

September 18, 1998

MEMORANDUM FOR ELENA KAGAN AND SALLY KATZEN

FROM: JULIE FERNANDES and CECILIA ROUSE

RE: AMENDED WYDEN-GRAHAM AGRICULTURAL GUESTWORKERS BILL

As you know, Senators Wyden and Graham have put forward a series of changes to their bill to reform the H-2A agricultural guestworker program. On Friday morning, you will be meeting with staff of Senators Ron Wyden (D-OR), Bob Graham (D-FL), Edward Kennedy (D-MA), and Dianne Feinstein (D-CA), and Representatives Howard Berman (D-CA), Sanford Bishop (D-GA), and Xavier Becerra (D-CA), to discuss where we are.

Though their new proposal does move in our direction in a few areas (e.g., it restores the requirement that growers reimburse workers for transportation; eliminates the provision that would have required reducing workers wages by 20% as an incentive to repatriate; adds a requirement that growers make a "good faith" effort to assist workers in utilizing the housing voucher), fundamental substantive objections remain. The following is a list of the most significant problems with the new Wyden-Graham proposal.

1. The bill would eliminate the current requirement that growers must conduct private market recruitment for workers, substituting a simple requirement to check a new and untested government-run "job registry".

The core of the Wyden-Graham bill remains the creation of a new "job registry" administered by the government. Under their bill, growers would need only to check this registry before employing H-2A workers. Thus, all responsibility for the recruitment of domestic farmworkers would shift to a new, untried, process for which the government and low-wage workers are entirely responsible. In addition, although this registry would take years to create and implement effectively, employers could begin to hire H-2A workers within 6 months of the enactment of the bill.

At last week's meeting, there was some discussion about extending the start date for the use of the registry from six months to one year after the enactment of the bill. However, even if this change is made, it would not address the fundamental problems with the proposed registry: (1) that use of the registry would relieve the growers of any obligation to do positive recruitment; and (2) that the bill would require wholesale reliance on a method of recruitment that has not been shown to be effective.

2. The bill would erode U.S. worker wages.

The wage provisions of the Wyden-Graham bill have not changed. Under the current program, growers who employ H-2A workers are required to pay all their farmworkers the higher of the prevailing wage (equal to the average local wage for the crop) or an “adverse effect wage rate” (AEWR) (equal to the average statewide wage). The use of the AEWR reflects the fact that foreign workers (both undocumented and H-2A guestworkers) can sometimes dominate a local labor market and depress the local prevailing wage: in such a case, using a statewide calculation (the AEWR) may be more appropriate. The Wyden-Graham bill caps the AEWR at 105% of the local prevailing wage. We continue to believe that this cap is not set high enough to compensate for the depression of wages in areas where there is a heavy reliance on foreign workers and not sufficiently high to attract new U.S. workers into agricultural employment.

In addition, the current proposal from Sens. Wyden and Graham does not include the much-discussed “user fee” (equal to 8½ percent of the H-2A worker’s wage). Without this fee, the wage cost of hiring a U.S. workers remains 8 ½ percent higher than hiring an H-2A worker.

3. The bill does not provide an adequate mechanism for housing foreign guestworkers.

Though the proposal continues to replace the requirement that growers provide housing with a requirement that the growers provide workers with a housing voucher, it now includes a requirement that growers make a “good faith” effort to locate housing for the worker. Though this minimal assistance obligation is an improvement, the fundamental obligation that the grower assure that workers are adequately housed would be eliminated. Also, though the Wyden-Graham proposal permits States to certify that there is inadequate housing for farmworkers (within one year of enactment of the bill), there is no requirement that States make an assessment of their rural housing stock and no incentive for them to do so. Further, even if such a certification is made by a State, the growers may still provide vouchers instead of housing for up to four additional years.

There are many areas (particularly in the West) where there simply is not an adequate supply of rural housing to meet the needs of farmworkers. This proposal does not address that. Rather, it gives a grower a minimum of five years after enactment of the bill to continue to use vouchers, regardless of the availability of adequate housing. Moreover, even with the “good faith” assistance by growers, it remains unrealistic to expect low-wage foreign migrant farmworkers to be able to secure housing using a federal voucher. Thus, many workers will likely end up without housing, or will overcrowd any available rental housing.

4. The bill would eliminate the requirement that growers guarantee part of the work offered to recruit U.S. and foreign workers.

This proposal continues to eliminate the requirement that growers guarantee 3/4 of the work offered to recruit U.S. and foreign farmworkers. Under current law, H-2A workers must be

paid for at least 75% of the work contract period for which they were recruited, except when there is an “act of God.” This “three-fourths guarantee” gives migrant workers some indication of their potential earnings and discourages employers from over-recruiting to secure a labor surplus and drive down wages. Though Wyden’s staff discussed trying to include a modified version of this requirement in their bill, their most recent proposal does not restore this protection. The elimination of the 3/4 guarantee would encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise. The change also could encourage growers to recruit more workers than they actually need to hedge against uncertainties.

