

105TH CONGRESS  
2D SESSION

# S. 1698

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 SENATE OF THE UNITED STATES

MARCH 3, 1998

Mr. COVERDELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Farmers’ Temporary  
5 Employment Assistance Act”.

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

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

6 (1) by striking “or (b)” and inserting “(b)”;  
 7 and

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

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

18 **SEC. 3. ALTERNATIVE AGRICULTURAL TEMPORARY WORK-**  
 19 **ER PROCESS USING ATTESTATIONS.**

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

23 “ALTERNATIVE AGRICULTURAL TEMPORARY WORKER  
 24 PROGRAM

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

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

4           “(A) the employment of the alien is cov-  
5 ered by a currently valid labor condition attes-  
6 tation which—

7           “(i) is filed by the employer, or by an  
8 association on behalf of the employer, for  
9 the occupation in which the alien will be  
10 employed;

11           “(ii) has been accepted by the State  
12 employment security agency having juris-  
13 diction over the area of intended employ-  
14 ment; and

15           “(iii) states each of the items de-  
16 scribed in paragraph (2) and includes in-  
17 formation identifying the employer or asso-  
18 ciation and agricultural job opportunities  
19 involved;

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

23           “(C) the employer has not, during the past  
24 2 years, been found by the Attorney General to  
25 have employed any aliens in violation of section

1           274A(a), including aliens admitted pursuant to  
2           this section.

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

7                   “(A) WAGE RATE.—The employer will pay  
8           H-2C aliens and all other workers in the occu-  
9           pation not less than the prevailing wage for  
10          similarly employed workers in the area of em-  
11          ployment, and not less than the applicable Fed-  
12          eral, State or local statutory minimum wage.

13                   “(B) WORKING CONDITIONS.—The em-  
14          ployment of H-2C aliens will not adversely af-  
15          fect the working conditions of similarly em-  
16          ployed workers in the area of employment.

17                   “(C) LIMITATION ON EMPLOYMENT.—An  
18          H-2C alien will not be employed in any job op-  
19          portunity which is not temporary or seasonal,  
20          and will not be employed by the employer in  
21          any job opportunity for more than 10 months  
22          in any 12-consecutive-month period.

23                   “(D) NO LABOR DISPUTE.—No H-2C  
24          alien will be employed in any job opportunity  
25          which is vacant because its former occupant is

1 involved in a strike, lockout or work stoppage  
2 in the course of a labor dispute in the occupa-  
3 tion at the place of employment.

4 “(E) NOTICE.—The employer, at the time  
5 of filing the attestation, has provided notice of  
6 the attestation to workers employed in the occu-  
7 pation in which H-2C aliens will be employed.

8 “(F) JOB ORDERS.—The employer will file  
9 one or more job orders for the occupation (or  
10 occupations) covered by the attestation with the  
11 State employment security agency no later than  
12 the day on which the employer first employs  
13 any H-2C aliens in the occupation.

14 “(G) PREFERENCE TO DOMESTIC WORK-  
15 ERS.—The employer will give preference to  
16 able, willing, and qualified United States work-  
17 ers who apply to the employer and are available  
18 at the time and place needed, for the first 25  
19 days after the filing of the job order in an occu-  
20 pation or until 5 days before the date employ-  
21 ment of workers in the occupation begins,  
22 whichever occurs later.

23 “(3) GENERAL ACCOUNTING OFFICE RE-  
24 PORTS.—Beginning 1 year after the effective date of  
25 this section, and annually thereafter, the Control-

1       ler General shall prepare and transmit to the Con-  
2       gress a report describing the results of a review of  
3       the implementation and enforcement of this section  
4       during the preceding 12-month period, for the pur-  
5       pose of determining if—

6               “(A) such provisions have been carried out  
7               satisfactorily;

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

11              “(C) the program has ensured that imple-  
12              mentation of the program is not displacing  
13              United States agricultural workers or diminish-  
14              ing the terms and conditions of employment of  
15              United States agricultural workers; and

16              “(D) an unnecessary regulatory burden  
17              has been created for employers hiring workers  
18              admitted under this section.

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

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

23              “(2) FILING BY ASSOCIATIONS ON BEHALF OF  
24              EMPLOYER MEMBERS.—An agricultural association  
25              may file a labor condition attestation as an agent on

1       behalf of its members. Such an attestation filed by  
2       an agricultural association acting as an agent for its  
3       members, when accepted, shall apply to those em-  
4       ployer members of the association that the associa-  
5       tion certifies to the State employment security agen-  
6       cy are members of the association and have agreed  
7       in writing to comply with the requirements of this  
8       section.

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

14               “(4) WHERE TO FILE.—A labor condition attes-  
15       tation shall be filed with the State employment secu-  
16       rity agency having jurisdiction over the area of in-  
17       tended employment of the workers covered by the at-  
18       testation. If an employer, or the members of an as-  
19       sociation of employers, will be employing workers in  
20       an area or areas covered by more than one such  
21       agency, the attestation shall be filed with each such  
22       agency having jurisdiction over an area where the  
23       workers will be employed.

24               “(5) DEADLINE FOR FILING.—A labor condi-  
25       tion attestation may be filed at any time up to 12

1 months prior to the date of the employer’s antici-  
2 pated need for workers in the occupation (or occupa-  
3 tions) covered by the attestation.

4 “(6) FILING FOR MULTIPLE OCCUPATIONS.—A  
5 labor condition attestation may be filed for one or  
6 more occupations and cover one or more periods of  
7 employment.

