104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 104–469
Part 3

IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995; TEMPORARY AGRICULTURAL WORKER AMENDMENTS OF 1996

MARCH 8, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROBERTS, from the Committee on Agriculture, submitted the following

R E P O R T

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 2202]

The Committee on Agriculture, to whom was referred the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

On page 364, after line 13, add the following (and conform the table of contents accordingly):

Subtitle A—Miscellaneous Provisions

Add at the end the following (and conform the table of contents accordingly):

Subtitle B—Guest Worker Visitation Program

SEC. 821. SHORT TITLE.

This subtitle may be cited as the "Temporary Agricultural Worker Amendments of 1996".

SEC. 822. NEW NONIMMIGRANT H–2B CATEGORY FOR TEMPORARY AGRICULTURAL WORKERS.

(a) ESTABLISHMENT OF NEW CLASSIFICATION.—Section 101(a)(15)(H)(ii) (8 U.S.C. 1101(a)(15)(H)(ii)) is amended by striking "or (b)" and inserting "(b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States pursuant to section 218A to perform such agricultural labor or services of a temporary or seasonal nature, or (c)".

(b) NO FAMILY MEMBERS PERMITTED.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended by striking "specified in this paragraph" and inserting "specified in this subparagraph (other than in clause (ii)(b))".

(c) DISQUALIFICATION IF CONVICTED OF OWNERSHIP OR OPERATION OF A MOTOR VEHICLE IN UNITED STATES WITHOUT INSURANCE.—Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

"(l)(1) An alien may not be admitted (or provided status) as a temporary worker under section 101(a)(15)(H)(ii)(b) if the alien (after the date of the enactment of this subsection) has been convicted of owning (or knowingly operating) a motor vehicle in the United States without having liability insurance that meets applicable insurance requirements of the State in which the alien is employed or in which the vehicle is registered.

"(2) An alien who is admitted or provided status as such a worker who is so convicted shall be considered, on and after the date of the conviction and for purposes of section 241(a)(1)(C), to have failed to comply with a condition for the maintenance of status under section 101(a)(15)(H)(ii)(b)."

(d) CONFORMING REDESIGNATION.—Subsections (c)(5)(A) and (g)(1)(B) of section 214 (8 U.S.C. 1184) are each amended by striking "101(a)(15)(H)(ii)(b)" and inserting "101(a)(15)(H)(ii)(c)".

SEC. 823. ALTERATIVE AGRICULTURAL TEMPORARY WORKER PROCESS USING ATTESTATIONS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by inserting after section 218 the following:

"ALTERNATIVE AGRICULTURAL TEMPORARY WORKER PROGRAM

"SEC. 218A. (a) CONDITION FOR THE EMPLOYMENT OF H–2B ALIENS.—

"(1) IN GENERAL.—No alien may be admitted or provided status as an H–2B alien (as defined in subsection (n)(4)) unless—

"(A) the employment of the alien is covered by a currently valid labor condition attestation which—

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

"(ii) has been accepted by the qualified State employment security agency having jurisdiction over the area of intended employment; and

"(iii) states each of the items described in paragraph (2) and includes information identifying the employer or association and agricultural job opportunities involved; and

"(B) the employer is not disqualified from employing H–2B aliens pursuant to subsection (g).

"(2) CONTENTS OF LABOR CONDITION ATTESTATION.—Each labor condition attestation filed by or on behalf of, an employer shall include the following:

"(A) WAGE RATE.—The employer will pay H–2B aliens and all other workers in the occupation not less than the prevailing wage for similarly employed workers in the area of employment, and not less than the applicable Federal, State or local statutory minimum wage.

"(B) WORKING CONDITIONS.—The employment of H–2B aliens will not adversely affect the working conditions with respect to housing and transportation of similarly employed workers in the area of employment.

"(C) LIMITATION ON EMPLOYMENT.—An H–2B alien will not be employed in any job opportunity which is not temporary or seasonal, and will not be employed by the employer in any job opportunity for more than 10 months in any 12-consecutive-month period.

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

"(E) NOTICE.—The employer, at the time of filing the attestation, has provided notice of the attestation to workers employed in the occupation in which H–2B aliens will be employed.

"(F) JOB ORDERS.—The employer will file one or more job orders for the occupation (or occupations) covered by the attestation with the qualified State employment security agency no later than the day

on which the employer first employs any H–2B aliens in the occupation.

"(G) PREFERENCE TO DOMESTIC WORKERS.—The employer will give preference to able, willing and qualified United States workers who apply to the employer and are available at the time and place needed, for the first 25 days after the filing of the job order in an occupation or until 5 days before the date employment of workers in the occupation begins, whichever occurs later.

"(3) ESTABLISHMENT AS PILOT PROGRAM; RESTRICTION OF ADMISSIONS TO PILOT PROGRAM PERIOD.—

"(A) IN GENERAL.—The program under this section is deemed to be a pilot program and no alien may be admitted or provided status as an H–2B alien under this section except during the pilot program period specified in subparagraph (B).

"(B) PILOT PROGRAM PERIOD.—

"(i) IN GENERAL.—Subject to clause (ii), the pilot program period under this subparagraph is the period (ending on October 1, 1999) during which the employment eligibility verification system is in effect under section 274A(b)(7) (as amended by the Immigration in the National Interest Act of 1995).

"(ii) CONSIDERATION OF EXTENSION.—If Congress extends such verification system, Congress shall also extend the pilot program period under this subparagraph for the same period of time.

"(C) ANNUAL REPORTS.—The Comptroller General shall submit to Congress annual reports on the operation of the pilot program under this section during the pilot program period. Such reports shall include an assessment of the program and of the need for foreign workers to perform temporary agricultural employment in the United States.

"(4) LIMITATIONS ON NUMBER OF VISAS.—

"(A) IN GENERAL.—In no case may the number of aliens who are admitted or provided status as an H–2B alien in a fiscal year exceed the numerical limitation specified under subparagraph (B) for that fiscal year.

"(B) NUMERICAL LIMITATION.—The numerical limitation specified in this subparagraph for—

"(i) the first fiscal year in which this section is applied is 250,000; and

"(ii) any subsequent fiscal year is the numerical limitation specified in this subparagraph for the previous fiscal year decreased by 25,000.

"(b) FILING A LABOR CONDITION ATTESTATION.—

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

"(2) FILING BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—An agricultural association may file a labor condition attestation as an agent on behalf of its members. Such an attestation filed by an agricultural association acting as an agent for its members, when accepted, shall apply to those employer members of the association that the association certifies to the qualified State employment security agency are members of the association and have agreed in writing to comply with the requirements of this section.

"(3) PERIOD OF VALIDITY.—A labor condition attestation is valid from the date on which it is accepted by the qualified State employment security agency for the period of time requested by the employer, but not to exceed 12 months.

"(4) WHERE TO FILE.—A labor condition attestation shall be filed with such agency having jurisdiction over the area of intended employment of the workers covered by the attestation. If an employer, or the members of an association of employers, will be employing workers in an area or areas covered by more than one such agency, the attestation shall be filed with each such agency having jurisdiction over an area where the workers will be employed.

"(5) DEADLINE FOR FILING.—An employer may file a labor condition attestation at any time up to 12 months prior to the date of the employer's anticipated need for workers in the occupation (or occupations) covered by the attestation.

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

"(7) MAINTAINING REQUIRED DOCUMENTATION.—

"(A) BY EMPLOYERS.—Each employer covered by an accepted labor condition attestation must maintain a file of the documentation required in subsection (c) for each occupation included in an accepted attestation covering the employer. The documentation shall be retained for a period of one year following the expiration of an accepted attestation. The employer shall make the documentation available to representatives of the Secretary during normal business hours.

"(B) BY ASSOCIATIONS.—In complying with subparagraph (A), documentation maintained by an association filing a labor condition attestation on behalf of an employer shall be deemed to be maintained by the employer.

"(8) WITHDRAWAL.—

"(A) COMPLIANCE WITH ATTESTATION OBLIGATIONS.—An employer covered by an accepted labor condition attestation for an occupation shall comply with the terms and conditions of the attestation from the date the attestation is accepted and continuing throughout the period any persons are employed in an occupation covered by such an accepted attestation, whether or not H–2B aliens are employed in the occupation, unless the attestation is withdrawn.

"(B) TERMINATION OF OBLIGATIONS.—An employer may withdraw a labor condition attestation in total, or with respect to a particular occupation covered by the attestation. An association may withdraw such an attestation with respect to one or more of its members. To withdraw an attestation the employer or association must notify in writing the qualified State employment security agency office with which the attestation was filed of the withdrawal of the attestation. An employer who withdraws an attestation, or on whose behalf an attestation is withdrawn by an association, is relieved of the obligations undertaken in the attestation with respect to the occupation (or occupations) with respect to which the attestation was withdrawn, upon acknowledgement by the appropriate qualified State employment security agency of receipt of the withdrawal notice. An attestation may not be withdrawn with respect to any occupation while any H–2B aliens covered by that attestation are employed in the occupation.

"(C) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by the employer under any other law or regulation as a result of recruitment of United States workers under an offer of terms and conditions of employment required by the H–2B program is unaffected by withdrawal of a labor condition attestation.

"(c) EMPLOYER RESPONSIBILITIES AND REQUIREMENTS FOR EMPLOYING H–2B NONIMMIGRANTS.—

"(1) REQUIREMENT TO PAY THE PREVAILING WAGE.—

"(A) EFFECT OF THE ATTESTATION.—Employers shall pay each worker in an occupation covered by an accepted labor condition attestation at least the prevailing wage in the occupation in the area of intended employment. The preceding sentence does not require employers to pay all workers in the occupation the same wage. The employer may, in the sole discretion of the employer, maintain pay differentials based on experience, tenure with the employer, skill, or any other work-related factor, if the differential is not based on a criterion for which discrimination is prohibited by the law

and all workers in the covered occupation receive at least the prevailing wage.

"(B) PAYMENT OF QUALIFIED STATE EMPLOYMENT SECURITY AGENCY DETERMINED WAGE SUFFICIENT.—The employer may request and obtain a prevailing wage determination from the qualified State employment security agency. If the employer requests such a determination, and pays the wage determined, such payment shall be considered sufficient to meet the requirement of this paragraph if the H–2B workers—

"(i) are employed in the occupation for which the employer possesses an accepted labor condition attestation, and for which the employer or association possesses a prevailing wage determination by the qualified State employment security agency, and

"(ii) are being paid at least the prevailing wage so determined.

"(C) RELIANCE ON WAGE SURVEY.—In lieu of the procedures of subparagraph (B), an employer may rely on other information, such as an employer generated prevailing wage survey and determination, which meets criteria specified by the Secretary by regulation. In the event of a complaint that the employer has failed to pay the required wage, the Secretary shall investigate to determine if the information upon which the employer relied complied with the criteria for prevailing wage determinations.

"(D) ALTERNATE METHODS OF PAYMENT PERMITTED.—

"(i) IN GENERAL.—A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate (described in clause (ii)), or other incentive pay system, including a group rate (described in clause (iii)). The requirement to pay at least the prevailing wage in the occupation and area of intended employment does not require an employer to pay by the method of pay in which the prevailing rate is expressed. However, if the employer adopts a method of pay other than the prevailing rate, the burden of proof is on the employer to demonstrate that the employer's method of pay is designed to produce earnings equivalent to the earnings that would result from payment of the prevailing rate.

"(ii) TASK RATE.—For purposes of this subparagraph, a task rate is an incentive payment based on a unit of work performed such that the incentive rate varies with the level of effort required to perform individual units of work.

"(iii) GROUP RATE.—For purposes of this subparagraph, a group rate is an incentive payment system in which the payment is shared among a group of workers working together to perform the task.

"(E) REQUIRED DOCUMENTATION.—The employer or association shall document compliance with this paragraph by retaining on file the employer or association's request for a determination by a qualified State employment security agency and the prevailing wage determination received from such agency or other information upon which the employer or association relied to assure compliance with the prevailing wage requirement.

"(2) REQUIREMENT TO PROVIDE HOUSING AND TRANSPORTATION.—

"(A) EFFECT OF THE ATTESTATION.—The employment of H–2B aliens shall not adversely affect the working conditions of United States workers similarly employed in the area of intended employment. The employer's obligation not to adversely affect working conditions shall continue for the duration of the period of employment by the employer of any H–2B aliens in the occupation and area of intended employment. An employer will be deemed to be in compliance with this attestation if the employer offers at least the benefits required by subparagraphs (B) through (D). The previous sentence does not require an employer to offer more than such benefits.

"(B) HOUSING REQUIRED.—

"(i) HOUSING OFFER.—The employer must offer to H–2B aliens and United States workers recruited from beyond normal recruiting distance housing, or a housing allowance, if it is prevailing practice in the occupation and area of intended employment to offer housing or a housing allowance to workers who are recruited from beyond normal commuting distance.

"(ii) HOUSING STANDARDS.—If the employer offers housing to such workers, the housing shall meet (at the option of the employer) applicable Federal farm labor housing standards or applicable local or State standards for rental, public accommodation, or other substantially similar class of habitation.

"(iii) CHARGES FOR HOUSING.—An employer who offers housing to such workers may charge an amount equal to the fair market value (but not greater than the employer's actual cost) for utilities and maintenance, or such lesser amount as permitted by law.

"(iv) HOUSING ALLOWANCE AS ALTERNATIVE.—In lieu of offering housing to such workers, at the employer's sole discretion on an individual basis, the employer may provide a reasonable housing allowance. An employer who offers a housing allowance to such a worker under this subparagraph shall not be deemed to be a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) merely by virtue of providing such housing allowance.

