

105TH CONGRESS  
1ST SESSION

# H. R. 2377

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 1997

Mr. SMITH of Oregon (for himself, Mr. CHAMBLISS, Mr. POMBO, Mr. BOEHNER, Mr. BISHOP, Mr. GALLEGLY, Mr. DREIER, Mr. SOLOMON, Mr. PAXON, Mr. PARKER, Mr. RADANOVICH, Mr. HASTINGS of Washington, Mr. LATOURETTE, Mr. LEWIS of Kentucky, Mr. DOOLITTLE, Mr. WHITFIELD, Mr. NORWOOD, Mr. HILLEARY, Mr. BONO, and Mr. COMBEST) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Agriculture, Ways and Means, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Temporary Agricul-  
3 tural Worker Act of 1997”.

4 **SEC. 2. NEW NONIMMIGRANT CATEGORY FOR PILOT PRO-**  
5 **GRAM TEMPORARY AND SEASONAL AGRICUL-**  
6 **TURAL WORKERS.**

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

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

12           (2) by adding at the end the following:

13       “ or (c) having a residence in a foreign country  
14       which he has no intention of abandoning who is  
15       coming temporarily to the United States pursuant to  
16       section 218A to perform such agricultural labor or  
17       services of a temporary or seasonal nature;”.

18       (b) NO FAMILY MEMBERS PERMITTED.—Section  
19 101(a)(15)(H) of the Immigration and Nationality Act (8  
20 U.S.C. 1101(a)(15)(H)) is amended by striking “specified  
21 in this paragraph” and inserting “specified in this sub-  
22 paragraph (other than in clause (ii)(c))”.

1 **SEC. 3. PILOT PROGRAM FOR ALTERNATIVE AGRICUL-**  
2 **TURAL TEMPORARY WORKER PROCESS**  
3 **USING ATTESTATION.**

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

7 “ALTERNATIVE AGRICULTURAL TEMPORARY WORKER  
8 PROGRAM

9 “SEC. 218A. (a) CONDITION FOR EMPLOYMENT OF  
10 PILOT PROGRAM ALIENS.—

11 “(1) ESTABLISHMENT OF PILOT PROGRAM; RE-  
12 STRICTION OF ADMISSIONS TO PILOT PROGRAM PE-  
13 RIOD.—

14 “(A) IN GENERAL.—The Attorney General  
15 shall establish a pilot program for the admis-  
16 sion of aliens classified as a nonimmigrant  
17 under section 101(a)(15)(H)(ii)(c) to perform  
18 temporary or seasonal agricultural services pur-  
19 suant to a labor condition attestation filed by  
20 an employer or an association for the occupa-  
21 tion in which the alien will be employed. No  
22 alien may be admitted or provided status as a  
23 pilot program alien under this section after the  
24 last day of the pilot program period specified in  
25 subparagraph (B).

1           “(B) PILOT PROGRAM PERIOD.—The pilot  
2           program period under this subparagraph is the  
3           24-month period beginning 6 months after the  
4           date of the enactment of the Temporary Agri-  
5           cultural Worker Act of 1997.

6           “(2) ADMISSION OF ALIENS.—No alien may be  
7           admitted to the United States or provided status as  
8           a pilot program alien (as defined in subsection  
9           (n)(4)) unless—

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

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

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

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

1 “(B) the employer is not disqualified from  
2 employing pilot program aliens pursuant to sub-  
3 section (h); and

4 “(C) the employer has not, during the pilot  
5 program period, been found by the Attorney  
6 General to have employed any aliens in violation  
7 of section 274A(a) or this section.

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

12 “(A) WAGE RATE.—The employer will pay  
13 pilot program aliens and all other workers in  
14 the occupation not less than the prevailing wage  
15 for similarly employed workers in the area of  
16 employment, and not less than the applicable  
17 Federal, State or local statutory minimum  
18 wage.

