

105TH CONGRESS  
1ST SESSION

# H. R. 2595

To amend the Immigration and Nationality Act to create a new nonimmigrant category for temporary agricultural workers admitted pursuant to a labor condition attestation.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1997

Mr. CHAMBLISS (for himself, Mr. POMBO, Mr. LATOURETTE, Mr. GRAHAM, Mr. BISHOP, Mr. NORWOOD, Mr. PAXON, Mr. BONO, Mr. COLLINS, Mr. RILEY, Mr. JONES, Mr. LUCAS of Oklahoma, Mr. BOYD, Mr. THOMAS, Mr. SOLOMON, Mr. LATHAM, Mr. NETHERCUTT, Mr. BERRY, Mr. JOHN, Mr. HASTINGS of Washington, and Mr. CONDIT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Agriculture, Ways and Means, and Commerce, 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

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## A BILL

To amend the Immigration and Nationality Act to create a new nonimmigrant category for temporary agricultural workers admitted pursuant to a labor condition attestation.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Farmers’ Temporary  
3 Employment Assistance Act”.

4 **SEC. 2. NEW NONIMMIGRANT H-2C CATEGORY FOR TEM-**  
5 **PORARY AGRICULTURAL WORKERS.**

6 (a) ESTABLISHMENT OF NEW CLASSIFICATION.—  
7 Section 101(a)(15)(H)(ii) of the Immigration and Nation-  
8 ality Act (8 U.S.C. 1101(a)(15)(ii)) is amended—

9 (1) by striking “or (b)” and inserting “(b)”;  
10 and

11 (2) by adding at the end the following: “or (c)  
12 having a residence in a foreign country which he has  
13 no intention of abandoning who is coming tempo-  
14 rarily to the United States pursuant to section 218A  
15 to perform such agricultural labor or services of a  
16 temporary or seasonal nature;”.

17 (b) NO FAMILY MEMBERS PERMITTED.—Section  
18 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended by  
19 striking “specified in this paragraph” and inserting “spec-  
20 ified in this subparagraph (other than in clause (ii)(c))”.

21 **SEC. 3. ALTERNATIVE AGRICULTURAL TEMPORARY WORKER**  
22 **PROCESS USING ATTESTATIONS.**

23 (a) IN GENERAL.—The Immigration and Nationality  
24 Act is amended by inserting after section 218 the follow-  
25 ing:

1 “ALTERNATIVE AGRICULTURAL TEMPORARY WORKER  
2 PROGRAM

3 “SEC. 218A. (a) CONDITION FOR THE EMPLOYMENT  
4 OF H-2C ALIENS.—

5 “(1) IN GENERAL.—No alien may be admitted  
6 or provided status as an H-2C alien (as defined in  
7 subsection (n)(4)) unless—

8 “(A) the employment of the alien is cov-  
9 ered by a currently valid labor condition attes-  
10 tation which—

11 “(i) is filed by the employer, or by an  
12 association on behalf of the employer, for  
13 the occupation in which the alien will be  
14 employed;

15 “(ii) has been accepted by the State  
16 employment security agency having juris-  
17 diction over the area of intended employ-  
18 ment; and

19 “(iii) states each of the items de-  
20 scribed in paragraph (2) and includes in-  
21 formation identifying the employer or asso-  
22 ciation and agricultural job opportunities  
23 involved;

1           “(B) the employer is not disqualified from  
2           employing H-2C aliens pursuant to subsection  
3           (h); and

4           “(C) the employer has not, during the past  
5           2 years, been found by the Attorney General to  
6           have employed any aliens in violation of section  
7           274A(a), including aliens admitted pursuant to  
8           this section.”.

9           “(2) CONTENTS OF LABOR CONDITION ATTES-  
10          TATION.—Each labor condition attestation filed by,  
11          or on behalf of, an employer shall include the follow-  
12          ing:

13               “(A) WAGE RATE.—The employer will pay  
14               H-2C aliens and all other workers in the occu-  
15               pation not less than the prevailing wage for  
16               similarly employed workers in the area of em-  
17               ployment, and not less than the applicable Fed-  
18               eral, State or local statutory minimum wage.

19               “(B) WORKING CONDITIONS.—The em-  
20               ployment of H-2C aliens will not adversely af-  
21               fect the working conditions of similarly em-  
22               ployed workers in the area of employment.

23               “(C) LIMITATION ON EMPLOYMENT.—An  
24               H-2C alien will not be employed in any job op-  
25               portunity which is not temporary or seasonal,

1 and will not be employed by the employer in  
2 any job opportunity for more than 10 months  
3 in any 12-consecutive-month period.

4 “(D) NO LABOR DISPUTE.—No H–2C  
5 alien will be employed in any job opportunity  
6 which is vacant because its former occupant is  
7 involved in a strike, lockout or work stoppage in  
8 the course of a labor dispute in the occupation  
9 at the place of employment.

10 “(E) NOTICE.—The employer, at the time  
11 of filing the attestation, has provided notice of  
12 the attestation to workers employed in the occu-  
13 pation in which H–2C aliens will be employed.

14 “(F) JOB ORDERS.—The employer will file  
15 one or more job orders for the occupation (or  
16 occupations) covered by the attestation with the  
17 State employment security agency no later than  
18 the day on which the employer first employs  
19 any H–2C aliens in the occupation.

20 “(G) PREFERENCE TO DOMESTIC WORK-  
21 ERS.—The employer will give preference to  
22 able, willing, and qualified United States work-  
23 ers who apply to the employer and are available  
24 at the time and place needed, for the first 25  
25 days after the filing of the job order in an occu-

1           pation or until 5 days before the date employ-  
2           ment of workers in the occupation begins,  
3           whichever occurs later.

4           “(3) GENERAL ACCOUNTING OFFICE RE-  
5           PORTS.—Beginning 1 year after the effective date of  
6           this section, and annually thereafter, the Comptrol-  
7           ler General shall prepare and transmit to the Con-  
8           gress a report describing the results of a review of  
9           the implementation and enforcement of this section  
10          during the preceding 12-month period, for the pur-  
11          pose of determining if—

12                 “(A) such provisions have been carried out  
13                 satisfactorily;

14                 “(B) the program has ensured an adequate  
15                 and timely supply of qualified, eligible workers  
16                 at the time and place needed for employers;

17                 “(C) the program has ensured that imple-  
18                 mentation of the program is not displacing  
19                 United States agricultural workers or diminish-  
20                 ing the terms and conditions of employment of  
21                 United States agricultural workers; and

22                 “(D) an unnecessary regulatory burden  
23                 has been created for employers hiring workers  
24                 admitted under this section.

