

**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 United States workers  
12 with substantially equivalent qualifications and  
13 experience; 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 Agriculture a petition attesting to the fol-  
22 lowing:

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 Agri-  
19 culture 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 Agri-  
2           culture shall make the list available for public exam-  
3           ination.

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 Agriculture may not  
8                   require such petition to be filed more than 28  
9                   days before the first date the employer requires  
10                  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 Agriculture 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 sub-  
10 sections (i)(2) and (3) or (j)(1), the Secretary  
11 of Agriculture shall invoke penalties pursuant  
12 to subsections (i) and (j) against only that  
13 member of the association unless the Secretary  
14 of Agriculture determines that the association  
15 participated in, had knowledge of, or had rea-  
16 son 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 Agriculture shall promulgate regulations to  
3 provide for an expedited procedure for the review of a de-  
4 nial of a petition under this section by the Secretary. At  
5 the petitioner’s request, the review shall include a de novo  
6 administrative hearing at which new evidence may be in-  
7 troduced.

8           “(h) FEES.—The Secretary of Agriculture shall re-  
9 quire, as a condition of approving the petition, the pay-  
10 ment of a fee to recover the reasonable cost of processing  
11 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 shall pay them a wage not less than the State  
2 or local minimum wage, or 115 percent of the  
3 applicable Federal minimum wage, whichever is  
4 greatest.

5 “(B) SPECIAL RULE.—An employer can  
6 utilize a piece rate or other alternative wage  
7 payment system so long as the employer guar-  
8 antees each worker a wage rate that equals or  
9 exceeds the amount required under subpara-  
10 graph (A) for the total hours worked in each  
11 pay period. Compensation from a piece rate or  
12 other alternative wage payment system shall in-  
13 clude time spent during rest breaks, moving  
14 from job to job, clean up, or any other non-  
15 productive time, provided that such time does  
16 not exceed 20 percent of the total hours in the  
17 work day.

18 “(3) EMPLOYMENT GUARANTEE.—

19 “(A) IN GENERAL.—

20 “(i) REQUIREMENT.—Each employer  
21 petitioning for workers under this sub-  
22 section shall guarantee to offer the H-2C  
23 workers and United States workers per-  
24 forming the same job employment for the  
25 hourly equivalent of not less than 50 per-

1 cent of the work hours set forth in the  
2 work contract.

3 “(ii) FAILURE TO MEET GUAR-  
4 ANTEE.—If an employer affords the  
5 United States workers or the H-2C work-  
6 ers less employment than that required  
7 under this subparagraph, the employer  
8 shall pay such workers the amount which  
9 the workers would have earned if the work-  
10 ers had worked for the guaranteed number  
11 of hours.

12 “(B) CALCULATION OF HOURS.—Any  
13 hours which workers fail to work, up to a max-  
14 imum of the number of hours specified in the  
15 work contract for a work day, when the workers  
16 have been offered an opportunity to do so, and  
17 all hours of work actually performed (including  
18 voluntary work in excess of the number of  
19 hours specified in the work contract in a work  
20 day) may be counted by the employer in calcu-  
21 lating whether the period of guaranteed employ-  
22 ment has been met.

23 “(C) LIMITATION.—If the workers aban-  
24 don employment before the end of the work  
25 contract period, or are terminated for cause,

1 the workers are not entitled to the 50 percent  
2 guarantee described in subparagraph (A).

3 “(D) TERMINATION OF EMPLOYMENT.—

4 “(i) IN GENERAL.—If, before the expi-  
5 ration of the period of employment speci-  
6 fied in the work contract, the services of  
7 the workers are no longer required due to  
8 any form of natural disaster, including  
9 flood, hurricane, freeze, earthquake, fire,  
10 drought, plant or animal disease, pest in-  
11 festation, regulatory action, or any other  
12 reason beyond the control of the employer  
13 before the employment guarantee in sub-  
14 paragraph (A) is fulfilled, the employer  
15 may terminate the workers’ employment.

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

19 “(I) fulfill the employment guar-  
20 antee in subparagraph (A) for the  
21 work days that have elapsed during  
22 the period beginning on the first work  
23 day and ending on the date on which  
24 such employment is terminated;

1                   “(II) make efforts to transfer the  
2                   worker to other comparable employ-  
3                   ment acceptable to the worker; and

4                   “(III) not later than 72 hours  
5                   after termination, notify the Secretary  
6                   of Agriculture of such termination  
7                   and stating the nature of the contract  
8                   impossibility.

