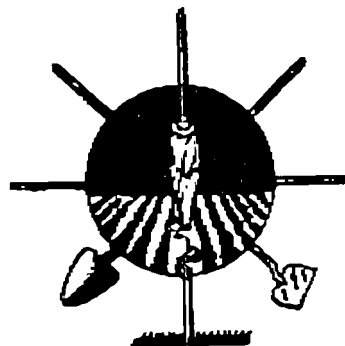


FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 776-1757
Fax: (202) 776-1792



FAX COVER SHEET

TO: IRENE BUENO
FROM: Bruce Goldstein, Co-Executive Director *BG*
DATE: June 2, 2000
RE: AGRICULTURAL GUESTWORKER LEGISLATION
Pages: 4

This fax may contain confidential or privileged information. If you receive it in error, please contact the sender and do not distribute. Thank you.

Please see attached memo.

An immigration subcommittee hearing is likely on June 15, 2000.

Bruce Goldstein

June 2, 2000

**PRELIMINARY ANALYSIS OF REP. POMBO'S
AGRICULTURAL GUESTWORKER BILL, H.R. 4548**

This offers a preliminary analysis of H.R. 4548, the new agricultural guestworker bill introduced by Rep. Richard Pombo (R.-Cal.) on May 25, 2000. *We understand that a hearing on the bill may occur in the House immigration subcommittee on June 15.*

The highlights below contain comparisons between H.R. 4548 and the other pending guestworker legislation (H.R. 4056 by Rep. Bishop, and S. 1814 by Sen. Gordon Smith, Bob Graham, Jesse Helms, Larry Craig, etc.):

- **Three-Year Pilot "H-2C" Agricultural Guestworker Program.**
 - The H-2A program would continue to exist as it currently does.
 - Section 305 of H.R. 4548 would create a second agricultural guestworker program called the "H-2C" program. The H-2C status would be similar to H-2A status: temporary nonimmigrant status for the purpose of performing temporary or seasonal agricultural work. H-2C workers would be tied to their individual employers. This H-2C program would be a 3-year pilot program, see § 308.
 - **The substantive employment-law provisions under H-2C would be much worse than under the current H-2A program.** These provisions are virtually the same as those in the proposed revisions that S. 1814/H.R. 4056 would make to the H-2A program. Thus, S. 4548's H-2C program would dramatically lower wages, omit most of the job protections for U.S. and foreign workers that have been in the old braccero program and the H-2A program, end the obligation to provide housing to agricultural guestworkers, eliminate the three-quarters minimum work guarantee, reduce government oversight, make recruitment meaningless, and weaken the Secretary of Labor's labor law enforcement authority. H-2C would also authorize abusive wage practices that are currently illegal.
 - There would be no reason for an employer to use the H-2A program if H-2C is available, since the H-2C job terms would be much lower, the H-2C test of the labor market (recruitment) would be a sham, and access to guestworkers virtually unrestricted. Neither H-2A nor H-2C has a numerical limit on visas.
 - This proposal is similar in many ways to the growers' Pombo-Chambliss amendment during the immigration debate in July 1996 over H.R. 2202, which was defeated by a vote of 242 to 180.

- **"Job Registry" System Would Replace U.S. Job Service.**
 - Like Title II of S. 1814 and H.R. 4056, this new bill would set up a "job registry" system whose purpose is to serve as the false justification for the claim that US workers are unavailable and that guestworkers are needed.
- **The Major Difference Between the Bills: This bill, H.R. 4548, does not contain an adjustment guestworker program. It omits Title I of S. 1814/H.R. 4056 (which is also the entirety of S. 1815). The lack of the adjustment guestworker program in H.R. 4548 has the consequences summarized in the table below:**

Major difference between <i>immigration</i> provisions of guestworker bills	
Pombo bill: H.R. 4548	S. 1814/H.R. 4056
There would be no opportunity for undocumented agricultural workers present in the United States to apply to become guestworkers	Some undocumented farmworkers residing in the U.S. would be permitted to apply to become adjustment guestworkers
All guestworkers (H-2A and H-2C) are tied to individual employers	Adjustment guestworkers would be required to work in agriculture 180 days per year in each of five years, and could not work in other occupations, but would not be tied to particular employers. H-2A guestworkers would continue to be tied to individual employers who secured their visa.
Employers control workers' access to visas.	H-2A employers control workers' access to visas. Adjustment guestworkers would apply to INS for their temporary visas, but could not retain the visas unless they obtained proof from their employers that they had worked 180 days in agriculture each year.
There would be no opportunity for guestworkers to ever apply for immigration status	Under S. 1814 and H.R. 4056, currently undocumented farmworkers could apply to become adjustment guestworkers and if they succeeded in working 180 days per year for five years, they could apply for immigration status.

- **Additional Differences Between Pombo's H.R. 4548 and Other Pending Legislation**
 - **The 3-year/10-year bars (against admitting foreign workers who have been in the U.S. unlawfully) are not waived.** Undocumented workers currently in the U.S. will be unable to become guestworkers. For some potential guestworkers living abroad who apply to employers to become H-2C guestworkers, this bill would require the government to show "by a preponderance of the evidence" that the 3year/10 year bar applies, but this burden on the government would only apply if: a prospective H-2C worker is a person who (1) has not been previously admitted as an H-2C worker, (2) has not overstayed a nonimmigrant visa before,

(3) has been physically present in his home country for at least 2 months after leaving the US, and (4) is otherwise admissible.

- Since there is no adjustment guestworker program, references to it have been deleted. Under the "Search of Registry" provision in 202(c), the referral of US workers will occur but there is no mention of referral of adjustment guestworkers. In (d), the Pombo bill discusses acceptance of referrals of "all qualified United States worker referrals" rather than using the S.1814 language "referral of registered workers."
- Extension of stays in the U.S. The S. 1814 provision giving an H-2A worker 14 days to get re-sponsored by another H-2A employer is not in HR 4548. Both sets of bills have a provision for extending the stay of someone who is lawfully in the US already and turning them into an H-2C worker or extending their H-2C stay. HR 4548 218A(b)(1) p. 47. But the two bills differ somewhat on how long the extension may last. 218A(b)(2), and 218A(b)(5) generally prohibit granting an H-2C worker the right to have physical presence in the US for more than 12 months, although this can be longer because the bill excludes from consideration any period of continuous physical absence from the US that lasts longer than 2 months, as long as the worker reports into the US consulate in the foreign country.
- HR 4548 has a provision on automatic approval of a replacement of an H-2C worker who is removed or quits. See 205(c) in proposed 218A(a)(3)(E). p. 44
- Proposed section 218A(a)(4) contains the identification document provisions, which in S. 1814 are in 218A(a)(1)(D).

Conclusion: S. 1814/H.R. 4056 is completely unacceptable to anyone who cares about the treatment of farmworkers in this country and the new bill, H.R. 4548, advanced by agribusiness in the House, is no more acceptable.

Interestingly, the growers chose to dispense with the one part S. 1814/H.R. 4056 which they loudly and broadly claimed should draw farmworker support: the adjustment of status program. This was a momentous decision. It demonstrates that agribusiness is focused on getting Congress to lower wages, reduce job protections, help them avoid hiring unemployed U.S. workers, and radically reduce government labor law enforcement. The growers had an alternative. They could have worked with farmworker supporters in Congress to legalize the several hundred thousand undocumented farmworkers they employ by giving them immigration status and a real opportunity to enjoy what America has to offer. The growers also could secure a further streamlining of the H-2A program's procedures. But the growers do not want to give farmworkers a meaningful legal status based on freedom. Nor is the "bureaucratic red tape" they complain about their real concern. This battle is about wages and working conditions, housing, and democratic freedoms.

Irene Bueno

06/05/2000 06:00:25 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc:

Subject: H2A update

As you requested, attached is a draft of talking points for John in his conversation with Senator Graham based on a letter that DOL drafted.

Also, Earl of DoL reported that the House Judiciary Subcommittee on Immigration has scheduled a hearing for June 15th on legislation introduced by Rep. Pombo (R-CA) which is similar to the Graham bill but does not include the legalization provisions. DoL has been invited to testify and John F. will testify. Earl thinks that we need to state our position at that time.



H-2A-Graham Admin Position-bulletsforJP06

Background:

This is to respond to the request by Senator Graham for the Administration's position of his legislation S. 1814, the "Agricultural Job Opportunity Benefits and Security Act," and S. 1815, the "Farmworker Adjustment Act". DPC lead a policy process with the agencies and a consensus position was developed that the Administration should oppose both bills. While Department of Agriculture concurs with this view, they note for the record that they support legislation to legalize undocumented farmworkers. Agencies include involved in the development of this position included OMB, DoL, Agriculture, and DoJ. The Administration has not formally stated our opposition to this legislation; however, we have opposed similar legislation in the past. We should note that the Department of Labor has been invited to testify on similar legislation before the House Judiciary Subcommittee on Immigration on June 15th and we expect that we will be asked for our position at that time. The following are suggested talking points on the reasons for the Administration's opposition to this legislation:

Suggested Talking Points

- The Administration agrees that there are serious problems of instability afflicting the U.S. agricultural labor market that require our serious attention and that responsible action is needed to promote greater labor market stability in agriculture
- Greater stability in the agricultural labor market can serve the interests of both agricultural employers and farm workers: employers would benefit from greater predictability and reliability in the labor supply; and farm workers would benefit through expanded job opportunities, longer periods of employment and, thus, higher annual earnings.
- We also share your profound sense that the plight of the farm workers is simply intolerable and must be more effectively addressed.
- While agricultural profits and productivity have increased significantly, the farm workers who contributed so much to these good results – and to putting inexpensive, abundant, high-quality food on the table all over the world – have not adequately shared in the benefits. The Department of Labor has recently released the results of its latest National Agricultural Worker Survey, which – among other things – found that:
 - ◆ The Nation's 1.8 million agricultural field workers have experienced stagnant or declining wages and earnings over the last decade – they have fallen behind compared to virtually all other American workers;

