

WITNESS LIST

Hearing Before the
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
on

"The Agricultural Job Opportunity Benefits and Security Act of 1999"

Thursday, May 4, 2000
2 p.m., SD-226

PANEL I

The Honorable Bob Graham ✓
United States Senator, Florida

The Honorable Larry Craig ✓
United States Senator, Idaho

The Honorable Gordon Smith ✓
United States Senator, Oregon

PANEL II

The Honorable Howard Berman ✓
United States Representative, California

The Honorable Sanford Bishop ✓
United States Representative, Georgia

Holt / NCLR

- Support, good balance but not growers dream bill.
- Developed over 5 years of debate, consultations, etc.
- Bk 3 ↑ under worker, they can't work so need to legalize

Per Charles Hansen

Berman brokering a deal between growers + UFW
Papers stating objections w/ bill + growers ~~have~~ objections + ~~may~~ how
much wiggle room there is in their proposal. Papers due now.

Abraham

Q: Is there a shortage?

A: ~~the~~ UFW - Since growers not paying a living wage, workers getting other jobs

A: ~~the~~ Holt: all real wages have declined not just farmworkers.

Have declined less than ag. workers.
inland area +

A: NCLR - studies DOL, CRS - show have not ↑

A: ^{Michigan} Farm Owner Shortage of legal workers - ~~not~~ growers can't pay the wage

Sen. Smith

No shortage of workers but shortage of legal workers

Q: illegal to build housing on farmland - state law... how would growers comply.

are we eliminating the prevailing wage?

- covered under the law

A: UFW
Housing - when states w/ housing available - voucher ok but no housing available voucher not

prevailing wage - based on state average worker in AGRIC

Sen. Graham

DOL + Ag = 1.6 million workers in Ag.
NWS

*DOL = 41K certificates H2A = issued (double than previous year).

Total workers 800K under

75% legal

41K H2A workers

NOTE - legal workers in CA - were unemployed - ~~the~~ H2A program hurt domestic workers.
~~there's a relationship between under + worker conditions between legal workers~~

Q: What's relationship between under + worker conditions between legal workers

A: Holt - Dept. of Ag - show that income ↑ - annual earnings.

NWAS - is a survey of seasonal ag work here

hydrate the # 2

PANEL III

Joshua Wunsch
Farmer and Board Member
Michigan Farm Bureau
on behalf of
American Farm Bureau
Traverse City, MI

Polo Garcia
Pastor
Casa de Zion-Lutheran Ministry to Farmworkers
Woodburn, Oregon

Cecilia Munoz
Vice-President
Office of Research Advocacy and Legislation
National Council of La Raza
Washington, DC

James S. Holt, PhD
Senior Economist
McGuiness & Williams
on behalf of
National Council of Agricultural Employers
Washington, DC

Marcos Camacho
General Counsel
United Farmworkers of America, AFL-CIO
Keene, CA

Irene Bueno
05/04/2000 09:31:21 AM

Record Type: Record

To: See the distribution list at the bottom of this message

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Subject: H2A hearing

FYI

EVENT: SENATE JUDICIARY COMMITTEE

TIME: 2:00 pm

BODY:

SUBJECT: Immigration Subcommittee hearing on the Agricultural Job Opportunity Benefits and Security Act of 1999.

Sen. Gordon Smith, R-OR; Sen. Bob Graham, D-FL; Sen. Larry Craig, R-ID; Rep. Sanford Bishop, Jr., D-GA; Rep. Howard Berman, D-CA; Joshua Wunsch, farmer/board member, Michigan Farm Bureau, on behalf of American Farm Bureau, Traverse City, MI; Polo Garcia, pastor, Casa de Zion-Lutheran Ministry to Farmworkers, Woodburn, OR; Cecilia Munoz, vice president, Office of Research Advocacy and Legislation; National Council of La Raza, Washington, DC; James Holt, Ph.D., senior economist, McGuiness and Williams, on behalf of National Council of Agricultural Employers, Washington, DC; Marcos Camacho, general counsel, United Farmworkers of American, AFL-CIO, Keene, CA

LOCATION: 226 Dirksen Senate Office Building -- May 4, 2000

CONTACT: 202-224-5225 <http://www.senate.gov/judiciary>

LANGUAGE: ENGLISH

LOAD-DATE: May 4, 2000

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Craig - asked Abraham to show similar support for H2A as H1B

Graham

- Ag Net - first step.
- Long application

Berman Bishop

Concern - threats of raid H2A 4056 companion S. 1814

- Registry - US worker
- Preference - legalized workers
- H2A

Farmers want legal workforce, worried illegal worker protections

Current program too cumbersome. Need on overhaul.

Berman

Propose to make it easier to bring in foreign worker than Am worker - wages, working conditions

Unacceptable growth of unloc. workforce but the answer is not a larger guestworker program

- US Com on Immig Refm - previous mistake to

while bipartisan bill, not an active participation by farmworker organizations & others

- Undocumented compromise if a bill passed this year.

- Undocumented - at last they proposed something Replenish agric. worker program - it limiting of farmworker shortage but ~~never~~ never found shortage. (at all)

H2W - 90 days of work - 3 consecutive years --- LPR status

Berman would support but does not like ~~the~~ tying people to particular industry

but does not like S. 1814 proposal b/c hard consequences for farmworker.

Title I - create a ~~new~~ second class of workers & limit work to ag. industry.

1/4 of all farmworker work outside of farmworkers to ~~be~~ survive.

180 day requirement unfair

Registry ~~to~~

lead to do substantial work to do, write been something accomplished ~~but~~. Has not been a collaborative process.

Abraham - wrote to do something ~~too~~

FL-CIO they have changed their perspective re. thing not a threat

Mr. Gordon Smith - commended AFL - small amnesty proposal. No diff. w/ Berman, draft is a starting point but need ~~to~~ to tell drafters what is fair, like what he said re. family but want something done - not status quo --- others don't want any amnesty. Don't think that far apart.

Berman - build a strong coalition

Abraham - very constructive other by Berman

Julia Murray/NCLH - want something to happen - improve working conditions & unloc. ~~workers~~ workers leg. gone in the wrong direction. No labor shortage of legal farmworkers using economic ~~shock~~ - wages have not increased, unemployed & underemployed. Only 1/2 workers work the hrs work, low demand, unemployed ~~even~~ even during high peak period.

Adjusted - support legalization but not this ~~one~~ proposal. Not enough to legalize, need to improve working conditions - equalizing, leveling the playing field. Other industries need to make changes ~~like~~ like other industry. Need to inspire them to ~~change~~ ~~change~~.

Need to be
for something
RAWS

Administration Progress on H-2A Reform

March 27, 2000

Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about \$10,000 and farm workers are employed on average only about 26 weeks per year.

The H-2A “guest worker” program admits temporary nonimmigrant agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season, if there is an inadequate supply of domestic workers. There is no cap on the number of H-2A visas granted annually. Currently, there are 1.8 million hand-harvest farm workers in the United States of which it is estimated that approximately half are undocumented. In FY 1999 there were 42,000 workers in the H-2A program.

Employer Obligations

Under the current program, in order to hire H-2A workers, an employer must demonstrate to the Department of Labor (DOL) that:

- (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and,
- (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers.

To meet these criteria, employers are required to:

- ✓ engage in positive recruitment efforts;
- ✓ pay workers the higher of the minimum wage, locally prevailing wage, or an “adverse effect wage rate” (AEWR), the average wage paid to non-managerial agricultural workers in the state;
- ✓ provide free and safe housing to workers coming from outside the commuting area;
- ✓ reimburse workers’ inbound transportation if they complete half the contract, outbound also if they complete the contract; and,
- ✓ guarantee 3/4 of the hours of the contract the grower offers; and,
- ✓ hire any qualified U.S. worker who applies during the first half of the work contract.

Administration Principles on Reform

The H-2A program has been heavily criticized by the General Accounting Office (GAO), DOL’s Inspector General, and the Hill primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. As a result, Congress has proposed legislation to restructure the H-2A program.

The Administration has acknowledged problems with the program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections. The Administration does not believe that legislation is necessary or appropriate at this time.

The Administration's guiding principles in reforming the H-2A program are to create a system:

- ✓ with procedures that are simple and the least burdensome for growers;
- ✓ which assures an adequate labor supply for growers in a predictable and timely manner;
- ✓ that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers;
- ✓ which avoids the transfer of costs and risks from businesses to low wage workers;
- ✓ that encourages longer periods of employment for legal U.S. workers; and,
- ✓ which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions.

The Administration is committed to improving the H-2A program to assure growers of an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society.