9           “(l) NONDELEGATION.—The Department of Agri-  
10          culture and the Department of Homeland Security shall  
11          not delegate their investigatory, enforcement, or adminis-  
12          trative functions relating to this section or section 218B  
13          to other agencies or departments of the Federal govern-  
14          ment.

15          “(m) COMPLIANCE WITH BIO-SECURITY PROTO-  
16          COLS.—Except in the case of an imminent threat to health  
17          or safety, any personnel from a Federal agency or Federal  
18          grantee seeking to determine the compliance of an em-  
19          ployer with the requirements of this section or section  
20          218B shall, when visiting such employer’s place of employ-  
21          ment, make their presence known to the employer and  
22          sign-in in accordance with reasonable bio-security proto-  
23          cols before proceeding to any other area of the place of  
24          employment.

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

3           “(1) MAXIMUM PERIOD.—The maximum con-  
4 tinuous period of authorized status as an H-2C  
5 worker (including any extensions) is 18 months for  
6 workers employed in a job that is of a temporary or  
7 seasonal nature. For H-2C workers employed in a  
8 job that is not of a temporary or seasonal nature,  
9 the initial maximum continuous period of authorized  
10 status is 36 months and subsequent maximum con-  
11 tinuous periods of authorized status are 18 months.

12           “(2) REQUIREMENT TO REMAIN OUTSIDE THE  
13 UNITED STATES.—In the case of H-2C workers who  
14 were employed in a job of a temporary or seasonal  
15 nature whose maximum continuous period of author-  
16 ized status as H-2C workers (including any exten-  
17 sions) have expired, the aliens may not again be eli-  
18 gible to be H-2C workers until they remain outside  
19 the United States for a continuous period equal to  
20 at least  $\frac{1}{12}$ th of the duration of their previous period  
21 of authorized status an H-2C workers. For H-2C  
22 workers who were employed in a job not of a tem-  
23 porary or seasonal nature whose maximum contin-  
24 uous period of authorized status as H-2C workers  
25 (including any extensions) have expired, the aliens

1       may not again be eligible to be H-2C workers until  
2       they remain outside the United States for a contin-  
3       uous period equal to at least the lesser of  $\frac{1}{12}$ th of  
4       the duration of their previous period of authorized  
5       status as H-2C workers or 45 days.

6               “(3) EXCEPTIONS.—

7               “(A) The Secretary of Homeland Security  
8       shall deduct absences from the United States  
9       that take place during an H-2C worker’s period  
10      of authorized status from the period that the  
11      alien is required to remain outside the United  
12      States under paragraph (2), if the alien or the  
13      alien’s employer requests such a deduction, and  
14      provides clear and convincing proof that the  
15      alien qualifies for such a deduction. Such proof  
16      shall consist of evidence such as arrival and de-  
17      parture records, copies of tax returns, and  
18      records of employment abroad.

19              “(B) There is no maximum continuous pe-  
20      riod of authorized status as set forth in para-  
21      graph (1) or a requirement to remain outside  
22      the United States as set forth in paragraph (2)  
23      for H-2C workers employed as a shepherd, or  
24      goatherder, in the range production of livestock,

1 or who return to the workers' permanent resi-  
2 dence outside the United States each day.

3 “(o) PERIOD OF ADMISSION.—

4 “(1) IN GENERAL.—In addition to the max-  
5 imum continuous period of authorized status, work-  
6 ers' authorized period of admission shall include—

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

11 “(B) a period of not more than 14 days  
12 after the conclusion of their authorized employ-  
13 ment for the purpose of departure from the  
14 United States or a period of not more than 30  
15 days following the employment for the purpose  
16 of seeking a subsequent offer of employment by  
17 an employer pursuant to a petition under this  
18 section (or pursuant to at-will employment  
19 under section 218B during such times as that  
20 section is in effect) if they have not reached  
21 their maximum continuous period of authorized  
22 employment under subsection (n) (subject to  
23 the exceptions in subsection (n)(3)) unless they  
24 accept subsequent offers of employment as H-  
25 2C workers or are otherwise lawfully present.



