

(Mr. CAMPBELL) was added as a cosponsor of S. 1404, a bill to amend the Ted Stevens Olympic and Amateur Sports Act.

S. 1454

At the request of Mr. DOMENICI, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1454, a bill to establish a National Drought Council within the Department of Agriculture, to improve national drought preparedness, mitigation, and response efforts, and for other purposes.

S. 1483

At the request of Mr. DODD, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1483, a bill to amend the Head Start Act to reauthorize that Act, and for other purposes.

S. 1531

At the request of Mr. HATCH, the names of the Senator from Connecticut (Mr. DODD), the Senator from Utah (Mr. BENNETT) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1557

At the request of Mr. MCCONNELL, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1557, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1558

At the request of Mr. ALLARD, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1558, a bill to restore religious freedoms.

S. 1559

At the request of Mr. KENNEDY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1559, a bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes.

S. 1568

At the request of Mr. HATCH, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 1568, a bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

S. 1586

At the request of Mr. SCHUMER, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1586, a bill to authorize appropriate action if the negotiations with the People's Republic of China regarding China's undervalued currency and currency manipulations are not successful.

S. 1594

At the request of Mrs. FEINSTEIN, the name of the Senator from Minnesota

(Mr. DAYTON) was added as a cosponsor of S. 1594, a bill to require a report on reconstruction efforts in Iraq.

S. 1618

At the request of Mr. ROCKEFELLER, the names of the Senator from South Dakota (Mr. DASCHLE) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 1618, a bill to reauthorize Federal Aviation Administration Programs for the period beginning on October 1, 2003, and ending on March 31, 2004, and for other purposes.

S. 1622

At the request of Mr. GRAHAM of Florida, the names of the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1622, a bill to amend title 10, United States Code, to exempt certain members of the Armed Forces from the requirement to pay subsistence charges while hospitalized.

S. CON. RES. 61

At the request of Mr. LOTT, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Vermont (Mr. LEAHY), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Massachusetts (Mr. KERRY) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Con. Res. 61, a concurrent resolution authorizing and requesting the President to issue a proclamation to commemorate the 200th anniversary of the birth of Constantino Brumidi.

S. CON. RES. 67

At the request of Mr. COCHRAN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Con. Res. 67, a concurrent resolution expressing the need for enhanced public awareness of traumatic brain injury and supporting the designation of a National Brain Injury Awareness Month.

S. RES. 202

At the request of Mr. CAMPBELL, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Delaware (Mr. BIDEN) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

AMENDMENT NO. 1731

At the request of Mr. REID, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Hawaii (Mr. AKAKA), the Senator from Vermont (Mr. LEAHY), the Senator from Maryland (Mr. SARBANES), the Senator from Massachusetts (Mr. KERRY) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 1731 proposed to H.R. 2691, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

AMENDMENT NO. 1731

At the request of Mr. EDWARDS, his name was added as a cosponsor of amendment No. 1731 proposed to H.R. 2691, supra.

AMENDMENT NO. 1731

At the request of Mr. JEFFORDS, his name was added as a cosponsor of amendment No. 1731 proposed to H.R. 2691, supra.

AMENDMENT NO. 1734

At the request of Mr. DASCHLE, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of amendment No. 1734 proposed to H.R. 2691, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

AMENDMENT NO. 1740

At the request of Mr. BINGAMAN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of amendment No. 1740 proposed to H.R. 2691, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself and Mr. BINGAMAN):

S. 1641. A bill to amend title XIX of the Social Security Act to extend medicare cost-sharing for certain qualifying individuals (QI-1s); to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1641

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "QI-1s Medicare Cost-Sharing Extension Act of 2003".

#### SEC. 2. EXTENSION OF MEDICARE COST-SHARING FOR CERTAIN QUALIFYING INDIVIDUALS.

(a) EXTENSION OF SUNSET.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended—

- (1) by striking subclause (II);
- (2) beginning in the matter preceding subclause (I), by striking "ending with December 2002" and all that follows through "for medicare cost-sharing described" in subclause (I) and inserting "ending with March 2004 for medicare cost-sharing described"; and
- (3) by striking ", and" at the end and inserting a semicolon.

(b) TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(c) of the Social Security Act (42 U.S.C. 1396u-3(c)) is amended—

- (1) in paragraph (1)(E), by striking "fiscal year 2002" and inserting "each of fiscal years 2002 and 2003"; and

(2) in paragraph (2)(A), by striking “the sum of” and all that follows through “1902(a)(10)(E)(iv)(II) in the State; to” and inserting “the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to”.

(c) SPECIAL RULE FOR FIRST QUARTER OF 2004.—Section 1933 of the Social Security Act (42 U.S.C. 1396u-3) is amended by adding at the end the following:

“(g) SPECIAL RULE.—With respect to the period that begins on January 1, 2004, and ends on March 31, 2004, a State shall select qualifying individuals, and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

“(1) references in the preceding subsections of this section to ‘fiscal year’ and ‘calendar year’ shall be deemed to be references to such period; and

“(2) the total allocation amount under subsection (c) for such period shall be \$100,000,000.”.

By Mr. GRASSLEY:

S. 1644. A bill to amend the Packers and Stockyards Act, 1921, to limit the number of packer-owned swine that certain packers may slaughter in any calendar year; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, today I am introducing legislation which will set a ceiling on vertical integration in the pork industry. Specifically, this bill will make it unlawful for any packer with an annual slaughter capacity of more than 20 million swine to slaughter more than 10 million packer-owned swine in any calendar year.

I am offering this because I believe the pork industry is at a critical juncture due to the impending sale of Farmland's pork division.

Either we stop the trend toward vertical integration, or we prepare for the inevitable “chicken-ization” of the pork industry.

It is vital that we sustain a place in the market for the independent pork producer. This legislation will at least limit the cancerous growth of vertical integration until we can pass a cure.

I ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1644

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

**SECTION 1. ANNUAL LIMITATION ON NUMBER OF PACKER-OWNED SWINE SLAUGHTERED BY CERTAIN PACKERS.**

(a) IN GENERAL.—Title II of the Packers and Stockyards Act, 1921 (7 U.S.C. 191 et seq.) is amended by adding at the end the following:

“**Subtitle C—Annual Limitation on Number of Packer-Owned Swine Slaughtered by Certain Packers**

**“SEC. 231. DEFINITIONS.**

“In this subtitle:

“(1) AFFILIATE.—The term ‘affiliate’ has the meaning given the term in section 231 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635i).

“(2) PACKER.—The term ‘packer’ has the meaning given the term in section 231 of the

Agricultural Marketing Act of 1946 (7 U.S.C. 1635i).

“(3) PACKER-OWNED SWINE.—The term ‘packer-owned swine’ means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 7 days (excluding any Saturday or Sunday) before slaughter.

“(4) SLAUGHTER CAPACITY.—The term ‘slaughter capacity’ means the total number of swine that a packer (including a subsidiary or affiliate of the packer) could slaughter in a calendar year if all federally inspected swine processing plants operated by the packer were operated at full capacity for 260 days each calendar year.

“(5) SWINE.—The term ‘swine’ has the meaning given the term in section 231 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635i).

**“SEC. 232. UNLAWFUL PRACTICE.**

“It shall be unlawful for any packer with an annual slaughter capacity of more than 20,000,000 swine to slaughter more than 10,000,000 packer-owned swine in any calendar year.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) takes effect on the date of enactment of this Act.

(2) EXISTING PACKERS.—In the case of a packer that, on the date of enactment of this Act, would otherwise be in violation of section 232 of the Packers and Stockyards Act, 1921 (as added by subsection (a)), the amendment made by subsection (a) takes effect on the date that is 18 months after the date of enactment of this Act.

By Mr. CRAIG (for himself, Mr. KENNEDY, Mr. SMITH, Mr. GRAHAM of Florida, Mr. COCHRAN, Mr. SCHUMER, Mr. GREGG, Mr. LIEBERMAN, Mr. MCCAIN, Mr. KERRY, Mr. HAGEL, Ms. CANTWELL, Mr. VOINOVICH, Mr. WYDEN, Mr. COLEMAN, Mrs. CLINTON, Mr. DEWINE, Mrs. BOXER, and Mrs. MURRAY):

S. 1645. A bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, I am pleased to announce today the introduction of bipartisan farmworker reform legislation with a bipartisan group of Members in both the Senate and the House of Representatives. Our leading sponsors include Senator TED KENNEDY, Congressman HOWARD BERMAN, and Congressman CHRIS CANNON.

The name of the bill says it all—“AgJOBS.” That stands for the “Agricultural Job Opportunity, Benefits, and Security Act of 2003.” We are introducing this bill today because Members of Congress realize our Nation is facing a growing crisis—for farm workers, growers, and the wider public. We want and need a stable, predictable, legal work force in American agriculture.

Willing American workers deserve a system that puts them first in line for available jobs with fair market wages.

We want all workers to receive decent treatment and protection of fundamental legal rights. Consumers deserve a safe, stable, domestic food supply. American citizens and taxpayers deserve secure borders and a government that works.

Yet Americans are being threatened on all these counts, because agriculture, more than any other sector of the economy, has become dependent for its existence on the labor of immigrants who are here without legal documentation. The only program currently in place to respond to a lack of legal domestic workers, the H-2A Guest Workers Program, is profoundly broken. Outside of H-2A, farm employers have no effective, reliable assurance that their employees are legal. Our own government has estimated that half of the total 1.6 million agricultural work force are not legally authorized to work in this country, based, astoundingly, on self-disclosure in worker surveys. Responsible private estimates run to 85 percent.

Several more times in recent months, we have read of the senseless and inhuman deaths of farmworkers being smuggled illegally into the United States. Those who survive to work in the fields are among the most vulnerable persons in this country, unable to assert the most basic legal rights and protections. This situation never was acceptable. It has become intolerable. Immigrants not legally authorized to work in this country know they must work in hiding. They have been known to pay “coyotes”—labor smugglers—thousands of dollars to be smuggled into this country. They cannot even claim basic legal rights and protections. They are vulnerable to predation and exploitation. They sometimes have been stuffed inhumanly into dangerously enclosed truck trailers and car trunks, in order to be transported, hidden from the view of the law. We heard with horror of the young girl who died this summer when a labor smuggler abandoned her entire family in the desert in the Southwest.

In contrast, legal workers have legal protections. They can assert wage, safety, and other legal protections. They can bargain openly and join unions. H-2A workers, in fact, are guaranteed housing and transportation. Time is running out for American agriculture, farmworkers, and consumers. What was a problem years ago is a crisis today and will be a catastrophe if we do not act immediately. A growing number of family farms simply are going out of business as growers try to, but cannot, secure a legal work force. All Americans face the danger of losing more and more of our safe, domestic food supply to imports.

Many farmers have seen recently hired workers scattered unpredictably by a government letter or random raid. As enforcement of our immigration and employment documentation laws has been stepped up—sporadically and haphazardly—workers are rarely deported,

but the workplace is frequently and widely disrupted. Between computerized checking by the Social Security Administration and audits and raids by the Immigration and Naturalization Service, more and more employers have discovered they have undocumented employees. More and more workers here illegally are being discovered and evicted from their jobs. The larger the so-called "underground economy," the harder it is to knowledgeably and effectively provide for our homeland security needs.

The H-2A status quo is complicated and legalistic. The Department of Labor's compliance manual alone is more than 300 pages long. A General Accounting Office study found that DOL missed deadlines in processing H-2A applications 40 percent of the time. For workers and growers alike, the H-2A status quo is slow, bureaucratic, and inflexible. It does nothing to recognize the uncertainties farmers face, from changes in the weather to global market demands. The current H-2A process is so hard to use, it will place only about 40,000 legal guest workers this year—2 to 3 percent of the total agricultural work force.

The answer is AgJOBS. This farmworker reform legislation builds upon some six years of discussion and ideas from among growers, farmworker advocates, Latino and immigration issue groups, Members of both parties in both Houses of Congress, and others. The coming together of all these diverse viewpoints and interests makes AgJOBS truly an historic piece of legislation. Our AgJOBS bill offers a thoughtful, two-step solution. On a one-time basis, experienced, trusted workers with a significant work history in American agriculture would be allowed to stay here legally and earn adjustment to legal status. For workers and growers using the H-2A legal guest worker program, that program would be overhauled and made more streamlined, practical, and secure. AgJOBS takes a win-win-win approach for our nation, workers, and farmers.

