

106TH CONGRESS
1ST SESSION

S. 1814

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 1999

Mr. SMITH of Oregon (for himself, Mr. GRAHAM, Mr. CRAIG, Mr. CLELAND, Mr. McCONNELL, Mr. COVERDELL, Mr. MACK, Mr. COCHRAN, Mr. HELMS, Mr. GRAMS, Mr. CRAPO, Mr. BUNNING, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Agricultural Job Opportunity Benefits and Security Act
 4 of 1999”.

5 (b) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LEGAL STATUS

Sec. 101. Agricultural workers.

TITLE II—AGRICULTURAL WORKER REGISTRIES

Sec. 201. Agricultural worker registries.

TITLE III—H-2A REFORM

Sec. 301. Employer applications and assurances.

Sec. 302. Search of registry.

Sec. 303. Issuance of visas and admission of aliens.

Sec. 304. Employment requirements.

Sec. 305. Program for the admission of temporary H-2A workers.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Enhanced worker protections and labor standards enforcement.

Sec. 402. Bilateral commissions.

Sec. 403. Regulations.

Sec. 404. Determination and use of user fees.

Sec. 405. Funding for startup costs.

Sec. 406. Report to Congress.

Sec. 407. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) ADVERSE EFFECT WAGE RATE.—

10 (A) IN GENERAL.—Except as provided in
 11 subparagraph (B), the term “adverse effect
 12 wage rate” means the rate of pay for an agri-
 13 cultural occupation that is 5 percent above the

1 prevailing rate of pay for that agricultural occu-
2 pation in an area of intended employment, if
3 the prevailing rate of pay for the occupation is
4 less than the prior year's average hourly earn-
5 ings of field and livestock workers for the State
6 (or region that includes the State), as deter-
7 mined by the Secretary of Agriculture, provided
8 no adverse effect wage rate shall be more than
9 the prior year's average hourly earnings of field
10 and livestock workers for the State (or region
11 that includes the State), as determined by the
12 Secretary of Agriculture.

13 (B) EXCEPTION.—If the prevailing rate of
14 pay for an activity is a piece rate, task rate or
15 group rate, and the average hourly earnings of
16 an employer's workers employed in that activ-
17 ity, taken as a group, are less than the prior
18 year's average hourly earnings of field and live-
19 stock workers in the State (or region that in-
20 cludes the State), as determined by the Sec-
21 retary of Agriculture, the term "adverse effect
22 wage rate" means the prevailing piece rate,
23 task rate or group rate for the activity plus
24 such an amount as is necessary to increase the
25 average hourly earnings of the employer's work-

ers 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 as 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)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(3) ELIGIBLE.—The term “eligible” as used with respect to workers or individuals, means individuals authorized to be employed in the United States as provided for in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1188).

(4) EMPLOYER.—The term “employer” means any person or entity, including any farm labor con-

1 tractor and any agricultural association, that em-
2 ploys workers.

3 (5) H-2A EMPLOYER.—The term “H-2A em-
4 ployer” means an employer who seeks to hire one or
5 more nonimmigrant aliens described in section
6 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
7 ality Act.

8 (6) H-2A WORKER.—The term “H-2A worker”
9 means a nonimmigrant described in section
10 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
11 ality Act.

12 (7) JOB OPPORTUNITY.—The term “job oppor-
13 tunity” means a specific period of employment pro-
14 vided by an employer to a worker in one or more ag-
15 ricultural activities.

16 (8) PREVAILING WAGE.—The term “prevailing
17 wage” means with respect to an agricultural activity
18 in an area of intended employment, the rate of
19 wages that includes the 51st percentile of employees
20 in that agricultural activity in the area of intended
21 employment, expressed in terms of the prevailing
22 method of pay for the agricultural activity in the
23 area of intended employment.

1 (9) REGISTERED WORKER.—The term “reg-
2 istered worker” means an individual whose name ap-
3 pears in a registry.

4 (10) REGISTRY.—The term “registry” means
5 an agricultural worker registry established under
6 section 201(a).

7 (11) SECRETARY.—The term “Secretary”
8 means the Secretary of Labor.

9 (12) UNITED STATES WORKER.—The term
10 “United States worker” means any worker, whether
11 a United States citizen or national, a lawfully admit-
12 ted permanent resident alien, or any other alien who
13 is authorized to work in the job opportunity within
14 the United States other than an alien admitted pur-
15 suant to section 101(a)(15)(H)(ii)(a) or section 218
16 of the Immigration and Nationality Act, as in effect
17 on the effective date of this Act, or a nonimmigrant
18 agricultural worker whose status was adjusted under
19 section 101(a).

20 (13) WORK DAY.—The term “work day” means
21 any day in which the individual is employed one or
22 more hours in agriculture.

TITLE I—ADJUSTMENT TO LEGAL STATUS

SEC. 101. AGRICULTURAL WORKERS.

(a) NONIMMIGRANT STATUS.—

(1) IN GENERAL.—The Attorney General shall adjust the status of an alien agricultural worker who qualifies under this subsection to that of an alien lawfully admitted for nonimmigrant status under section 101(a)(15) of the Immigration and Nationality Act if the Attorney General determines that the following requirements are satisfied with respect to the alien:

(A) PERFORMANCE OF AGRICULTURAL EMPLOYMENT IN THE UNITED STATES.—The alien must establish that the alien has performed agricultural employment in the United States for at least 880 hours or 150 work days, whichever is lesser, during the 12-month period prior to October 27, 1999.

(B) APPLICATION PERIOD.—The alien must apply for such adjustment not later than 12 months after the effective date of this Act.

(C) ADMISSIBILITY.—

(i) IN GENERAL.—The alien must establish that the alien is otherwise admis-

sible to the United States under section 212 of the Immigration and Nationality Act, except as otherwise provided under subsection (d).

(ii) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—An alien who has not previously been admitted to the United States pursuant to this section, and who is otherwise eligible for admission in accordance with clause (i), shall not be deemed inadmissible by virtue of section 212(a)(9)(B) of that Act.

(2) PERIOD OF VALIDITY OF NONIMMIGRANT STATUS.—

(A) IN GENERAL.—The status granted in paragraph (1) shall be valid for a period of not to exceed 7 consecutive calendar years, except that the alien may not be present in the United States for more than an aggregate of 300 days in any calendar year.

(B) EXCEPTION.—The 300-day-per-year limitation in subparagraph (A) shall not apply to any period of validity of the status of any alien who—

1 (i) has established a permanent resi-
2 dence in the United States and has a
3 minor child who was born in the United
4 States prior to the date of enactment of
5 this Act who resides in the alien's house-
6 hold; and

7 (ii) performs agricultural employment
8 for not less than 240 days in a calendar
9 year.

10 (3) AUTHORIZED TRAVEL.—During the period
11 an alien is in lawful nonimmigrant status granted
12 under this subsection, the alien has the right to trav-
13 el abroad (including commutation from a residence
14 abroad).

15 (4) AUTHORIZED EMPLOYMENT.—During the
16 period an alien is in lawful nonimmigrant status
17 granted under this subsection, the alien shall be
18 granted authorization to engage in the performance
19 only of agricultural employment in the United States
20 and shall be provided an “employment authorized”
21 endorsement or other appropriate work permit, only
22 for the performance of such employment. A non-
23 immigrant alien under this subsection may perform
24 agricultural employment anywhere in the United
25 States.

1 (5) TERMINATION OF NONIMMIGRANT STA-
2 TUS.—Except as otherwise provided in paragraph
3 (2), the Attorney General shall terminate the status,
4 and bring proceedings under section 240 of the Im-
5 migration and Nationality Act to remove, any non-
6 immigrant alien under this subsection who failed
7 during 3 prior calendar years to perform 1,040
8 hours or 180 work days, whichever is lesser, of agri-
9 cultural services in any single calendar year.

10 (6) RECORD OF EMPLOYMENT.—Each employer
11 of a nonimmigrant agricultural worker whose status
12 is adjusted under this subsection shall—

13 (A) provide a written record of employ-
14 ment to the alien; and

15 (B) provide a copy of such record to the
16 Immigration and Naturalization Service.

17 (b) ADJUSTMENT TO PERMANENT RESIDENCE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the Attorney General shall adjust the sta-
20 tus of any alien provided lawful nonimmigrant status
21 under subsection (a) to that of an alien lawfully ad-
22 mitted for permanent residence if the Attorney Gen-
23 eral determines that the following requirements are
24 satisfied:

1 (A) QUALIFYING YEARS.—The alien has
2 performed a minimum period of agricultural
3 employment in the United States in each of 5
4 calendar years during the period of validity of
5 the alien’s adjustment to nonimmigrant status
6 pursuant to subsection (a). Qualifying years
7 under this subparagraph may include non-
8 consecutive years.

9 (B) MINIMUM PERIODS OF AGRICULTURAL
10 EMPLOYMENT.—

11 (i) IN GENERAL.—Except as provided
12 in clause (ii), the minimum period of agri-
13 cultural employment in any calendar year
14 is 1,040 hours or 180 work days, which-
15 ever is lesser.

16 (ii) EXCEPTION.—An alien described
17 in subsection (a)(2)(B) who remains in the
18 United States for more than 300 days in
19 a calendar year may only be credited with
20 satisfaction of the minimum period of agri-
21 cultural employment requirement for that
22 year if the alien performed agricultural
23 employment in the United States for at
24 least 240 work days that year.

1 (C) APPLICATION PERIOD.—The alien ap-
2 plies for adjustment of status not later than 6
3 months after completing the fifth year of quali-
4 fying employment in the United States.

5 (2) GROUNDS FOR DENIAL OF ADJUSTMENT OF
6 STATUS.—The Attorney General may deny adjust-
7 ment to nonimmigrant status and provide for termi-
8 nation of the nonimmigrant status granted such
9 alien under subsection (a) if—

10 (A) the Attorney General finds by a pre-
11 ponderance of the evidence that the adjustment
12 to nonimmigrant status was the result of fraud
13 or willful misrepresentation as set out in section
14 212(a)(6)(C)(i), or

15 (B) the alien commits an act that (i)
16 makes the alien inadmissible to the United
17 States under section 212 of the Immigration
18 and Nationality Act, except as provided under
19 subsection (c)(2), or (ii) is convicted of a felony
20 or 3 or more misdemeanors committed in the
21 United States.

22 (3) TREATMENT OF ALIENS DEMONSTRATING
23 PRIMA FACIE CASE FOR ADJUSTMENT.—Any alien
24 who demonstrates a prima facie case of eligibility for
25 adjustment under this subsection in accordance with

1 regulations promulgated by the Attorney General,
2 shall be considered a temporary resident alien and,
3 pending adjudication of an application for perma-
4 nent resident status under this subsection—

5 (A) may remain in the United States and
6 shall be granted authorization to engage in any
7 employment in the United States; and

8 (B) shall become eligible for any assistance
9 or benefit to which a person granted lawful per-
10 manent resident status would be eligible on the
11 date of enactment of this Act.

