

108TH CONGRESS
1ST SESSION

S. 1645

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 2003

Mr. CRAIG (for himself, Mr. KENNEDY, Mr. SMITH, Mr. GRAHAM of Florida, Mr. COCHRAN, Mr. SCHUMER, Mr. GREGG, Mr. LIEBERMAN, Mr. MCCAIN, Mr. KERRY, Mr. HAGEL, Ms. CANTWELL, Mr. VOINOVICH, Mr. WYDEN, Mr. COLEMAN, Mrs. CLINTON, Mr. DEWINE, Mrs. BOXER, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LAWFUL STATUS

Sec. 101. Agricultural workers.

Sec. 102. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

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

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **AGRICULTURAL EMPLOYMENT.**—The term
 10 “agricultural employment” means any service or ac-
 11 tivity that is considered to be agricultural under sec-
 12 tion 3(f) of the Fair Labor Standards Act of 1938
 13 (29 U.S.C. 203(f)) or agricultural labor under sec-
 14 tion 3121(g) of the Internal Revenue Code of 1986
 15 (26 U.S.C. 3121(g)). For purposes of this para-
 16 graph, agricultural employment includes employment
 17 under section 101(a)(15)(H)(ii)(a) of the Immigra-

1 tion and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(ii)(a)).

3 (2) EMPLOYER.—The term “employer” means
4 any person or entity, including any farm labor con-
5 tractor and any agricultural association, that em-
6 ploys workers in agricultural employment.

7 (3) JOB OPPORTUNITY.—The term “job oppor-
8 tunity” means a job opening for temporary full-time
9 employment at a place in the United States to which
10 United States workers can be referred.

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of Homeland Security.

13 (5) TEMPORARY.—A worker is employed on a
14 “temporary” basis where the employment is in-
15 tended not to exceed 10 months.

16 (6) UNITED STATES WORKER.—The term
17 “United States worker” means any worker, whether
18 a United States citizen or national, a lawfully admit-
19 ted permanent resident alien, or any other alien,
20 who is authorized to work in the job opportunity
21 within the United States, except an alien admitted
22 or otherwise provided status under section
23 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

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

4 **TITLE I—ADJUSTMENT TO**
5 **LAWFUL STATUS**

6 **SEC. 101. AGRICULTURAL WORKERS.**

7 (a) TEMPORARY RESIDENT STATUS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary shall confer upon an
10 alien who qualifies under this subsection the status
11 of an alien lawfully admitted for temporary residence
12 if the Secretary determines that the following re-
13 quirements are satisfied with respect to the alien:

14 (A) PERFORMANCE OF AGRICULTURAL EM-
15 PLOYMENT IN THE UNITED STATES.—The alien
16 must establish that the alien has performed ag-
17 ricultural employment in the United States for
18 at least 575 hours or 100 work days, whichever
19 is less, during any 12 consecutive months dur-
20 ing the 18-month period ending on August 31,
21 2003.

22 (B) APPLICATION PERIOD.—The alien
23 must apply for such status during the 18-month
24 application period beginning on the 1st day of

1 the 7th month that begins after the date of en-
2 actment of this Act.

3 (C) ADMISSIBLE AS IMMIGRANT.—The
4 alien must establish that the alien is otherwise
5 admissible to the United States under section
6 212 of the Immigration and Nationality Act (8
7 U.S.C. 1182), except as otherwise provided
8 under subsection (e)(2).

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

15 (3) AUTHORIZED EMPLOYMENT.—During the
16 period an alien is in lawful temporary resident sta-
17 tus granted under this subsection, the alien shall be
18 provided an “employment authorized” endorsement
19 or other appropriate work permit, in the same man-
20 ner as an alien lawfully admitted for permanent resi-
21 dence.

22 (4) TERMINATION OF TEMPORARY RESIDENT
23 STATUS.—During the period of temporary resident
24 status granted an alien under this subsection, the
25 Secretary may terminate such status only upon a de-

1 termination under this Act that the alien is deport-
2 able.