AgJOBS may be no one's idea of perfect labor and immigration legislation in an ideal world. However, for the imperfect world we live in, it is a balanced, practical, and achievable approach to resolving urgent problems that require immediate attention. The broad bipartism support for this approach is reflected already in the cosponsorship of a number of our colleagues. Among others, I am happy we are joined by Senators GORDON SMITH and BOB GRAHAM as original cosponsors, both of whom have invested years of work in this issue. Supporters of this legislation include the United Farm Workers of America, the National Council of La Raza, and the AFL-CIO, all of whom participated in a press conference the principal sponsors held earlier today, as well as the U.S. Chamber of Commerce. This bill has overwhelming support in the agriculture community, including the National

Council of Agricultural Employers, the American Nursery and Landscape Association, and the American Farm Bureau Federation.

I ask unanimous consent to print in the RECORD a list from the Agriculture Coalition for Immigration Reform that includes a large number of agricultural groups around the country who support this bill. I also ask unanimous consent to print a technical summary of the bill; a side-by-side comparison with current law; an open letter to Congress from our former Secretary of Agriculture, Ambassador Clayton Yeutter; and the text of the AgJOBS bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AGRICULTURE COALITION FOR IMMIGRATION  
REFORM

NATIONAL CO-CHAIRS

American Nursery & Landscape Association; National Council of Agricultural Employers; New England Apple Council.

ASSOCIATION MEMBERS AND SUPPORTERS

Agricultural Affiliates; American Farm Bureau Federation; American Frozen Foods Institute; American Horse Council; American Mushroom Institute; CoBank-Northeast Farm Credit Regional Council; Council of Northeast Farmer Cooperatives; National Association of State Departments of Agriculture; National Cattleman's Beef Association; National Chicken Council; National Christmas Tree Association; National Cotton Council; National Council of Farmer Cooperatives; National Potato Council; National Watermelon Association, Inc.; Nisei Farmers League; Northeast Dairy Coops; Northern Christmas Tree Growers; Northern Ohio Growers Association; Northwest Horticultural Council.

Society of American Florists; United Egg Association; United Egg Producers; United Fresh Fruit & Vegetable Association; U.S. Apple Association; U.S. Custom Harvesters Association; Western Growers Association; Agricultural Council of California; Alabama Farmers Federation; Alabama Nursery Association; Arizona Nursery Associations; Arkansas Green Industry Association; Associated Landscape Contractors of Colorado; Associated Landscape Contractors of Massachusetts; California Association of Nurserymen; California Citrus Mutual; California Farm Bureau; California Grape and Tree Fruit League; Nursery Growers Association (CA); Colorado Nursery Association.

Connecticut Nursery & Landscape Association; Florida Citrus Mutual; Florida Farm Bureau Federation; Florida Nurserymen & Growers Association; Florida Fruit and Vegetable Association; Georgia Green Industry Association; Gulf Citrus Growers Association; Idaho Nursery Association; Illinois Landscape Contractors Association; Illinois Nurserymen's Association; Illinois Specialty Growers Association; Indiana Nursery & Landscape Association; Iowa Nursery and Landscape Association; Kansas Nursery and Landscape Association; Kentucky Nursery & Landscape Association; Louisiana Nursery & Landscape Association; Massachusetts Nursery & Landscape Association; Michigan Nursery and Landscape Association; Minnesota Nursery & Landscape Association; Mississippi Nursery Association.

Missouri Landscape & Nursery Association; New England Nursery Association; New Jersey Nursery & Landscape Association; New York State Nursery & Landscape Association; New York State Vegetable Growers Association; North Carolina Association of

Nurserymen; Northern California Growers Association; Nursery Growers of Lake County Ohio, Inc.; Ohio Nursery & Landscape Association; Oregon Association of Nurserymen; Oregon Farm Bureau Federation; Pacific Tomato Growers; Pennsylvania Landscape & Nursery Association; Rhode Island Nursery and Landscape Association; Senseney South Corporation; Snake River Farmers Association; South Carolina Nursery Association; Southern Nursery Association; State Horticultural Association of Pennsylvania; Tennessee Nursery & Landscape Association.

Texas Nursery & Landscape Association; Texas Produce Association; Turfgrass Producers International; Ventura County Agriculture Association; Virginia Agricultural Growers Association; Virginia Nursery and Landscape Association; Wasco County Fruit & Produce League; Washington Growers Clearing House Association, Inc.; Washington Growers League; Washington Potato & Onion Association; Washington State Nursery & Landscape Association; Western Grower Law Group; West Virginia Nursery and Landscape Association; Wisconsin Nursery Association; Wisconsin Landscape Federation; Wisconsin Christmas Tree Producers.

AGRICULTURAL JOB OPPORTUNITY, BENEFITS,  
AND SECURITY ACT OF 2003—SUMMARY OF  
SIGNIFICANT PROVISIONS—SEPTEMBER 2003

TITLE I—ADJUSTMENT OF AGRICULTURAL WORKERS  
TO TEMPORARY AND PERMANENT RESIDENT STATUS

Title I establishes a program whereby agricultural workers in the United States who lack authorized immigration status but who can demonstrate that they have worked 100 or more days in a 12 consecutive month period during the 18-month period ending on August 31, 2003 can apply for adjustment of status. Eligible applicants would be granted temporary resident status. If the farmworker performs at least 360 work days of agricultural employment during the 6-year period ending on August 31, 2009, including at least 240 work days during the first 3 years following adjustment, and at least 75 days of agricultural work during each of three 12-month periods in the 6-years following adjustment to temporary resident status, the farmworker may apply for permanent resident status.

During the period of temporary resident status the farmworker is employment authorized, and can travel abroad and re-enter the United States. Workers adjusting to temporary resident status may work in non-agricultural occupations, as long as their agricultural work requirements are met. While in temporary resident status, workers may select their employers and may switch employers. During the period of temporary resident status, the farmworker's spouse and minor children who are residing in the United States may remain in the United States, but are not employment authorized. The spouse and minor children may adjust to permanent resident status once the farmworker adjusts to permanent resident status. Unauthorized workers who do not apply or are not qualified for adjustment to temporary resident status are subject to removal. Temporary residents under this program who do not fulfill the agricultural work requirement or are inadmissible under immigration law or commit a felony or three or more misdemeanors as temporary residents are denied adjustment to permanent resident status and are subject to removal. The adjustment program is funded through application fees.

## TITLES II AND III—REFORM OF THE H-2A TEMPORARY AND SEASONAL AGRICULTURAL WORKER PROGRAM

This section modifies the existing H-2A temporary and seasonal foreign agricultural worker program. Employers desiring to employ H-2A foreign workers in seasonal jobs (10 months or less) will file an application and a job offer with the Secretary of Labor. If the application and job offer meets the requirements of the program and there are no obvious deficiencies the Secretary must approve the application. Employers must seek to employ qualified U.S. workers prior to the arrival of H-2A foreign workers by filing a job order with a local job service office at least 28 days prior to date of need and also authorizing the posting of the job on an electronic job registry.

All workers in job opportunities covered by an H-2A application must be provided with workers' compensation insurance, and no job may be filled by an H-2A worker that is vacant because the previous occupant is on strike or involved in a labor dispute. If the job is covered by a collective bargaining agreement, the employer must also notify the bargaining agent of the filing of the application. If the job opportunity is not covered by a collective bargaining agreement, the employer is required to provide additional benefits, as follows. The employer

must provide housing at no cost, or a monetary housing allowance where the governor of a State has determined that there is sufficient migrant housing available, to workers whose place of residence is beyond normal commuting distance. The employer must also reimburse inbound and return transportation costs to workers who meet employment requirements and who travel more than 100 miles to come to work for the employer. The employer must also guarantee employment for at least three quarters of the period of employment, and assure at least the highest of the applicable statutory minimum wage, the prevailing wage in the occupation and area of intended employment, or a reformed Adverse Effect Wage Rate (AEWR). If the AEWR applies, it will not be higher than that existing on 1/01/03 and if Congress fails to enact a new wage rate within 3 years, the AEWR will be indexed to the change in the consumer price index, capped at 4 percent per year beginning December 1, 2006. Employers must meet specific motor vehicle safety standards.

H-2A foreign workers are admitted for the duration of the initial job, not to exceed 10 months, and may extend their stay if recruited for additional seasonal jobs, to a maximum continuous stay of 3 years, after which the H-2A foreign worker must depart the United States. H-2A foreign workers are

authorized to be employed only in the job opportunity and by the employer for which they were admitted. Workers who abandon their employment or are terminated for cause must be reported by the employer, and are subject to removal. H-2A foreign workers are provided with a counterfeit resistant identity and employment authorization document.

The Secretary of Labor is required to provide a process for filing, investigating and disposing of complaints, and may order back wages and civil money penalties for program violators. The Secretary of Homeland Security may order debarment of violators for up to 2 years. H-2A workers are provided with a limited Federal private right of action to enforce the requirements of housing, transportation, wages, the employment guarantee, motor vehicle safety, retaliation and any other written promises in the employer's job offer. Either party may request mediation after the filing of the complaint. State contract claims seeking to enforce terms of the H-2A program are preempted by the limited Federal right of action. No other State law rights are preempted or restricted.

The administration of the H-2A program is funded through a user fee paid by agricultural employers.

**COMPARISON OF THE CURRENT H-2A AGRICULTURAL GUEST WORKER PROGRAM AND THE CRAIG / KENNEDY AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT OF 2003**

September 22, 2003

**One-Time Adjustment to Legal Status (non-H-2A)**

(Legislation would create a new program; therefore, this table contains no "Current Law" column)

Bipartisan AgJOBS Reform Plan	
Issue	
Agricultural Work Required to Adjust to Legal Status	Workers must prove that they worked in agricultural employment in the U.S. the lesser of 575 hours or 100 work days, during any 12 consecutive months in the 18 month period ending on August 31, 2003.
Application Process to Qualify to Adjust to Legal Status	Application must be made beginning 7 months after enactment (after regulations are issued) and not later than 18 months thereafter.
Proof of Qualifying Employment	Workers applying for adjustment have the burden of proving by a preponderance of evidence the qualifying days or hours of agricultural employment through employment records from employers, unions, government agencies and other reliable documentation.
Status of Adjusted Workers	Adjusted workers obtain temporary resident status. They may remain in the U.S. year-round. To qualify for temporary and permanent resident status, applicants are subject to the same admissibility standards as any other alien, except that they are granted a one-time waiver of ineligibility for unlawful presence.
Right to Work and Travel of Adjusted Workers	Adjusted workers must satisfy an annual agricultural work requirement during the qualifying adjustment of status period. They are allowed to work in industries outside of agriculture during periods in which they are not working in agriculture. Workers have the right to travel within the U.S. and between the U.S. and their resident country and will be given a counterfeit-resistant document of authorization to enter or reenter the U.S.
Agricultural Work Requirements to Adjust to Permanent Resident Status	The adjusting worker must perform at least 2060 hours or 360 work days, whichever is less, of agricultural employment in the U.S. during the 6 year period ending on August 31, 2009. Adjusting workers must work at least 75 work days of agricultural employment in each of three 12 month periods ending on August 31, 2006 and at least 240 work days of agricultural employment during the first 3 of the 6 years following adjustment to temporary resident status. Upon completion of the work requirement, workers obtain permanent resident status.

Bipartisan AgJOBS Reform Plan	
Issue	
Status of Spouses and Dependents	Spouses and minor children of workers who adjust status may not be removed nor given employment authorization while the qualifying worker is in temporary resident status. Once a worker obtains permanent resident status through satisfaction of the agricultural work requirement, he/she may seek to adjust the status of a spouse and minor child
Proof of Agricultural Work During Qualifying Period After Enactment	Adjusting workers claiming that they are deprived of qualifying days of work in agriculture through termination without just cause are entitled to arbitration of their termination. A favorable arbitration decision for a worker can result only in a credit of work days or hours but cannot be used for any other purpose in any other litigation. Workers also can get credit for days lost through an inability to work due to injury or disease arising out of agricultural employment during the qualifying period, as long as proven through medical records. Secretary of the Department of Homeland Security (DHS) has limited authority to relax hours of agricultural work requirement during the first 3 years due to a natural disaster.
Confidentiality of Information	Information provided by workers and employers to the Secretary of DHS shall remain confidential and can only be used to determine whether a worker qualifies to adjust to legal status.