- ◆ Farm workers continue to experience chronic unemployment and under-employment, and their situation is deteriorating – they average only 24 weeks of agricultural employment each year and another five weeks of non-agricultural employment, with both trending down over the last decade;
 - ◆ Farm worker family earnings remain – on average – well below the poverty line due to this combination of low wages and under-employment; and,
 - ◆ Now, just more than half of the Nation’s agricultural workforce is unauthorized to work in the U.S.
- These findings reflect a persistent over-supply of agricultural labor largely fueled by continuing entry of new, young workers into the labor market through migration. These new entrants to the labor market reduce job opportunities for U.S. workers and drive down wages and working conditions for all agricultural workers.
 - We applaud the serious attention that you and your co-sponsors have been giving to these critical issues, and your well-intentioned and persistent efforts to find effective solutions to promote agricultural labor market stability that will, indeed, benefit both employers and workers. However, we cannot agree that the approach embodied in S. 1814 and S. 1815 is likely to accomplish our common goals.
 - On the contrary, it is our considered view that – while the bills would accomplish the goal of assuring an adequate, predictable and reliable labor supply for U.S. agricultural employers – the bills would substantially harm U.S. farm workers by:
 - ◆ Increasing illegal immigration, at least in the longer term;
 - ◆ Reducing job opportunities for authorized U.S. farm workers; and,
 - ◆ Further undermining the wages and working conditions of authorized U.S. farm workers.
 - This Administration is not, in principle, opposed to considering some means of status adjustment as part of a comprehensive approach to addressing instability in the agricultural labor market. However, we strongly oppose the approach embodied in S. 1815 because, in our view, it effectively rewards past illegal behavior, gives unfair preferential treatment to agricultural employers and workers, and will most likely encourage – rather than discourage – more illegal immigration into the U.S.
 - The Administration is opposed, in principle, to significant reductions in workplace protections – for both U.S. and foreign workers – afforded under the existing

agricultural guestworker program, as we believe would certainly result from S. 1814.

- The Administration have been and will continue to work hard to address these problems – by simplifying access to the existing agricultural guestworker program, by building new job matching capability for agricultural employment, and by enforcing basic labor standards a which apply in this sector.
- And we are eager to continue working with you to develop effective solutions that will ensure a stable supply of farmworkers while at the same time not pose the risk of serious and lasting harm to some of the most vulnerable workers in our society.

HR 4548 IH

106th CONGRESS

2d Session

H. R. 4548

To establish a pilot program creating a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers, to amend the Immigration and Nationality Act to streamline procedures for the temporary admission and extension of stay of nonimmigrant agricultural workers under the pilot program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 25, 2000

Mr. POMBO (for himself, Mr. CHAMBLISS, Mr. HASTINGS of Washington, Mr. PITTS, Mr. CALVERT, Mr. WEXLER, Mr. MARTINEZ, Mr. RADANOVICH, Mr. NUSSLE, Mr. BOEHNER, Mr. MCCOLLUM, Mr. KINGSTON, Mr. DOOLITTLE, Mr. FOLEY, Mrs. CHENOWETH-HAGE, Mrs. BONO, and Mr. KOLBE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a pilot program creating a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers, to amend the Immigration and Nationality Act to streamline procedures for the temporary admission and extension of stay of nonimmigrant agricultural workers under the pilot program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Agricultural Opportunities Act'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I--AGRICULTURAL WORKER REGISTRIES

Sec. 101. Agricultural worker registries.

TITLE II--H-2C PROGRAM

Sec. 201. Employer applications and assurances.

Sec. 202. Search of registry.

Sec. 203. Issuance of visas and admission of aliens.

Sec. 204. Employment requirements.

Sec. 205. Program for the admission of temporary H-2C workers.

TITLE III--MISCELLANEOUS PROVISIONS

Sec. 301. Enhanced worker protections and labor standards enforcement.

Sec. 302. Commission.

Sec. 303. Regulations.

Sec. 304. Determination and use of user fees.

Sec. 305. Funding for startup costs.

Sec. 306. Report to Congress.

Sec. 307. Effective date.

Sec. 308. Termination of program.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADVERSE EFFECT WAGE RATE-

(A) IN GENERAL- Except as provided in subparagraph (B), the term 'adverse effect wage rate' means the rate of pay for an agricultural occupation that is 5 percent above the prevailing rate of pay for that agricultural occupation in an area of intended employment, if the prevailing rate of pay for the occupation is less than the prior year's average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the Secretary of Agriculture, provided no adverse effect wage rate shall be more than the prior year's average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the Secretary of Agriculture.

(B) EXCEPTION- If the prevailing rate of pay for an activity is a piece rate, task rate, or group rate, and the average hourly earnings of an employer's workers employed in that activity, taken as a group, are less than the prior year's average hourly earnings of field and livestock workers in the State (or region that includes the State), as determined by the Secretary of Agriculture, the term 'adverse effect wage rate' means the prevailing piece rate, task rate, or group rate for the activity plus such an amount as is necessary to increase the average hourly earnings of the employer's workers employed in the activity, taken as a group, by 5 percent, or to the prior's years average hourly earnings for field and livestock workers for the State (or region that includes the State) determined by the Secretary of Agriculture, whichever is less.

(2) AGRICULTURAL EMPLOYMENT- The term 'agricultural employment' means any service or activity that is considered to be agriculture under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986. For purposes of this paragraph, agricultural employment in

the United States includes, but is not limited to, employment under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (as added by this Act).

(3) ELIGIBLE- The term 'eligible' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) with respect to that employment.

(4) EMPLOYER- The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers.

(5) H-2C EMPLOYER- The term 'H-2C employer' means an employer who seeks to hire one or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (as added by this Act).

(6) H-2C WORKER- The term 'H-2C worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (as added by this Act).

(7) JOB OPPORTUNITY- The term 'job opportunity' means a specific period of employment provided by an employer to a worker in one or more agricultural activities.

(8) PREVAILING WAGE- The term 'prevailing wage' means with respect to an agricultural activity in an area of intended employment, the rate of wages that includes the 51st percentile of employees in that agricultural activity in the area of intended employment, expressed in terms of the prevailing method of pay for the agricultural activity in the area of intended employment.

(9) REGISTERED WORKER- The term 'registered worker' means an individual whose name appears in a registry.

(10) REGISTRY- The term 'registry' means an agricultural worker registry established under section 101(a).

(11) SECRETARY- The term 'Secretary' means the Secretary of Labor.

(12) UNITED STATES WORKER- The term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien who is authorized to work in the job opportunity within the United States other than an alien admitted pursuant to section 101(a)(15)(H)(ii)(c) or section 218A of the Immigration and Nationality Act, as in effect on the effective date of this Act.

TITLE I--AGRICULTURAL WORKER REGISTRIES

SEC. 101. AGRICULTURAL WORKER REGISTRIES.

(a) ESTABLISHMENT OF REGISTRIES-

(1) IN GENERAL- The Secretary of Labor shall establish and maintain a system of registries containing a current database of eligible United States workers who seek agricultural employment and the employment status of such workers--

(A) to ensure that eligible United States workers are informed about available agricultural job opportunities and have the right of first refusal for the agricultural jobs available through the registry; and

(B) to provide timely referral of such workers to agricultural job opportunities in the United States.

(2) GEOGRAPHIC COVERAGE-

(A) SINGLE STATE- Each registry established under paragraph (1) shall include the job opportunities in a single State, except that, in the case of New England States, two or more such States may be represented by a single registry in lieu of multiple registries.

(B) REQUESTS FOR INCLUSION- Each State having any group of agricultural producers seeking to utilize the registry shall be represented by a registry, except that, in the case of a New England State, the State shall be represented by the registry covering the group of States of which the State is a part.

(3) COMPUTER DATABASE- The Secretary of Labor may establish the registries as part of the computer databases known as 'America's Job Bank' and 'America's Talent Bank'.

(4) RELATION TO PROCESS FOR IMPORTING H-2C WORKERS- Notwithstanding section 218A of the Immigration and Nationality Act (as added by this Act), no petition to import an alien as an H-2C worker may be approved by the Attorney General unless the H-2C employer--

(A) has applied to the Secretary to conduct a search of the registry of the State in which the job opportunities for which H-2C workers are sought are located; and

(B) has received a report or approved application described in section 203(a)(1).

(b) REGISTRATION-

(1) IN GENERAL- An eligible individual who seeks employment in agricultural work may apply to be included in the registry for the State in which the individual resides. Such application shall include--

(A) the name and address of the individual;

(B) the period or periods of time (including beginning and ending dates) during which the individual will be available for agricultural work;

(C) the registry or registries on which the individual desires to be included;

(D) the specific qualifications and work experience possessed by the applicant;

(E) the type or types of agricultural work the applicant is willing to perform;

(F) such other information as the applicant wishes to be taken into account in referring the applicant to agricultural job opportunities; and

(G) such other information as may be required by the Secretary.

(2) VALIDATION OF EMPLOYMENT AUTHORIZATION- No person may be included on any registry unless the Secretary of Labor has requested and obtained from the Attorney General a certification that the person is authorized to be employed in the United States.

(3) EMPLOYMENT VERIFICATION SYSTEM- The Attorney General shall establish a reliable automated employment eligibility verification system to ensure that an employer who hires an H-2C worker does not hire for employment in the United States an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act).

(4) UNITED STATES WORKERS- United States workers shall have preference in referral by the registry, and may be referred to any job opportunity nationwide for which they are qualified and make a commitment to be available at the time and place needed.

(5) USE OF REGISTRY- Any United States agricultural employer may use the registry.

(6) DISCRETIONARY USE FOR NEW HIRES- An agricultural employer may require prospective employees to register with a registry as a means of assuring that its workers are eligible to be employed in the United States.

(7) WORKERS REFERRED TO JOB OPPORTUNITIES- The name of each registered worker who is referred and accepts employment with an employer shall be classified as inactive on each registry on which the worker is included during the period of employment involved in the job to which the worker was referred, unless the worker reports to the Secretary that the worker is no longer employed and is available for referral to another job opportunity. A registered worker classified as inactive shall not be referred.

(8) REMOVAL OF NAMES FROM A REGISTRY- The Secretary shall remove from the appropriate registry the name of any registered worker who, on

3 separate occasions within a 3-month period, is referred to a job opportunity pursuant to this section, and who declines such referral or fails to report to work in a timely manner.