3 (5) RECORD OF EMPLOYMENT.—

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

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

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

11 (B) SUNSET.—The obligation under sub-
12 paragraph (A) terminates on August 31, 2009.

13 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-
14 DENT STATUS.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, an alien who acquires the
17 status of an alien lawfully admitted for temporary
18 residence under subsection (a), such status not hav-
19 ing changed, shall be considered to be an alien law-
20 fully admitted for permanent residence for purposes
21 of any law other than any provision of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1101 et seq.).

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

1 (A) PROHIBITION.—No alien granted sta-
2 tus under subsection (a) may be terminated
3 from employment by any employer during the
4 period of temporary resident status except for
5 just cause.

6 (B) TREATMENT OF COMPLAINTS.—

7 (i) ESTABLISHMENT OF PROCESS.—

8 The Secretary shall establish a process for
9 the receipt, initial review, and disposition
10 in accordance with this subparagraph of
11 complaints by aliens granted temporary
12 resident status under subsection (a) who
13 allege that they have been terminated with-
14 out just cause. No proceeding shall be con-
15 ducted under this subparagraph with re-
16 spect to a termination unless the Secretary
17 determines that the complaint was filed
18 not later than 6 months after the date of
19 the termination.

20 (ii) INITIATION OF ARBITRATION.—If

21 the Secretary finds that a complaint has
22 been filed in accordance with clause (i) and
23 there is reasonable cause to believe that
24 the complainant was terminated without
25 just cause, the Secretary shall initiate

1 binding arbitration proceedings by request-
2 ing the Federal Mediation and Conciliation
3 Service to appoint a mutually agreeable ar-
4 bitrator from the roster of arbitrators
5 maintained by such Service for the geo-
6 graphical area in which the employer is lo-
7 cated. The procedures and rules of such
8 Service shall be applicable to the selection
9 of such arbitrator and to such arbitration
10 proceedings. The Secretary shall pay the
11 fee and expenses of the arbitrator.

12 (iii) ARBITRATION PROCEEDINGS.—

13 The arbitrator shall conduct the pro-
14 ceeding in accordance with the policies and
15 procedures promulgated by the American
16 Arbitration Association applicable to pri-
17 vate arbitration of employment disputes.
18 The arbitrator shall make findings respect-
19 ing whether the termination was for just
20 cause. The arbitrator may not find that
21 the termination was for just cause unless
22 the employer so demonstrates by a prepon-
23 derance of the evidence. If the arbitrator
24 finds that the termination was not for just
25 cause, the arbitrator shall make a specific

1 finding of the number of days or hours of
2 work lost by the employee as a result of
3 the termination. The arbitrator shall have
4 no authority to order any other remedy, in-
5 cluding, but not limited to, reinstatement,
6 back pay, or front pay to the affected em-
7 ployee. Within 30 days from the conclusion
8 of the arbitration proceeding, the arbi-
9 trator shall transmit the findings in the
10 form of a written opinion to the parties to
11 the arbitration and the Secretary. Such
12 findings shall be final and conclusive, and
13 no official or court of the United States
14 shall have the power or jurisdiction to re-
15 view any such findings.

16 (iv) EFFECT OF ARBITRATION FIND-
17 INGS.—If the Secretary receives a finding
18 of an arbitrator that an employer has ter-
19 minated an alien granted temporary resi-
20 dent status under subsection (a) without
21 just cause, the Secretary shall credit the
22 alien for the number of days or hours of
23 work lost for purposes of the requirement
24 of subsection (c)(1).

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

5 (vi) NONEXCLUSIVE REMEDY.—The
6 complaint process provided for in this sub-
7 paragraph is in addition to any other
8 rights an employee may have in accordance
9 with applicable law.