"(v) SECURITY DEPOSIT.—The requirement, if any, to offer housing to such a worker under this subparagraph shall not preclude an employer from requiring a reasonable deposit to protect against gross negligence or willful destruction of property, as a condition for providing such housing.

"(vi) DAMAGES.—An employer who offers housing to such a worker shall not be precluded from requiring a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

"(C) TRANSPORTATION.—If the employer provides transportation arrangements or assistance to H–2B aliens, the employer must offer to provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed by the employer in the occupation at the place of employment who were recruited from beyond normal commuting distance.

"(D) WORKERS' COMPENSATION.—If the employment covered by a labor condition attestation is not covered by the State workers' compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the workers' employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(E) REQUIRED DOCUMENTATION.—

"(i) HOUSING AND TRANSPORTATION.—No specific documentation is required to be maintained to evidence compliance with the requirements of subparagraphs (B) and (C). In the event of a complaint alleging a failure to comply with such a requirement, the burden of proof shall be on the employer to show that the employer offered the required benefit to

the complainant, or that the employer was not required by the terms of this paragraph to offer such benefit to the complainant.

"(ii) WORKERS' COMPENSATION.—The employer shall maintain copies of certificates of insurance evidencing compliance with subparagraph (D) throughout the period of validity of the labor condition attestation.

"(3) REQUIREMENT TO EMPLOY ALIENS IN TEMPORARY OR SEASONAL AGRICULTURAL JOB OPPORTUNITIES.—

"(A) LIMITATIONS.—

"(i) IN GENERAL.—The employer may employ H–2B aliens only in agricultural employment which is temporary or seasonal.

"(ii) SEASONAL BASIS.—For purposes of this section, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.

"(iii) TEMPORARY BASIS.—For purposes of this section, a worker is employed on a temporary basis where the employment is intended not to exceed 10 months.

"(B) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the employment meets such requirement.

"(4) REQUIREMENT NOT TO EMPLOY ALIENS IN JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR DISPUTE.—

"(A) IN GENERAL.—No H–2B alien may be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.

"(B) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the job opportunity in which the H–2B alien was employed was not vacant because the former occupant was on strike, locked out, or participating in a work stoppage in the course of a labor dispute in the occupation at the place of employment.

"(5) NOTICE OF FILING OF ATTESTATION AND SUPPORTING DOCUMENTATION.—

"(A) IN GENERAL.—The employer shall—

"(i) provide notice of the filing of a labor condition attestation to the appropriate cer-

tified bargaining agent (if any) which represents workers of the employer in the occupation (or occupations) at the place of employment covered by the attestation; or

"(ii) in the case where no appropriate bargaining agent exists, post notice of the filing of such an attestation in at least two conspicuous locations where applications for employment are accepted.

"(B) PERIOD FOR POSTING.—The requirement for a posting under subparagraph (A)(ii) begins on the day the attestation is filed, and continues through the period during which the employer's job order is required to remain active pursuant to paragraph (6)(A).

"(C) REQUIRED DOCUMENTATION.—The employer shall maintain a copy of the notice provided to the bargaining agent (if any), together with evidence that the notice was provided (such as a signed receipt of evidence of attempt to send the notice by certified or registered mail). In the case where no appropriate certified bargaining agent exists, the employer shall retain a copy of the posted notice, together with information as to the dates and locations where the notice was displayed.

"(6) REQUIREMENT TO FILE A JOB ORDER.—

"(A) EFFECT OF THE ATTESTATION.—The employer, or an association acting as agent for its members, shall file the information necessary to complete a local job order for each occupation covered by an accepted labor condition attestation with the appropriate local office of the qualified State employment security agency having jurisdiction over the area of intended employment, or with the State office of such an agency if workers will be employed in an area within the jurisdiction of more than one local office of such an agency. The job orders shall remain on file for 25 calendar days or until 5 calendar days before the anticipated date of need for workers in the occupation covered by the job order, whichever occurs later. The job order shall provide at least the minimum terms and conditions of employment required for participation in the H–2B program.

"(B) DEADLINE FOR FILING.—A job order shall be filed under subparagraph (A) no later than the date on which the employer files a petition with the Attorney General for admission or extension of stay for aliens to be employed in the occupation for which the order is filed.

"(C) REQUIRED DOCUMENTATION.—The office of the qualified State employment security agency which the employer or association provides with information necessary to file a local job order shall

provide the employer with evidence that the information was provided in a timely manner as required by this paragraph, and the employer or association shall retain such evidence for each occupation in which H–2B aliens are employed.

"(7) REQUIREMENT TO GIVE PREFERENCE TO QUALIFIED UNITED STATES WORKERS.—

"(A) FILING 30 DAYS OR MORE BEFORE DATE OF NEED.—If a job order is filed 30 days or more before the anticipated date of need for workers in an occupation covered by a labor condition attestation and for which the job order has been filed, the employer shall offer to employ able, willing, and qualified United States workers who apply to the employer and who will be available at the time and place needed for the job opportunities covered by the attestation until 5 calendar days before the anticipated date of need for workers in the occupation, or until the employer's job opportunities in the occupation are filled with qualified United States workers, if that occurs more than 5 days before the anticipated date of need for workers in the occupation.

"(B) FILLING FEWER THAN 30 DAYS BEFORE DATE OF NEED.—If a job order is filed fewer than 30 days before the anticipated date of need for workers in an occupation covered by such an attestation and for which a job order has been filed, the employer shall offer to employ able, willing, and qualified United States workers who are or will be available at the time and place needed during the first 25 days after the job order is filed or until the employer's job opportunities in the occupation are filled with United States workers, regardless of whether any of the job opportunities may already be occupied by H–2B aliens.

"(C) FILING VACANCIES.—An employer may fill a job opportunity in an occupation covered by an accepted attestation which remains or becomes vacant after expiration of the required preference period specified in subparagraph (A) or (B) of paragraph (6) without regard to such preference.

"(D) JOB-RELATED REQUIREMENTS.—No employer shall be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful job-related standards of conduct and performance, including failure to meet minimum productivity standards after a 3-day break-in period.

"(E) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirements of this paragraph. In the event of a complaint, the burden of proof shall

be on the complainant to show that the complainant applied for the job and was available at the time and place needed. If the complainant makes such a showing, the burden of proof shall be on the employer to show that the complainant was not qualified or that the preference period had expired.

"(8) REQUIREMENTS OF NOTICE OF CERTAIN BREAKS IN EMPLOYMENT.—

"(A) IN GENERAL.—The employer (or an association in relation to an H–2B alien) shall notify the Service within 7 days if an H–2B alien prematurely abandons the alien's employment.

"(B) OUT-OF-STATUS.—An H–2B alien who abandons the alien's employment shall be considered to have failed to maintain nonimmigrant status as an alien described in section 101(a)(15)(H)(ii)(b) and shall leave the United States or be subject to deportation under section 241(a)(1)(C)(i).

"(d) ACCEPTANCE BY QUALIFIED STATE EMPLOYMENT SECURITY AGENCY.—The qualified State employment security agency shall review labor condition attestations submitted by employers or associations only for completeness and obvious inaccuracies. Unless such an agency finds that the application is incomplete or obviously inaccurate, the agency shall accept the attestation within 7 days of the date of filing of the attestation, and return a copy to the applicant marked 'accepted'.

"(e) PUBLIC REGISTRY.—The Secretary shall maintain a registry of all accepted labor condition attestations and make such registry available for public inspection.

"(f) RESPONSIBILITIES OF THE QUALIFIED STATE EMPLOYMENT SECURITY AGENCIES.—

"(1) DISSEMINATION OF LABOR MARKET INFORMATION.—The Secretary shall direct qualified State employment security agencies to disseminate nonemployer-specific information about potential labor needs based on accepted attestations filed by employers. Such dissemination shall be separate from the clearance of job orders through the Interstate and Intrastate Clearance Systems, and shall create no obligations for employers except as provided in this section.

"(2) REFERRAL OF WORKERS ON QUALIFIED STATE EMPLOYMENT SECURITY AGENCY JOB ORDERS.—Such agencies holding job orders filed by employers covered by approved labor condition attestations shall be authorized to refer any able, willing, and qualified eligible job applicant who will be available at the time and place needed and who is authorized to work in the United States, including H–2B aliens who are seeking additional work in the United States and whose eligibility to remain in the United States pursuant to sub-

section (h) has not expired, on job orders filed by holders of accepted attestations.

"(g) ENFORCEMENT AND PENALTIES.—

"(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 12 months 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 paragraph (2) has been committed. The Secretary's determination shall be served on the complainant and the employer, and shall provide an opportunity for an appeal of the Secretary's decision to an administrative law judge, who may conduct a de novo hearing.

"(2) REMEDIES.—

"(A) BACK WAGES.—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or H–2B alien employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

"(B) FAILURE TO PAY WAGES.—Upon a final determination that the employer has failed to pay the wages required under this section, the Secretary may assess a civil money penalty up to $1,000 for each failure, and may recommend to the Attorney General the disqualification of the employer from the employment of H–2B aliens for a period of time determined by the Secretary not to exceed 1 year.

"(C) OTHER VIOLATIONS.—If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an accepted labor condition attestation has—

"(i) filed an attestation which misrepresents a material fact; or

"(ii) failed to meet a condition specified in subsection (a),

the Secretary may assess a civil money penalty not to exceed $1,000 for each violation. In determining the amount of civil money penalty to be assessed, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, whether the employer obtained a financial gain from the violation, whether the violation was willful, and other relevant factors.

"(D) PROGRAM DISQUALIFICATION.—

"(i) 3-YEARS FOR SECOND VIOLATION.—Upon a second final determination that an employer has failed to pay the wages required under this section, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from the employment of H–2B aliens for a period of 3 years.

"(ii) PERMANENT FOR THIRD VIOLATION.—Upon a third final determination that an employer has failed to pay the wages required under this section, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from any subsequent employment of H–2B aliens.

"(3) ROLE OF ASSOCIATIONS.—

"(A) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf a labor condition attestation is filed by an association acting as its agent is fully responsible for such attestation, and for complying with the terms and conditions of this section, as though the employer had filed the attestation itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer who committed the violation and not against the association or other members of the association.

"(B) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing a labor condition attestation on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program under paragraph (2)(D), no individual member of such association may be the beneficiary of the services of an H–2B alien in an occupation in which such alien was employed by the association during the period

such disqualification is in effect, unless such member files a labor condition attestation as an individual employer or such an attestation is filed on the employer's behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this section.

"(h) PROCEDURE FOR ADMISSION OR EXTENSION OF H-2B ALIENS.—

"(1) ALIENS WHO ARE OUTSIDE THE UNITED STATES.—

"(A) PETITIONING FOR ADMISSION.—An employer or an association acting as agent for its members who seeks the admission into the United States of H–2B aliens may file a petition with the District Director of the Service having jurisdiction over the location where the aliens will be employed. The petition shall be accompanied by an accepted and currently valid labor condition attestation covering the petitioner. The petition may be for named or unnamed individual or multiple beneficiaries.

"(B) EXPEDITED ADJUDICATION BY DISTRICT DIRECTOR.—If an employer's petition for admission of H–2B aliens is correctly filled out, and the employer is not ineligible to employ H–2B aliens, the District Director (or the Director's designee) shall approve the petition within 3 working days of receipt of the petition and accepted labor condition attestation and immediately (by fax, cable, or other means assuring expedited delivery) transmit a copy of the approved petition to the petitioner and to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

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

"(D) CRITERIA FOR ADMISSIBILITY.—

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

"(ii) DISQUALIFICATION.—An alien shall be debarred from admission or being provided status as an H–2B alien under this section if the alien has, at any time—

"(I) violated a material provision of this section, including the requirement to promptly depart the United States when

the alien's authorized period of admission under this section has expired; or

"(II) has otherwise violated a term or condition of admission to the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(E) PERIOD OF ADMISSION.—The alien shall be admitted for the period requested by the petitioner not to exceed 10 months, or the remaining validity period of the petitioner's approved labor condition attestation, whichever is shorter, plus an additional period of 14 days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien's work authorization, the alien is not authorized to be employed unless the original petitioner or a subsequent petitioner has filed an extension of stay on behalf of the alien.

"(F) ISSUANCE OF IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—

"(i) IN GENERAL.—The Attorney General shall cause to be issued to each H–2B alien a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

"(ii) DESIGN OF CARD.—Each card issued pursuant to clause (i) shall be designed in such a manner and contain a photograph and other identifying information (such as date of birth, sex, and distinguishing marks) that would allow an employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual, and shall—

"(I) contain a fingerprint or other biometric identifying data (or both);

"(II) specify the date of the aliens authorization as an H–2B alien;

"(III) specify the expiration date of the alien's work authorization; and

"(IV) specify the alien's admission number or alien file number.

"(2) EXTENSION OF STAY.—

"(A) APPLICATION FOR EXTENSION OF STAY.—If a petitioner seeks to employ an H–2B alien already in the United States, the petitioner shall file an application for an extension of stay. The application for extension of stay shall be accompanied by a currently valid labor condition attestation.

"(B) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY.—An application may not be

filed for an extension of an alien's stay for a period of more than 10 months, or later than a date which is 2 years from the date of the alien's last admission to the United States as a H–2B alien, whichever occurs first. An application for extension of stay may not be filed during the pendency of an alien's previous authorized period of admission, nor after the alien's authorized stay in the United States has expired.