1           “(2) FAILURE TO DEPART.—H–2C workers  
2           who do not depart the United States within the peri-  
3           ods referred to in paragraph (1) will be considered  
4           to have failed to maintain nonimmigrant status as  
5           H–2C workers and shall be subject to removal under  
6           section 237(a)(1)(C)(i). Such aliens shall be consid-  
7           ered to be inadmissible pursuant to section  
8           212(a)(9)(B)(i) for having been unlawfully present,  
9           with the aliens considered to have been unlawfully  
10          present for 181 days as of the 15th day following  
11          their period of employment for the purpose of depart-  
12          ure or as of the 31st day following their period of  
13          employment for the purpose of seeking subsequent  
14          offers of employment.

15          “(p) ABANDONMENT OF EMPLOYMENT.—

16               “(1) REPORT BY EMPLOYER.—Not later than  
17               72 hours after an employer learns of the abandon-  
18               ment of employment by H–2C workers before the  
19               conclusion of their work contracts, the employer  
20               shall notify the Secretary of Agriculture of such  
21               abandonment.

22               “(2) REPLACEMENT OF ALIENS.—An employer  
23               may designate eligible aliens to replace H–2C work-  
24               ers who abandon employment notwithstanding the  
25               numerical limitation found in section 214(g)(1)(C).

1           “(q) ADJUSTMENT OF STATUS.—Aliens who are un-  
2 lawfully present in the United States on October 2, 2017,  
3 are eligible to adjust status to that of H–2C workers de-  
4 spite their unlawful presence.

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

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

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

14           “(A) IN GENERAL.—Notwithstanding the  
15 Fair Labor Standards Act of 1938 (29 U.S.C.  
16 201 et seq.) and State and local wage laws, all  
17 employers of H–2C workers shall withhold from  
18 the wages of all H–2C workers other than those  
19 employed as shepherders, goatherders, in the  
20 range production of livestock, or who return to  
21 the their permanent residence outside the  
22 United States each day, an amount equivalent  
23 to 10 percent of the gross wages of each worker  
24 in each pay period and, on behalf of each work-

1           er, transfer such withheld amount to the Trust  
2           Fund.

3           “(B) JOBS THAT ARE NOT OF A TEM-  
4           PORARY OR SEASONAL NATURE.—Employers of  
5           H–2C workers employed in jobs that are not of  
6           a temporary or seasonal nature, other than  
7           those employed as a shepherd, goatherder, or  
8           in the range production of livestock, shall also  
9           pay into the Trust Fund an amount equivalent  
10          to the Federal tax on the wages paid to H–2C  
11          workers that the employer would be obligated to  
12          pay under chapters 21 and 23 of the Internal  
13          Revenue Code of 1986 had the H–2C workers  
14          been subject to such chapters.

15          “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
16          into the Trust Fund on behalf of an H–2C worker,  
17          and held pursuant to paragraph (2)(A) and interest  
18          earned thereon, shall be transferred from the Trust  
19          Fund to the Secretary of Agriculture, who shall dis-  
20          tribute them to the worker if the worker—

21                 “(A) applies to the Secretary of Agri-  
22                 culture (or the designee of the Secretary) for  
23                 payment within 120 days of the expiration of  
24                 the alien’s last authorized stay in the United

1 States as an H-2C worker, for which they seek  
2 amounts from the Trust Fund;

3 “(B) establishes to the satisfaction of the  
4 Secretary of Agriculture that they have com-  
5 plied with the terms and conditions of the H-  
6 2C program;

7 “(C) once approved by the Secretary of  
8 Agriculture for payment, physically appears at  
9 a United States embassy or consulate in the  
10 worker’s home country; and

11 “(D) establishes their identity to the satis-  
12 faction of the Secretary of Agriculture.

13 “(4) ADMINISTRATIVE EXPENSES.—The  
14 amounts paid into the Trust Fund and held pursu-  
15 ant to paragraph (2)(B), and interest earned there-  
16 on, shall be distributed annually to the Secretary of  
17 State, the Secretary of Agriculture, and the Sec-  
18 retary of Homeland Security in amounts propor-  
19 tionate to the expenses incurred by such officials in  
20 the administration and enforcement of the terms of  
21 the H-2C program.

22 “(5) LAW ENFORCEMENT.—Notwithstanding  
23 any other provision of law, amounts paid into the  
24 Trust Fund under paragraph (2), and interest  
25 earned thereon, that are not needed to carry out

1 paragraphs (3) and (4) shall, to the extent provided  
2 in advance in appropriations Acts, be made available  
3 until expended without fiscal year limitation to the  
4 Secretary of Homeland Security to apprehend, de-  
5 tain, and remove aliens inadmissible to or deportable  
6 from the United States.