(9) VOLUNTARY REMOVAL- A registered worker may request that the worker's name be removed from a registry.

(10) REMOVAL BY EXPIRATION- The application of a registered worker shall expire, and the Secretary shall remove the name of such worker from the appropriate registry if the worker has not accepted a job opportunity pursuant to this section within the preceding 12-month period.

(11) REINSTATEMENT- A worker whose name is removed from a registry pursuant to paragraph (8), (9), or (10) may apply to the Secretary for reinstatement to such registry at any time.

(c) CONFIDENTIALITY OF REGISTRIES- The Secretary shall maintain the confidentiality of the registries established pursuant to this section, and the information in such registries shall not be used for any purposes other than those authorized in this Act.

(d) ADVERTISING OF REGISTRIES- The Secretary shall widely disseminate, through advertising and other means, the existence of the registries for the purpose of encouraging eligible United States workers seeking agricultural job opportunities to register. The Secretary of Labor shall ensure that the information about the registry is made available to eligible workers through all appropriate means, including appropriate State agencies, groups representing farm workers, and nongovernmental organizations, and shall ensure that the registry is accessible to growers and farm workers.

TITLE II--H-2C PROGRAM

SEC. 201. EMPLOYER APPLICATIONS AND ASSURANCES.

(a) APPLICATIONS TO THE SECRETARY-

(1) IN GENERAL- Not later than 28 days prior to the date on which an H-2C employer desires to employ an H-2C worker in a temporary or seasonal agricultural job opportunity, the employer shall, before petitioning for the admission of such a worker, apply to the Secretary for the referral of a United States worker or nonimmigrant agricultural worker

through a search of the appropriate registry, in accordance with section 202. Such application shall--

- (A) describe the nature and location of the work to be performed;
- (B) list the anticipated period (expected beginning and ending dates) for which workers will be needed;
- (C) indicate the number of job opportunities in which the employer seeks to employ workers from the registry;
- (D) describe the bona fide occupational qualifications that must be possessed by a worker to be employed in the job opportunity in question;
- (E) describe the wages and other terms and conditions of employment the employer will offer, which shall not be less (and are not required to be more) than those required by this section;
- (F) contain the assurances required by subsection (c);
- (G) specify the foreign country or region thereof from which alien workers should be admitted in the case of a failure to refer United States workers under this Act; and
- (H) be accompanied by the payment of a registry user fee determined under section 304(b)(1)(A) for each job opportunity indicated under subparagraph (C).

(2) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS-

- (A) **IN GENERAL-** An agricultural association may file an application under paragraph (1) for registered workers on behalf of its employer members.
- (B) **EMPLOYERS-** An application under subparagraph (A) shall cover those employer members of the association that the association certifies in its application have agreed in writing to comply with the requirements of this Act.

(b) **AMENDMENT OF APPLICATIONS-** Prior to receiving a referral of workers from a registry, an employer may amend an application under this subsection if the employer's need for workers changes. If an employer makes a material amendment to an application on a date which is later than 28 days prior to the date on which the workers on the amended application are sought to be employed, the Secretary may delay issuance of the report described in section 202(b) by the number of days by which the filing of the amended application is later than 28 days before the date on which the employer desires to employ workers.

(c) **ASSURANCES-** The assurances referred to in subsection (a)(1)(F) are the following:

(1) ASSURANCE THAT THE JOB OPPORTUNITY IS NOT A RESULT OF A LABOR DISPUTE- The employer shall assure that the job opportunity for

which the employer requests a registered worker is not vacant because a worker is involved in a strike, lockout, or work stoppage in the course of a labor dispute involving the job opportunity at the place of employment.

(2) ASSURANCE THAT THE JOB OPPORTUNITY IS TEMPORARY OR SEASONAL-

- (A) **REQUIRED ASSURANCE-** The employer shall assure that the job opportunity for which the employer requests a registered worker is temporary or seasonal.

(B) SEASONAL BASIS- For purposes of this Act, 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.

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

(3) ASSURANCE OF PROVISION OF REQUIRED WAGES AND BENEFITS- The employer shall assure that the employer will provide the wages and benefits required by subsections (a), (b), and (c) of section 204 to all workers employed in job opportunities for which the employer has applied under subsection (a) and to all other workers in the same occupation at the place of employment, and in no case less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the applicable State minimum wage.

(4) ASSURANCE OF EMPLOYMENT- The employer shall assure that the employer will not refuse to employ qualified individuals referred under section 202, and will terminate qualified individuals employed pursuant to this Act only for lawful job-related reasons, including lack of work.

(5) ASSURANCE OF COMPLIANCE WITH LABOR LAWS-

(A) IN GENERAL- An employer who requests registered workers shall assure that, except as otherwise provided in this Act, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer.

(B) LIMITATIONS- The disclosure required under section 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) may be made at any time prior to the time the alien is issued a visa permitting entry into the United States.

(6) ASSURANCE OF ADVERTISING OF THE REGISTRY- The employer shall assure that, from the day an application for workers is submitted under subsection (a), and continuing throughout the period of employment of any job opportunity for which the employer has applied for a worker from the registry, post in a conspicuous place a poster to be provided by the Secretary advertising the availability of the registry.

(7) ASSURANCE OF ADVERTISING OF JOB OPPORTUNITIES- The employer shall assure that not later than 14 days after submitting an application to a registry for workers under subsection (a) the employer will advertise the availability of the job opportunities for which the employer is seeking workers from the registry in a publication in the local labor market that is likely to be patronized by potential farmworkers, if any, and refer interested workers to register with the registry.

(8) ASSURANCE OF CONTACTING FORMER WORKERS- The employer shall assure that the employer has made reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any eligible worker the employer employed during the previous season in the

occupation at the place of intended employment for which the employer is applying for registered workers, and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous worker, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

(9) ASSURANCE OF PROVISION OF WORKERS COMPENSATION- The employer shall assure that if the job opportunity is not covered by the State workers' compensation law, that the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(10) ASSURANCE OF PAYMENT OF ALIEN EMPLOYMENT USER FEE- The employer shall assure that if the employer receives a notice of insufficient workers under section 202(c), such employer shall promptly pay the alien employment user fee determined under section 304(b)(1)(B) for each job opportunity to be filled by an eligible alien as required under such section.

(d) WITHDRAWAL OF APPLICATIONS-

(1) IN GENERAL- An employer may withdraw an application under subsection (a), except that, if the employer is an agricultural association, the association may withdraw an application under subsection (a) with respect to one or more of its members. To withdraw an application, the employer shall notify the Secretary in writing, and the Secretary shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

(2) LIMITATION- An application may not be withdrawn while any alien provided status under this

Act pursuant to such application is employed by the employer.

(3) OBLIGATIONS UNDER OTHER STATUTES- Any obligation incurred by an 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 as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

(e) REVIEW OF APPLICATION-

(1) IN GENERAL- Promptly upon receipt of an application by an employer under subsection (a), the Secretary shall review the application for compliance with the requirements of such subsection.

(2) APPROVAL OF APPLICATIONS- If the Secretary determines that an application meets the requirements of subsection (a), and the employer is not ineligible to apply under paragraph (2), (3), or (4) of section 301(b), the Secretary shall, not later than 7 days after the receipt of such application, approve the application and so notify the employer.

(3) REJECTION OF APPLICATIONS- If the Secretary determines that an application fails to meet 1 or more of the requirements of subsection (a), the Secretary, as expeditiously as possible, but in no case later than 7 days after the receipt of such application, shall--

(A) notify the employer of the rejection of the application and the reasons for such rejection, and provide the opportunity for the prompt resubmission of an amended application; and

(B) offer the applicant an opportunity to request an expedited administrative review or a de novo administrative hearing before an administrative law judge of the rejection of the application.

(4) REJECTION FOR PROGRAM VIOLATIONS- The Secretary shall reject the

application of an employer under this section if--

(A) the employer has been determined to be ineligible to employ workers under section 301(b); or

(B) the employer during the previous two-year period employed H-2C workers or registered workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the assurances made with respect to the employment of United States workers or nonimmigrant workers.

No employer may have applications under this section rejected for more than 3 years for any violation described in this paragraph.

SEC. 202. SEARCH OF REGISTRY.

(a) **SEARCH PROCESS AND REFERRAL TO THE EMPLOYER-** Upon the approval of an application under section 201(e), the Secretary shall promptly begin a search of the registry of the State (or States) in which the work is to be performed to identify registered United States workers with the qualifications requested by the employer. The Secretary shall contact such qualified registered workers and determine, in each instance, whether the worker is ready, willing, and able to accept the employer's job opportunity and will make the affirmative commitment to work for the employer at the time and place needed. The Secretary shall provide to each worker who commits to work for the employer the employer's name, address, telephone number, the location where the employer has requested that employees report for employment, and a statement disclosing the terms and conditions of employment.

(b) **DEADLINE FOR COMPLETING SEARCH PROCESS; REFERRAL OF WORKERS-** As expeditiously as possible, but not later than 7 days before the date on which an employer desires work to begin, the Secretary shall complete the search under subsection (a) and shall transmit to the employer a report containing the name, address, and social security account number of each registered worker who has made the affirmative commitment described in subsection (a) to work for the employer on the date needed, together with sufficient information to enable the employer to establish contact with the worker. The identification of such registered workers in a report shall constitute a referral of workers under this section.

(c) **ACCEPTANCE OF REFERRALS-** H-2C employers shall accept all qualified United States worker referrals who make a commitment to report to work at the time and place needed and to complete the full period of employment offered, on the registry of the State in which the intended employment is located, and the immediately contiguous States. An employer shall not be required to accept more referrals than the number of job opportunities for which the employer applied to the registry.

(d) **NOTICE OF INSUFFICIENT WORKERS-** If the report provided to the employer under subsection (b) does not include referral of a sufficient number of registered workers to fill all of the employer's job opportunities in the occupation for which the employer applied under section 201(a), the Secretary shall indicate in the report the number of job opportunities for which registered workers could not be referred, and shall promptly transmit a copy of the report to the Attorney General and the Secretary of State, by electronic or other means ensuring next day delivery.