"(C) WORK AUTHORIZATION UPON FILING AN APPLICATION FOR EXTENSION OF STAY.—An employer may begin employing an alien already in the United States in H–2B status on the day the employer files its application for extension of stay with the Service. For the purpose of this requirement, the term 'filing' means sending the application by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of receipt of the application. The employer shall provide a copy of the employer's application for extension of stay to the alien, who shall keep the application with the alien's identification and employment eligibility card as evidence that the extension has been filed and that the alien is authorized to work in the United States. Upon approval of an application for extension of stay, the Service shall provide a new employment document to the alien indicating a new validity date, after which the alien is not required to retain a copy of the application for extension of stay.

"(D) LIMITATION ON EMPLOYMENT AUTHORIZATION OF H–2B ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY CARD.—An expired identification and employment eligibility card, together with a copy of an application for extension of stay, shall constitute a valid work authorization document for a period of not more than 60 days from the date of application for the extension of stay, after which time only a currently valid identification and employment eligibility card shall be acceptable.

"(3) LIMITATION ON AN INDIVIDUAL'S STAY IN H–2B STATUS.—An alien having status as an H–2B alien may not have the status extended for a continuous period longer than 2 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which an H–2B visa is valid. If the alien has resided in the United States 10 months or less, an absence breaks the continuity of the period if its lasts for at least 2 months. If the alien has resided in the United States 10

months or more, an absence breaks the continuity of the period if it lasts for at least one-fifth the duration of the stay.

"(i) TRUST FUND TO ASSURE WORKER RETURN.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the 'Trust Fund') for the purpose of providing a monetary incentive for H–2B aliens to return to their country of origin upon expiration of their visas under this section.

"(2) WITHHOLDING OF WAGES; PAYMENT INTO THE TRUST FUND.—

"(A) IN GENERAL.—Employers of H–2B aliens shall—

"(i) withhold from the wages of their H–2B alien workers an amount equivalent to 25 percent of the wages of each H–2B alien worker and pay such withheld amount into the Trust Fund in accordance paragraph (3); and

"(ii) pay to the Trust Fund an amount equivalent to the Federal tax on the wages paid to H–2B aliens that the employer would be obligated to pay under the Federal Unemployment Tax Act and the Federal Insurance Contributions Act.

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

"(3) DISTRIBUTION OF FUNDS.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(i), and interest earned thereon, shall be paid by the Attorney General as follows:

"(A) REIMBURSEMENT OF EMERGENCY MEDICAL EXPENSES.—To reimburse valid claims for reimbursement of emergency medical services furnished to H–2B aliens, to the extent that sufficient funds are not available on an annual basis from the Trust Fund pursuant to paragraphs (2)(A)(ii) and (4)(B).

"(B) PAYMENTS TO WORKERS.—Amounts paid into the Trust Fund on behalf of a worker, and interest earned thereon, less a pro rata reduction for any payments made pursuant to subparagraph (A), shall be paid by the Attorney General to the worker if—

"(i) the worker applies to the Attorney General (or the designee of the Attorney General) for payment within 30 days of the expiration of the alien's last authorized stay in the United States as a H–2B alien;

"(ii) in such application the worker establishes that the worker has complied with the terms and conditions of this section; and

"(iii) in connection with the application, the worker tenders the identification and employment authorization card issued to the worker pursuant to subsection (h)(1)(F) and establishes that the worker is identified as the person to whom the card was issued based on the biometric identification information contained on the card.

"(4) ADMINISTRATIVE EXPENSES AND EMERGENCY MEDICAL EXPENSES.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(ii), and interest earned thereon, shall be paid by the Attorney General as follows:

"(A) ADMINISTRATIVE EXPENSES.—First, to the Attorney General, the Secretary of Labor, and the Secretary of State in amounts equivalent to the expenses incurred by such officials in the administration of section 101(a)(15)(H)(ii)(b) and this section.

"(B) REIMBURSEMENT OF EMERGENCY MEDICAL SERVICES.—Any remaining amounts shall be available on an annual basis to reimburse hospitals for emergency medical services furnished to H–2B aliens as provided in subsection (k)(2).

"(5) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this subsection.

"(j) INVESTMENT OF TRUST FUND.—

"(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgement, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

"(A) on original issue at the price; or

"(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and

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

"(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

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

"(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Attorney General) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

"(k) REIMBURSEMENT OF COST OF EMERGENCY MEDICAL SERVICES.—

"(1) IN GENERAL.—The Attorney General shall establish procedures for reimbursement of hospitals operated by a State or by a unit of local government (or corporation owned or controlled by the State or unit) for the reasonable cost of providing emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services) in the United States to H–2B aliens for which payment has not been otherwise reimbursed.

"(2) SOURCE OF FUNDS FOR REIMBURSEMENT.—Funds for reimbursement of hospitals pursuant to paragraph (1) shall be drawn—

"(A) first under subsection (i)(4)(B), from amounts deposited in the Trust Fund under subsection (i)(2)(A)(ii) after reimbursement of certain administrative expenses; and

"(B) then under subsection (i)(3)(A), to the extent that funds described in subparagraph (A) are insufficient to meet valid claims, from amounts deposited in the Trust Fund under subsection (i)(2)(A)(i).

"(l) MISCELLANEOUS PROVISIONS.—

"(1) APPLICABILITY OF LABOR LAWS.—Except as provided in paragraphs (2), (3), and (4), all Federal, State, and local labor laws (including laws affecting migrant farm workers) applicable to United States workers shall also apply to H–2B aliens.

"(2) LIMITATION OF WRITTEN DISCLOSURE IMPOSED UPON RECRUITERS.—Any disclosure required of recruiters under section of 201(a) of the Migrant and Sea-

sonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) need not be given to H–2B aliens prior to the time their visa is issued permitted entry into the United States.

"(3) EXEMPTION FROM FICA AND FUTA TAXES.—The wages paid to H–2B aliens shall be excluded from wages subject to taxation under the Federal Unemployment Tax Act and under the Federal Insurance Contributions Act.

"(4) INELIGIBILITY FOR CERTAIN PUBLIC BENEFITS PROGRAMS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subparagraph (B), any alien provided status as an H–2B alien shall not be eligible for any Federal or State or local means-tested public benefit program.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to the following:

"(i) EMERGENCY MEDICAL SERVICES.—The provision of emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services).

"(ii) PUBLIC HEALTH IMMUNIZATIONS.—Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment for communicable diseases.

"(iii) SHORT-TERM EMERGENCY DISASTER RELIEF.—The provision of non-cash, in-kind, short-term emergency disaster relief.

"(m) CONSULTATION ON REGULATIONS.—

"(1) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Agriculture, and the Attorney General shall approve, all regulations dealing with the approval of labor condition attestations for H–2B aliens or enforcement of the requirements for employing H–2B aliens under an approved attestation.

"(2) REGULATIONS OF THE ATTORNEY GENERAL.—The Attorney General shall consult with the Secretary of Agriculture on all regulations dealing with the approval of petitions for admission or extension of stay of H–2B aliens or the requirements for employing H–2B aliens or the enforcement of such requirements.

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

"(1) AGRICULTURAL ASSOCIATION.—The term 'agricultural association' means any nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any agricultural workers.

"(2) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity in-

cluded within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1986 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

"(3) EMPLOYER.—The term 'employer' means any person or entity, including any independent contractor and any agricultural association, that employs workers.

"(4) H–2B ALIEN.—The term 'H–2B alien' means an alien admitted to the United States or provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(b).

"(5) QUALIFIED STATE EMPLOYMENT SECURITY AGENCY.—The term 'qualified State employment security agency' means a State employment security agency in a State in which the Secretary has determined that the State operates a job service that actively seeks to match agricultural workers with jobs and participates in a multi-State job service program in States where significant supplies of farm labor exist.

"(6) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(7) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen, a United States national, or an alien, who is legally permitted to work in the job opportunity within the United States other than aliens admitted pursuant to this section."

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218 the following new item:

"Sec. 218A. Alternative agricultural worker program.".

Page 147, after line 5, insert the following:

(J)(i) Section 214(l)(2), as added by section 822(c), is amended by striking "241(a)(1)(C)" and inserting "237(a)(1)(C)".

(ii) Section 218A(c)(8)(B), as inserted by section 823(a), is amended by striking "deportation under section 241(a)(1)(C)(i)" and inserting "removal under section 237(a)(1)(C)(i)".

BRIEF SUMMARY

The Committee on Agriculture added a subtitle B to title VIII of H.R. 2202. Subtitle B will modify the current temporary agriculture worker program, commonly known as H–2A, by creating an alternative program to be known as H–2B.

The new H–2B program will be a pilot program authorized for the same three-year period as the verification system provided for under section 274A of the Immigration and Nationality Act (as amended by this Act). If Congress extends the verification system, Congress shall also extend the H–2B pilot program for the same

period of time. No more than 250,000 aliens may be admitted as H–2B workers in the first year of this program. Each year thereafter, this limit shall be decreased by 25,000.

The new H–2B program will differ from H–2A in several key areas.

Unlike H–2A, which requires a detailed and lengthy application process, the H–2B program will require the employer to file a Labor Condition Attestation with the State Employment Security Agency in the area of intended employment. To be accepted by the State Employment Security Agency, the attestation must contain the following:

(a) The wage rate—the H–2B worker must be paid the prevailing wage for similarly employed workers in the area of employment;

(b) The H–2B worker will not adversely affect the working conditions of similarly employed workers in the area of employment;

(c) The job is seasonal or temporary, or will not last more than 10 months in any 12-month period;

(d) The H–2B worker will not take a job that is vacant because of a strike, lockout, or work stoppage;

(e) The employer has provided notice of the attestation to domestic workers employed in the occupation in which the H–2B worker will be employed;

(f) The employer will file a job order for the occupation covered by the attestation no later than the date on which the employer first employs any H–2B worker; and

(g) The employer will give preference to any able, willing, and qualified U.S. worker who applies and is available the later of the first 25 days after the filing of the job order or until 5 days before the date the H–2B worker begins.

Under the current H–2A program the employer must pay the higher of the prevailing wage or the "Adverse Effect Wage Rate." This rate is the average for all field and livestock worker occupations in a particular region. Because it includes all occupations, this wage often overstates the wage for many occupations.

Under the H–2B program, the employer must pay the prevailing wage. The prevailing wage will be determined by the State Employment Security Agency if the employer requests. Alternatively, the employer may determine the prevailing wage by use of some other method which meets the criteria established by the Secretary of Labor, such as an employer generated wage survey. The prevailing wage may not be lower than the minimum wage.

Under the current H–2A program, the employer must provide housing for all workers needed, whether or not they all need such housing.

Under the H–2B program, the employer must offer the H–2B and U.S. workers recruited from beyond normal recruiting distances housing if it is the prevailing practice in the occupation and the area of intended employment.

If the employer must offer housing, the employer may do so by offering the H–2B and U.S. workers a reasonable housing allowance.

Under the current H–2A program, the employer must reimburse the alien worker for transportation costs from the point of hire to the workplace if the worker completes 50% of the contract period.

Under the H–2B program, if the employer provides transportation arrangements or assistance to H–2B workers, the employer must provide similar assistance to U.S. workers in the same occupation who were recruited from beyond a normal commuting distance.

The Secretary of Labor is responsible for investigating and acting on all complaints. An employer who submits false information on an attestation or fails to pay the required wages may be ordered to pay back wages or assessed a civil penalty of up to $1000 for each failure. A second violation may result in disqualification for up to 3 years, and a third violation will result in permanent disqualification from the program.

The employer shall withhold 25% of the H–2B worker's wages. The withheld funds will be placed in a trust fund administered by the Attorney General that can be accessed by the alien only upon the alien's return to his or her home country.

Additionally, the employer shall pay to the trust fund an amount equal to the Federal Unemployment Tax and the Federal Insurance Contributions Act for the H–2B worker. These funds will be used to reimburse the Attorney General, Secretary of Labor, and the Secretary of State for the costs of administering the H–2B program.

Each H–2B worker will be issued an identification card which will contain a picture, identifying information, and other biometric information, such as encrypted finger prints. The alien must present this card and have his or her identity verified before the alien can access the funds in the trust account upon return to the alien's home country.

PURPOSE AND NEED

The week of March 19th, the House is expected to take up consideration of comprehensive and sweeping immigration reform legislation, H.R. 2202 "The Immigration in the National Interest Act of 1995".

Earlier in the year, as the various committees began consideration of H.R. 2202, the bill was additionally referred to the House Committee on Agriculture as was the predecessor bill, H.R. 1915. Many in the agriculture community believe it is critically important that any immigration bill passed by the Congress ensure a supply of temporary and seasonal workers for American agriculture and that issue is addressed in subtitle B of title VIII of H.R. 2202 as reported by the Committee.

A sizeable majority of the House Committee on Agriculture acted to amend H.R. 2202 adding an enhancement to the current H–2A guest worker program to be known as H–2B. Anticipating the effects of H.R. 2202 on the agriculture labor supply the committee cites the following justifications for reform of the current agriculture guest worker program:

Hired labor is one of the most important and costly inputs in farming. U.S. farmers spent $15 billion on hired labor expenses in 1992—one of every eight dollars of farm production expenses. For

the labor intensive fruit, vegetable and horticulture sector, labor accounts for 35 to 45 percent of production costs.

The competitiveness of U.S. agriculture, especially the fruit, vegetable and horticultural specialty sectors, depends on the continued availability of hired labor at a reasonable cost. U.S. farmers, including producers of labor intensive perishable commodities, compete directly with producers in other countries for market share in both U.S. and foreign commodity markets.

The availability of adequate seasonal labor has enabled U.S. producers to expand production and exports of labor intensive commodities. This has created tens of thousands of jobs for U.S. workers in ''upstream'' and ''downstream'' industries. Approximately three off-farm jobs depend directly on each on-farm job.