25          “(b) FILING A LABOR CONDITION ATTESTATION.—

1           “(1) FILING BY EMPLOYERS.—Any employer in  
2           the United States is eligible to file a labor condition  
3           attestation.

4           “(2) FILING BY ASSOCIATIONS ON BEHALF OF  
5           EMPLOYER MEMBERS.—An agricultural association  
6           may file a labor condition attestation as an agent on  
7           behalf of its members. Such an attestation filed by  
8           an agricultural association acting as an agent for its  
9           members, when accepted, shall apply to those em-  
10          ployer members of the association that the associa-  
11          tion certifies to the State employment security agen-  
12          cy are members of the association and have agreed  
13          in writing to comply with the requirements of this  
14          section.

15          “(3) PERIOD OF VALIDITY.—A labor condition  
16          attestation is valid from the date on which it is ac-  
17          cepted by the State employment security agency for  
18          the period of time requested by the employer, but  
19          not to exceed 12 months.

20          “(4) WHERE TO FILE.—A labor condition attes-  
21          tation shall be filed with the State employment secu-  
22          rity agency having jurisdiction over the area of in-  
23          tended employment of the workers covered by the at-  
24          testation. If an employer, or the members of an as-  
25          sociation of employers, will be employing workers in

1 an area or areas covered by more than one such  
2 agency, the attestation shall be filed with each such  
3 agency having jurisdiction over an area where the  
4 workers will be employed.

5 “(5) DEADLINE FOR FILING.—A labor condi-  
6 tion attestation may be filed at any time up to 12  
7 months prior to the date of the employer’s antici-  
8 pated need for workers in the occupation (or occupa-  
9 tions) covered by the attestation.

10 “(6) FILING FOR MULTIPLE OCCUPATIONS.—A  
11 labor condition attestation may be filed for one or  
12 more occupations and cover one or more periods of  
13 employment.

14 “(7) MAINTAINING REQUIRED DOCUMENTA-  
15 TION.—

16 “(A) BY EMPLOYERS.—Each employer cov-  
17 ered by an accepted labor condition attestation  
18 must maintain a file of the documentation re-  
19 quired in subsection (c) for each occupation in-  
20 cluded in an accepted attestation covering the  
21 employer. The documentation shall be retained  
22 for a period of one year following the expiration  
23 of an accepted attestation. The employer shall  
24 make the documentation available to represent-



1           atives of the Secretary during normal business  
2           hours.

3           “(B) BY ASSOCIATIONS.—In complying  
4           with subparagraph (A), documentation main-  
5           tained by an association filing a labor condition  
6           attestation on behalf of an employer shall be  
7           deemed to be maintained by the employer.

8           “(8) WITHDRAWAL.—

9           “(A) COMPLIANCE WITH ATTESTATION OB-  
10          LIGATIONS.—An employer covered by an ac-  
11          cepted labor condition attestation for an occu-  
12          pation shall comply with the terms and condi-  
13          tions of the attestation from the date the attes-  
14          tation is accepted and continuing throughout  
15          the period any persons are employed in an occu-  
16          pation covered by such an accepted attestation,  
17          whether or not H-2C aliens are employed in the  
18          occupation, unless the attestation is withdrawn.

19          “(B) TERMINATION OF OBLIGATIONS.—An  
20          employer may withdraw a labor condition attes-  
21          tation in total, or with respect to a particular  
22          occupation covered by the attestation. An asso-  
23          ciation may withdraw such an attestation with  
24          respect to one or more of its members. To with-  
25          draw an attestation the employer or association

1 must notify in writing the State employment se-  
2 curity agency office with which the attestation  
3 was filed of the withdrawal of the attestation.  
4 An employer who withdraws an attestation, or  
5 on whose behalf an attestation is withdrawn by  
6 an association, is relieved of the obligations un-  
7 dertaken in the attestation with respect to the  
8 occupation (or occupations) with respect to  
9 which the attestation was withdrawn, upon ac-  
10 knowledgement by the appropriate State em-  
11 ployment security agency of receipt of the with-  
12 drawal notice. An attestation may not be with-  
13 drawn with respect to any occupation while any  
14 H-2C aliens covered by that attestation is em-  
15 ployed in the occupation.

16 “(C) OBLIGATIONS UNDER OTHER STAT-  
17 UTES.—Any obligation incurred by the em-  
18 ployer under any other law or regulation as a  
19 result of recruitment of United States workers  
20 under an offer of terms and conditions of em-  
21 ployment required by the H-2C program is un-  
22 affected by withdrawal of a labor condition at-  
23 testation.

24 “(c) EMPLOYER RESPONSIBILITIES AND REQUIRE-  
25 MENTS FOR EMPLOYING H-2C NONIMMIGRANTS.—

1           “(1) REQUIREMENT TO PAY THE PREVAILING  
2       WAGE.—

3           “(A) EFFECT OF THE ATTESTATION.—

4       Employers shall pay each worker in an occupa-  
5       tion covered by an accepted labor condition at-  
6       testation at least the prevailing wage in the oc-  
7       cupation in the area of intended employment.  
8       The preceding sentence does not require em-  
9       ployers to pay all workers in the occupation the  
10      same wage. The employer may, in the sole dis-  
11      cretion of the employer, maintain pay differen-  
12      tials based on experience, tenure with the em-  
13      ployer, skill, or any other work-related factor, if  
14      the differential is not based on a criterion for  
15      which discrimination is prohibited by the law  
16      and all workers in the covered occupation re-  
17      ceive at least the prevailing wage.

18           “(B) PAYMENT OF STATE EMPLOYMENT  
19      SECURITY AGENCY DETERMINED WAGE SUFFI-  
20      CIENT.—The employer may request and obtain  
21      a prevailing wage determination from the State  
22      employment security agency. If the employer re-  
23      quests such a determination, and pays the wage  
24      determined, such payment shall be considered

1 sufficient to meet the requirement of this para-  
2 graph if the H-2C workers—

3 “(i) are employed in the occupation  
4 for which the employer possesses an ac-  
5 cepted labor condition attestation, and for  
6 which the employer or association pos-  
7 sesses a prevailing wage determination by  
8 the State employment security agency, and

9 “(ii) are being paid at least the pre-  
10 vailing wage so determined.

11 “(C) RELIANCE ON WAGE SURVEY.—In  
12 lieu of the procedures of subparagraph (B), an  
13 employer may rely on other information, such  
14 as an employer generated prevailing wage sur-  
15 vey and determination, which meets criteria  
16 specified by the Secretary by regulation. In the  
17 event of a complaint that the employer has  
18 failed to pay the required wage, the Secretary  
19 shall investigate to determine if the information  
20 upon which the employer relied complied with  
21 the criteria for prevailing wage determinations.