The Wyden-Graham proposal would require H-2A workers to be covered under the Migrant and Seasonal Worker Protection Act (MSPA). Under MSPA, U.S. migrant farmworkers appear to enjoy a guarantee of 100% of the work contract period for which they were recruited. There is some internal dispute as to whether Wyden’s proposal to cover H-2A workers under MSPA would mean that H-2A workers would enjoy a 100% work guarantee. No one on either Sen. Wyden’s or Sen. Graham’s staff has claimed that this change would provide such a guarantee.

Latest version of Wyden-Graham

10/7/98

- ① Wages : 105% of prevailing - AEWRCap
Employment can generate prevailing
- ② Registry : same time limits (6 mo. implementation)
- ③ No lock-out } Assurances
- ④ No UI }
- ⑤ Housing - voucher + "good faith" effort to help
- ⑥ Can charge for utilities; maintenance; security deposit
- ⑦ Transportation - status quo
- ⑧ 3/4 guarantee - NO
- ⑨ 50% Rule - only applies to employers in the registry
not when no immigrants on the farm (?)
- ⑩ Enforcement - complaint driven
but DOL can conduct investigations
otherwise authorized.
- ⑪ Immigrant can stay in the U.S. for 14 days in
between jobs.
- ⑫ No 20% repatriation incentive
- ⑬ Requires the creation of a fraud-proof ID card
- ⑭ If an immigrant comes in 4 consecutive years.
(for 6 mo. each year) can apply for perm. work visa.
- ⑮ Children eligible for Head Start
- ⑯ Funded by Job Training Partnership Act
- ⑰ Report to Congress
- ⑱ Kennedy Principles
- ⑲ 6 mo. effective date

“(3) It is the intent of Congress that in making expenditures from the endowment fund under paragraph (1) to carry out activities specified in that paragraph, the Foundation should give priority to funding projects that address the conservation of populations of whales that the Foundation determines—

“(A) are the most endangered (including the northern right whale (*Eubaleana glacialis*)); or

“(B) most warrant, and are most likely to benefit from, research management, or educational activities that may be funded with amounts made available from the fund.

“(g) In carrying out any action on the part of the Foundation under subsection (f), the Directors of the Board shall consult with the Administrator of the National Oceanic and Atmospheric Administration and the Marine Mammal Commission.”.

TITLE XI—TEMPORARY AGRICULTURAL WORKERS

SEC. 1101. SHORT TITLE; TABLE OF CONTENTS. (a)

SHORT TITLE.—This title may be cited as the “Agricultural Job Opportunity Benefits and Security Act of 1998”.

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

Sec. 1101. Short title; table of contents.

Sec. 1102. Definitions.

Sec. 1103. Agricultural worker registries.

- Sec. 1104. Employer applications and assurances.
- Sec. 1105. Search of registry.
- Sec. 1106. Issuance of visas and admission of aliens.
- Sec. 1107. Employment requirements.
- Sec. 1108. Enforcement and penalties.
- Sec. 1109. Alternative program for the admission of temporary H-2A workers.
- Sec. 1110. Inclusion in employment-based immigration preference allocation.
- Sec. 1111. Migrant and seasonal Head Start program.
- Sec. 1112. Regulations.
- Sec. 1113. Funding.
- Sec. 1114. Report to Congress.
- Sec. 1115. Presidential authority.
- Sec. 1116. Effective date.

SEC. 1102. DEFINITIONS. In this title:

(1) *ADVERSE EFFECT WAGE RATE.*—The term “adverse effect wage rate” means the rate of pay for an agricultural occupation that is 5-percent above the prevailing rate of pay for that agricultural occupation in an area of intended employment, if the average hourly equivalent of the prevailing rate of pay for the occupation is less than the prior year’s average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the Secretary of Agriculture. No adverse effect wage rate shall be more than the prior year’s average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the Secretary of Agriculture.

(2) *AGRICULTURAL EMPLOYMENT.*—The term “agricultural employment” means any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C.

203(f)) or section 3121(g) of the Internal Revenue Code of 1986 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

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

(4) *EMPLOYER*.—The term “employer” means any person or entity, including any independent contractor and any agricultural association, that employs workers.

(5) *JOB OPPORTUNITY*.—The term “job opportunity” means a specific period of employment for a worker in one or more specified agricultural activities.

(6) *PREVAILING WAGE*.—The term “prevailing wage” means with respect to an agricultural activity in an area of intended employment, the rate of wages that includes the 51st percentile of employees in that agricultural activity in the area of intended employment, expressed in terms of the prevailing method of

pay for the agricultural activity in the area of intended employment.