FY 2000 Budget Initiative

The President's pending Budget requests \$10 million to fund America's Agricultural Labor Network ("AgNet") that would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. AgNet would serve as an information broker through an electronic system that allows both growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.).

H-2A Regulatory Reform

On June 29, 1999 DOL published a final regulation that will complete an earlier proposal to:

–reduce the length of time that employers must file an H-2A application from 60 to 45 days before the date when employees are needed;

–reduce the deadline for when employer-provided housing must be available for inspection before the date of need; and,

–modify the requirement that certified H-2A employers provide notice of the exact date on which H-2A employees have departed for the place of employment.

INS will soon issue a final regulation that will complete an earlier proposal to delegate H-2A petitioning authority to DOL. This proposed change would significantly reduce the burden to growers when filing for H-2A workers by removing an entire step from the current process.

DOL has also made additional administrative changes to the H-2A program such as modifications to the positive recruitment requirement. DOL intends to consistently meet the existing 20 day deadline to issue approved certifications for growers.

THE AGRICULTURAL JOB OPPORTUNITY BENEFITS AND SECURITY ACT OF 1999

Providing Legal Status to Undocumented Farmworkers

S-1815

- To reduce the number of H-2A workers needed after enactment, utilize the skills of the existing agricultural workforce and maintain immigration control, farmworkers who can prove that they worked 150 days in agricultural work in the U.S. during the 12-month period prior to introduction of the bill may adjust their status to temporary nonimmigrants and eventually earn the right to become legal permanent residents.
- Eligible workers would have to meet standards of proof to qualify.
- Eligible workers who choose to participate could only work in agricultural employment during the qualifying period. They would be in nonimmigrant status during the qualifying period.
- Eligible workers could be present in the U.S. and work no more than 10 months annually in the U.S. during the qualifying period, with the exception of those with U.S. born children.
- Workers eligible for adjustment are free to select their employer and work anywhere in the U.S. in agricultural employment.
- Eligible workers could earn the right to adjust to permanent residency by working in agriculture a minimum of 180 days annually in 5 of 7 years following their initial adjustment of status.

Making the H-2A Program Work for Farmers and Farmworkers

S. 1814

Innovation and Technology: the Agricultural Worker Registry

- The labor certification process that is used to ascertain whether domestic workers are available to work in agriculture prior to the admission of foreign workers is antiquated and inefficient. Its use in the H-2A Program is over 50 years old. The Department of Labor has existing computer technology as part of America's Talent and Job Banks that can simplify and substantially improve upon the existing process. Under the bill, this technology would be modified to replace the old system with an Agricultural Worker Registry.
- Any U.S. worker interested in agricultural employment would be able to call or walk into a local job service office and get listed on the registry by indicating the area, crop and length of time they would like to work in agriculture.

- Any agricultural employer seeking workers could use the registry to list jobs available in specific crops, locations, and terms and conditions of employment. The registry would match workers and employers with comparable requirements.
- Employers seeking H-2A workers would have to use the registry and hire all qualified and available U.S. workers before they could get permission from the Department of Labor to bring in temporary alien H-2A workers. H-2A workers would only be admitted if there were a shortage of U.S. workers.
- Workers adjusted under the bill would have the choice of being listed on the registry. If they were listed on the registry, employers seeking H-2A workers would have to hire US workers, and if an insufficient number of U.S. workers were available, then hire adjusted workers in the area, before any H-2A workers would be admitted.
- Workers hired off the registry by H-2A employers would receive the same premium wages and working conditions as H-2A workers.
- Employers and the government would have to advertise the availability of the registry.
- Employers would have to independently advertise for U.S. workers and recruit former U.S. workers regarding employment opportunities.
- Alien workers could not be used if the job for which they were sought was involved in a labor dispute. Alien workers could join unions.

Better Wages

- **Premium wage rate.** Under the bill, U.S. and H-2A workers would have to be paid the prevailing wage rate plus a premium of up to 5% on prevailing wages that are less than the prior year's average hourly earnings of field and livestock workers for the state. In no case could a worker receive less than the federal, state, or local minimum wage level.

Better Housing and Transportation

- **Housing or limited housing allowance.** U.S. and H-2A workers would have to be provided housing or a housing allowance. A housing allowance set by the U.S. Department of Housing and Urban Development could be provided in lieu of housing during the 3-year period after enactment, during which the implementing regulations and adjustment procedures would be implemented. Thereafter, an allowance in lieu of housing would be permissible only if the Governor of a particular state indicated that sufficient housing were available in the area of employment.

- **U.S. and Alien workers get transportation costs reimbursed.** Inbound transportation is reimbursed if workers complete 50% of the contract work period and outbound transportation reimbursed if they complete the entire period of employment.

Better Labor Law Protections

- Eligible workers would be covered by all U.S. labor law protections, such as child labor laws, occupational health and safety regulations, and wage and hour rules.
- For the first time, H-2A workers would be covered under the terms of the ***Migrant and Seasonal Worker Agricultural Protection Act***.
- A commission would study the complicated problem of farm labor housing and make recommendations for long-term changes and improvements.
- Studies of existing agricultural labor standards and enforcement would be conducted, including:
 - The relationship between childcare and child labor violations.
 - Field sanitation standards
 - Coordinated and targeted labor standards enforcement.

106TH CONGRESS
1ST SESSION


S. 1815

IN THE SENATE OF THE UNITED STATES

for himself and Mr. Smith of Oregon
Mr. GRAHAM introduced the following bill; which was read twice and referred
to the Committee on

A BILL

To provide for the adjustment of status of certain aliens
who previously performed agricultural work in the United
States to that of aliens who are lawfully admitted to
the United States to perform that work.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the
5 "Farmworker Adjustment Act of 1999".

6 **SEC. 2. AGRICULTURAL WORKERS.**

7 (a) NONIMMIGRANT STATUS.—

8 (1) IN GENERAL.—The Attorney General shall
9 adjust the status of an alien agricultural worker who

1 qualifies under this subsection to that of an alien
2 lawfully admitted for nonimmigrant status under
3 section 101(a)(15) of the Immigration and National-
4 ity Act if the Attorney General determines that the
5 following requirements are satisfied with respect to
6 the alien:

7 (A) PERFORMANCE OF AGRICULTURAL EM-
8 PLOYMENT IN THE UNITED STATES.—The alien
9 must establish that the alien has performed ag-
10 ricultural employment in the United States for
11 at least 880 hours or 150 work days, whichever
12 is lesser, during the 12-month period prior to
13 October ²⁷~~6~~, 1999.

14 (B) APPLICATION PERIOD.—The alien
15 must apply for such adjustment not later than
16 12 months after the effective date of this Act.

17 (C) ADMISSIBILITY.—

18 (i) IN GENERAL.—The alien must es-
19 tablish that the alien is otherwise admissi-
20 ble to the United States under section 212
21 of the Immigration and Nationality Act,
22 except as otherwise provided under sub-
23 section (d).

24 (ii) WAIVER OF INELIGIBILITY FOR
25 UNLAWFUL PRESENCE.—An alien who has

1 not previously been admitted to the United
2 States pursuant to this section, and who is
3 otherwise eligible for admission in accord-
4 ance with clause (i), shall not be deemed
5 inadmissible by virtue of section
6 212(a)(9)(B) of that Act.

7 (2) PERIOD OF VALIDITY OF NONIMMIGRANT
8 STATUS.—

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

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

19 (i) has established a permanent resi-
20 dence in the United States and has a
21 minor child who was born in the United
22 States prior to the date of enactment of
23 this Act who resides in the alien's house-
24 hold; and

1 (ii) performs agricultural employment
2 for not less than 240 days in a calendar
3 year.

4 (3) AUTHORIZED TRAVEL.—During the period
5 an alien is in lawful nonimmigrant status granted
6 under this subsection, the alien has the right to travel
7 abroad (including commutation from a residence
8 abroad).

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

20 (5) TERMINATION OF NONIMMIGRANT STA-
21 TUS.—Except as otherwise provided in paragraph
22 (2), the Attorney General shall terminate the status,
23 and bring proceedings under section 240 of the Im-
24 migration and Nationality Act to remove, any non-
25 immigrant alien under this subsection who failed

1 during 3 prior calendar years to perform 1,040
2 hours or 180 work days, whichever is lesser, of agri-
3 cultural services in any single calendar year.

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

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

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

11 (b) ADJUSTMENT TO PERMANENT RESIDENCE.—

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

19 (A) QUALIFYING YEARS.—The alien has
20 performed a minimum period of agricultural
21 employment in the United States in each of 5
22 calendar years during the period of validity of
23 the alien's adjustment to nonimmigrant status
24 pursuant to subsection (a). Qualifying years

1 under this subparagraph may include non-
2 consecutive years.