22 “(D) ALTERNATE METHODS OF PAYMENT  
23 PERMITTED.—

24 “(i) IN GENERAL.—A prevailing wage  
25 may be expressed as an hourly wage, a

1 piece rate, a task rate (described in clause  
2 (ii)), or other incentive pay system, includ-  
3 ing a group rate (described in clause (iii)).  
4 The requirement to pay at least the pre-  
5 vailing wage in the occupation and area of  
6 intended employment does not require an  
7 employer to pay by the method of pay in  
8 which the prevailing rate is expressed.  
9 However, if the employer adopts a method  
10 of pay other than the prevailing rate, the  
11 burden of proof is on the employer to dem-  
12 onstrate that the employer's method of pay  
13 is designed to produce earnings equivalent  
14 to the earnings that would result from pay-  
15 ment of the prevailing rate.

16 “(ii) TASK RATE.—For purposes of  
17 this subparagraph, a task rate is an incen-  
18 tive payment based on a unit of work per-  
19 formed such that the incentive rate varies  
20 with the level of effort required to perform  
21 individual units of work.

22 “(iii) GROUP RATE.—For purposes of  
23 this subparagraph, a group rate is an in-  
24 centive payment system in which the pay-

1           ment is shared among a group of workers  
2           working together to perform the task.

3           “(E) REQUIRED DOCUMENTATION.—The  
4           employer or association shall document compli-  
5           ance with this paragraph by retaining on file  
6           the employer or association’s request for a de-  
7           termination by a State employment security  
8           agency and the prevailing wage determination  
9           received from such agency or other information  
10          upon which the employer or association relied to  
11          assure compliance with the prevailing wage re-  
12          quirement.

13          “(2) REQUIREMENT TO PROVIDE HOUSING AND  
14          TRANSPORTATION.—

15          “(A) EFFECT OF THE ATTESTATION.—The  
16          employment of H-2C aliens shall not adversely  
17          affect the working conditions of United States  
18          workers similarly employed in the area of in-  
19          tended employment. The employer’s obligation  
20          not to adversely affect working conditions shall  
21          continue for the duration of the period of em-  
22          ployment by the employer of any H-2C aliens  
23          in the occupation and area of intended employ-  
24          ment. An employer will be deemed to be in com-  
25          pliance with this attestation if the employer of-

1           fers at least the benefits required by subpara-  
2           graphs (B) through (D). The previous sentence  
3           does not require an employer to offer more than  
4           such benefits.

5           “(B) HOUSING REQUIRED.—

6           “(i) HOUSING OFFER.—The employer  
7           must offer to H-2C aliens and United  
8           States workers recruited from beyond nor-  
9           mal recruiting distance housing, or a hous-  
10          ing allowance, if it is prevailing practice in  
11          the occupation and area of intended em-  
12          ployment to offer housing or a housing al-  
13          lowance to workers who are recruited from  
14          beyond normal commuting distance.

15          “(ii) HOUSING STANDARDS.—If the  
16          employer offers housing to such workers,  
17          the housing shall meet (at the option of  
18          the employer) applicable Federal farm  
19          labor housing standards or applicable local  
20          or State standards for rental, public ac-  
21          commodation, or other substantially simi-  
22          lar class of habitation.

23          “(iii) CHARGES FOR HOUSING.—An  
24          employer who offers housing to such work-  
25          ers may charge an amount equal to the

1 fair market value (but not greater than the  
2 employer's actual cost) for utilities and  
3 maintenance, or such lesser amount as per-  
4 mitted by law.

5 “(iv) HOUSING ALLOWANCE AS AL-  
6 TERNATIVE.—In lieu of offering housing to  
7 such workers, at the employer's sole discre-  
8 tion on an individual basis, the employer  
9 may provide a reasonable housing allow-  
10 ance. An employer who offers a housing al-  
11 lowance to such a worker under this sub-  
12 paragraph shall not be deemed to be a  
13 housing provider under section 203 of the  
14 Migrant and Seasonal Agricultural Worker  
15 Protection Act (29 U.S.C. 1823) merely by  
16 virtue of providing such housing allowance.

17 “(v) SECURITY DEPOSIT.—The re-  
18 quirement, if any, to offer housing to such  
19 a worker under this subparagraph shall  
20 not preclude an employer from requiring a  
21 reasonable deposit to protect against gross  
22 negligence or willful destruction of prop-  
23 erty, as a condition for providing such  
24 housing.



1                   “(vi) DAMAGES.—An employer who  
2                   offers housing to such a worker shall not  
3                   be precluded from requiring a worker  
4                   found to have been responsible for damage  
5                   to such housing which is not the result of  
6                   normal wear and tear related to habitation  
7                   to reimburse the employer for the reason-  
8                   able cost of repair of such damage.

9                   “(C) TRANSPORTATION.—If the employer  
10                  provides transportation arrangements or assist-  
11                  ance to H-2C aliens, the employer must offer  
12                  to provide the same transportation arrange-  
13                  ments or assistance (generally comparable in  
14                  expense and scope) for other individuals em-  
15                  ployed by the employer in the occupation at the  
16                  place of employment who were recruited from  
17                  beyond normal commuting distance.

18                  “(D) WORKERS’ COMPENSATION.—If the  
19                  employment covered by a labor condition attes-  
20                  tation is not covered by the State workers’ com-  
21                  pensation law, the employer must provide, at no  
22                  cost to the worker, insurance covering injury  
23                  and disease arising out of and in the course of  
24                  the workers’ employment which will provide  
25                  benefits at least equal to those provided under

1 the State workers' compensation law for com-  
2 parable employment.

3 “(E) REQUIRED DOCUMENTATION.—

4 “(i) HOUSING AND TRANSPORTATION.—No specific documentation is re-  
5 quired to be maintained to evidence com-  
6 pliance with the requirements of subpara-  
7 graphs (B) and (C). In the event of a com-  
8 plaint alleging a failure to comply with  
9 such a requirement, the burden of proof  
10 shall be on the employer to show that the  
11 employer offered the required benefit to  
12 the complainant, or that the employer was  
13 not required by the terms of this para-  
14 graph to offer such benefit to the com-  
15 plainant.  
16

17 “(ii) WORKERS' COMPENSATION.—

18 The employer shall maintain copies of cer-  
19 tificates of insurance evidencing compli-  
20 ance with subparagraph (D) throughout  
21 the period of validity of the labor condition  
22 attestation.