(7) *REGISTERED WORKER.*—*The term “registered worker” means an individual whose name appears in a registry.*

(8) *REGISTRY.*—*The term “registry” means an agricultural worker registry established under section 1103(a).*

(9) *SECRETARY.*—*The term “Secretary” means the Secretary of Labor.*

(10) *UNITED STATES WORKER.*—*The term “United States worker” means any worker, whether a United States citizen, a United States national, or an alien who is authorized to work in the job opportunity within the United States other than an alien admitted pursuant to section 101(a)(15)(H)(ii)(a) or 218 of the Immigration and Nationality Act, as in effect on the effective date of this title.*

SEC. 1103. AGRICULTURAL WORKER REGISTRIES. (a)
ESTABLISHMENT OF REGISTRIES.—

(1) *IN GENERAL.*—*The Secretary of Labor shall establish and maintain a system of registries containing a current database of eligible United States workers who seek to perform temporary or seasonal agri-*

cultural work and the employment status of such workers—

(A) to ensure that eligible United States workers are informed about available agricultural job opportunities;

(B) to maximize the work period for eligible United States workers; and

(C) to provide timely referral of such workers to temporary and seasonal agricultural job opportunities in the United States.

(2) COVERAGE.—

(A) SINGLE STATE OR GROUP OF STATES.—
Each registry established under paragraph (1) shall include the job opportunities in a single State, or a group of contiguous States that traditionally share a common pool of seasonal agricultural workers.

(B) REQUESTS FOR INCLUSION.—
Each State requesting inclusion in a registry, or having any group of agricultural producers seeking to utilize the registry, shall be represented by a registry or by a registry of contiguous States.

(b) REGISTRATION.—

(1) IN GENERAL.—
An eligible individual who seeks employment in temporary or seasonal agricul-

tural work may apply to be included in the registry for the State or States in which the individual seeks employment. Such application shall include—

(A) the name and address of the individual;

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

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

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

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

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

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

(2) VALIDATION OF EMPLOYMENT AUTHORIZATION.—No person may be included on any registry unless the Attorney General has certified to the Sec-

retary of Labor that the person is authorized to be employed in the United States.

(3) *WORKERS REFERRED TO JOB OPPORTUNITIES.*—The name of each registered worker who is referred and accepts employment with an employer pursuant to section 1105 shall be classified as inactive on each registry on which the worker is included during the period of employment involved in the job to which the worker was referred, unless the worker reports to the Secretary that the worker is no longer employed and is available for referral to another job opportunity. A registered worker classified as inactive shall not be referred pursuant to section 1105.

(4) *REMOVAL OF NAMES FROM A REGISTRY.*—The Secretary shall remove from all registries the name of any registered worker who, on 3 separate occasions within a 3-month period, is referred to a job opportunity pursuant to this section, and who declines such referral or fails to report to work in a timely manner.

(5) *VOLUNTARY REMOVAL.*—A registered worker may request that the worker's name be removed from a registry or from all registries.

(6) *REMOVAL BY EXPIRATION.*—The application of a registered worker shall expire, and the Secretary

shall remove the name of such worker from all registries if the worker has not accepted a job opportunity pursuant to this section within the preceding 12-month period.

(7) REINSTATEMENT.—A worker whose name is removed from a registry pursuant to paragraph (4), (5), or (6) may apply to the Secretary for reinstatement to such registry at any time.

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

(d) ADVERTISING OF REGISTRIES.—The Secretary shall widely disseminate, through advertising and other means, the existence of the registries for the purpose of encouraging eligible United States workers seeking temporary or seasonal agricultural job opportunities to register.

SEC. 1104. EMPLOYER APPLICATIONS AND ASSURANCES. (a) APPLICATIONS TO THE SECRETARY.—

(1) IN GENERAL.—Not later than 21 days prior to the date on which an agricultural employer desires to employ a registered worker in a temporary or seasonal agricultural job opportunity, the employer shall

apply to the Secretary for the referral of a United States worker through a search of the appropriate registry, in accordance with section 1105. Such application shall—

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

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

(C) indicate the number of job opportunities in which the employer seeks to employ workers from the registry;

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

(E) describe the wages and other terms and conditions of employment the employer will offer, which shall not be less (and are not required to be more) than those required by this section;

(F) contain the assurances required by subsection (c); and

(G) specify the foreign country or region thereof from which alien workers should be ad-

mitted in the case of a failure to refer United States workers under this title.

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

(A) IN GENERAL.—An agricultural association may file an application under paragraph (1) for registered workers on behalf of its employer members.

(B) EMPLOYERS.—An application under subparagraph (A) shall cover those employer members of the association that the association certifies in its application have agreed in writing to comply with the requirements of this title.

(b) AMENDMENT OF APPLICATIONS.—Prior to receiving a referral of workers from a registry, an employer may amend an application under this subsection if the employer's need for workers changes. If an employer amends an application on a date which is later than 21 days prior to the date on which the workers on the amended application are sought to be employed, the Secretary may delay issuance of the report described in section 1105(b) by the number of days by which the filing of the amended application is later than 21 days before the date on which the employer desires to employ workers.