3 (B) MINIMUM PERIODS OF AGRICULTURAL
4 EMPLOYMENT.—

5 (i) IN GENERAL.—Except as provided
6 in clause (ii), the minimum period of agri-
7 cultural employment in any calendar year
8 is 1,040 hours or 180 work days, which-
9 ever is lesser.

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

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

23 (2) GROUNDS FOR DENIAL OF ADJUSTMENT OF
24 STATUS.—The Attorney General may deny adjust-
25 ment to nonimmigrant status and provide for termi-

1 nation of the nonimmigrant status granted such
2 alien under subsection (a) if—

3 (A) the Attorney General finds by a pre-
4 ponderance of the evidence that the adjustment
5 to nonimmigrant status was the result of fraud
6 or willful misrepresentation as set out in section
7 212(a)(6)(C)(i) of the Immigration and Nation-
8 ality Act, or

9 (B) the alien commits an act that (i)
10 makes the alien inadmissible to the United
11 States under section 212 of the Immigration
12 and Nationality Act, except as provided under
13 subsection (c)(2), or (ii) is convicted of a felony
14 or 3 or more misdemeanors committed in the
15 United States.

16 (3) TREATMENT OF ALIENS DEMONSTRATING
17 PRIMA FACIE CASE FOR ADJUSTMENT.—Any alien
18 who demonstrates a prima facie case of eligibility for
19 adjustment under this subsection in accordance with
20 regulations promulgated by the Attorney General,
21 shall be considered a temporary resident alien and,
22 pending adjudication of an application for perma-
23 nent resident status under this subsection—

1 (A) may remain in the United States and
2 shall be granted authorization to engage in any
3 employment in the United States; and

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

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

14 (5) NUMERICAL LIMITATION.—In any fiscal
15 year not more than 20 percent of the number of
16 aliens obtaining nonimmigrant status under sub-
17 section (a) may be granted adjustment of status
18 under this subsection. In granting such adjustment,
19 aliens having the greater number of work hours shall
20 be accorded priority. Any temporary resident alien
21 under paragraph (3) who does not receive adjust-
22 ment of status under this subsection in a fiscal year
23 by reason of the limitation in this paragraph may
24 continue to work in any employment, and shall be
25 credited with any additional hours of agricultural

1 employment performed for purposes of being ac-
2 corded priority for adjustment of status.

3 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

4 (1) TO WHOM MAY BE MADE.—

5 (A) WITHIN THE UNITED STATES.—The
6 Attorney General shall provide that—

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

9 (I) with the Attorney General; or

10 (II) with a qualified designated
11 entity (designated under paragraph
12 (2)), but only if the applicant consents
13 to the forwarding of the application to
14 the Attorney General; and

15 (ii) applications for adjustment of sta-
16 tus under subsection (b) shall be filed di-
17 rectly with the Attorney General.

18 (B) OUTSIDE THE UNITED STATES.—The
19 Attorney General, in cooperation with the Sec-
20 retary of State, shall provide a procedure
21 whereby an alien may apply for adjustment of
22 status under subsection (a) at an appropriate
23 consular office outside the United States. The
24 Attorney General shall prescribe regulations
25 setting forth procedures for notification of im-

1 migration officials by the alien before departing
2 the United States.

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

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

11 (A) shall designate qualified voluntary or-
12 ganizations and other qualified State, local,
13 community, farm labor organizations, and asso-
14 ciations of agricultural employers; and

15 (B) may designate such other persons as
16 the Attorney General determines are qualified
17 and have substantial experience, demonstrated
18 competence, and traditional long-term involve-
19 ment in the preparation and submittal of appli-
20 cations for adjustment of status under section
21 209 or 245 of the Immigration and Nationality
22 Act, Public Law 89-732, or Public Law 95-
23 145.

24 (3) PROOF OF ELIGIBILITY.—

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

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

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

23 (4) TREATMENT OF APPLICATIONS BY QUALI-
24 FIED DESIGNATED ENTITIES.—Each qualified des-
25 ignated entity must agree to forward to the Attorney

1 General applications filed with it in accordance with
2 paragraph (1)(A)(ii) but not to forward to the Attor-
3 ney General applications filed with it unless the ap-
4 plicant has consented to such forwarding. No such
5 entity may make a determination required by this
6 section to be made by the Attorney General. Upon
7 the request of the alien, a qualified designated entity
8 shall assist the alien in obtaining documentation of
9 the work history of the alien.

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

18 (6) CONFIDENTIALITY OF INFORMATION.—

19 (A) IN GENERAL.—Except as provided in
20 this paragraph, neither the Attorney General,
21 nor any other official or employee of the De-
22 partment of Justice, or bureau or agency there-
23 of, may—

24 (i) use the information furnished by
25 the applicant pursuant to an application

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

8 (ii) make any publication whereby the
9 information furnished by any particular in-
10 dividual can be identified; or

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

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

21 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
22 PPLICATIONS.—

23 (A) CRIMINAL PENALTY.—Whoever—

24 (i) files an application for adjustment
25 of status under this section and knowingly

1 and willfully falsifies, conceals, or covers
2 up a material fact or makes any false, fic-
3 titious, or fraudulent statements or rep-
4 resentations, or makes or uses any false
5 writing or document knowing the same to
6 contain any false, fictitious, or fraudulent
7 statement or entry, or

8 (ii) creates or supplies a false writing
9 or document for use in making such an ap-
10 plication,

11 shall be fined in accordance with title 18, Unit-
12 ed States Code, or imprisoned not more than
13 five years, or both.

14 (B) EXCLUSION.—An alien who is con-
15 victed of a crime under subparagraph (A) shall
16 be considered to be inadmissible to the United
17 States on the ground described in section
18 212(a)(6)(C)(i) of the Immigration and Nation-
19 ality Act.

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

22 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—
23 The numerical limitations of sections 201 and 202
24 of the Immigration and Nationality Act shall not

1 apply to the adjustment of aliens to lawful perma-
2 nent resident status under this section.

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

8 (A) GROUNDS OF EXCLUSION NOT APPLI-
9 CABLE.—The provisions of paragraphs (5) and
10 (7)(A) of section 212(a) of the Immigration and
11 Nationality Act shall not apply.

12 (B) WAIVER OF OTHER GROUNDS.—

13 (i) IN GENERAL.—Except as provided
14 in clause (ii), the Attorney General may
15 waive any other provision of section 212(a)
16 of that Act in the case of individual aliens
17 for humanitarian purposes, to assure fam-
18 ily unity, or when it is otherwise in the
19 public interest.

20 (ii) GROUNDS THAT MAY NOT BE
21 WAIVED.—The following provisions of sec-
22 tion 212(a) of that Act may not be waived
23 by the Attorney General under clause (i):

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

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

4 (III) Paragraph (2)(C) (relating
5 to drug offenses), except for so much
6 of such paragraph as relates to a sin-
7 gle offense of simple possession of 30
8 grams or less of marijuana.

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

12 (C) SPECIAL RULE FOR DETERMINA-
13 TION OF PUBLIC CHARGE.—An alien is not
14 ineligible for adjustment of status under
15 this section due to being inadmissible
16 under section 212(a)(4) of that Act if the
17 alien demonstrates a history of employ-
18 ment in the United States evidencing self-
19 support without reliance on public cash as-
20 sistance.

21 (e) TEMPORARY STAY OF REMOVAL AND WORK AU-
22 THORIZATION FOR CERTAIN APPLICANTS.—

23 (1) BEFORE APPLICATION PERIOD.—The Attor-
24 ney General shall provide that in the case of an alien
25 who is apprehended before the beginning of the ap-

1 plication period described in subsection (a)(1) and
2 who can establish a nonfrivolous case of eligibility to
3 have his status adjusted under subsection (a) (but
4 for the fact that he may not apply for such adjust-
5 ment until the beginning of such period), until the
6 alien has had the opportunity during the first 30
7 days of the application period to complete the filing
8 of an application for adjustment, the alien—

9 (A) may not be removed, and

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

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

24 (A) may not be removed, and

1 (B) shall be granted authorization to en-
2 gage in agricultural employment in the United
3 States and be provided an "employment author-
4 ized" endorsement or other appropriate work
5 permit for such purpose.

6 (3) PROHIBITION.—No application fees col-
7 lected by the Service pursuant to this subsection
8 may be used by the Service to offset the costs of the
9 agricultural worker adjustment program under this
10 Act until the Service implements the program con-
11 sistent with the statutory mandate as follows:

12 (A) During the application period de-
13 scribed in subsection (a)(1)(A) the Service may
14 grant nonimmigrant admission to the United
15 States, work authorization, and provide an
16 "employment authorized" endorsement or other
17 appropriate work permit to any alien who pre-
18 sents a preliminary application for adjustment
19 of status under subsection (a) at a designated
20 port of entry on the southern land border. An
21 alien who does not enter through a port of
22 entry is subject to deportation and removal as
23 otherwise provided in this Act.