## H-2A GUEST WORKER REFORMS

Issue	Current Law	Bipartisan AgJOBS Reform Plan
<b>DOMESTIC WORKER RECRUITMENT AND SEC. OF LABOR CERTIFICATION OF EMPLOYERS TO EMPLOY H-2A FOREIGN GUEST WORKERS</b>		
Limitation on Covered Job Opportunities	Job opportunities must be "agricultural" and must be "temporary" or "seasonal". Maximum duration of temporary jobs 364 days; maximum practical duration of seasonal jobs 10 months. Agriculture defined as in FLSA and Internal Revenue Code.	Job opportunities must be "agricultural" and must be "temporary" or "seasonal". Maximum duration of jobs 10 months. Agriculture defined as in Fair Labor Standards Act and Internal Revenue Code.
Mechanics of Process	Labor Certification: Application for temporary guest worker labor certification must be filed at least 45 days before date of need with local office and DOL regional office. DOL accepts or requests modification in 7 days. Certification 30 days before date of need. DOL has discretion to waive time frames in "emergency" situations. Requests for redetermination allowed.	Labor Condition Application: Process similar to H-1B high-tech program. Application for H-2A workers is filed with Secretary of Labor (SOL). Application provides assurances that employer will comply with program requirements most of which are set forth in the following Labor Standards section. Unless the application is incomplete or contains obvious inaccuracies, SOL must approve it.
Domestic Recruitment	Local and interstate orders, filed with DOL 45 days before date of need for workers. Newspaper, radio advertising and other requirements imposed by Secretary of Labor (SOL). Emergency provisions allow SOL to waive recruitment requirements where there is insufficient time before date of need and need could not have reasonably been foreseen.	Employer must contact former workers and advertise jobs in local paper likely to be patronized by farmworkers no later than 14 days before date of need for workers. Employer must file job order with local job service office 28 days prior to date of need and authorize posting of job on an electronic job registry. Interstate recruitment of workers is not required. Emergency provisions allow SOL to waive recruitment requirements where there is insufficient time before date of need and need could not have reasonably been foreseen.

Issue		Current Law		Bipartisan AgJOBS Reform Plan	
<b>LABOR STANDARDS</b>					
In General	Open-ended, terms and conditions of employment may not adversely affect U.S. workers.	Limited to standards in statute unless higher wages, benefits or working conditions are offered or provided to H-2A workers.			
Wages	Highest of Adverse Effect Wage Rate (AEWR) administratively established by DOL, prevailing wage, or federal or state minimum wage. AEWR methodology set by SOL by regulation.	Similar to existing H-2A, except AEWR may not be higher than the applicable AEWR on 1-1-03. If Congress fails to enact a new wage rate within 3 years of enactment, thereafter the existing AEWRs will be annually indexed by the % change in the CPI, with a maximum adjustment of 4% annually. During 3 year period after enactment, GAO and Congressional commission study wage rate and make recommendations to Congress.			
Housing	Employer must offer housing to all non-local workers. H-2A application limited to capacity of available housing. May use public accommodation housing. Local workers not requiring housing not counted against H-2A request up to number of local workers usually employed. No charge for housing permitted.	Employer must provide housing or a housing allowance. From the date of enactment, the housing allowance may be offered only if the Governor of State certifies that housing is available in the area of intended employment. Housing allowance is based on HUD Section 8 statewide average fair market rental rates for existing housing. In non-metropolitan counties the allowance is the statewide average fair market rental for existing housing for non-metropolitan counties and for metropolitan counties it is the statewide average for metropolitan counties.			
Transportation	Reimburse in-bound if worker completes 50% of period of employment; pay outbound if worker completes 100% of period of employment. Transportation must be advanced if it is prevailing practice.	Same as existing H-2A program except no reimbursement if worker travels less than 100 miles or does not reside in employer provided housing or housing obtained through an allowance.			
Workers' Compensation	State coverage or equivalent.	State coverage or equivalent.			

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Employment Guarantee	Employer guarantees employment for 3/4 of work hours of anticipated period of employment. Guarantee terminated if an "Act of God" terminates need for workers. Guarantee waived for workers terminated for lawful job related reasons or who abandon employment.	Same as existing H-2A program except statute defines "Act of God" circumstances that cause termination of guaranteee.
Collective Bargaining Agreement	No Provision.	If the job opportunity is covered by a collective bargaining agreement, the employer does not have to provide the wages and other benefits required of employers without such an agreement.
Preference for U.S. Workers	Must hire qualified U.S. worker who applies until 50% of period of employment has expired. Prohibits entities from withholding U.S. workers until H-2A workers arrive.	Must hire qualified U.S. worker who applies until 50% of period of employment has expired. Prohibits entities from withholding U.S. workers until H-2A workers arrive and requires SOL to place U.S. workers with other employers for which DOL has job orders for similar job opportunities in the area of intended employment prior to displacing H-2A workers. If a U.S. worker displaces an H-2A worker and then quits the job, the employer may obtain a replacement H-2A worker in an expedited manner.
Lawful Job-Related Requirements	Permitted at the discretion of SOL. Complicated scheme for regulating productivity standards.	Permitted. Employers may use legitimate selection criteria that are normal or customary to the job.
Application of MSPA to H-2A Workers	H-2A workers are exempt from the coverage of MSPA.	H-2A workers are exempt from the coverage of MSPA. H-2A workers are provided a federal private right of action to enforce the housing, transportation, wage, employment guarantee, motor vehicle safety and retaliation provisions and any other written promises in the employer's job offer. Either party may request mediation after the filing of the complaint. H-2A worker must elect between DOL enforcement of rights or right to sue. State contract claims based on H-2A program requirements are preempted by federal right of action.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Enforcement of Labor Standards	SOL has the authority to investigate compliance with H-2A requirements and assurances. SOL has authority to seek civil money penalties and backpay through an administrative hearing process for alleged violations of program requirements and has the authority to debar employers from the H-2A program for program violations.	Aggrieved persons or third parties can bring a complaint to SOL within 12 months of employer's alleged failure to comply with assurances, for misrepresentations in the labor condition application, and for displacement of U.S. workers. If, after investigation, SOL finds reasonable cause, the parties are entitled to a hearing and the SOL must make a finding not less than 60 days after the hearing. If a violation is found after a hearing, SOL may require backpay for wages and benefits not paid, as well as civil money penalties (CMPs) of up to \$1,000 for non-willful violations, \$5,000 for willful violations and \$15,000 for displacement of U.S. workers. CMPs are capped for all types of violations at no more than \$90,000.
Initial Waiver of Ineligibility for Unlawful Presence	Banned from admission up to 10 years for previous unlawful presence. Must show non-immigrant intent and meet other criteria for admissibility.	One time waiver of bar on admission for unlawful presence. Must show non-immigrant intent and meet other criteria for admissibility.
Strike and Lockout	Cannot hire an H-2A worker if the specific job opportunity for which the employer is requesting an H-2A worker is vacant because the former occupant is on strike or being out in the course of a labor dispute.	Same as current law.
<b>GUEST WORKER ADMISSION AND ELIGIBILITY PROVISIONS</b>		
Procedures for Admission of H-2A guest workers	Governed by current INS statute and regulations. Employer petitions INS and, upon approval, workers apply for visas and admission.	Employer files petition with Secretary of the Dept. of Homeland Security (DHS), accompanied by valid labor certification covering petitioner. Secretary of DHS is required to adjudicate petitions on an expedited basis within 7 working days and send copies of approved petition to petitioning employer and consular office where worker will apply.
Issuance of Identity and Employment Eligibility Document	Subject to current INS regulations and law. Receives same documents as all other admissions.	Requires counterfeit-proof document.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Extension of Stay of H-2A worker	Worker may remain in U.S. for 14 days after period of employment ends to seek additional employment. Cannot work for employer who files an extension until extension approved. Continuous stay for period of labor certification up to 3 years with successive certified employers.	Worker may remain in U.S. for period of labor certification plus 14 additional days after period of employment ends to seek employment. Can work immediately for employer who has filed an extension of stay but must within 60 days obtain valid work authorization documents. Continuous stay up to 3 years with successive approved employers, but no more than ten months in each job opportunity.
<b>MISCELLANEOUS PROVISIONS</b>		
Filing by Associations of Agricultural Employment	Permitted; association may be agent, joint employer or sole employer. Association must be joint employer for workers to transfer among members.	Similar to current law. Associations may file applications as actual employers or on behalf of members who have written agreements to comply with program requirements.
Public Notice and Access to Information	No provision.	Employers covered by a collective bargaining agreement must at the time of filing of the application give notice to the bargaining representative of the employees in the occupational classification at the place of employment for which H-2A workers are sought. Employers must keep copy of application at principal place of business for public inspection. SOL must keep a public list by employer of the applications filed under the H-2A program, including the wage rate, number of workers sought, period of intended employment and date of need. The list is available for examination at DOL in Washington, D.C.
Continuation of Obligation to Meet H-2A Standards Upon Withdrawal from Program	May withdraw. Policy on applicability of program requirements not clear, but generally believed that H-2A obligations continue if any workers are recruited under H-2A terms.	May withdraw if no H-2A guest workers are employed. Any employer obligations incurred under other laws would continue.
Payment of Users' Fee	Employers pay fees set by SOL and INS.	Employers pay user's filing fee for filing labor condition application and for admission of H-2A guest workers. Fees established by federal standards.
Effective Date	Not applicable.	One year after enactment.

Issue	Current Law	Bipartisan AgJOBS Reform Plan
Regulations	Not applicable.	Secretaries of Labor and Agriculture and DHS consult regarding regulations, which must be issued 1 year after enactment.

TEXT OF OPEN LETTER TO CONGRESS ON  
AGRICULTURAL LABOR REFORM, AUGUST, 2003

The recent tragic truck-trailer deaths of Mexican workers seeking illegal entry to the U.S. have raised once again the wisdom and feasibility of our immigration policies at the U.S./Mexico border. This is an issue that many of us in American agriculture have tried to address over the years, but few have listened. Perhaps our views can now be heard.

Many of the workers entering the U.S. from Mexico are hoping for jobs on farms or in nurseries. As you know, such jobs often await them, for thousands of American farmers wonder every year whether they'll have dependable help at harvest time. This is especially critical for our fruit and vegetable industries, where the "open window" for harvest can be very short-lived. But similar concerns are now emerging in many other farm enterprises, ranging from dairy to poultry to greenhouse crops to beef to Christmas trees. This has become a national problem, and a recurring nightmare for our agricultural employers nationwide.

Government statistics and other evidence suggest that at least 50% and perhaps 70% of the current agricultural workforce is not in this country legally. The immediate reaction of some is to say that these workers have broken the law and should be deported, and that U.S. farmers and other employers have brought this problem on themselves by not doing a better job of detecting fraudulent documents.

That "easy" answer ignores the reality that few Americans are drawn to highly seasonal and physically demanding work in agriculture. At chaotic harvest times, a stable, dependable workforce is essential. Instead, American farmers are in a "damned if you do, damned if you don't" situation where they're required by law to be policemen, immigration officials, and security experts while simultaneously trying to get their crops harvested before they spoil.

My experience over many years tells me that agricultural employers do not want to hire illegal immigrants. What they want is a stable, viable program with integrity that will meet their labor force needs in a timely, effective way. What they do not want is a program with major shortcomings, for which they will inevitably be blamed. Unfortunately, that is what our laws have imposed upon them.

As a nation, we can and must do better—for agricultural employers and for immigrant workers. Many of these workers have come to the U.S. on a regular basis. Many have lived here for years doing our toughest jobs, and some would like to earn the privilege of living here permanently. Why not permit them to do so, over a specified time-frame, thereby keeping the best workers here? That has the additional advantage of permitting our government to better focus its limited monitoring/enforcement resources, particularly where security may be a concern. Let's use entry/exit tracking, tamper proof documentation, biometric identification, etc. where it will truly pay security dividends, and let's stop painting all immigrants with the same brush.