12 (4) GROUNDS FOR REMOVAL.—Any non-
13 immigrant alien under subsection (a) who does not
14 apply for adjustment of status under this subsection
15 before the expiration of the application period de-
16 scribed in paragraph (1)(C) is deportable and may
17 be removed.

18 (5) NUMERICAL LIMITATION.—In any fiscal
19 year not more than 20 percent of the number of
20 aliens obtaining nonimmigrant status under sub-
21 section (a) may be granted adjustment of status
22 under this subsection. In granting such adjustment,
23 aliens having the greater number of work hours shall
24 be accorded priority. Any temporary resident alien
25 under paragraph (3) who does not receive adjust-

1 ment of status under this subsection in a fiscal year
 2 by reason of the limitation in this paragraph may
 3 continue to work in any employment, and shall be
 4 credited with any additional hours of agricultural
 5 employment performed for purposes of being ac-
 6 corded priority for adjustment of status.

7 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

8 (1) TO WHOM MAY BE MADE.—

9 (A) WITHIN THE UNITED STATES.—The
 10 Attorney General shall provide that—

11 (i) applications for adjustment of sta-
 12 tus under subsection (a) may be filed—

13 (I) with the Attorney General; or

14 (II) with a qualified designated
 15 entity (designated under paragraph
 16 (2)), but only if the applicant consents
 17 to the forwarding of the application to
 18 the Attorney General; and

19 (ii) applications for adjustment of sta-
 20 tus under subsection (b) shall be filed di-
 21 rectly with the Attorney General.

22 (B) OUTSIDE THE UNITED STATES.—The
 23 Attorney General, in cooperation with the Sec-
 24 retary of State, shall provide a procedure
 25 whereby an alien may apply for adjustment of

1 status under subsection (a) at an appropriate
2 consular office outside the United States. The
3 Attorney General shall prescribe regulations
4 setting forth procedures for notification of im-
5 migration officials by the alien before departing
6 the United States.

7 (C) TRAVEL DOCUMENTATION.—The At-
8 torney General shall provide each alien whose
9 status is adjusted under this section with a
10 counterfeit-resistant document of authorization
11 to enter or reenter the United States.

12 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
13 PPLICATIONS.—For purposes of receiving applications
14 under subsection (a), the Attorney General—

15 (A) shall designate qualified voluntary or-
16 ganizations and other qualified State, local,
17 community, farm labor organizations, and asso-
18 ciations of agricultural employers; and

19 (B) may designate such other persons as
20 the Attorney General determines are qualified
21 and have substantial experience, demonstrated
22 competence, and traditional long-term involve-
23 ment in the preparation and submittal of appli-
24 cations for adjustment of status under section
25 209 or 245 of the Immigration and Nationality

1 Act, Public Law 89–732, or Public Law 95–
2 145.

3 (3) PROOF OF ELIGIBILITY.—

4 (A) IN GENERAL.—An alien may establish
5 that the alien meets the requirement of sub-
6 section (a)(1)(A) through government employ-
7 ment records or records supplied by employers
8 or collective bargaining organizations. The At-
9 torney General shall establish special proce-
10 dures to properly credit work in cases in which
11 an alien was employed under an assumed name.

12 (B) DOCUMENTATION OF WORK HIS-
13 TORY.—(i) An alien applying for adjustment of
14 status under subsection (a)(1) has the burden
15 of proving by a preponderance of the evidence
16 that the alien has worked the requisite number
17 of hours (as required under subsection
18 (a)(1)(A)).

19 (ii) If an employer or farm labor con-
20 tractor employing such an alien has kept proper
21 and adequate records respecting such employ-
22 ment, the alien’s burden of proof under clause
23 (i) may be met by securing timely production of
24 those records under regulations to be promul-
25 gated by the Attorney General.

1 (4) TREATMENT OF APPLICATIONS BY QUALI-
2 FIED DESIGNATED ENTITIES.—Each qualified des-
3 ignated entity must agree to forward to the Attorney
4 General applications filed with it in accordance with
5 paragraph (1)(A)(ii) but not to forward to the Attor-
6 ney General applications filed with it unless the ap-
7 plicant has consented to such forwarding. No such
8 entity may make a determination required by this
9 section to be made by the Attorney General. Upon
10 the request of the alien, a qualified designated entity
11 shall assist the alien in obtaining documentation of
12 the work history of the alien.

13 (5) LIMITATION ON ACCESS TO INFORMA-
14 TION.—Files and records prepared for purposes of
15 this section by qualified designated entities operating
16 under this section are confidential and the Attorney
17 General and the Service shall not have access to
18 such files or records relating to an alien without the
19 consent of the alien, except as allowed by a court
20 order issued pursuant to paragraph (6).

21 (6) CONFIDENTIALITY OF INFORMATION.—

22 (A) IN GENERAL.—Except as provided in
23 this paragraph, neither the Attorney General,
24 nor any other official or employee of the De-

1 partment of Justice, or bureau or agency there-
2 of, may—

3 (i) use the information furnished by
4 the applicant pursuant to an application
5 filed under this section, or the information
6 provided to the applicant by a person des-
7 ignated under paragraph (2)(B), for any
8 purpose other than to make a determina-
9 tion on the application, including a deter-
10 mination under subsection (b)(3), or for
11 enforcement of paragraph (7);

12 (ii) make any publication whereby the
13 information furnished by any particular in-
14 dividual can be identified; or

15 (iii) permit anyone other than the
16 sworn officers and employees of the De-
17 partment or bureau or agency or, with re-
18 spect to applications filed with a des-
19 ignated entity, that designated entity, to
20 examine individual applications.

21 (B) CRIME.—Whoever knowingly uses,
22 publishes, or permits information to be exam-
23 ined in violation of this paragraph shall be fined
24 not more than \$10,000.

1 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
2 PLICATIONS.—

3 (A) CRIMINAL PENALTY.—Whoever—

4 (i) files an application for adjustment
5 of status under this section and knowingly
6 and willfully falsifies, conceals, or covers
7 up a material fact or makes any false, fic-
8 titious, or fraudulent statements or rep-
9 resentations, or makes or uses any false
10 writing or document knowing the same to
11 contain any false, fictitious, or fraudulent
12 statement or entry, or

13 (ii) creates or supplies a false writing
14 or document for use in making such an ap-
15 plication,

16 shall be fined in accordance with title 18,
17 United States Code, or imprisoned not more
18 than five years, or both.

19 (B) EXCLUSION.—An alien who is con-
20 victed of a crime under subparagraph (A) shall
21 be considered to be inadmissible to the United
22 States on the ground described in section
23 212(a)(6)(C)(i) of the Immigration and Nation-
24 ality Act.

1 (d) WAIVER OF NUMERICAL LIMITATIONS AND CER-
 2 TAIN GROUNDS FOR INADMISSIBILITY.—

3 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

4 The numerical limitations of sections 201 and 202
 5 of the Immigration and Nationality Act shall not
 6 apply to the adjustment of aliens to lawful perma-
 7 nent resident status under this section.

8 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
 9 MISSIBILITY.—In the determination of an alien's ad-
 10 missibility under subsection (a)(1)(D), the following
 11 provisions of section 212(a) of the Immigration and
 12 Nationality Act shall not apply:

13 (A) GROUNDS OF EXCLUSION NOT APPLI-
 14 CABLE.—The provisions of paragraphs (5) and
 15 (7)(A) of section 212(a) shall not apply.

16 (B) WAIVER OF OTHER GROUNDS.—

17 (i) IN GENERAL.—Except as provided
 18 in clause (ii), the Attorney General may
 19 waive any other provision of section 212(a)
 20 in the case of individual aliens for humani-
 21 tarian purposes, to assure family unity, or
 22 when it is otherwise in the public interest.

23 (ii) GROUNDS THAT MAY NOT BE
 24 WAIVED.—The following provisions of sec-

tion 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraph (2) (A) and (B) (relating to criminals).

(II) Paragraph (4) (relating to aliens likely to become public charges).

(III) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana.

(IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof.

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(e) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

1 (1) BEFORE APPLICATION PERIOD.—The Attor-
2 ney General shall provide that in the case of an alien
3 who is apprehended before the beginning of the ap-
4 plication period described in subsection (a)(1) and
5 who can establish a nonfrivolous case of eligibility to
6 have his status adjusted under subsection (a) (but
7 for the fact that he may not apply for such adjust-
8 ment until the beginning of such period), until the
9 alien has had the opportunity during the first 30
10 days of the application period to complete the filing
11 of an application for adjustment, the alien—

12 (A) may not be removed, and

13 (B) shall be granted authorization to en-
14 gage in agricultural employment in the United
15 States and be provided an “employment author-
16 ized” endorsement or other appropriate work
17 permit for such purpose.

18 (2) DURING APPLICATION PERIOD.—The Attor-
19 ney General shall provide that in the case of an alien
20 who presents a nonfrivolous application for adjust-
21 ment of status under subsection (a) during the ap-
22 plication period, including an alien who files such an
23 application within 30 days of the alien’s apprehen-
24 sion, and until a final determination on the applica-

tion has been made in accordance with this section,
the alien—

(A) may not be removed, and

(B) shall be granted authorization to engage in agricultural employment in the United States and be provided an “employment authorized” endorsement or other appropriate work permit for such purpose.

(3) PROHIBITION.—No application fees collected by the Service pursuant to this subsection may be used by the Service to offset the costs of the agricultural worker adjustment program under this title until the Service implements the program consistent with the statutory mandate as follows:

(A) During the application period described in subsection (a)(1)(A) the Service may grant nonimmigrant admission to the United States, work authorization, and provide an “employment authorized” endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) at a designated port of entry on the southern land border. An alien who does not enter through a port of

1 entry is subject to deportation and removal as
2 otherwise provided in this Act.

3 (B) During the application period de-
4 scribed in subsection (a)(1)(A) any alien who
5 has filed an application for adjustment of status
6 within the United States as provided in sub-
7 section (b)(1)(A) is subject to paragraph (2) of
8 this subsection.

9 (C) A preliminary application is defined as
10 a fully completed and signed application with
11 fee and photographs which contains specific in-
12 formation concerning the performance of quali-
13 fying employment in the United States and the
14 documentary evidence which the applicant in-
15 tends to submit as proof of such employment.
16 The applicant must be otherwise admissible to
17 the United States and must establish to the
18 satisfaction of the examining officer during an
19 interview that his or her claim to eligibility for
20 agriculture worker status is credible.

21 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22 (1) ADMINISTRATIVE AND JUDICIAL REVIEW.—

23 There shall be no administrative or judicial review of
24 a determination respecting an application for adjust-

1 ment of status under this section except in accord-
2 ance with this subsection.