(e) **USER FEE FOR CERTIFICATION TO EMPLOY ALIEN WORKERS-** With respect to each job opportunity for which a notice of insufficient workers is made, the Secretary shall require the payment of an alien employment user fee determined under section 304(b)(1)(B).

SEC. 203. ISSUANCE OF VISAS AND ADMISSION OF ALIENS.

(a) IN GENERAL-

(1) NUMBER OF ADMISSIONS- Subject to paragraph (2), the Secretary of State shall promptly issue visas to, and the Attorney General shall admit, as nonimmigrant aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act a sufficient number of eligible aliens designated by the employer to fill the job opportunities of the employer--

(A) upon receipt of a copy of the report described in section 202(b);

(B) upon approval of an application (or copy of an application under subsection (b));

(C) upon receipt of the report required by subsection (c)(1)(B); or

(D) upon receipt of a report under subsection (d).

(2) PROCEDURES- The admission of aliens under paragraph (1) shall be subject to the procedures of section 218A of the Immigration and Nationality Act, as added by this Act.

(b) DIRECT APPLICATION UPON FAILURE TO ACT-

(1) APPLICATION TO THE SECRETARY OF STATE- If the employer has not received a referral of sufficient workers pursuant to section 202(b) or a report of insufficient workers pursuant to section 202(d), by the date that is 7 days before the date on which the work is anticipated to begin, the employer may submit an application for alien workers directly to the Secretary of State, with a copy of the application provided to the Attorney General, seeking the issuance of visas to and the admission of aliens for employment in the job opportunities for which the employer has not received referral of registered workers. Such an application shall include a copy of the employer's application under section 201(a), together with evidence of its timely submission. The Secretary of State may consult with the Secretary of Labor in carrying out this paragraph.

(2) EXPEDITED CONSIDERATION BY SECRETARY OF STATE- The Secretary of State shall, as expeditiously as possible, but not later than 5 days after the employer files an application under paragraph (1), issue visas to, and the Attorney General shall admit, a sufficient number of eligible aliens designated by the employer to fill the job opportunities for which the employer has applied under that paragraph, if the employer has met the requirements of sections 201 and 202. The employer shall be subject to the alien employment user fee determined under section 304(b)(1)(B) with respect to each job opportunity for which the Secretary of State authorizes the issuance of a visa pursuant to paragraph (2).

(c) REDETERMINATION OF NEED-

(1) REQUESTS FOR REDETERMINATION-

(A) IN GENERAL- An employer may file a request for a redetermination by the Secretary of the employer's need for workers if a worker referred from the registry--

(i) is not at the place of employment on the date of need shown on the application, or the date the work for which the worker is needed has begun, whichever is later;

(ii) is not ready, willing, able, or qualified to perform the work required; or

(iii) abandons the employment or is terminated for a lawful job-related reason.

(B) ADDITIONAL AUTHORIZATION OF ADMISSIONS- The Secretary shall expeditiously, but in no case later than 72 hours after a redetermination is requested under subparagraph (A), submit a report to the Secretary of State and the Attorney General providing notice of a need for workers under this subsection, if the employer has met the requirements of sections 201 and 202 and the conditions described in subparagraph (A).

(2) JOB-RELATED REQUIREMENTS- An employer shall not 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 production standards after a 3-day break-in period.

(d) EMERGENCY APPLICATIONS- Notwithstanding subsections (b) and (c), the Secretary may promptly transmit a report to the Attorney General and Secretary of State providing notice of a need for workers under this subsection for an employer--

(1) who has not employed aliens under this Act in the occupation in question in the prior year's agricultural season;

(2) who faces an unforeseen need for workers (as determined by the Secretary); and

(3) with respect to whom the Secretary cannot refer able, willing, and qualified workers from the registry who will commit to be at the employer's place of employment and ready for work within 72 hours or on the date the work for which the worker is needed has begun, whichever is later.

The employer shall be subject to the alien employment user fee determined under section 304(b)(1)(B) with respect to each job opportunity for which a notice of insufficient workers is made pursuant to this subsection.

(e) REGULATIONS- The Secretary of State shall prescribe regulations to provide for the designation of aliens under this section.

SEC. 204. EMPLOYMENT REQUIREMENTS.

(a) REQUIRED WAGES-

(1) IN GENERAL- An employer applying under section 201(a) for workers shall offer to pay, and shall pay, all workers in the occupation or occupations for which the employer has applied for workers from the registry, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the applicable State minimum wage.

(2) PAYMENT OF PREVAILING WAGE DETERMINED BY A STATE EMPLOYMENT SECURITY AGENCY SUFFICIENT- In complying with paragraph (1), an employer may request and obtain a prevailing wage determination from the State employment security agency. If the employer requests such a determination, and pays the wage required by paragraph (1) based upon such a determination, such payment shall be considered sufficient to meet the requirement of paragraph (1).

(3) RELIANCE ON WAGE SURVEY- In lieu of the procedure of paragraph (2), an employer may rely on other information, such as an employer-generated prevailing wage survey that the Secretary determines meets criteria specified by the Secretary in regulations.

(4) ALTERNATIVE METHODS OF PAYMENT PERMITTED-

(A) IN GENERAL- A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate, or other incentive payment method, including a group rate. 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, except that, 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.

(B) COMPLIANCE WHEN PAYING AN INCENTIVE RATE- In the case of an employer that pays a piece rate or task rate or uses any other incentive payment method, including a group rate, the employer shall be considered to be in compliance with any applicable hourly wage requirement if the average of the hourly earnings of the workers, taken as a group, in the activity for which a piece rate, task rate, or other incentive payment, including a group rate, is paid, for the pay period, is at least equal to the required hourly wage, except that no worker shall be paid less than the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

(C) TASK RATE- For purposes of this paragraph, the term 'task rate' means an incentive payment method 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.

(D) GROUP RATE- For purposes of this paragraph, the term 'group rate' means an incentive payment method in which the payment is shared among a group of workers working together to perform the task.

(b) REQUIREMENT TO PROVIDE HOUSING-

(1) IN GENERAL-

(A) REQUIREMENT- An employer applying under section 201(a) for registered workers shall offer to provide housing at no cost (except for charges permitted by paragraph (5)) to all

workers employed in job opportunities to which the employer has applied under that section, and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

(B) LIABILITY- An employer not complying with subparagraph (A) shall be liable to a registered worker for the costs of housing equivalent to the type of housing required to be provided under that subparagraph and shall not be liable for any employment-related obligation solely by reason of such noncompliance.

(2) TYPE OF HOUSING- In complying with paragraph (1), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or, in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation.

(3) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK- The Secretary shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

(4) LIMITATION- Nothing in this subsection shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

(5) CHARGES FOR HOUSING-

(A) UTILITIES AND MAINTENANCE- An employer who provides housing to a worker pursuant to paragraph (1) may charge an amount equal to the fair market value (but not greater than the employer's actual cost) for maintenance and utilities, or such lesser amount as permitted by law.

(B) SECURITY DEPOSIT- An employer who provides housing to workers pursuant to paragraph (1) may require, as a condition for providing such housing, a deposit not to exceed \$50 from workers occupying such housing to

protect against gross negligence or willful destruction of property.

(C) DAMAGES- An employer who provides housing to workers pursuant to paragraph (1) may require 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.

(6) HOUSING ALLOWANCE AS ALTERNATIVE-

(A) IN GENERAL- In lieu of offering housing pursuant to paragraph (1), the employer may provide a reasonable housing allowance during the 3-year period beginning on the effective date of this Act. After the expiration of that period such allowance may be provided only if the requirement of subparagraph (B) is satisfied or, in the case of a certification under subparagraph (B) that is expired, the requirement of subparagraph (C) is satisfied. Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies pursuant to 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) solely by virtue of providing such housing allowance.

(B) CERTIFICATION- The requirement of this subparagraph is satisfied if the Governor of the State certifies to the Secretary that there is adequate housing available in an area of intended employment for migrant farm workers, and nonimmigrant aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

(C) EFFECT OF CERTIFICATION- Notwithstanding the expiration of a certification under subparagraph (B) with respect to an area of intended employment, a housing allowance described in subparagraph (A) may be offered for up to one year after the date of expiration.

(D) AMOUNT OF ALLOWANCE- The amount of a housing allowance under this paragraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State in which the employment occurs, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(c) REIMBURSEMENT OF TRANSPORTATION-

(1) TO PLACE OF EMPLOYMENT- A worker who is referred to a job opportunity under section 202(a), or an alien employed pursuant to this Act, who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the worker's permanent place of residence (or place of last employment, if the worker traveled from such place) to the place of employment to which the worker was referred under section 202(a).

(2) FROM PLACE OF EMPLOYMENT- A worker who is referred to a job opportunity under section 202(a), or an alien employed pursuant to this Act, who completes the period of employment for the job opportunity involved, shall be reimbursed by the employer for the cost of the worker's transportation

and subsistence from the place of employment to the worker's place of residence, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

(3) LIMITATION-

(A) AMOUNT OF REIMBURSEMENT- Except as provided in subparagraph (B), the amount of reimbursement provided under paragraph (1) or (2) to a worker or alien shall not exceed the lesser of--

(i) the actual cost to the worker or alien of the transportation and subsistence involved; or

(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

(B) DISTANCE TRAVELED- No reimbursement under paragraph (1) or (2) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through a housing allowance as provided in subsection (b)(6).

(C) PLACE OF RECRUITMENT- For the purpose of the reimbursement required under paragraph (1) or (2) to aliens admitted pursuant to this Act, the alien's place of residence shall be deemed to be the place where the alien was issued the visa authorizing admission to the United States or, if no visa was required, the place from which the alien departed the foreign country to travel to the United States.

(d) CONTINUING OBLIGATION TO EMPLOY UNITED STATES WORKERS-

(1) IN GENERAL- An employer that applies for registered workers under section 201(a) shall, as a condition for the approval of such application, continue to offer employment to qualified, eligible United States workers who are referred under section 202(b) after the employer receives the report described in section 202(b).