8 “(7) MAINTAINING REQUIRED DOCUMENTA-  
9 TION.—

10 “(A) BY EMPLOYERS.—Each employer cov-  
11 ered by an accepted labor condition attestation  
12 must maintain a file of the documentation re-  
13 quired in subsection (c) for each occupation in-  
14 cluded in an accepted attestation covering the  
15 employer. The documentation shall be retained  
16 for a period of one year following the expiration  
17 of an accepted attestation. The employer shall  
18 make the documentation available to represent-  
19 atives of the Secretary during normal business  
20 hours.

21 “(B) BY ASSOCIATIONS.—In complying  
22 with subparagraph (A), documentation main-  
23 tained by an association filing a labor condition  
24 attestation on behalf of an employer shall be  
25 deemed to be maintained by the employer.

1 “(8) WITHDRAWAL.—

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

12 “(B) TERMINATION OF OBLIGATIONS.—An  
13 employer may withdraw a labor condition attes-  
14 tation in total, or with respect to a particular  
15 occupation covered by the attestation. An asso-  
16 ciation may withdraw such an attestation with  
17 respect to one or more of its members. To with-  
18 draw an attestation the employer or association  
19 must notify in writing the State employment se-  
20 curity agency office with which the attestation  
21 was filed of the withdrawal of the attestation.  
22 An employer who withdraws an attestation, or  
23 on whose behalf an attestation is withdrawn by  
24 an association, is relieved of the obligations un-  
25 dertaken in the attestation with respect to the

1 occupation (or occupations) with respect to  
2 which the attestation was withdrawn, upon ac-  
3 knowledgement by the appropriate State em-  
4 ployment security agency of receipt of the with-  
5 drawal notice. An attestation may not be with-  
6 drawn with respect to any occupation while any  
7 H-2C aliens covered by that attestation is em-  
8 ployed in the occupation.

9 “(C) OBLIGATIONS UNDER OTHER STAT-  
10 UTES.—Any obligation incurred by the em-  
11 ployer under any other law or regulation as a  
12 result of recruitment of United States workers  
13 under an offer of terms and conditions of em-  
14 ployment required by the H-2C program is un-  
15 affected by withdrawal of a labor condition at-  
16 testation.

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

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

21 “(A) EFFECT OF THE ATTESTATION.—  
22 Employers shall pay each worker in an occupa-  
23 tion covered by an accepted labor condition at-  
24 testation at least the prevailing wage in the oc-  
25 cupation in the area of intended employment.

1           The preceding sentence does not require em-  
2           ployers to pay all workers in the occupation the  
3           same wage. The employer may, in the sole dis-  
4           cretion of the employer, maintain pay differen-  
5           tials based on experience, tenure with the em-  
6           ployer, skill, or any other work-related factor, if  
7           the differential is not based on a criterion for  
8           which discrimination is prohibited by the law  
9           and all workers in the covered occupation re-  
10          ceive at least the prevailing wage.

11                   “(B) PAYMENT OF STATE EMPLOYMENT  
12           SECURITY AGENCY DETERMINED WAGE SUFFI-  
13           CIENT.—The employer may request and obtain  
14           a prevailing wage determination from the State  
15           employment security agency. If the employer re-  
16           quests such a determination, and pays the wage  
17           determined, such payment shall be considered  
18           sufficient to meet the requirement of this para-  
19           graph if the H-2C workers—

20                           “(i) are employed in the occupation  
21                           for which the employer possesses an ac-  
22                           cepted labor condition attestation, and for  
23                           which the employer or association pos-  
24                           sesses a prevailing wage determination by  
25                           the State employment security agency, and

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

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

14          “(D) ALTERNATE METHODS OF PAYMENT  
15          PERMITTED.—

16                 “(i) IN GENERAL.—A prevailing wage  
17                 may be expressed as an hourly wage, a  
18                 piece rate, a task rate (described in clause  
19                 (ii)), or other incentive pay system, includ-  
20                 ing a group rate (described in clause (iii)).  
21                 The requirement to pay at least the pre-  
22                 vailing wage in the occupation and area of  
23                 intended employment does not require an  
24                 employer to pay by the method of pay in  
25                 which the prevailing rate is expressed.

1           However, if the employer adopts a method  
2           of pay other than the prevailing rate, the  
3           burden of proof is on the employer to dem-  
4           onstrate that the employer’s method of pay  
5           is designed to produce earnings equivalent  
6           to the earnings that would result from pay-  
7           ment of the prevailing rate.

8           “(ii) TASK RATE.—For purposes of  
9           this subparagraph, a task rate is an incen-  
10          tive payment based on a unit of work per-  
11          formed such that the incentive rate varies  
12          with the level of effort required to perform  
13          individual units of work.

14          “(iii) GROUP RATE.—For purposes of  
15          this subparagraph, a group rate is an in-  
16          centive payment system in which the pay-  
17          ment is shared among a group of workers  
18          working together to perform the task.

19          “(E) REQUIRED DOCUMENTATION.—The  
20          employer or association shall document compli-  
21          ance with this paragraph by retaining on file  
22          the employer or association’s request for a de-  
23          termination by a State employment security  
24          agency and the prevailing wage determination  
25          received from such agency or other information

1           upon which the employer or association relied to  
2           assure compliance with the prevailing wage re-  
3           quirement.

4           “(2) REQUIREMENT TO PROVIDE HOUSING AND  
5           TRANSPORTATION.—

6                   “(A) EFFECT OF THE ATTESTATION.—The  
7           employment of H-2C aliens shall not adversely  
8           affect the working conditions of United States  
9           workers similarly employed in the area of in-  
10          tended employment. The employer’s obligation  
11          not to adversely affect working conditions shall  
12          continue for the duration of the period of em-  
13          ployment by the employer of any H-2C aliens  
14          in the occupation and area of intended employ-  
15          ment. An employer will be deemed to be in com-  
16          pliance with this attestation if the employer of-  
17          fers at least the benefits required by subpara-  
18          graphs (B) through (D). The previous sentence  
19          does not require an employer to offer more than  
20          such benefits.