7 “(6) INVESTMENT OF TRUST FUND.—

8 “(A) IN GENERAL.—It shall be the duty of  
9 the Secretary of the Treasury to invest such  
10 portion of the Trust Fund as is not, in the Sec-  
11 retary’s judgment, required to meet current  
12 withdrawals. Such investments may be made  
13 only in interest-bearing obligations of the  
14 United States or in obligations guaranteed as to  
15 both principal and interest by the United  
16 States.

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

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

1           the Congress each year on the financial condi-  
2           tion and the results of the operations of the  
3           Trust Fund during the preceding fiscal year  
4           and on its expected condition and operations  
5           during the next fiscal year. Such report shall be  
6           printed as both a House and a Senate docu-  
7           ment of the session of the Congress in which  
8           the report is made.

9           “(s) PROCEDURES FOR SPECIAL PROCEDURES IN-  
10 DUSTRIES.—

11           “(1) WORK LOCATIONS.—The Secretary of Ag-  
12           riculture shall permit an employer in a Special Pro-  
13           cedures Industry that does not operate at a single  
14           fixed place of employment to provide, as part of its  
15           petition, a list of places of employment, which—

16                   “(A) may include an itinerary; and

17                   “(B) may be subsequently amended at any  
18           time by the employer, after notice to the Sec-  
19           retary.

20           “(2) WAGES.—Notwithstanding subsection  
21           (k)(2), the Secretary of Agriculture may establish  
22           monthly, weekly, or biweekly wage rates for occupa-  
23           tions in a Special Procedures Industry for a State  
24           or other geographic area. For an employer in a Spe-  
25           cial Procedures Industry that typically pays a

1 monthly wage, the Secretary shall require that H-  
2 2C workers be paid not less frequently than monthly  
3 and at a rate no less than the legally required  
4 monthly cash wage in an amount as re-determined  
5 annually by the Secretary.

6 “(3) ALLERGY LIMITATION.—An employer en-  
7 gaged in the commercial beekeeping or pollination  
8 services industry may require that job applicants be  
9 free from bee-related allergies, including allergies to  
10 pollen and bee venom.”.

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

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

17 “(a) IN GENERAL.—An employer that is designated  
18 as a ‘registered agricultural employer’ pursuant to sub-  
19 section (c) may employ aliens as H-2C workers. However,  
20 an H-2C worker may only perform labor or services pur-  
21 suant to this section if the worker is already lawfully  
22 present in the United States as an H-2C worker, having  
23 been admitted or otherwise provided nonimmigrant status  
24 pursuant to section 218A, and has completed the period  
25 of employment specified in the job offer the worker accept-

1 ed pursuant to section 218A or the employer has termi-  
2 nated the worker's employment pursuant to section  
3 218A(k)(3)(D)(i). An H-2C worker who abandons the em-  
4 ployment which was the basis for admission or status pur-  
5 suant to section 218A may not perform labor or services  
6 pursuant to this section until the worker has returned to  
7 their home country, been readmitted as an H-2C worker  
8 pursuant to section 218A and has completed the period  
9 of employment specified in the job offer the worker accept-  
10 ed pursuant to section 218A or the employer has termi-  
11 nated the worker's employment pursuant to section  
12 218A(k)(3)(D)(i).

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

20       “(c) REGISTERED AGRICULTURAL EMPLOYERS.—  
21 The Secretary of Agriculture shall establish a process to  
22 accept and adjudicate applications by employers to be des-  
23 igned as registered agricultural employers. The Sec-  
24 retary shall require, as a condition of approving the appli-  
25 cation, the payment of a fee to recover the reasonable cost



1 of processing the application. The Secretary shall des-  
2 ignate an employer as a registered agricultural employer  
3 if the Secretary determines that the employer—

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

6 “(2) has not been subject to debarment from  
7 receiving temporary agricultural labor certifications  
8 pursuant to section 101(a)(15)(H)(ii)(a) within the  
9 last three years;

10 “(3) has not been subject to disqualification  
11 from the employment of H-2C workers within the  
12 last five years;