A limited, earned legalization for agriculture is nothing like an amnesty program. It would apply only to immigrants who are at work, paying taxes, and are willing to earn their way to citizenship so that they can share in the American dream. These workers form the foundation of much of our nation's agricultural workforce. We need them!

Agricultural employers need an updated guest work program to replace the antiquated "H2A" temporary worker system,

which is too expensive and too bureaucratic to be of practical use. Necessary reforms include fair and stronger security and identification measures, market-based wage rates, and comprehensive application procedures.

The reform program I have outlined already has broad bipartisan support, thanks to the good work and leadership of Sens. Larry Craig, Gordon Smith, Ted Kennedy, and Bob Graham, among others, and a bipartisan group of House colleagues. Their work product deserves immediate and serious consideration by the Congress. The status quo is simply unacceptable. It puts both American employers and immigrant workers in an untenable situation—with a high cost in economic efficiency, respect for the law, and sometimes even in human life. The reforms now being proposed are a practical solution to a serious problem that is evolving into a national crisis.

As President Bush has stated, we can and must do better to match a willing and hard-working immigrant worker with producers who are in desperate need of a lawful workforce. It is time, and in our great country's interest, to enact these reforms.

Sincerely,

CLAYTON YEUTTER  
(Former Agriculture Secretary and U.S.  
Trade Representative).

S. 1645

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the "Agricultural Job Opportunity, Benefits, and Security Act of 2003".

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—ADJUSTMENT TO LAWFUL STATUS**

Sec. 101. Agricultural workers.

Sec. 102. Correction of Social Security records.

**TITLE II—REFORM OF H-2A WORKER PROGRAM**

Sec. 201. Amendment to the Immigration and Nationality Act.

**TITLE III—MISCELLANEOUS PROVISIONS**

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Effective date.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **AGRICULTURAL EMPLOYMENT.**—The term "agricultural employment" means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes 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)).

(2) **EMPLOYER.**—The term "employer" means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(3) **JOB OPPORTUNITY.**—The term "job opportunity" means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

(4) **SECRETARY.**—The term "Secretary" means the Secretary of Homeland Security.

(5) **TEMPORARY.**—A worker is employed on a "temporary" basis where the employment is intended not to exceed 10 months.

(6) **UNITED STATES WORKER.**—The term "United States worker" means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(7) **WORK DAY.**—The term "work day" means any day in which the individual is employed 1 or more hours in agriculture.

**TITLE I—ADJUSTMENT TO LAWFUL STATUS**

**SEC. 101. AGRICULTURAL WORKERS.**

(a) **TEMPORARY RESIDENT STATUS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary shall confer upon an alien who qualifies under this subsection the status of an alien lawfully admitted for temporary residence if the Secretary 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 575 hours or 100 work days, whichever is less, during any 12 consecutive months during the 18-month period ending on August 31, 2003.

(B) **APPLICATION PERIOD.**—The alien must apply for such status during the 18-month application period beginning on the 1st day of the 7th month that begins after the date of enactment of this Act.

(C) **ADMISSIBLE AS IMMIGRANT.**—The alien must establish that the alien is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under subsection (e)(2).

(2) **AUTHORIZED TRAVEL.**—During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) in the same manner as an alien lawfully admitted for permanent residence.

(3) **AUTHORIZED EMPLOYMENT.**—During the period an alien is in lawful temporary resident status granted under this subsection, the alien shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(4) **TERMINATION OF TEMPORARY RESIDENT STATUS.**—During the period of temporary resident status granted an alien under this subsection, the Secretary may terminate such status only upon a determination under this Act that the alien is deportable.

(5) **RECORD OF EMPLOYMENT.**—

(A) **IN GENERAL.**—Each employer of a worker granted status under this subsection shall annually—

(i) provide a written record of employment to the alien; and

(ii) provide a copy of such record to the Secretary.

(B) **SUNSET.**—The obligation under subparagraph (A) terminates on August 31, 2009.

**(b) RIGHTS OF ALIENS GRANTED TEMPORARY RESIDENT STATUS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a), such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

(A) PROHIBITION.—No alien granted status under subsection (a) may be terminated from employment by any employer during the period of temporary resident status except for just cause.

(B) TREATMENT OF COMPLAINTS.—

(i) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this subparagraph of complaints by aliens granted temporary resident status under subsection (a) who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(ii) INITIATION OF ARBITRATION.—If the Secretary finds that a complaint has been filed in accordance with clause (i) and there is reasonable cause to believe that the complainant was terminated without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator.

(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including, but not limited to, reinstatement, back pay, or front pay to the affected employee. Within 30 days from the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted temporary resident status under subsection (a) without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of subsection (c)(1).

(v) TREATMENT OF ATTORNEY'S FEES.—The parties shall bear the cost of their own attorney's fees involved in the litigation of the complaint.

(vi) NONEXCLUSIVE REMEDY.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the em-

ployee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

(C) CIVIL PENALTIES.—

(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted temporary resident status under subsection (a) has failed to provide the record of employment required under subsection (a)(5) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed \$1,000 per violation.

(ii) LIMITATION.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(c) ADJUSTMENT TO PERMANENT RESIDENCE.—

(1) AGRICULTURAL WORKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall adjust the status of an alien granted lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(i) QUALIFYING EMPLOYMENT.—The alien has performed at least 2,060 hours or 360 work days, whichever is less, of agricultural employment in the United States, during the period beginning on September 1, 2003, and ending on August 31, 2009.

(ii) QUALIFYING YEARS.—The alien has performed at least 430 hours or 75 work days, whichever is less, of agricultural employment in the United States in at least 3 non-overlapping periods of 12 consecutive months during the period beginning on September 1, 2003, and ending on August 31, 2009. Qualifying periods under this clause may include nonconsecutive 12-month periods.

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 1,380 hours or 240 work days, whichever is less, of agricultural employment during the period beginning on September 1, 2003, and ending on August 31, 2006.

(iv) APPLICATION PERIOD.—The alien applies for adjustment of status not later than August 31, 2010.

(v) PROOF.—In meeting the requirements of clauses (i), (ii), and (iii), an alien may submit the record of employment described in subsection (a)(5) or such documentation as may be submitted under subsection (d)(3).

(vi) DISABILITY.—In determining whether an alien has met the requirements of clauses (i), (ii), and (iii), the Secretary shall credit the alien with any work days lost because the alien was unable to work in agricultural employment due to injury or disease arising out of and in the course of the alien's agricultural employment, if the alien can establish such disabling injury or disease through medical records.

(B) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien adjustment to permanent resident status, and provide for termination of the temporary resident status granted such alien under subsection (a), if—

(i) the Secretary finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation, as described in

section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under subsection (e)(2); or

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(C) GROUNDS FOR REMOVAL.—Any alien granted temporary resident status under subsection (a) who does not apply for adjustment of status under this subsection before the expiration of the application period described in subparagraph (A)(iv), or who fails to meet the other requirements of subparagraph (A) by the end of the applicable period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a). The Secretary shall issue regulations establishing grounds to waive subparagraph (A)(iii) with respect to an alien who has completed at least 200 days of the work requirement specified in such subparagraph in the event of a natural disaster which substantially limits the availability of agricultural employment or a personal emergency that prevents compliance with such subparagraph.

(2) SPOUSES AND MINOR CHILDREN.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted status under paragraph (1), including any individual who was a minor child on the date such alien was granted temporary resident status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(B) TREATMENT OF SPOUSES AND MINOR CHILDREN PRIOR TO ADJUSTMENT OF STATUS.—A spouse and minor child of an alien granted temporary resident status under subsection (a) may not be—

(i) removed while such alien maintains such status; and

(ii) granted authorization to engage in employment in the United States or be provided an "employment authorized" endorsement or other work permit, unless such employment authorization is granted under another provision of law.

(d) APPLICATIONS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Secretary shall provide that—

(i) applications for temporary resident status under subsection (a) may be filed—

(I) with the Secretary, but only if the applicant is represented by an attorney; or

(II) with a qualified designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Secretary; and

(ii) applications for adjustment of status under subsection (c) shall be filed directly with the Secretary.

(B) OUTSIDE THE UNITED STATES.—The Secretary, in cooperation with the Secretary of State, shall establish a procedure whereby an alien may apply for temporary resident status under subsection (a) at an appropriate consular office outside the United States.

(C) PRELIMINARY APPLICATIONS.—

(i) IN GENERAL.—During the application period described in subsection (a)(1)(B), the Secretary may grant admission to the United States as a temporary resident and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for such status under subsection (a) at a designated port of entry on the southern

land border of the United States. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this Act.

(ii) DEFINITION.—For purposes of clause (i), the term “preliminary application” means a fully completed and signed application which contains specific information concerning the performance of qualifying employment in the United States, together with the payment of the appropriate fee and the submission of photographs and the documentary evidence which the applicant intends to submit as proof of such employment.

(iii) ELIGIBILITY.—An applicant under clause (i) must be otherwise admissible to the United States under subsection (e)(2) and must establish to the satisfaction of the examining officer during an interview that the applicant’s claim to eligibility for temporary resident status is credible.

(D) TRAVEL DOCUMENTATION.—The Secretary shall provide each alien granted status under this section with a counterfeit-resistant document of authorization to enter or reenter the United States that meets the requirements established by the Secretary.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—

(A) IN GENERAL.—For purposes of receiving applications under subsection (a), the Secretary—

(i) shall designate qualified farm labor organizations and associations of employers; and

(ii) may designate such other persons as the Secretary determines are qualified and have substantial experience, demonstrate competence, and have traditional long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act, Public Law 89-732, Public Law 95-145, or the Immigration Reform and Control Act of 1986.

(B) REFERENCES.—Organizations, associations, and persons designated under subparagraph (A) are referred to in this Act as “qualified designated entities”.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) or subsection (c)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—(i) An alien applying for status under subsection (a)(1) or subsection (c)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A) or subsection (c)(1)(A)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien’s burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(A) or subsection (c)(1)(A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(4) TREATMENT OF APPLICATIONS BY QUALIFIED DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Secretary applications filed with it in accordance with paragraph (1)(A)(i)(II) but not to forward to the Secretary applications filed with it unless the applicant has con-

sented to such forwarding. No such entity may make a determination required by this section to be made by the Secretary. Upon the request of the alien, a qualified designated entity shall assist the alien in obtaining documentation of the work history of the alien.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this subsection by qualified designated entities operating under this subsection are confidential and the Secretary shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6).

(6) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, neither the Secretary, nor any other official or employee of the Department of Homeland Security, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section, the information provided to the applicant by a person designated under paragraph (2)(A), or any information provided by an employer or former employer, for any purpose other than to make a determination on the application, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department of Homeland Security, or bureau or agency thereof, or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(B) CRIME.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Whoever—

(i) files an application for status under subsection (a) or (c) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(ii) creates or supplies a false writing or document for use in making such an application;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for adjustment of status under this section.

(9) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(i) shall be charged for the filing of applications for status under subsections (a) and (c); and

(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified des-

ignated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

(C) DISPOSITION OF FEES.—

(i) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the “Agricultural Worker Immigration Status Adjustment Account”. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the “Agricultural Worker Immigration Status Adjustment Account” shall remain available to the Secretary until expended for processing applications for status under subsections (a) and (c).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien’s eligibility for status under subsection (a)(1)(C) or an alien’s eligibility for adjustment of status under subsection (c)(1)(B)(ii)(I), the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of such section 212(a) may not be waived by the Secretary under clause (i):

(I) Subparagraphs (A) and (B) of paragraph (2) (relating to criminals).

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

(III) Paragraph (2)(C) (relating to drug offenses).

(IV) Paragraph (3) (relating to security and related grounds).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for status under this section by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

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

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for temporary resident status under subsection (a) (but for the fact that the alien may not apply for such status until the beginning of

such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for temporary resident status, the alien—

(A) may not be removed; and

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

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for temporary resident status under subsection (a) during the application period described in subsection (a)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

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

(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c) except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the 1st day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the 1st day of the 7th month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) FUNDING.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$40,000,000 for each of fiscal years 2004 through 2007 to the Secretary to carry out this section.