19 “(B) WORKING CONDITIONS.—The em-  
20 ployment of pilot program aliens will not ad-  
21 versely affect the working conditions of simi-  
22 larly employed workers in the area of employ-  
23 ment.

24 “(C) LIMITATION ON EMPLOYMENT.—A  
25 pilot program alien will not be employed in any

1 job opportunity which is not temporary or sea-  
2 sonal, and will not be employed by the employer  
3 in any job opportunity for more than 10  
4 months in any 12-consecutive-month period.

5 “(D) NO LABOR DISPUTE.—No pilot pro-  
6 gram alien will be employed in any job oppor-  
7 tunity which is vacant because its former occu-  
8 pant is involved in a strike, lockout or work  
9 stoppage in the course of a labor dispute in the  
10 occupation at the place of employment.

11 “(E) NOTICE.—The employer, at the time  
12 of filing the attestation, has provided notice of  
13 the attestation to its workers employed in the  
14 occupation in which, and at the place of em-  
15 ployment where, pilot program aliens will be  
16 employed.

17 “(F) JOB ORDERS.—The employer will file  
18 one or more job orders for the occupation (or  
19 occupations) covered by the attestation with the  
20 State employment security agency no later than  
21 the day on which the employer first employs  
22 any pilot program aliens in the occupation.

23 “(G) PREFERENCE TO DOMESTIC WORK-  
24 ERS.—The employer will give preference to  
25 able, willing and qualified United States work-

1           ers who apply to the employer and are available  
2           at the time and place needed, for the first 25  
3           days after the filing of the job order in an occu-  
4           pation or until 5 days before the date employ-  
5           ment of workers in the occupation begins,  
6           whichever occurs later.

7           “(4) LIMITATION ON NUMBER OF VISAS.—In no  
8           case may the number of aliens who are admitted or  
9           provided status as a pilot program alien in a fiscal  
10          year exceed 25,000.

11          “(5) OPERATION OF PROGRAM IN NOT LESS  
12          THAN 5 AREAS.—Alien admissions under this section  
13          shall be allocated equally to employers in not less  
14          than 5 geographically and agriculturally diverse  
15          areas designated by the Secretary of Agriculture.  
16          The entire United States shall be encompassed with-  
17          in such areas.

18          “(6) GENERAL ACCOUNTING OFFICE REPORT.—  
19          Not later than 90 days after the termination of the  
20          pilot program period specified in paragraph (1)(B),  
21          the Comptroller General shall prepare and transmit  
22          to the Congress a report describing the results of a  
23          review of the implementation and enforcement of  
24          this section during such period, for the purpose of  
25          determining if—

1           “(A) the program has ensured an adequate  
2           and timely supply of qualified, eligible workers  
3           at the time and place needed for employers;

4           “(B) the program has ensured that pilot  
5           program aliens are employed only in authorized  
6           employment and that they timely depart the  
7           United States when their authorized stay ends;

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

13          “(D) an unnecessary regulatory burden  
14          has been created for employers hiring workers  
15          admitted under this section.

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

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

20               “(2) FILING BY ASSOCIATIONS ON BEHALF OF  
21          EMPLOYER MEMBERS.—An agricultural association  
22          may file a labor condition attestation as an agent on  
23          behalf of its members. Such an attestation filed by  
24          an agricultural association acting as an agent for its  
25          members, when accepted, shall apply to those em-



1        ployer members of the association that the associa-  
2        tion certifies to the State employment security agen-  
3        cy are members of the association and have agreed  
4        in writing to comply with the requirements of this  
5        section.

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

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

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

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

5           “(7) MAINTAINING REQUIRED DOCUMENTA-  
6       TION.—

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

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

23          “(8) WITHDRAWAL.—

24          “(A) COMPLIANCE WITH ATTESTATION OB-  
25      LIGATIONS.—An employer covered by an ac-

1        cepted labor condition attestation for an occu-  
2        pation shall comply with the terms and condi-  
3        tions of the attestation from the date the attes-  
4        tation is accepted and continuing throughout  
5        the period any persons are employed in an occu-  
6        pation covered by such an accepted attestation,  
7        whether or not pilot program aliens are em-  
8        ployed in the occupation, unless the attestation  
9        is withdrawn.