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

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

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

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

(B) *SEASONAL BASIS.*—*For purposes of this title, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.*

(C) *TEMPORARY BASIS.*—*For purposes of this title, a worker is employed on a temporary*

basis where the employment is intended not to exceed 10 months.

(3) *ASSURANCE OF PROVISION OF REQUIRED WAGES AND BENEFITS.*—*The employer shall assure that the employer will provide the wages and benefits required by subsections (a), (b), and (c) of section 1107 to all workers employed in job opportunities for which the employer has applied under subsection (a) and to all other workers in the same occupation at the place of employment.*

(4) *ASSURANCE OF EMPLOYMENT.*—*The employer shall assure that the employer will refuse to employ individuals referred under section 1105, or terminate individuals employed pursuant to this title, only for lawful job-related reasons, including lack of work.*

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

(A) *IN GENERAL.*—*An employer who requests registered workers shall assure that, except as otherwise provided in this title, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with*

respect to all United States workers and alien workers employed by the employer.

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

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

(7) ASSURANCE OF CONTACTING FORMER WORKERS.—The employer shall assure that the employer has made reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any eligible worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for registered workers, and has

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

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

(d) *WITHDRAWAL OF APPLICATIONS.*—

(1) *IN GENERAL.*—*An employer may withdraw an application under subsection (a), except that, if the employer is an agricultural association, the association may withdraw an application under subsection (a) with respect to one or more of its members. To withdraw an application, the employer shall notify the Secretary in writing, and the Secretary shall*

acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

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

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

(e) REVIEW OF APPLICATION.—

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

(2) APPROVAL OF APPLICATIONS.—If the Secretary determines that an application meets the requirements of subsection (a), and the employer is not ineligible to apply under paragraph (2), (3), or (4)

of section 1108(b), the Secretary shall, not later than 7 days after the receipt of such application, approve the application and so notify the employer.

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

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

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

(4) REJECTION FOR PROGRAM VIOLATIONS.—The Secretary shall reject the application of an employer under this section if the employer has been determined to be ineligible to employ workers under section 1108(b) or subsection (b)(2) of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188).

SEC. 1105. SEARCH OF REGISTRY. (a) SEARCH PROCESS AND REFERRAL TO THE EMPLOYER.—Upon the approval of an application under section 1104(e), the Secretary shall promptly begin a search of the registry of the State (or States) in which the work is to be performed to identify registered workers with the qualifications requested by the employer. The Secretary shall contact such qualified registered workers and determine, in each instance, whether the worker is ready, willing, and able to accept the employer's job opportunity and will commit to work for the employer at the time and place needed. The Secretary shall provide to each worker who commits to work for the employer the employer's name, address, telephone number, the location where the employer has requested that employees report for employment, and a statement disclosing the terms and conditions of employment.

(b) DEADLINE FOR COMPLETING SEARCH PROCESS; REFERRAL OF WORKERS.—As expeditiously as possible, but not later than 7 days before the date on which an employer desires work to begin, the Secretary shall complete the search under subsection (a) and shall transmit to the employer a report containing the name, address, and social security account number of each registered worker who has committed to work for the employer on the date needed, together with sufficient information to enable the em-

ployer to establish contact with the worker. The identification of such registered workers in a report shall constitute a referral of workers under this section.

(c) NOTICE OF INSUFFICIENT WORKERS.—If the report provided to the employer under subsection (b) does not include referral of a sufficient number of registered workers to fill all of the employer's job opportunities in the occupation for which the employer applied under section 1104(a), the Secretary shall indicate in the report the number of job opportunities for which registered workers could not be referred, and promptly transmit a copy of the report to the Attorney General and the Secretary of State, by electronic or other means ensuring next day delivery.

SEC. 1106. ISSUANCE OF VISAS AND ADMISSION OF ALIENS. (a) IN GENERAL.—

(1) NUMBER OF ADMISSIONS.—The Secretary of State shall promptly issue visas to, and the Attorney General shall admit, a sufficient number of eligible aliens designated by the employer to fill the job opportunities of the employer—

(A) upon receipt of a copy of the report described in section 1105(c);

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

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

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

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

(3) *AGRICULTURAL ASSOCIATIONS.*—Aliens admitted pursuant to a report described in paragraph (1) may be employed by any member of the agricultural association that has made the certification required by section 1104(a)(2)(B). Independent contractors, agricultural associations, and such similar entities shall be subject to a cap on the number of H2-A visas that they may sponsor at the discretion of the Secretary of Labor.