## SEC. 102. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(ii), by striking "or" at the end;

(2) in subparagraph (C), by inserting "or" at the end;

(3) by inserting after subparagraph (C) the following:

"(D) who is granted status as a lawful temporary resident under the Agricultural Job Opportunity, Benefits, and Security Act of 2003,"; and

(4) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred prior to the date on which the alien was granted lawful temporary resident status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the 1st day of the 7th month that begins after the date of enactment of this Act.

## TITLE II—REFORM OF H-2A WORKER PROGRAM

### SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by striking section 218 (8 U.S.C. 1188) and inserting the following:

#### "H-2A EMPLOYER APPLICATIONS

"SEC. 218. (a) APPLICATIONS TO THE SECRETARY OF LABOR.—

"(1) IN GENERAL.—No alien may be admitted to the United States as an H-2A worker, or otherwise provided status as an H-2A worker, unless the employer has filed with the Secretary of Labor an application containing—

"(A) the assurances described in subsection (b);

"(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers.

"(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that must be possessed by a worker to be employed in the job opportunity in question.

"(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

"(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

"(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

"(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied under subsection (a) and to all other workers in the same occupation at the place of employment.

"(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H-2A workers.

"(E) REQUIREMENTS FOR PLACEMENT OF NON-IMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

"(i) the nonimmigrant performs duties in whole or in part at 1 or more work sites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

"(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H-2A workers.

"(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

"(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

“(H) EMPLOYMENT OF UNITED STATES WORKERS.—

“(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H-2A nonimmigrant is, or H-2A nonimmigrants are, sought:

“(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer’s job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

“(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days prior to the date on which the employer desires to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on ‘America’s Job Bank’ or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

“(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days prior to the date on which the employer desires to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

“(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer’s need for H-2A workers could not reasonably have been foreseen.

“(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

“(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the foreign worker departs for the employer’s place of employment and ending on the date on which 50 percent of the period of employment for which the foreign worker who is in the job was hired has elapsed, subject to the following requirements:

“(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers prior to the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

“(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of

the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

“(III) PLACEMENT OF UNITED STATES WORKERS.—Prior to referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

“(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

“(C) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

“(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A through 218C.

“(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

“(d) WITHDRAWAL OF APPLICATIONS.—

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

“(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

“(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H-2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

“(e) REVIEW AND APPROVAL OF APPLICATIONS.—

“(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer’s principal place of business or work site, a copy of each such application (and such accompanying documents as are necessary).

“(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

“(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

“(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.

“H-2A EMPLOYMENT REQUIREMENTS

“SEC. 218A. (a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer’s H-2A workers.

“(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which must accompany an application under section 218 shall include each of the following benefit, wage, and working condition provisions:

“(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

“(A) IN GENERAL.—An employer applying under section 218(a) for H-2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

“(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer’s election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

“(C) FAMILY HOUSING.—When it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

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

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

“(F) CHARGES FOR HOUSING.—

“(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing’s management.

“(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. However, an employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

“(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

“(i) IN GENERAL.—In lieu of offering housing pursuant to subparagraph (A), the employer may provide a reasonable housing allowance, but only if the requirement of clause (ii) is satisfied. Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. However, no housing allowance may be used for housing which is owned or controlled by the employer.

“(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H-2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

“(iii) AMOUNT OF ALLOWANCE.—

“(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(2) REIMBURSEMENT OF TRANSPORTATION.—

“(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker’s

transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

“(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation and subsistence to such subsequent employer’s place of employment.

“(C) LIMITATION.—

“(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

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

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

“(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

“(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORK SITE.—The employer shall provide transportation between the worker’s living quarters (i.e., housing provided by the employer pursuant to paragraph (1), including housing provided through a housing allowance) and the employer’s work site without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(3) REQUIRED WAGES.—

“(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

“(B) LIMITATION.—Effective on the date of enactment of the Agricultural Job Opportunity, Benefits, and Security Act of 2003 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

“(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

“(i) FIRST ADJUSTMENT.—Unless Congress acts to set a new wage standard applicable to this section, effective on December 1, 2006, the adverse effect wage rate then in effect

shall be adjusted by the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the preceding year and December of the second preceding year, except that such adjustment shall not exceed 4 percent.

“(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Effective on March 1, 2007, and each March 1 thereafter, the adverse effect wage rate then in effect shall be adjusted in accordance with the requirements of clause (i).

“(D) DEDUCTIONS.—The employer shall make only those deductions from the worker’s wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker’s wages.

“(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

“(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in one or more written statements the following information:

“(i) The worker’s total earnings for the pay period.

“(ii) The worker’s hourly rate of pay, piece rate of pay, or both.

“(iii) The hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the three-quarters guarantee described in paragraph (4)).

“(iv) The hours actually worked by the worker.

“(v) An itemization of the deductions made from the worker’s wages.

“(vi) If piece rates of pay are used, the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than June 1, 2007, the Resources, Community and Economic Development Division, and the Health, Education and Human Services Division, of the General Accounting Office shall jointly prepare and transmit to the Secretary of Labor and to the Committees on the Judiciary of the House of Representatives and the Senate a report which shall address—

“(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural work force has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

“(v) recommendations for future wage protection under this section.

“(H) COMMISSION ON WAGE STANDARDS.—

“(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H-2A program (in this subparagraph referred to as the ‘Commission’).

“(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

“(I) 4 representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

“(II) 4 representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

“(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

“(I) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(V) recommendations for future wage protection under this section.

“(iv) FINAL REPORT.—Not later than June 1, 2007, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

“(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

“(4) GUARANTEE OF EMPLOYMENT.—

“(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H-2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

“(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the ‘three-fourths guarantee’ described in subparagraph (A).

“(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any

form of natural disaster, including but not limited to a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

“(5) MOTOR VEHICLE SAFETY.—

“(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

“(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H-2A employer that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

“(ii) USES OR CAUSES TO BE USED.—(I) In this subsection, the term ‘uses or causes to be used’ applies only to transportation provided by an H-2A employer to an H-2A worker, or by a farm labor contractor to an H-2A worker at the request or direction of an H-2A employer.

“(II) The term ‘uses or causes to be used’ does not apply to—

“(aa) transportation provided, or transportation arrangements made, by an H-2A worker himself or herself, unless the employer specifically requested or arranged such transportation; or

“(bb) carpooling arrangements made by H-2A workers themselves, using one of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

“(III) The mere providing of a job offer by an employer to an H-2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H-2A worker by an H-2A employer, shall not constitute an arrangement of, or participation in, such transportation.

“(iii) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H-2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

“(iv) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

“(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

“(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

“(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

“(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

“(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H-2A worker.

“(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

“(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H-2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

“(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

“(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

“(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

“(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

“(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section or sections 218 or 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

“PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H-2A WORKERS

“SEC. 218B. (a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H-2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

“(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

“(c) CRITERIA FOR ADMISSIBILITY.—

“(I) IN GENERAL.—An H-2A worker shall be considered admissible to the United States if

the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

“(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

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

“(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

“(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

“(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H-2A status, but may not be granted that status in the United States.

“(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

“(d) PERIOD OF ADMISSION.—

“(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of up to 1 week before the beginning of the period of employment (to be granted for the purpose of travel to the work site) and a period of 14 days following the period of employment (to be granted for the purpose of departure or extension based on a subsequent offer of employment), except that—

“(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

“(B) the total period of employment, including such 14-day period, may not exceed 10 months.

“(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

“(e) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H-2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

“(2) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Secretary within 7 days of an H-2A worker’s having prematurely abandoned employment.

“(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H-2A worker who violates any term or condition of the worker’s nonimmigrant status.

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if

the alien promptly departs the United States upon termination of such employment.

“(f) REPLACEMENT OF ALIEN.—

“(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker—

“(A) who abandons or prematurely terminates employment; or

“(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

“(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

“(g) IDENTIFICATION DOCUMENT.—

“(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify such person’s proper identity.

“(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

“(A) The document shall be capable of reliably determining whether—

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

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

“(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H-2A worker.

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

“(C) The document shall—

“(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

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

“(h) EXTENSION OF STAY OF H-2A ALIENS IN THE UNITED STATES.—

“(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H-2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay and a change in the alien’s employment.

“(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

“(A) for a period of more than 10 months; or

“(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States under this section.

“(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—In the case of an alien who is lawfully present in the United States, the alien is authorized to commence the employment described in a petition under paragraph (1) on the date on which the petition is filed. For purposes of the preceding sentence, the term ‘file’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the em-

ployer with a documented acknowledgment of the date of receipt of the petition. The employer shall provide a copy of the employer’s petition to the alien, who shall keep the petition with the alien’s identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States. Upon approval of a petition for an extension of stay or change in the alien’s authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

“(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien’s authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

“(5) LIMITATION ON AN INDIVIDUAL’S STAY IN STATUS.—

“(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H-2A worker (including any extensions) is 3 years.

“(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

“(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H-2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H-2A worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien’s previous period of authorized status as an H-2A worker (including any extensions).

“(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien’s period of authorized status as an H-2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H-2A worker.

“(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS.—Notwithstanding any other provision of the Agricultural Job Opportunity, Benefits, and Security Act of 2003, aliens admitted under section 101(a)(15)(H)(ii)(a) for employment as sheepherders—

“(1) may be admitted for a period of 12 months;

“(2) may be extended for a continuous period of up to 3 years; and

“(3) shall not be subject to the requirements of subsection (h)(5) relating to periods of absence from the United States.

“WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT

“SEC. 218C. (a) ENFORCEMENT AUTHORITY.—

“(1) INVESTIGATION OF COMPLAINTS.—

“(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition specified in section 218(b), or an employer’s misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be

conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

“(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (H). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

“(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

“(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$5,000 per violation) as the Secretary of Labor determines to be appropriate;

“(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

“(iii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 2 years.

“(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition,

impose such other administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.

“(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of \$90,000.

“(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

“(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

“(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H-2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

“(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

“(2) The reimbursement of transportation as required under section 218A(b)(2).

“(3) The payment of wages required under section 218A(b)(3) when due.

“(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

“(5) The guarantee of employment required under section 218A(b)(4).

“(6) The motor vehicle safety requirements under section 218A(b)(5).

“(7) The prohibition of discrimination under subsection (d)(2).

“(c) PRIVATE RIGHT OF ACTION.—

“(1) MEDIATION.—Upon the filing of a complaint by an H-2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

“(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H-2A workers and agricultural employers without charge to the parties.

“(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct medi-

ation or other non-binding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

“(C) AUTHORIZATION.—There is hereby authorized to be appropriated annually not to exceed \$500,000 to the Federal Mediation and Conciliation Service to carry out this section, provided that, any contrary provision of law notwithstanding, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

“(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H-2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

“(3) ELECTION.—An H-2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn prior to the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

“(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H-2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

“(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

“(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

“(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

“(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

“(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

“(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H-2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

“(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for

loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

“(i) a recovery under a State workers’ compensation law; or

“(ii) rights conferred under a State workers’ compensation law.

“(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers’ compensation law that the workers’ compensation law is not applicable to a claim for bodily injury or death of an H-2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers’ compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H-2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers’ compensation law.

“(9) PRECLUSIVE EFFECT.—Any settlement by an H-2A worker and H-2A employer reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

“(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H-2A employer on behalf of an H-2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

“(d) DISCRIMINATION PROHIBITED.—

“(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

“(2) DISCRIMINATION AGAINST H-2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H-2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

“(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H-2A worker who

files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

“(f) ROLE OF ASSOCIATIONS.—

“(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

“(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

“DEFINITIONS

“SEC. 218D. For purposes of sections 218 through 218C:

“(1) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural employment’ means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a).

“(2) BONA FIDE UNION.—The term ‘bona fide union’ means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

“(3) DISPLACE.—In the case of an application with respect to 1 or more H-2A workers by an employer, the employer is considered to ‘displace’ a United States worker from a job if the employer lays off the worker from a job for which the H-2A worker or workers is or are sought.

“(4) ELIGIBLE.—The term ‘eligible’, when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)).

“(5) EMPLOYER.—The term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

“(6) H-2A EMPLOYER.—The term ‘H-2A employer’ means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

“(7) H-2A WORKER.—The term ‘H-2A worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

“(8) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for tem-

porary full-time employment at a place in the United States to which United States workers can be referred.