13 “(4) agrees to, if employing H-2C workers pur-  
14 suant to this section, fulfill the attestations con-  
15 tained in section 218A(b) as if it had submitted a  
16 petition making those attestations (excluding sub-  
17 section (k)(3) of such section) and not to employ H-  
18 2C workers who have reached their maximum con-  
19 tinuous period of authorized status under section  
20 218A(n) (subject to the exceptions contained in sec-  
21 tion 218A(n)(3)) or if the workers have complied  
22 with the terms of section 218A(n)(2); and

23 “(5) agrees to notify the Secretary of Agri-  
24 culture and the Secretary of Homeland Security  
25 each time it employs H-2C workers pursuant to this

1 section within 72 hours of the commencement of em-  
2 ployment and within 72 hours of the cessation of  
3 employment.

4 “(d) LENGTH OF DESIGNATION.—An employer’s des-  
5 ignation as a registered agricultural employer shall be  
6 valid for 3 years, and the designation can be extended  
7 upon reapplication for additional 3-year terms. The Sec-  
8 retary shall revoke a designation before the expiration of  
9 its 3-year term if the employer is subject to disqualifica-  
10 tion from the employment of H–2C workers subsequent  
11 to being designated as a registered agricultural employer.

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

1           (c) PROHIBITION ON FAMILY MEMBERS.—Section  
2 101(a)(15)(H) of the Immigration and Nationality Act (8  
3 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
4 the end and inserting “him, except that no spouse or child  
5 may be admitted under clause (ii)(c);”.

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

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

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

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

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

16           “(i) if the base allocation is exhausted dur-  
17 ing any fiscal year, the base allocation for that  
18 and subsequent fiscal years shall be increased  
19 by the lesser of 10 percent or a percentage rep-  
20 resenting the number of petitioned-for aliens  
21 (as a percentage of the base allocation) who  
22 would be eligible to be issued visas or otherwise  
23 provided nonimmigrant status as H-2C workers  
24 during that fiscal year but for the base alloca-  
25 tion being exhausted, and if the increased base

1 allocation is itself exhausted during a subse-  
2 quent fiscal year, the base allocation for that  
3 and subsequent fiscal years shall be further in-  
4 creased by the lesser of 10 percent or a percent-  
5 age representing the number of petitioned-for  
6 aliens (as a percentage of the increased base al-  
7 location) who would be eligible to be issued  
8 visas or otherwise provided nonimmigrant sta-  
9 tus as H-2C workers during that fiscal year  
10 but for the increased base allocation being ex-  
11 hausted (subject to clause (ii));

12 “(ii) if the base allocation is not exhausted  
13 during any fiscal year, the base allocation for  
14 subsequent fiscal years shall be decreased by  
15 the greater of 5 percent or a percentage rep-  
16 resenting the unutilized portion of the base allo-  
17 cation (as a percentage of the base allocation)  
18 during that fiscal year, and if in a subsequent  
19 fiscal year the decreased base allocation is itself  
20 not exhausted, the base allocation for fiscal  
21 years subsequent to that fiscal year shall be  
22 further decreased by the greater of 5 percent or  
23 a percentage representing the unutilized portion  
24 of the decreased base allocation (as a percent-  
25 age of the decreased base allocation) during

1 that fiscal year (subject to clause (i) and except  
2 that the base allocation shall not fall below  
3 500,000); and

4 “(iii) this numerical limitation shall not  
5 apply to any alien—

6 “(I) who performed agricultural labor  
7 or services in the United States for at least  
8 5.75 hours during each of at least 180  
9 days, pursuant to section 7 of the AG Act,  
10 during the 2-year period beginning on the  
11 date of the enactment of such Act; or

12 “(II) who has previously been issued a  
13 visa or otherwise provided nonimmigrant  
14 status pursuant to subclause (a) or (b) of  
15 section 101(a)(15)(H)(ii), but only to the  
16 extent that the alien is being petitioned for  
17 by an employer pursuant to section  
18 218A(b) who previously employed the alien  
19 pursuant to subclause (a) or (b) of section  
20 101(a)(15)(H)(ii) beginning no later than  
21 October 2, 2017.”.