Effective immigration control will significantly reduce the supply of seasonal labor for U.S. agriculture, because many seasonal agricultural workers currently employed in agriculture are not legally entitled to work in the U.S., although they possess documents employers are obligated to accept under current law.

Employment of U.S. workers cannot be expanded to replace the alien labor displaced by current immigration control proposals. U.S. workers will always prefer regular over seasonal employment, local over migratory work, and less physically demanding, indoor work over more demanding manual work in sometimes uncomfortable conditions.

U.S. farmworkers' wages will not be forced up by eliminating alien labor, because growers' production costs are capped by world market commodity prices. Instead, a reduction in the work force available to agriculture will force U.S. producers to reduce production to the level that can be sustained by a smaller work force.

Reduced U.S. production of labor intensive agricultural commodities will eliminate the jobs of U.S. workers in farming, input production and services and product handling industries that are dependent on the U.S. production.

The end result of failure to provide a legal temporary alien worker program for U.S. agriculture will be to reduce U.S. farm production and agribusiness employment, with little or no change in domestic farmworker employment or wages.

SECTION-BY-SECTION ANALYSIS

SECTION 821 SHORT TITLE

This Act may be cited as the ''Temporary Agriculture Worker Amendments of 1996''.

SECTION 822. NEW NONIMMIGRANT H–2B CATEGORY FOR TEMPORARY AGRICULTURAL WORKERS

This section amends section 101 of the Immigration and Nationality Act (INA) to divide the existing H–2A temporary agricultural admission category into two categories: H–2A, the current program, which is retained, and H–2B, the new program established by this amendment. It redesignates the existing H–2B temporary nonagricultural admission program as H–2C. The section also excludes spouses and minor children of aliens admitted under the newly created H–2B provisions from derivative eligibility for admission. This

section also excludes aliens from participation in the program who are convicted of ownership or operation of a motor vehicle in the United States without insurance, and upon such a conviction of an alien already in the United States, terminates the status of the alien.

SECTION 823. ALTERNATIVE TEMPORARY WORKER PROCESS USING ATTESTATIONS

This section amends the INA by adding a new section 218A establishing an alternative procedure for the admission of H–2 nonimmigrants to perform agricultural labor or services on a temporary or seasonal basis, designated H–2B aliens.

Section 218A(a)—Condition for the employment of H–2B aliens

This subsection provides that an H–2B alien may not be admitted unless the employment is covered by a Labor Condition Attestation (LCA) filed by the employer or an association on behalf of the employer for the occupation in which this alien is to be employed. The attestation must be accepted by the qualified State Employment Security Agency having jurisdiction over the area of intended employment and must include the statements specified in this subsection. The employer must not have been disqualified from employing H–2B aliens. This section lists the obligations to which an employer must attest on the Labor Condition Application, which are spelled out more fully in Subsection 218A(c). The H–2B program is a pilot program authorized for the same three-year period as the verification system provided for under section 274A of the Immigration and Nationality Act (as amended by this Act). If Congress extends the verification system, Congress shall also extend the H–2B pilot program for the same period of time. No more than 250,000 aliens may be admitted as H–2B workers in the first year of this program. Each year thereafter, this limit shall be decreased by 25,000.

Section 218A(b)—Filing a labor condition attestation

This subsection sets out the process for filing and withdrawing an LCA. Any employer in the U.S. is eligible to file an LCA. Associations may file LCA's on behalf of employer members who have agreed in writing to comply with the program requirements. LCA's are filed with the qualified State employment security agency having jurisdiction over the area of intended employment of the H–2B alien. An LCA may be filed up to 12 months prior to the employer's anticipated need for workers and is valid for 12 months from the date it is accepted by the qualified State employment security agency. LCA's may be filed for a single occupation or multiple occupations. Employers who file LCA's are required to maintain certain documentation of their compliance with the program, and to make this documentation available to the Secretary of Labor for inspection. The attestation conditions apply from the time the LCA is filed and continue through the period any persons are employed in an occupation covered by an accepted LCA, unless the LCA is withdrawn. An LCA may not be withdrawn while any H–2B aliens are employed in an occupation covered by an LCA. Any obligations incurred by an employer as a result of recruiting U.S. workers under

an offer of employment required by the LCA are unaffected by withdrawal of an LCA.

Section 218A(c)—Employer responsibilities and requirements for employing H–2B nonimmigrants

This subsection sets out the requirements for compliance with the attestations set forth in subsection (a) and the documentation the employer is required to maintain pursuant to subsection (b).

Section 218A(c)(1) requires that employers pay at least the prevailing wage in the occupation in the area of intended employment in occupations covered by an LCA. Employers are not required to pay all workers in the occupation the same way so long as all workers are paid at least the prevailing wage. Employers may request a prevailing wage determination from the qualified State employment security agency, or may rely on a wage survey, including an employer-generated survey, which meets criteria specified by the Secretary of Labor. Employers may utilize a different method of pay than that in which the prevailing wage is expressed, but if an employer does so, the burden of proof is on the employer to demonstrate that the employer's method of pay is designed to produce earnings equivalent to the earnings that would result from the prevailing rate.

Section 218A(c)(2) requires that in complying with this attestation the employer is required to offer housing or a reasonable housing allowance to U.S. workers and H–2B aliens if it is the prevailing practice in the occupation and area of intended employment to offer housing or a housing allowance to workers who are recruited from beyond normal commuting distance. Housing provided may be either housing which meets Federal farm labor housing standards or rental or other public accommodation housing which meets applicable standards. Employers may make a charge not greater than the employers' actual cost for utilities and maintenance. Employers may require a reasonable damage deposit, and an employer may require occupants responsible for damage to reimburse the employer the reasonable cost of repair.

This paragraph also requires employers to offer U.S. workers the same transportation arrangements or assistance (generally comparable in expense and scope) provided to H–2B aliens.

This paragraph also requires employers whose employment is not covered by a state workers' compensation law to provide insurance covering work related injury and illness which provides benefits at least equal to those provided under the state workers' compensation law for comparable employment.

Section 218A(c)(3) requires that H–2B aliens be employed only in job opportunities which are seasonal or temporary. ''Seasonal'' employment is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. ''Temporary'' employment is employment not intended to exceed 10 months.

Section 218A(c)(4) provides that no H–2B alien may be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.

Section 218A(c)(5) requires employers filing LCA's to provide notice of the filing to the certified bargaining agent, if any, or to post notice of the filing in conspicuous locations where applications for employment are accepted.

Section 218A(c)(6) requires the employer to file the information necessary to complete a local job order for each occupation covered by an approved LCA with the local office of the qualified State employment security agency having jurisdiction over the area of intended employment of H–2B aliens. The job order is required to be maintained on file for 25 calendar days or until 5 calendar days before the employers' anticipated date of need for workers, whichever occurs later. The job order must be filed no later than the day on which the employer files a petition with the Immigration and Naturalization Service (INS) for the admission or extension of stay of H–2B aliens in the occupation.

Section 218A(c)(7) requires the employer to offer to employ able, willing and qualified U.S. workers who apply to the employer and who will be available at the time and place needed for the job opportunities coved by an approved LCA for the first 25 days after a job order for the occupation is filed or until 5 days before the anticipated date of need for workers, whichever occurs later. The employer may fill vacancies that occur after the expiration of this U.S. worker preference period without regard to the preference. The employer is not required to employ or to continue the employment of a worker who fails to meet lawful job-related employment requirements, including a minimum productivity standard after a 3-day break-in period.

Section 218A(c)(8) requires employers to notify the INS within 7 days if an H–2B alien terminates employment and provides that under such circumstances the alien will be deemed out of status and subject to removal or deportation.

Section 218A(d)—Acceptance by qualified State employment security agency

This subsection provides that the qualified Statement employment security agency review LCA's only for completeness and obvious inaccuracies and unless the application is incomplete or obviously inaccurate the agency must mark it ''accepted'' and return a copy to the employer within 7 days of filing.

Section 218A(e)—Public registry

This subsection requires the Secretary of Labor to maintain a public registry of all accepted LCA's.

Section 218A(f)—Responsibilities of the qualified State employment security agency

This subsection requires the Secretary of Labor to direct the qualified State employment Security agency to disseminate non-employer-specific information about potential labor needs based on accepted LCA's without requiring filing of intra- or interstate job orders. The subsection also authorizes the qualified State employment Security agency to refer any able, willing and qualified eligible job applicant, including H–2B aliens whose eligibility to remain

in the United States has not expired, on job orders filed by holders of accepted LCA's.

Section 218A(g)—Enforcement and penalties

This subsection requires the Secretary of Labor to establish a process for the receipt, investigation and disposition of complaints respecting an employer's failure to comply with a condition of the H–2B program. Complaints may be filed by any aggrieved person or organization, including bargaining representatives. The Secretary is required to investigate complaints for which there is reasonable cause to believe that a violation occurred. The Subsection also provides for penalties upon a final determination that a violation has occurred. Penalties include back wages, civil money penalties and/or debarment from the program for up to one year. An employer who commits a second violation of willfully failing to pay required wages will be disqualified from the program for 3 years. An employer who commits a third violation of willfully failing to pay the required wage will be permanently debarred from participation in the program. If an employer who is a member of an association is determined to have committed a violation, the penalty applies to the employer. If an association which employs workers directly is determined to have committed a violation, the penalty applies to the association. However if the association is disqualified from employing H–2B aliens, no member of the association may be the beneficiary of the services of an H–2B alien unless the employer files an LCA individually or through an association with which the employer has an agreement that the employer will comply with the requirements of the program.

Section 218A(h)—Procedures for admission or extension of H–2B aliens

This subsection provides that petitions for admission of H–2B aliens are filled with the District Director of the INS having jurisdiction over the location where the aliens will be employed. Petitions may be for named or unnamed beneficiaries. If the petition is correctly filled out and the employer is not ineligible to employ H–2B aliens, the District Director must approve the petition within 3 working days. A copy of the approved petition is transmitted to the visa issuing consulate and the port of entry. The petitioning employer must approve the issuance of visas to aliens who are unnamed beneficiaries of petitions. Aliens must be admissible under the INA and must not be debarred from participating in the H–2B program. Aliens are admitted for the period requested by the petitioner, but not to exceed 10 months or the remaining validity period of the petition's LCA, whichever is less, plus an additional 14 days during which the alien may make himself available for additional authorized H–2B employment. H–2B aliens must be issued a tamper- and counterfeit-resistant identification and employment authorization card. An employer may employ an H–2B alien who is already in the U.S. and who has completed his previous authorized period of employment and who is eligible to remain in the U.S. by filing a request for an extension of stay with the INS. The maximum continuous period of stay for an H–2B alien is 2 years.

Section 218A(i)—Trust fund to assure worker return

This subsection requires employers to withhold 25 percent of the wages of H–2B aliens to be paid into a trust fund. H–2B aliens may apply for the amount held in the trust fund on their behalf by establishing that the worker complied with the terms and conditions of the program and tendering the worker's identity and employment authorization card. Claims by public hospitals for reimbursement of emergency medical services in excess of those reimbursed by the user-fee trust fund (described in the paragraph below) would also be paid out of the wage withholding trust fund. Employers are also required to pay into the trust fund an amount equivalent to the Federal tax on the wages paid to H–2B aliens that the employer would be obligated to pay under the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). Payments out of this trust fund will be made to the Attorney General, the Secretary of Labor and the Secretary of State, for reimbursement of expenses incurred in the administration of the program. Remaining funds are available for the Attorney General to reimburse public hospitals for unreimbursed costs of providing emergency medical services to H–2B aliens.

Section 218A(j)—Investment of trust fund

This subsection prescribes how the funds in the trust fund established by subsection (i) shall be invested and requires the Secretary of the Treasury to report annually to the Congress on the financial condition of the fund and the results of the previous year's operation.

Section 218A(k)—Reimbursement of cost of emergency medical services

This subsection provides that the Attorney General shall establish procedures for reimbursement of public hospitals for the reasonable cost of providing emergency medical services to H–2B aliens for which payment has not been otherwise made. Funds for the reimbursement will be drawn from those remaining in the user-fee trust fund after reimbursement of administrative costs of the program. To the extent that sufficient funds are not available from the user-fee trust fund, reimbursements will be made from the wage withholding trust fund.

Section 218A(l)—Miscellaneous provisions

This subsection provides: (1) That all Federal, State and local labor laws applicable to U.S. workers shall be applicable to H–2B aliens; (2) provides that written disclosures required to be provided by the Migrant and Seasonal Agricultural Worker Protection Act may be made to aliens under this program at the time their visa is issued prior to entry into the United States; (3) exempts the wages paid to H–2B aliens from taxation under the FICA and the FUTA; and (4) makes H–2B aliens ineligible for any Federal, State or local means-tested public benefit program except noncash, in-kind emergency assistance (including emergency medical services), and public health immunizations.

Section 218A(m)—Consultation on regulations

This subsection provides that the Secretary of Labor shall consult with the Secretary of Agriculture and that the Attorney General shall approve all regulations dealing with approval of LCA's for H–2B aliens or enforcement of the requirements for employing H–2B aliens. It also provides that the Attorney General shall consult with the Secretary of Agriculture on all regulations dealing with the approval of petitions for admission or extension of stay of H–2B aliens or the requirements for employing H–2B aliens or for the enforcement of such requirements.

Section 218A(n)—Definitions

This subsection defines terms used in the Act.

