the  
2       last three years;

3           “(3) has not been subject to disqualification  
4       from the employment of H–2C workers within the  
5       last five years;

6           “(4) agrees to, if employing H–2C workers pur-  
7       suant to this section, fulfill the attestations con-  
8       tained in section 218A(b) as if it had submitted a  
9       petition making those attestations (excluding sub-  
10      section (k)(3) of such section) and not to employ H–  
11      2C workers who have reached their maximum con-  
12      tinuous period of authorized status under section  
13      218A(n) (subject to the exceptions contained in sec-  
14      tion 218A(n)(3)) or if the workers have complied  
15      with the terms of section 218A(n)(2); and

16           “(5) agrees to notify the Secretary of Agri-  
17      culture and the Secretary of Homeland Security  
18      each time it employs H–2C workers pursuant to this  
19      section within 72 hours of the commencement of em-  
20      ployment and within 72 hours of the cessation of  
21      employment.

22           “(d) LENGTH OF DESIGNATION.—An employer’s des-  
23      ignation as a registered agricultural employer shall be  
24      valid for 3 years, and the designation can be extended  
25      upon reapplication for additional 3-year terms. The Sec-

1 retary shall revoke a designation before the expiration of  
2 its 3-year term if the employer is subject to disqualifica-  
3 tion from the employment of H-2C workers subsequent  
4 to being designated as a registered agricultural employer.

5       “(e) ENFORCEMENT.—The Secretary of Agriculture  
6 shall be responsible for conducting investigations and au-  
7 dits, including random audits, of employers to ensure com-  
8 pliance with the requirements of this section. All monetary  
9 fines levied against employers shall be paid to the Depart-  
10 ment of Agriculture and used to enhance the Department  
11 of Agriculture’s investigatory and audit abilities to ensure  
12 compliance by employers with their obligations under this  
13 section and section 218A. The Secretary of Agriculture’s  
14 enforcement powers and an employer’s liability described  
15 in subsections (i) through (j) of section 218A are applica-  
16 ble to employers employing H-2C workers pursuant to  
17 this section.”.

18       (c) PROHIBITION ON FAMILY MEMBERS.—Section  
19 101(a)(15)(H) of the Immigration and Nationality Act (8  
20 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
21 the end and inserting “him, except that no spouse or child  
22 may be admitted under clause (ii)(c);”.

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

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

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

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

6           “(C) under section 101(a)(15)(H)(ii)(c)—

7                   “(i) except as otherwise provided under  
8                   this subparagraph, may not exceed 40,000 for  
9                   aliens issued visas or otherwise provided non-  
10                  immigrant status under such section for the  
11                  purpose of performing agricultural labor or  
12                  services consisting or meat or poultry proc-  
13                  essing;

14                   “(ii) except as otherwise provided under  
15                   this subparagraph, may not exceed 410,000 for  
16                   aliens issued visas or otherwise provided non-  
17                   immigrant status under such section for the  
18                   purpose of performing agricultural labor or  
19                   services other than agricultural labor or services  
20                   consisting of meat or poultry processing;

21                   “(iii) if the base allocation under clause (i)  
22                   or (ii) is exhausted during any fiscal year, the  
23                   base allocation under such clause for that and  
24                   subsequent fiscal years shall be increased by the  
25                   lesser of 10 percent or a percentage rep-

1           resenting the number of petitioned-for aliens  
2           (as a percentage of the base allocation) who  
3           would be eligible to be issued visas or otherwise  
4           provided nonimmigrant status described in that  
5           clause during that fiscal year but for the base  
6           allocation being exhausted, and if the increased  
7           base allocation is itself exhausted during a sub-  
8           sequent fiscal year, the base allocation for that  
9           and subsequent fiscal years shall be further in-  
10          creased by the lesser of 10 percent or a percent-  
11          age representing the number of petitioned-for  
12          aliens (as a percentage of the increased base al-  
13          location) who would be eligible to be issued  
14          visas or otherwise provided nonimmigrant sta-  
15          tus described in that clause during that fiscal  
16          year but for the increased base allocation being  
17          exhausted (subject to clause (iv));