3 (2) ADMINISTRATIVE REVIEW.—

4 (A) SINGLE LEVEL OF ADMINISTRATIVE
5 APPELLATE REVIEW.—The Attorney General
6 shall establish an appellate authority to provide
7 for a single level of administrative appellate re-
8 view of such a determination.

9 (B) STANDARD FOR REVIEW.—Such ad-
10 ministrative appellate review shall be based
11 solely upon the administrative record estab-
12 lished at the time of the determination on the
13 application and upon such additional or newly
14 discovered evidence as may not have been avail-
15 able at the time of the determination.

16 (3) JUDICIAL REVIEW.—

17 (A) LIMITATION TO REVIEW OF EXCLU-
18 SION OR DEPORTATION.—There shall be judicial
19 review of such a denial only in the judicial re-
20 view of an order of removal under section 106.

21 (B) STANDARD FOR JUDICIAL REVIEW.—

22 Such judicial review shall be based solely upon
23 the administrative record established at the
24 time of the review by the appellate authority
25 and the findings of fact and determinations

1 contained in such record shall be conclusive un-
 2 less the applicant can establish abuse of discre-
 3 tion or that the findings are directly contrary to
 4 clear and convincing facts contained in the
 5 record considered as a whole.

6 (g) DISSEMINATION OF INFORMATION ON ADJUST-
 7 MENT PROGRAM.—Beginning not later than the date des-
 8 ignated by the Attorney General under subsection
 9 (a)(1)(A), the Attorney General, in cooperation with quali-
 10 fied designated entities, shall broadly disseminate informa-
 11 tion respecting the benefits which aliens may receive under
 12 this section and the requirements to obtain such benefits.

13 **TITLE II—AGRICULTURAL** 14 **WORKER REGISTRIES**

15 **SEC. 201. AGRICULTURAL WORKER REGISTRIES.**

16 (a) ESTABLISHMENT OF REGISTRIES.—

17 (1) IN GENERAL.—The Secretary of Labor shall
 18 establish and maintain a system of registries con-
 19 taining a current database of workers described in
 20 paragraph (2) who seek agricultural employment
 21 and the employment status of such workers—

22 (A) to ensure that eligible United States
 23 workers are informed about available agricul-
 24 tural job opportunities and have the right of

1 first refusal for the agricultural jobs available
 2 through the registry; and

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

6 (2) COVERED WORKERS.—The workers covered
 7 by paragraph (1) are—

8 (A) eligible United States workers; and

9 (B) eligible nonimmigrant agricultural
 10 workers whose status was adjusted under sec-
 11 tion 101(a).

12 (3) GEOGRAPHIC COVERAGE.—

13 (A) SINGLE STATE.—Each registry estab-
 14 lished under paragraph (1) shall include the job
 15 opportunities in a single State, except that, in
 16 the case of New England States, two or more
 17 such States may be represented by a single reg-
 18 istry in lieu of multiple registries.

19 (B) REQUESTS FOR INCLUSION.—Each
 20 State having any group of agricultural pro-
 21 ducers seeking to utilize the registry shall be
 22 represented by a registry, except that, in the
 23 case of a New England State, the State shall be
 24 represented by the registry covering the group
 25 of States of which the State is a part.

1 (4) COMPUTER DATABASE.—The Secretary of
 2 Labor may establish the registries as part of the
 3 computer databases known as “America’s Job
 4 Bank” and “America’s Talent Bank”.

5 (5) RELATION TO PROCESS FOR IMPORTING H-
 6 2A WORKERS.—Notwithstanding section 218 of the
 7 Immigration and Nationality Act (8 U.S.C. 1188),
 8 no petition to import an alien as an H-2A worker
 9 (as defined in section 218(i)(2) of that Act) may be
 10 approved by the Attorney General unless the H-2A
 11 employer—

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

16 (B) has received a report described in sec-
 17 tion 303(a)(1).

18 (b) REGISTRATION.—

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

23 (A) the name and address of the indi-
 24 vidual;

1 (B) the period or periods of time (includ-
2 ing beginning and ending dates) during which
3 the individual will be available for agricultural
4 work;

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

7 (D) the specific qualifications and work ex-
8 perience possessed by the applicant;

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

11 (F) such other information as the appli-
12 cant wishes to be taken into account in refer-
13 ring the applicant to agricultural job opportuni-
14 ties; and

15 (G) such other information as may be re-
16 quired by the Secretary.

17 (2) VALIDATION OF EMPLOYMENT AUTHORIZA-
18 TION.—No person may be included on any registry
19 unless the Secretary of Labor has requested and ob-
20 tained from the Attorney General a certification that
21 the person is authorized to be employed in the
22 United States.

23 (3) UNITED STATES WORKERS.—United States
24 workers shall have preference in referral by the reg-
25 istry, and may be referred to any job opportunity

1 nationwide for which they are qualified and make a
2 commitment to be available at the time and place
3 needed.

4 (4) ADJUSTED NONIMMIGRANTS.—Adjusted
5 nonimmigrant aliens who apply to be included in a
6 registry may only be referred to job opportunities for
7 which they are qualified within the State covered by
8 the registry or within States contiguous to that
9 State.

10 (5) SANCTIONS FOR NONCOMPLIANCE.—Ad-
11 justed nonimmigrant aliens who elect to be listed on
12 the registry and who fail to report to a registry job
13 opportunity for which they had made an affirmative
14 commitment and been referred will be removed from
15 the registry for a period of 6 months for the first
16 such failure and for a period of 1 year for each suc-
17 ceeding failure.

18 (6) USE OF REGISTRY.—Any United States ag-
19 ricultural employer may use the registry.

20 (7) DISCRETIONARY USE FOR NEW HIRES.—An
21 agricultural employer may require prospective em-
22 ployees to register with a registry as a means of as-
23 suring that its workers are eligible to be employed
24 in the United States.

1 (8) WORKERS REFERRED TO JOB OPPORTUNI-
2 TIES.—The name of each registered worker who is
3 referred and accepts employment with an employer
4 shall be classified as inactive on each registry on
5 which the worker is included during the period of
6 employment involved in the job to which the worker
7 was referred, unless the worker reports to the Sec-
8 retary that the worker is no longer employed and is
9 available for referral to another job opportunity. A
10 registered worker classified as inactive shall not be
11 referred.

12 (9) REMOVAL OF NAMES FROM A REGISTRY.—
13 The Secretary shall remove from the appropriate
14 registry the name of any registered worker who, on
15 3 separate occasions within a 3-month period, is re-
16 ferred to a job opportunity pursuant to this section,
17 and who declines such referral or fails to report to
18 work in a timely manner.

19 (10) VOLUNTARY REMOVAL.—A registered
20 worker may request that the worker's name be re-
21 moved from a registry.

22 (11) REMOVAL BY EXPIRATION.—The applica-
23 tion of a registered worker shall expire, and the Sec-
24 retary shall remove the name of such worker from
25 the appropriate registry if the worker has not ac-

1 cepted a job opportunity pursuant to this section
 2 within the preceding 12-month period.

3 (12) REINSTATEMENT.—A worker whose name
 4 is removed from a registry pursuant to paragraph
 5 (9), (10), or (11) may apply to the Secretary for re-
 6 instatement to such registry at any time.

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

12 (d) ADVERTISING OF REGISTRIES.—The Secretary
 13 shall widely disseminate, through advertising and other
 14 means, the existence of the registries for the purpose of
 15 encouraging eligible United States workers seeking agri-
 16 cultural job opportunities to register. The Secretary of
 17 Labor shall ensure that the information about the registry
 18 is made available to eligible workers through all appro-
 19 priate means, including appropriate State agencies, groups
 20 representing farm workers, and nongovernmental organi-
 21 zations, and shall ensure that the registry is accessible to
 22 growers and farm workers.

23 **TITLE III—H-2A REFORM**

24 **SEC. 301. EMPLOYER APPLICATIONS AND ASSURANCES.**

25 (a) APPLICATIONS TO THE SECRETARY.—

1 (1) IN GENERAL.—Not later than 28 days prior
2 to the date on which an H–2A employer desires to
3 employ an H–2A worker in a temporary or seasonal
4 agricultural job opportunity, the employer shall, be-
5 fore petitioning for the admission of such a worker,
6 apply to the Secretary for the referral of a United
7 States worker or nonimmigrant agricultural worker
8 whose status was adjusted under section 101(a)
9 through a search of the appropriate registry, in ac-
10 cordance with section 302. Such application shall—

11 (A) describe the nature and location of the
12 work to be performed;

13 (B) list the anticipated period (expected
14 beginning and ending dates) for which workers
15 will be needed;

16 (C) indicate the number of job opportuni-
17 ties in which the employer seeks to employ
18 workers from the registry;

19 (D) describe the bona fide occupational
20 qualifications that must be possessed by a
21 worker to be employed in the job opportunity in
22 question;

23 (E) describe the wages and other terms
24 and conditions of employment the employer will
25 offer, which shall not be less (and are not re-

1 quired to be more) than those required by this
2 section;

3 (F) contain the assurances required by
4 subsection (c);

5 (G) specify the foreign country or region
6 thereof from which alien workers should be ad-
7 mitted in the case of a failure to refer United
8 States workers under this Act; and

9 (H) be accompanied by the payment of a
10 registry user fee determined under section
11 404(b)(1)(A) for each job opportunity indicated
12 under subparagraph (C).

13 (2) APPLICATIONS BY ASSOCIATIONS ON BE-
14 HALF OF EMPLOYER MEMBERS.—

15 (A) IN GENERAL.—An agricultural associa-
16 tion may file an application under paragraph
17 (1) for registered workers on behalf of its em-
18 ployer members.

19 (B) EMPLOYERS.—An application under
20 subparagraph (A) shall cover those employer
21 members of the association that the association
22 certifies in its application have agreed in writ-
23 ing to comply with the requirements of this Act.

24 (b) AMENDMENT OF APPLICATIONS.—Prior to receiv-
25 ing a referral of workers from a registry, an employer may

1 amend an application under this subsection if the employ-
2 er's need for workers changes. If an employer makes a
3 material amendment to an application on a date which is
4 later than 28 days prior to the date on which the workers
5 on the amended application are sought to be employed,
6 the Secretary may delay issuance of the report described
7 in section 302(b) by the number of days by which the fil-
8 ing of the amended application is later than 28 days before
9 the date on which the employer desires to employ workers.

10 (c) ASSURANCES.—The assurances referred to in
11 subsection (a)(1)(F) are the following:

12 (1) ASSURANCE THAT THE JOB OPPORTUNITY
13 IS NOT A RESULT OF A LABOR DISPUTE.—The em-
14 ployer shall assure that the job opportunity for
15 which the employer requests a registered worker is
16 not vacant because a worker is involved in a strike,
17 lockout, or work stoppage in the course of a labor
18 dispute involving the job opportunity at the place of
19 employment.