24 (B) During the application period de-
25 scribed in subsection (a)(1)(A) any alien who

1 has filed an application for adjustment of status
2 within the United States as provided in sub-
3 section (b)(1)(A) is subject to paragraph (2) of
4 this subsection.

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

17 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

18 (1) ADMINISTRATIVE AND JUDICIAL REVIEW.—

19 There shall be no administrative or judicial review of
20 a determination respecting an application for adjust-
21 ment of status under this section except in accord-
22 ance with this subsection.

23 (2) ADMINISTRATIVE REVIEW.—

24 (A) SINGLE LEVEL OF ADMINISTRATIVE
25 APPELLATE REVIEW.—The Attorney General

1 shall establish an appellate authority to provide
2 for a single level of administrative appellate re-
3 view of such a determination.

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

11 (3) JUDICIAL REVIEW.—

12 (A) LIMITATION TO REVIEW OF EXCLU-
13 SION OR DEPORTATION.—There shall be judicial
14 review of such a denial only in the judicial re-
15 view of an order of removal under section 242
16 of the Immigration and Nationality Act.

17 (B) STANDARD FOR JUDICIAL REVIEW.—
18 Such judicial review shall be based solely upon
19 the administrative record established at the
20 time of the review by the appellate authority
21 and the findings of fact and determinations
22 contained in such record shall be conclusive un-
23 less the applicant can establish abuse of discre-
24 tion or that the findings are directly contrary to

1 clear and convincing facts contained in the
2 record considered as a whole.

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

106TH CONGRESS
1ST SESSION

S. 1814

IN THE SENATE OF THE UNITED STATES

for himself with Mr. Graham, Mr. Craig, Mr. Cleland, Mr. McConnell, Mr. Coverdell,
Mr. SMITH of Oregon introduced the following bill; which was read twice and
referred to the Committee on _____

*Mr. Mack,
Mr. Cochran,
Mr. Helms,
Mr. Grams,
Mr. Crapo, and
Mr. Bunning*

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LEGAL STATUS

Sec. 101. Agricultural workers.

TITLE II—AGRICULTURAL WORKER REGISTRIES

Sec. 201. Agricultural worker registries.

TITLE III—H-2A REFORM

Sec. 301. Employer applications and assurances.

Sec. 302. Search of registry.

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

Sec. 304. Employment requirements.

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

TITLE IV—MISCELLANEOUS PROVISIONS

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

Sec. 402. Bilateral commissions.

Sec. 403. Regulations.

Sec. 404. Determination and use of user fees.

Sec. 405. Funding for startup costs.

Sec. 406. Report to Congress.

Sec. 407. Effective date.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) ADVERSE EFFECT WAGE RATE.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term “adverse effect
6 wage rate” means the rate of pay for an agri-
7 cultural occupation that is 5 percent above the
8 prevailing rate of pay for that agricultural occu-
9 pation in an area of intended employment, if
10 the prevailing rate of pay for the occupation is
11 less than the prior year’s average hourly earn-
12 ings of field and livestock workers for the State
13 (or region that includes the State), as deter-

1 mined by the Secretary of Agriculture, provided
2 no adverse effect wage rate shall be more than
3 the prior year's average hourly earnings of field
4 and livestock workers for the State (or region
5 that includes the State), as determined by the
6 Secretary of Agriculture.

7 (B) EXCEPTION.—If the prevailing rate of
8 pay for an activity is a piece rate, task rate or
9 group rate, and the average hourly earnings of
10 an employer's workers employed in that activ-
11 ity, taken as a group, are less than the prior
12 year's average hourly earnings of field and live-
13 stock workers in the State (or region that in-
14 cludes the State), as determined by the Sec-
15 retary of Agriculture, the term "adverse effect
16 wage rate" means the prevailing piece rate,
17 task rate or group rate for the activity plus
18 such an amount as is necessary to increase the
19 average hourly earnings of the employer's work-
20 ers employed in the activity, taken as a group,
21 by 5 percent, or to the prior's years average
22 hourly earnings for field and livestock workers
23 for the State (or region that includes the State)
24 determined by the Secretary of Agriculture,
25 whichever is less.

1 (2) AGRICULTURAL EMPLOYMENT.—The term
2 “agricultural employment” means any service or ac-
3 tivity that is considered to be agriculture under sec-
4 tion 3(f) of the Fair Labor Standards Act of 1938
5 (29 U.S.C. 203(f)) or as agricultural labor under
6 section 3121(g) of the Internal Revenue Code of
7 1986. For purposes of this paragraph, agricultural
8 employment in the United States includes, but is not
9 limited to, employment under section
10 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

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

17 (4) EMPLOYER.—The term “employer” means
18 any person or entity, including any farm labor con-
19 tractor and any agricultural association, that em-
20 ploys workers.

21 (5) H-2A EMPLOYER.—The term “H-2A em-
22 ployer” means an employer who seeks to hire one or
23 more nonimmigrant aliens described in section
24 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
25 ality Act.

1 (6) H-2A WORKER.—The term “H-2A worker”
2 means a nonimmigrant described in section
3 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
4 ality Act.

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

9 (8) PREVAILING WAGE.—The term “prevailing
10 wage” means with respect to an agricultural activity
11 in an area of intended employment, the rate of
12 wages that includes the 51st percentile of employees
13 in that agricultural activity in the area of intended
14 employment, expressed in terms of the prevailing
15 method of pay for the agricultural activity in the
16 area of intended employment.

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

20 (10) REGISTRY.—The term “registry” means
21 an agricultural worker registry established under
22 section 201(a).

23 (11) SECRETARY.—The term “Secretary”
24 means the Secretary of Labor.

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

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

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TITLE I—ADJUSTMENT TO LEGAL STATUS

SEC. 101. AGRICULTURAL WORKERS.

(a) NONIMMIGRANT STATUS.—

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

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

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

(C) ADMISSIBILITY.—

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

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1 ble to the United States under section 212
2 of the Immigration and Nationality Act,
3 except as otherwise provided under sub-
4 section (d).

5 (ii) WAIVER OF INELIGIBILITY FOR
6 UNLAWFUL PRESENCE.—An alien who has
7 not previously been admitted to the United
8 States pursuant to this section, and who is
9 otherwise eligible for admission in accord-
10 ance with clause (i), shall not be deemed
11 inadmissible by virtue of section
12 212(a)(9)(B) of that Act.

13 (2) PERIOD OF VALIDITY OF NONIMMIGRANT
14 STATUS.—

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

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

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

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

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

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

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

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

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

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

17 (b) ADJUSTMENT TO PERMANENT RESIDENCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

8 (1) TO WHOM MAY BE MADE.—

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

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

13 (I) with the Attorney General; or

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

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

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

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

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

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

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

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

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

3 (3) PROOF OF ELIGIBILITY.—

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

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

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

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

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

21 (6) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

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

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

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

3 (A) CRIMINAL PENALTY.—Whoever—

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

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

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

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

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

3 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

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

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

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

16 (B) WAIVER OF OTHER GROUNDS.—

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

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

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1 tion 212(a) may not be waived by the At-
2 torney General under clause (i):

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

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

8 (III) Paragraph (2)(C) (relating
9 to drug offenses), except for so much
10 of such paragraph as relates to a sin-
11 gle offense of simple possession of 30
12 grams or less of marijuana.

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

16 (C) SPECIAL RULE FOR DETERMINA-
17 TION OF PUBLIC CHARGE.—An alien is not
18 ineligible for adjustment of status under
19 this section due to being inadmissible
20 under section 212(a)(4) if the alien dem-
21 onstrates a history of employment in the
22 United States evidencing self-support with-
23 out reliance on public cash assistance.

24 (e) TEMPORARY STAY OF REMOVAL AND WORK AU-
25 THORIZATION FOR CERTAIN APPLICANTS.—

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

12 (A) may not be removed, and

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

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

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

3 (A) may not be removed, and

4 (B) shall be granted authorization to en-
5 gage in agricultural employment in the United
6 States and be provided an “employment author-
7 ized” endorsement or other appropriate work
8 permit for such purpose.