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

1 knowledge by the appropriate State em-  
2 ployment security agency of receipt of the with-  
3 drawal notice. An attestation may not be with-  
4 drawn with respect to any occupation while any  
5 pilot program alien covered by that attestation  
6 is employed in the occupation.

7 “(C) OBLIGATIONS UNDER OTHER STAT-  
8 UTES.—Any obligation incurred by the em-  
9 ployer under any other law or regulation as a  
10 result of recruitment of United States workers  
11 under an offer of terms and conditions of em-  
12 ployment required by the pilot program under  
13 this section is unaffected by withdrawal of a  
14 labor condition attestation.

15 “(c) EMPLOYER RESPONSIBILITIES AND REQUIRE-  
16 MENTS FOR EMPLOYING PILOT PROGRAM ALIENS.—

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

19 “(A) EFFECT OF THE ATTESTATION.—  
20 Employers shall pay each worker in an occupa-  
21 tion covered by an accepted labor condition at-  
22 testation at least the prevailing wage in the oc-  
23 cupation in the area of intended employment.  
24 The preceding sentence does not require em-  
25 ployers to pay all workers in the occupation the

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

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

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

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

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

12          “(D) ALTERNATE METHODS OF PAYMENT  
13          PERMITTED.—

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

1           burden of proof is on the employer to dem-  
2           onstrate that the employer’s method of pay  
3           is designed to produce earnings equivalent  
4           to the earnings that would result from pay-  
5           ment of the prevailing rate.

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

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

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

1           assure compliance with the prevailing wage re-  
2           quirement.

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

5                   “(A) EFFECT OF THE ATTESTATION.—The  
6           employment of pilot program aliens shall not  
7           adversely affect the working conditions of Unit-  
8           ed States workers similarly employed in the  
9           area of intended employment. The employer’s  
10          obligation not to adversely affect working condi-  
11          tions shall continue for the duration of the pe-  
12          riod of employment by the employer of any pilot  
13          program aliens in the occupation and area of  
14          intended employment. An employer will be  
15          deemed to be in compliance with this attesta-  
16          tion if the employer offers at least the benefits  
17          required by subparagraphs (B) through (D).  
18          The previous sentence does not require an em-  
19          ployer to offer more than such benefits.

20                   “(B) HOUSING REQUIRED.—

21                           “(i) HOUSING OFFER.—The employer  
22           must offer to pilot program aliens and  
23           United States workers recruited from be-  
24           yond normal recruiting distance housing,  
25           or a housing allowance, if it is prevailing



1 practice in the occupation and area of in-  
2 tended employment to offer housing or a  
3 housing allowance to workers who are re-  
4 cruited from beyond normal commuting  
5 distance.

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

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

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

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

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

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

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

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

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

18          “(E) REQUIRED DOCUMENTATION.—

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

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

7 “(ii) WORKERS’ COMPENSATION.—

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

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

16 “(A) LIMITATIONS.—

17 “(i) IN GENERAL.—The employer may  
18 employ pilot program aliens only in agri-  
19 cultural employment which is temporary or  
20 seasonal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



ner as required by this paragraph, and the employer or association shall retain such evidence for each occupation in which pilot program aliens are employed.

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

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

“(B) FILING FEWER THAN 30 DAYS BEFORE DATE OF NEED.—If a job order is filed

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

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

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

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

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

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

16 “(1) IN GENERAL.—The employer (or the asso-  
17 ciation acting as agent for the employer) shall notify  
18 the Attorney General within 7 days if a pilot pro-  
19 gram alien prematurely abandons the alien’s employ-  
20 ment.