20 (2) ASSURANCE THAT THE JOB OPPORTUNITY
21 IS TEMPORARY OR SEASONAL.—

22 (A) REQUIRED ASSURANCE.—The em-
23 ployer shall assure that the job opportunity for
24 which the employer requests a registered worker
25 is temporary or seasonal.

1 (B) SEASONAL BASIS.—For purposes of
2 this Act, labor is performed on a seasonal basis
3 where, ordinarily, the employment pertains to
4 or is of the kind exclusively performed at cer-
5 tain seasons or periods of the year and which,
6 from its nature, may not be continuous or car-
7 ried on throughout the year.

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

12 (3) ASSURANCE OF PROVISION OF REQUIRED
13 WAGES AND BENEFITS.—The employer shall assure
14 that the employer will provide the wages and bene-
15 fits required by subsections (a), (b), and (c) of sec-
16 tion 304 to all workers employed in job opportunities
17 for which the employer has applied under subsection
18 (a) and to all other workers in the same occupation
19 at the place of employment, and in no case less than
20 the greater of the hourly wage prescribed under sec-
21 tion 6(a)(1) of the Fair Labor Standards Act of
22 1938 (29 U.S.C. 206(a)(1)), or the applicable State
23 minimum wage.

24 (4) ASSURANCE OF EMPLOYMENT.—The em-
25 ployer shall assure that the employer will not refuse

1 to employ qualified individuals referred under sec-
2 tion 302, and will terminate qualified individuals
3 employed pursuant to this Act only for lawful job-
4 related reasons, including lack of work.

5 (5) ASSURANCE OF COMPLIANCE WITH LABOR
6 LAWS.—

7 (A) IN GENERAL.—An employer who re-
8 quests registered workers shall assure that, ex-
9 cept as otherwise provided in this Act, the em-
10 ployer will comply with all applicable Federal,
11 State, and local labor laws, including laws af-
12 fecting migrant and seasonal agricultural work-
13 ers, with respect to all United States workers
14 and alien workers employed by the employer.

15 (B) LIMITATIONS.—The disclosure re-
16 quired under section 201(a) of the Migrant and
17 Seasonal Agricultural Worker Protection Act
18 (29 U.S.C. 1821(a)) may be made at any time
19 prior to the time the alien is issued a visa per-
20 mitting entry into the United States.

21 (6) ASSURANCE OF ADVERTISING OF THE REG-
22 ISTRY.—The employer shall assure that the em-
23 ployer will, from the day an application for workers
24 is submitted under subsection (a), and continuing
25 throughout the period of employment of any job op-

1 portunity for which the employer has applied for a
2 worker from the registry, post in a conspicuous place
3 a poster to be provided by the Secretary advertising
4 the availability of the registry.

5 (7) ASSURANCE OF ADVERTISING OF JOB OP-
6 PORTUNITIES.—The employer shall assure that not
7 later than 14 days after submitting an application to
8 a registry for workers under subsection (a) the em-
9 ployer will advertise the availability of the job oppor-
10 tunities for which the employer is seeking workers
11 from the registry in a publication in the local labor
12 market that is likely to be patronized by potential
13 farmworkers, if any, and refer interested workers to
14 register with the registry.

15 (8) ASSURANCE OF CONTACTING FORMER
16 WORKERS.—The employer shall assure that the em-
17 ployer has made reasonable efforts through the
18 sending of a letter by United States Postal Service
19 mail, or otherwise, to contact any eligible worker the
20 employer employed during the previous season in the
21 occupation at the place of intended employment for
22 which the employer is applying for registered work-
23 ers, and has made the availability of the employer's
24 job opportunities in the occupation at the place of
25 intended employment known to such previous work-

1 er, unless the worker was terminated from employ-
2 ment by the employer for a lawful job-related reason
3 or abandoned the job before the worker completed
4 the period of employment of the job opportunity for
5 which the worker was hired.

6 (9) ASSURANCE OF PROVISION OF WORKERS
7 COMPENSATION.—The employer shall assure that if
8 the job opportunity is not covered by the State work-
9 ers' compensation law, that the employer will pro-
10 vide, at no cost to the worker, insurance covering in-
11 jury and disease arising out of and in the course of
12 the worker's employment which will provide benefits
13 at least equal to those provided under the State
14 workers' compensation law for comparable employ-
15 ment.

16 (10) ASSURANCE OF PAYMENT OF ALIEN EM-
17 PLOYMENT USER FEE.—The employer shall assure
18 that if the employer receives a notice of insufficient
19 workers under section 302(c), such employer shall
20 promptly pay the alien employment user fee deter-
21 mined under section 404(b)(1)(B) for each job op-
22 portunity to be filled by an eligible alien as required
23 under such section.

24 (d) WITHDRAWAL OF APPLICATIONS.—

1 (1) IN GENERAL.—An employer may withdraw
2 an application under subsection (a), except that, if
3 the employer is an agricultural association, the asso-
4 ciation may withdraw an application under sub-
5 section (a) with respect to one or more of its mem-
6 bers. To withdraw an application, the employer shall
7 notify the Secretary in writing, and the Secretary
8 shall acknowledge in writing the receipt of such
9 withdrawal notice. An employer who withdraws an
10 application under subsection (a), or on whose behalf
11 an application is withdrawn, is relieved of the obliga-
12 tions undertaken in the application.

13 (2) LIMITATION.—An application may not be
14 withdrawn while any alien provided status under this
15 Act pursuant to such application is employed by the
16 employer.

17 (3) OBLIGATIONS UNDER OTHER STATUTES.—
18 Any obligation incurred by an employer under any
19 other law or regulation as a result of recruitment of
20 United States workers under an offer of terms and
21 conditions of employment required as a result of
22 making an application under subsection (a) is unaf-
23 fected by withdrawal of such application.

24 (e) REVIEW OF APPLICATION.—

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

5 (2) APPROVAL OF APPLICATIONS.—If the Sec-
6 retary determines that an application meets the re-
7 quirements of subsection (a), and the employer is
8 not ineligible to apply under paragraph (2), (3), or
9 (4) of section 305(b), the Secretary shall, not later
10 than 7 days after the receipt of such application, ap-
11 prove the application and so notify the employer.

12 (3) REJECTION OF APPLICATIONS.—If the Sec-
13 retary determines that an application fails to meet
14 1 or more of the requirements of subsection (a), the
15 Secretary, as expeditiously as possible, but in no
16 case later than 7 days after the receipt of such ap-
17 plication, shall—

18 (A) notify the employer of the rejection of
19 the application and the reasons for such rejec-
20 tion, and provide the opportunity for the
21 prompt resubmission of an amended applica-
22 tion; and

23 (B) offer the applicant an opportunity to
24 request an expedited administrative review or a
25 de novo administrative hearing before an ad-

1 ministrative law judge of the rejection of the
2 application.

3 (4) REJECTION FOR PROGRAM VIOLATIONS.—

4 The Secretary shall reject the application of an em-
5 ployer under this section if—

6 (A) the employer has been determined to
7 be ineligible to employ workers under section
8 401(b); or

9 (B) the employer during the previous two-
10 year period employed H-2A workers or reg-
11 istered workers and the Secretary of Labor has
12 determined, after notice and opportunity for a
13 hearing, that the employer at any time during
14 that period substantially violated a material
15 term or condition of the assurances made with
16 respect to the employment of United States
17 workers or nonimmigrant workers.

18 No employer may have applications under this sec-
19 tion rejected for more than 3 years for any violation
20 described in this paragraph.

21 **SEC. 302. SEARCH OF REGISTRY.**

22 (a) SEARCH PROCESS AND REFERRAL TO THE EM-
23 PLOYER.—Upon the approval of an application under sec-
24 tion 301(e), the Secretary shall promptly begin a search
25 of the registry of the State (or States) in which the work

1 is to be performed to identify registered United States
2 workers and adjusted aliens with the qualifications re-
3 quested by the employer. The Secretary shall contact such
4 qualified registered workers and determine, in each in-
5 stance, whether the worker is ready, willing, and able to
6 accept the employer's job opportunity and will make the
7 affirmative commitment to work for the employer at the
8 time and place needed. The Secretary shall provide to each
9 worker who commits to work for the employer the employ-
10 er's name, address, telephone number, the location where
11 the employer has requested that employees report for em-
12 ployment, and a statement disclosing the terms and condi-
13 tions of employment.

14 (b) DEADLINE FOR COMPLETING SEARCH PROCESS;
15 REFERRAL OF WORKERS.—As expeditiously as possible,
16 but not later than 7 days before the date on which an
17 employer desires work to begin, the Secretary shall com-
18 plete the search under subsection (a) and shall transmit
19 to the employer a report containing the name, address,
20 and social security account number of each registered
21 worker who has made the affirmative commitment de-
22 scribed in subsection (a) to work for the employer on the
23 date needed, together with sufficient information to enable
24 the employer to establish contact with the worker. The

1 identification of such registered workers in a report shall
2 constitute a referral of workers under this section.

3 (c) ACCEPTANCE OF REFERRALS.—H-2A employers
4 shall accept all qualified United States worker referrals
5 who make a commitment to report to work at the time
6 and place needed and to complete the full period of em-
7 ployment offered, and those adjusted nonimmigrants on
8 the registry of the State in which the intended employment
9 is located, and the immediately contiguous States. An em-
10 ployer shall not be required to accept more referrals than
11 the number of job opportunities for which the employer
12 applied to the registry.

13 (d) NOTICE OF INSUFFICIENT WORKERS.—If the re-
14 port provided to the employer under subsection (b) does
15 not include referral of a sufficient number of registered
16 workers to fill all of the employer's job opportunities in
17 the occupation for which the employer applied under sec-
18 tion 301(a), the Secretary shall indicate in the report the
19 number of job opportunities for which registered workers
20 could not be referred, and shall promptly transmit a copy
21 of the report to the Attorney General and the Secretary
22 of State, by electronic or other means ensuring next day
23 delivery.

24 (e) USER FEE FOR CERTIFICATION TO EMPLOY
25 ALIEN WORKERS.—With respect to each job opportunity

1 for which a notice of insufficient workers is made, the Sec-
 2 retary shall require the payment of an alien employment
 3 user fee determined under section 404(b)(1)(B).

4 **SEC. 303. ISSUANCE OF VISAS AND ADMISSION OF ALIENS.**

5 (a) IN GENERAL.—

6 (1) NUMBER OF ADMISSIONS.—Subject to para-
 7 graph (3), the Secretary of State shall promptly
 8 issue visas to, and the Attorney General shall admit,
 9 as nonimmigrant aliens described in section
 10 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
 11 ality Act a sufficient number of eligible aliens des-
 12 ignated by the employer to fill the job opportunities
 13 of the employer—

14 (A) upon receipt of a copy of the report
 15 described in section 302(c);

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

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

20 (D) upon receipt of a report under sub-
 21 section (d).