9 (3) PROHIBITION.—No application fees col-
10 lected by the Service pursuant to this subsection
11 may be used by the Service to offset the costs of the
12 agricultural worker adjustment program under this
13 title until the Service implements the program con-
14 sistent with the statutory mandate as follows:

15 (A) During the application period de-
16 scribed in subsection (a)(1)(A) the Service may
17 grant nonimmigrant admission to the United
18 States, work authorization, and provide an
19 “employment authorized” endorsement or other
20 appropriate work permit to any alien who pre-
21 sents a preliminary application for adjustment
22 of status under subsection (a) at a designated
23 port of entry on the southern land border. An
24 alien who does not enter through a port of

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

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

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

21 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22 (1) ADMINISTRATIVE AND JUDICIAL REVIEW.—

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

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

3 (2) ADMINISTRATIVE REVIEW.—

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

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

16 (3) JUDICIAL REVIEW.—

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

21 (B) STANDARD FOR JUDICIAL REVIEW.—
22 Such judicial review shall be based solely upon
23 the administrative record established at the
24 time of the review by the appellate authority
25 and the findings of fact and determinations

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

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

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

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

16 (a) ESTABLISHMENT OF REGISTRIES.—

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

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

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

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

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

8 (A) eligible United States workers; and

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

12 (3) GEOGRAPHIC COVERAGE.—

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

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

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

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

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

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

18 (b) REGISTRATION.—

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

23 (A) the name and address of the individ-
24 ual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **TITLE III—H-2A REFORM**

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

3 (a) APPLICATIONS TO THE SECRETARY.—

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

14 (A) describe the nature and location of the
15 work to be performed;

16 (B) list the anticipated period (expected
17 beginning and ending dates) for which workers
18 will be needed;

19 (C) indicate the number of job opportuni-
20 ties in which the employer seeks to employ
21 workers from the registry;

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

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1 (E) describe the wages and other terms
2 and conditions of employment the employer will
3 offer, which shall not be less (and are not re-
4 quired to be more) than those required by this
5 section;

6 (F) contain the assurances required by
7 subsection (c);

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

12 (H) be accompanied by the payment of a
13 registry user fee determined under section
14 404(b)(1)(A) for each job opportunity indicated
15 under subparagraph (C).

16 (2) APPLICATIONS BY ASSOCIATIONS ON BE-
17 HALF OF EMPLOYER MEMBERS.—

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

22 (B) EMPLOYERS.—An application under
23 subparagraph (A) shall cover those employer
24 members of the association that the association

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1 certifies in its application have agreed in writ-
2 ing to comply with the requirements of this Act.

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

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

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

24 (2) ASSURANCE THAT THE JOB OPPORTUNITY
25 IS TEMPORARY OR SEASONAL.—

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1 (A) REQUIRED ASSURANCE.—The em-
2 ployer shall assure that the job opportunity for
3 which the employer requests a registered worker
4 is temporary or seasonal.

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

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

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

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1 1938 (29 U.S.C. 206(a)(1)), or the applicable State
2 minimum wage.

3 (4) ASSURANCE OF EMPLOYMENT.—The em-
4 ployer shall assure that the employer will not refuse
5 to employ qualified individuals referred under sec-
6 tion 302, and will terminate qualified individuals
7 employed pursuant to this Act only for lawful job-
8 related reasons, including lack of work.

9 (5) ASSURANCE OF COMPLIANCE WITH LABOR
10 LAWS.—

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

19 (B) LIMITATIONS.—The disclosure re-
20 quired under section 201(a) of the Migrant and
21 Seasonal Agricultural Worker Protection Act
22 (29 U.S.C. 1821(a)) may be made at any time
23 prior to the time the alien is issued a visa per-
24 mitting entry into the United States.

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1 (6) ASSURANCE OF ADVERTISING OF THE REG-
2 ISTRY.—The employer shall assure that the em-
3 ployer will, from the day an application for workers
4 is submitted under subsection (a), and continuing
5 throughout the period of employment of any job op-
6 portunity for which the employer has applied for a
7 worker from the registry, post in a conspicuous place
8 a poster to be provided by the Secretary advertising
9 the availability of the registry.

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

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

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1 occupation at the place of intended employment for
2 which the employer is applying for registered work-
3 ers, and has made the availability of the employer's
4 job opportunities in the occupation at the place of
5 intended employment known to such previous work-
6 er, unless the worker was terminated from employ-
7 ment by the employer for a lawful job-related reason
8 or abandoned the job before the worker completed
9 the period of employment of the job opportunity for
10 which the worker was hired.

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

21 (10) ASSURANCE OF PAYMENT OF ALIEN EM-
22 PLOYMENT USER FEE.—The employer shall assure
23 that if the employer receives a notice of insufficient
24 workers under section 302(c), such employer shall
25 promptly pay the alien employment user fee deter-

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1 mined under section 404(b)(1)(B) for each job op-
2 portunity to be filled by an eligible alien as required
3 under such section.

4 (d) WITHDRAWAL OF APPLICATIONS.—

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

17 (2) LIMITATION.—An application may not be
18 withdrawn while any alien provided status under this
19 Act pursuant to such application is employed by the
20 employer.

21 (3) OBLIGATIONS UNDER OTHER STATUTES.—
22 Any obligation incurred by an employer under any
23 other law or regulation as a result of recruitment of
24 United States workers under an offer of terms and
25 conditions of employment required as a result of

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1 making an application under subsection (a) is unaf-
2 fected by withdrawal of such application.

3 (e) REVIEW OF APPLICATION.—

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

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

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

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

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1 (B) offer the applicant an opportunity to
2 request an expedited administrative review or a
3 de novo administrative hearing before an ad-
4 ministrative law judge of the rejection of the
5 application.

6 (4) REJECTION FOR PROGRAM VIOLATIONS.—

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

9 (A) the employer has been determined to
10 be ineligible to employ workers under section
11 401(b); or

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

21 No employer may have applications under this sec-
22 tion rejected for more than 3 years for any violation
23 described in this paragraph.

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1 **SEC. 302. SEARCH OF REGISTRY.**

2 (a) **SEARCH PROCESS AND REFERRAL TO THE EM-**
3 **PLOYER.**—Upon the approval of an application under sec-
4 tion 301(e), the Secretary shall promptly begin a search
5 of the registry of the State (or States) in which the work
6 is to be performed to identify registered United States
7 workers and adjusted aliens with the qualifications re-
8 quested by the employer. The Secretary shall contact such
9 qualified registered workers and determine, in each in-
10 stance, whether the worker is ready, willing, and able to
11 accept the employer's job opportunity and will make the
12 affirmative commitment to work for the employer at the
13 time and place needed. The Secretary shall provide to each
14 worker who commits to work for the employer the employ-
15 er's name, address, telephone number, the location where
16 the employer has requested that employees report for em-
17 ployment, and a statement disclosing the terms and condi-
18 tions of employment.

19 (b) **DEADLINE FOR COMPLETING SEARCH PROCESS;**
20 **REFERRAL OF WORKERS.**—As expeditiously as possible,
21 but not later than 7 days before the date on which an
22 employer desires work to begin, the Secretary shall com-
23 plete the search under subsection (a) and shall transmit
24 to the employer a report containing the name, address,
25 and social security account number of each registered
26 worker who has made the affirmative commitment de-

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1 scribed in subsection (a) to work for the employer on the
2 date needed, together with sufficient information to enable
3 the employer to establish contact with the worker. The
4 identification of such registered workers in a report shall
5 constitute a referral of workers under this section.

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

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

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1 of State, by electronic or other means ensuring next day
2 delivery.

3 (e) USER FEE FOR CERTIFICATION TO EMPLOY
4 ALIEN WORKERS.—With respect to each job opportunity
5 for which a notice of insufficient workers is made, the Sec-
6 retary shall require the payment of an alien employment
7 user fee determined under section 404(b)(1)(B).

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

9 (a) IN GENERAL.—

10 (1) NUMBER OF ADMISSIONS.—Subject to para-
11 graph (3), the Secretary of State shall promptly
12 issue visas to, and the Attorney General shall admit,
13 as nonimmigrant aliens described in section
14 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
15 ality Act a sufficient number of eligible aliens des-
16 igned by the employer to fill the job opportunities
17 of the employer—

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

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

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

24 (D) upon receipt of a report under sub-
25 section (d).

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

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

6 (1) APPLICATION TO THE SECRETARY OF
7 STATE.—If the employer has not received a referral
8 of sufficient workers pursuant to section 302(b) or
9 a report of insufficient workers pursuant to section
10 302(c), by the date that is 7 days before the date
11 on which the work is anticipated to begin, the em-
12 ployer may submit an application for alien workers
13 directly to the Secretary of State, with a copy of the
14 application provided to the Attorney General, seek-
15 ing the issuance of visas to and the admission of
16 aliens for employment in the job opportunities for
17 which the employer has not received referral of reg-
18 istered workers. Such an application shall include a
19 copy of the employer's application under section
20 301(a), together with evidence of its timely submis-
21 sion. The Secretary of State may consult with the
22 Secretary of Labor in carrying out this paragraph.