18                 “(iv) if the base allocation under clause (i)  
19                 or (ii) is not exhausted during any fiscal year,  
20                 the base allocation under such clause for subse-  
21                 quent fiscal years shall be decreased by the  
22                 greater of 5 percent or a percentage rep-  
23                 resenting the unutilized portion of the base allo-  
24                 cation (as a percentage of the base allocation)  
25                 during that fiscal year, and if in a subsequent

1 fiscal year the decreased base allocation is itself  
2 not exhausted, the base allocation for fiscal  
3 years subsequent to that fiscal year shall be  
4 further decreased by the greater of 5 percent or  
5 a percentage representing the unutilized portion  
6 of the decreased base allocation (as a percent-  
7 age of the decreased base allocation) during  
8 that fiscal year (subject to clause (iii) and ex-  
9 cept that the base allocations under clauses (i)  
10 and (ii) shall not fall below 40,000 and  
11 410,000, respectively);

12 “(v) the numerical limitations under this  
13 subparagraph shall not apply to any alien—

14 “(I) who—

15 “(aa) was physically present in  
16 the United States on October 23,  
17 2017; and

18 “(bb) performed agricultural  
19 labor or services in the United States  
20 for at least 5.75 hours during each of  
21 at least 180 days during the 2-year  
22 period ending on the date of the en-  
23 actment of the AG Act; or

24 “(II) who has previously been issued a  
25 visa or otherwise provided nonimmigrant

1 status pursuant to subclause (a) or (b) of  
2 section 101(a)(15)(H)(ii), but only to the  
3 extent that the alien is being petitioned for  
4 by an employer pursuant to section  
5 218A(b) who previously employed the alien  
6 pursuant to subclause (a) or (b) of section  
7 101(a)(15)(H)(ii) beginning no later than  
8 October 23, 2017.”.

9 (e) INTENT.—Section 214(b) of the Immigration and  
10 Nationality Act (8 U.S.C. 1184(b)) is amended by striking  
11 “section 101(a)(15)(H)(i) except subclause (b1) of such  
12 section” and inserting “clause (i), except subclause (b1),  
13 or (ii)(c) of section 101(a)(15)(H)”.

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

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

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

18 **SEC. 4. MEDIATION.**

19 Nonimmigrants having status under section  
20 101(a)(15)(H)(ii)(c) of the Immigration and Nationality  
21 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil  
22 actions for damages against their employers, nor may any  
23 other attorneys or individuals bring civil actions for dam-  
24 ages on behalf of such nonimmigrants against the non-

1 immigrants’ employers, unless at least 90 days prior to  
2 bringing an action a request has been made to the Federal  
3 Mediation and Conciliation Service to assist the parties  
4 in reaching a satisfactory resolution of all issues involving  
5 all parties to the dispute and mediation has been at-  
6 tempted.

7 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**  
8 **PROTECTION.**

9 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-  
10 cultural Worker Protection Act (29 U.S.C.  
11 1802(8)(B)(ii)) is amended by striking “under sections  
12 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and  
13 Nationality Act.” and inserting “under subclauses (a) and  
14 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the  
15 Immigration and Nationality Act.”.

16 **SEC. 6. BINDING ARBITRATION.**

17 (a) **APPLICABILITY.**—H–2C workers may, as a condi-  
18 tion of employment with an employer, be subject to man-  
19 datory binding arbitration and mediation of any grievance  
20 relating to the employment relationship. An employer shall  
21 provide any such workers with notice of such condition of  
22 employment at the time it makes job offers.

23 (b) **ALLOCATION OF COSTS.**—Any cost associated  
24 with such arbitration and mediation process shall be  
25 equally divided between the employer and the H–2C work-

1 ers, except that each party shall be responsible for the cost  
2 of its own counsel, if any.

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

4 (1) The term “condition of employment” means  
5 a term, condition, obligation, or requirement that is  
6 part of the job offer, such as the term of employ-  
7 ment, job responsibilities, employee conduct stand-  
8 ards, and the grievance resolution process, and to  
9 which applicants or prospective H-2C workers must  
10 consent or accept in order to be hired for the posi-  
11 tion.

12 (2) The term “H-2C worker” means a non-  
13 immigrant described in section 218A(a)(5) of the  
14 Immigration and Nationality Act, as added by sec-  
15 tion 3(a) of this Act.