“(9) LAYS OFF.—

“(A) IN GENERAL.—The term ‘lays off’, with respect to a worker—

“(i) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary layoffs due to weather, markets, or other temporary conditions; but

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer’s access to water for irrigation purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

“(11) SEASONAL.—Labor is performed on a ‘seasonal’ basis if—

(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

(B) from its nature, it may not be continuous or carried on throughout the year.

“(12) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(13) TEMPORARY.—A worker is employed on a ‘temporary’ basis where the employment is intended not to exceed 10 months.

“(14) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).”

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”

### TITLE III—MISCELLANEOUS PROVISIONS

#### SEC. 301. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens under this Act, and a collection process for such fees from employers participating in the program provided under this Act. Such fees shall be the only fees chargeable to employers for services provided under this Act.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on

the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as added by section 201 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ eligible aliens pursuant to this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

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

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

(C) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the alien employment user fees shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218B of the Immigration and Nationality Act, as added by section 201 of this Act, and the provisions of this Act.

**SEC. 302. REGULATIONS.**

(a) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture on all regulations to implement the duties of the Secretary under this Act.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act.

(c) REGULATIONS OF THE SECRETARY OF LABOR.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218, 218A, 218B, and 218C of the Immigration and Nationality Act, as added by section 201, shall take effect on the effective date of section 201 and shall be issued not later than 1 year after the date of enactment of this Act.

**SEC. 303. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise provided, sections 201 and 301 shall take effect on the date that is 1 year after the date of enactment of this Act.

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

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues in introducing the Agricultural Jobs, Opportunity, Benefits, and Security Act.

The treatment of immigrant farm workers, dating back to the Bracero program, represents a shameful chapter in our history. The decades of exploitation these workers have endured continues to this day. Large numbers of men and women employed in agri-

culture today are indispensable workers who also happen to be undocumented. As a result, they are easily exploited by unscrupulous employers, who get away with paying them very low wages and forcing them to work in dangerous conditions. Inevitably, that means lower wages for legal farm workers.

We have been struggling for decades to find a solution to this emotional heart-wrenching problem. This legislation—a historic and far-reaching agreement between the United Farm Workers of America and the representatives of agricultural industries—provides a common sense solution to this long-standing problem. It will provide farm workers and their families with dignity and justice and give agricultural industries with a legal workforce.

We need an agriculture policy grounded in reality, a policy that recognizes their contributions and respects and rewards their work. This legislation will improve the wages and working conditions of all farm workers, and provide a way for foreign-born workers to become permanent residents.

Under this bill, 500,000 farm workers currently working the United States will be able to legalize their status. These changes will benefit both workers and growers. The legislation will improve the wages and working conditions of all farm workers, and provide a way for foreign-born workers to become permanent residents.

Agriculture is a unique industry. Growers must have an immediate and reliable workforce at harvest time. Everyone is harmed when crops rot in the field because the workers are not available. With these changes, growers will have greater access to dependable, hard-working employees, and a workforce that is no longer subject to sudden immigration raids.

I urge my colleagues to support this needed legislation. These reforms are long overdue, to improve the lives and working conditions of all farm workers, and it is long past time for Congress to act.

Mr. GRAHAM. Mr. President, I am pleased to join my colleagues, Senator KENNEDY of Massachusetts and Senator CRAIG of Idaho, in introducing the Agricultural Job Opportunity Benefits and Security Act of 2003. For the last six years, I have been working closely with several of my colleagues in the Senate and House of Representatives, including the Senators from Massachusetts and Idaho, to enact legislation that would provide a balanced approach to reforming our agricultural guest worker program.

There is one thing I believe we can all agree on—the status quo of agricultural guest workers in America is unacceptable. Under the status quo, we have created an underground society and pushed many of our Nation's hardest workers into the shadows. This is unfair treatment for workers who play such a vital part in our Nation's economic health.

Recently, the Miami Herald published a series documenting the horrible working and living conditions of agricultural workers in Florida. I have attached parts of that series for the RECORD. This series substantiates what we have all known anecdotally for years. Farm workers in our country—those who are legal citizens or residents of the United States as well as those who are undocumented—live in uninhabitable housing, are transported in vehicles that do not meet basic safety standards, and are subject to predatory lending practices that require payment of as much as 100 percent interest on accumulated debt.

Mr. President, I ask unanimous consent that the text of the series be printed in the RECORD.

There being no objection, the series was ordered to be printed in the RECORD, as follows:

[From the Miami Herald, Aug. 31, 2003]

FIELDS OF DESPAIR—FLORIDA FARMHANDS REAP A HARVEST OF POVERTY, PAIN AND EXPLOITATION

(By Ronnie Green)

First of three parts

JACKSONVILLE.—The recruiters come rolling through in roomy vans, searching for a fresh crop of farmworkers from the homeless shelters, haggard parks and soup kitchens dotting North Florida's urban hubs.

They target the addicted, the vulnerable, the desperate with promises of good pay, cash upfront, cold beer. Some talk of crack cocaine and ready sex.

Step inside that van, say those who have, and journey straight to hell.

Florida is America's second-richest agricultural state. But for the farmhands who labor along the lowest rung of the food chain, the riches are a mirage.

Their world is filled with sweatshop hours, slum housing, poverty pay and criminal abuse. At its extreme, it includes modern-day slavery in a state where oranges adorn license plates and tourists pull in for a free cup of juice when they cross the border.

The brutality in North Florida has an unusual, bitter twist, a Herald examination has found. While most farmworkers in Florida and nationwide are undocumented Mexicans who have trekked through the desert in search of fortune, the laborers who toil unnoticed in hamlets like East Palatka and Hastings are mostly poor black Americans.

They are recruited by crew-chief contractors who serve as middlemen between the farmers who grow crops and the laborers who pick, package and sort them. These bosses can control nearly every aspect of the workers' lives: their housing, their food, their transportation and even their paycheck.

In interviews with The Herald, farmworkers told harrowing stories of life in a hot stretch of North Florida farm country that welcomes passersby with signs saying "Jesus is Lord, Welcome to Hastings" and "Florida's Potato Capital."

Many were recruited from gathering spots for the homeless—soup kitchens, parks and shelters in Jacksonville, Orlando, Tampa. They say they were lured with vows of good pay, sprinkled with promises of partying and \$15 in cash when they reached the farm.

What they didn't know: They would live in slum housing, work long hours for scant pay, and, in several cases, have to pay back \$1 of interest for most every \$1 loaned to them to buy food—including the \$15 that first lured them into the van.

Poor, isolated, without transportation, these men said they became slaves to the

boss and their debts. One said he was beaten about the face this year when he couldn't repay his "debt." Two nights later, he slipped away at midnight and walked for hours to escape.

#### CASES INVESTIGATED

##### *Focus is on recruitment by farm labor contractors*

Federal prosecutors are now examining cases in which North Florida farm labor contractors recruited from homeless shelters—only to exploit the laborers who stepped into those vans. Investigators confirmed the inquiry, but would not elaborate.

"We've been contacted about this situation," Douglas Molloy, managing assistant U.S. attorney in Fort Myers, said last week.

One former worker, Angelo Jennings, said a Hastings crew boss lured him from a scraggly lot across from the Clara White Mission in Jacksonville, a lot where birds snip at dirty bread and shopping carts and beer cans cover the grounds.

"This is when he catches you at your lowest point," said Jennings, a recovering drug addict working to reform his ways. "If you have any good sense, he doesn't want you. He wants you where he can use you."

"If you're tired and hungry, they'll go out and buy some food and a six-pack, and put it on ice."

Then, almost as an afterthought, he said: "Just like a rat trying to get some cheese."

The mission's chief executive officer, Ju'Coby Pittman, said: "They go from shelter to shelter and prey on them"

Such tactics became so routine, and the promises so hollow, that Pittman once posted a sign: "Do not get in the van."

But the vans still roll through here, through Tampa, through Orlando, on the road to farm country.

#### A BIG FARM STATE

##### *Abuse is an unseen element in Florida's No. 2 industry*

Agriculture is a huge business in Florida. The state produces three-fourths of the citrus harvested across the United States each year, and it leads the world in production of grapefruit. In 2000, the top 10 vegetable growers in the Southeastern United States were based in Florida. Across the country, only California boasts a richer agricultural crop.

Yet behind the sunny image of Florida's No. 2 industry, abuse abounds, and it is not limited to one rough boss or one patch of hard-luck laborers.

"It's incredibly widespread," said prosecutor Molloy, who has previously sent bosses away for enslaving farmworkers. "There is someone who has been making money off the misery—and off the hopes and dreams—of other people."

At the bottom rung of the system are the 200,000 seasonal farmworkers who harvest crops from outside the State's urban hubs to its dusty corridors.

"You've made a job so bad that the only people who are going to do farm work are undocumented aliens or crack addicts," said Gregory S. Schell, a Lake Worth lawyer with the Migrant Farmworker Justice Project of Florida Legal Services. "That's a tremendous indictment of the agricultural industry."

His criticism is not of the workers who harvest Florida's bountiful crops, but of the industry enriched by their sweat labor.

Most pickers in Florida and nationwide are undocumented foreign workers, and many native farmhands have had run-ins with the law. There is a reason for that worker profile, advocates say: Crew bosses hire the vulnerable because they can exploit them. The laborers, hungry for a fresh start, are quick to take the job.

Florida is home to more crew-chief contractors than any State in the Nation, with more than one in three—3,027 of 8,832—based in the State. Florida also leads the Nation in the number of crew-chief contractors and assistants currently stripped of licenses to work because of labor violations, with 43 percent of the total, The Herald has found. They have relegated workers to shabby housing, cheated them of pay or otherwise skirted Federal migrant worker laws.

For a glimpse inside this world, follow Lisa Butler, a Florida Rural Legal Services attorney representing workers who fled their contractors' employ in far North Florida.

Butler does her legwork at night and in potentially dangerous environs, visiting housing camps to pass out fliers letting workers know their rights. More than once, she has been confronted by crew chiefs or their workers.

"There is a pattern up here of severe violations," Butler said as she wheeled through Hastings and Spuds and East Palatka, on her way to the next cramped housing camp. "It's a function of how this industry lets crew leaders control the pay."

The picture she sees evokes images of America's darkest days.

"I felt like being a slave, just working to support his family," farmworker Isiah Brown, 43, a native of South Carolina, said of the boss who controlled him.

That boss, Ronald M. Jones, is a six-foot-four, 250-pound homegrown son who spins through town in a muscular Cadillac Escalade and flashes cash he gets from Florida farmers to employ laborers at the lowest, dirtiest rung of the chain. He did not respond to multiple interview requests.

#### START OF A JOURNEY

##### *Promise of work and pay is irresistible—and elusive*

Brown's journey to Jones began on a Sunday in Orlando, when another farm recruiter approached him as he lounged in a park. There's work up north, the man said. Honest day, honest pay.

Brown hopped in, traveling 100 miles to Hastings and neighboring East Palatka, where he ultimately lived in a squalid, illegal hellhole for farmworkers operated by Jones and stood for long hours sorting potatoes for a few dollars' pay.

Brown came to the job poor and said boss Jones made him poorer, fronting him cash for food and supplies, but demand \$1 in interest for most ever \$1 loaned. With no car and little cash, he was captive to the debts—struggling to work enough hours to pay back the 100 percent interest.

Five former workers said in interviews that Jones forced the same arrangement on them.

"It was the only way I could eat," Brown said. "This farm thing, you put in the work, but the money just don't match the work."

In East Palatka, he slept in a decrepit trailer along with nine other farmworkers in a trashy compound that housed up to two dozen workers. His trailer had no running water and no air conditioning.

When workers returned to the camp after long days, area drug dealers and bootleggers showed up, Brown said, the bootleggers selling 65-cent beer for \$1.25.

"Everybody makes money off farmworkers," he said at a nearby park days after fleeing. "It seems like when farmworkers come to town, everything goes up 20 percent."

#### HIRING OF FARMHANDS

##### *Homeless people in park described as "easy targets"*

Crew leader Jones was employed by Bulls-Hit Ranch & Farm, maker of gourmet potato chips, to provide farm laborers like Brown.

William Oglesby, 50, a one-time truck driver, also worked at Bulls-Hit under Jones and lived in the same compound.