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

(1) *APPLICATION TO THE SECRETARY OF STATE.*—If the employer has not received a referral of sufficient workers pursuant to section 1105(b) or a report of insufficient workers pursuant to section 1105(c), by the date that is 7 days before the date on which the work is anticipated to begin, the employer may submit an application for alien workers directly

to the Secretary of State, with a copy of the application provided to the Attorney General, seeking the issuance of visas to and the admission of aliens for employment in the job opportunities for which the employer has not received referral of registered workers. Such an application shall include a copy of the employer's application under section 1104(a), together with evidence of its timely submission. The Secretary of State may consult with the Secretary of Labor in carrying out this paragraph.

(2) EXPEDITED CONSIDERATION BY SECRETARY OF STATE.—The Secretary of State shall, as expeditiously as possible, but not later than 5 days after the employer files an application under paragraph (1), issue visas to, and the Attorney General shall admit, a sufficient number of eligible aliens designated by the employer to fill the job opportunities for which the employer has applied under that paragraph.

(c) REDETERMINATION OF NEED.—

(1) REQUESTS FOR REDETERMINATION.—

(A) IN GENERAL.—An employer may file a request for a redetermination by the Secretary of the needs of the employer if—

(i) a worker referred from the registry is not at the place of employment on the

date of need shown on the application, or the date the work for which the worker is needed has begun, whichever is later;

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

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

(B) ADDITIONAL AUTHORIZATION OF ADMISSIONS.—The Secretary shall expeditiously, but in no case later than 72 hours after a re-determination is requested under subparagraph (A), submit a report to the Secretary of State and the Attorney General providing notice of a need for workers under this subsection.

(2) JOB-RELATED REQUIREMENTS.—An employer shall not be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful, job-related standards of conduct and performance, including failure to meet minimum production standards after a 3-day break-in period.

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

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

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

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

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

SEC. 1107. EMPLOYMENT REQUIREMENTS. (a) REQUIRED WAGES.—

(1) *IN GENERAL.*—An employer applying under section 1104(a) for workers shall offer to pay, and shall pay, all workers in the occupation or occupations for which the employer has applied for workers

from the registry, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate.

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

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

(4) ALTERNATIVE METHODS OF PAYMENT PERMITTED.—

(A) IN GENERAL.—A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate, or other incentive payment method, including a group rate. The requirement to pay at

least the prevailing wage in the occupation and area of intended employment does not require an employer to pay by the method of pay in which the prevailing rate is expressed, except that, if the employer adopts a method of pay other than the prevailing rate, the burden of proof is on the employer to demonstrate that the employer's method of pay is designed to produce earnings equivalent to the earnings that would result from payment of the prevailing rate.

(B) COMPLIANCE WHEN PAYING AN INCENTIVE RATE.—In the case of an employer that pays a piece rate or task rate or uses any other incentive payment method, including a group rate, the employer shall be considered to be in compliance with any applicable hourly wage requirement if the average of the hourly earnings of the workers, taken as a group, the activity for which a piece rate, task rate, or other incentive payment, including a group rate, is paid, for the pay period, is at least equal to the required hourly wage.

(C) TASK RATE.—For purposes of this paragraph, the term "task rate" means an incentive payment method based on a unit of work

performed such that the incentive rate varies with the level of effort required to perform individual units of work.

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

(b) REQUIREMENT TO PROVIDE HOUSING.—

(1) IN GENERAL.—An employer applying under section 1104(a) for registered workers shall offer to provide housing at no cost (except for charges permitted by paragraph (5)) to all workers employed in job opportunities to which the employer has applied under that section, and to all other workers in the same occupation at the place of employment, whose permanent place of residence is beyond normal commuting distance.

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

sence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation.

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

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

(5) CHARGES FOR HOUSING.—

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

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

from workers occupying such housing to protect against gross negligence or willful destruction of property.

(C) DAMAGES.—An employer who provides housing to workers pursuant to paragraph (1) may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

(6) HOUSING ALLOWANCE AS ALTERNATIVE.—

(A) IN GENERAL.—In lieu of offering housing pursuant to paragraph (1), subject to subparagraphs (B) through (D), the employer may on a case-by-case basis provide a reasonable housing allowance. An employer who offers a housing allowance to a worker pursuant to this subparagraph shall not be deemed to be a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance.

(B) LIMITATION.—At any time after the date that is 3 years after the effective date of this title, the governor of the State may certify to the

Secretary that there is not sufficient housing available in an area of intended employment of migrant farm workers or aliens provided status pursuant to this title who are seeking temporary housing while employed at farm work. Such certification may be canceled by the governor of the State at any time, and shall expire after 5 years unless renewed by the governor of the State.

(C) EFFECT OF CERTIFICATION.—If the governor of the State makes the certification of insufficient housing described in subparagraph (A) with respect to an area of employment, employers of workers in that area of employment may not offer the housing allowance described in subparagraph (A) after the date that is 5 years after such certification of insufficient housing for such area, unless the certification has expired or been canceled pursuant to subparagraph (B).