21 “(2) OUT-OF-STATUS.—A pilot program alien  
22 who abandons the alien’s employment shall be con-  
23 sidered to have failed to maintain nonimmigrant sta-  
24 tus as an alien described in section  
25 101(a)(15)(H)(ii)(c) and shall leave the United

1 States or be subject to removal under section  
2 237(a)(1)(C)(i).

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

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

15 “(g) RESPONSIBILITIES OF THE STATE EMPLOY-  
16 MENT SECURITY AGENCIES.—

17 “(1) DISSEMINATION OF LABOR MARKET IN-  
18 FORMATION.—The Secretary shall direct State em-  
19 ployment security agencies to disseminate non-em-  
20 ployer-specific information about potential labor  
21 needs based on accepted attestations filed by em-  
22 ployers. Such dissemination shall be separate from  
23 the clearance of job orders through the Interstate  
24 and Intrastate Clearance Systems, and shall create

1 no obligations for employers except as provided in  
2 this section.

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

15 “(h) ENFORCEMENT AND PENALTIES.—

16 “(1) ENFORCEMENT AUTHORITY.—

17 “(A) INVESTIGATION OF COMPLAINTS.—

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

tion or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 2 years after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

“(B) WRITTEN NOTICE OF FINDINGS AND OPPORTUNITY FOR APPEAL.—After an investigation has been conducted, the Secretary shall issue a written determination as to whether or not any violation described in subparagraph (A) has been committed. The Secretary’s determination shall be served on the complainant and the employer, and shall provide an opportunity for an appeal of the Secretary’s decision to an administrative law judge, who may conduct a de novo hearing.

“(2) REMEDIES.—

“(A) BACK WAGES.—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due

1 to any United States worker or pilot program  
2 alien employed by the employer in the specific  
3 employment in question. The back wages shall  
4 be equal to the difference between the amount  
5 that should have been paid and the amount  
6 that actually was paid to such worker.

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

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

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

23 “(ii) failed to meet a condition speci-  
24 fied in subsection (a),

1 the Secretary may assess a civil money penalty  
2 not to exceed \$1,000 for each violation. In de-  
3 termining the amount of civil money penalty to  
4 be assessed, the Secretary shall consider the se-  
5 riousness of the violation, the good faith of the  
6 employer, the size of the business of the em-  
7 ployer being charged, the history of previous  
8 violations by the employer, whether the em-  
9 ployer obtained a financial gain from the viola-  
10 tion, whether the violation was willful, and  
11 other relevant factors.

12 “(D) PROGRAM DISQUALIFICATION.—Upon  
13 a second final determination that an employer  
14 has failed to pay the wages required under this  
15 section, the Secretary shall report such deter-  
16 mination to the Attorney General and the At-  
17 torney General shall disqualify the employer  
18 from any subsequent employment of pilot pro-  
19 gram aliens.

20 “(3) ROLE OF ASSOCIATIONS.—

21 “(A) VIOLATION BY AN ASSOCIATION.—An  
22 employer on whose behalf a labor condition at-  
23 testation is filed by an association acting as its  
24 agent is fully responsible for such attestation,  
25 and for complying with the terms and condi-



1           tions of this section, as though the employer  
2           had filed the attestation itself. If such an em-  
3           ployer is determined to have violated a require-  
4           ment of this section, the penalty for such viola-  
5           tion shall be assessed against the employer who  
6           committed the violation and not against the as-  
7           sociation or other members of the association.

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

1       “(i) PROCEDURE FOR ADMISSION OR EXTENSION OF  
2 PILOT PROGRAM ALIENS.—

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

5               “(A) PETITIONING FOR ADMISSION.—An  
6 employer or an association acting as agent for  
7 its members who seeks the admission into the  
8 United States of pilot program aliens may file  
9 a petition with the District Director of the Im-  
10 migration and Naturalization Service having ju-  
11 risdiction over the location where the aliens will  
12 be employed. The petition shall be accompanied  
13 by an accepted and currently valid labor condi-  
14 tion attestation covering the petitioner. The pe-  
15 tition may be for named or unnamed individual  
16 or multiple beneficiaries.