21                   “(B) HOUSING REQUIRED.—

22                           “(i) HOUSING OFFER.—The employer  
23           must offer to H-2C aliens and United  
24           States workers recruited from beyond nor-  
25           mal recruiting distance housing, or a hous-

1 ing allowance, if it is prevailing practice in  
2 the occupation and area of intended em-  
3 ployment to offer housing or a housing al-  
4 lowance to workers who are recruited from  
5 beyond normal commuting distance.

6 “(ii) HOUSING STANDARDS.—If the  
7 employer offers housing to such workers,  
8 the housing shall meet (at the option of  
9 the employer) applicable Federal farm  
10 labor housing standards or applicable local  
11 or State standards for rental, public ac-  
12 commodation, or other substantially simi-  
13 lar class of habitation.

14 “(iii) CHARGES FOR HOUSING.—An  
15 employer who offers housing to such work-  
16 ers may charge an amount equal to the  
17 fair market value (but not greater than the  
18 employer’s actual cost) for utilities and  
19 maintenance, or such lesser amount as per-  
20 mitted by law.

21 “(iv) HOUSING ALLOWANCE AS AL-  
22 TERNATIVE.—In lieu of offering housing to  
23 such workers, at the employer’s sole discre-  
24 tion on an individual basis, the employer  
25 may provide a reasonable housing allow-

1           ance. An employer who offers a housing al-  
2           lowance to such a worker under this sub-  
3           paragraph shall not be deemed to be a  
4           housing provider under section 203 of the  
5           Migrant and Seasonal Agricultural Worker  
6           Protection Act (29 U.S.C. 1823) merely by  
7           virtue of providing such housing allowance.

8           “(v) SECURITY DEPOSIT.—The re-  
9           quirement, if any, to offer housing to such  
10          a worker under this subparagraph shall  
11          not preclude an employer from requiring a  
12          reasonable deposit to protect against gross  
13          negligence or willful destruction of prop-  
14          erty, as a condition for providing such  
15          housing.

16          “(vi) DAMAGES.—An employer who  
17          offers housing to such a worker shall not  
18          be precluded from requiring a worker  
19          found to have been responsible for damage  
20          to such housing which is not the result of  
21          normal wear and tear related to habitation  
22          to reimburse the employer for the reason-  
23          able cost of repair of such damage.

24          “(C) TRANSPORTATION.—If the employer  
25          provides transportation arrangements or assist-

1           ance to H-2C aliens, the employer must offer  
2           to provide the same transportation arrange-  
3           ments or assistance (generally comparable in  
4           expense and scope) for other individuals em-  
5           ployed by the employer in the occupation at the  
6           place of employment who were recruited from  
7           beyond normal commuting distance.

8           “(D) WORKERS’ COMPENSATION.—If the  
9           employment covered by a labor condition attes-  
10          tation is not covered by the State workers’ com-  
11          pensation law, the employer must provide, at no  
12          cost to the worker, insurance covering injury  
13          and disease arising out of and in the course of  
14          the workers’ employment which will provide  
15          benefits at least equal to those provided under  
16          the State workers’ compensation law for com-  
17          parable employment.

18          “(E) REQUIRED DOCUMENTATION.—

19                 “(i) HOUSING AND TRANSPOR-  
20                 TATION.—No specific documentation is re-  
21                 quired to be maintained to evidence com-  
22                 pliance with the requirements of subpara-  
23                 graphs (B) and (C). In the event of a com-  
24                 plaint alleging a failure to comply with  
25                 such a requirement, the burden of proof

1 shall be on the employer to show that the  
2 employer offered the required benefit to  
3 the complainant, or that the employer was  
4 not required by the terms of this para-  
5 graph to offer such benefit to the com-  
6 plainant.

7 “(ii) WORKERS’ COMPENSATION.—

8 The employer shall maintain copies of cer-  
9 tificates of insurance evidencing compli-  
10 ance with subparagraph (D) throughout  
11 the period of validity of the labor condition  
12 attestation.

13 “(3) REQUIREMENT TO EMPLOY ALIENS IN  
14 TEMPORARY OR SEASONAL AGRICULTURAL JOB OP-  
15 PORTUNITIES.—

16 “(A) LIMITATIONS.—

17 “(i) IN GENERAL.—The employer may  
18 employ H-2C aliens only in agricultural  
19 employment which is temporary or sea-  
20 sonal.

21 “(ii) SEASONAL BASIS.—For purposes  
22 of this section, labor is performed on a sea-  
23 sonal basis where, ordinarily, the employ-  
24 ment pertains to or is of the kind exclu-  
25 sively performed at certain seasons or peri-

1           ods of the year and which, from its nature,  
2           may not be continuous or carried on  
3           throughout the year.

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

8           “(B) REQUIRED DOCUMENTATION.—No  
9           specific documentation is required to dem-  
10          onstrate compliance with the requirement of  
11          subparagraph (A). In the event of a complaint,  
12          the burden of proof shall fall on the employer  
13          to show that the employment meets such re-  
14          quirement.

15          “(4) REQUIREMENT NOT TO EMPLOY ALIENS IN  
16          JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR  
17          DISPUTE.—

18                 “(A) IN GENERAL.—No H-2C alien may  
19                 be employed in any job opportunity which is va-  
20                 cant because its former occupant is involved in  
21                 a strike, lockout, or work stoppage in the  
22                 course of a labor dispute in the occupation at  
23                 the place of employment.