22 (2) PROCEDURES.—The admission of aliens
 23 under paragraph (1) shall be subject to the proce-
 24 dures of section 218 of the Immigration and Nation-
 25 ality Act, as amended by this Act.

1 (b) DIRECT APPLICATION UPON FAILURE TO ACT.—

2 (1) APPLICATION TO THE SECRETARY OF
3 STATE.—If the employer has not received a referral
4 of sufficient workers pursuant to section 302(b) or
5 a report of insufficient workers pursuant to section
6 302(c), by the date that is 7 days before the date
7 on which the work is anticipated to begin, the em-
8 ployer may submit an application for alien workers
9 directly to the Secretary of State, with a copy of the
10 application provided to the Attorney General, seek-
11 ing the issuance of visas to and the admission of
12 aliens for employment in the job opportunities for
13 which the employer has not received referral of reg-
14 istered workers. Such an application shall include a
15 copy of the employer's application under section
16 301(a), together with evidence of its timely submis-
17 sion. The Secretary of State may consult with the
18 Secretary of Labor in carrying out this paragraph.

19 (2) EXPEDITED CONSIDERATION BY SECRETARY
20 OF STATE.—The Secretary of State shall, as expedi-
21 tiously as possible, but not later than 5 days after
22 the employer files an application under paragraph
23 (1), issue visas to, and the Attorney General shall
24 admit, a sufficient number of eligible aliens des-
25 ignated by the employer to fill the job opportunities

1 for which the employer has applied under that para-
 2 graph, if the employer has met the requirements of
 3 sections 301 and 302. The employer shall be subject
 4 to the alien employment user fee determined under
 5 section 404(b)(1)(B) with respect to each job oppor-
 6 tunity for which the Secretary of State authorizes
 7 the issuance of a visa pursuant to paragraph (2).

8 (c) REDETERMINATION OF NEED.—

9 (1) REQUESTS FOR REDETERMINATION.—

10 (A) IN GENERAL.—An employer may file a
 11 request for a redetermination by the Secretary
 12 of the employer's need for workers if—

13 (i) a worker referred from the registry
 14 is not at the place of employment on the
 15 date of need shown on the application, or
 16 the date the work for which the worker is
 17 needed has begun, whichever is later;

18 (ii) the worker is not ready, willing,
 19 able, or qualified to perform the work re-
 20 quired; or

21 (iii) the worker abandons the employ-
 22 ment or is terminated for a lawful job-re-
 23 lated reason.

24 (B) ADDITIONAL AUTHORIZATION OF AD-
 25 MISSIONS.—The Secretary shall expeditiously,

1 but in no case later than 72 hours after a rede-
2 termination is requested under subparagraph
3 (A), submit a report to the Secretary of State
4 and the Attorney General providing notice of a
5 need for workers under this subsection, if the
6 employer has met the requirements of sections
7 301 and 302 and the conditions described in
8 subparagraph (A).

9 (2) JOB-RELATED REQUIREMENTS.—An em-
10 ployer shall not be required to initially employ a
11 worker who fails to meet lawful job-related employ-
12 ment criteria, nor to continue the employment of a
13 worker who fails to meet lawful, job-related stand-
14 ards of conduct and performance, including failure
15 to meet minimum production standards after a 3-
16 day break-in period.

17 (d) EMERGENCY APPLICATIONS.—Notwithstanding
18 subsections (b) and (c), the Secretary may promptly trans-
19 mit a report to the Attorney General and Secretary of
20 State providing notice of a need for workers under this
21 subsection for an employer—

22 (1) who has not employed aliens under this Act
23 in the occupation in question in the prior year's ag-
24 ricultural season;

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

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

9 The employer shall be subject to the alien employment
10 user fee determined under section 404(b)(1)(B) with re-
11 spect to each job opportunity for which a notice of insuffi-
12 cient workers is made pursuant to this subsection.

13 (e) REGULATIONS.—The Secretary of State shall pre-
14 scribe regulations to provide for the designation of aliens
15 under this section.

16 **SEC. 304. EMPLOYMENT REQUIREMENTS.**

17 (a) REQUIRED WAGES.—

18 (1) IN GENERAL.—An employer applying under
19 section 301(a) for workers shall offer to pay, and
20 shall pay, all workers in the occupation or occupa-
21 tions for which the employer has applied for workers
22 from the registry, not less (and is not required to
23 pay more) than the greater of the prevailing wage in
24 the occupation in the area of intended employment
25 or the adverse effect wage rate. No worker shall be

1 paid less than the greater of the hourly wage pre-
 2 scribed under section 6(a)(1) of the Fair Labor
 3 Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the
 4 applicable State minimum wage.

5 (2) PAYMENT OF PREVAILING WAGE DETER-
 6 MINED BY A STATE EMPLOYMENT SECURITY AGENCY
 7 SUFFICIENT.—In complying with paragraph (1), an
 8 employer may request and obtain a prevailing wage
 9 determination from the State employment security
 10 agency. If the employer requests such a determina-
 11 tion, and pays the wage required by paragraph (1)
 12 based upon such a determination, such payment
 13 shall be considered sufficient to meet the require-
 14 ment of paragraph (1).

15 (3) RELIANCE ON WAGE SURVEY.—In lieu of
 16 the procedure of paragraph (2), an employer may
 17 rely on other information, such as an employer-gen-
 18 erated prevailing wage survey that the Secretary de-
 19 termines meets criteria specified by the Secretary in
 20 regulations.

21 (4) ALTERNATIVE METHODS OF PAYMENT PER-
 22 MITTED.—

23 (A) IN GENERAL.—A prevailing wage may
 24 be expressed as an hourly wage, a piece rate, a
 25 task rate, or other incentive payment method,

1 including a group rate. The requirement to pay
2 at least the prevailing wage in the occupation
3 and area of intended employment does not re-
4 quire an employer to pay by the method of pay
5 in which the prevailing rate is expressed, except
6 that, if the employer adopts a method of pay
7 other than the prevailing rate, the burden of
8 proof is on the employer to demonstrate that
9 the employer's method of pay is designed to
10 produce earnings equivalent to the earnings
11 that would result from payment of the pre-
12 vailing rate.

13 (B) COMPLIANCE WHEN PAYING AN IN-
14 CENTIVE RATE.—In the case of an employer
15 that pays a piece rate or task rate or uses any
16 other incentive payment method, including a
17 group rate, the employer shall be considered to
18 be in compliance with any applicable hourly
19 wage requirement if the average of the hourly
20 earnings of the workers, taken as a group, in
21 the activity for which a piece rate, task rate, or
22 other incentive payment, including a group rate,
23 is paid, for the pay period, is at least equal to
24 the required hourly wage, except that no worker
25 shall be paid less than the hourly wage pre-

scribed 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 301(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.

1 (B) LIABILITY.—An employer not com-
2 plying with subparagraph (A) shall be liable to
3 a registered worker for the costs of housing
4 equivalent to the type of housing required to be
5 provided under that subparagraph and shall not
6 be liable for any employment-related obligation
7 solely by reason of such noncompliance.

8 (2) TYPE OF HOUSING.—In complying with
9 paragraph (1), an employer may, at the employer's
10 election, provide housing that meets applicable Fed-
11 eral standards for temporary labor camps or secure
12 housing that meets applicable local standards for
13 rental or public accommodation housing or other
14 substantially similar class of habitation, or, in the
15 absence of applicable local standards, State stand-
16 ards for rental or public accommodation housing or
17 other substantially similar class of habitation.

18 (3) WORKERS ENGAGED IN THE RANGE PRO-
19 Duction OF LIVESTOCK.—The Secretary shall issue
20 regulations that address the specific requirements
21 for the provision of housing to workers engaged in
22 the range production of livestock.

23 (4) LIMITATION.—Nothing in this subsection
24 shall be construed to require an employer to provide
25 or secure housing for persons who were not entitled

1 to such housing under the temporary labor certifi-
2 cation regulations in effect on June 1, 1986.

3 (5) CHARGES FOR HOUSING.—

4 (A) UTILITIES AND MAINTENANCE.—An
5 employer who provides housing to a worker pur-
6 suant to paragraph (1) may charge an amount
7 equal to the fair market value (but not greater
8 than the employer's actual cost) for mainte-
9 nance and utilities, or such lesser amount as
10 permitted by law.

11 (B) SECURITY DEPOSIT.—An employer
12 who provides housing to workers pursuant to
13 paragraph (1) may require, as a condition for
14 providing such housing, a deposit not to exceed
15 \$50 from workers occupying such housing to
16 protect against gross negligence or willful de-
17 struction of property.

18 (C) DAMAGES.—An employer who provides
19 housing to workers pursuant to paragraph (1)
20 may require a worker found to have been re-
21 sponsible for damage to such housing which is
22 not the result of normal wear and tear related
23 to habitation to reimburse the employer for the
24 reasonable cost of repair of such damage.

25 (6) HOUSING ALLOWANCE AS ALTERNATIVE.—

1 (A) IN GENERAL.—In lieu of offering
2 housing pursuant to paragraph (1), the em-
3 ployer may provide a reasonable housing allow-
4 ance during the 3-year period beginning on the
5 date of enactment of this Act. After the expira-
6 tion of that period such allowance may be pro-
7 vided only if the requirement of subparagraph
8 (B) is satisfied or, in the case of a certification
9 under subparagraph (B) that is expired, the re-
10 quirement of subparagraph (C) is satisfied.
11 Upon the request of a worker seeking assist-
12 ance in locating housing, the employer shall
13 make a good faith effort to assist the worker in
14 identifying and locating housing in the area of
15 intended employment. An employer who offers a
16 housing allowance to a worker, or assists a
17 worker in locating housing which the worker oc-
18 cupies, pursuant to this subparagraph shall not
19 be deemed to be a housing provider under sec-
20 tion 203 of the Migrant and Seasonal Agricul-
21 tural Worker Protection Act (29 U.S.C. 1823)
22 solely by virtue of providing such housing allow-
23 ance.

24 (B) CERTIFICATION.—The requirement of
25 this subparagraph is satisfied if the Governor of

1 the State certifies to the Secretary that there is
2 adequate housing available in an area of in-
3 tended employment for migrant farm workers,
4 aliens provided status pursuant to this Act, or
5 nonimmigrant aliens described in section
6 101(a)(15)(H)(ii)(a) of the Immigration and
7 Nationality Act, who are seeking temporary
8 housing while employed at farm work. Such cer-
9 tification shall expire after 3 years unless re-
10 newed by the Governor of the State.

11 (C) EFFECT OF CERTIFICATION.—Not-
12 withstanding the expiration of a certification
13 under subparagraph (B) with respect to an area
14 of intended employment, a housing allowance
15 described in subparagraph (A) may be offered
16 for up to one year after the date of expiration.