22 (e) WAIVER OF BARS TO ADMISSIBILITY.—Section  
23 212(a)(9)(B)(v) of the Immigration and Nationality Act  
24 (8 U.S.C. 1182(a)(9)(B)(v)) is amended—

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

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

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

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

9                           “(II) H-2C WORKERS.—The Sec-  
10                          retary of Homeland Security shall  
11                          waive clause (i) solely as necessary to  
12                          allow aliens to perform agricultural  
13                          labor or services as provided in section  
14                          101(a)(15)(H)(ii)(c), except to the ex-  
15                          tent that the aliens’ unlawful presence  
16                          was subsequent to their receiving the  
17                          status of nonimmigrants under such  
18                          section. If the Secretary waives clause  
19                          (i) pursuant to this subclause with re-  
20                          spect to an alien, the alien must  
21                          thereafter remain outside the United  
22                          States for a period by not later than  
23                          6 months after being issued a visa or  
24                          otherwise being provided with status  
25                          as an H-2C worker. Aliens who do

1 not remain outside the United States  
2 as required by the previous sentence  
3 are considered to be unlawfully  
4 present as of the date 6 months after  
5 being issued a visa or otherwise being  
6 provided with status as an H-2C  
7 worker, have failed to maintain non-  
8 immigrant status as an H-2C worker,  
9 and shall be subject to removal under  
10 section 237(a)(1)(C)(i).”.

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

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

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

20 **SEC. 4. MEDIATION.**

21 Nonimmigrants having status under section  
22 101(a)(15)(H)(ii)(c) of the Immigration and Nationality  
23 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil  
24 actions for damages against their employers, nor may any

1 other attorneys or individuals bring civil actions for dam-  
2 ages on behalf of such nonimmigrants against the non-  
3 immigrants' employers, unless at least 90 days prior to  
4 bringing an action a request has been made to the Federal  
5 Mediation and Conciliation Service to assist the parties  
6 in reaching a satisfactory resolution of all issues involving  
7 all parties to the dispute and mediation has been at-  
8 tempted.

9 **SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER**  
10 **PROTECTION.**

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

18 **SEC. 6. BINDING ARBITRATION.**

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



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

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

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

15 (2) The term “H–2C worker” means a non-  
16 immigrant described in section 218A(a)(4) of the  
17 Immigration and Nationality Act (8 U.S.C.  
18 1188A(a)(4)), as added by section 3(a) of this Act.

19 **SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR**  
20 **SERVICES BY ALIENS WHO ARE UNLAWFULLY**  
21 **PRESENT.**

22 (a) IN GENERAL.—The Secretary of Homeland Secu-  
23 rity shall waive the grounds of inadmissibility contained  
24 in paragraphs (5), (6), (7), and (9)(B) of section 212(a),  
25 and the grounds of deportability contained in subpara-

1 graphs (A) through (D) of paragraph (1), and paragraph  
2 (3), of section 237(a), of the Immigration and Nationality  
3 Act (8 U.S.C. 1101 et seq.) in the case of aliens described  
4 in subsection (b) solely as may be necessary in order to  
5 allow the aliens to perform agricultural labor or services.  
6 Such aliens shall not be considered unauthorized aliens for  
7 purposes of section 274A(h)(3) of the Immigration and  
8 Nationality Act (8 U.S.C. 1324a(h)(3)) or to be unlaw-  
9 fully present as long as the aliens perform such labor or  
10 services. Such aliens shall be provided documents indi-  
11 cating their authorization to work only in agricultural  
12 labor or services.

13 (b) ALIENS DESCRIBED.—Aliens described in this  
14 subsection are aliens who—

15 (1) were physically present in the United States  
16 on October 2, 2017; and

17 (2) performed agricultural labor or services in  
18 the United States for at least 5.75 hours during  
19 each of at least 180 days, during the 2-year period  
20 ending on the date of the enactment of this Act.

21 **SEC. 8. ELIGIBILITY FOR HEALTH CARE SUBSIDIES AND**  
22 **REFUNDABLE TAX CREDITS.**

23 (a) HEALTH CARE SUBSIDIES.—H-2C workers (as  
24 defined in section 218A(a)(4) of the Immigration and Na-  
25 tionality Act (8 U.S.C. 1188A(a)(4)), as added by section

1 3(a) of this Act, and aliens performing agricultural labor  
2 or services pursuant to section 7 of this Act—

3 (1) are not entitled to the premium assistance  
4 tax credit authorized under section 36B of the Inter-  
5 nal Revenue Code of 1986 and shall be subject to  
6 the rules applicable to individuals who are not law-  
7 fully present set forth in subsection (e) of such sec-  
8 tion; and

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

13 (b) REFUNDABLE TAX CREDITS.—H-2C workers (as  
14 defined in section 218A(a)(4) of the Immigration and Na-  
15 tionality Act (8 U.S.C. 1188A(a)(4)), as added by section  
16 3(a) of this Act, and aliens performing agricultural labor  
17 or services pursuant to section 7 of this Act shall not be  
18 allowed any credit under sections 24 and 32 of the Inter-  
19 nal Revenue Code of 1986. In the case of a joint return,  
20 no credit shall be allowed under either such section if both  
21 spouses are such workers or aliens.