23 “(3) REQUIREMENT TO EMPLOY ALIENS IN  
24 TEMPORARY OR SEASONAL AGRICULTURAL JOB OP-  
25 PORTUNITIES.—

1 “(A) LIMITATIONS.—

2 “(i) IN GENERAL.—The employer may  
3 employ H-2C aliens only in agricultural  
4 employment which is temporary or sea-  
5 sonal.

6 “(ii) SEASONAL BASIS.—For purposes  
7 of this section, labor is performed on a sea-  
8 sonal basis where, ordinarily, the employ-  
9 ment pertains to or is of the kind exclu-  
10 sively performed at certain seasons or peri-  
11 ods of the year and which, from its nature,  
12 may not be continuous or carried on  
13 throughout the year.

14 “(iii) TEMPORARY BASIS.—For pur-  
15 poses of this section, a worker is employed  
16 on a temporary basis where the employ-  
17 ment is intended not to exceed 10 months.

18 “(B) REQUIRED DOCUMENTATION.—No  
19 specific documentation is required to dem-  
20 onstrate compliance with the requirement of  
21 subparagraph (A). In the event of a complaint,  
22 the burden of proof shall fall on the employer  
23 to show that the employment meets such re-  
24 quirement.

1           “(4) REQUIREMENT NOT TO EMPLOY ALIENS IN  
2           JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR  
3           DISPUTE.—

4           “(A) IN GENERAL.—No H-2C alien may  
5           be employed in any job opportunity which is va-  
6           cant because its former occupant is involved in  
7           a strike, lockout, or work stoppage in the  
8           course of a labor dispute in the occupation at  
9           the place of employment.

10          “(B) REQUIRED DOCUMENTATION.—No  
11          specific documentation is required to dem-  
12          onstrate compliance with the requirement of  
13          subparagraph (A). In the event of a complaint,  
14          the burden of proof shall fall on the employer  
15          to show that the job opportunity in which the  
16          H-2C alien was employed was not vacant be-  
17          cause the former occupant was on strike, locked  
18          out, or participating in a work stoppage in the  
19          course of a labor dispute in the occupation at  
20          the place of employment.

21          “(5) NOTICE OF FILING OF LABOR CONDITION  
22          ATTESTATION AND SUPPORTING DOCUMENTATION.—

23          “(A) IN GENERAL.—The employer shall—

24                  “(i) provide notice of the filing of a  
25                  labor condition attestation to the appro-

1           priate certified bargaining agent (if any)  
2           which represents workers of the employer  
3           in the occupation (or occupations) at the  
4           place of employment covered by the attes-  
5           tation; or

6           “(ii) in the case where no such bar-  
7           gaining agent exists, post notice of the fil-  
8           ing of such an attestation in at least two  
9           conspicuous locations where applications  
10          for employment are accepted.

11          “(B) PERIOD FOR POSTING.—The require-  
12          ment for a posting under subparagraph (A)(ii)  
13          begins on the day the attestation is filed, and  
14          continues through the period during which the  
15          employer’s job order is required to remain ac-  
16          tive pursuant to paragraph (6)(A).

17          “(C) REQUIRED DOCUMENTATION.—The  
18          employer shall maintain a copy of the notice  
19          provided to the bargaining agent (if any), to-  
20          gether with evidence that the notice was pro-  
21          vided (such as a signed receipt of evidence of  
22          attempt to send the notice by certified or reg-  
23          istered mail). In the case where no certified  
24          bargaining agent described in subparagraph  
25          (A)(i) exists, the employer shall retain a copy of

1 the posted notice, together with information as  
2 to the dates and locations where the notice was  
3 displayed.

4 “(6) REQUIREMENT TO FILE A JOB ORDER.—

5 “(A) EFFECT OF THE ATTESTATION.—The  
6 employer, or an association acting as agent for  
7 its members, shall file the information nec-  
8 essary to complete a local job order for each oc-  
9 cupation covered by an accepted labor condition  
10 attestation with the appropriate local office of  
11 the State employment security agency having  
12 jurisdiction over the area of intended employ-  
13 ment, or with the State office of such an agency  
14 if workers will be employed in an area within  
15 the jurisdiction of more than one local office of  
16 such an agency. The job orders shall remain on  
17 file for 25 calendar days or until 5 calendar  
18 days before the anticipated date of need for  
19 workers in the occupation covered by the job  
20 order, whichever occurs later. The job order  
21 shall provide at least the minimum terms and  
22 conditions of employment required for partici-  
23 pation in the H-2C program.

24 “(B) DEADLINE FOR FILING.—A job order  
25 shall be filed under subparagraph (A) no later

1           than the date on which the employer files a pe-  
2           tition with the Attorney General for admission  
3           or extension of stay for aliens to be employed  
4           in the occupation for which the order is filed.

5           “(C) REQUIRED DOCUMENTATION.—The  
6           office of the State employment security agency  
7           which the employer or association provides with  
8           information necessary to file a local job order  
9           shall provide the employer with evidence that  
10          the information was provided in a timely man-  
11          ner as required by this paragraph, and the em-  
12          ployer or association shall retain such evidence  
13          for each occupation in which H-2C aliens are  
14          employed.

15          “(7) REQUIREMENT TO GIVE PREFERENCE TO  
16          QUALIFIED UNITED STATES WORKERS.—

17          “(A) FILING 30 DAYS OR MORE BEFORE  
18          DATE OF NEED.—If a job order is filed 30 days  
19          or more before the anticipated date of need for  
20          workers in an occupation covered by a labor  
21          condition attestation and for which the job  
22          order has been filed, the employer shall offer to  
23          employ able, willing, and qualified United  
24          States workers who apply to the employer and  
25          who will be available at the time and place

1 needed for the job opportunities covered by the  
2 attestation until 5 calendar days before the an-  
3 ticipated date of need for workers in the occu-  
4 pation, or until the employer's job opportunities  
5 in the occupation are filled with qualified Unit-  
6 ed States workers, if that occurs more than 5  
7 days before the anticipated date of need for  
8 workers in the occupation.

9 “(B) FILLING FEWER THAN 30 DAYS BE-  
10 FORE DATE OF NEED.—If a job order is filed  
11 fewer than 30 days before the anticipated date  
12 of need for workers in an occupation covered by  
13 such an attestation and for which a job order  
14 has been filed, the employer shall offer to em-  
15 ploy able, willing, and qualified United States  
16 workers who are or will be available at the time  
17 and place needed during the first 25 days after  
18 the job order is filed or until the employer's job  
19 opportunities in the occupation are filled with  
20 United States workers, whichever occurs earlier,  
21 regardless of whether any of the job opportuni-  
22 ties may already be occupied by H-2C aliens.