10 (vii) EFFECT ON OTHER ACTIONS OR
11 PROCEEDINGS.—Any finding of fact or
12 law, judgment, conclusion, or final order
13 made by an arbitrator in the proceeding
14 before the Secretary shall not be conclusive
15 or binding in any separate or subsequent
16 action or proceeding between the employee
17 and the employee's current or prior em-
18 ployer brought before an arbitrator, admin-
19 istrative agency, court, or judge of any
20 State or the United States, regardless of
21 whether the prior action was between the
22 same or related parties or involved the
23 same facts, except that the arbitrator's
24 specific finding of the number of days or
25 hours of work lost by the employee as a re-

1 sult of the employment termination may be
2 referred to the Secretary pursuant to
3 clause (iv).

4 (C) CIVIL PENALTIES.—

5 (i) IN GENERAL.—If the Secretary
6 finds, after notice and opportunity for a
7 hearing, that an employer of an alien
8 granted temporary resident status under
9 subsection (a) has failed to provide the
10 record of employment required under sub-
11 section (a)(5) or has provided a false state-
12 ment of material fact in such a record, the
13 employer shall be subject to a civil money
14 penalty in an amount not to exceed \$1,000
15 per violation.

16 (ii) LIMITATION.—The penalty appli-
17 cable under clause (i) for failure to provide
18 records shall not apply unless the alien has
19 provided the employer with evidence of em-
20 ployment authorization granted under this
21 section.

22 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

23 (1) AGRICULTURAL WORKERS.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the Secretary shall adjust

1 the status of an alien granted lawful temporary
2 resident status under subsection (a) to that of
3 an alien lawfully admitted for permanent resi-
4 dence if the Secretary determines that the fol-
5 lowing requirements are satisfied:

6 (i) QUALIFYING EMPLOYMENT.—The
7 alien has performed at least 2,060 hours
8 or 360 work days, whichever is less, of ag-
9 ricultural employment in the United
10 States, during the period beginning on
11 September 1, 2003, and ending on August
12 31, 2009.

13 (ii) QUALIFYING YEARS.—The alien
14 has performed at least 430 hours or 75
15 work days, whichever is less, of agricul-
16 tural employment in the United States in
17 at least 3 nonoverlapping periods of 12
18 consecutive months during the period be-
19 ginning on September 1, 2003, and ending
20 on August 31, 2009. Qualifying periods
21 under this clause may include nonconsecu-
22 tive 12-month periods.

23 (iii) QUALIFYING WORK IN FIRST 3
24 YEARS.—The alien has performed at least
25 1,380 hours or 240 work days, whichever

1 is less, of agricultural employment during
2 the period beginning on September 1,
3 2003, and ending on August 31, 2006.

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

7 (v) PROOF.—In meeting the require-
8 ments of clauses (i), (ii), and (iii), an alien
9 may submit the record of employment de-
10 scribed in subsection (a)(5) or such docu-
11 mentation as may be submitted under sub-
12 section (d)(3).

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

23 (B) GROUNDS FOR DENIAL OF ADJUST-
24 MENT OF STATUS.—The Secretary may deny an
25 alien adjustment to permanent resident status,

1 and provide for termination of the temporary
2 resident status granted such alien under sub-
3 section (a), if—

4 (i) the Secretary finds by a prepon-
5 derance of the evidence that the adjust-
6 ment to temporary resident status was the
7 result of fraud or willful misrepresentation,
8 as described in section 212(a)(6)(C)(i) of
9 the Immigration and Nationality Act (8
10 U.S.C. 1182(a)(6)(C)(i)); or

11 (ii) the alien—

12 (I) commits an act that makes
13 the alien inadmissible to the United
14 States under section 212 of the Immi-
15 gration and Nationality Act (8 U.S.C.
16 1182), except as provided under sub-
17 section (e)(2); or

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

21 (C) GROUNDS FOR REMOVAL.—Any alien
22 granted temporary resident status under sub-
23 section (a) who does not apply for adjustment
24 of status under this subsection before the expi-
25 ration of the application period described in

1 subparagraph (A)(iv), or who fails to meet the
2 other requirements of subparagraph (A) by the
3 end of the applicable period, is deportable and
4 may be removed under section 240 of the Immi-
5 gration and Nationality Act (8 U.S.C. 1229a).
6 The Secretary shall issue regulations estab-
7 lishing grounds to waive subparagraph (A)(iii)
8 with respect to an alien who has completed at
9 least 200 days of the work requirement speci-
10 fied in such subparagraph in the event of a nat-
11 ural disaster which substantially limits the
12 availability of agricultural employment or a per-
13 sonal emergency that prevents compliance with
14 such subparagraph.

