

112TH CONGRESS
1ST SESSION

H. R. 2847

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2011

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

16 “(a) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

23 “(6) LAY OFF.—

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

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

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

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

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

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

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

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

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

14 “(1) TEMPORARY WORK OR SERVICES.—

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

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

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

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

16 “(4) RECRUITMENT.—

17 “(A) IN GENERAL.—The employer—

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

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

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

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

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

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

17 “(i) names the employer;

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

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

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

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

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

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

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

15 “(A) applies;

16 “(B) is qualified for the job; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(d) LIST.—

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

4 “(A) be sorted by employer; and

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

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

12 “(e) PETITIONING FOR ADMISSION.—

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

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

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

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

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

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

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

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

1 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

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

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

13 “(3) TREATMENT OF VIOLATIONS.—

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

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

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

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

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

21 “(h) MISCELLANEOUS PROVISIONS.—

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

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

3 “(2) FEES.—

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

9 “(B) FEE BY TYPE OF EMPLOYEE.—

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

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

17 “(II) does not exceed \$1,000.

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

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

1 “(II) does not exceed \$1,000.

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

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

15 “(i) ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(2) REQUIRED WAGES.—

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

20 “(i) the prevailing wage; or

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(D) LIMITATION.—

15 “(i) AMOUNT OF REIMBURSEMENT.—

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

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

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

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

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

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

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

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

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

3 “(4) EMPLOYMENT GUARANTEE.—

4 “(A) IN GENERAL.—

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

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

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

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

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

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

23 “(D) TERMINATION OF EMPLOYMENT.—

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

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

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

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

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

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

7 “(1) PERIOD OF ADMISSION.—

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

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

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

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

23 “(m) ABANDONMENT OF EMPLOYMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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