(D) AMOUNT OF ALLOWANCE.—The amount of a housing allowance under this paragraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State in which the employment occurs, as established by the Secretary of Housing and Urban Development pursuant to

section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(c) REIMBURSEMENT OF TRANSPORTATION.—

(1) TO PLACE OF EMPLOYMENT.—A worker who is referred to a job opportunity under section 1105(a), or an alien employed pursuant to this title, who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, may apply to the employer for reimbursement of the cost of the worker's transportation and subsistence from the worker's permanent place of residence (or place of last employment, if the worker traveled from such place) to the place of employment to which the worker was referred under section 1105(a).

(2) FROM PLACE OF EMPLOYMENT.—A worker who is referred to a job opportunity under section 1105(a), or an alien employed pursuant to this title, who completes the period of employment for the job opportunity involved, may apply to the employer for reimbursement of the cost of the worker's transportation and subsistence from the place of employment to the worker's permanent place of residence.

(3) LIMITATION.—

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

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

(ii) the most economical and reasonable transportation and subsistence costs that would have been incurred had the worker or alien used an appropriate common carrier, as determined by the Secretary.

(B) DISTANCE TRAVELED.—No reimbursement under paragraph (1) or (2) shall be required if the distance traveled is 100 miles or less.

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

(1) IN GENERAL.—An employer that applies for registered workers under section 1104(a) shall, as a condition for the approval of such application, continue to offer employment to qualified, eligible United States workers who are referred under section 1105(b)

after the employer receives the report described in section 1105(b).

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

(A) after 50 percent of the anticipated period of employment shown on the employer's application under section 1104(a) has elapsed; or

(B) during any period in which the employer is employing no aliens in the occupation for which the United States worker was referred; or

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

(3) LIMITATION ON REQUIREMENT TO PROVIDE HOUSING.—Notwithstanding any other provision of this title, an employer to whom a registered worker is referred pursuant to paragraph (1) may provide a reasonable housing allowance to such referred worker in lieu of providing housing if the employer does not

have sufficient housing to accommodate the referred worker and all other workers for whom the employer is providing housing or has committed to provide housing.

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

SEC. 1108. ENFORCEMENT AND PENALTIES. (a) ENFORCEMENT AUTHORITY.—

(1) INVESTIGATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in section 1104 or an employer's misrepresentation of material facts in an application under that section. Complaints may be filed by any aggrieved person or any organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint con-

cerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, as the case may be. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

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

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

(b) REMEDIES.—

(1) *BACK WAGES.*—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

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

(3) *OTHER VIOLATIONS.*—If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an application under section 1104(a) has—

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

(B) failed to meet a condition specified in section 1104,

the Secretary may assess a civil money penalty not to exceed \$1,000 for each violation and may recommend to the Attorney General the disqualification of the employer for substantial violations in the employment of any United States workers or aliens described in section 101(a)(15)(ii)(a) of the Immigration and Nationality Act for a period of time determined by the Secretary not to exceed 1 year. In determining the amount of civil money penalty to be assessed or whether to recommend disqualification of the employer, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, whether the employer obtained a financial gain from the violation, whether the violation was willful, and other relevant factors.

(4) PROGRAM DISQUALIFICATION.—

(A) 3 YEARS FOR SECOND VIOLATION.—

Upon a second final determination that an employer has failed to pay the wages required

under this title or committed other substantial violations under paragraph (3), the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act for a period of 3 years.

(B) PERMANENT FOR THIRD VIOLATION.—

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

(c) ROLE OF ASSOCIATIONS.—

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

the employer had filed the application itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer who committed the violation and not against the association or other members of the association.

(2) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program under subsection (b), no individual member of such association may be the beneficiary of the services of an alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act in an occupation in which such alien was employed by the association during the period such disqualification is in effect, unless such member files an application as an individual employer or such application is filed on the employer's behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this title.

SEC. 1109. ALTERNATIVE PROGRAM FOR THE ADMISSION OF TEMPORARY H-2A WORKERS. (a) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—

(1) *ELECTION OF PROCEDURES.*—Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended—

(A) by striking the fifth and sixth sentences;

(B) by striking “(c)(1) The” and inserting “(c)(1)(A) Except as provided in subparagraph (B), the”; and

(C) by adding at the end the following new subparagraph:

“(B) Notwithstanding subparagraph (A), in the case of the importing of any nonimmigrant alien described in section 101(a)(15)(H)(ii)(a), the importing employer may elect to import the alien under the procedures of section 218 or section 218A, except that any employer that applies for registered workers under section 1104(a) of the Agricultural Job Opportunity Benefits and Security Act of 1998 shall import nonimmigrants described in section 101(a)(15)(H)(ii)(a) only in accordance with section 218A. For purposes of subparagraph (A), with respect to the importing of nonimmigrants under section 218, the term ‘appropriate agencies of Government’ means the Department of

Labor and includes the Department of Agriculture.”