23 “(C) FILING VACANCIES.—An employer  
24 may fill a job opportunity in an occupation cov-  
25 ered by an accepted labor condition attestation



1 which remains or becomes vacant after expira-  
2 tion of the required preference period specified  
3 in subparagraph (A) or (B) of paragraph (6)  
4 without regard to such preference.

5 “(D) JOB-RELATED REQUIREMENTS.—No  
6 employer shall be required to initially employ a  
7 worker who fails to meet lawful job-related em-  
8 ployment criteria, nor to continue the employ-  
9 ment of a worker who fails to meet lawful job-  
10 related standards of conduct and performance,  
11 including failure to meet minimum productivity  
12 standards after a 3-day break-in period.

13 “(E) REQUIRED DOCUMENTATION.—No  
14 specific documentation is required to dem-  
15 onstrate compliance with the requirements of  
16 this paragraph. In the event of a complaint, the  
17 burden of proof shall be on the complainant to  
18 show that the complainant applied for the job  
19 and was available at the time and place needed.  
20 If the complainant makes such a showing, the  
21 burden of proof shall be on the employer to  
22 show that the complainant was not qualified or  
23 that the preference period had expired.

24 “(d) REQUIREMENTS OF NOTICE OF CERTAIN  
25 BREAKS IN EMPLOYMENT.—

1           “(1) IN GENERAL.—The employer (or the asso-  
2           ciation acting as agent for the employer) shall notify  
3           the Attorney General within 7 days if an H–2C alien  
4           prematurely abandons the alien’s employment.

5           “(2) OUT-OF-STATUS.—An H–2C alien who  
6           abandons the alien’s employment shall be considered  
7           to have failed to maintain nonimmigrant status as  
8           an alien described in section 101(a)(15)(H)(ii)(c)  
9           and shall leave the United States or be subject to  
10          deportation under section 237(a)(1)(C)(i).

11          “(e) ACCEPTANCE BY STATE EMPLOYMENT SECU-  
12          RITY AGENCY.—The State employment security agency  
13          shall review labor condition attestations submitted by em-  
14          ployers or associations pursuant to this section only for  
15          completeness and obvious inaccuracies. Unless such an  
16          agency finds that the application is incomplete or obvi-  
17          ously inaccurate, the agency shall accept the attestation  
18          within 7 days of the date of filing of the attestation, and  
19          return a copy to the applicant marked ‘accepted’.

20          “(f) PUBLIC REGISTRY.—The Secretary shall main-  
21          tain a registry of all accepted labor condition attestations  
22          and make such registry available for public inspection.

23          “(g) RESPONSIBILITIES OF STATE EMPLOYMENT SE-  
24          CURITY AGENCIES.—

1           “(1) DISSEMINATION OF LABOR MARKET IN-  
2           FORMATION.—The Secretary shall direct State em-  
3           ployment security agencies to disseminate non-  
4           employer-specific information about potential labor  
5           needs based on accepted attestations filed by em-  
6           ployers. Such dissemination shall be separate from  
7           the clearance of job orders through the Interstate  
8           and Intrastate Clearance Systems, and shall create  
9           no obligations for employers except as provided in  
10          this section.

11          “(2) REFERRAL OF WORKERS ON STATE EM-  
12          PLOYMENT SECURITY AGENCY JOB ORDERS.—Such  
13          agencies holding job orders filed by employers cov-  
14          ered by approved labor condition attestations shall  
15          be authorized to refer any able, willing, and qualified  
16          eligible job applicant who will be available at the  
17          time and place needed and who is authorized to  
18          work in the United States, including H–2C aliens  
19          who are seeking additional work in the United  
20          States and whose eligibility to remain in the United  
21          States pursuant to subsection (i) has not expired, on  
22          job orders filed by holders of accepted attestations.

23          “(h) ENFORCEMENT AND PENALTIES.—

24          “(1) ENFORCEMENT AUTHORITY.—

“(A) INVESTIGATION OF COMPLAINTS.—

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer’s failure to meet a condition specified in subsection (a) or an employer’s misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organizations (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than two years after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

“(B) WRITTEN NOTICE OF FINDINGS AND OPPORTUNITY FOR APPEAL.—After an investigation has been conducted, the Secretary shall issue a written determination as to whether or not any violation described in subparagraph (A) has been committed. The Secretary’s determination shall be served on the complainant

1 and the employer, and shall provide an oppor-  
2 tunity for an appeal of the Secretary's decision  
3 to an administrative law judge, who may con-  
4 duct a de novo hearing.

5 “(2) REMEDIES.—

6 “(A) BACK WAGES.—Upon a final deter-  
7 mination that the employer has failed to pay  
8 wages as required under this section, the Sec-  
9 retary may assess payment of back wages due  
10 to any United States worker or H-2C alien em-  
11 ployed by the employer in the specific employ-  
12 ment in question. The back wages shall be  
13 equal to the difference between the amount that  
14 should have been paid and the amount that ac-  
15 tually was paid to such worker.

16 “(B) FAILURE TO PAY WAGES.—Upon a  
17 final determination that the employer has failed  
18 to pay the wages required under this section,  
19 the Secretary may assess a civil money penalty  
20 up to \$1,000 for each failure, and may rec-  
21 ommend to the Attorney General the disquali-  
22 fication of the employer from the employment  
23 of H-2C aliens for a period of time determined  
24 by the Secretary not to exceed 1 year.

1           “(C) OTHER VIOLATIONS.—If the Sec-  
2           retary, as a result of an investigation pursuant  
3           to a complaint, determines that an employer  
4           covered by an accepted labor condition attesta-  
5           tion has—

6                   “(i) filed an attestation which mis-  
7                   represents a material fact; or

8                   “(ii) failed to meet a condition speci-  
9                   fied in subsection (a),

10          the Secretary may assess a civil money penalty  
11          not to exceed \$1,000 for each violation. In de-  
12          termining the amount of civil money penalty to  
13          be assessed, the Secretary shall consider the se-  
14          riousness of the violation, the good faith of the  
15          employer, the size of the business of the em-  
16          ployer being charged, the history of previous  
17          violations by the employer, whether the em-  
18          ployer obtained a financial gain from the viola-  
19          tion, whether the violation was willful, and  
20          other relevant factors.

21          “(D) PROGRAM DISQUALIFICATION.—

22                   “(i) 3-YEARS FOR SECOND VIOLA-  
23                   TION.—Upon a second final determination  
24                   that an employer has failed to pay the  
25                   wages required under this section, the Sec-

1           retary shall report such determination to  
2           the Attorney General and the Attorney  
3           General shall disqualify the employer from  
4           the employment of H-2C aliens for a pe-  
5           riod of 3 years.