24                 “(B) REQUIRED DOCUMENTATION.—No  
25                 specific documentation is required to dem-

1           onstrate compliance with the requirement of  
2           subparagraph (A). In the event of a complaint,  
3           the burden of proof shall fall on the employer  
4           to show that the job opportunity in which the  
5           H-2C alien was employed was not vacant be-  
6           cause the former occupant was on strike, locked  
7           out, or participating in a work stoppage in the  
8           course of a labor dispute in the occupation at  
9           the place of employment.

10           “(5) NOTICE OF FILING OF LABOR CONDITION  
11           ATTESTATION AND SUPPORTING DOCUMENTATION.—

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

13           “(i) provide notice of the filing of a  
14           labor condition attestation to the appro-  
15           priate certified bargaining agent (if any)  
16           which represents workers of the employer  
17           in the occupation (or occupations) at the  
18           place of employment covered by the attes-  
19           tation; or

20           “(ii) in the case where no such bar-  
21           gaining agent exists, post notice of the fil-  
22           ing of such an attestation in at least two  
23           conspicuous locations where applications  
24           for employment are accepted.

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

7           “(C) REQUIRED DOCUMENTATION.—The  
8           employer shall maintain a copy of the notice  
9           provided to the bargaining agent (if any), to-  
10          gether with evidence that the notice was pro-  
11          vided (such as a signed receipt of evidence of  
12          attempt to send the notice by certified or reg-  
13          istered mail). In the case where no certified  
14          bargaining agent described in subparagraph  
15          (A)(i) exists, the employer shall retain a copy of  
16          the posted notice, together with information as  
17          to the dates and locations where the notice was  
18          displayed.

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

20                 “(A) EFFECT OF THE ATTESTATION.—The  
21                 employer, or an association acting as agent for  
22                 its members, shall file the information nec-  
23                 essary to complete a local job order for each oc-  
24                 cupation covered by an accepted labor condition  
25                 attestation with the appropriate local office of

1 the State employment security agency having  
2 jurisdiction over the area of intended employ-  
3 ment, or with the State office of such an agency  
4 if workers will be employed in an area within  
5 the jurisdiction of more than one local office of  
6 such an agency. The job orders shall remain on  
7 file for 25 calendar days or until 5 calendar  
8 days before the anticipated date of need for  
9 workers in the occupation covered by the job  
10 order, whichever occurs later. The job order  
11 shall provide at least the minimum terms and  
12 conditions of employment required for partici-  
13 pation in the H-2C program.

14 “(B) DEADLINE FOR FILING.—A job order  
15 shall be filed under subparagraph (A) no later  
16 than the date on which the employer files a pe-  
17 tition with the Attorney General for admission  
18 or extension of stay for aliens to be employed  
19 in the occupation for which the order is filed.

20 “(C) REQUIRED DOCUMENTATION.—The  
21 office of the State employment security agency  
22 which the employer or association provides with  
23 information necessary to file a local job order  
24 shall provide the employer with evidence that  
25 the information was provided in a timely man-

1           ner as required by this paragraph, and the em-  
2           ployer or association shall retain such evidence  
3           for each occupation in which H-2C aliens are  
4           employed.

5           “(7) REQUIREMENT TO GIVE PREFERENCE TO  
6           QUALIFIED UNITED STATES WORKERS.—

7                   “(A) FILING 30 DAYS OR MORE BEFORE  
8           DATE OF NEED.—If a job order is filed 30 days  
9           or more before the anticipated date of need for  
10          workers in an occupation covered by a labor  
11          condition attestation and for which the job  
12          order has been filed, the employer shall offer to  
13          employ able, willing, and qualified United  
14          States workers who apply to the employer and  
15          who will be available at the time and place  
16          needed for the job opportunities covered by the  
17          attestation until 5 calendar days before the an-  
18          ticipated date of need for workers in the occu-  
19          pation, or until the employer’s job opportunities  
20          in the occupation are filled with qualified  
21          United States workers, if that occurs more than  
22          5 days before the anticipated date of need for  
23          workers in the occupation.

24                   “(B) FILING FEWER THAN 30 DAYS BE-  
25          FORE DATE OF NEED.—If a job order is filed

1 fewer than 30 days before the anticipated date  
2 of need for workers in an occupation covered by  
3 such an attestation and for which a job order  
4 has been filed, the employer shall offer to em-  
5 ploy able, willing, and qualified United States  
6 workers who are or will be available at the time  
7 and place needed during the first 25 days after  
8 the job order is filed or until the employer's job  
9 opportunities in the occupation are filled with  
10 United States workers, whichever occurs earlier,  
11 regardless of whether any of the job opportuni-  
12 ties may already be occupied by H-2C aliens.

13 “(C) FILING VACANCIES.—An employer  
14 may fill a job opportunity in an occupation cov-  
15 ered by an accepted labor condition attestation  
16 which remains or becomes vacant after expira-  
17 tion of the required preference period specified  
18 in subparagraph (A) or (B) of paragraph (6)  
19 without regard to such preference.

20 “(D) JOB-RELATED REQUIREMENTS.—No  
21 employer shall be required to initially employ a  
22 worker who fails to meet lawful job-related em-  
23 ployment criteria, nor to continue the employ-  
24 ment of a worker who fails to meet lawful job-  
25 related standards of conduct and performance,

1 including failure to meet minimum productivity  
2 standards after a 3-day break-in period.

3 “(E) REQUIRED DOCUMENTATION.—No  
4 specific documentation is required to dem-  
5 onstrate compliance with the requirements of  
6 this paragraph. In the event of a complaint, the  
7 burden of proof shall be on the complainant to  
8 show that the complainant applied for the job  
9 and was available at the time and place needed.  
10 If the complainant makes such a showing, the  
11 burden of proof shall be on the employer to  
12 show that the complainant was not qualified or  
13 that the preference period had expired.