15 (2) SPOUSES AND MINOR CHILDREN.—

16 (A) IN GENERAL.—Notwithstanding any
17 other provision of law, the Secretary shall con-
18 fer the status of lawful permanent resident on
19 the spouse and minor child of an alien granted
20 status under paragraph (1), including any indi-
21 vidual who was a minor child on the date such
22 alien was granted temporary resident status, if
23 the spouse or minor child applies for such sta-
24 tus, or if the principal alien includes the spouse
25 or minor child in an application for adjustment

1 of status to that of a lawful permanent resi-
2 dent.

3 (B) TREATMENT OF SPOUSES AND MINOR
4 CHILDREN PRIOR TO ADJUSTMENT OF STA-
5 TUS.—A spouse and minor child of an alien
6 granted temporary resident status under sub-
7 section (a) may not be—

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

10 (ii) granted authorization to engage in
11 employment in the United States or be
12 provided an “employment authorized” en-
13 dorsement or other work permit, unless
14 such employment authorization is granted
15 under another provision of law.

16 (d) APPLICATIONS.—

17 (1) TO WHOM MAY BE MADE.—

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

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

22 (I) with the Secretary, but only if
23 the applicant is represented by an at-
24 torney; or

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

6 (ii) applications for adjustment of sta-
7 tus under subsection (c) shall be filed di-
8 rectly with the Secretary.

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

15 (C) PRELIMINARY APPLICATIONS.—

16 (i) IN GENERAL.—During the applica-
17 tion period described in subsection
18 (a)(1)(B), the Secretary may grant admis-
19 sion to the United States as a temporary
20 resident and provide an “employment au-
21 thorized” endorsement or other appro-
22 priate work permit to any alien who pre-
23 sents a preliminary application for such
24 status under subsection (a) at a designated
25 port of entry on the southern land border

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

5 (ii) DEFINITION.—For purposes of
6 clause (i), the term “preliminary applica-
7 tion” means a fully completed and signed
8 application which contains specific infor-
9 mation concerning the performance of
10 qualifying employment in the United
11 States, together with the payment of the
12 appropriate fee and the submission of pho-
13 tographs and the documentary evidence
14 which the applicant intends to submit as
15 proof of such employment.

16 (iii) ELIGIBILITY.—An applicant
17 under clause (i) must be otherwise admis-
18 sible to the United States under subsection
19 (e)(2) and must establish to the satisfac-
20 tion of the examining officer during an
21 interview that the applicant’s claim to eli-
22 gibility for temporary resident status is
23 credible.

24 (D) TRAVEL DOCUMENTATION.—The Sec-
25 retary shall provide each alien granted status

1 under this section with a counterfeit-resistant
2 document of authorization to enter or reenter
3 the United States that meets the requirements
4 established by the Secretary.

5 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
6 PPLICATIONS.—

7 (A) IN GENERAL.—For purposes of receiv-
8 ing applications under subsection (a), the Sec-
9 retary—

10 (i) shall designate qualified farm labor
11 organizations and associations of employ-
12 ers; and

13 (ii) may designate such other persons
14 as the Secretary determines are qualified
15 and have substantial experience, dem-
16 onstrate competence, and have traditional
17 long-term involvement in the preparation
18 and submittal of applications for adjust-
19 ment of status under section 209, 210, or
20 245 of the Immigration and Nationality
21 Act, Public Law 89–732, Public Law 95–
22 145, or the Immigration Reform and Con-
23 trol Act of 1986.

24 (B) REFERENCES.—Organizations, asso-
25 ciations, and persons designated under subpara-

1 graph (A) are referred to in this Act as “quali-
2 fied designated entities”.