6           “(ii) PERMANENT FOR THIRD VIOLA-  
7           TION.—Upon a third final determination  
8           that an employer has failed to pay the  
9           wages required under this section, the Sec-  
10          retary shall report such determination to  
11          the Attorney General and the Attorney  
12          General shall disqualify the employer from  
13          any subsequent employment of H-2C  
14          aliens.

15          “(3) ROLE OF ASSOCIATIONS.—

16          “(A) VIOLATION BY A MEMBER OF AN AS-  
17          SOCIATION.—An employer on whose behalf a  
18          labor condition attestation is filed by an asso-  
19          ciation acting as its agent is fully responsible  
20          for such attestation, and for complying with the  
21          terms and conditions of this section, as though  
22          the employer had filed the attestation itself. If  
23          such an employer is determined to have violated  
24          a requirement of this section, the penalty for  
25          such violation shall be assessed against the em-

1           employer who committed the violation and not  
2           against the association or other members of the  
3           association.

4                   “(B) VIOLATION BY AN ASSOCIATION ACT-  
5           ING AS AN EMPLOYER.—If an association filing  
6           a labor condition attestation on its own behalf  
7           as an employer is determined to have commit-  
8           ted a violation under this subsection which re-  
9           sults in disqualification from the program under  
10          paragraph (2)(D), no individual member of  
11          such association may be the beneficiary of the  
12          services of an H-2C alien in an occupation in  
13          which such alien was employed by the associa-  
14          tion during the period such disqualification is  
15          in effect, unless such member files a labor con-  
16          dition attestation as an individual employer or  
17          such an attestation is filed on the employer’s  
18          behalf by an association with which the em-  
19          ployer has an agreement that the employer will  
20          comply with the requirements of this section.

21          “(i) PROCEDURE FOR ADMISSION OR EXTENSION OF  
22          H-2C ALIENS.—

23                   “(1) ALIENS WHO ARE OUTSIDE THE UNITED  
24          STATES.—



1           “(A) PETITIONING FOR ADMISSION.—An  
2           employer or an association acting as agent for  
3           its members who seeks the admission into the  
4           United States of H–2C aliens may file a peti-  
5           tion with the District Director of the Immigra-  
6           tion and Naturalization Service having jurisdic-  
7           tion over the location where the aliens will be  
8           employed. The petition shall be accompanied by  
9           an accepted and currently valid labor condition  
10          attestation covering the petitioner. The petition  
11          may be for named or unnamed individual or  
12          multiple beneficiaries.

13          “(B) EXPEDITED ADJUDICATION BY DIS-  
14          TRICT DIRECTOR.—If an employer’s petition for  
15          admission of H–2C aliens is correctly filled out,  
16          and the employer is not ineligible to employ H–  
17          2C aliens, the District Director (or the Direc-  
18          tor’s designee) shall approve the petition within  
19          3 working days of receipt of the petition and  
20          accepted labor condition attestation and imme-  
21          diately (by fax, cable, or other means assuring  
22          expedited delivery) transmit a copy of the ap-  
23          proved petition to the petitioner and to the ap-  
24          propriate immigration officer at the port of  
25          entry or United States consulate (as the case

1 may be) where the petitioner has indicated that  
2 the alien beneficiary (or beneficiaries) will apply  
3 for a visa or admission to the United States.

4 “(C) UNNAMED BENEFICIARIES SELECTED  
5 BY PETITIONER.—The petitioning employer or  
6 association or its representative shall approve  
7 the issuance of visas to beneficiaries who are  
8 unnamed on a petition for admission granted to  
9 the employer or association.

10 “(D) CRITERIA FOR ADMISSIBILITY.—

11 “(i) IN GENERAL.—An alien shall be  
12 admissible under this section if the alien is  
13 otherwise admissible under this Act and  
14 the alien is not debarred pursuant to the  
15 provisions of clause (ii).

16 “(ii) DISQUALIFICATION.—An alien  
17 shall be debarred from admission or being  
18 provided status as an H-2C alien under  
19 this section if the alien has, at any time  
20 during the past 5 years—

21 “(I) violated a material provision  
22 of this section, including the require-  
23 ment to promptly depart the United  
24 States when the alien’s authorized pe-

1                   riod of admission under this section  
2                   has expired; or

3                   “(II) otherwise violated a term or  
4                   condition of admission to the United  
5                   States as a nonimmigrant, including  
6                   overstaying the period of authorized  
7                   admission as such a nonimmigrant.

8                   “(E) PERIOD OF ADMISSION.—The alien  
9                   shall be admitted for the period requested by  
10                  the petitioner not to exceed 10 months, or the  
11                  remaining validity period of the petitioner’s ap-  
12                  proved labor condition attestation, whichever is  
13                  less, plus an additional period of 14 days, dur-  
14                  ing which the alien shall seek authorized em-  
15                  ployment in the United States. During the 14-  
16                  day period following the expiration of the alien’s  
17                  work authorization, the alien is not authorized  
18                  to be employed unless the original petitioner or  
19                  a subsequent petitioner has filed an extension  
20                  of stay on behalf of the alien pursuant to para-  
21                  graph (2).

22                  “(F) ISSUANCE OF IDENTIFICATION AND  
23                  EMPLOYMENT ELIGIBILITY DOCUMENT.—

24                  “(i) IN GENERAL.—The Attorney  
25                  General shall cause to be issued to each

1 H-2C alien a card in a form which is re-  
2 sistant to counterfeiting and tampering for  
3 the purpose of providing proof of identity  
4 and employment eligibility under section  
5 274A.

6 “(ii) DESIGN OF CARD.—Each card  
7 issued pursuant to clause (i) shall be de-  
8 signed in such a manner and contain a  
9 photograph and other identifying informa-  
10 tion (such as date of birth, sex, and distin-  
11 guishing marks) that would allow an em-  
12 ployer to determine with reasonable cer-  
13 tainty that the bearer is not claiming the  
14 identity of another individual, and shall—

15 “(I) contain a fingerprint or  
16 other biometric identifying data (or  
17 both);

18 “(II) specify the date of the  
19 alien’s authorization as an H-2C  
20 alien;

21 “(III) specify the expiration date  
22 of the alien’s work authorization; and

23 “(IV) specify the alien’s admis-  
24 sion number or alien file number.