14 “(d) REQUIREMENTS OF NOTICE OF CERTAIN  
15 BREAKS IN EMPLOYMENT.—

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

20 “(2) OUT-OF-STATUS.—An H-2C alien who  
21 abandons the alien’s employment shall be considered  
22 to have failed to maintain nonimmigrant status as  
23 an alien described in section 101(a)(15)(H)(ii)(c)  
24 and shall leave the United States or be subject to  
25 deportation under section 237(a)(1)(C)(i).

1       “(e) ACCEPTANCE BY STATE EMPLOYMENT SECUR-  
2       RITY AGENCY.—The State employment security agency  
3       shall review labor condition attestations submitted by em-  
4       ployers or associations pursuant to this section only for  
5       completeness and obvious inaccuracies. Unless such an  
6       agency finds that the application is incomplete or obvi-  
7       ously inaccurate, the agency shall accept the attestation  
8       within 7 days of the date of filing of the attestation, and  
9       return a copy to the applicant marked ‘accepted’.

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

13       “(g) RESPONSIBILITIES OF STATE EMPLOYMENT SE-  
14       CURITY AGENCIES.—

15               “(1) DISSEMINATION OF LABOR MARKET IN-  
16       FORMATION.—The Secretary shall direct State em-  
17       ployment security agencies to disseminate non-  
18       employer-specific information about potential labor  
19       needs based on accepted attestations filed by em-  
20       ployers. Such dissemination shall be separate from  
21       the clearance of job orders through the Interstate  
22       and Intrastate Clearance Systems, and shall create  
23       no obligations for employers except as provided in  
24       this section.

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

13          “(h) ENFORCEMENT AND PENALTIES.—

14                 “(1) ENFORCEMENT AUTHORITY.—

15                         “(A) INVESTIGATION OF COMPLAINTS.—

16           The Secretary shall establish a process for the  
17           receipt, investigation, and disposition of com-  
18           plaints respecting an employer’s failure to meet  
19           a condition specified in subsection (a) or an em-  
20           ployer’s misrepresentation of material facts in  
21           such an application. Complaints may be filed by  
22           any aggrieved person or organizations (includ-  
23           ing bargaining representatives). No investiga-  
24           tion or hearing shall be conducted on a com-  
25           plaint concerning such a failure or misrepresen-

1           tation unless the complaint was filed not later  
2           than two years after the date of the failure or  
3           misrepresentation, respectively. The Secretary  
4           shall conduct an investigation under this sub-  
5           paragraph if there is reasonable cause to believe  
6           that such a failure or misrepresentation has oc-  
7           curred.

8           “(B) WRITTEN NOTICE OF FINDINGS AND  
9           OPPORTUNITY FOR APPEAL.—After an inves-  
10          tigation has been conducted, the Secretary shall  
11          issue a written determination as to whether or  
12          not any violation described in subparagraph (A)  
13          has been committed. The Secretary’s deter-  
14          mination shall be served on the complainant  
15          and the employer, and shall provide an oppor-  
16          tunity for an appeal of the Secretary’s decision  
17          to an administrative law judge, who may con-  
18          duct a de novo hearing.

19          “(2) REMEDIES.—

20          “(A) BACK WAGES.—Upon a final deter-  
21          mination that the employer has failed to pay  
22          wages as required under this section, the Sec-  
23          retary may assess payment of back wages due  
24          to any United States worker or H-2C alien em-  
25          ployed by the employer in the specific employ-

1           ment in question. The back wages shall be  
2           equal to the difference between the amount that  
3           should have been paid and the amount that ac-  
4           tually was paid to such worker.

5           “(B) FAILURE TO PAY WAGES.—Upon a  
6           final determination that the employer has failed  
7           to pay the wages required under this section,  
8           the Secretary may assess a civil money penalty  
9           up to \$1,000 for each failure, and may rec-  
10          ommend to the Attorney General the disquali-  
11          fication of the employer from the employment  
12          of H-2C aliens for a period of time determined  
13          by the Secretary not to exceed 1 year.

14          “(C) OTHER VIOLATIONS.—If the Sec-  
15          retary, as a result of an investigation pursuant  
16          to a complaint, determines that an employer  
17          covered by an accepted labor condition attesta-  
18          tion has—

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

21                  “(ii) failed to meet a condition speci-  
22                  fied in subsection (a),

23          the Secretary may assess a civil money penalty  
24          not to exceed \$1,000 for each violation. In de-  
25          termining the amount of civil money penalty to

1 be assessed, the Secretary shall consider the se-  
2 riousness of the violation, the good faith of the  
3 employer, the size of the business of the em-  
4 ployer being charged, the history of previous  
5 violations by the employer, whether the em-  
6 ployer obtained a financial gain from the viola-  
7 tion, whether the violation was willful, and  
8 other relevant factors.

9 “(D) PROGRAM DISQUALIFICATION.—

10 “(i) 3-YEARS FOR SECOND VIOLA-  
11 TION.—Upon a second final determination  
12 that an employer has failed to pay the  
13 wages required under this section, the Sec-  
14 retary shall report such determination to  
15 the Attorney General and the Attorney  
16 General shall disqualify the employer from  
17 the employment of H-2C aliens for a pe-  
18 riod of 3 years.

19 “(ii) PERMANENT FOR THIRD VIOLA-  
20 TION.—Upon a third final determination  
21 that an employer has failed to pay the  
22 wages required under this section, the Sec-  
23 retary shall report such determination to  
24 the Attorney General and the Attorney  
25 General shall disqualify the employer from

1           any subsequent employment of H-2C  
2           aliens.