Like Brown, he had been recruited where the homeless congregate, at Confederate Park in Jacksonville. "Most of them were easy targets," Oglesby said.

He said he wasn't homeless but needed work. "They told me I could go with them today and work," he said "And they said I could make some money. But money, I haven't seen."

One week, Oglesby calculated, he should have earned \$300 by sorting potatoes and packing them into trucks, rising at 5:30 a.m. and sometimes not returning to the camp until 10 p.m.

His pay stub from Jones showed \$154.51. Bug Oglesby—like Brown—said even the pay stub did not reflect what actually went into his pocket. To understand how that could happen, follow the money.

Bulls-Hit President Thomas R. Lee said he would write Jones a check each week to cover the work completed. But then the boss, not the farmer, was responsible for paying workers from that bounty.

"He pays them. I don't," Lee said. "He has a daily record of what he pays the crew."

Lee said he told Jones not to make any loans at Bulls-Hit, since such transactions on farm property could reflect upon the farmer. "I told him that whatever he did off my property was his business," Lee said.

Critics say this arrangement is ripe for abuse. When crew bosses control the cash, they are more apt to cheat the workers below them. Simply put, every \$1 they skimp from workers is an extra \$1 in their pocket. Jones' former workers say they were cheated of thousands.

Contrary to the figure on his pay stub, Oglesby said he got \$35 in cash stuffed into an envelope at week's end. Brown said he pocketed \$32.06 one week.

The men say Jones did not pay them for all the hours they worked. They say he also docked from their pay the loans and interest he charged them, and billed \$30 a week to live in the slum complex.

"They've got a way to make sure you stay in their debt," Oglesby said. "You don't think straight when you're tired and hungry."

Jones, 40, is known in these parts as "Too Tall." He did not reply to written questions delivered to his house in Hastings, nor did he respond to three requests for an interview placed with his wife, Sylvia.

Jennings, the Jacksonville man recruited near a homeless shelter, said he lived at another Jones compound in Palatka and also sorted potatoes at Bulls-Hit. He said Jones zeroed in on his weakness at that scraggly Jacksonville lot, luring him and four others.

"I've got a deal for you, and y'all can make a lot of money," he quoted Jones as saying. "If you smoke crack, that's the place to be."

Once he was in Palatka, Jennings said, prostitutes were ready visitors to the housing camp—at a cost. "They would come there and smoke crack," he said.

Jennings is working to get straight at the Trinity Rescue Ministries in Jacksonville. The program supervisor, Cornell Robinson, said: "They find your weakness and they force this on you."

The city is a ready target for farm recruiters. The Jacksonville/Duval County hub is home to nearly 15,000 homeless people a year, according to a recent study by the Emergency Services and Homeless Coalition of Jacksonville.

For the homeless who turn to farm work, the cycle can become brutal. Many become fearful of talking publicly.

In late May, The Herald encountered a Jones worker at another of Jones' properties, a house in Hastings. With an elderly man sitting on a porch chair that day, the worker said he had no complaints.

Later that day, the worker was carrying a sack of potatoes back to the house, out of sight of the man in the chair. "That housing is unfit," he said, saying he was billed \$30 a week to live there.

Two months later, by chance, The Herald ran into the worker outside a Jacksonville feeding line. Now free of the boss, he said that "Too Tall" had recruited him at a soup kitchen with the same tired promises: good pay, nice housing, plentiful food.

"Nothing was true," he said. "It's a death trap. You can't get out of there."

He said that Jones loaned him money each day, and that a Jones associate loaned him cash each afternoon. Both demanded 100 percent interest. The debts got so heavy, he said, that one week he pocketed \$1.08 for six days of work.

"It keeps you in a hole you can never get out of," said the worker, who asked that his name not be used.

He said the Jones associate beat him when he didn't have money to repay the debt, hitting him in the face two or three times and knocking him to the ground. "He told me I better have his money or I'll be in trouble." Two days later, he made his midnight exit.

Misery in North Florida isn't limited to Jones' camps, and poverty pay and slum housing are not the only abuses. Many workers, struggling when they start their farm duty, quickly find themselves in dangerous conditions. Injuries, or worse, become part of the trade.

In January, a migrant worker at the nearby Uzzles Labor Camp in Elkton was stabbed to death with a butcher knife after a dispute with another laborer.

Three months later, attorney Butler went to the camp to hand out fliers letting workers know their rights. She was not well received, nor were journalists who accompanied her for this report.

Ron Uzzle, the burly crew boss, became angry when a photographer started snapping pictures. He had little patience for Butler either. "Does anyone want to talk to these people?" Uzzle bellowed.

"Hell no!" came the reply. Some of his crew members refused to accept fliers from Butler as Uzzle watched. Uzzle refused a request for an interview.

Another nearby complex housed a catalog of pain. To one side of that squat blue building, Butler inspected farmworker William Durham, who pulled up his shirt to expose a stomach covered by an unsightly, itchy white rash.

Durham feared that the rash came from pesticides. "It did happen on the job," he told Butler. She took his story and his picture.

Nearby, Richard Williams, 53, a picker for nine years, worked without a right forefinger.

Wearing a T-shirt that said "Nature Can't Be Restocked," Williams said he thinks pesticides got under his fingernail as he picked winter cabbage in North Carolina in 2001.

"By the time I got here, it was too late," he said. The finger was amputated.

Butler took his information. Another potential case at a camp oozing booze and misery.

William Anderson said he heard the promises at a Tampa Salvation Army shelter and went to a camp run by Ronald Evans, a veteran East Palatka contractor. Evans did not reply to four interview requests, nor did he respond to written questions.

"A van rolled around," Anderson recounted. "They said, 'Are you looking for

work? . . . We've got a swimming pool.' When we got there, it was more like a slave camp. After he gets you there, he's got you."

At night at the camp, next to the dinner line, more goods were for sale. "You get your cigarettes, your beer and your drugs. Everything was there on the camp," Anderson said from an upstate shelter, to which he turned after leaving.

"A couple of guys said they owed \$10,000. You might as well owe them your soul, because where can you go?"

"I'm not going to sugarcoat it. We were doing what everyone else was doing. You do your beer, your cigarettes and your drugs."

After four months of work, he left with \$90 in his pocket, he said. "I've been down and out. Right now, I'm sleeping wherever I can."

Tammy Byrer, executive director of the St. Francis House shelter in St. Augustine, which provides a roof and job counseling for displaced workers like Anderson, said Florida's farmers surely know what's going on.

"Don't ask, don't tell," was how she described the prevailing attitude, as volunteers prepared 600 sandwiches delivered daily to area farmworkers.

"Somebody needs to come up to the plate."

#### FARM CAMP "UNSAFE FOR HUMAN OCCUPANCY"

(By Ronnie Greene)

EAST PALATKA.—When inspectors showed up at Ronald Jones' farmworker housing camp here, they found a place unfit for humans.

Within a day in early May, the multicolored buildings were condemned, with bright red "Danger" signs on each door: "This building is deemed unsafe for human occupancy."

Inspectors found five open septic systems; bad plumbing; substandard floors, roofs and ceilings—and "evidence of occupancy of the cabins" even though the complex didn't have the proper permits to house migrant workers.

As dragonflies buzzed overhead one May day, an exposed septic tank was filled with sewage. A 32-ounce Schlitz Malt Liquor bottle lay nearby.

"It just was miserable living there. And I just wanted out of that filth," farmworker Earnest Louis Mitchell, 57, said in a telephone interview from a homeless shelter.

"The commode wouldn't flush, you smelled all through the house at night, and water was all on the floor. You could get electrocuted when you went into the bathroom."

He doesn't intend to go back. "I'm just going to bum the street—no more farm work."

Mitchell had walked away from Jones' employ and called the number on a Legal Services flier. Lisa Butler, a Florida Rural Legal Services attorney, notified the state Department of Health, which investigated along with the Putnam County code enforcement division.

Jones, who owns several farm housing camps in the area, did not reply to written questions. But later that May day, his wife happened to stop by the housing camp.

"A lot of things we didn't know about," said Sylvia Jones, who said she co-owns the property with her husband. "It was like this when we got it."

The Jones camp is just one of many around the state where workers live in squalor. Yet little is done to help them—unless someone complains.

"Migrant workers aren't one to complain too much," said John Salmons, the Putnam County code enforcement supervisor, who examined the buildings with Code Officer Dina K. Trull.

"I think they're afraid for whatever reason. If they're illegal aliens or just happy to be working, we don't get a lot of calls on migrant labor camps."

THE FACE OF FLORIDA'S FARMWORKERS—DRIVEN BY HARSH CONDITIONS IN THEIR HOMELANDS, LABORERS TRAVEL FAR, ONLY TO SEE NEW HARDSHIPS HERE

(By Ronnie Greene)

IMMOKALEE.—At dawn, the migrant workers huddle around the red-and-blue buses that deliver them to Florida's rich farm fields. One by one, they pile into the rickety carriers, their fingers dirty with Florida soil, their faces weathered from sun-soaked labor.

This is farm country, Immokalee, Florida. Just 100 short miles from South Florida's urban shuffle, Immokalee feels a century away. The streets are dusty, the traffic slow—farmhands trudging or riding bikes, cars a luxury beyond the reach of most.

By day, they pluck the tomatoes and oranges that are the lifeblood of Florida's agriculture economy. By night, they return to their modest camps, where they turn on fans to shoo the heat and tally the earnings they will send back home.

In Immokalee, you will find the face of Florida's farmworkers. While some pockets of the Sunshine State include American men recruited from homeless camps to harvest crops, Immokalee's workforce, mirroring the farmworker profile across the nation, is largely Mexican-born.

The men, women and some children laboring here paid steep fees for the privilege. Many walked through the desert to touch U.S. soil in Arizona, then paid \$1,000 or more to be smuggled to Florida on the back floor of furtive vans.

And, like farmworkers nationwide, they struggle. Certainly, the long hours under the sun provide more pay than most ever earned back home.

But this prosperity is relative. Most farmworkers nationwide earn less than poverty pay. And in Florida, some have been criminally abused. Immokalee and the farm beyond it have been home to three of the five farmworkers slavery prosecutions brought against Florida farm contractors and smugglers since 1996.

In 2000, the U.S. Department of Labor issued A Demographic and Employment Profile of U.S. Farmworkers, which was based on interviews with 4,199 farmworkers in 85 counties from 1996 to 1998.

The study found that: 61 percent of U.S. farmworkers had income below the poverty level.

The median income was less than \$7,500 a year.

14 percent of farmworkers owned or were buying a home in 1997-98. Three years earlier, the ratio had been one in three.

77 percent of U.S. farmworkers were Mexican-born.

More than half of America's farmworkers—52 of every 100—were unauthorized workers.

In Immokalee, these numbers have faces.

#### ADVOCATES DON'T FEEL LABOR DEPARTMENT IS ALLY

(By Ronnie Greene)

Farmworker advocates say the federal government does little to protect the laborers whose sweat brings fruit and vegetables to the state's tables.

Now they fear even less protection. The head of the agency overseeing farm work conditions recently told Florida growers that she wants to work with—not against—them.

"If you have an issue with an investigator [who cites you], you shouldn't just pay the money. Go up the chain of command and

complain. You will get fair treatment from us," Tammy McCutchen, the U.S. Department of Labor's wage and hour administrator, told growers in Orlando last year, according to an industry publication.

Her comments were viewed by many growers as "the most encouraging they had heard from a Department of Labor administrator in years," Gempler's Alert newsletter said. Her remarks came at a time when the department faced dwindling investigative staffing.

In an interview with The Herald, McCutchen said critics are mistaken if they accuse her office of lax supervision.

She said her approach is to work with companies that act in "good faith" and if farmers don't work to fix flaws, "we will hit them hard with enforcement."

"If you can get employers to voluntarily comply early on, you can do a lot better job for the workers. Instead of waiting two or three years for litigation, you are able to fix the problem in a few weeks or a few months."

Statistics from wage and hour show the division collected 30 percent more in back wages for agriculture workers last year than a year earlier.

In fiscal year 2002, it assessed \$230,600 in civil penalties against growers and contractors in the Southeast.

"Defending one of our lawsuits cost [growers] that much," said Rob Williams, director of the Migrant Farmworker Justice Project of Florida Legal Services, which has tangled with growers over wage and other inequities.