17 (D) AMOUNT OF ALLOWANCE.—The
18 amount of a housing allowance under this para-
19 graph shall be equal to the statewide average
20 fair market rental for existing housing for non-
21 metropolitan counties for the State in which the
22 employment occurs, as established by the Sec-
23 retary of Housing and Urban Development pur-
24 suant to section 8(c) of the United States
25 Housing Act of 1937 (42 U.S.C. 1437f(c)),

1 based on a 2-bedroom dwelling unit and an as-
2 sumption of 2 persons per bedroom.

3 (c) REIMBURSEMENT OF TRANSPORTATION.—

4 (1) TO PLACE OF EMPLOYMENT.—A worker
5 who is referred to a job opportunity under section
6 302(a), or an alien employed pursuant to this Act,
7 who completes 50 percent of the period of employ-
8 ment of the job opportunity for which the worker
9 was hired, shall be reimbursed by the employer for
10 the cost of the worker's transportation and subsist-
11 ence from the worker's permanent place of residence
12 (or place of last employment, if the worker traveled
13 from such place) to the place of employment to
14 which the worker was referred under section 302(a).

15 (2) FROM PLACE OF EMPLOYMENT.—A worker
16 who is referred to a job opportunity under section
17 302(a), or an alien employed pursuant to this Act,
18 who completes the period of employment for the job
19 opportunity involved, shall be reimbursed by the em-
20 ployer for the cost of the worker's transportation
21 and subsistence from the place of employment to the
22 worker's place of residence, or to the place of next
23 employment, if the worker has contracted with a
24 subsequent employer who has not agreed to provide
25 or pay for the worker's transportation and subsist-

1 ence to such subsequent employer's place of employ-
 2 ment.

3 (3) LIMITATION.—

4 (A) AMOUNT OF REIMBURSEMENT.—Ex-
 5 cept as provided in subparagraph (B), the
 6 amount of reimbursement provided under para-
 7 graph (1) or (2) to a worker or alien shall not
 8 exceed the lesser of—

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

12 (ii) the most economical and reason-
 13 able common carrier transportation
 14 charges and subsistence costs for the dis-
 15 tance involved.

16 (B) DISTANCE TRAVELED.—No reimburse-
 17 ment under paragraph (1) or (2) shall be re-
 18 quired if the distance traveled is 100 miles or
 19 less, or the worker is not residing in employer-
 20 provided housing or housing secured through a
 21 voucher as provided in subsection (b)(6).

22 (C) PLACE OF RECRUITMENT.—For the
 23 purpose of the reimbursement required under
 24 paragraph (1) or (2) to aliens admitted pursu-
 25 ant to this Act, the alien's place of residence

1 shall be deemed to be the place where the alien
 2 was issued the visa authorizing admission to the
 3 United States or, if no visa was required, the
 4 place from which the alien departed the foreign
 5 country to travel to the United States.

6 (d) CONTINUING OBLIGATION TO EMPLOY UNITED
 7 STATES WORKERS.—

8 (1) IN GENERAL.—An employer that applies for
 9 registered workers under section 301(a) shall, as a
 10 condition for the approval of such application, con-
 11 tinue to offer employment to qualified, eligible
 12 United States workers who are referred under sec-
 13 tion 302(b) after the employer receives the report
 14 described in section 302(b).

15 (2) LIMITATION.—An employer shall not be ob-
 16 ligated to comply with paragraph (1)—

17 (A) after 50 percent of the anticipated pe-
 18 riod of employment shown on the employer's
 19 application under section 301(a) has elapsed; or

20 (B) during any period in which the em-
 21 ployer is employing no H-2A workers in the oc-
 22 cupation for which the United States worker
 23 was referred; or

24 (C) during any period when the Secretary
 25 is conducting a search of a registry for workers

1 in the occupation and area of intended employ-
2 ment to which the worker has been referred, or
3 in other occupations in the area of intended em-
4 ployment for which the worker that has been
5 referred is qualified and that offer substantially
6 similar terms and conditions of employment.

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

17 (4) REFERRAL OF WORKERS DURING 50-PER-
18 CENT PERIOD.—The Secretary shall make all rea-
19 sonable efforts to place a registered worker in an
20 open job acceptable to the worker, including avail-
21 able jobs not listed on the registry, before referring
22 such worker to an employer for a job opportunity al-
23 ready filled by, or committed to, an alien admitted
24 pursuant to this Act.

1 **SEC. 305. PROGRAM FOR THE ADMISSION OF TEMPORARY**
 2 **H-2A WORKERS.**

3 Section 218 of the Immigration and Nationality Act
 4 (8 U.S.C. 1188) is amended to read as follows:

5 “ADMISSION OF TEMPORARY H-2A WORKERS

6 “SEC. 218. (a) PROCEDURE FOR ADMISSION OR EX-
 7 TENSION OF ALIENS.—

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

10 “(A) CRITERIA FOR ADMISSIBILITY.—

11 “(i) IN GENERAL.—An alien described
 12 in section 101(a)(15)(H)(ii)(a) of the Im-
 13 migration and Nationality Act shall be ad-
 14 missible under this section if the alien is
 15 designated pursuant to section 302 of the
 16 Agricultural Job Opportunity Benefits and
 17 Security Act of 1999, otherwise admissible
 18 under this Act, and the alien is not ineli-
 19 gible under clause (ii).

20 “(ii) DISQUALIFICATION.—An alien
 21 shall be ineligible for admission to the
 22 United States or being provided status
 23 under this section if the alien has, at any
 24 time during the past 5 years—

25 “(I) violated a material provision
 26 of this section, including the require-

1 ment to promptly depart the United
2 States when the alien's authorized pe-
3 riod of admission under this section
4 has expired; or

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

10 “(iii) INITIAL WAIVER OF INELIGI-
11 BILITY FOR UNLAWFUL PRESENCE.—

12 “(I) IN GENERAL.—An alien who
13 has not previously been admitted to
14 the United States pursuant to this
15 section, and who is otherwise eligible
16 for admission in accordance with
17 clauses (i) and (ii), shall not be
18 deemed inadmissible by virtue of sec-
19 tion 212(a)(9)(B). Such an alien shall
20 depart the United States to be eligible
21 for admission under this section.

22 “(II) TERMINATION.—Subclause
23 (I) shall terminate on the date that is
24 4 years after the date of the enact-
25 ment of the Agricultural Job Oppor-

1 tunity Benefits and Security Act of
2 1999.

3 “(B) PERIOD OF ADMISSION.—The alien
4 shall be admitted for the period requested by
5 the employer not to exceed 10 months, or the
6 ending date of the anticipated period of employ-
7 ment on the employer’s application for reg-
8 istered workers, whichever is less, plus an addi-
9 tional period of 14 days, during which the alien
10 shall seek authorized employment in the United
11 States. During the 14-day period following the
12 expiration of the alien’s work authorization, the
13 alien is not authorized to be employed unless an
14 employer who is authorized to employ such
15 worker has filed an extension of stay on behalf
16 of the alien pursuant to paragraph (2).

17 “(C) ABANDONMENT OF EMPLOYMENT.—

18 “(i) IN GENERAL.—An alien admitted
19 or provided status under this section who
20 abandons the employment which was the
21 basis for such admission or status shall be
22 considered to have failed to maintain non-
23 immigrant status as an alien described in
24 section 101(a)(15)(H)(ii)(a) and shall de-

1 part the United States or be subject to re-
2 moval under section 237(a)(1)(C)(i).

3 “(ii) REPORT BY EMPLOYER.—The
4 employer (or association acting as agent
5 for the employer) shall notify the Attorney
6 General within 7 days of an alien admitted
7 or provided status under this Act pursuant
8 to an application to the Secretary of Labor
9 under section 302 of the Agricultural Job
10 Opportunity Benefits and Security Act of
11 1999 by the employer who prematurely
12 abandons the alien’s employment.

13 “(iii) REMOVAL BY THE ATTORNEY
14 GENERAL.—The Attorney General shall
15 promptly remove from the United States
16 aliens admitted pursuant to section
17 101(a)(15)(H)(ii)(a) who have failed to
18 maintain nonimmigrant status or who have
19 otherwise violated the terms of a visa
20 issued under this title.

21 “(iv) VOLUNTARY TERMINATION.—
22 Notwithstanding the provisions of clause
23 (i), an alien may voluntarily terminate his
24 or her employment if the alien promptly

1 departs the United States upon termi-
2 nation of such employment.

3 “(D) IDENTIFICATION DOCUMENT AND
4 IDENTIFICATION SYSTEM.—

5 “(i) IN GENERAL.—Each alien admit-
6 ted under this section shall, upon receipt of
7 a visa, be given an identification and em-
8 ployment eligibility document to verify eli-
9 gibility for employment in the United
10 States and verify such person’s proper
11 identity.

12 “(ii) REQUIREMENTS.—No identifica-
13 tion and employment eligibility document
14 may be issued and no identification system
15 may be implemented which does not meet
16 the following requirements:

17 “(I) The document and system
18 shall be capable of reliably deter-
19 mining whether—

20 “(aa) the individual with the
21 identification and employment
22 eligibility document whose eligi-
23 bility is being verified is in fact
24 eligible for employment,

1 “(bb) the individual whose
2 eligibility is being verified is
3 claiming the identity of another
4 person, and

5 “(cc) the individual whose
6 eligibility is being verified has
7 been properly admitted under
8 this section.

9 “(II) The document shall be in
10 the form that is resistant to counter-
11 feiting and to tampering.

12 “(III) The document and system
13 shall—

14 “(aa) be compatible with
15 other Immigration and Natu-
16 ralization Service databases and
17 other Federal government data-
18 bases for the purpose of exclud-
19 ing aliens from benefits for which
20 they are not eligible and to deter-
21 mine whether the alien is illegally
22 present in the United States, and

23 “(bb) be compatible with law
24 enforcement databases to deter-

1 mine if the alien has been con-
2 victed of criminal offenses.

3 “(2) EXTENSION OF STAY OF ALIENS IN THE
4 UNITED STATES.—

5 “(A) EXTENSION OF STAY.—If an em-
6 ployer with respect to whom a report or applica-
7 tion described in section 302(a)(1) of the Agri-
8 cultural Job Opportunity Benefits and Security
9 Act of 1999 has been submitted seeks to em-
10 ploy an alien who has acquired status under
11 this section and who is lawfully present in the
12 United States, the employer shall file with the
13 Attorney General an application for an exten-
14 sion of the alien’s stay or a change in the
15 alien’s authorized employment. The application
16 shall be accompanied by a copy of the appro-
17 priate report or application described in section
18 302 of the Agricultural Job Opportunity Bene-
19 fits and Security Act of 1999.

20 “(B) LIMITATION ON FILING AN APPLICA-
21 TION FOR EXTENSION OF STAY.—An applica-
22 tion may not be filed for an extension of an
23 alien’s stay for a period of more than 10
24 months, or later than a date which is 3 years
25 from the date of the alien’s last admission to

1 the United States under this section, whichever
2 occurs first.