(2) ALTERNATIVE PROGRAM.—The Immigration and Nationality Act is amended by inserting after section 218 (8 U.S.C. 1188) the following new section:

“ALTERNATIVE PROGRAM FOR THE ADMISSION OF

TEMPORARY H-2A WORKERS

“SEC. 218A. (a) PROCEDURE FOR ADMISSION OR EXTENSION OF ALIENS.—

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

“(A) CRITERIA FOR ADMISSIBILITY.—

“(i) IN GENERAL.—An alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act shall be admissible under this section if the alien is designated pursuant to section 1106 of the Agricultural Job Opportunity Benefits and Security Act of 1998, otherwise admissible under this Act, and the alien is not ineligible under clause (ii).

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

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

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

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

“(B) PERIOD OF ADMISSION.—The alien shall be admitted for the period requested by the employer not to exceed 10 months, or the ending date of the anticipated period of employment on the employer’s application for registered workers, whichever is less, plus an additional period of 14

days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien's work authorization, the alien is not authorized to be employed unless an employer who is authorized to employ such worker has filed an extension of stay on behalf of the alien pursuant to paragraph (2).

“(C) ABANDONMENT OF EMPLOYMENT.—

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

“(ii) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Attorney General within 7 days of an alien admitted or provided status under this Act pursuant to an application to the Secretary of Labor under section 1106 of the Agricultural Job

Opportunity Benefits and Security Act of 1998 by the employer who prematurely abandons the alien's employment.

“(D) ISSUANCE OF IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—

“(i) IN GENERAL.—The Attorney General shall cause to be issued to each alien admitted under this section a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

“(ii) DESIGN OF CARD.—Each card issued pursuant to clause (i) shall be designed in such a manner and contain a photograph and other identifying information (such as date of birth, sex, and distinguishing marks) that would allow an employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual, and shall—

“(I) specify the date of the alien's acquisition of status under this section;

“(II) specify the expiration date of the alien's work authorization; and

“(III) specify the alien’s admission number or alien file number.

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

“(A) EXTENSION OF STAY.—If an employer with respect to whom a report or application described in section 1106(a)(1) of the Agricultural Job Opportunity Benefits and Security Act of 1998 has been submitted seeks to employ an alien who has acquired status under this section and who is present in the United States, the employer shall file with the Attorney General an application for an extension of the alien’s stay or a change in the alien’s authorized employment. The application shall be accompanied by a copy of the appropriate report or application described in section 1106 of the Agricultural Job Opportunity Benefits and Security Act of 1998.

“(B) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY.—An application 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 United States. Upon approval of an application for an extension of stay or change in the alien’s authorized employment, the Attorney General shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after

which the alien is not required to retain a copy of the application.

“(D) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY CARD.—An expired identification and employment eligibility document, together with a copy of an application for extension of stay or change in the alien’s authorized employment, shall constitute a valid work authorization document for a period of not more than 60 days from the date of application for the extension of stay, after which time only a currently valid identification and employment eligibility document shall be acceptable.

“(E) LIMITATION ON AN INDIVIDUAL’S STAY IN STATUS.—An alien having status under this section may not have the status extended for a continuous period longer than 3 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which a nonimmigrant visa issued under section 101(a)(15)(H)(ii)(a) is valid. If the alien has resided in the United

States 10 months or less, an absence breaks the continuity of the period if it lasts for at least 2 months. If the alien has resided in the United States 10 months or more, an absence breaks the continuity of the period if it lasts for at least one-fifth the duration of the stay.

“(b) STUDY BY THE ATTORNEY GENERAL.—The Attorney General shall conduct a study to determine whether aliens under this section depart the United States in a timely manner upon the expiration of their period of authorized stay. If the Attorney General finds that a significant number of aliens do not so depart and that a financial inducement is necessary to assure such departure, then the Attorney General shall so report to Congress and make recommendations on appropriate courses of action.”.

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

(c) CONFORMING AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 218 the following new item:

“Sec. 218A. Alternative program for the admission of H-2A workers.”.

(d) REPEAL AND ADDITIONAL CONFORMING AMENDMENTS.—

(1) REPEAL.—Section 218 of the Immigration and Nationality Act is repealed.

(2) TECHNICAL AMENDMENTS.—(A) Section 218A of the Immigration and Nationality Act is redesignated as section 218.

(B) The table of contents of that Act is amended by striking the item relating to section 218A.

(C) The section heading for section 218 of that Act is amended by striking “ALTERNATIVE PROGRAM FOR”.

(3) TERMINATION OF EMPLOYER ELECTION.—Section 214(c)(1)(B) of the Immigration and Nationality Act is amended to read as follows:

“(B) Notwithstanding subparagraph (A), the procedures of section 218 shall apply to the importing of any nonimmigrant alien described in section 101(a)(15)(H)(ii)(a).”.