17               “(B) EXPEDITED ADJUDICATION BY DIS-  
18 TRICT DIRECTOR.—If an employer’s petition for  
19 admission of pilot program aliens is correctly  
20 filled out, and the employer is not ineligible to  
21 employ pilot program aliens, the District Direc-  
22 tor (or the Director’s designee) shall approve  
23 the petition within 3 working days of receipt of  
24 the petition and accepted labor condition attes-  
25 tation and immediately (by fax, cable, or other

1 means assuring expedited delivery) transmit a  
2 copy of the approved petition to the petitioner  
3 and to the appropriate immigration officer at  
4 the port of entry or United States consulate (as  
5 the case may be) where the petitioner has indi-  
6 cated that the alien beneficiary (or bene-  
7 ficiaries) will apply for a visa or admission to  
8 the United States.

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

15 “(D) CRITERIA FOR ADMISSIBILITY.—

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

21 “(ii) DISQUALIFICATION.—An alien  
22 shall be debarred from admission or being  
23 provided status as a pilot program alien  
24 under this section if the alien has, at any  
25 time during the past 5 years—

1                   “(I) violated a material provision  
2                   of this section, including the require-  
3                   ment to promptly depart the United  
4                   States when the alien’s authorized pe-  
5                   riod of admission under this section  
6                   has expired; or

7                   “(II) otherwise violated a term or  
8                   condition of admission to the United  
9                   States as a nonimmigrant, including  
10                  overstaying the period of authorized  
11                  admission as such a nonimmigrant.

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

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

3                   “(i) IN GENERAL.—The Attorney  
4 General shall cause to be issued to each  
5 pilot program alien a card in a form which  
6 is resistant to counterfeiting and tamper-  
7 ing for the purpose of providing proof of  
8 identity and employment eligibility under  
9 section 274A.

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

19                   “(I) contain a fingerprint or  
20 other biometric identifying data (or  
21 both);

22                   “(II) specify the date of the  
23 alien’s authorization as a pilot pro-  
24 gram alien;

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

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

5 “(2) EXTENSION OF STAY.—

6 “(A) APPLICATION FOR EXTENSION OF  
7 STAY.—If a petitioner seeks to employ a pilot  
8 program alien already in the United States, the  
9 petitioner shall file with the Attorney General  
10 an application for an extension of the alien’s  
11 stay. The application for extension of stay shall  
12 be accompanied by a currently valid labor con-  
13 dition attestation.

14 “(B) LIMITATION ON FILING AN APPLICA-  
15 TION FOR EXTENSION OF STAY.—An applica-  
16 tion may not be filed for an extension of an  
17 alien’s stay for a period of more than 10  
18 months, or later than a date which is 2 years  
19 from the date of the alien’s last admission to  
20 the United States as a pilot program alien,  
21 whichever occurs first. An application for exten-  
22 sion of stay may not be filed during the pend-  
23 ency of an alien’s previous authorized period of  
24 employment, nor after the alien’s authorized  
25 stay in the United States has expired.

1           “(C) WORK AUTHORIZATION UPON FILING  
2           AN APPLICATION FOR EXTENSION OF STAY.—  
3           An employer may begin employing an alien al-  
4           ready in the United States in pilot program  
5           alien status on the day the employer files its  
6           application for extension of stay. For the pur-  
7           pose of this requirement, the term ‘filing’  
8           means sending the application by certified mail  
9           via the United States Postal Service, return re-  
10          ceipt requested, or delivered by guaranteed  
11          commercial delivery which will provide the em-  
12          ployer with a documented acknowledgment of  
13          the date of sending and receipt of the applica-  
14          tion. The employer shall provide a copy of the  
15          employer’s application for extension of stay to  
16          the alien, who shall keep the application with  
17          the alien’s identification and employment eligi-  
18          bility document as evidence that the extension  
19          has been filed and that the alien is authorized  
20          to work in the United States. Upon approval of  
21          an application for extension of stay, the Attor-  
22          ney General shall provide a new or updated em-  
23          ployment eligibility document to the alien indi-  
24          cating the new validity date, after which the

1 alien is not required to retain a copy of the ap-  
2 plication for extension of stay.