COMMITTEE CONSIDERATION

I. HEARINGS

On December 14, 1995, the Full Committee on Agriculture and the Subcommittee on Risk Management and Specialty Crops held a joint hearing with the Subcommittee on Immigration and Claims of the Committee on the Judiciary.

Chairman Roberts called the joint meeting to order for the purpose of reviewing the agriculture guest worker programs to assure that agricultural producers can secure the services of a sufficient number of seasonal workers during critical harvest times.

There was a great deal of interest expressed by the Members of the Committee on this issue and their prepared opening statements can be found printed in Hearing Serial No. 104–24.

Shortly after opening statements, Chairman Roberts adjourned the Full Committee so that the joint hearing between the Subcommittee on Risk Management and Specialty Crops and the Judiciary Subcommittee on Immigration and Claims could begin with the prepared testimony and questioning of witnesses.

The Subcommittees received testimony from the following witnesses: Dr. Keith J. Collins, USDA; Mr. C. Stan Eury, President, North Carolina Growers Association on behalf of the American Association of Nurserymen and National Council of Agricultural Employers; Mr. Bruce Goldstein, Attorney, Farmworker Justice Fund; Dr. James S. Holt, Senior Economist, McGuiness & Williams on behalf of the National Council of Agricultural Employers; Ms. Delores Huerta, First Vice President, United Farm Workers Union; Dr. Mark J. Miller, Department of Political Science and International Relations, University of Delaware; Mr. Russell L. Williams, Agricultural Producers; Mr. Steve Appel, Washington State Farm Bureau on behalf of the American Farm Bureau Federation; Mr. Israel Baez, Manager of Employee Relations, A. Duda and Sons, Inc.; Mr. Robert Dasher on behalf of Vidalia Onion Business Council; Mr. John R. Hancock, former Chief of Agricultural Labor Certification, U.S. Department of Labor; and Mr. Chandler Keys, Senior Director Congressional Relations, National Cattlemen's Association.

II. FULL COMMITTEE CONSIDERATION

The Committee on Agriculture met, pursuant to notice, on March 5, 1996, the matter having been held at the Full Committee, a quorum being present, to consider the bill H.R. 2202, the "Immigration in the National Interest Act of 1995."

The Chairman called the meeting to order at 2:15 p.m. and after giving Members permission to submit statements for the record, stated that the Committee would consider an amendment being offered by Mr. Pombo, which would add a Subtitle B to Title VIII of H.R. 2202 regarding temporary agricultural guest workers, and that it would be considered as original text for purposes of amendment.

The Chairman also stressed the need for the Committee to take action on agricultural issues relevant to immigration reform. It was further noted that H.R. 2202 has been reported by the Committee on the Judiciary and was scheduled for House Floor consideration on March 19, 1996.

Without objection, the amendment offered by Mr. Pombo was laid before the Committee and was considered as original text for purposes of amendment. A section-by-section analysis of the amendment was also made available to each Member at the rostrum.

Thereafter, Mr. Volkmer made a motion that the Committee postpone indefinitely consideration of the Pombo amendment, and requested a show-of-hands vote on the motion. The Chairman reiterated the need for the Committee to claim its jurisdiction on the measure and the need to report the measure in order that the bill H.R. 2202 could be considered on the House Floor by March 19. Discussion occurred and by a show of hands, 16 years to 22 nays, the Volkmer motion was not agreed to.

Mr. Goodlatte was then recognized to offer and explain an amendment that would convert the Pombo guest worker amendment into a three-year program designed to last as long as the employment eligibility confirmation telephone verification system which is implemented by H.R. 2202.

Discussion continued on the Goodlatte amendment with Mr. Pombo offering a verbal amendment which would tie the reauthorization of the pilot program to the reauthorization of the verification number, and the H–2B program would be authorized for the length of time that the verification number as noted in the preceding paragraph would be authorized. Mr. Goodlatte indicated that he would accept the Pombo verbal amendment, which without objection, it was adopted.

Further discussion occurred on the Goodlatte amendment and without objection, the Goodlatte amendment, as amended by the verbal Pombo amendment, was adopted.

Mr. Goodlatte then offered and explained an amendment that would place a cap on the number of alien guest workers who can come into the country at 250,000 in the first year, with a reduction of 25,000 in each subsequent year. Discussion occurred and by a recorded vote of 24 yeas to 13 nays, with 1 voting present, the amendment was adopted. See Rollcall Vote No. 1.

Mr. Farr was then recognized to offer and explain an amendment regarding State farm worker guarantees of minimum labor stand-

ards. Lengthy discussion occurred on the amendment with Mr. Gunderson pointing out that there appeared to be an error in the provision concerning overtime pay and that the words "per day" should be inserted after the word "hours". Mr. Farr then requested by unanimous consent that the amendment be changed and without objection, the amendment was corrected.

Further discussion and questions occurred on the Farr amendment with Mr. Latham, Mr. Pomeroy and Mr. Condit making inquiries concerning the amendment. Mr. Pomeroy expressed his opinion that with respect to the question of unfunded mandates issues that it is nonexistent with respect to the Farr amendment because it is part of a program that a State may opt into or out of. Mr. Farr, noting that he hoped his amendment and its discussion brought to light some problems with the bill as regards below minimum standards for farm workers addressed by his amendment, and the amendment was withdrawn.

Mr. Farr then offered and explained an amendment regarding multi-State recruitment in States which operate a job service program to insure that domestic workers are considered first for the jobs before bringing in guest workers. Mr. Pombo noted that the amendment would require participating agricultural employers to file job orders with the local Job Service and would require the Department of Labor to designate nonemployer-specific information about potential labor needs. Mr. Pombo further stated that the amendment would not severely change any of the provisions of the underlying amendment and by a voice vote the Farr amendment was adopted.

Mr. Combest was then recognized and moved that H.R. 2202, as amended, be adopted and reported favorably to the House with the recommendation that it do pass. Mr. Volkmer requested a rollcall vote, but before the rollcall vote had been completed, the Chairman noted a parliamentary oversight that had occurred because a motion had not been made to approve the Pombo amendment, as amended. The Chairman then requested by unanimous consent to vacate the rollcall vote, then in progress, and to proceed by approving the Pombo amendment, as amended. Without objection, the vote as vacated.

The Chairman then asked for a voice vote on the Pombo amendment, as amended. Mr. Volkmer requested a rollcall vote and by a recorded vote of 25 yeas and 14 nays, with 1 voting present, the Pombo amendment was adopted. See Rollcall Vote No. 2.

Without objection, it was agreed to record Messrs. Minge and Combest as they were recorded on the aforementioned vacated vote.

Mr. Roberts then moved that the bill H.R. 2202, as amended, be adopted and reported favorably to the House. By a recorded vote of 28 yeas to 11 nays, with 1 voting present, and in the presence of a quorum, H.R. 2202, as amended, was ordered favorably reported to the House. See Rollcall Vote No. 2.

Mr. Minge was then recognized and requested unanimous consent that the record show that he initially voted against the Pombo amendment and that was his position on the revote as well. Without objection, Mr. Minge and Mr. Combest were recorded on the

vote of the Pombo amendment as they were recorded on the vacated vote.

Mr. Roberts then made a motion to authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on H.R. 2202 or a similar Senate bill.

Mr. Hilliard requested a rollcall on the motion, but there was an insufficient number of Members in favor of a rollcall vote.

Mr. de la Garza was then recognized and gave notice of the intent of the Minority to file additional minority, or supplementing views.

Without objection, staff was given permission to make such technical, clarifying, or conforming changes as are appropriate without changing the substance of the legislation.

The Chairman then thanked the Members and adjourned the meeting subject to the call of the chair.

ROLLCALL VOTES

In compliance with clause 2(l)(2)(B) of rule XI of the House of Representatives, the Committee sets forth the record of the following rollcall votes taken with respect to H.R. 2202:

Rollcall No. 1

Summary: Cap on the number of alien guest workers who can come into the country at 250,000 in the first year with a reduction of 25,000 in each subsequent year.

Offered By: Mr. Goodlatte.

Results: Adopted to rollcall vote: 24 yeas/13 nays/1 present/10 not voting.

Yeas: Cong. Combest, Cong. Allard, Cong. Barrett, Cong. Ewing, Cong. Goodlatte, Cong. Canady, Cong. Smith, Cong. Lucas, Cong. Hostettler, Cong. Bryant, Cong. Latham, Cong. Foley, Cong. Stenholm, Cong. Volkmer, Cong. Clayton, Cong. Minge, Cong. Hilliard, Cong. Pomeroy, Cong. Thurman, Cong. Bishop, Cong. Thompson, Cong. Farr, Cong. Pastor, and Cong. Baldacci.

Nays: Cong. Gunderson, Cong. Doolittle, Cong. Pombo, Cong. Everett, Cong. Lewis, Cong. Baker, Cong. Calvert, Cong. Cooley, Cong. Chambliss, Cong. LaHood, Cong. Condit, Cong. Dooley, and Cong. Roberts, Chairman.

Present: Cong. de la Garza.

Not voting: Cong. Emerson, Cong. Boehner, Cong. Crapo, Cong. Chenoweth, Cong. Brown, Cong. Rose, Cong. Johnson, Cong. Peterson, Cong. Holden, and Cong. Baesler.

Rollcall No. 2

Summary: Adding a Subtitle B to Title VII regarding temporary agricultural guest workers. The Pombo amendment, as amended.

Offered By: Mr. Pombo.

Results: Adopted by a rollcall vote: 25 yeas/14 nays/1 present/8 not voting.

Yeas: Cong. Gunderson, Cong. Allard, Cong. Barrett, Cong. Boehner, Cong. Ewing, Cong. Doolittle, Cong. Pombo, Cong. Canady, Cong. Smith, Cong. Everett, Cong. Lucas, Cong. Lewis, Cong. Baker, Cong. Crapo, Cong. Calvert, Cong. Bryant, Cong. Latham, Cong. Cooley, Cong. Foley, Cong. Chambliss, Cong.

LaHood, Cong. Condit, Cong. Dooley, Cong. Bishop, and Cong. Roberts, Chairman.

Nays: Cong. Goodlatte, Cong. Hostettler, Cong. de la Garza, Cong. Stenholm, Cong. Volkmer, Cong. Peterson, Cong. Clayton, Cong. Minge, Cong. Hilliard, Cong. Pomeroy, Cong. Thompson, Cong. Farr, Cong. Pastor, and Cong. Baldacci.

Present: Cong. Thurman.

Not voting: Cong. Emerson, Cong. Combest, Cong. Chenoweth, Cong. Brown, Cong. Rose, Cong. Johnson, Cong. Holden, and Cong. Baesler.

Rollcall No. 3

Summary: Final Passage H.R. 2202, as amended.

Offered By: Mr. Roberts.

Results: Adopted by a rollcall vote: 28 yeas/11 nays/1 present/8 not voting.

Yeas: Cong. Gunderson, Cong. Allard, Cong. Barrett, Cong. Boehner, Cong. Ewing, Cong. Doolittle, Cong. Goodlatte, Cong. Pombo, Cong. Canady, Cong. Smith, Cong. Everett, Cong. Lucas, Cong. Lewis, Cong. Baker, Cong. Crapo, Cong. Calvert, Cong. Bryant, Cong. Latham, Cong. Cooley, Cong. Foley, Cong. Chambliss, Cong. LaHood, Cong. Stenholm, Cong. Condit, Cong. Peterson, Cong. Minge, Cong. Baldacci, and Cong. Roberts, Chairman.

Nays: Cong. de la Garza, Cong. Volkmer, Cong. Dooley, Cong. Clayton, Cong. Hilliard, Cong. Pomeroy, Cong. Thurman, Cong. Bishop, Cong. Thompson, Cong. Farr, and Cong. Pastor.

Present: Cong. Hostettler.

Not voting: Cong. Emerson, Cong. Combest, Cong. Chenoweth, Cong. Brown, Cong. Rose, Cong. Johnson, Cong. Holden, and Cong. Baesler.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report and is not included herein.

However, on March 7, 1996, and without objection, the Committee on Agriculture received permission to file a supplemental report containing such estimate by a unanimous consent request obtained on the House Floor. It is the Committee's intent to include in a supplemental report the Congressional Budget Office cost estimate on H.R. 2202, as amended.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of

H.R. 2202, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform and Oversight under clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 2202, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of such provisions of the bill as fall within the jurisdiction of this committee pursuant to clause 1(a) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on the Judiciary are shown in the report filed by that committee (Rept. 104–469, Part 1).

For the information of the Members of the House of Representatives, changes made by the amendment made by this committee to existing law are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

TABLE OF CONTENTS

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TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

Sec. 211. Documentary requirements.
Sec. 212. General classes of aliens ineligible to receive visas and excluded from admission; waivers of inadmissibility.
Sec. 213. Admission of certain aliens on giving bond.

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Sec. 218A. Alternative agricultural worker program.

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien (i)(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1); or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, [or (b)] *(b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States pursuant to section 218A to perform such agricultural labor or services of a temporary or seasonal nature, or (c)* having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien [specified in this paragraph] *specified in this subparagraph (other than in clause (ii)(b))* if accompanying him or following to join him;

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TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(5)(A) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)[(b)]*(c)* and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

* * * * * * *

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b) may not exceed 65,000, or

(B) under section 101(a)(15)(H)(ii)[(b)]*(c)* may not exceed 66,000.

* * * * * * *

(l)(1) An alien may not be admitted (or provided status) as a temporary worker under section 101(a)(15)(H)(ii)(b) if the alien (after the date of the enactment of this subsection) has been convicted of owning (or knowingly operating) a motor vehicle in the United States without having liability insurance that meets applicable insurance requirements of the State in which the alien is employed or in which the vehicle is registered.