(4) MAINTENANCE OF CERTAIN SECTION 218 PROVISIONS.—Section 218 (as redesignated by paragraph (2) of this subsection) is amended by adding at the end the following:

“(d) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and

exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

“(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of non-immigrant workers.”.

(5) EFFECTIVE DATE.—The repeal and amendments made by this subsection shall take effect 5 years after the date of enactment of this title.

SEC. 1110. INCLUSION IN EMPLOYMENT-BASED IMMIGRATION PREFERENCE ALLOCATION. (a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 203(b)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)(A)) is amended—

(1) by redesignating clause (iii) as clause (iv);
and

(2) by inserting after clause (ii) the following:

“(iii) AGRICULTURAL WORKERS.—

Qualified immigrants who have completed at least 6 months of work in the United States in each of 4 consecutive calendar years under section 101(a)(15)(H)(ii)(a), and have complied with all terms and conditions applicable to that section.”.

(b) *CONFORMING AMENDMENT.*—Section 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)(A)) is amended by striking “subparagraph (A)(iii)” and inserting “subparagraph (A)(iv)”.

(c) *EFFECTIVE DATE.*—The amendments made by subsections (a) and (b) shall apply to aliens described in section 101(a)(15)(H)(ii)(a) admitted to the United States before, on, or after the effective date of this title.

SEC. 1111. MIGRANT AND SEASONAL HEAD START PROGRAM. (a) *IN GENERAL.*—Section 637(12) of the Head Start Act (42 U.S.C. 9832(12)) is amended—

(1) by inserting “and seasonal” after “migrant”;
and

(2) by inserting before the period the following:
“, or families whose incomes or labor is primarily dedicated to performing seasonal agricultural labor for hire but whose places of residency have not changed to another geographic location in the preceding 2-year period”.

(b) *FUNDS SET-ASIDE.*—Section 640(a) (42 U.S.C. 9835(a)) is amended—

(1) in paragraph (2), strike “13” and insert “14”;

(2) in paragraph (2)(A), by striking “1994” and inserting “1998”; and

(3) by adding at the end the following new paragraph:

“(8) In determining the need for migrant and seasonal Head Start programs and services, the Secretary shall consult with the Secretary of Labor, other public and private entities, and providers. Notwithstanding paragraph (2)(A), after conducting such consultation, the Secretary shall further adjust the amount available for such programs and services, taking into consideration the need and demand for such services.”.

SEC. 1112. REGULATIONS. (a) REGULATIONS OF THE ATTORNEY GENERAL.—The Attorney General shall consult with the Secretary and the Secretary of Agriculture on all regulations to implement the duties of the Attorney General under this title.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Attorney General on all regulations to implement the duties of the Secretary of State under this title.

SEC. 1113. FUNDING. If additional funds are necessary to pay the start-up costs of the registries established under section 1103(a), such costs may be paid out of amounts available to Federal or State governmental entities under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

Except as provided for by subsequent appropriation, additional expenses incurred for administration by the Attorney General, the Secretary of Labor, and the Secretary of State shall be paid for out of appropriations otherwise made available to their respective departments.

SEC. 1114. REPORT TO CONGRESS. Not later than 3 years after the date of enactment of this Act and 5 years after the date of enactment of this Act, the Attorney General and the Secretaries of Agriculture and Labor shall jointly prepare and transmit to Congress a report describing the results of a review of the implementation of and compliance with this title. The report shall address—

(1) whether the program has ensured an adequate and timely supply of qualified, eligible workers at the time and place needed by employers;

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

(3) whether the program has ensured that participating employers comply with the requirements of the program with respect to the employment of United States workers and aliens admitted under this program;

(4) *whether the program has ensured that aliens admitted under this program are not displacing eligible, qualified United States workers or diminishing the wages and other terms and conditions of employment of eligible United States workers;*

(5) *whether the housing provisions of this program ensure that adequate housing is available to workers employed under this program who are required to be provided housing or a housing allowance; and*

(6) *recommendations for improving the operation of the program for the benefit of participating employers, eligible United States workers, participating aliens, and governmental agencies involved in administering the program.*

SEC. 1115. PRESIDENTIAL AUTHORITY. In implementing this title, the President of the United States shall not implement any provision that he deems to be in violation of any of the following principles—

(1) *where the procedures for using the program are simple and the least burdensome for growers;*

(2) *which assures an adequate labor supply for growers in a predictable and timely manner;*

(3) *that provides a clear and meaningful first preference for United States farm workers and a*

means for mitigating against the development of a structural dependency on foreign workers in an area or crop;

(4) which avoids the transfer of costs and risks from businesses to low wage workers;

(5) that encourages longer periods of employment for legal United States workers;

(6) 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.

SEC. 1116. EFFECTIVE DATE. This title and the amendments made by this title shall take effect 180 days after the date of enactment of this title.

This Act may be cited as the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999".

; And the Senate agree to the same.