23 (2) EXPEDITED CONSIDERATION BY SECRETARY
24 OF STATE.—The Secretary of State shall, as expedi-
25 tiously as possible, but not later than 5 days after

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1 the employer files an application under paragraph
2 (1), issue visas to, and the Attorney General shall
3 admit, a sufficient number of eligible aliens des-
4 ignated by the employer to fill the job opportunities
5 for which the employer has applied under that para-
6 graph, if the employer has met the requirements of
7 sections 301 and 302. The employer shall be subject
8 to the alien employment user fee determined under
9 section 404(b)(1)(B) with respect to each job oppor-
10 tunity for which the Secretary of State authorizes
11 the issuance of a visa pursuant to paragraph (2).

12 (c) REDETERMINATION OF NEED.—

13 (1) REQUESTS FOR REDETERMINATION.—

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

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

22 (ii) the worker is not ready, willing,
23 able, or qualified to perform the work re-
24 quired; or

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1 (iii) the worker abandons the employ-
2 ment or is terminated for a lawful job-re-
3 lated reason.

4 (B) ADDITIONAL AUTHORIZATION OF AD-
5 MISSIONS.—The Secretary shall expeditiously,
6 but in no case later than 72 hours after a rede-
7 termination is requested under subparagraph
8 (A), submit a report to the Secretary of State
9 and the Attorney General providing notice of a
10 need for workers under this subsection, if the
11 employer has met the requirements of sections
12 301 and 302 and the conditions described in
13 subparagraph (A).

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

22 (d) EMERGENCY APPLICATIONS.—Notwithstanding
23 subsections (b) and (c), the Secretary may promptly trans-
24 mit a report to the Attorney General and Secretary of

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1 State providing notice of a need for workers under this
2 subsection for an employer—

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

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

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

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

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

21 **SEC. 304. EMPLOYMENT REQUIREMENTS.**

22 (a) REQUIRED WAGES.—

23 (1) IN GENERAL.—An employer applying under
24 section 301(a) for workers shall offer to pay, and
25 shall pay, all workers in the occupation or occupa-

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1 tions for which the employer has applied for workers
2 from the registry, not less (and is not required to
3 pay more) than the greater of the prevailing wage in
4 the occupation in the area of intended employment
5 or the adverse effect wage rate. No worker shall be
6 paid less than the greater of the hourly wage pre-
7 scribed under section 6(a)(1) of the Fair Labor
8 Standards Act of 1938 (29 U.S.C. 206(a)(1)), or the
9 applicable State minimum wage.

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

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

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1 (4) ALTERNATIVE METHODS OF PAYMENT PER-
2 MITTED.—

3 (A) IN GENERAL.—A prevailing wage may
4 be expressed as an hourly wage, a piece rate, a
5 task rate, or other incentive payment method,
6 including a group rate. The requirement to pay
7 at least the prevailing wage in the occupation
8 and area of intended employment does not re-
9 quire an employer to pay by the method of pay
10 in which the prevailing rate is expressed, except
11 that, if the employer adopts a method of pay
12 other than the prevailing rate, the burden of
13 proof is on the employer to demonstrate that
14 the employer's method of pay is designed to
15 produce earnings equivalent to the earnings
16 that would result from payment of the prevail-
17 ing rate.

18 (B) COMPLIANCE WHEN PAYING AN IN-
19 CENTIVE RATE.—In the case of an employer
20 that pays a piece rate or task rate or uses any
21 other incentive payment method, including a
22 group rate, the employer shall be considered to
23 be in compliance with any applicable hourly
24 wage requirement if the average of the hourly
25 earnings of the workers, taken as a group, in

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1 the activity for which a piece rate, task rate, or
2 other incentive payment, including a group rate,
3 is paid, for the pay period, is at least equal to
4 the required hourly wage, except that no worker
5 shall be paid less than the hourly wage pre-
6 scribed under section 6(a)(1) of the Fair Labor
7 Standards Act of 1938 (29 U.S.C. 206(a)(1))
8 or the applicable State minimum wage.

9 (C) TASK RATE.—For purposes of this
10 paragraph, the term “task rate” means an in-
11 centive payment method based on a unit of
12 work performed such that the incentive rate
13 varies with the level of effort required to per-
14 form individual units of work.

15 (D) GROUP RATE.—For purposes of this
16 paragraph, the term “group rate” means an in-
17 centive payment method in which the payment
18 is shared among a group of workers working to-
19 gether to perform the task.

20 (b) REQUIREMENT TO PROVIDE HOUSING.—

21 (1) IN GENERAL.—

22 (A) REQUIREMENT.—An employer apply-
23 ing under section 301(a) for registered workers
24 shall offer to provide housing at no cost (except
25 for charges permitted by paragraph (5)) to all

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1 workers employed in job opportunities to which
2 the employer has applied under that section,
3 and to all other workers in the same occupation
4 at the place of employment, whose place of resi-
5 dence is beyond normal commuting distance.

6 (B) LIABILITY.—An employer not comply-
7 ing with subparagraph (A) shall be liable to a
8 registered worker for the costs of housing
9 equivalent to the type of housing required to be
10 provided under that subparagraph and shall not
11 be liable for any employment-related obligation
12 solely by reason of such noncompliance.

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

23 (3) WORKERS ENGAGED IN THE RANGE PRO-
24 Duction OF LIVESTOCK.—The Secretary shall issue
25 regulations that address the specific requirements

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1 for the provision of housing to workers engaged in
2 the range production of livestock.

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

8 (5) CHARGES FOR HOUSING.—

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

16 (B) SECURITY DEPOSIT.—An employer
17 who provides housing to workers pursuant to
18 paragraph (1) may require, as a condition for
19 providing such housing, a deposit not to exceed
20 \$50 from workers occupying such housing to
21 protect against gross negligence or willful de-
22 struction of property.

23 (C) DAMAGES.—An employer who provides
24 housing to workers pursuant to paragraph (1)
25 may require a worker found to have been re-

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1 sponsible for damage to such housing which is
2 not the result of normal wear and tear related
3 to habitation to reimburse the employer for the
4 reasonable cost of repair of such damage.

5 (6) HOUSING ALLOWANCE AS ALTERNATIVE.—

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

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1 tural Worker Protection Act (29 U.S.C. 1823)
2 solely by virtue of providing such housing allow-
3 ance.

4 (B) CERTIFICATION.—The requirement of
5 this subparagraph is satisfied if the Governor of
6 the State certifies to the Secretary that there is
7 adequate housing available in an area of in-
8 tended employment for migrant farm workers,
9 aliens provided status pursuant to this Act, or
10 nonimmigrant aliens described in section
11 101(a)(15)(H)(ii)(a) of the Immigration and
12 Nationality Act, who are seeking temporary
13 housing while employed at farm work. Such cer-
14 tification shall expire after 3 years unless re-
15 newed by the Governor of the State.

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

22 (D) AMOUNT OF ALLOWANCE.—The
23 amount of a housing allowance under this para-
24 graph shall be equal to the statewide average
25 fair market rental for existing housing for non-

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1 metropolitan counties for the State in which the
2 employment occurs, as established by the Sec-
3 retary of Housing and Urban Development pur-
4 suant to section 8(c) of the United States
5 Housing Act of 1937 (42 U.S.C. 1437f(c)),
6 based on a 2-bedroom dwelling unit and an as-
7 sumption of 2 persons per bedroom.

8 (c) REIMBURSEMENT OF TRANSPORTATION.—

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

20 (2) FROM PLACE OF EMPLOYMENT.—A worker
21 who is referred to a job opportunity under section
22 302(a), or an alien employed pursuant to this Act,
23 who completes the period of employment for the job
24 opportunity involved, shall be reimbursed by the em-
25 ployer for the cost of the worker's transportation

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1 and subsistence from the place of employment to the
2 worker's place of residence, or to the place of next
3 employment, if the worker has contracted with a
4 subsequent employer who has not agreed to provide
5 or pay for the worker's transportation and subsist-
6 ence to such subsequent employer's place of employ-
7 ment.

8 (3) LIMITATION.—

9 (A) AMOUNT OF REIMBURSEMENT.—Ex-
10 cept as provided in subparagraph (B), the
11 amount of reimbursement provided under para-
12 graph (1) or (2) to a worker or alien shall not
13 exceed the lesser of—

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

17 (ii) the most economical and reason-
18 able common carrier transportation
19 charges and subsistence costs for the dis-
20 tance involved.