(2) LIMITATION- An employer shall not be obligated to comply with paragraph (1)--

(A) after 50 percent of the anticipated period of employment shown on the employer's application under section 201(a) has elapsed; or

(B) during any period in which the employer is employing no H-2C workers in the occupation for which the United States worker was referred; or

(C) during any period when the Secretary is conducting a search of a registry for workers in the occupation and area of intended employment to which the worker has been referred, or in other occupations in the area of intended employment for which the worker that has been referred is qualified and that offer substantially similar terms and conditions of employment.

(3) LIMITATION ON REQUIREMENT TO PROVIDE HOUSING- Notwithstanding any other provision of this Act, an employer to whom a registered worker is referred pursuant to paragraph (1) may provide a reasonable housing allowance to such referred worker in lieu of providing housing if the employer does not have sufficient housing to accommodate the referred worker and all other workers for whom the employer is providing housing or has committed to provide housing.

(4) REFERRAL OF WORKERS DURING 50-PERCENT PERIOD- The Secretary shall make all reasonable efforts to place a registered worker in an open job acceptable to the worker, including available jobs not listed on the registry, before referring such worker to an employer for a job opportunity already filled by, or committed to, an alien admitted pursuant to this Act.

SEC. 205. PROGRAM FOR THE ADMISSION OF TEMPORARY H-2C WORKERS.

(a) ESTABLISHMENT OF NEW NONIMMIGRANT CATEGORY FOR PILOT PROGRAM AGRICULTURAL WORKERS- Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended--

(1) by striking 'or (b)' and inserting '(b)'; and

(2) by adding at the end the following:

' or (c) 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;'

(b) NO FAMILY MEMBERS PERMITTED- Section 101(a)(15)(H) of the Immigration and Nationality Act (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)(c))'.

(c) ALTERNATIVE AGRICULTURAL TEMPORARY WORKER PROGRAM-

(1) IN GENERAL- The Immigration and Nationality Act is amended by inserting after section 218 the following:

'ALTERNATIVE AGRICULTURAL TEMPORARY WORKER PROGRAM

'SEC. 218A. (a) PROCEDURE FOR ADMISSION OF ALIENS WHO ARE OUTSIDE THE UNITED STATES-

'(1) CRITERIA FOR ADMISSIBILITY-

'(A) IN GENERAL- An alien described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act shall be admissible under this section if the alien is designated pursuant to section 203 of the Agricultural Opportunities Act, otherwise admissible under this Act, and the alien is not ineligible under subparagraph (B) or

(C).

`(B) DISQUALIFICATION- An alien shall be ineligible for admission to the United States or being provided status under this section if the alien has, at any time during the past 5 years--

`(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) 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.

`(C) FOREIGN RESIDENCE REQUIREMENT- No person admitted under section 101(a)(15)(H)(ii)(c) or acquiring such status after admission shall be eligible to apply for another nonimmigrant visa under such section until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least 2 months following departure from the United States.

`(D) BURDEN OF PROOF ON UNLAWFUL PRESENCE- Notwithstanding section 291, in the case of an alien who has not previously been admitted to the United States under this section, is not ineligible under subparagraph (B) or (C), is described in subparagraph (A), and is seeking admission under this section, the alien shall not be considered inadmissible under section 212(a)(9)(B) unless the alien's inadmissibility is established by a preponderance of the evidence.

`(2) PERIOD OF ADMISSION- The alien shall be admitted for the period requested by the employer not to exceed 10 months, or the ending date of the anticipated period of employment on the employer's application for registered workers, whichever is less.

`(3) ABANDONMENT OF EMPLOYMENT-

`(A) IN GENERAL- An alien admitted or provided status under this section who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an alien described in section 101(a)(15)(H)(ii)(c) and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

`(B) REPORT BY EMPLOYER- The employer (or association acting as agent for the employer) shall notify the Attorney General within 7 days of an alien admitted or provided status under this Act pursuant to an application to the Secretary of Labor under section 201 of the Agricultural Opportunities Act who prematurely abandons the alien's employment.

`(C) REMOVAL BY THE ATTORNEY GENERAL- The Attorney General shall promptly remove from the United States aliens admitted pursuant to section 101(a)(15)(H)(ii)(c) who have failed to maintain nonimmigrant status or who have otherwise violated the terms of a visa issued under this title.

`(D) VOLUNTARY TERMINATION- Notwithstanding the provisions of subparagraph (A), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

`(E) REPLACEMENT OF ALIEN- Upon presentation of the notice to the attorney General required by subparagraph (B), the Secretary of State shall promptly issue a

visa to, and the Attorney General shall admit, an eligible alien designated by the employer to replace an alien who abandons or prematurely terminates employment.

“(4) IDENTIFICATION DOCUMENT AND IDENTIFICATION SYSTEM-

“(A) IN GENERAL- Each alien admitted under this section shall, upon receipt of a visa, be given an identification and employment eligibility document to verify eligibility for employment in the United States and verify such person's proper identity.

“(B) REQUIREMENTS- No identification and employment eligibility document may be issued and no identification system may be implemented which does not meet the following requirements:

“(i) The document and system shall be capable of reliably determining whether--

“(I) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment,

“(II) the individual whose eligibility is being verified is claiming the identity of another person, and

“(III) the individual whose eligibility is being verified has been properly admitted under this section.

“(ii) The document shall be in the form that is resistant to counterfeiting and to tampering.

“(iii) The document and system shall--

“(I) be compatible with other Immigration and Naturalization Service databases and other Federal government databases for the purpose of excluding aliens from benefits for which they are not eligible and to determine whether the alien is illegally present in the United States, and

“(II) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

“(b) EXTENSION OF STAY OF ALIENS IN THE UNITED STATES-

“(1) EXTENSION OF STAY- If an employer with respect to whom a report or application described in section 203(a)(1) of the Agricultural Opportunities Act has been submitted seeks to employ an alien who has acquired status under this section and who is lawfully present in the United States, the employer shall file with the Attorney General an application for an extension of the alien's stay or a change in the alien's authorized employment. The application shall be accompanied by a copy of the appropriate report or application described in section 203 of the Agricultural Opportunities Act.

“(2) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY- An application may not be filed to extend an alien's stay if the granting of the application would permit the alien's period of physical presence in the United States, under the authority of the most recent nonimmigrant visa (or other document providing nonimmigrant status) issued under section 101(a)(15)(H)(ii)(c), to exceed 12 months (disregarding any period of continuous physical absence from the United States exceeding 2 months during which the alien appears before a consular officer outside of the United States for the purpose of

verifying the alien's identity by presenting the identification and employment eligibility document provided under subsection (a)(4)).

`(3) WORK AUTHORIZATION UPON FILING AN APPLICATION FOR EXTENSION OF STAY- An employer may begin employing an alien who is present in the United States who has acquired status under this Act on the day the employer files an application for extension of stay. 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 the date of sending and receipt of the application. The employer shall provide a copy of the employer's application to the alien, who shall keep the application with the alien's identification and employment eligibility document as evidence that the application has been filed and that the alien is authorized to work in the United States. Upon approval of an application for an extension of stay or change in the alien's authorized employment, the Attorney General shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the application.

`(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY CARD- An expired identification and employment eligibility document, together with a copy of an application for extension of stay or change in the alien's authorized employment that complies with the requirements of paragraph (1), 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 document shall be acceptable.

`(5) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS- In the case of a nonimmigrant granted an extension of stay under this section, such extension may not permit the alien's total period of physical presence in the United States, under the authority of the nonimmigrant visa (or other document providing nonimmigrant status) to which the extension applies, to exceed 12 months (disregarding any period of continuous physical absence from the United States exceeding 2 months during which the alien

appears before a consular officer outside of the United States for the purpose of verifying the alien's identity by presenting the identification and employment eligibility document provided under subsection (a)(4)).'.

(2) CLERICAL AMENDMENT- The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 218 the following new item:

`Sec. 218A. Alternative agricultural temporary worker program.'.

(d) RANGE PRODUCTION OF LIVESTOCK- Nothing in this title shall preclude the Secretary of Labor and the Attorney General from continuing to apply special procedures to the employment, admission, and extension of aliens in the range production of livestock.

(e) VERIFICATION OF RETURN OF WORKERS TO COUNTRY OF ORIGIN- The Attorney General shall establish a program to verify that H-2C workers are departing from the United States after the expiration of their authorized period of stay in the United States.

TITLE III--MISCELLANEOUS PROVISIONS

SEC. 301. ENHANCED WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY-

(1) INVESTIGATION OF COMPLAINTS-

(A) AGGRIEVED PERSON OR THIRD PARTY 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 section 201 or an employer's misrepresentation of material facts in an application under that section, or violation of the provisions described in subparagraph (B). Complaints may be filed by any aggrieved person or any organization (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, as the case may be. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) EXPEDITED INVESTIGATION OF SERIOUS CHILD LABOR, WAGE, AND HOUSING VIOLATIONS- The Secretary shall complete an investigation and issue a written determination as to whether or not a violation has been committed within 10 days of the receipt of a complaint pursuant to subparagraph (A) if there is reasonable cause to believe that any of the following serious violations have occurred:

(i) A violation of section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 212(c)).

(ii) A failure to make a wage payment, except that complaints alleging that an amount less than the wages due has been paid shall be handled pursuant to subparagraph (A).

(iii) A failure to provide the housing allowance required under section 204(b)(6).

(iv) Providing housing pursuant to section 204(b)(1) that fails to comply with standards under section 204(b)(2) and which poses an immediate threat of serious bodily injury or death to workers.

(C) STATUTORY CONSTRUCTION- Nothing in this Act limits the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers or, in the absence of a complaint under this paragraph, under this Act.

(2) WRITTEN NOTICE OF FINDING 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 subsection (b) 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.

(3) ABILITY OF ALIEN WORKERS TO CHANGE EMPLOYERS-

(A) IN GENERAL- Pending the completion of an investigation pursuant to paragraph (1)(A), the Secretary may permit the transfer of an aggrieved person who has filed a complaint under such paragraph to an employer that--

(i) has been approved to employ workers under this Act; and

(ii) agrees to accept the person for employment.

(B) REPLACEMENT WORKER- An aggrieved person may not be transferred under subparagraph (A) until such time as the employer from whom the person is to be transferred receives a requested replacement worker referred by a registry pursuant to section 202 of this Act or provided status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act.