(2) An alien who is admitted or provided status as such a worker who is so convicted shall be considered, on and after the date of the conviction and for purposes of section 237(a)(1)(C), to have failed to comply with a condition for the maintenance of status under section 101(a)(15)(H)(ii)(b).

* * * * * * *

ALTERNATIVE AGRICULTURAL TEMPORARY WORKER PROGRAM

SEC. 218A. (a) CONDITION FOR THE EMPLOYMENT OF H–2B ALIENS.—

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

(A) the employment of the alien is covered by a currently valid labor condition attestation which—

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

(ii) has been accepted by the qualified State employment security agency having jurisdiction over the area of intended employment; and

(iii) states each of the items described in paragraph (2) and includes information identifying the employer or association and agricultural job opportunities involved; and

(B) the employer is not disqualified from employing H–2B aliens pursuant to subsection (g).

(2) CONTENTS OF LABOR CONDITION ATTESTATION.—Each labor condition attestation filed by or on behalf of, an employer shall include the following:

(A) WAGE RATE.—The employer will pay H–2B aliens and all other workers in the occupation not less than the prevailing wage for similarly employed workers in the area of employment, and not less than the applicable Federal, State or local statutory minimum wage.

(B) WORKING CONDITIONS.—The employment of H–2B aliens will not adversely affect the working conditions with respect to housing and transportation of similarly employed workers in the area of employment.

(C) LIMITATION ON EMPLOYMENT.—An H–2B alien will not be employed in any job opportunity which is not temporary or seasonal, and will not be employed by the employer in any job opportunity for more than 10 months in any 12-consecutive-month period.

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

(E) NOTICE.—The employer, at the time of filing the attestation, has provided notice of the attestation to workers employed in the occupation in which H–2B aliens will be employed.

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

(G) PREFERENCE TO DOMESTIC WORKERS.—The employer will give preference to able, willing and qualified United States workers who apply to the employer and are available at the time and place needed, for the first 25 days after the filing of the job order in an occupation or until 5 days before the date employment of workers in the occupation begins, whichever occurs later.

(3) ESTABLISHMENT AS PILOT PROGRAM; RESTRICTION OF ADMISSIONS TO PILOT PROGRAM PERIOD.—

(A) IN GENERAL.—The program under this section is deemed to be a pilot program and no alien may be admit-

ted or provided status as an H–2B alien under this section except during the pilot program period specified in subparagraph (B).

(B) PILOT PROGRAM PERIOD.—

(i) IN GENERAL.—Subject to clause (ii), the pilot program period under this subparagraph is the period (ending on October 1, 1999) during which the employment eligibility verification system is in effect under section 274A(b)(7) (as amended by the Immigration in the National Interest Act of 1995).

(ii) CONSIDERATION OF EXTENSION.—If Congress extends such verification system, Congress shall also extend the pilot program period under this subparagraph for the same period of time.

(C) ANNUAL REPORTS.—The Comptroller General shall submit to Congress annual reports on the operation of the pilot program under this section during the pilot program period. Such reports shall include an assessment of the program and of the need for foreign workers to perform temporary agricultural employment in the United States.

(4) LIMITATIONS ON NUMBER OF VISAS.—

(A) IN GENERAL.—In no case may the number of aliens who are admitted or provided status as an H–2B alien in a fiscal year exceed the numerical limitation specified under subparagraph (B) for that fiscal year.

(B) NUMERICAL LIMITATION.—The numerical limitation specified in this subparagraph for—

(i) the first fiscal year in which this section is applied is 250,000; and

(ii) any subsequent fiscal year is the numerical limitation specified in this subparagraph for the previous fiscal year decreased by 25,000.

(b) FILING A LABOR CONDITION ATTESTATION.—

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

(2) FILING BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—An agricultural association may file a labor condition attestation as an agent on behalf of its members. Such an attestation filed by an agricultural association acting as an agent for its members, when accepted, shall apply to those employer members of the association that the association certifies to the qualified State employment security agency are members of the association and have agreed in writing to comply with the requirements of this section.

(3) PERIOD OF VALIDITY.—A labor condition attestation is valid from the date on which it is accepted by the qualified State employment security agency for the period of time requested by the employer, but not to exceed 12 months.

(4) WHERE TO FILE.—A labor condition attestation shall be filed with such agency having jurisdiction over the area of intended employment of the workers covered by the attestation. If an employer, or the members of an association of employers, will be employing workers in an area or areas covered by more than one such agency, the attestation shall be filed with each

such agency having jurisdiction over an area where the workers will be employed.

(5) DEADLINE FOR FILING.—An employer may file a labor condition attestation at any time up to 12 months prior to the date of the employer's anticipated need for workers in the occupation (or occupations) covered by the attestation.

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

(7) MAINTAINING REQUIRED DOCUMENTATION.—

(A) BY EMPLOYERS.—Each employer covered by an accepted labor condition attestation must maintain a file of the documentation required in subsection (c) for each occupation included in an accepted attestation covering the employer. The documentation shall be retained for a period of one year following the expiration of an accepted attestation. The employer shall make the documentation available to representatives of the Secretary during normal business hours.

(B) BY ASSOCIATIONS.—In complying with subparagraph (A), documentation maintained by an association filing a labor condition attestation on behalf of an employer shall be deemed to be maintained by the employer.

(8) WITHDRAWAL.—

(A) COMPLIANCE WITH ATTESTATION OBLIGATIONS.—An employer covered by an accepted labor condition attestation for an occupation shall comply with the terms and conditions of the attestation from the date the attestation is accepted and continuing throughout the period any persons are employed in an occupation covered by such an accepted attestation, whether or not H–2B aliens are employed in the occupation, unless the attestation is withdrawn.

(B) TERMINATION OF OBLIGATIONS.—An employer may withdraw a labor condition attestation in total, or with respect to a particular occupation covered by the attestation. An association may withdraw such an attestation with respect to one or more of its members. To withdraw an attestation the employer or association must notify in writing the qualified State employment security agency office with which the attestation was filed of the withdrawal of the attestation. An employer who withdraws an attestation, or on whose behalf an attestation is withdrawn by an association, is relieved of the obligations undertaken in the attestation with respect to the occupation (or occupations) with respect to which the attestation was withdrawn, upon acknowledgement by the appropriate qualified State employment security agency of receipt of the withdrawal notice. An attestation may not be withdrawn with respect to any occupation while any H–2B aliens covered by that attestation are employed in the occupation.

(C) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by the employer under any other law or regulation as a result of recruitment of United States workers under an offer of terms and conditions of employment re-

quired by the H–2B program is unaffected by withdrawal of a labor condition attestation.

(c) EMPLOYER RESPONSIBILITIES AND REQUIREMENTS FOR EMPLOYING H–2B NONIMMIGRANTS.—

(1) REQUIREMENT TO PAY THE PREVAILING WAGE.—

(A) EFFECT OF THE ATTESTATION.—Employers shall pay each worker in an occupation covered by an accepted labor condition attestation at least the prevailing wage in the occupation in the area of intended employment. The preceding sentence does not require employers to pay all workers in the occupation the same wage. The employer may, in the sole discretion of the employer, maintain pay differentials based on experience, tenure with the employer, skill, or any other work-related factor, if the differential is not based on a criterion for which discrimination is prohibited by the law and all workers in the covered occupation receive at least the prevailing wage.

(B) PAYMENT OF QUALIFIED STATE EMPLOYMENT SECURITY AGENCY DETERMINED WAGE SUFFICIENT.—The employer may request and obtain a prevailing wage determination from the qualified State employment security agency. If the employer requests such a determination, and pays the wage determined, such payment shall be considered sufficient to meet the requirement of this paragraph if the H–2B workers—

(i) are employed in the occupation for which the employer possesses an accepted labor condition attestation, and for which the employer or association possesses a prevailing wage determination by the qualified State employment security agency, and

(ii) are being paid at least the prevailing wage so determined.

(C) RELIANCE ON WAGE SURVEY.—In lieu of the procedures of subparagraph (B), an employer may rely on other information, such as an employer generated prevailing wage survey and determination, which meets criteria specified by the Secretary by regulation. In the event of a complaint that the employer has failed to pay the required wage, the Secretary shall investigate to determine if the information upon which the employer relied complied with the criteria for prevailing wage determinations.

(D) ALTERNATE METHODS OF PAYMENT PERMITTED.—

(i) IN GENERAL.—A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate (described in clause (ii)), or other incentive pay system, including a group rate (described in clause (iii)). The requirement to pay at least the prevailing wage in the occupation and area of intended employment does not require an employer to pay by the method of pay in which the prevailing rate is expressed. However, if the employer adopts a method of pay other than the prevailing rate, the burden of proof is on the employer to demonstrate that the employer's method of pay is de-

signed to produce earnings equivalent to the earnings that would result from payment of the prevailing rate.

(ii) TASK RATE.—For purposes of this subparagraph, a task rate is an incentive payment based on a unit of work performed such that the incentive rate varies with the level of effort required to perform individual units of work.

(iii) GROUP RATE.—For purposes of this subparagraph, a group rate is an incentive payment system in which the payment is shared among a group of workers working together to perform the task.

(E) REQUIRED DOCUMENTATION.—The employer or association shall document compliance with this paragraph by retaining on file the employer or association's request for a determination by a qualified State employment security agency and the prevailing wage determination received from such agency or other information upon which the employer or association relied to assure compliance with the prevailing wage requirement.

(2) REQUIREMENT TO PROVIDE HOUSING AND TRANSPORTATION.—

(A) EFFECT OF THE ATTESTATION.—The employment of H–2B aliens shall not adversely affect the working conditions of United States workers similarly employed in the area of intended employment. The employer's obligation not to adversely affect working conditions shall continue for the duration of the period of employment by the employer of any H–2B aliens in the occupation and area of intended employment. An employer will be deemed to be in compliance with this attestation if the employer offers at least the benefits required by subparagraphs (B) through (D). The previous sentence does not require an employer to offer more than such benefits.

(B) HOUSING REQUIRED.—

(i) HOUSING OFFER.—The employer must offer to H–2B aliens and United States workers recruited from beyond normal recruiting distance housing, or a housing allowance, if it is prevailing practice in the occupation and area of intended employment to offer housing or a housing allowance to workers who are recruited from beyond normal commuting distance.

(ii) HOUSING STANDARDS.—If the employer offers housing to such workers, the housing shall meet (at the option of the employer) applicable Federal farm labor housing standards or applicable local or State standards for rental, public accommodation, or other substantially similar class of habitation.

(iii) CHARGES FOR HOUSING.—An employer who offers housing to such workers may charge an amount equal to the fair market value (but not greater than the employer's actual cost) for utilities and maintenance, or such lesser amount as permitted by law.

(iv) HOUSING ALLOWANCE AS ALTERNATIVE.—In lieu of offering housing to such workers, at the employer's

sole discretion on an individual basis, the employer may provide a reasonable housing allowance. An employer who offers a housing allowance to such a worker under this subparagraph shall not be deemed to be a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) merely by virtue of providing such housing allowance.

(v) SECURITY DEPOSIT.—The requirement, if any, to offer housing to such a worker under this subparagraph shall not preclude an employer from requiring a reasonable deposit to protect against gross negligence or willful destruction of property, as a condition for providing such housing.

(vi) DAMAGES.—An employer who offers housing to such a worker shall not be precluded from requiring a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

(C) TRANSPORTATION.—If the employer provides transportation arrangements or assistance to H–2B aliens, the employer must offer to provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed by the employer in the occupation at the place of employment who were recruited from beyond normal commuting distance.

(D) WORKERS' COMPENSATION.—If the employment covered by a labor condition attestation is not covered by the State workers' compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the workers' employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(E) REQUIRED DOCUMENTATION.—

(i) HOUSING AND TRANSPORTATION.—No specific documentation is required to be maintained to evidence compliance with the requirements of subparagraphs (B) and (C). In the event of a complaint alleging a failure to comply with such a requirement, the burden of proof shall be on the employer to show that the employer offered the required benefit to the complainant, or that the employer was not required by the terms of this paragraph to offer such benefit to the complainant.

(ii) WORKERS' COMPENSATION.—The employer shall maintain copies of certificates of insurance evidencing compliance with subparagraph (D) throughout the period of validity of the labor condition attestation.

(3) REQUIREMENT TO EMPLOY ALIENS IN TEMPORARY OR SEASONAL AGRICULTURAL JOB OPPORTUNITIES.—

(A) LIMITATIONS.—

(i) IN GENERAL.—The employer may employ H–2B aliens only in agricultural employment which is temporary or seasonal.

(ii) SEASONAL BASIS.—For purposes of this section, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.

(iii) TEMPORARY BASIS.—For purposes of this section, a worker is employed on a temporary basis where the employment is intended not to exceed 10 months.

(B) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the employment meets such requirement.

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

(A) IN GENERAL.—No H–2B alien may be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.

(B) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A). In the event of a complaint, the burden of proof shall fall on the employer to show that the job opportunity in which the H–2B alien was employed was not vacant because the former occupant was on strike, locked out, or participating in a work stoppage in the course of a labor dispute in the occupation at the place of employment.

(5) NOTICE OF FILING OF ATTESTATION AND SUPPORTING DOCUMENTATION.—

(A) IN GENERAL.—The employer shall—

(i) provide notice of the filing of a labor condition attestation to the appropriate certified bargaining agent (if any) which represents workers of the employer in the occupation (or occupations) at the place of employment covered by the attestation; or

(ii) in the case where no appropriate bargaining agent exists, post notice of the filing of such an attestation in at least two conspicuous locations where applications for employment are accepted.