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) or subsection (c)(1)(A)
7 through government employment records or
8 records supplied by employers or collective bar-
9 gaining organizations, and other reliable docu-
10 mentation as the alien may provide. The Sec-
11 retary shall establish special procedures to
12 properly credit work in cases in which an alien
13 was employed under an assumed name.

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

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

1 those records under regulations to be promul-
2 gated by the Secretary.

3 (iii) An alien can meet such burden of
4 proof if the alien establishes that the alien has
5 in fact performed the work described in sub-
6 section (a)(1)(A) or subsection (c)(1)(A) by
7 producing sufficient evidence to show the extent
8 of that employment as a matter of just and rea-
9 sonable inference.

10 (4) TREATMENT OF APPLICATIONS BY QUALI-
11 FIED DESIGNATED ENTITIES.—Each qualified des-
12 ignated entity must agree to forward to the Sec-
13 retary applications filed with it in accordance with
14 paragraph (1)(A)(i)(II) but not to forward to the
15 Secretary applications filed with it unless the appli-
16 cant has consented to such forwarding. No such en-
17 tity may make a determination required by this sec-
18 tion to be made by the Secretary. Upon the request
19 of the alien, a qualified designated entity shall assist
20 the alien in obtaining documentation of the work
21 history of the alien.

22 (5) LIMITATION ON ACCESS TO INFORMA-
23 TION.—Files and records prepared for purposes of
24 this subsection by qualified designated entities oper-
25 ating under this subsection are confidential and the

1 Secretary shall not have access to such files or
2 records relating to an alien without the consent of
3 the alien, except as allowed by a court order issued
4 pursuant to paragraph (6).

5 (6) CONFIDENTIALITY OF INFORMATION.—

6 (A) IN GENERAL.—Except as otherwise
7 provided in this subsection, neither the Sec-
8 retary, nor any other official or employee of the
9 Department of Homeland Security, or bureau
10 or agency thereof, may—

11 (i) use the information furnished by
12 the applicant pursuant to an application
13 filed under this section, the information
14 provided to the applicant by a person des-
15 ignated under paragraph (2)(A), or any in-
16 formation provided by an employer or
17 former employer, for any purpose other
18 than to make a determination on the appli-
19 cation, or for enforcement of paragraph
20 (7);

21 (ii) make any publication whereby the
22 information furnished by any particular in-
23 dividual can be identified; or

24 (iii) permit anyone other than the
25 sworn officers and employees of the De-

1 partment of Homeland Security, or bureau
2 or agency thereof, or, with respect to appli-
3 cations filed with a qualified designated en-
4 tity, that qualified designated entity, to ex-
5 amine individual applications.

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

10 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
11 PLICATIONS.—

12 (A) CRIMINAL PENALTY.—Whoever—

13 (i) files an application for status
14 under subsection (a) or (c) and knowingly
15 and willfully falsifies, conceals, or covers
16 up a material fact or makes any false, fic-
17 titious, or fraudulent statements or rep-
18 resentations, or makes or uses any false
19 writing or document knowing the same to
20 contain any false, fictitious, or fraudulent
21 statement or entry; or

22 (ii) creates or supplies a false writing
23 or document for use in making such an ap-
24 plication;

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

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

10 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-
11 tion 504(a)(11) of Public Law 104–134 (110 Stat.
12 1321–53 et seq.) shall not be construed to prevent
13 a recipient of funds under the Legal Services Cor-
14 poration Act (42 U.S.C. 2996 et seq.) from pro-
15 viding legal assistance directly related to an applica-
16 tion for adjustment of status under this section.

17 (9) APPLICATION FEES.—

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

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

23 (ii) may be charged by qualified des-
24 ignated entities to help defray the costs of
25 services provided to such applicants.

1 (B) PROHIBITION ON EXCESS FEES BY
2 QUALIFIED DESIGNATED ENTITIES.—A quali-
3 fied designated entity may not charge any fee
4 in excess of, or in addition to, the fees author-
5 ized under subparagraph (A)(ii) for services
6 provided to applicants.