22 **SEC. 9. STUDY OF ESTABLISHMENT OF AN AGRICULTURAL**  
23 **WORKER EMPLOYMENT POOL.**

24 (a) STUDY.—The Secretary of Agriculture shall con-  
25 duct a study on the feasibility of establishing an agricul-

1 tural worker employment pool and an electronic Internet-  
2 based portal to assist H-2C workers, prospective H-2C  
3 workers, and employers to identify job opportunities in the  
4 H-2C program and willing, able and available workers for  
5 the program, respectively.

6 (b) CONTENTS.—The study required under sub-  
7 section (a) shall include an analysis of—

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

9 (2) potential funding sources or mechanisms to  
10 support the creation and maintenance of the pool  
11 and portal;

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

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

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

20 (c) REPORT.—Not later than 1 year after the date  
21 of the enactment of this Act, the Secretary of Agriculture  
22 shall submit to the Committees on the Judiciary of the  
23 House of Representatives and the Senate a report con-  
24 taining the results of the study required under subsection  
25 (a).

1 **SEC. 10. IMMIGRANT VISAS FOR AGRICULTURAL WORKERS.**

2 (a) Amend the heading of paragraph (3) of section  
3 203(b) of the Immigration and Nationality Act (8 U.S.C.  
4 1153(b)(3)) to read as follows: “SKILLED WORKERS, PRO-  
5 FESSIONALS, AND AGRICULTURAL WORKERS.—”.

6 (b) Amend section 203(b)(3)(A)(iii) of the Immigra-  
7 tion and Nationality Act (8 U.S.C. 1153(b)(3)(A)(iii)) to  
8 read as follows:

9 “(iii) AGRICULTURAL WORKERS.—

10 “(I) Qualified immigrants who  
11 have performed agricultural labor or  
12 services (as defined in section  
13 101(a)(53)) for at least 5.75 hours  
14 during each of at least 90 days, dur-  
15 ing each of the preceding four fiscal  
16 years and who are capable, at the  
17 time of petitioning for classification  
18 under this paragraph, of performing  
19 such labor or services.

20 “(II) The Secretary of Homeland  
21 Security shall waive the grounds of in-  
22 admissibility contained in paragraphs  
23 (5), (6), (7), and (9)(B) of section  
24 212(a) and the grounds of deport-  
25 ability contained in subparagraphs (A)  
26 through (D) of paragraph (1), and

1 paragraph (3), of section 237(a), sole-  
2 ly as may be necessary in order to  
3 allow an alien to receive a visa or oth-  
4 erwise be provided with status pursu-  
5 ant to subclause (I).”.

6 **SEC. 11. EFFECTIVE DATES; SUNSET; REGULATIONS.**

7 (a) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Sections 2 and 4 through 6  
9 of this Act, subsections (a) and (c) through (f) of  
10 section 3 of this Act, and the amendments made by  
11 the sections, shall take effect on the date that is 2  
12 years after the date of the enactment of this Act,  
13 and the Secretary of Agriculture shall accept peti-  
14 tions pursuant to section 218A of the Immigration  
15 and Nationality Act, as inserted by this Act, begin-  
16 ning 28 days earlier. Section 8 of this Act shall take  
17 effect on the date of enactment of the Act. Section  
18 10 of this Act, and the amendments made by that  
19 section, shall take effect on the date of enactment of  
20 the Act.