3 “(D) LIMITATION ON EMPLOYMENT AU-  
4 THORIZATION OF PILOT PROGRAM ALIENS  
5 WITHOUT VALID IDENTIFICATION AND EMPLOY-  
6 MENT ELIGIBILITY CARD.—An expired identi-  
7 fication and employment eligibility document,  
8 together with a copy of an application for ex-  
9 tension of stay, shall constitute a valid work au-  
10 thorization document for a period of not more  
11 than 60 days from the date of application for  
12 the extension of stay, after which time only a  
13 currently valid identification and employment  
14 eligibility document shall be acceptable.

15 “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN  
16 PILOT PROGRAM STATUS.—An alien having status as  
17 a pilot program alien may not have the status ex-  
18 tended for a continuous period longer than 2 years  
19 unless the alien remains outside the United States  
20 for an uninterrupted period of 6 months. An absence  
21 from the United States may break the continuity of  
22 the period for which a nonimmigrant visa issued  
23 under section 101(a)(15)(H)(ii)(c) is valid. If the  
24 alien has resided in the United States 10 months or  
25 less, an absence breaks the continuity of the period



1 if its lasts for at least 2 months. If the alien has re-  
2 sided in the United States 10 months or more, an  
3 absence breaks the continuity of the period if it lasts  
4 for at least one-fifth the duration of the stay.

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

6 “(1) ESTABLISHMENT.—There is established in  
7 the Treasury of the United States a trust fund (in  
8 this section referred to as the ‘Trust Fund’) for the  
9 purpose of providing a monetary incentive for pilot  
10 program aliens to return to their country of origin  
11 upon expiration of their visas under this section.

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

14 “(A) IN GENERAL.—Employers of pilot  
15 program aliens shall—

16 “(i) withhold from the wages of their  
17 pilot program alien workers an amount  
18 equivalent to 25 percent of the wages of  
19 each pilot program alien worker and pay  
20 such withheld amount into the Trust Fund  
21 in accordance with paragraph (3); and

22 “(ii) pay to the Trust Fund an  
23 amount equivalent to the Federal tax on  
24 the wages paid to pilot program aliens that  
25 the employer would be obligated to pay

1 under the Federal Unemployment Tax Act  
2 and the Federal Insurance Contributions  
3 Act.

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

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

13 “(A) the worker applies to the Attorney  
14 General (or the designee of the Attorney Gen-  
15 eral) for payment within 30 days of the expira-  
16 tion of the alien’s last authorized stay in the  
17 United States as a pilot program alien;

18 “(B) in such application the worker estab-  
19 lishes that the worker has complied with the  
20 terms and conditions of this section; and

21 “(C) in connection with the application,  
22 the worker tenders the identification and em-  
23 ployment authorization card issued to the work-  
24 er pursuant to subsection (i)(1)(F) and estab-  
25 lishes that the worker is identified as the per-

1 son to whom the card was issued based on the  
2 biometric identification information contained  
3 on the card.

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

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

15 “(k) INVESTMENT OF TRUST FUND.—

16 “(1) IN GENERAL.—It shall be the duty of the  
17 Secretary of the Treasury to invest such portion of  
18 the Trust Fund as is not, in the Secretary’s judg-  
19 ment, required to meet current withdrawals. Such  
20 investments may be made only in interest-bearing  
21 obligations of the United States or in obligations  
22 guaranteed as to both principal and interest by the  
23 United States. For such purpose, such obligations  
24 may be acquired—

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

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

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

22           “(2) SALE OF OBLIGATION.—Any obligation ac-  
23      quired by the Trust Fund (except special obligations  
24      issued exclusively to the Trust Fund) may be sold by  
25      the Secretary of the Treasury at the market price,

1 and such special obligations may be redeemed at par  
2 plus accrued interest.