7 (C) DISPOSITION OF FEES.—

8 (i) IN GENERAL.—There is established
9 in the general fund of the Treasury a sepa-
10 rate account, which shall be known as the
11 “Agricultural Worker Immigration Status
12 Adjustment Account”. Notwithstanding
13 any other provision of law, there shall be
14 deposited as offsetting receipts into the ac-
15 count all fees collected under subparagraph
16 (A)(i).

17 (ii) USE OF FEES FOR APPLICATION
18 PROCESSING.—Amounts deposited in the
19 “Agricultural Worker Immigration Status
20 Adjustment Account” shall remain avail-
21 able to the Secretary until expended for
22 processing applications for status under
23 subsections (a) and (c).

24 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-
25 TAIN GROUNDS FOR INADMISSIBILITY.—

1 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—
2 The numerical limitations of sections 201 and 202
3 of the Immigration and Nationality Act (8 U.S.C.
4 1151 and 1152) shall not apply to the adjustment
5 of aliens to lawful permanent resident status under
6 this section.

7 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
8 MISSIBILITY.—In the determination of an alien’s eli-
9 gibility for status under subsection (a)(1)(C) or an
10 alien’s eligibility for adjustment of status under sub-
11 section (c)(1)(B)(ii)(I), the following rules shall
12 apply:

13 (A) GROUNDS OF EXCLUSION NOT APPLI-
14 CABLE.—The provisions of paragraphs (5),
15 (6)(A), (7)(A), and (9)(B) of section 212(a) of
16 the Immigration and Nationality Act (8 U.S.C.
17 1182(a)) shall not apply.

18 (B) WAIVER OF OTHER GROUNDS.—
19 (i) IN GENERAL.—Except as provided
20 in clause (ii), the Secretary may waive any
21 other provision of such section 212(a) in
22 the case of individual aliens for humani-
23 tarian purposes, to ensure family unity, or
24 when it is otherwise in the public interest.

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

5 (I) Subparagraphs (A) and (B)
6 of paragraph (2) (relating to crimi-
7 nals).

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

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

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

15 (iii) CONSTRUCTION.—Nothing in this
16 subparagraph shall be construed as affect-
17 ing the authority of the Secretary other
18 than under this subparagraph to waive
19 provisions of such section 212(a).

20 (C) SPECIAL RULE FOR DETERMINATION
21 OF PUBLIC CHARGE.—An alien is not ineligible
22 for status under this section by reason of a
23 ground of inadmissibility under section
24 212(a)(4) of the Immigration and Nationality
25 Act (8 U.S.C. 1182(a)(4)) if the alien dem-

1 onstrates a history of employment in the United
2 States evidencing self-support without reliance
3 on public cash assistance.

4 (f) TEMPORARY STAY OF REMOVAL AND WORK AU-
5 THORIZATION FOR CERTAIN APPLICANTS.—

6 (1) BEFORE APPLICATION PERIOD.—Effective
7 on the date of enactment of this Act, the Secretary
8 shall provide that, in the case of an alien who is ap-
9 prehended before the beginning of the application
10 period described in subsection (a)(1)(B) and who
11 can establish a nonfrivolous case of eligibility for
12 temporary resident status under subsection (a) (but
13 for the fact that the alien may not apply for such
14 status until the beginning of such period), until the
15 alien has had the opportunity during the first 30
16 days of the application period to complete the filing
17 of an application for temporary resident status, the
18 alien—

19 (A) may not be removed; and

20 (B) shall be granted authorization to en-
21 gage in employment in the United States and
22 be provided an “employment authorized” en-
23 dorsement or other appropriate work permit for
24 such purpose.