(C) LIMITATION- An employer from whom an aggrieved person has been transferred under this paragraph shall have no obligation to reimburse the person for the cost of transportation prior to the completion of the period of employment referred to in section 204(c).

(D) VOLUNTARY TRANSFER- Notwithstanding this paragraph, an employer may voluntarily agree to transfer a worker to another employer that--

(i) has been approved to employ workers under this Act; and

(ii) agrees to accept the person for employment.

(b) REMEDIES-

(1) 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 alien described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act 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.

(2) FAILURE TO PAY WAGES- Upon a final determination that the employer has failed to pay the wages required under this Act, the Secretary may assess a civil money penalty up to \$1,000 for each person for whom the employer failed to pay the required wage, and may recommend to the Attorney General the disqualification of the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act for a period of time determined by the Secretary not to exceed 1 year.

(3) OTHER VIOLATIONS- If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an application under section 201(a) has--

(A) filed an application that misrepresents a material fact;

(B) failed to meet a condition specified in section 201; or

(C) committed a serious violation of subsection (a)(1)(B),

the Secretary may seek a cease and desist order and assess a civil money penalty not to exceed \$1,000 for each violation and may recommend to the Attorney General the disqualification of the employer if the Secretary finds it to be a substantial misrepresentation or violation of the requirements for the employment of any United States workers or aliens described in section 101(a)(15)(ii)(c) of the Immigration and Nationality Act for a period of time determined by the Secretary not to exceed 1 year. In determining the amount of civil money penalty to be assessed or whether to recommend disqualification of the employer, 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.

(4) EXPANDED PROGRAM DISQUALIFICATION-

(A) 3 YEARS FOR SECOND VIOLATION- Upon a second final determination that an employer has failed to pay the wages required under this Act, or a second final determination that the employer has committed another substantial violation under paragraph (3) in the same category of violations, with respect to the same alien, the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act for a period of 3 years.

(B) PERMANENT FOR THIRD VIOLATION- Upon a third final determination that an employer has failed to pay the wages required under this section or committed other substantial violations under paragraph (3), the Secretary shall report such determination to the Attorney General, and the Attorney General shall disqualify the employer from any subsequent employment of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act.

(c) ROLE OF ASSOCIATIONS-

(1) VIOLATION BY A MEMBER OF AN ASSOCIATION- An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of this Act, as though the employer had filed the application 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.

(2) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER- If an association filing an application 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 subsection (b), no individual member of such association may be the beneficiary of the services of an alien described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act in an occupation in which such alien was employed by the association during the period such disqualification is in effect, unless such member files an application as an individual employer or such application 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 Act.

(d) STUDY OF AGRICULTURAL LABOR STANDARDS AND ENFORCEMENT-

(1) COMMISSION ON HOUSING MIGRANT AGRICULTURAL WORKERS-

(A) ESTABLISHMENT- There is established the Commission on Housing Migrant Agricultural Workers (in this paragraph referred to as the 'Commission').

(B) COMPOSITION- The Commission shall consist of 12 members, as follows:

(i) Four representatives of agricultural employers and one representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

(ii) Four representatives of agricultural workers and one representative of the Department of Labor, each appointed by the Secretary of Labor.

(iii) One State or local official knowledgeable about farmworker housing and

one representative of Housing and Urban Development, each appointed by the Secretary of Housing and Urban Development.

(C) FUNCTIONS- The Commission shall conduct a study of the problem of in-season housing for migrant agricultural workers.

(D) INTERIM REPORTS- The Commission may at any time submit interim reports to Congress describing the findings made up to that time with respect to the study conducted under subparagraph (C).

(E) FINAL REPORT- Not later than 3 years after the date of enactment of this Act, the Commission shall submit a report to Congress setting forth the findings of the study conducted under subparagraph (C).

(F) TERMINATION DATE- The Commission shall terminate upon filing its final report.

(2) STUDY OF RELATIONSHIP BETWEEN CHILD CARE AND CHILD LABOR- The Secretaries of Labor, Agriculture, and Health and Human Services shall jointly conduct a study of the issues relating to child care of migrant agricultural workers. Such study shall address issues related to the adequacy of educational and day care services for migrant children and the relationship, if any, of child care needs and child labor violations in agriculture. An evaluation of migrant and seasonal Head Start programs (as defined in section 637(12) of the Head Start Act) as they relate to these issues shall be included as a part of the study.

(3) STUDY OF FIELD SANITATION- The Secretary of Labor and the Secretary of Agriculture shall jointly conduct a study regarding current field sanitation standards in agriculture and evaluate alternative approaches and innovations that may further compliance with such standards.

(4) STUDY OF COORDINATED AND TARGETED LABOR STANDARDS ENFORCEMENT- The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study of the most persistent and serious labor standards violations in agriculture and evaluate the most effective means of coordinating enforcement efforts between Federal and State officials. The study shall place primary emphasis on the means by which Federal and State authorities, in consultation with representatives of workers and agricultural employers, may develop more effective methods of targeting resources at repeated and egregious violators of labor standards. The study also shall consider ways of facilitating expanded education among agricultural employers and workers regarding compliance with labor standards and evaluate means of broadening such education on a cooperative basis among employers and workers.

(5) REPORT- Not later than 3 years after the date of enactment of this Act, with respect to each study required to be conducted under paragraphs (2) through (4), the Secretary or group of Secretaries required to conduct the study shall submit to Congress a report setting forth the findings of the study.

SEC. 302. COMMISSION.

The Attorney General is authorized and requested to establish a commission between the United States and each country not less than 10,000 nationals of which are nonimmigrant aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)). Such commission shall provide a forum to the governments involved to discuss matters of mutual concern regarding the program for the admission of aliens under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act.

SEC. 303. REGULATIONS.

- (a) **REGULATIONS OF THE ATTORNEY GENERAL-** The Attorney General shall consult with the Secretary and the Secretary of Agriculture on all regulations to implement the duties of the Attorney General under this Act.
- (b) **REGULATIONS OF THE SECRETARY OF STATE-** The Secretary of State shall consult with the Attorney General, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act.
- (c) **REGULATIONS OF THE SECRETARY OF LABOR-** The Secretary shall consult with the Secretary of Agriculture and shall obtain the approval of the Attorney General on all regulations to implement the duties of the Secretary under this Act.
- (d) **DEADLINE FOR ISSUANCE OF REGULATIONS-** All regulations to implement the duties of the Attorney General, the Secretary of State, and the Secretary of Labor shall take effect on the effective date of this Act.

SEC. 304. DETERMINATION AND USE OF USER FEES.

(a) **SCHEDULE OF FEES-** The Secretary of Labor shall establish and periodically adjust a schedule for the registry user fee and the alien employment user fee imposed under this Act, and a collection process for such fees from employers participating in the programs provided under this Act. Such fees shall be the only fees chargeable to employers for services provided under this Act.

(b) DETERMINATION OF SCHEDULE-

(1) **IN GENERAL-** The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in an employer's application under section 201(a)(1)(C) and sufficient to provide for the reimbursement of the direct costs of providing the following services:

(A) **REGISTRY USER FEE-** Services provided through the agricultural worker registries established under section 101(a), including registration, referral, and validation, but not including services that would otherwise be provided by the Secretary of Labor under related or similar programs if such registries had not been established.

(B) **ALIEN EMPLOYMENT USER FEE-** Services related to an employer's authorization to employ eligible aliens pursuant to this Act, including the establishment and certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE-

(A) **IN GENERAL-** In establishing and adjusting such schedule, the Secretary of Labor shall comply with Federal cost accounting and fee setting standards.

(B) **PUBLICATION AND COMMENT-** The Secretary of Labor shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment will be sought and a final rule issued.

(c) USE OF PROCEEDS-

(1) **IN GENERAL-** All proceeds resulting from the payment of registry user fees and alien

employment user fees shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretaries of Labor, State, and Agriculture, and the Attorney General for the costs of carrying out section 218A of the Immigration and Nationality Act and the provisions of this Act.

(2) **LIMITATION ON ENFORCEMENT COSTS-** In making a determination of reimbursable costs under paragraph (1), the Secretary of Labor shall provide that reimbursement of the costs of enforcement under section 301 shall not exceed 10 percent of the direct costs of the Secretary described in subparagraphs (A) and (B) of subsection (b)(1).

SEC. 305. FUNDING FOR STARTUP COSTS.

If additional funds are necessary to pay the startup costs of the agricultural worker registries established under section 101(a), such costs may be paid out of amounts available to Federal or State governmental entities under the Wagner-Peyser Act (29 U.S.C. 49 et seq.). Proceeds described in section 304(c) may be used to reimburse the use of such available amounts.

SEC. 306. REPORT TO CONGRESS.

(a) **REQUIREMENT-** Not later than 4 years after the effective date under section 307, the Resources, Community and Economic Development Division, and the Health, Education and Human Services Division, of the Office of the Comptroller General of the United States shall jointly prepare and transmit to the Committee on the Judiciary and the Committee on Agriculture of the House of Representatives and the Committee on the Judiciary and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of a review of the implementation of and compliance with this Act. The report shall address--

- (1) whether the program has ensured an adequate and timely supply of qualified, eligible workers at the time and place needed by employers;
- (2) whether the program has ensured that aliens admitted under this program are employed only in authorized employment, and that they timely depart the United States when their authorized stay ends;
- (3) whether the program has ensured that participating employers comply with the requirements of the program with respect to the employment of United States workers and aliens admitted under this program;
- (4) whether the program has ensured that aliens admitted under this program are not displacing eligible, qualified United States workers or diminishing the wages and other terms and conditions of employment of eligible United States workers;
- (5) to the extent practicable, compare the wages and other terms of employment of eligible United States workers and aliens employed under this program with the wages and other terms of employment of agricultural workers who are not authorized to work in the United States;
- (6) whether the housing provisions of this program ensure that adequate housing is available to workers employed under this program who are required to be provided housing or a housing allowance;
- (7) recommendations for improving the operation of the program for the benefit of participating employers, eligible United States workers, participating aliens, and governmental agencies involved in administering the program; and
- (8) recommendations for the continuation or termination of the program under this Act.