16 **SEC. 7. ELIGIBILITY FOR HEALTH CARE SUBSIDIES AND**  
17 **REFUNDABLE TAX CREDITS; REQUIRED**  
18 **HEALTH INSURANCE COVERAGE.**

19 (a) HEALTH CARE SUBSIDIES.—H-2C workers (as  
20 defined in section 218A(a)(5) of the Immigration and Na-  
21 tionality Act, as added by section 3(a) of this Act)—

22 (1) are not entitled to the premium assistance  
23 tax credit authorized under section 36B of the Inter-  
24 nal Revenue Code of 1986 and shall be subject to  
25 the rules applicable to individuals who are not law-

1 fully present set forth in subsection (e) of such sec-  
2 tion; and

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

7 (b) REFUNDABLE TAX CREDITS.—H-2C workers (as  
8 defined in section 218A(a)(5) of the Immigration and Na-  
9 tionality Act, as added by section 3(a) of this Act), shall  
10 not be allowed any credit under sections 24 and 32 of the  
11 Internal Revenue Code of 1986. In the case of a joint re-  
12 turn, no credit shall be allowed under either such section  
13 if both spouses are such workers or aliens.

14 (c) REQUIREMENT REGARDING HEALTH INSURANCE  
15 COVERAGE.—Notwithstanding the Fair Labor Standards  
16 Act of 1938 (29 U.S.C. 201 et seq.) and State and local  
17 wage laws, not later than 21 days after being issued a  
18 visa or otherwise provided nonimmigrant status under sec-  
19 tion 101(a)(15)(H)(ii)(e) of the Immigration and Nation-  
20 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(e)), an alien must  
21 obtain health insurance coverage accepted in their State  
22 or States of employment and residence for the period of  
23 employment specified in section 218A(b)(1) of the Immi-  
24 gration and Nationality Act. H-2C workers under sections  
25 218A or 218B of the Immigration and Nationality Act

1 who do not obtain and maintain the required insurance  
2 coverage will be considered to have failed to maintain non-  
3 immigrant status under section 101(a)(15)(H)(ii)(c) of  
4 the Immigration and Nationality Act and shall be subject  
5 to removal under section 237(a)(1)(C)(i) of the Immigra-  
6 tion and Nationality Act (8 U.S.C. 1227(a)(1)(C)(i)).

7 **SEC. 8. STUDY OF ESTABLISHMENT OF AN AGRICULTURAL**  
8 **WORKER EMPLOYMENT POOL.**

9 (a) **STUDY.**—The Secretary of Agriculture shall con-  
10 duct a study on the feasibility of establishing an agricul-  
11 tural worker employment pool and an electronic Internet-  
12 based portal to assist H-2C workers (as such term is de-  
13 fined in section 218A of the Immigration and Nationality  
14 Act), prospective H-2C workers, and employers to identify  
15 job opportunities in the H-2C program and willing, able  
16 and available workers for the program, respectively.

17 (b) **CONTENTS.**—The study required under sub-  
18 section (a) shall include an analysis of—

19 (1) the cost of creating such a pool and portal;

20 (2) potential funding sources or mechanisms to  
21 support the creation and maintenance of the pool  
22 and portal;

23 (3) with respect to H-2C workers and prospec-  
24 tive H-2C workers in the pool, the data that would  
25 be relevant for employers;

1           (4) the merits of assisting H-2C workers and  
2           employers in identifying job opportunities and will-  
3           ing, able, and available workers, respectively; and

4           (5) other beneficial uses for such a pool and  
5           portal.

6           (c) REPORT.—Not later than 1 year after the date  
7           of the enactment of this Act, the Secretary of Agriculture  
8           shall submit to the Committees on the Judiciary of the  
9           House of Representatives and the Senate a report con-  
10          taining the results of the study required under subsection  
11          (a).

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

13          (a) EFFECTIVE DATES.—

14               (1) IN GENERAL.—Sections 2 and 4 through 6  
15               of this Act, subsections (a) and (c) through (f) of  
16               section 3 of this Act, and the amendments made by  
17               the sections, shall take effect on the date on which  
18               the Secretary issues the rules under subsection (c)  
19               of this section, and the Secretary of Homeland Secu-  
20               rity shall accept petitions pursuant to section 218A  
21               of the Immigration and Nationality Act, as inserted  
22               by this Act, beginning no later than that date. Sec-  
23               tion 7 of this Act shall take effect on the date of the  
24               enactment of the Act.