(B) PERIOD FOR POSTING.—The requirement for a posting under subparagraph (A)(ii) begins on the day the attestation is filed, and continues through the period during which the employer's job order is required to remain active pursuant to paragraph (6)(A).

(C) REQUIRED DOCUMENTATION.—The employer shall maintain a copy of the notice provided to the bargaining agent (if any), together with evidence that the notice was provided (such as a signed receipt of evidence of attempt to

send the notice by certified or registered mail). In the case where no appropriate certified bargaining agent exists, the employer shall retain a copy of the posted notice, together with information as to the dates and locations where the notice was displayed.

(6) REQUIREMENT TO FILE A JOB ORDER.—

(A) EFFECT OF THE ATTESTATION.—The employer, or an association acting as agent for its members, shall file the information necessary to complete a local job order for each occupation covered by an accepted labor condition attestation with the appropriate local office of the qualified State employment security agency having jurisdiction over the area of intended employment, or with the State office of such an agency if workers will be employed in an area within the jurisdiction of more than one local office of such an agency. The job orders shall remain on file for 25 calendar days or until 5 calendar days before the anticipated date of need for workers in the occupation covered by the job order, whichever occurs later. The job order shall provide at least the minimum terms and conditions of employment required for participation in the H–2B program.

(B) DEADLINE FOR FILING.—A job order shall be filed under subparagraph (A) no later than the date on which the employer files a petition with the Attorney General for admission or extension of stay for aliens to be employed in the occupation for which the order is filed.

(C) REQUIRED DOCUMENTATION.—The office of the qualified State employment security agency which the employer or association provides with information necessary to file a local job order shall provide the employer with evidence that the information was provided in a timely manner as required by this paragraph, and the employer or association shall retain such evidence for each occupation in which H–2B aliens are employed.

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

(A) FILING 30 DAYS OR MORE BEFORE DATE OF NEED.—If a job order is filed 30 days or more before the anticipated date of need for workers in an occupation covered by a labor condition attestation and for which the job order has been filed, the employer shall offer to employ able, willing, and qualified United States workers who apply to the employer and who will be available at the time and place needed for the job opportunities covered by the attestation until 5 calendar days before the anticipated date of need for workers in the occupation, or until the employer's job opportunities in the occupation are filled with qualified United States workers, if that occurs more than 5 days before the anticipated date of need for workers in the occupation.

(B) FILLING FEWER THAN 30 DAYS BEFORE DATE OF NEED.—If a job order is filed fewer than 30 days before the anticipated date of need for workers in an occupation covered by such an attestation and for which a job order has been filed, the employer shall offer to employ able, willing,

and qualified United States workers who are or will be available at the time and place needed during the first 25 days after the job order is filed or until the employer's job opportunities in the occupation are filled with United States workers, regardless of whether any of the job opportunities may already be occupied by H–2B aliens.

(C) FILING VACANCIES.—An employer may fill a job opportunity in an occupation covered by an accepted attestation which remains or becomes vacant after expiration of the required preference period specified in subparagraph (A) or (B) of paragraph (6) without regard to such preference.

(D) JOB-RELATED REQUIREMENTS.—No employer shall be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful job-related standards of conduct and performance, including failure to meet minimum productivity standards after a 3-day break-in period.

(E) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirements of this paragraph. In the event of a complaint, the burden of proof shall be on the complainant to show that the complainant applied for the job and was available at the time and place needed. If the complainant makes such a showing, the burden of proof shall be on the employer to show that the complainant was not qualified or that the preference period had expired.

(8) REQUIREMENTS OF NOTICE OF CERTAIN BREAKS IN EMPLOYMENT.—

(A) IN GENERAL.—The employer (or an association in relation to an H–2B alien) shall notify the Service within 7 days if an H–2B alien prematurely abandons the alien's employment.

(B) OUT-OF-STATUS.—An H–2B alien who abandons the alien's employment shall be considered to have failed to maintain nonimmigrant status as an alien described in section 101(a)(15)(H)(ii)(b) and shall leave the United States or be subject to removal under section 237(a)(1)(C)(i).

(d) ACCEPTANCE BY QUALIFIED STATE EMPLOYMENT SECURITY AGENCY.—The qualified State employment security agency shall review labor condition attestations submitted by employers or associations only for completeness and obvious inaccuracies. Unless such an agency finds that the application is incomplete or obviously inaccurate, the agency shall accept the attestation within 7 days of the date of filing of the attestation, and return a copy to the applicant marked "accepted".

(e) PUBLIC REGISTRY.—The Secretary shall maintain a registry of all accepted labor condition attestations and make such registry available for public inspection.

(f) RESPONSIBILITIES OF THE QUALIFIED STATE EMPLOYMENT SECURITY AGENCIES.—

(1) DISSEMINATION OF LABOR MARKET INFORMATION.—The Secretary shall direct qualified State employment security agen-

cies to disseminate nonemployer-specific information about potential labor needs based on accepted attestations filed by employers. Such dissemination shall be separate from the clearance of job orders through the Interstate and Intrastate Clearance Systems, and shall create no obligations for employers except as provided in this section.

(2) REFERRAL OF WORKERS ON QUALIFIED STATE EMPLOYMENT SECURITY AGENCY JOB ORDERS.—Such agencies holding job orders filed by employers covered by approved labor condition attestations shall be authorized to refer any able, willing, and qualified eligible job applicant who will be available at the time and place needed and who is authorized to work in the united States, including H–2B aliens who are seeking additional work in the United States and whose eligibility to remain in the United States pursuant to subsection (h) has not expired, on job orders filed by holders of accepted attestations.

(g) ENFORCEMENT AND PENALTIES.—

(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 12 months 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 paragraph (2) has been committed. The Secretary's determination shall be served on the complainant and the employer, and shall provide an opportunity for an appeal of the Secretary's decision to an administrative law judge, who may conduct a de novo hearing.

(2) REMEDIES.—

(A) BACK WAGES.—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or H–2B alien employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

(B) FAILURE TO PAY WAGES.—Upon a final determination that the employer has failed to pay the wages required under this section, the Secretary may assess a civil money penalty up to $1,000 for each failure, and may recommend

to the Attorney General the disqualification of the employer from the employment of H–2B aliens for a period of time determined by the Secretary not to exceed 1 year.

(C) OTHER VIOLATIONS.—If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an accepted labor condition attestation has—

(i) filed an attestation which misrepresents a material fact; or

(ii) failed to meet a condition specified in subsection (a),

the Secretary may assess a civil money penalty not to exceed $1,000 for each violation. In determining the amount of civil money penalty to be assessed, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, whether the employer obtained a financial gain from the violation, whether the violation was willful, and other relevant factors.

(D) PROGRAM DISQUALIFICATION.—

(i) 3-YEARS FOR SECOND VIOLATION.—Upon a second final determination that an employer has failed to pay the wages required under this section, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from the employment of H–2B aliens for a period of 3 years.

(ii) PERMANENT FOR THIRD VIOLATION.—Upon a third final determination that an employer has failed to pay the wages required under this section, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from any subsequent employment of H–2B aliens.

(3) ROLE OF ASSOCIATIONS.—

(A) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf a labor condition attestation is filed by an association acting as its agent is fully responsible for such attestation, and for complying with the terms and conditions of this section, as though the employer had filed the attestation itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer who committed the violation and not against the association or other members of the association.

(B) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing a labor condition attestation on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program under paragraph (2)(D), no individual member of such association may be the beneficiary of the services of an H–2B alien in an occupation in which such alien was employed by the association

during the period such disqualification is in effect, unless such member files a labor condition attestation as an individual employer or such an attestation is filed on the employer's behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this section.

(h) PROCEDURE FOR ADMISSION OR EXTENSION OF H-2B ALIENS.—

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

(A) PETITIONING FOR ADMISSION.—An employer or an association acting as agent for its members who seeks the admission into the United States of H–2B aliens may file a petition with the District Director of the Service having jurisdiction over the location where the aliens will be employed. The petition shall be accompanied by an accepted and currently valid labor condition attestation covering the petitioner. The petition may be for named or unnamed individual or multiple beneficiaries.

(B) EXPEDITED ADJUDICATION BY DISTRICT DIRECTOR.—If an employer's petition for admission of H–2B aliens is correctly filled out, and the employer is not ineligible to employ H–2B aliens, the District Director (or the Director's designee) shall approve the petition within 3 working days of receipt of the petition and accepted labor condition attestation and immediately (by fax, cable, or other means assuring expedited delivery) transmit a copy of the approved petition to the petitioner and to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

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

(D) CRITERIA FOR ADMISSIBILITY.—

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

(ii) DISQUALIFICATION.—An alien shall be debarred from admission or being provided status as an H–2B alien under this section if the alien has, at any time—

(I) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

(II) has otherwise violated a term or condition of admission to the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

(E) PERIOD OF ADMISSION.—The alien shall be admitted for the period requested by the petitioner not to exceed 10

months, or the remaining validity period of the petitioner's approved labor condition attestation, whichever is shorter, plus an additional period of 14 days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien's work authorization, the alien is not authorized to be employed unless the original petitioner or a subsequent petitioner has filed an extension of stay on behalf of the alien.

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

(i) IN GENERAL.—The Attorney General shall cause to be issued to each H–2B alien a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

(ii) DESIGN OF CARD.—Each card issued pursuant to clause (i) shall be designed in such a manner and contain a photograph and other identifying information (such as date of birth, sex, and distinguishing marks) that would allow an employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual, and shall—

(I) contain a fingerprint or other biometric identifying data (or both);

(II) specify the date of the aliens authorization as an H–2B alien;

(III) specify the expiration date of the alien's work authorization; and

(IV) specify the alien's admission number or alien file number.

(2) EXTENSION OF STAY.—

(A) APPLICATION FOR EXTENSION OF STAY.—If a petitioner seeks to employ an H–2B alien already in the United States, the petitioner shall file an application for an extension of stay. The application for extension of stay shall be accompanied by a currently valid labor condition attestation.

(B) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY.—An application may not be filed for an extension of an alien's stay for a period of more than 10 months, or later than a date which is 2 years from the date of the alien's last admission to the United States as a H–2B alien, whichever occurs first. An application for extension of stay may not be filed during the pendency of an alien's previous authorized period of admission, nor after the alien's authorized stay in the United States has expired.

(C) WORK AUTHORIZATION UPON FILING AN APPLICATION FOR EXTENSION OF STAY.—An employer may begin employing an alien already in the United States in H–2B status on the day the employer files its application for extension of stay with the Service. For the purpose of this requirement, the term "filing" means sending the application by certified mail via the United States Postal Service, return

receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of receipt of the application. The employer shall provide a copy of the employer's application for extension of stay to the alien, who shall keep the application with the alien's identification and employment eligibility card as evidence that the extension has been filed and that the alien is authorized to work in the United States. Upon approval of an application for extension of stay, the Service shall provide a new employment document to the alien indicating a new validity date, after which the alien is not required to retain a copy of the application for extension of stay.

(D) LIMITATION ON EMPLOYMENT AUTHORIZATION OF H–2B ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY CARD.—An expired identification and employment eligibility card, together with a copy of an application for extension of stay, shall constitute a valid work authorization document for a period of not more than 60 days from the date of application for the extension of stay, after which time only a currently valid identification and employment eligibility card shall be acceptable.

(3) LIMITATION ON AN INDIVIDUAL'S STAY IN H–2B STATUS.—An alien having status as an H–2B alien may not have the status extended for a continuous period longer than 2 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which an H–2B visa is valid. If the alien has resided in the United States 10 months or less, an absence breaks the continuity of the period if its lasts for at least 2 months. If the alien has resided in the United States 10 months or more, an absence breaks the continuity of the period if it lasts for at least one-fifth the duration of the stay.

(i) TRUST FUND TO ASSURE WORKER RETURN.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the "Trust Fund") for the purpose of providing a monetary incentive for H–2B aliens to return to their country of origin upon expiration of their visas under this section.

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

(A) IN GENERAL.—Employers of H–2B aliens shall—

(i) withhold from the wages of their H–2B alien workers an amount equivalent to 25 percent of the wages of each H–2B alien worker and pay such withheld amount into the Trust Fund in accordance paragraph (3); and

(ii) pay to the Trust Fund an amount equivalent to the Federal tax on the wages paid to H–2B aliens that the employer would be obligated to pay under the Federal Unemployment Tax Act and the Federal Insurance Contributions Act.

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

(3) DISTRIBUTION OF FUNDS.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(i), and interest earned thereon, shall be paid by the Attorney General as follows:

(A) REIMBURSEMENT OF EMERGENCY MEDICAL EXPENSES.—To reimburse valid claims for reimbursement of emergency medical services furnished to H–2B aliens, to the extent that sufficient funds are not available on an annual basis from the Trust Fund pursuant to paragraphs (2)(A)(ii) and (4)(B).

(B) PAYMENTS TO WORKERS.—Amounts paid into the Trust Fund on behalf of a worker, and interest earned thereon, less a pro rata reduction for any payments made pursuant to subparagraph (A), shall be paid by the Attorney General to the worker if—

(i) the worker applies to the Attorney General (or the designee of the Attorney General) for payment within 30 days of the expiration of the alien's last authorized stay in the United States as a H–2B alien;

(ii) in such application the worker establishes that the worker has complied with the terms and conditions of this section; and

(iii) in connection with the application, the worker tenders the identification and employment authorization card issued to the worker pursuant to subsection (h)(1)(F) and establishes that the worker is identified as the person to whom the card was issued based on the biometric identification information contained on the card.