(b) **ADVISORY BOARD-** There shall be established an advisory board to be composed of--

(1) four representatives of agricultural employers to be appointed by the Secretary of Agriculture, including individuals who have experience with the H-2C program; and

(2) four representatives of agricultural workers to be appointed by the Secretary of Labor, including individuals who have experience with the H-2C program,

to provide advice to the Comptroller General in the preparation of the reports required under subsection (a).

SEC. 307. EFFECTIVE DATE.

(a) **IN GENERAL-** This Act and the amendments made by this Act shall take effect on the date that is 1 year after the date of the enactment of this Act.

(b) **REPORT-** Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress a report that described the measures being taken and the progress made in implementing this Act.

SEC. 308. TERMINATION OF PROGRAM.

This Act, and the amendments made by this Act, shall cease to be effective on the date that is 3 years after the effective date under section 307(a).

END



Gohl Earl <gohl-earl@dol.gov>
06/13/2000 01:12:45 PM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: testimony

In regard to the H2a testimony and the use of a veto threat....the arguments in support of having a veto threat in the testimony are:

- * both the growers and the advocates will see the lack of a veto threat as a change in Administration position. The last communications coming from the Administration on this issue was a veto threat.
- * the Administration establishes a clear position on ag guestworkers for this Congress.....so when the House goes to mark up or the Senate considers an H2a amendment on the floor, the Administration will have already established a position.
- * an early and clear position gives us the ability to work the Senate so that when H2a is offered we can be more successful at holding down the numbers



Gohl Earl <gohl-earl@dol.gov>
06/13/2000 05:18:58 PM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: last time

On March 11, 1998 Lamar Smith introduced Hr 3410 which is virtually the same guestworker bill as HR 4548 of this session. On March 12, 1998 without a hearing, the Subcommittee marked up HR 3410 and the Secretary issued a letter w/ a veto threat. We put forward a veto threat within 24 hours after the bill was introduced and at the very first occasion when there was any public debate on the bill. There was no hearing on HR 3410, and there was no further consideration of HR 3410.

i will fax the letter over.

**STATEMENT OF JOHN FRASER
Deputy Wage and Hour Administrator
Employment Standards Administration
United States Department of Labor**

before the

**SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE**

June 15, 2000

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to present the Administration's views on H.R. 4548, which would establish a new 3-year agricultural guestworker program as an alternative to the existing H-2A temporary nonimmigrant agricultural worker program under the Immigration and Nationality Act.

Mr. Chairman, I would like to briefly describe current trends in the agricultural economy and workforce that frame the context in which this bill should be considered. I will then present some of our specific objections to H.R. 4548 and suggest some alternative proposals for stabilizing the agricultural labor market that will reduce farmers' risks while simultaneously improving the lives of the Nation's farm workers.

State of the Agricultural Economy and Labor Market

U.S. agriculture is benefiting economically from increased access to global markets, but farm workers are not sharing in those benefits. Production of labor-intensive commodities like fruits and vegetables has increased and global demand for American produce continues to grow, but farm worker earnings and working conditions are either stagnant or in decline.

The Administration supports policies that will:

- promote greater predictability and reliability in both the labor supply and availability of work;
- improve farm workers' wages, working and living conditions;
- better connect authorized workers to employment opportunities;
- increase the number of weeks farm workers are employed each year; and,
- in turn, increase farm workers' earnings.

The Congress has heard testimony that labor-intensive agriculture in the U.S. – including tobacco, vegetables, fruits, nuts, berries, horticultural and greenhouse commodities – continues to undergo a dramatic transformation. U.S. farm receipts for fruit and horticultural specialty crops have more than doubled – and, for vegetables, more than tripled – during the last two decades.

Labor-intensive agriculture underwent explosive growth between 1987 and 1997. Domestic and foreign demand for its commodities has increased substantially, and technological developments in transportation and storage along with changes in consumer tastes and preferences that favor fruits and vegetables have facilitated the expansion. This market expansion has been accompanied by changes in the structure of the labor-intensive agricultural sector. Fewer and fewer farms are growing these commodities on more and more acreage.

But while overall production of labor-intensive agricultural commodities is up -- as measured by acreage, production and the market value of sales -- as noted earlier, the number of employed farm workers has remained relatively stable. Recent research reports indicate that the total number of hired and contract farm workers in the U.S. decreased slightly between 1990 and 1998, but agriculture's use of hired labor has remained relatively constant over the last ten years -- at an estimated 1.8 million workers.

Labor in agriculture has become more productive. And the increased output was apparently accomplished with little investment in mechanized agriculture. But this increased productivity has not resulted in higher wages. Rather, according to both the National Agricultural Worker Survey (NAWS) and the National Agricultural Statistics Survey (NASS), farm worker wages declined over the last decade in real terms.

While the level of employment has remained stable, the NAWS data from 1989 through 1998 reveal that the demographic and employment characteristics of farm workers have changed substantially. Compared to 1988, farm workers in 1998:

- found fewer weeks of employment;
- earned less per hour in real terms;
- continued to have poverty level earnings; and
- were less likely to utilize public assistance/programs designed to help ameliorate the effects of poverty on the working poor.

NAWS findings of falling real wages, less employment, and low annual incomes of U.S. crop workers are all indicators of a national oversupply of farm labor. These same factors contribute to the higher turnover in the agricultural labor market, as workers exit farm labor in search of jobs paying higher wages, offering more hours of work, and offering more steady and predictable employment. Instability in this labor market is due, in part, to agriculture's failure to create the working and living conditions necessary to attract and retain skilled, experienced and authorized workers. Over the last decade, agriculture's ability to retain workers has dwindled. The agricultural sector has replaced many authorized workers with unauthorized workers. Today, only about one-half of the agricultural labor force is authorized to work in the U.S.

Examining farm worker wage, earnings and poverty trends more generally from 1989 to 1998, one finds that over the period of the 1990s -- with a strong economy and greater, increasingly widespread prosperity -- farm worker wages have lost ground relative to those of workers in the private, non-farm sector. Between 1989 and 1998, the average nominal hourly wage of farm

workers rose 18 percent (from \$5.24 to \$6.18), while the wages of workers in the private non-farm sector increased by 32 percent. Consequently, farm workers went from earning 54 percent of the average hourly wage for all production workers in 1989 to earning just 48 percent of that wage in 1998. Adjusted for inflation, the average real hourly wage paid to farm workers -- in 1998 dollars -- dropped from \$6.89 to \$6.18 -- over a 10 percent loss in purchasing power.

Compounding the effect of falling real wages is the inability of farm workers to find enough employment. Over the ten-year period 1989-1998, the amount of agricultural employment that farm workers were able to obtain per year declined. In 1989-1990, farm workers were employed, on average, 29.3 weeks per year in agriculture. In 1997-1998, the average number of weeks dropped to 24.9. Even during months in which the demand for farm labor peaks, many farm workers are not employed in agriculture -- in July 1997, only 56 percent of all crop workers had a farm job. Earning less per hour (in real wages) and working fewer weeks per year, it is not surprising that the median personal and family incomes of farm workers have remained low since 1989-1990.

Instability in the farm labor market is also reflected in other changes in the demographic and employment characteristics of farm workers. The market is increasingly young, and migrant. These demographic changes have occurred at the same time farm worker employment, wages and earnings have declined:

- the average number of years working for the current agricultural employer has declined;
- the percentage of workers employed seasonally, rather than full-time, increased;
- use of farm labor contractors in labor-intensive agricultural commodities increased; and
- other employer-provided benefits that could help stabilize the workforce and induce workers to remain in the industry -- such as paid holidays and vacations, health insurance and paid transportation -- are also in decline.

All of the above trends paint a picture of the conditions under which farm workers live and work. Low wages, sub-poverty annual earnings, significant periods of un- and under-employment, low utilization of safety net programs all add up to a labor force in significant economic distress. In addition, the continued oversupply of workers will not allow the market conditions necessary to give farm workers sufficient labor market leverage to substantially change these conditions.

Views on H.R. 4548

Mr. Chairman, it is the Administration's view that H.R. 4548 will not ameliorate these serious problems in the agricultural labor market, but rather -- if enacted -- it would almost certainly make them worse. The Administration has been and remains opposed to establishing a new agricultural guestworker program that further increases the supply of agricultural workers and reduces their legal protections.

We have raised serious concerns that legislation like H.R. 4548 would almost certainly:

- * increase illegal immigration;
- * reduce work opportunities for U.S. citizens and other legal residents; and
- * depress wages and work standards for American workers.

The Administration's position on this issue is consistent with the conclusions of two Congressionally-created commissions -- the bipartisan Commission on Immigration Reform, chaired by the late Barbara Jordan, and the Commission on Agricultural Workers, which examined this issue in the early 1990s -- as well as the more recent Binational Study on Migration, a joint study by highly respected scholars from both Mexico and the U.S. which issued its report in September 1997.

Mr. Chairman, let me explain the Administration's opposition to H.R. 4548 by posing and answering four questions that we would urge the Congress to carefully consider. I believe the answers we present demonstrate that H.R. 4548's proposed new guestworker program will have the harmful effects we would expect and is, therefore, not the solution to problems besetting the agricultural labor market.

First, would H.R. 4548 provide growers the stable labor supply they seek? H.R. 4548 would permit admission of an unlimited number of new "H-2C" foreign agricultural guestworkers without any reliable determination that a labor shortage actually exists. So the answer to this question may be "yes" in the short-term and for some growers. Growers currently using the H-2A program would likely move over to the new program envisioned by H.R. 4548 because unquestionably their labor costs would be lower. And many other growers may want to use the program as well.

Making use of the new H-2C program even more appealing is the fact that this program, for the first time -- and in contrast to all other employment situations in the country, would shift the burden of finding workers from the employer to the government. Agricultural employers desiring to hire foreign guestworkers would have no obligation to find U.S. workers on their own behalf except to apply to the government-operated registry, advertise (on behalf of the registry) in a local publication, and make "reasonable efforts" to contact workers employed in the previous season. Under H.R. 4548, the government would only have 21 days to find an employer's workers, may only search for such workers registered in the State where the work is to be performed, and must contact each potentially qualified worker to obtain a commitment to accept the offered job. Failure to overcome the obstacles to effectively operating an electronic job matching service in the agricultural labor market would allow the employer to obtain its workforce abroad.