21 (2) AT-WILL EMPLOYMENT.—Section 3(b) of  
22 this Act and the amendments made by that sub-  
23 section shall take effect on the date that it becomes  
24 unlawful for all persons or other entities to hire, or  
25 to recruit or refer for a fee, for employment in the

1 United States an individual (as provided in section  
2 274A(a)(1) of the Immigration and Nationality Act)  
3 (8 U.S.C. 1324a(a)(1)) without participating in the  
4 E-Verify Program described in section 403(a) of the  
5 Illegal Immigration Reform and Immigrant Respon-  
6 sibility Act of 1996 (8 U.S.C. 1324a note) or an em-  
7 ployment eligibility verification system patterned on  
8 such program's verification system, and only if at  
9 that time the E-Verify Program (or another pro-  
10 gram patterned after the E-Verify Program) re-  
11 sponds to inquiries made by such persons or entities  
12 by providing confirmation, tentative nonconfirma-  
13 tion, and final nonconfirmation of an individual's  
14 identity and employment eligibility in such a way  
15 that indicates whether the individual is eligible to be  
16 employed in all occupations or only to perform agri-  
17 cultural labor or services under sections 218A and  
18 219B of the Immigration and Nationality Act (8  
19 U.S.C. 1188A; 8 U.S.C. 1188B) (as added by sec-  
20 tion 3 of this Act), and if the latter, whether the  
21 nonimmigrant would be in compliance with their  
22 maximum continuous period of authorized status  
23 and requirement to remain outside the United States  
24 under section 218A(n) of such Act (8 U.S.C.  
25 1188A(n)), as added by section 3(a) of this Act, and

1 on what date the alien would cease to be in compli-  
2 ance with their maximum continuous period of au-  
3 thorized status.

4 (3) AGRICULTURAL LABOR OR SERVICES BY  
5 ALIENS UNLAWFULLY PRESENT.—Section 7 of this  
6 Act shall take effect on the date of the enactment  
7 of this Act and shall cease to be in effect on the date  
8 that is 2 years after such date, except that such sec-  
9 tion shall remain in effect in the case of an alien for  
10 as long as the alien is the beneficiary of a petition  
11 under 218(A) of the Immigration and Nationality  
12 Act that has not yet been adjudicated.

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

15 (1) APPLICATION OF EXISTING REGULA-  
16 TIONS.—The Department of Labor H-2A program  
17 regulations published at 73 Federal Register 77110  
18 et seq. (2008) shall be in force for all petitions ap-  
19 proved under sections 101(a)(15)(H)(ii)(a) and 218  
20 of the Immigration and Nationality Act (8 U.S.C.  
21 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on  
22 the date of the enactment of this Act, except that  
23 the following, as in effect on the date of enactment  
24 of this Act, shall remain in effect, and, to the extent  
25 that any rule published at 73 Federal Register



1       77110 et seq. is in conflict, such rule shall have no  
2       force and effect:

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

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

9               (C) Paragraphs (c), (d) and (e) of section  
10              655.210 of title 20, Code of Federal Regula-  
11              tions.

12              (D) Section 655.230 of title 20, Code of  
13              Federal Regulations.

14              (E) Section 655.235 of title 20, Code of  
15              Federal Regulations.

16              (F) The Special Procedures Labor Certifi-  
17              cation Process for Employers in the Itinerant  
18              Animal Shearing Industry under the H-2A  
19              Program in effect under the Training and Em-  
20              ployment Guidance Letter No. 17-06, Change  
21              1, Attachment B, Section II, with an effective  
22              date of October 1, 2011.

23              (2) ADJUSTMENT OF STATUS.—Aliens who were  
24              unlawfully present in the United States on October  
25              2, 2017, shall be eligible for status as aliens de-

1 scribed in section 101(a)(15)(H)(ii)(a) of the Immi-  
2 gration and Nationality Act (8 U.S.C.  
3 1101(a)(15)(H)(ii)(a)) despite their unlawful pres-  
4 ence beginning on the date of the enactment of this  
5 Act and ending on the date that is 2 years after the  
6 date of enactment of this Act, except that an alien  
7 shall remain eligible for such status for as long as  
8 the alien is the beneficiary of a petition under  
9 218(A) of the Immigration and Nationality Act that  
10 has not yet been adjudicated.

11 (3) SUNSET.—Beginning on the date on which  
12 employers can file petitions pursuant to section  
13 218A of the Immigration and Nationality Act (8  
14 U.S.C. 1188A) as added by section 3(a) of this Act,  
15 no new petitions under sections 101(a)(15)(H)(ii)(a)  
16 and 218 of the Immigration and Nationality Act (8  
17 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall  
18 be accepted.

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