25 “(2) EXTENSION OF STAY.—

1           “(A) APPLICATION FOR EXTENSION OF  
2 STAY.—If a petitioner seeks to employ an H-2C  
3 alien already in the United States, the peti-  
4 tioner shall file with the Attorney General an  
5 application for an extension of the alien’s stay.  
6 The application for extension of stay shall be  
7 accompanied by a currently valid labor condi-  
8 tion attestation.

9           “(B) LIMITATION ON FILING AN APPLICA-  
10 TION FOR EXTENSION OF STAY.—An applica-  
11 tion may not be filed for an extension of an  
12 alien’s stay for a period of more than 10  
13 months, or later than a date which is 2 years  
14 from the date of the alien’s last admission to  
15 the United States as a H-2C alien, whichever  
16 occurs first. An application for extension of stay  
17 may not be filed during the pendency of an  
18 alien’s previous authorized period of employ-  
19 ment, nor after the alien’s authorized stay in  
20 the United States has expired.

21           “(C) WORK AUTHORIZATION UPON FILING  
22 AN APPLICATION FOR EXTENSION OF STAY.—  
23 An employer may begin employing an alien al-  
24 ready in the United States in H-2C status on  
25 the day the employer files its application for ex-

1           tension of stay. For the purpose of this require-  
2           ment, the term ‘filing’ means sending the appli-  
3           cation by certified mail via the United States  
4           Postal Service, return receipt requested, or de-  
5           livered by guaranteed commercial delivery which  
6           will provide the employer with a documented ac-  
7           knowledgment of the date of sending and re-  
8           ceipt of the application. The employer shall pro-  
9           vide a copy of the employer’s application for ex-  
10          tension of stay to the alien, who shall keep the  
11          application with the alien’s identification and  
12          employment eligibility document as evidence  
13          that the extension has been filed and that the  
14          alien is authorized to work in the United  
15          States. Upon approval of an application for ex-  
16          tension of stay, the Attorney General shall pro-  
17          vide a new or updated employment eligibility  
18          document to the alien indicating the new valid-  
19          ity date, after which the alien is not required to  
20          retain a copy of the application for extension of  
21          stay.

22               “(D) LIMITATION ON EMPLOYMENT AU-  
23          THORIZATION OF H-2C ALIENS WITHOUT VALID  
24          IDENTIFICATION AND EMPLOYMENT ELIGI-  
25          BILITY DOCUMENT.—An expired identification

1 and employment eligibility document, together  
2 with a copy of an application for extension of  
3 stay, shall constitute a valid work authorization  
4 document for a period of not more than 60  
5 days from the date of application for the exten-  
6 sion of stay, after which time only a currently  
7 valid identification and employment eligibility  
8 document shall be acceptable.

9 “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN  
10 H-2C STATUS.—An alien having status as an H-2C  
11 alien may not have the status extended for a contin-  
12 uous period longer than 2 years unless the alien re-  
13 mains outside the United States for an uninter-  
14 rupted period of 6 months. An absence from the  
15 United States may break the continuity of the period  
16 for which an H-2C visa is valid. If the alien has re-  
17 sided in the United States 10 months or less, an ab-  
18 sence breaks the continuity of the period if its lasts  
19 for at least 2 months. If the alien has resided in the  
20 United States 10 months or more, an absence  
21 breaks the continuity of the period if it lasts for at  
22 least one-fifth the duration of the stay.

23 “(j) TRUST FUND TO ASSURE WORKER RETURN.—

24 “(1) ESTABLISHMENT.—There is established in  
25 the Treasury of the United States a trust fund (in

1 this section referred to as the ‘Trust Fund’) for the  
2 purpose of providing a monetary incentive for H-2C  
3 aliens to return to their country of origin upon expi-  
4 ration of their visas under this section.

5 “(2) WITHHOLDING OF WAGES; PAYMENT INTO  
6 THE TRUST FUND.—

7 “(A) IN GENERAL.—Employers of H-2C  
8 aliens shall—

9 “(i) withhold from the wages of their  
10 H-2C alien workers an amount equivalent  
11 to 25 percent of the wages of each H-2C  
12 alien worker and pay such withheld  
13 amount into the Trust Fund in accordance  
14 with paragraph (3); and

15 “(ii) pay to the Trust Fund an  
16 amount equivalent to the Federal tax on  
17 the wages paid to H-2C aliens that the  
18 employer would be obligated to pay under  
19 the Federal Unemployment Tax Act and  
20 the Federal Insurance Contributions Act.

21 Amounts withheld under clause (i) shall be  
22 maintained in such interest bearing account  
23 with such a financial institution as the Attorney  
24 General shall specify.



1           “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
2           into the Trust Fund on behalf of a worker, and held  
3           pursuant to paragraph (2)(A)(i) and interest earned  
4           thereon, shall be paid by the Attorney General to the  
5           worker if—

6                   “(A) the worker applies to the Attorney  
7           General (or the designee of the Attorney Gen-  
8           eral) for payment within 30 days of the expira-  
9           tion of the alien’s last authorized stay in the  
10          United States as a H–2C alien;

11                   “(B) in such application the worker estab-  
12          lishes that the worker has complied with the  
13          terms and conditions of this section; and

14                   “(C) in connection with the application,  
15          the worker tenders the identification and em-  
16          ployment authorization card issued to the work-  
17          er pursuant to subsection (i)(1)(F) and estab-  
18          lishes that the worker is identified as the per-  
19          son to whom the card was issued based on the  
20          biometric identification information contained  
21          on the card.

22           “(4) ADMINISTRATIVE EXPENSES.—The  
23          amounts paid into the Trust Fund and held pursu-  
24          ant to paragraph (2)(A)(ii), and interest earned  
25          thereon, shall be paid to the Attorney General, the

1 Secretary of Labor, and the Secretary of State in  
2 amounts equivalent to the expenses incurred by such  
3 officials in the administration of section  
4 101(a)(15)(H)(ii)(c) and this section.

5 “(5) REGULATIONS.—The Attorney General  
6 shall prescribe regulations to carry out this sub-  
7 section.

8 “(k) INVESTMENT OF TRUST FUND.—

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

18 “(A) on original issue at the price; or

19 “(B) by purchase of outstanding obliga-  
20 tions at the market price.

21 The purposes for which obligations of the United  
22 States may be issued under chapter 31 of title 31,  
23 United States Code, are hereby extended to author-  
24 ize the issuance at par of special obligations exclu-  
25 sively to the Trust Fund. Such special obligations

1 shall bear interest at a rate equal to the average  
2 rate of interest, computed as to the end of the cal-  
3 endar month next preceding the date of such issue,  
4 borne by all marketable interest-bearing obligations  
5 of the United States then forming a part of the pub-  
6 lic debt, except that where such average rate is not  
7 a multiple of one-eighth of 1 percent next lower than  
8 such average rate. Such special obligations shall be  
9 issued only if the Secretary of the Treasury deter-  
10 mines that the purchase of other interest-bearing ob-  
11 ligations of the United States, or of obligations  
12 guaranteed as to both principal and interest by the  
13 United States on original issue or at the market  
14 price, is not in the public interest.