3           “(3) ROLE OF ASSOCIATIONS.—

4           “(A) VIOLATION BY A MEMBER OF AN AS-  
5           SOCIATION.—An employer on whose behalf a  
6           labor condition attestation is filed by an asso-  
7           ciation acting as its agent is fully responsible  
8           for such attestation, and for complying with the  
9           terms and conditions of this section, as though  
10          the employer had filed the attestation itself. If  
11          such an employer is determined to have violated  
12          a requirement of this section, the penalty for  
13          such violation shall be assessed against the em-  
14          ployer who committed the violation and not  
15          against the association or other members of the  
16          association.

17          “(B) VIOLATION BY AN ASSOCIATION ACT-  
18          ING AS AN EMPLOYER.—If an association filing  
19          a labor condition attestation on its own behalf  
20          as an employer is determined to have commit-  
21          ted a violation under this subsection which re-  
22          sults in disqualification from the program under  
23          paragraph (2)(D), no individual member of  
24          such association may be the beneficiary of the  
25          services of an H-2C alien in an occupation in

1           which such alien was employed by the associa-  
2           tion during the period such disqualification is in  
3           effect, unless such member files a labor condi-  
4           tion attestation as an individual employer or  
5           such an attestation is filed on the employer's  
6           behalf by an association with which the em-  
7           ployer has an agreement that the employer will  
8           comply with the requirements of this section.

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

11           “(1) ALIENS WHO ARE OUTSIDE THE UNITED  
12 STATES.—

13           “(A) PETITIONING FOR ADMISSION.—An  
14 employer or an association acting as agent for  
15 its members who seeks the admission into the  
16 United States of H-2C aliens may file a peti-  
17 tion with the District Director of the Immigra-  
18 tion and Naturalization Service having jurisdic-  
19 tion over the location where the aliens will be  
20 employed. The petition shall be accompanied by  
21 an accepted and currently valid labor condition  
22 attestation covering the petitioner. The petition  
23 may be for named or unnamed individual or  
24 multiple beneficiaries.

1           “(B) EXPEDITED ADJUDICATION BY DIS-  
2           TRICT DIRECTOR.—If an employer’s petition for  
3           admission of H–2C aliens is correctly filled out,  
4           and the employer is not ineligible to employ H–  
5           2C aliens, the District Director (or the Direc-  
6           tor’s designee) shall approve the petition within  
7           3 working days of receipt of the petition and  
8           accepted labor condition attestation and imme-  
9           diately (by fax, cable, or other means assuring  
10          expedited delivery) transmit a copy of the ap-  
11          proved petition to the petitioner and to the ap-  
12          propriate immigration officer at the port of  
13          entry or United States consulate (as the case  
14          may be) where the petitioner has indicated that  
15          the alien beneficiary (or beneficiaries) will apply  
16          for a visa or admission to the United States.

17          “(C) UNNAMED BENEFICIARIES SELECTED  
18          BY PETITIONER.—The petitioning employer or  
19          association or its representative shall approve  
20          the issuance of visas to beneficiaries who are  
21          unnamed on a petition for admission granted to  
22          the employer or association.

23          “(D) CRITERIA FOR ADMISSIBILITY.—

24                  “(i) IN GENERAL.—An alien shall be  
25                  admissible under this section if the alien is

1 otherwise admissible under this Act and  
2 the alien is not debarred pursuant to the  
3 provisions of clause (ii).

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

9 “(I) violated a material provision  
10 of this section, including the require-  
11 ment to promptly depart the United  
12 States when the alien’s authorized pe-  
13 riod of admission under this section  
14 has expired; or

15 “(II) otherwise violated a term or  
16 condition of admission to the United  
17 States as a nonimmigrant, including  
18 overstaying the period of authorized  
19 admission as such a nonimmigrant.

20 “(E) PERIOD OF ADMISSION.—The alien  
21 shall be admitted for the period requested by  
22 the petitioner not to exceed 10 months, or the  
23 remaining validity period of the petitioner’s ap-  
24 proved labor condition attestation, whichever is  
25 less, plus an additional period of 14 days, dur-

1           ing which the alien shall seek authorized em-  
2           ployment in the United States. During the 14-  
3           day period following the expiration of the alien's  
4           work authorization, the alien is not authorized  
5           to be employed unless the original petitioner or  
6           a subsequent petitioner has filed an extension  
7           of stay on behalf of the alien pursuant to para-  
8           graph (2).

9           “(F) ISSUANCE OF IDENTIFICATION AND  
10          EMPLOYMENT ELIGIBILITY DOCUMENT.—

11           “(i) IN GENERAL.—The Attorney  
12          General shall cause to be issued to each  
13          H-2C alien a card in a form which is re-  
14          sistant to counterfeiting and tampering for  
15          the purpose of providing proof of identity  
16          and employment eligibility under section  
17          274A.

18           “(ii) DESIGN OF CARD.—Each card  
19          issued pursuant to clause (i) shall be de-  
20          signed in such a manner and contain a  
21          photograph and other identifying informa-  
22          tion (such as date of birth, sex, and distin-  
23          guishing marks) that would allow an em-  
24          ployer to determine with reasonable cer-

1 tainty that the bearer is not claiming the  
2 identity of another individual, and shall—

3 “(I) contain a fingerprint or  
4 other biometric identifying data (or  
5 both);

6 “(II) specify the date of the  
7 alien’s authorization as an H–2C  
8 alien;

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

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

13 “(2) EXTENSION OF STAY.—

14 “(A) APPLICATION FOR EXTENSION OF  
15 STAY.—If a petitioner seeks to employ an H–2C  
16 alien already in the United States, the peti-  
17 tioner shall file with the Attorney General an  
18 application for an extension of the alien’s stay.  
19 The application for extension of stay shall be  
20 accompanied by a currently valid labor condi-  
21 tion attestation.