1           (2) AT-WILL EMPLOYMENT.—Section 3(b) of  
2 this Act and the amendments made by that sub-  
3 section shall take effect on the date that it becomes  
4 unlawful for all persons or other entities to hire, or  
5 to recruit or refer for a fee, for employment in the  
6 United States an individual (as provided in section  
7 274A(a)(1) of the Immigration and Nationality Act  
8 (8 U.S.C. 1324a(a)(1)) without participating in the  
9 E-Verify Program described in section 403(a) of the  
10 Illegal Immigration Reform and Immigrant Respon-  
11 sibility Act of 1996 (8 U.S.C. 1324a note) or an em-  
12 ployment eligibility verification system patterned on  
13 such program’s verification system, and only if at  
14 that time the E-Verify Program (or another pro-  
15 gram patterned after the E-Verify Program) re-  
16 sponds to inquiries made by such persons or entities  
17 by providing confirmation, tentative nonconfirma-  
18 tion, and final nonconfirmation of an individual’s  
19 identity and employment eligibility in such a way  
20 that indicates whether the individual is eligible to be  
21 employed in all occupations or only to perform agri-  
22 cultural labor or services under sections 218A and  
23 219B of the Immigration and Nationality Act, as  
24 added by section 3 of this Act, and if the latter,  
25 whether the nonimmigrant would be in compliance

1 with their maximum continuous period of authorized  
2 status and requirement to remain outside the United  
3 States under section 218A(n) of such Act, as added  
4 by section 3(a) of this Act, and on what date the  
5 alien would cease to be in compliance with their  
6 maximum continuous period of authorized status.

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

9 (1) APPLICATION OF EXISTING REGULA-  
10 TIONS.—The Department of Labor H-2A program  
11 regulations published at 73 Federal Register 77110  
12 et seq. (2008) shall be in force for all petitions ap-  
13 proved under sections 101(a)(15)(H)(ii)(a) and 218  
14 of the Immigration and Nationality Act (8 U.S.C.  
15 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on  
16 the date of the enactment of this Act, except that  
17 the following, as in effect on the date of the enact-  
18 ment of this Act, shall remain in effect, and, to the  
19 extent that any rule published at 73 Federal Reg-  
20 ister 77110 et seq. is in conflict, such rule shall have  
21 no force and effect:

22 (A) Paragraph (a) and subparagraphs (1)  
23 and (3) of paragraph (b) of section 655.200 of  
24 title 20, Code of Federal Regulations.

1 (B) Section 655.201 of title 20, Code of  
2 Federal Regulations, except the paragraphs en-  
3 titled “Production of Livestock” and “Range”.

4 (C) Paragraphs (c), (d) and (e) of section  
5 655.210 of title 20, Code of Federal Regula-  
6 tions.

7 (D) Section 655.230 of title 20, Code of  
8 Federal Regulations.

9 (E) Section 655.235 of title 20, Code of  
10 Federal Regulations.

11 (F) The Special Procedures Labor Certifi-  
12 cation Process for Employers in the Itinerant  
13 Animal Shearing Industry under the H-2A  
14 Program in effect under the Training and Em-  
15 ployment Guidance Letter No. 17-06, Change  
16 1, Attachment B, Section II, with an effective  
17 date of October 1, 2011.

18 (2) SUNSET.—Beginning on the date on which  
19 employers can file petitions pursuant to section  
20 218A of the Immigration and Nationality Act, as  
21 added by section 3(a) of this Act, no new petitions  
22 under sections 101(a)(15)(H)(ii)(a) and 218 of the  
23 Immigration and Nationality Act (8 U.S.C.  
24 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-  
25 cepted.

1           (c) REGULATIONS.—Notwithstanding any other pro-  
2 vision of law, not later than the first day of the seventh  
3 month that begins after the date of the enactment of this  
4 Act, the Secretary of Homeland Security shall issue final  
5 rules, on an interim or other basis, to carry out this Act.