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

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

18 “(I) MISCELLANEOUS PROVISIONS.—

19 “(1) APPLICABILITY OF LABOR LAWS.—Except  
20 as provided in paragraphs (2), (3), and (4), all Fed-  
21 eral, State, and local labor laws (including laws af-  
22 fecting migrant farm workers) applicable to United  
23 States workers shall also apply to pilot program  
24 aliens.

1           “(2) LIMITATION OF WRITTEN DISCLOSURE IM-  
2       POSED UPON RECRUITERS.—Any disclosure required  
3       of recruiters under section of 201(a) of the Migrant  
4       and Seasonal Agricultural Worker Protection Act  
5       (29 U.S.C. 1821(a)) need not be given to pilot pro-  
6       gram aliens prior to the time their visa is issued per-  
7       mitting entry into the United States.

8           “(3) EXEMPTION FROM FICA AND FUTA  
9       TAXES.—The wages paid to pilot program aliens  
10      shall be excluded from wages subject to taxation  
11      under the Federal Unemployment Tax Act and  
12      under the Federal Insurance Contributions Act.

13          “(4) INELIGIBILITY FOR CERTAIN PUBLIC BEN-  
14      EFITS PROGRAMS.—

15           “(A) IN GENERAL.—Notwithstanding any  
16      other provision of law and except as provided in  
17      subparagraph (B), any alien provided status as  
18      a pilot program alien shall not be eligible for  
19      any Federal or State or local means-tested pub-  
20      lic benefit program.

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

23           “(i) EMERGENCY MEDICAL SERV-  
24      ICES.—The provision of emergency medical  
25      services (as defined by the Attorney Gen-

1                   eral in consultation with the Secretary of  
2                   Health and Human Services).

3                   “(ii) PUBLIC HEALTH IMMUNIZA-  
4                   TIONS.—Public health assistance for im-  
5                   munizations with respect to immunizable  
6                   diseases and for testing and treatment for  
7                   communicable diseases.

8                   “(iii) SHORT-TERM EMERGENCY DIS-  
9                   ASTER RELIEF.—The provision of non-  
10                  cash, in-kind, short-term emergency disas-  
11                  ter relief.

12               “(m) REGULATIONS.—

13               “(1) SELECTION OF AREAS.—The Secretary of  
14               Agriculture shall select the areas under subsection  
15               (a)(4) not later than 60 days after the date of the  
16               enactment of the Temporary Agricultural Worker  
17               Act of 1997.

18               “(2) REGULATIONS OF THE SECRETARY.—The  
19               Secretary shall consult with the Secretary of Agri-  
20               culture, and the Attorney General shall approve, all  
21               regulations dealing with the approval of labor condi-  
22               tion attestations for pilot program aliens and en-  
23               forcement of the requirements for employing pilot  
24               program aliens under an approved attestation. The  
25               Secretary shall promulgate, and the Attorney Gen-

1       eral shall approve, such regulations not later than  
2       90 days after the date of the enactment of the Tem-  
3       porary Agricultural Worker Act of 1997.

4           “(3) REGULATIONS OF THE ATTORNEY GEN-  
5       ERAL.—The Attorney General shall consult with the  
6       Secretary of Agriculture on all regulations dealing  
7       with the approval of petitions for admission or ex-  
8       tension of stay of pilot program aliens and the re-  
9       quirements for employing pilot program aliens and  
10      the enforcement of such requirements. The Attorney  
11      General shall promulgate such regulations not later  
12      than 90 days after the date of the enactment of the  
13      Temporary Agricultural Worker Act of 1997.

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

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

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



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

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

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

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

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

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

- 1 inserting after the item relating to section 218 the following
- 2 new item:

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