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

5 An employer may begin employing an alien who
6 is present in the United States who has ac-
7 quired status under this Act on the day the em-
8 ployer files an application for extension of stay.

9 For the purpose of this requirement, the term
10 ‘filing’ means sending the application by cer-
11 tified mail via the United States Postal Service,
12 return receipt requested, or delivered by guar-
13 anteed commercial delivery which will provide
14 the employer with a documented acknowledg-
15 ment of the date of sending and receipt of the
16 application. The employer shall provide a copy
17 of the employer’s application to the alien, who
18 shall keep the application with the alien’s iden-
19 tification and employment eligibility document
20 as evidence that the application has been filed
21 and that the alien is authorized to work in the
22 United States. Upon approval of an application
23 for an extension of stay or change in the alien’s
24 authorized employment, the Attorney General
25 shall provide a new or updated employment eli-

1 gibility document to the alien indicating the
2 new validity date, after which the alien is not
3 required to retain a copy of the application.

4 “(D) LIMITATION ON EMPLOYMENT AU-
5 THORIZATION OF ALIENS WITHOUT VALID
6 IDENTIFICATION AND EMPLOYMENT ELIGI-
7 BILITY CARD.—An expired identification and
8 employment eligibility document, together with
9 a copy of an application for extension of stay or
10 change in the alien’s authorized employment
11 that complies with the requirements of subpara-
12 graph (A), shall constitute a valid work author-
13 ization document for a period of not more than
14 60 days from the date of application for the ex-
15 tension of stay, after which time only a cur-
16 rently valid identification and employment eligi-
17 bility document shall be acceptable.

18 “(E) LIMITATION ON AN INDIVIDUAL’S
19 STAY IN STATUS.—An alien having status under
20 this section may not have the status extended
21 for a continuous period longer than 3 years un-
22 less the alien remains outside the United States
23 for an uninterrupted period of 6 months. An
24 absence from the United States may break the
25 continuity of the period for which a non-

1 immigrant visa issued under section
2 101(a)(15)(H)(ii)(a) is valid. If the alien has
3 resided in the United States 10 months or less,
4 an absence breaks the continuity of the period
5 if it lasts for at least 2 months. If the alien has
6 resided in the United States 10 months or
7 more, an absence breaks the continuity of the
8 period if it lasts for at least one-fifth the dura-
9 tion of the stay.

10 “(b) STUDY BY THE ATTORNEY GENERAL.—The At-
11 torney General shall conduct a study to determine whether
12 aliens under this section depart the United States in a
13 timely manner upon the expiration of their period of au-
14 thorized stay. If the Attorney General finds that a signifi-
15 cant number of aliens do not so depart and that with-
16 holding a portion of the aliens’ wages to be refunded upon
17 timely departure is necessary as an inducement to assure
18 such departure, then the Attorney General shall so report
19 to Congress and make recommendations on appropriate
20 courses of action.”.

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

1 (c) RANGE PRODUCTION OF LIVESTOCK.—Nothing
 2 in this title shall preclude the Secretary of Labor and the
 3 Attorney General from continuing to apply special proce-
 4 dures to the employment, admission, and extension of
 5 aliens in the range production of livestock.

6 **TITLE IV—MISCELLANEOUS** 7 **PROVISIONS**

8 **SEC. 401. ENHANCED WORKER PROTECTIONS AND LABOR** 9 **STANDARDS ENFORCEMENT.**

10 (a) ENFORCEMENT AUTHORITY.—

11 (1) INVESTIGATION OF COMPLAINTS.—

12 (A) AGGRIEVED PERSON OR THIRD PARTY
 13 COMPLAINTS.—The Secretary shall establish a
 14 process for the receipt, investigation, and dis-
 15 position of complaints respecting an employer's
 16 failure to meet a condition specified in section
 17 301 or an employer's misrepresentation of ma-
 18 terial facts in an application under that section,
 19 or violation of the provisions described in sub-
 20 paragraph (B). Complaints may be filed by any
 21 aggrieved person or any organization (including
 22 bargaining representatives). No investigation or
 23 hearing shall be conducted on a complaint con-
 24 cerning such a failure or misrepresentation un-
 25 less the complaint was filed not later than 12

1 months after the date of the failure or mis-
2 representation, as the case may be. The Sec-
3 retary shall conduct an investigation under this
4 paragraph if there is reasonable cause to believe
5 that such a failure or misrepresentation has oc-
6 curred.

7 (B) EXPEDITED INVESTIGATION OF SERI-
8 OUS CHILD LABOR, WAGE, AND HOUSING VIOLA-
9 TIONS.—The Secretary shall complete an inves-
10 tigation and issue a written determination as to
11 whether or not a violation has been committed
12 within 10 days of the receipt of a complaint
13 pursuant to subparagraph (A) if there is rea-
14 sonable cause to believe that any of the fol-
15 lowing serious violations have occurred:

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

19 (ii) A failure to make a wage pay-
20 ment, except that complaints alleging that
21 an amount less than the wages due has
22 been paid shall be handled pursuant to
23 subparagraph (A).

1 (iii) A failure to provide the housing
2 allowance required under section
3 304(b)(6).

4 (iv) Providing housing pursuant to
5 section 304(b)(1) that fails to comply with
6 standards under section 304(b)(2) and
7 which poses an immediate threat of serious
8 bodily injury or death to workers.

9 (C) STATUTORY CONSTRUCTION.—Nothing
10 in this Act limits the authority of the Secretary
11 of Labor to conduct any compliance investiga-
12 tion under any other labor law, including any
13 law affecting migrant and seasonal agricultural
14 workers or, in the absence of a complaint under
15 this paragraph, under this Act.

16 (2) WRITTEN NOTICE OF FINDING AND OPPOR-
17 TUNITY FOR APPEAL.—After an investigation has
18 been conducted, the Secretary shall issue a written
19 determination as to whether or not any violation de-
20 scribed in subsection (b) has been committed. The
21 Secretary's determination shall be served on the
22 complainant and the employer, and shall provide an
23 opportunity for an appeal of the Secretary's decision
24 to an administrative law judge, who may conduct a
25 de novo hearing.

1 (3) ABILITY OF ALIEN WORKERS TO CHANGE
2 EMPLOYERS.—

3 (A) IN GENERAL.—Pending the completion
4 of an investigation pursuant to paragraph
5 (1)(A), the Secretary may permit the transfer
6 of an aggrieved person who has filed a com-
7 plaint under such paragraph to an employer
8 that—

9 (i) has been approved to employ work-
10 ers under this Act; and

11 (ii) agrees to accept the person for
12 employment.

13 (B) REPLACEMENT WORKER.—An ag-
14 grieved person may not be transferred under
15 subparagraph (A) until such time as the em-
16 ployer from whom the person is to be trans-
17 ferred receives a requested replacement worker
18 referred by a registry pursuant to section 302
19 of this Act or provided status under section
20 101(a)(15)(H)(ii)(a) of the Immigration and
21 Nationality Act.

22 (C) LIMITATION.—An employer from
23 whom an aggrieved person has been transferred
24 under this paragraph shall have no obligation to
25 reimburse the person for the cost of transpor-

1 tation prior to the completion of the period of
2 employment referred to in section 304(c).

3 (D) VOLUNTARY TRANSFER.—Notwith-
4 standing this paragraph, an employer may vol-
5 untarily agree to transfer a worker to another
6 employer that—

7 (i) has been approved to employ work-
8 ers under this Act; and

9 (ii) agrees to accept the person for
10 employment.

11 (b) REMEDIES.—

12 (1) BACK WAGES.—Upon a final determination
13 that the employer has failed to pay wages as re-
14 quired under this section, the Secretary may assess
15 payment of back wages due to any United States
16 worker or alien described in section
17 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
18 ality Act employed by the employer in the specific
19 employment in question. The back wages shall be
20 equal to the difference between the amount that
21 should have been paid and the amount that actually
22 was paid to such worker.

23 (2) FAILURE TO PAY WAGES.—Upon a final de-
24 termination that the employer has failed to pay the
25 wages required under this Act, the Secretary may

1 assess a civil money penalty up to \$1,000 for each
2 person for whom the employer failed to pay the re-
3 quired wage, and may recommend to the Attorney
4 General the disqualification of the employer from the
5 employment of aliens described in section
6 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
7 ality Act for a period of time determined by the Sec-
8 retary not to exceed 1 year.

9 (3) OTHER VIOLATIONS.—If the Secretary, as a
10 result of an investigation pursuant to a complaint,
11 determines that an employer covered by an applica-
12 tion under section 401(a) has—

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

15 (B) failed to meet a condition specified in
16 section 401; or

17 (C) committed a serious violation of sub-
18 section (a)(1)(B),

19 the Secretary may seek a cease and desist order and
20 assess a civil money penalty not to exceed \$1,000 for
21 each violation and may recommend to the Attorney
22 General the disqualification of the employer if the
23 Secretary finds it to be a substantial misrepresenta-
24 tion or violation of the requirements for the employ-
25 ment of any United States workers or aliens de-

1 scribed in section 101(a)(15)(ii)(a) of the Immigra-
2 tion and Nationality Act for a period of time deter-
3 mined by the Secretary not to exceed 1 year. In de-
4 termining the amount of civil money penalty to be
5 assessed or whether to recommend disqualification of
6 the employer, the Secretary shall consider the seri-
7 ousness of the violation, the good faith of the em-
8 ployer, the size of the business of the employer being
9 charged, the history of previous violations by the em-
10 ployer, whether the employer obtained a financial
11 gain from the violation, whether the violation was
12 willful, and other relevant factors.

13 (4) EXPANDED PROGRAM DISQUALIFICATION.—

14 (A) 3 YEARS FOR SECOND VIOLATION.—

15 Upon a second final determination that an em-
16 ployer has failed to pay the wages required
17 under this Act, or a second final determination
18 that the employer has committed another sub-
19 stantial violation under paragraph (3) in the
20 same category of violations, with respect to the
21 same alien, the Secretary shall report such de-
22 termination to the Attorney General and the
23 Attorney General shall disqualify the employer
24 from the employment of aliens described in sec-

tion 101(a)(15)(H)(ii)(a) 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)(a) of the Immigration and Nationality Act.

(c) ROLE OF ASSOCIATIONS.—

(1) VIOLATION BY A MEMBER OF AN ASSOCIA-

TION.—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.

1 (2) VIOLATION BY AN ASSOCIATION ACTING AS
 2 AN EMPLOYER.—If an association filing an applica-
 3 tion on its own behalf as an employer is determined
 4 to have committed a violation under this subsection
 5 which results in disqualification from the program
 6 under subsection (b), no individual member of such
 7 association may be the beneficiary of the services of
 8 an alien described in section 101(a)(15)(H)(ii)(a) of
 9 the Immigration and Nationality Act in an occupa-
 10 tion in which such alien was employed by the asso-
 11 ciation during the period such disqualification is in
 12 effect, unless such member files an application as an
 13 individual employer or such application is filed on
 14 the employer’s behalf by an association with which
 15 the employer has an agreement that the employer
 16 will comply with the requirements of this Act.