(4) ADMINISTRATIVE EXPENSES AND EMERGENCY MEDICAL EXPENSES.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(ii), and interest earned thereon, shall be paid by the Attorney General as follows:

(A) ADMINISTRATIVE EXPENSES.—First, to the Attorney General, the Secretary of Labor, and the Secretary of State in amounts equivalent to the expenses incurred by such officials in the administration of section 101(a)(15)(H)(ii)(b) and this section.

(B) REIMBURSEMENT OF EMERGENCY MEDICAL SERVICES.—Any remaining amounts shall be available on an annual basis to reimburse hospitals for emergency medical services furnished to H–2B aliens as provided in subsection (k)(2).

(5) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this subsection.

(j) INVESTMENT OF TRUST FUND.—

(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgement, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as

to both principal and interest by the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the price; or

(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

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

(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Attorney General) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

(k) REIMBURSEMENT OF COST OF EMERGENCY MEDICAL SERVICES.—

(1) IN GENERAL.—The Attorney General shall establish procedures for reimbursement of hospitals operated by a State or by a unit of local government (or corporation owned or controlled by the State or unit) for the reasonable cost of providing emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services) in the United States to H–2B aliens for which payment has not been otherwise reimbursed.

(2) SOURCE OF FUNDS FOR REIMBURSEMENT.—Funds for reimbursement of hospitals pursuant to paragraph (1) shall be drawn—

(A) first under subsection (i)(4)(B), from amounts deposited in the Trust Fund under subsection (i)(2)(A)(ii) after reimbursement of certain administrative expenses; and

(B) then under subsection (i)(3)(A), to the extent that funds described in subparagraph (A) are insufficient to meet valid claims, from amounts deposited in the Trust Fund under subsection (i)(2)(A)(i).

(l) MISCELLANEOUS PROVISIONS.—

(1) APPLICABILITY OF LABOR LAWS.—Except as provided in paragraphs (2), (3), and (4), all Federal, State, and local labor laws (including laws affecting migrant farm workers) applicable to United States workers shall also apply to H–2B aliens.

(2) LIMITATION OF WRITTEN DISCLOSURE IMPOSED UPON RECRUITERS.—Any disclosure required of recruiters under section of 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) need not be given to H–2B aliens prior to the time their visa is issued permitted entry into the United States.

(3) EXEMPTION FROM FICA AND FUTA TAXES.—The wages paid to H–2B aliens shall be excluded from wages subject to taxation under the Federal Unemployment Tax Act and under the Federal Insurance Contributions Act.

(4) INELIGIBILITY FOR CERTAIN PUBLIC BENEFITS PROGRAMS.—

(A) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subparagraph (B), any alien provided status as an H–2B alien shall not be eligible for any Federal or State or local means-tested public benefit program.

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

(i) EMERGENCY MEDICAL SERVICES.—The provision of emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services).

(ii) PUBLIC HEALTH IMMUNIZATIONS.—Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment for communicable diseases.

(iii) SHORT-TERM EMERGENCY DISASTER RELIEF.—The provision of non-cash, in-kind, short-term emergency disaster relief.

(m) CONSULTATION ON REGULATIONS.—

(1) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Agriculture, and the Attorney General shall approve, all regulations dealing with the approval of labor condition attestations for H–2B aliens or enforcement of the requirements for employing H–2B aliens under an approved attestation.

(2) REGULATIONS OF THE ATTORNEY GENERAL.—The Attorney General shall consult with the Secretary of Agriculture on all regulations dealing with the approval of petitions for admission or extension of stay of H–2B aliens or the requirements for employing H–2B aliens or the enforcement of such requirements.

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

(1) AGRICULTURAL ASSOCIATION.—The term "agricultural association" means any nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any agricultural workers.

(2) AGRICULTURAL EMPLOYMENT.—The term "agricultural employment" means any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1986 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(3) EMPLOYER.—The term "employer" means any person or entity, including any independent contractor and any agricultural association, that employs workers.

(4) H–2B ALIEN.—The term "H–2B alien" means an alien admitted to the United States or provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(b).

(5) QUALIFIED STATE EMPLOYMENT SECURITY AGENCY.—The term "qualified State employment security agency" means a State employment security agency in a State in which the Secretary has determined that the State operates a job service that actively seeks to match agricultural workers with jobs and participates in a multi-State job service program in States where significant supplies of farm labor exist.

(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(7) UNITED STATES WORKER.—The term "United States worker" means any worker, whether a United States citizen, a United States national, or an alien, who is legally permitted to work in the job opportunity within the United States other than aliens admitted pursuant to this section.

* * * * * * *

MINORITY VIEWS

We oppose the committee's action to add authority for a new agricultural guestworker program to H.R. 2202, the Immigration in the National Interest Act of 1995. We recognize that H.R. 2202 will have an adverse impact on certain sectors of the food and agriculture industries. Both proponents and opponents of a new guestworker program agree that H.R. 2202 will reduce the number of foreign workers available to the agricultural producers. We also understand that the current agricultural guestworker program is not working well for growers or for foreign workers. The solution of the committee, to establish an additional guestworker program, will decrease the number of jobs available to domestic workers and provide inadequate protection for foreign workers. A preferable solution is to improve the current guestworker program.

Production of many crops is highly dependent on hand labor. For example, the U.S. Department of Agriculture estimates that 89 percent of fruit production and 37 percent of vegetable production in this country are hand-harvested. Typically, the time window for harvesting these highly perishable crops is exact and frequently very short, sometimes lasting only five to seven days. The nature of the harvest work requires particularized skill; determining when a product is ripe for harvest and use of the most effective and efficient means of harvesting comes from experience.

The current program to help farmers find these skilled workers when domestic workers are unavailable is the so-called "H–2A" program, authorized under section 101(a)(15)(H)(2)(A) of the Immigration and Nationality Act. It provides for the temporary admission of foreign agricultural workers if domestic workers are unavailable. This program requires an affirmative search by a producer for available domestic workers, and a determination that the admission of guestworkers will not adversely affect the wages and working conditions of similarly employed domestic workers. Employers must apply to the Department of Labor for certification at least 60 days in advance of the estimated date of need, and the final decision to admit H–2A workers is made by the Immigration and Naturalization Service. Producers using H–2A workers must provide to all workers approved housing (for non-commuters) without charge, assured employment for at least 75 percent of the contract period, and reimbursed transportation costs for every worker who completes the contract.

Unfortunately, the H–2A program, as it is currently administered, is not fulfilling its promise to either growers or guestworkers. The certification requirements are too burdensome for most farmers and the guestworker protections are not well enforced. As a result, H–2A is not widely used by agricultural producers, and when it is used the allegations of guestworker abuse challenge its integrity. Without an adequate guestworker program, ille-

gal immigrants fill the void. The Department of Labor estimates that 25 percent of the 1.6 million agricultural workers are illegal aliens.

The committee has approved an amendment to H.R. 2202 that will create a new guestworker program—the H–2B program. This new program will not require that employers show the unavailability of domestic workers, and it provides weaker worker protections than required by the H–2A program. Enforcement of the H–2B provisions will be complaint driven only.

We are very concerned that enactment of this new program will encourage producers to hire foreign workers rather than domestic workers and will permit the living conditions of all farmworkers to deteriorate. At a time when we are trying to encourage welfare recipients to get jobs and become self-sufficient, it makes little sense to encourage foreign workers to take domestic jobs. At a time when the American people are urging us to reform our immigration laws, it make little sense to open a big new door to foreign workers. At a time when the current guestworker program is criticized for not adequately protecting guestworkers, it makes little sense to begin a new program that offers fewer guestworker legal protections.

We believe that the better approach to resolving the problem of an inadequate supply of farmworkers is to reform the H–2A program so that it works more effectively for both producer and worker, and to support efforts to improve where necessary agricultural labor practices and to better match domestic workers with agricultural jobs so that domestic workers will be attracted to jobs in the agriculture sector. This approach obviates the need for a new guestworker program that will be perceived by most Americans as an open door to foreign workers who will not return to their home countries. It also reiterates the promise of worker protections for all farmworkers.

We share the commitment of the majority to maintaining the competitiveness of our agricultural and food industries. We believe that this commitment is not in conflict with out commitment to ensure the well-being of all of our farmworkers, domestic and foreign. The H–2B program approved by the Committee on Agriculture moves in the wrong direction, and we oppose the committee's action.

E (KIKA) DE LA GARZA,
GEORGE E. BROWN, Jr.,
EARL F. HILLIARD,
EVA M. CLAYTON,
HAROLD L. VOLKMER,
SANFORD D. BISHOP, Jr.,
EARL POMEROY,
SAM FARR,
JOHN BALDACCI.

ADDITIONAL MINORITY VIEWS OF MR. POMEROY AND MR. FARR

During the mark-up of H.R. 2202 by the Committee on Agriculture a question was presented to counsel by Mr. Latham regarding an amendment offered by Mr. Farr. Mr. Farr's amendment, which was ultimately withdrawn, would have provided that no employer shall employ an H–2B worker in a State unless the laws of that State guarantee farmworkers certain minimum labor standards. Mr. Latham asked counsel if this amendment would be subject to a point of order as an unfunded federal mandate. Counsel's response was that the Farr amendment would be an unfunded mandate on the states. Believing counsel's position to be incorrect, Mr. Pomeroy requested that senior counsel give his ruling on the question, and Mr. Latham also asked for the opinion of senior counsel. Senior counsel responded that he did not have a different view.

We wish to include at this point in the record the opinion of the Congressional Research Service on this issue, an opinion which supports our view that the Farr amendment is not an unfunded mandate.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, March 8, 1996.

To: House Committee on Agriculture. Attention: John Riley.
From: American Law Division.
Subject: Unfunded Mandate Reform Act Applicability to Amendment Offered by Mr. Farr to H.R. 2202.

This memorandum responds to your request for a legal analysis of the applicability of the Unfunded Mandates Reform Act, P.L. 104–4 to an amendment offered by Mr. Farr to H.R. 2202. Mr. Farr's amendment would provide that an employer could not employ certain categories of guest workers unless the state has in effect certain labor laws regarding farm workers' compensation, unemployment compensation, overtime pay, rights to organize labor unions and the right to collective bargaining between a labor union and an agricultural employer.

P.L. 104–4 provides in section 101 that the term "Federal intergovernmental mandate" means "any provision in legislation, statute, or regulation that (i) would impose an enforceable duty upon State, local, or tribal governments, except * * * a duty arising from participation in a voluntary Federal program".

Mr. Farr's amendment does not appear to impose "an enforceable duty upon (a) state" since the states are not required to enact the labor laws applicable to farm workers, nor is an enforcement mechanism specified in the amendment regarding enactment of such

state laws. Thus, the amendment does not appear to contain a federal intergovernmental mandate as defined in P.L. 104–4.

In addition, Mr. Farr's amendment does not appear to impose an enforceable duty upon private sector employers which would be recognized as a federal private sector mandate since a duty which arises from participation in a voluntary federal program is exempt from the provisions of that Act. It is our understanding that participation by employers in the guest worker program would be voluntary, so that requirements such as payment of overtime pay would come under the Unfunded Mandates Act exemption and not be considered to be an unfunded mandate as defined in that Act.

KATHLEEN S. SWENDIMAN, *Legislative Attorney.*

We trust that future opinions by the counsel of the Committee on Agriculture on this matter will reflect the informed view of the Congressional Research Service.

EARL POMEROY,
SAM FARR.

ADDITIONAL MINORITY VIEWS OF MR. VOLKMER

The Committee on Agriculture's business meeting to mark-up legislation to establish a new guest worker program is reminiscent of the mark-up of the Freedom to Farm legislation during which the majority followed a flawed procedure to the point the legislative process was abused and irresponsible lawmaking followed.

I raised a similar concern regarding the handling of the legislation providing for a new guest worker program, entitled H2B. No agriculture subcommittee hearings were held on the new H2B-guest worker legislation before it came to the full committee; however the "concept" of such a program was discussed during a hearing. That is not a hearing on the bill. To bring this proposal to the full committee without a hearing and implore members that the legislation go forward or "the committee will lose jurisdiction" or, "the train is leaving the station" or, "it's the only game in town" begs the question of where the committee has been on this issue for the last year and are not legitimate reasons to abandon established committee procedure in the development of good public policy or law that citizens will respect and follow. For the most part, legislation hastily made without public scrutiny, like this proposed H2B Program, is rife with loopholes and invites lawbreaking by the affected parties. H2B will not stem the flow of immigrants, but will increase the flood of immigrants.

Frankly, this proposal is cross-wise with current efforts to protect American farmworkers' jobs and to reform welfare. What rational person seeking to reform welfare would argue that we close our borders, build fences to keep out illegals to protect jobs for Americans and for those who will be removed from welfare and required to work, and legal aliens already here and available for work, and at the same time propose a new program to bring in more foreign workers. Plain and simple, this is a program to create a surplus of labor.

There is no shortage of labor in America, the fact is there is a surplus and this program insures an even larger surplus which will be accompanied by downward pressure on wages, benefits and working conditions for Americans and legal aliens. In my mind the shortage in this program is Justice for American workers, including those on welfare who are hoping for a better life through finding a job and working, and those legal aliens who are anxious and available to work.

The benefit of this program accrues solely to large agribusiness firms who, due to an over-supply of farmworkers, will be relieved of pressure from the free-market place of laws of supply and demand to offer farmworkers better pay, longer employment and more meaningful benefits.

The process has been flawed and the purpose of the H2B Program is questionable. Public hearings on the effect of this proposal

should be held in order to correct the deficiencies of the proposal before it moves forward.

HAROLD L. VOLKMER, *MC.*

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