21 (B) DISTANCE TRAVELED.—No reimburse-
22 ment under paragraph (1) or (2) shall be re-
23 quired if the distance traveled is 100 miles or
24 less, or the worker is not residing in employer-

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1 provided housing or housing secured through a
2 voucher as provided in subsection (b)(6).

3 (C) PLACE OF RECRUITMENT.—For the
4 purpose of the reimbursement required under
5 paragraph (1) or (2) to aliens admitted pursu-
6 ant to this Act, the alien's place of residence
7 shall be deemed to be the place where the alien
8 was issued the visa authorizing admission to the
9 United States or, if no visa was required, the
10 place from which the alien departed the foreign
11 country to travel to the United States.

12 (d) CONTINUING OBLIGATION TO EMPLOY UNITED
13 STATES WORKERS.—

14 (1) IN GENERAL.—An employer that applies for
15 registered workers under section 301(a) shall, as a
16 condition for the approval of such application, con-
17 tinue to offer employment to qualified, eligible Unit-
18 ed States workers who are referred under section
19 302(b) after the employer receives the report de-
20 scribed in section 302(b).

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

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

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

5 (C) during any period when the Secretary
6 is conducting a search of a registry for workers
7 in the occupation and area of intended employ-
8 ment to which the worker has been referred, or
9 in other occupations in the area of intended em-
10 ployment for which the worker that has been
11 referred is qualified and that offer substantially
12 similar terms and conditions of employment.

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

23 (4) REFERRAL OF WORKERS DURING 50-PER-
24 CENT PERIOD.—The Secretary shall make all rea-
25 sonable efforts to place a registered worker in an

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1 open job acceptable to the worker, including avail-
2 able jobs not listed on the registry, before referring
3 such worker to an employer for a job opportunity al-
4 ready filled by, or committed to, an alien admitted
5 pursuant to this Act.

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

8 Section 218 of the Immigration and Nationality Act
9 (8 U.S.C. 1188) is amended to read as follows:

10 "ADMISSION OF TEMPORARY H-2A WORKERS

11 "SEC. 218. (a) PROCEDURE FOR ADMISSION OR EX-
12 TENSION OF ALIENS.—

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

15 "(A) CRITERIA FOR ADMISSIBILITY.—

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

25 "(ii) DISQUALIFICATION.—An alien
26 shall be ineligible for admission to the

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1 United States or being provided status
2 under this section if the alien has, at any
3 time during the past 5 years—

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

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

15 “(iii) INITIAL WAIVER OF INELIGIBIL-
16 ITY FOR UNLAWFUL PRESENCE.—

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

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1 depart the United States to be eligible
2 for admission under this section.

3 “(II) TERMINATION.—Subclause
4 (I) shall terminate on the date that is
5 4 years after the date of the enact-
6 ment of the Agricultural Job Oppor-
7 tunity Benefits and Security Act of
8 1999.

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

23 “(C) ABANDONMENT OF EMPLOYMENT.—

24 “(i) IN GENERAL.—An alien admitted
25 or provided status under this section who

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1 abandons the employment which was the
2 basis for such admission or status shall be
3 considered to have failed to maintain non-
4 immigrant status as an alien described in
5 section 101(a)(15)(H)(ii)(a) and shall de-
6 part the United States or be subject to re-
7 moval under section 237(a)(1)(C)(i).

8 “(ii) REPORT BY EMPLOYER.—The
9 employer (or association acting as agent
10 for the employer) shall notify the Attorney
11 General within 7 days of an alien admitted
12 or provided status under this Act pursuant
13 to an application to the Secretary of Labor
14 under section 302 of the Agricultural Job
15 Opportunity Benefits and Security Act of
16 1999 by the employer who prematurely
17 abandons the alien’s employment.

18 “(iii) REMOVAL BY THE ATTORNEY
19 GENERAL.—The Attorney General shall
20 promptly remove from the United States
21 aliens admitted pursuant to section
22 101(a)(15)(H)(ii)(a) who have failed to
23 maintain nonimmigrant status or who have
24 otherwise violated the terms of a visa is-
25 sued under this title.

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1 “(iv) VOLUNTARY TERMINATION.—

2 Notwithstanding the provisions of clause
3 (i), an alien may voluntarily terminate his
4 or her employment if the alien promptly
5 departs the United States upon termi-
6 nation of such employment.

7 “(D) IDENTIFICATION DOCUMENT AND
8 IDENTIFICATION SYSTEM.—

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

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

21 “(I) The document and system
22 shall be capable of reliably determin-
23 ing whether—

24 “(aa) the individual with the
25 identification and employment

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1 eligibility document whose eligi-
2 bility is being verified is in fact
3 eligible for employment,

4 “(bb) the individual whose
5 eligibility is being verified is
6 claiming the identity of another
7 person, and

8 “(cc) the individual whose
9 eligibility is being verified has
10 been properly admitted under
11 this section.

12 “(II) The document shall be in
13 the form that is resistant to counter-
14 feiting and to tampering.

15 “(III) The document and system
16 shall—

17 “(aa) be compatible with
18 other Immigration and Natu-
19 ralization Service databases and
20 other Federal government
21 databases for the purpose of ex-
22 cluding aliens from benefits for
23 which they are not eligible and to
24 determine whether the alien is il-

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1 legally present in the United
2 States, and

3 “(bb) be compatible with law
4 enforcement databases to deter-
5 mine if the alien has been con-
6 victed of criminal offenses.

7 “(2) EXTENSION OF STAY OF ALIENS IN THE
8 UNITED STATES.—

9 “(A) EXTENSION OF STAY.—If an em-
10 ployer with respect to whom a report or applica-
11 tion described in section 302(a)(1) of the Agri-
12 cultural Job Opportunity Benefits and Security
13 Act of 1999 has been submitted seeks to em-
14 ploy an alien who has acquired status under
15 this section and who is lawfully present in the
16 United States, the employer shall file with the
17 Attorney General an application for an exten-
18 sion of the alien’s stay or a change in the
19 alien’s authorized employment. The application
20 shall be accompanied by a copy of the appro-
21 priate report or application described in section
22 302 of the Agricultural Job Opportunity Bene-
23 fits and Security Act of 1999.

24 “(B) LIMITATION ON FILING AN APPLICA-
25 TION FOR EXTENSION OF STAY.—An applica-

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tion may not be filed for an extension of an alien's stay for a period of more than 10 months, or later than a date which is 3 years from the date of the alien's last admission to the United States under this section, whichever occurs first.

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

An employer may begin employing an alien who is present in the United States who has acquired status under this Act on the day the employer files an application for extension of stay. For the purpose of this requirement, the term ‘filing’ means sending the application by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of sending and receipt of the application. The employer shall provide a copy of the employer's application to the alien, who shall keep the application with the alien's identification and employment eligibility document as evidence that the application has been filed and that the alien is authorized to work in the

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1 United States. Upon approval of an application
2 for an extension of stay or change in the alien's
3 authorized employment, the Attorney General
4 shall provide a new or updated employment eli-
5 gibility document to the alien indicating the
6 new validity date, after which the alien is not
7 required to retain a copy of the application.

8 "(D) LIMITATION ON EMPLOYMENT AU-
9 THORIZATION OF ALIENS WITHOUT VALID
10 IDENTIFICATION AND EMPLOYMENT ELIGI-
11 BILITY CARD.—An expired identification and
12 employment eligibility document, together with
13 a copy of an application for extension of stay or
14 change in the alien's authorized employment
15 that complies with the requirements of subpara-
16 graph (A), shall constitute a valid work author-
17 ization document for a period of not more than
18 60 days from the date of application for the ex-
19 tension of stay, after which time only a cur-
20 rently valid identification and employment eligi-
21 bility document shall be acceptable.

22 "(E) LIMITATION ON AN INDIVIDUAL'S
23 STAY IN STATUS.—An alien having status under
24 this section may not have the status extended
25 for a continuous period longer than 3 years un-

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

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

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1 (b) NO FAMILY MEMBERS PERMITTED.—Section
2 101(a)(15)(H) of the Immigration and Nationality Act (8
3 U.S.C. 1101(a)(15)(H)) is amended by striking “specified
4 in this paragraph” and inserting “specified in this sub-
5 paragraph (other than in clause (ii)(a))”.

6 (c) RANGE PRODUCTION OF LIVESTOCK.—Nothing
7 in this title shall preclude the Secretary of Labor and the
8 Attorney General from continuing to apply special proce-
9 dures to the employment, admission, and extension of
10 aliens in the range production of livestock.