22 “(B) LIMITATION ON FILING AN APPLICA-  
23 TION FOR EXTENSION OF STAY.—An applica-  
24 tion may not be filed for an extension of an  
25 alien’s stay for a period of more than 10

1 months, or later than a date which is 2 years  
2 from the date of the alien's last admission to  
3 the United States as a H-2C alien, whichever  
4 occurs first. An application for extension of stay  
5 may not be filed during the pendency of an  
6 alien's previous authorized period of employ-  
7 ment, nor after the alien's authorized stay in  
8 the United States has expired.

9 “(C) WORK AUTHORIZATION UPON FILING  
10 AN APPLICATION FOR EXTENSION OF STAY.—

11 An employer may begin employing an alien al-  
12 ready in the United States in H-2C status on  
13 the day the employer files its application for ex-  
14 tension of stay. For the purpose of this require-  
15 ment, the term ‘filing’ means sending the appli-  
16 cation by certified mail via the United States  
17 Postal Service, return receipt requested, or de-  
18 livered by guaranteed commercial delivery which  
19 will provide the employer with a documented ac-  
20 knowledgment of the date of sending and re-  
21 ceipt of the application. The employer shall pro-  
22 vide a copy of the employer's application for ex-  
23 tension of stay to the alien, who shall keep the  
24 application with the alien's identification and  
25 employment eligibility document as evidence

1           that the extension has been filed and that the  
2           alien is authorized to work in the United  
3           States. Upon approval of an application for ex-  
4           tension of stay, the Attorney General shall pro-  
5           vide a new or updated employment eligibility  
6           document to the alien indicating the new valid-  
7           ity date, after which the alien is not required  
8           to retain a copy of the application for extension  
9           of stay.

10           “(D) LIMITATION ON EMPLOYMENT AU-  
11           THORIZATION OF H-2C ALIENS WITHOUT VALID  
12           IDENTIFICATION AND EMPLOYMENT ELIGI-  
13           BILITY DOCUMENT.—An expired identification  
14           and employment eligibility document, together  
15           with a copy of an application for extension of  
16           stay, shall constitute a valid work authorization  
17           document for a period of not more than 60  
18           days from the date of application for the exten-  
19           sion of stay, after which time only a currently  
20           valid identification and employment eligibility  
21           document shall be acceptable.

22           “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN  
23           H-2C STATUS.—An alien having status as an H-2C  
24           alien may not have the status extended for a contin-  
25           uous period longer than 2 years unless the alien re-

1       mains outside the United States for an uninter-  
2       rupted period of 6 months. An absence from the  
3       United States may break the continuity of the period  
4       for which an H-2C visa is valid. If the alien has re-  
5       sided in the United States 10 months or less, an ab-  
6       sence breaks the continuity of the period if it lasts  
7       for at least 2 months. If the alien has resided in the  
8       United States 10 months or more, an absence  
9       breaks the continuity of the period if it lasts for at  
10      least one-fifth the duration of the stay.

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

12              “(1) ESTABLISHMENT.—There is established in  
13      the Treasury of the United States a trust fund (in  
14      this section referred to as the ‘Trust Fund’) for the  
15      purpose of providing a monetary incentive for H-2C  
16      aliens to return to their country of origin upon expi-  
17      ration of their visas under this section.

18              “(2) WITHHOLDING OF WAGES; PAYMENT INTO  
19      THE TRUST FUND.—

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

22                      “(i) withhold from the wages of their  
23                      H-2C alien workers an amount equivalent  
24                      to 25 percent of the wages of each H-2C  
25                      alien worker and pay such withheld

1 amount into the Trust Fund in accordance  
2 with paragraph (3); and

3 “(ii) pay to the Trust Fund an  
4 amount equivalent to the Federal tax on  
5 the wages paid to H–2C aliens that the  
6 employer would be obligated to pay under  
7 the Federal Unemployment Tax Act and  
8 the Federal Insurance Contributions Act.

9 Amounts withheld under clause (i) shall be  
10 maintained in such interest bearing account  
11 with such a financial institution as the Attorney  
12 General shall specify.

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

18 “(A) the worker applies to the Attorney  
19 General (or the designee of the Attorney Gen-  
20 eral) for payment within 30 days of the expira-  
21 tion of the alien’s last authorized stay in the  
22 United States as a H–2C alien;

23 “(B) in such application the worker estab-  
24 lishes that the worker has complied with the  
25 terms and conditions of this section; and

1           “(C) in connection with the application,  
2           the worker tenders the identification and em-  
3           ployment authorization card issued to the work-  
4           er pursuant to subsection (i)(1)(F) and estab-  
5           lishes that the worker is identified as the per-  
6           son to whom the card was issued based on the  
7           biometric identification information contained  
8           on the card.

9           “(4) ADMINISTRATIVE EXPENSES.—The  
10          amounts paid into the Trust Fund and held pursu-  
11          ant to paragraph (2)(A)(ii), and interest earned  
12          thereon, shall be paid to the Attorney General, the  
13          Secretary of Labor, and the Secretary of State in  
14          amounts equivalent to the expenses incurred by such  
15          officials in the administration of section  
16          101(a)(15)(H)(ii)(c) and this section.