17 (d) STUDY OF AGRICULTURAL LABOR STANDARDS
 18 AND ENFORCEMENT.—

19 (1) COMMISSION ON HOUSING MIGRANT AGRI-
 20 CULTURAL WORKERS.—

21 (A) ESTABLISHMENT.—There is estab-
 22 lished the Commission on Housing Migrant Ag-
 23 ricultural Workers (in this paragraph referred
 24 to as the “Commission”).

1 (B) COMPOSITION.—The Commission shall
2 consist of 12 members, as follows:

3 (i) Four representatives of agricul-
4 tural employers and one representative of
5 the Department of Agriculture, each ap-
6 pointed by the Secretary of Agriculture.

7 (ii) Four representatives of agricul-
8 tural workers and one representative of the
9 Department of Labor, each appointed by
10 the Secretary of Labor.

11 (iii) One State or local official knowl-
12 edgeable about farmworker housing and
13 one representative of Housing and Urban
14 Development, each appointed by the Sec-
15 retary of Housing and Urban Develop-
16 ment.

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

20 (D) INTERIM REPORTS.—The Commission
21 may at any time submit interim reports to Con-
22 gress describing the findings made up to that
23 time with respect to the study conducted under
24 subparagraph (C).

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

6 (F) TERMINATION DATE.—The Commis-
 7 sion shall terminate upon filing its final report.

8 (2) STUDY OF RELATIONSHIP BETWEEN CHILD
 9 CARE AND CHILD LABOR.—The Secretaries of
 10 Labor, Agriculture, and Health and Human Services
 11 shall jointly conduct a study of the issues relating to
 12 child care of migrant agricultural workers. Such
 13 study shall address issues related to the adequacy of
 14 educational and day care services for migrant chil-
 15 dren and the relationship, if any, of child care needs
 16 and child labor violations in agriculture. An evalua-
 17 tion of migrant and seasonal Head Start programs
 18 (as defined in section 637(12) of the Head Start
 19 Act) as they relate to these issues shall be included
 20 as a part of the study.

21 (3) STUDY OF FIELD SANITATION.—The Sec-
 22 retary of Labor and the Secretary of Agriculture
 23 shall jointly conduct a study regarding current field
 24 sanitation standards in agriculture and evaluate al-

1 ternative approaches and innovations that may fur-
 2 ther compliance with such standards.

3 (4) STUDY OF COORDINATED AND TARGETED
 4 LABOR STANDARDS ENFORCEMENT.—The Secretary,
 5 in consultation with the Secretary of Agriculture,
 6 shall conduct a study of the most persistent and se-
 7 rious labor standards violations in agriculture and
 8 evaluate the most effective means of coordinating
 9 enforcement efforts between Federal and State offi-
 10 cials. The study shall place primary emphasis on the
 11 means by which Federal and State authorities, in
 12 consultation with representatives of workers and ag-
 13 ricultural employers, may develop more effective
 14 methods of targeting resources at repeated and egre-
 15 gious violators of labor standards. The study also
 16 shall consider ways of facilitating expanded edu-
 17 cation among agricultural employers and workers re-
 18 garding compliance with labor standards and evalu-
 19 ate means of broadening such education on a cooper-
 20 ative basis among employers and workers.

21 (5) REPORT.—Not later than 3 years after the
 22 date of enactment of this Act, with respect to each
 23 study required to be conducted under paragraphs (2)
 24 through (4), the Secretary or group of Secretaries

1 required to conduct the study shall submit to Con-
 2 gress a report setting forth the findings of the study.

3 **SEC. 402. BILATERAL COMMISSIONS.**

4 The Attorney General is authorized and requested to
 5 establish a bilateral commission between the United States
 6 and each country not less than 10,000 nationals of which
 7 are nonimmigrant aliens described in section
 8 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
 9 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)). Such bilateral com-
 10 missions shall provide a forum to the governments in-
 11 volved to discuss matters of mutual concern regarding the
 12 program for the admission of aliens under section
 13 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
 14 Act.

15 **SEC. 403. REGULATIONS.**

16 (a) REGULATIONS OF THE ATTORNEY GENERAL.—
 17 The Attorney General shall consult with the Secretary and
 18 the Secretary of Agriculture on all regulations to imple-
 19 ment the duties of the Attorney General under this Act.

20 (b) REGULATIONS OF THE SECRETARY OF STATE.—
 21 The Secretary of State shall consult with the Attorney
 22 General, the Secretary of Labor, and the Secretary of Ag-
 23 riculture on all regulations to implement the duties of the
 24 Secretary of State under this Act.

1 (c) REGULATIONS OF THE SECRETARY OF LABOR.—

2 The Secretary shall consult with the Secretary of Agri-
 3 culture and shall obtain the approval of the Attorney Gen-
 4 eral on all regulations to implement the duties of the Sec-
 5 retary under this Act.

6 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

7 All regulations to implement the duties of the Attorney
 8 General, the Secretary of State, and the Secretary of
 9 Labor shall take effect on the effective date of this Act.

10 **SEC. 404. DETERMINATION AND USE OF USER FEES.**

11 (a) SCHEDULE OF FEES.—The Secretary of Labor
 12 shall establish and periodically adjust a schedule for the
 13 registry user fee and the alien employment user fee im-
 14 posed under this Act, and a collection process for such
 15 fees from employers participating in the programs pro-
 16 vided under this Act. Such fees shall be the only fees
 17 chargeable to employers for services provided under this
 18 Act.

19 (b) DETERMINATION OF SCHEDULE.—

20 (1) IN GENERAL.—The schedule under sub-
 21 section (a) shall reflect a fee rate based on the num-
 22 ber of job opportunities indicated in an employer's
 23 application under section 301(a)(1)(C) and sufficient
 24 to provide for the reimbursement of the direct costs
 25 of providing the following services:

1 (A) REGISTRY USER FEE.—Services pro-
2 vided through the agricultural worker registries
3 established under section 301(a), including reg-
4 istration, referral, and validation, but not in-
5 cluding services that would otherwise be pro-
6 vided by the Secretary of Labor under related
7 or similar programs if such registries had not
8 been established.

9 (B) ALIEN EMPLOYMENT USER FEE.—
10 Services related to an employer’s authorization
11 to employ eligible aliens pursuant to this Act,
12 including the establishment and certification of
13 eligible employers, the issuance of documenta-
14 tion, and the admission of eligible aliens.

15 (2) PROCEDURE.—

16 (A) IN GENERAL.—In establishing and ad-
17 justing such schedule, the Secretary of Labor
18 shall comply with Federal cost accounting and
19 fee setting standards.

20 (B) PUBLICATION AND COMMENT.—The
21 Secretary of Labor shall publish in the Federal
22 Register an initial fee schedule and associated
23 collection process and the cost data or estimates
24 upon which such fee schedule is based, and any
25 subsequent amendments thereto, pursuant to

1 which public comment will be sought and a final
2 rule issued.

3 (c) USE OF PROCEEDS.—

4 (1) IN GENERAL.—All proceeds resulting from
5 the payment of registry user fees and alien employ-
6 ment user fees shall be available without further ap-
7 propriation and shall remain available without fiscal
8 year limitation to reimburse the Secretaries of
9 Labor, State, and Agriculture, and the Attorney
10 General for the costs of carrying out section 218 of
11 the Immigration and Nationality Act and the provi-
12 sions of this Act.

13 (2) LIMITATION ON ENFORCEMENT COSTS.—In
14 making a determination of reimbursable costs under
15 paragraph (1), the Secretary of Labor shall provide
16 that reimbursement of the costs of enforcement
17 under section 401 shall not exceed 10 percent of the
18 direct costs of the Secretary described in subsection
19 (b)(1) (A) and (B).

20 **SEC. 405. FUNDING FOR STARTUP COSTS.**

21 If additional funds are necessary to pay the startup
22 costs of the agricultural worker registries established
23 under section 301(a), such costs may be paid out of
24 amounts available to Federal or State governmental enti-
25 ties under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

1 Proceeds described in section 404(c) may be used to reim-
2 burse the use of such available amounts.

3 **SEC. 406. REPORT TO CONGRESS.**

4 (a) REQUIREMENT.—Not later than 4 years after the
5 effective date under section 408, the Resources, Commu-
6 nity and Economic Development Division, and the Health,
7 Education and Human Services Division, of the Office of
8 the Comptroller General of the United States shall jointly
9 prepare and transmit to the Committee on the Judiciary
10 of the House of Representatives and the Committee on
11 the Judiciary of the Senate a report describing the results
12 of a review of the implementation of and compliance with
13 this Act. The report shall address—

14 (1) whether the program has ensured an ade-
15 quate and timely supply of qualified, eligible workers
16 at the time and place needed by employers;

17 (2) whether the program has ensured that
18 aliens admitted under this program are employed
19 only in authorized employment, and that they timely
20 depart the United States when their authorized stay
21 ends;

22 (3) whether the program has ensured that par-
23 ticipating employers comply with the requirements of
24 the program with respect to the employment of

1 United States workers and aliens admitted under
2 this program;

3 (4) whether the program has ensured that
4 aliens admitted under this program are not dis-
5 placing eligible, qualified United States workers or
6 diminishing the wages and other terms and condi-
7 tions of employment of eligible United States work-
8 ers;

9 (5) to the extent practicable, compare the wages
10 and other terms of employment of eligible United
11 States workers and aliens employed under this pro-
12 gram with the wages and other terms of employment
13 of agricultural workers who are not authorized to
14 work in the United States;

15 (6) whether the housing provisions of this pro-
16 gram ensure that adequate housing is available to
17 workers employed under this program who are re-
18 quired to be provided housing or a housing allow-
19 ance;

20 (7) recommendations for improving the oper-
21 ation of the program for the benefit of participating
22 employers, eligible United States workers, partici-
23 pating aliens, and governmental agencies involved in
24 administering the program; and

1 (8) recommendations for the continuation or
2 termination of the program under this Act.

3 (b) ADVISORY BOARD.—There shall be established an
4 advisory board to be composed of—

5 (1) four representatives of agricultural employ-
6 ers to be appointed by the Secretary of Agriculture,
7 including individuals who have experience with the
8 H–2A program; and

9 (2) four representatives of agricultural workers
10 to be appointed by the Secretary of Labor, including
11 individuals who have experience with the H–2A pro-
12 gram,

13 to provide advice to the Comptroller General in the prepa-
14 ration of the reports required under subsection (a).

15 **SEC. 407. EFFECTIVE DATE.**

16 (a) IN GENERAL.—This Act and the amendments
17 made by this Act shall become effective on the date that
18 is 1 year after the date of enactment of this Act.

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

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