11 **TITLE IV—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 401. ENHANCED WORKER PROTECTIONS AND LABOR**
14 **STANDARDS ENFORCEMENT.**

15 (a) ENFORCEMENT AUTHORITY.—

16 (1) INVESTIGATION OF COMPLAINTS.—

17 (A) AGGRIEVED PERSON OR THIRD PARTY
18 COMPLAINTS.—The Secretary shall establish a
19 process for the receipt, investigation, and dis-
20 position of complaints respecting an employer’s
21 failure to meet a condition specified in section
22 301 or an employer’s misrepresentation of ma-
23 terial facts in an application under that section,
24 or violation of the provisions described in sub-
25 paragraph (B). Complaints may be filed by any

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1 aggrieved person or any organization (including
2 bargaining representatives). No investigation or
3 hearing shall be conducted on a complaint con-
4 cerning such a failure or misrepresentation un-
5 less the complaint was filed not later than 12
6 months after the date of the failure or mis-
7 representation, as the case may be. The Sec-
8 retary shall conduct an investigation under this
9 paragraph if there is reasonable cause to believe
10 that such a failure or misrepresentation has oc-
11 curred.

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

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

24 (ii) A failure to make a wage pay-
25 ment, except that complaints alleging that

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1 an amount less than the wages due has
2 been paid shall be handled pursuant to
3 subparagraph (A).

4 (iii) A failure to provide the housing
5 allowance required under section
6 304(b)(6).

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

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

19 (2) WRITTEN NOTICE OF FINDING AND OPPOR-
20 TUNITY FOR APPEAL.—After an investigation has
21 been conducted, the Secretary shall issue a written
22 determination as to whether or not any violation de-
23 scribed in subsection (b) has been committed. The
24 Secretary's determination shall be served on the
25 complainant and the employer, and shall provide an

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1 opportunity for an appeal of the Secretary's decision
2 to an administrative law judge, who may conduct a
3 de novo hearing.

4 (3) ABILITY OF ALIEN WORKERS TO CHANGE
5 EMPLOYERS.—

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

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

14 (ii) agrees to accept the person for
15 employment.

16 (B) REPLACEMENT WORKER.—An ag-
17 grieved person may not be transferred under
18 subparagraph (A) until such time as the em-
19 ployer from whom the person is to be trans-
20 ferred receives a requested replacement worker
21 referred by a registry pursuant to section 302
22 of this Act or provided status under section
23 101(a)(15)(H)(ii)(a) of the Immigration and
24 Nationality Act.

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1 (C) LIMITATION.—An employer from
2 whom an aggrieved person has been transferred
3 under this paragraph shall have no obligation to
4 reimburse the person for the cost of transpor-
5 tation prior to the completion of the period of
6 employment referred to in section 304(c).

7 (D) VOLUNTARY TRANSFER.—Notwith-
8 standing this paragraph, an employer may vol-
9 untarily agree to transfer a worker to another
10 employer that—

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

13 (ii) agrees to accept the person for
14 employment.

15 (b) REMEDIES.—

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

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1 should have been paid and the amount that actually
2 was paid to such worker.

3 (2) FAILURE TO PAY WAGES.—Upon a final de-
4 termination that the employer has failed to pay the
5 wages required under this Act, the Secretary may
6 assess a civil money penalty up to \$1,000 for each
7 person for whom the employer failed to pay the re-
8 quired wage, and may recommend to the Attorney
9 General the disqualification of the employer from the
10 employment of aliens described in section
11 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
12 ality Act for a period of time determined by the Sec-
13 retary not to exceed 1 year.

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

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

20 (B) failed to meet a condition specified in
21 section 401; or

22 (C) committed a serious violation of sub-
23 section (a)(1)(B),

24 the Secretary may seek a cease and desist order and
25 assess a civil money penalty not to exceed \$1,000 for

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1 each violation and may recommend to the Attorney
2 General the disqualification of the employer if the
3 Secretary finds it to be a substantial misrepresenta-
4 tion or violation of the requirements for the employ-
5 ment of any United States workers or aliens de-
6 scribed in section 101(a)(15)(ii)(a) of the Immigra-
7 tion and Nationality Act for a period of time deter-
8 mined by the Secretary not to exceed 1 year. In de-
9 termining the amount of civil money penalty to be
10 assessed or whether to recommend disqualification of
11 the employer, the Secretary shall consider the seri-
12 ousness of the violation, the good faith of the em-
13 ployer, the size of the business of the employer being
14 charged, the history of previous violations by the em-
15 ployer, whether the employer obtained a financial
16 gain from the violation, whether the violation was
17 willful, and other relevant factors.

18 (4) EXPANDED PROGRAM DISQUALIFICATION.—

19 (A) 3 YEARS FOR SECOND VIOLATION.—

20 Upon a second final determination that an em-
21 ployer has failed to pay the wages required
22 under this Act, or a second final determination
23 that the employer has committed another sub-
24 stantial violation under paragraph (3) in the
25 same category of violations, with respect to the

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1 same alien, the Secretary shall report such de-
2 termination to the Attorney General and the
3 Attorney General shall disqualify the employer
4 from the employment of aliens described in sec-
5 tion 101(a)(15)(H)(ii)(a) of the Immigration
6 and Nationality Act for a period of 3 years.

7 (B) PERMANENT FOR THIRD VIOLATION.—

8 Upon a third final determination that an em-
9 ployer has failed to pay the wages required
10 under this section or committed other substan-
11 tial violations under paragraph (3), the Sec-
12 retary shall report such determination to the
13 Attorney General, and the Attorney General
14 shall disqualify the employer from any subse-
15 quent employment of aliens described in section
16 101(a)(15)(H)(ii)(a) of the Immigration and
17 Nationality Act.

18 (c) ROLE OF ASSOCIATIONS.—

19 (1) VIOLATION BY A MEMBER OF AN ASSOCIA-
20 TION.—An employer on whose behalf an application
21 is filed by an association acting as its agent is fully
22 responsible for such application, and for complying
23 with the terms and conditions of this Act, as though
24 the employer had filed the application itself. If such
25 an employer is determined to have violated a re-

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1 requirement of this section, the penalty for such viola-
2 tion shall be assessed against the employer who com-
3 mitted the violation and not against the association
4 or other members of the association.

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

21 (d) STUDY OF AGRICULTURAL LABOR STANDARDS
22 AND ENFORCEMENT.—

23 (1) COMMISSION ON HOUSING MIGRANT AGRI-
24 CULTURAL WORKERS.—

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1 (A) ESTABLISHMENT.—There is estab-
2 lished the Commission on Housing Migrant Ag-
3 ricultural Workers (in this paragraph referred
4 to as the “Commission”).

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

7 (i) Four representatives of agricul-
8 tural employers and one representative of
9 the Department of Agriculture, each ap-
10 pointed by the Secretary of Agriculture.

11 (ii) Four representatives of agricul-
12 tural workers and one representative of the
13 Department of Labor, each appointed by
14 the Secretary of Labor.

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

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

24 (D) INTERIM REPORTS.—The Commission
25 may at any time submit interim reports to Con-

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1 gress describing the findings made up to that
2 time with respect to the study conducted under
3 subparagraph (C).

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

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

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

24 (3) STUDY OF FIELD SANITATION.—The Sec-
25 retary of Labor and the Secretary of Agriculture

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1 shall jointly conduct a study regarding current field
2 sanitation standards in agriculture and evaluate al-
3 ternative approaches and innovations that may fur-
4 ther compliance with such standards.

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

23 (5) REPORT.—Not later than 3 years after the
24 date of enactment of this Act, with respect to each
25 study required to be conducted under paragraphs (2)

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1 through (4), the Secretary or group of Secretaries
2 required to conduct the study shall submit to Con-
3 gress a report setting forth the findings of the study.

4 **SEC. 402. BILATERAL COMMISSIONS.**

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

16 **SEC. 403. REGULATIONS.**

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

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

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

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

6 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

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

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

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

19 (b) DETERMINATION OF SCHEDULE.—

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

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

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

15 (2) PROCEDURE.—

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

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

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

3 (c) USE OF PROCEEDS.—

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

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

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

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

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

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

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

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

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

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

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

3 (4) whether the program has ensured that
4 aliens admitted under this program are not displac-
5 ing eligible, qualified United States workers or di-
6 minishing the wages and other terms and conditions
7 of employment of eligible United States workers;

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

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

19 (7) recommendations for improving the oper-
20 ation of the program for the benefit of participating
21 employers, eligible United States workers, participat-
22 ing aliens, and governmental agencies involved in ad-
23 ministering the program; and

24 (8) recommendations for the continuation or
25 termination of the program under this Act.

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

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

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

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

13 **SEC. 407. EFFECTIVE DATE.**

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

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