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

20          “(k) INVESTMENT OF TRUST FUND.—

21                 “(1) IN GENERAL.—It shall be the duty of the  
22          Secretary of the Treasury to invest such portion of  
23          the Trust Fund as is not, in the Secretary’s judg-  
24          ment, required to meet current withdrawals. Such  
25          investments may be made only in interest-bearing

1 obligations of the United States or in obligations  
2 guaranteed as to both principal and interest by the  
3 United States. For such purpose, such obligations  
4 may be acquired—

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

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

8 The purposes for which obligations of the United  
9 States may be issued under chapter 31 of title 31,  
10 United States Code, are hereby extended to author-  
11 ize the issuance at par of special obligations exclu-  
12 sively to the Trust Fund. Such special obligations  
13 shall bear interest at a rate equal to the average  
14 rate of interest, computed as to the end of the cal-  
15 endar month next preceding the date of such issue,  
16 borne by all marketable interest-bearing obligations  
17 of the United States then forming a part of the pub-  
18 lic debt, except that where such average rate is not  
19 a multiple of one-eighth of 1 percent next lower than  
20 such average rate. Such special obligations shall be  
21 issued only if the Secretary of the Treasury deter-  
22 mines that the purchase of other interest-bearing ob-  
23 ligations of the United States, or of obligations  
24 guaranteed as to both principal and interest by the

1 United States on original issue or at the market  
2 price, is not in the public interest.

3 “(2) SALE OF OBLIGATION.—Any obligation ac-  
4 quired by the Trust Fund (except special obligations  
5 issued exclusively to the Trust Fund) may be sold by  
6 the Secretary of the Treasury at the market price,  
7 and such special obligations may be redeemed at par  
8 plus accrued interest.

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

13 “(4) REPORT TO CONGRESS.—It shall be the  
14 duty of the Secretary of the Treasury to hold the  
15 Trust Fund, and (after consultation with the Attor-  
16 ney General) to report to the Congress each year on  
17 the financial condition and the results of the oper-  
18 ations of the Trust Fund during the preceding fiscal  
19 year and on its expected condition and operations  
20 during the next fiscal year. Such report shall be  
21 printed as both a House and a Senate document of  
22 the session of the Congress to which the report is  
23 made.

24 “(1) MISCELLANEOUS PROVISIONS.—

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

6           “(2) LIMITATION OF WRITTEN DISCLOSURE IM-  
7 POSED UPON RECRUITERS.—Any disclosure required  
8 of recruiters under section 201(a) of the Migrant  
9 and Seasonal Agricultural Worker Protection Act  
10 (29 U.S.C. 1821(a)) need not be given to H-2C  
11 aliens prior to the time their visa is issued permit-  
12 ting entry into the United States.

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

18           “(4) INELIGIBILITY FOR CERTAIN PUBLIC BEN-  
19 EFITS PROGRAMS.—

20           “(A) IN GENERAL.—Notwithstanding any  
21 other provision of law and except as provided in  
22 subparagraph (B), any alien provided status as  
23 an H-2C alien shall not be eligible for any Fed-  
24 eral or State or local means-tested public bene-  
25 fit program.

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

3           “(i) EMERGENCY MEDICAL SERV-  
4 ICES.—The provision of emergency medical  
5 services (as defined by the Attorney Gen-  
6 eral in consultation with the Secretary of  
7 Health and Human Services).

8           “(ii) PUBLIC HEALTH IMMUNIZA-  
9 TIONS.—Public health assistance for im-  
10 munizations with respect to immunizable  
11 diseases and for testing and treatment for  
12 communicable diseases.

13           “(iii) SHORT-TERM EMERGENCY DIS-  
14 ASTER RELIEF.—The provision of non-  
15 cash, in-kind, short-term emergency disas-  
16 ter relief.

17           “(m) REGULATIONS.—

18           “(1) REGULATIONS OF THE SECRETARY.—The  
19 Secretary shall consult with the Secretary of Agri-  
20 culture, and the Attorney General shall approve, all  
21 regulations dealing with the approval of labor condi-  
22 tion attestations for H-2C aliens and enforcement of  
23 the requirements for employing H-2C aliens under  
24 an approved attestation. The Secretary shall promul-  
25 gate, and the Attorney General shall approve, such

1 regulations not later than 180 days after the date  
2 of the enactment of the Farmers' Temporary Em-  
3 ployment Assistance Act.

4 “(2) REGULATIONS OF THE ATTORNEY GEN-  
5 ERAL.—The Attorney General shall consult with the  
6 Secretary of Agriculture on all regulations dealing  
7 with the approval of petitions for admission or ex-  
8 tension of stay of H-2C aliens and the requirements  
9 for employing H-2C aliens and the enforcement of  
10 such requirements. The Attorney General shall pro-  
11 mulgate such regulations not later than 180 days  
12 after the date of the enactment of the Farmers'  
13 Temporary Employment Assistance Act.

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

15 “(1) AGRICULTURAL ASSOCIATION.—The term  
16 ‘agricultural association’ means any nonprofit or co-  
17 operative association of farmers, growers, or ranch-  
18 ers incorporated or qualified under applicable State  
19 law, which recruits, solicits, hires, employs, fur-  
20 nishes, or transports any agricultural workers.

21 “(2) AGRICULTURAL EMPLOYMENT.—The term  
22 ‘agricultural employment’ means any service or ac-  
23 tivity included within the provisions of section 3(f)  
24 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
25 203(f)) or section 3121(g) of the Internal Revenue

1 Code of 1986 and the handling, planting, drying,  
2 packing, packaging, processing, freezing, or grading  
3 prior to delivery for storage of any agricultural or  
4 horticultural commodity in its unmanufactured  
5 state.

6 “(3) EMPLOYER.—The term ‘employer’ means  
7 any person or entity, including any independent con-  
8 tractor and any agricultural association, that em-  
9 ploys workers.

10 “(4) H-2C ALIEN.—The term ‘H-2C alien’  
11 means an alien admitted to the United States or  
12 provided status as a nonimmigrant under section  
13 101(a)(15)(H)(ii)(c).

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

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

22 (b) CLERICAL AMENDMENT.—The table of contents  
23 of the Immigration and Nationality Act is amended by in-

1 inserting after the item relating to section 218 the following

2 new item:

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

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