15 “(2) SALE OF OBLIGATION.—Any obligation ac-  
16 quired by the Trust Fund (except special obligations  
17 issued exclusively to the Trust Fund) may be sold by  
18 the Secretary of the Treasury at the market price,  
19 and such special obligations may be redeemed at par  
20 plus accrued interest.

21 “(3) CREDITS TO TRUST FUND.—The interest  
22 on, and the proceeds from the sale or redemption of,  
23 any obligations held in the Trust Fund shall be  
24 credited to and form a part of the Trust Fund.

1           “(4) REPORT TO CONGRESS.—It shall be the  
2       duty of the Secretary of the Treasury to hold the  
3       Trust Fund, and (after consultation with the Attor-  
4       ney General) to report to the Congress each year on  
5       the financial condition and the results of the oper-  
6       ations of the Trust Fund during the preceding fiscal  
7       year and on its expected condition and operations  
8       during the next fiscal year. Such report shall be  
9       printed as both a House and a Senate document of  
10      the session of the Congress to which the report is  
11      made.

12      “(1) MISCELLANEOUS PROVISIONS.—

13           “(1) APPLICABILITY OF LABOR LAWS.—Except  
14      as provided in paragraphs (2), (3), and (4), all Fed-  
15      eral, State, and local labor laws (including laws af-  
16      fecting migrant farm workers) applicable to United  
17      States workers shall also apply to H-2C aliens.

18           “(2) LIMITATION OF WRITTEN DISCLOSURE IM-  
19      POSED UPON RECRUITERS.—Any disclosure required  
20      of recruiters under section of 201(a) of the Migrant  
21      and Seasonal Agricultural Worker Protection Act  
22      (29 U.S.C. 1821(a)) need not be given to H-2C  
23      aliens prior to the time their visa is issued permit-  
24      ting entry into the United States.

1           “(3) EXEMPTION FROM FICA AND FUTA  
2 TAXES.—The wages paid to H-2C aliens shall be ex-  
3 cluded from wages subject to taxation under the  
4 Federal Unemployment Tax Act and under the Fed-  
5 eral Insurance Contributions Act.

6           “(4) INELIGIBILITY FOR CERTAIN PUBLIC BEN-  
7 EFITS PROGRAMS.—

8           “(A) IN GENERAL.—Notwithstanding any  
9 other provision of law and except as provided in  
10 subparagraph (B), any alien provided status as  
11 an H-2C alien shall not be eligible for any Fed-  
12 eral or State or local means-tested public bene-  
13 fit program.

14           “(B) EXCEPTIONS.—Subparagraph (A)  
15 shall not apply to the following:

16           “(i) EMERGENCY MEDICAL SERV-  
17 ICES.—The provision of emergency medical  
18 services (as defined by the Attorney Gen-  
19 eral in consultation with the Secretary of  
20 Health and Human Services).

21           “(ii) PUBLIC HEALTH IMMUNIZA-  
22 TIONS.—Public health assistance for im-  
23 munizations with respect to immunizable  
24 diseases and for testing and treatment for  
25 communicable diseases.

1                   “(iii) SHORT-TERM EMERGENCY DIS-  
2                   ASTER RELIEF.—The provision of non-  
3                   cash, in-kind, short-term emergency disas-  
4                   ter relief.

5                   “(m) REGULATIONS.—

6                   “(1) REGULATIONS OF THE SECRETARY.—The  
7                   Secretary shall consult with the Secretary of Agri-  
8                   culture, and the Attorney General shall approve, all  
9                   regulations dealing with the approval of labor condi-  
10                  tion attestations for H–2C aliens and enforcement of  
11                  the requirements for employing H–2C aliens under  
12                  an approved attestation. The Secretary shall promul-  
13                  gate, and the Attorney General shall approve, such  
14                  regulations not later than 180 days after the date of  
15                  the enactment of the Farmers’ Temporary Employ-  
16                  ment Assistance Act.

17                  “(2) REGULATIONS OF THE ATTORNEY GEN-  
18                  ERAL.—The Attorney General shall consult with the  
19                  Secretary of Agriculture on all regulations dealing  
20                  with the approval of petitions for admission or ex-  
21                  tension of stay of H–2C aliens and the requirements  
22                  for employing H–2C aliens and the enforcement of  
23                  such requirements. The Attorney General shall pro-  
24                  mulgate such regulations not later than 180 days

1 after the date of the enactment of the Farmers’  
2 Temporary Employment Assistance Act.

3 “(n) DEFINITIONS.—For the purpose of this section:

4 “(1) AGRICULTURAL ASSOCIATION.—The term  
5 ‘agricultural association’ means any nonprofit or co-  
6 operative association of farmers, growers, or ranch-  
7 ers incorporated or qualified under applicable State  
8 law, which recruits, solicits, hires, employs, fur-  
9 nishes, or transports any agricultural workers.

10 “(2) AGRICULTURAL EMPLOYMENT.—The term  
11 ‘agricultural employment’ means any service or ac-  
12 tivity included within the provisions of section 3(f)  
13 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
14 203(f)) or section 3121(g) of the Internal Revenue  
15 Code of 1986 and the handling, planting, drying,  
16 packing, packaging, processing, freezing, or grading  
17 prior to delivery for storage of any agricultural or  
18 horticultural commodity in its unmanufactured  
19 state.

20 “(3) EMPLOYER.—The term ‘employer’ means  
21 any person or entity, including any independent con-  
22 tractor and any agricultural association, that em-  
23 ploys workers.

24 “(4) H-2C ALIEN.—The term ‘H-2C alien’  
25 means an alien admitted to the United States or

1 provided status as a nonimmigrant under section  
2 101(a)(15)(H)(ii)(c).

3 “(5) SECRETARY.—The term ‘Secretary’ means  
4 the Secretary of Labor.

5 “(6) UNITED STATES WORKER.—The term  
6 ‘United States worker’ means any worker, whether  
7 a United States citizen, a United States national, or  
8 an alien, who is legally permitted to work in the job  
9 opportunity within the United States other than an  
10 alien admitted pursuant to this section.”.

11 (b) CLERICAL AMENDMENT.—The table of contents  
12 of the Immigration and Nationality Act is amended by in-  
13 serting after the item relating to section 218 the following  
14 new item:

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