He believes McCutchen's message means that enforcement will be rarer still.

McCutchen had also told growers that a checklist used to inspect migrant housing would be significantly pared down, to weed out minor items in order to focus on major housing concerns. She said her own inspectors would undergo "professional conduct" training to improve relations with growers they inspect.

Other numbers support critics' concerns. The wage and hour division had 945 investigators to examine agriculture and other industries at the end of fiscal year 2001, but 862 as of March. In Florida, the number dipped from 77 to 73 in January 2003. "I'm very proud of our enforcement efforts, no matter what the raw numbers show," McCutchen said.

Last year, the Labor Department conducted an informal study to see how many growers and contractors were in compliance with the four main provisions of the Migrant and Seasonal Agricultural Worker Protection Act. It found:

Thirty-nine percent did not comply with the law's disclosure rules, which require employers to inform workers of their rights.

Twenty-six percent did not comply with housing safety and health rules.

Ten percent to 15 percent did not comply with various transportation requirements.

Nine percent did not comply with wage laws.

Although the federal agency is more apt to punish labor contractors, it sometimes goes after farmers.

In August 2002, it fined West Coast Tomato \$3,650 for operating a Manatee County camp in squalid condition.

Former Manatee County Commissioner Daniel P. McClure is president of West Coast, the ninth-largest vegetable grower in the Southeast.

At 6747 Prospect Rd. in Bradenton, inspectors found the roof rotting and leaking. The garage was used as a sleeping room, four beds on the floor. Gas tanks had been installed without a permit.

McClure, who lives in a Bradenton mansion with a \$1.6 million market value, had blamed the camp conditions on a former crew boss.

"That's past history, fella," McClure said, declining interview requests. "Sounds like you're looking for some way to sensationalize the news. If you want to talk about the past, don't come."

Mr. GRAHAM of Florida. Hard-working, law-abiding farmers and growers also suffer under the current system. They continue to be at legal risk for hiring undocumented workers who frequently present fraudulent documents that appear to be credible. The current agricultural guest worker program also fails to provide for unforeseen labor shortages.

The bill before us provides an essential balance. It establishes a legal system that ensures basic rights and protections for workers who make significant contributions to our nation's economy. It also ensures the development of an efficient agricultural guest worker program that improves farmer and grower access to legal agricultural workers.

Agricultural workers do extremely grueling work, work that puts fruits, vegetables and flowers on the tables of many American households. Dedicated, experienced farm workers deserve the dignity, empowerment and improved quality of life that come with earning legal status. Farmers that play by the rules should have a modern, streamlined program that provides easier access to legal agricultural workers.

Congress has not focused on farm worker issues since the mid-1980s. Reform of our agricultural guest worker program is long overdue, and I am hopeful that we will move beyond our status quo and address this important issue this year.

By Mr. MCCAIN (for himself and Mr. HOLLINGS):

S. 1646. A bill to provide a 5-month extension of highway safety programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, today, I am joined by Senator HOLLINGS in introducing legislation to provide a short-term extension of the safety programs administered by the Federal Motor Carrier Safety Administration (FMCSA), the National Highway Traffic Safety Administration (NHTSA), and the boating safety program administered by the Coast Guard. It is our expectation that this measure will be joined with broader legislation to extend the highway and transit programs for five months.

I take pride in the fact that the Senate Commerce Committee completed work last June on a 6-year reauthorization of the safety programs under its jurisdiction. The bipartisan bill is designed to meet the level of commitment to safety needed to achieve aggressive goals for reducing accidents and fatalities on the nation's roadways. This short-term extension is consistent with our Committee's longer-

term reauthorization proposal. It is also consistent with the President's budget request for fiscal year 2004 and with the appropriations bill for fiscal year 2004 that has been reported by the Senate Appropriations Committee.

We look forward to working with our colleagues to approve the extension to ensure the continuity of these important safety programs.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1646

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Transportation Safety Program Extension Act of 2003".

**SEC. 2. EXTENSION OF MOTOR CARRIER SAFETY PROGRAM.**

(a) ADMINISTRATIVE EXPENSES.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation for administration of motor carrier safety programs, motor carrier safety research, and border enforcement activities, including the border enforcement program authorized under section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002, \$119,125,000 for the period beginning on October 1, 2003, and ending on February 29, 2004, to carry out the functions and operations of the Federal Motor Carrier Safety Administration of which \$19,583,000 shall be available for the construction of State border safety inspection facilities at the border between the United States and Mexico and at the border between the United States and Canada and of which \$4,583,000 shall be used for regulatory development.

(b) MOTOR CARRIER SAFETY ACCOUNT.—Funds made available under subsection (a) shall be administered in the account established in the Treasury entitled "Motor Carrier Safety 69-8055-0-7-401".

(c) MAINTENANCE OF EXPENDITURES.—The Secretary of Transportation may make a grant under section 31107 of title 49, United States Code, to a State from funds made available under subsection (a) only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2003.

(d) CONTRACT AUTHORITY.—Funds made available under subsection (a) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

**SEC. 3. EXTENSION OF MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.**

(a) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a) of title 49, United States Code, is amended by adding at the end the following:

"(7) Not more than \$77,125,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(b) INFORMATION SYSTEMS.—Section 31107(a) of title 49, United States Code, is amended—

(1) by striking "and" after the semicolon in paragraph (2);

(2) by striking "2002." in paragraph (3) and inserting "2002;";

(3) by striking "2003." in paragraph (4) and inserting "2003; and"; and

(4) by adding at the end the following:

"(5) \$8,333,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(c) MAINTENANCE OF EXPENDITURES.—The Secretary of Transportation may make a grant to a State from funds made available under section 31104(a)(7) of title 49, United States Code, only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2003.

#### SEC. 4. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act of the 21st Century (112 Stat. 337) is amended—

(1) by striking "and"; and

(2) by striking "2003." and inserting "2003, and \$68,640,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2009(a)(2) of that Act (112 Stat. 337) is amended by striking "2003." and inserting "2003, and \$29,952,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2009(a)(3) of that Act (112 Stat. 337) is amended—

(1) by striking "and"; and

(2) by striking "2003." and inserting "2003, and \$8,320,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(d) INCENTIVE GRANTS FOR ALCOHOL-IMPAIRED DRIVING COUNTER-MEASURES.—

(1) EXTENSION OF PROGRAM.—Section 410 of title 23, United States Code, is amended—

(A) by striking "6" in subsection (a)(3) and inserting "7"; and

(B) by striking "fifth and sixth" in subsection (a)(4)(C) and inserting "fifth, sixth, and seventh".

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2009(a)(4) of the Transportation Equity Act of the 21st Century (112 Stat. 337) is amended—

(A) by striking "and" the last place it appears; and

(B) by striking "2003." and inserting "2003, and \$16,640,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(e) NATIONAL DRIVER REGISTER.—Section 2009(a)(6) of that Act (112 Stat. 338) is amended by striking "2003." and inserting "2003, and \$1,498,000 for the period beginning on October 1, 2003, and ending on February 29, 2004."

(f) ALLOCATIONS.—Section 2009(b) of that Act (112 Stat. 338) is amended by striking "2003," each place it appears and inserting "2004."

(g) APPLICABILITY OF TITLE 23.—Section 2009(c) of that Act (112 Stat. 338) is amended by striking "2003" and inserting "2004".

#### SEC. 5. EXTENSION OF SPORT FISHING AND BOATING SAFETY PROGRAM.

Section 13106 of title 46, United States Code, is amended by striking subsection (c) and inserting the following:

"(c) BOATING SAFETY FUNDS.—

"(1) IN GENERAL.—Of the amount transferred to the Secretary of Homeland Security under paragraph (4) of section 4(b) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(b)), \$2,083,333 is available to

the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which \$833,333 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.

"(2) USE OF FUNDS.—No funds available to the Secretary of Homeland Security under this sub-section may be used—

"(A) to replace funding traditionally provided through general appropriations; or

"(B) for any purposes except a purpose authorized by this section.

"(3) AVAILABILITY OF FUNDS.—Amounts made available by this subsection shall remain available until expended.

"(4) ACCOUNTING.—The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection."

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 228—RECOGNIZING THE TEAMS AND PLAYERS OF THE NEGRO BASEBALL LEAGUES FOR THEIR ACHIEVEMENTS, DEDICATION, SACRIFICES, AND CONTRIBUTIONS TO BASEBALL AND THE NATION

Mr. NELSON of Florida submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 228

Whereas even though African-Americans were excluded from playing in the major leagues of baseball with their Caucasian counterparts, the desire of some African-Americans to play baseball could not be repressed;

Whereas Major League Baseball was not fully integrated until July 1959;

Whereas African-Americans began organizing their own professional baseball teams in 1885;

Whereas 6 separate baseball leagues, known collectively as the Negro Baseball Leagues, were organized by African-Americans between 1920 and 1960;

Whereas the Negro Baseball Leagues included exceptionally talented players;

Whereas Jackie Robinson, whose career began in the Negro Baseball Leagues, was named Rookie of the Year in 1947 and subsequently led the Brooklyn Dodgers to 6 National League pennants and a World Series championship;

Whereas by achieving success on the baseball field, African-American baseball players helped break down color barriers and integrate African-Americans into all aspects of society in the United States;

Whereas during World War II, more than 50 Negro Baseball League players served in the Armed Forces of the United States;

Whereas during an era of sexism and gender barriers, 3 women played in the Negro Baseball Leagues;

Whereas the Negro Baseball Leagues helped teach the people of the United States that what matters most is not the color of a person's skin, but the content of that person's character and the measure of that person's skills and abilities;

Whereas only in recent years has the history of the Negro Baseball Leagues begun receiving the recognition that it deserves;

Whereas in 1997 Major League Baseball created a pension plan for former players of the

Negro Baseball Leagues who went on to play in Major League Baseball; and

Whereas baseball is the national pastime and reflects the history of the Nation: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the teams and players of the Negro Baseball Leagues for their achievements, dedication, sacrifices, and contributions to both baseball and our Nation; and

(2) encourages Major League Baseball to reach a fair compensation agreement with former players of the Negro Baseball Leagues who were excluded under Major League Baseball's 1997 pension plan.

#### SENATE RESOLUTION 229—SUPPORTING THE GOALS AND IDEALS OF CHRONIC OBSTRUCTIVE PULMONARY DISEASE AWARENESS MONTH

Mr. CRAPO submitted the following resolution; which was considered and agreed to:

S. RES. 229

Whereas chronic obstructive pulmonary disease ("COPD") is primarily associated with emphysema and chronic bronchitis;

Whereas an estimated 10,000,000 adults in the United States have been diagnosed by a physician with COPD;

Whereas an estimated 24,000,000 adults in the United States have symptoms of impaired lung function, indicating that COPD is underdiagnosed;

Whereas COPD is progressive and is not fully reversible;

Whereas as COPD progresses, the airways and alveoli in the lungs lose elasticity and the airway walls collapse, closing off smaller airways and narrowing larger ones;

Whereas symptoms of COPD include chronic coughing, shortness of breath, increased effort to breathe, increased mucus production, and frequent clearing of the throat;

Whereas risk factors for COPD include long-term smoking, a family history of COPD, exposure to air pollution or second-hand smoke, and a history of frequent childhood respiratory infections;

Whereas more than half of all adults who suffer from COPD report that their condition limits their ability to work, sleep, and participate in social and physical activities;

Whereas more than half of all adults who suffer from COPD feel they are not in control of their breathing, panic when they cannot catch their breath, and expect their condition to worsen;

Whereas nearly 119,000 adults died in the United States of COPD in 2000, making COPD the fourth leading cause of death in the United States;

Whereas COPD accounted for 8,000,000 office visits to doctors, 1,500,000 emergency department visits, and 726,000 hospitalizations by adults in the United States in 2000;

Whereas COPD cost the economy of the United States an estimated \$32,100,000,000 in 2002;

Whereas too many people with COPD are not diagnosed or are not receiving adequate treatment; and

Whereas the establishment of a Chronic Obstructive Pulmonary Disease Awareness Month would raise public awareness about the prevalence of chronic obstructive pulmonary disease and the serious problems associated with the disease: Now, therefore, be it

*Resolved*, That the Senate supports the goals and ideals of Chronic Obstructive Pulmonary Disease Awareness Month.