The second question is whether H.R. 4548 will protect U.S. agricultural workers from unfair competition? It would not. Domestic farm workers will see their employment opportunities reduced and farm workers generally will see their wages, benefits and working conditions undermined because of the inferior protections provided by the proposed H-2C program.

As noted, the bill contains no requirement for employers to develop and implement an

affirmative or effective domestic farm worker recruitment plan. Nor does it ensure U.S. farm workers their current right to be hired by employers using H-2A workers if they make themselves available for work. Unless they are referred through the registry at least a week ahead of time, those appearing in person for the work offered by the employer could be turned away because this legislation would drop the “50 percent rule” requiring the hiring of any U.S. worker who makes him/herself available for work during the first half of the employer’s contract period. Moreover, farm workers would also lose their guarantee of pay for at least three-quarters of the work hours/days offered in the employer’s contract and could be terminated without pay at any time for “lack of work.”

U.S. farm workers would also be discouraged from accepting farm labor jobs because of lower wages, standards and protections. Farm workers would lose rights under current law and no longer be guaranteed any wage higher than the Federal or State minimum wage -- unless the employer decides to pay by-the-hour and offers a higher hourly wage. Any employer would have to promise to pay the locally prevailing wage or the (new) adverse effect wage rate – that is, the locally prevailing wage plus up to 5 percent. But any employer offering any “incentive payment method” – that is, piece-rate, task-rate, or group-rate – would only have to meet this obligation on average for the group of workers as a whole; no individual worker would be guaranteed any higher minimum wage.

Under the current H-2A program, each H-2A worker and similarly-employed U.S. worker must be paid the higher of the State or Federal minimum wage, the locally prevailing wage, or the “adverse effect wage rate” -- which is the average State or regional wage for farm jobs. With the disparity between pay requirements in current law and H.R. 4548, tens of thousands of farm workers would be very likely to experience pay cuts. For example, we estimate that in North Carolina alone, more than ten thousand farm workers – H-2A and similarly-employed U.S. workers – could experience a nearly 20 percent pay cut under the reduced minimum wage provisions of the proposed H-2C program.

And these are not the only ways in which the bill would provide cost savings for growers by taking money from the pockets of farm workers. For example, no additional farm workers would necessarily benefit from employer-provided housing, and some workers who so benefit now might lose their housing since their employers could substitute a voucher for housing. Moreover, compared to current law, the proposed new program would shift travel costs from growers to low-wage workers. For example, in a change from current law, workers would not have to be reimbursed for travel costs at all if they travel less than 100 miles or if -- for some reason -- they do not reside in housing provided directly or secured through a voucher. Furthermore, domestic farm workers hired through the registry would not be entitled to receive prevailing benefits and working conditions as required under current law.

The third question is whether H.R. 4548 will adequately protect foreign agricultural workers from abuse? Again, the answer is clearly “no.” For the reasons just discussed with regard to domestic farm workers, foreign workers admitted under the H-2C program would lose rights under current law with regard to wages paid and other benefits. They would also suffer from

reduced housing benefits. Significantly, in this regard, the lack of rural housing and the strong incentive to foreign workers to remit as much of their earnings as possible for their families (to the extent that any housing voucher takes the form of or can be converted to cash), means that more farm workers are likely to be without any housing while they work in the U.S. with adverse impacts on the local communities.

Also, instead of being fully reimbursed for travel expenses, the new H-2C workers would at most only have to be reimbursed for their travel from the border to the place of employment if they complete 50 percent of the contract period, and back to the border if they complete the contract. The current H-2A program requires reimbursement from/to the place where the worker was recruited. Again, under H.R. 4548, there need be no travel reimbursement for distances under 100 miles. Also, like domestic farm workers, the H-2C workers would not be entitled to receive prevailing benefits and working conditions.

Finally, we must consider how H.R. 4548 will affect illegal immigration to the U.S.? The substantially reduced worker benefits and protections afforded under the new H-2C program will provide powerful incentives for many more U.S. agricultural employers to actively reach out to recruit labor from abroad. Experts and academics who study migration flows generally agree that guestworker programs establish migratory networks and paths that increase illegal immigration. Guestworkers tend to come and stay in the receiving country. The program resulting from H.R. 4548 would be no different. And it would make it easier for foreign agricultural workers admitted under the program to become illegal workers by overstaying in this country. And it appears that H.R. 4548 would put the employer under no obligation to ensure the workers it imported leave the U.S. upon completion of the work.

In sum, the cost of this proposed new H-2C program could be enormous to the Nation. In our view, this proposed new guestworker program would exacerbate the Nation's problem with illegal immigration, adversely impact the employment opportunities, wages and working conditions of U.S. farm workers, and increase -- not reduce -- the opportunity for abuse of foreign agricultural workers. The current H-2A program can provide growers the supply of workers they need, while moderating the risk of the harmful side effects of this proposal.

Policy Recommendations for Stabilizing the Agricultural Labor Market

Mr. Chairman, there are ways to stabilize the agricultural labor market. In the short term, we need to implement policies that will address the known problems in the labor market. For the longer term, we need to normalize worker protections and working conditions in agriculture, provide greater benefits for workers, increase investments in research and development, and increase mechanization. Among other approaches, we believe these recommendations can establish a foundation for progress:

Short-Term Policy Recommendations

- Congress should raise the minimum wage by \$1 an hour over two years. This increase would

make a significant difference in the ability of many migrant and seasonal farm workers who work for wages at or near the minimum wage to earn enough to support themselves and their families.

- Congress should expand and increase farm worker access to the Earned Income Tax Credit (EITC). The EITC was created to ensure that nobody who works in America lives below the poverty level. Farm workers have very low levels of use of government programs for which they qualify. Growers and government should work together to increase farm worker access to those programs for which they are eligible.
- Congress should fund “AgNet,” an Internet-based, on-line job matching system to help connect agricultural employers and workers. In its FY 2001 budget request, the Administration has again asked for \$10 million to build and implement AgNet. Even though Congress did not provide that funding when requested for FY 2000, the Department of Labor has developed a prototype and is ready to move forward with the program if appropriations are made available for that purpose. AgNet will be both an information system and a voluntary labor exchange tailored to the needs of the agricultural sector. Workers will be able to post work experience and the types of opportunities they seek; search for jobs; and have the system match worker information against that submitted by employers. Employers will be able to post jobs and search for legally authorized workers. We believe AgNet holds the potential to be a new and powerful resource for employers seeking farm workers and for those seeking agricultural jobs. But it will not be the exclusive labor matching service envisioned in H.R. 4548.
- We are committed to complete current efforts and continue to streamline the H-2A program without weakening protections for U.S. and foreign farm workers. The Department has been working to reengineer and streamline the H-2A program to ease application burdens on growers while maintaining effective worker protections. This includes a change in the regulations to reduce the deadline for when employers must file H-2A applications from 60 to 45 days before the date when workers are needed, and another change to delegate from INS to the Department of Labor authority to adjudicate certain H-2A petitions -- those filed on behalf of workers located outside the U.S. -- which will be published as a final rule in the Federal Register within the next few weeks. Additionally, the McConnell Amendment requires that certifications now be issued 30 days before the date of need. The Department has also established a section on its web site for H-2A employers, who can now access information about the H-2A program and the necessary forms for processing an H-2A application on-line.
- There needs to be a better means for agricultural employers to verify the legal status of workers they hire. The Administration and Congress should work together to improve current identification documents to reduce the use of fraudulent documents and assist employers in their effort to follow the law. Further, increased use of available automated verification systems would increase growers’ confidence in and reduce their business risk associated with their workers’ immigration status.

- Congress should support increased resources for stronger enforcement of U.S. labor laws. Increased funding and Congressional support for strong labor law enforcement will ensure that the Department can effectively focus on and deploy adequate resources to address those employers which pay less than legal wages and provide substandard, often intimidating work environments.
- Congress should increase funding for farm worker health, housing, and educational assistance through safety-net programs administered by the Departments of Health and Human Services, Housing and Urban Development, and Education, and reduce or eliminate barriers in access to “safety net” programs for U.S. farm workers.
- The United States must continue to pursue bi-lateral and (under the terms of the NAFTA labor side agreement) tri-lateral discussions with countries that send farm workers to the U.S. to explore ways in which their legal rights can be better protected through actions by the sending countries.

Long-Term Policy Recommendations

- The Congress must consider ending agricultural exceptions from worker protection laws that apply to other industries. There is no longer any justification for the special and unequal treatment of farm workers under these laws. Congress and the States should act to normalize the treatment of farm workers under important labor statutes.
- Congress should encourage research and development of improved labor management techniques for agriculture. Much more needs to be done and can be done to more efficiently and effectively utilize the available pool of authorized domestic farm workers by coordinating and better linking employment opportunities among growers to provide workers with the maximum number of farm jobs possible throughout the year.
- Congress should encourage and fund research and development on agricultural mechanization that will improve the nature of farm labor productivity, improve the farmer’s ability to perform operations in a timely manner, and reduce the farmer’s risks associated with the need for large amounts of hand labor for short periods of time. Productivity enhancing technologies using mechanical methods to replace hand methods will likely lead to higher skill levels – and wages/earnings – of the agricultural workforce, resulting in a more stable workforce.

Conclusion

This Administration has consistently opposed proposals like H.R. 4548 to supplement or replace the current H-2A program with a new agricultural guestworker program and strongly recommends that Congress reject this proposal. We agree with the conclusion of the

Commission on Immigration Reform that such legislation would simply not be in the national interest and, if passed by the Congress, the Secretary of Labor would strongly recommend that the President veto H.R. 4548. Rather, the Congress should examine and give favorable consideration to the proposals I just outlined as ways to stabilize the agricultural labor market while at the same time improving the lives of the Nation's farm workers. These proposals could represent a win-win proposition for agricultural growers, the Nation's farm workers and the country.

I appreciate the attention given by the Subcommittee members and staff to our views, and their consideration. The Department looks forward to continuing to work closely and cooperatively with you and your staff.

Mr. Chairman, that concludes my statement and I will be pleased to respond to questions.