1 (2) DURING APPLICATION PERIOD.—The Sec-
2 retary shall provide that, in the case of an alien who
3 presents a nonfrivolous application for temporary
4 resident status under subsection (a) during the ap-
5 plication period described in subsection (a)(1)(B),
6 including an alien who files such an application
7 within 30 days of the alien’s apprehension, and until
8 a final determination on the application has been
9 made in accordance with this section, the alien—

10 (A) may not be removed; and

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

16 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

17 (1) IN GENERAL.—There shall be no adminis-
18 trative or judicial review of a determination respect-
19 ing an application for status under subsection (a) or
20 (c) except in accordance with this subsection.

21 (2) ADMINISTRATIVE REVIEW.—

22 (A) SINGLE LEVEL OF ADMINISTRATIVE
23 APPELLATE REVIEW.—The Secretary shall es-
24 tablish an appellate authority to provide for a

1 single level of administrative appellate review of
2 such a determination.

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

10 (3) JUDICIAL REVIEW.—

11 (A) LIMITATION TO REVIEW OF RE-
12 MOVAL.—There shall be judicial review of such
13 a determination only in the judicial review of an
14 order of removal under section 242 of the Im-
15 migration and Nationality Act (8 U.S.C. 1252).

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

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

8 (i) REGULATIONS.—The Secretary shall issue regula-
9 tions to implement this section not later than the 1st day
10 of the 7th month that begins after the date of enactment
11 of this Act.

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

15 (k) FUNDING.—There are hereby appropriated, out
16 of any money in the Treasury not otherwise appropriated,
17 \$40,000,000 for each of fiscal years 2004 through 2007
18 to the Secretary to carry out this section.

19 **SEC. 102. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

22 (1) in subparagraph (B)(ii), by striking “or” at
23 the end;

24 (2) in subparagraph (C), by inserting “or” at
25 the end;

1 (3) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) who is granted status as a lawful tem-
4 porary resident under the Agricultural Job Oppor-
5 tunity, Benefits, and Security Act of 2003,”; and

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

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

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

16 **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-**
17 **ALITY ACT.**

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

21 “H-2A EMPLOYER APPLICATIONS

22 “SEC. 218. (a) APPLICATIONS TO THE SECRETARY
23 OF LABOR.—

24 “(1) IN GENERAL.—No alien may be admitted
25 to the United States as an H-2A worker, or other-
26 wise provided status as an H-2A worker, unless the

1 employer has filed with the Secretary of Labor an
2 application containing—

3 “(A) the assurances described in sub-
4 section (b);

5 “(B) a description of the nature and loca-
6 tion of the work to be performed;

7 “(C) the anticipated period (expected be-
8 ginning and ending dates) for which the work-
9 ers will be needed; and

10 “(D) the number of job opportunities in
11 which the employer seeks to employ the work-
12 ers.

13 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
14 plication filed under paragraph (1) shall be accom-
15 panied by a copy of the job offer describing the
16 wages and other terms and conditions of employ-
17 ment and the bona fide occupational qualifications
18 that must be possessed by a worker to be employed
19 in the job opportunity in question.

20 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
21 TIONS.—The assurances referred to in subsection (a)(1)
22 are the following:

23 “(1) JOB OPPORTUNITIES COVERED BY COL-
24 LECTIVE BARGAINING AGREEMENTS.—With respect

1 to a job opportunity that is covered under a collec-
2 tive bargaining agreement:

3 “(A) UNION CONTRACT DESCRIBED.—The
4 job opportunity is covered by a union contract
5 which was negotiated at arm’s length between a
6 bona fide union and the employer.

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

12 “(C) NOTIFICATION OF BARGAINING REP-
13 RESENTATIVES.—The employer, at the time of
14 filing the application, has provided notice of the
15 filing under this paragraph to the bargaining
16 representative of the employer’s employees in
17 the occupational classification at the place or
18 places of employment for which aliens are
19 sought.

20 “(D) TEMPORARY OR SEASONAL JOB OP-
21 PORTUNITIES.—The job opportunity is tem-
22 porary or seasonal.

23 “(E) OFFERS TO UNITED STATES WORK-
24 ERS.—The employer has offered or will offer
25 the job to any eligible United States worker

1 who applies and is equally or better qualified
2 for the job for which the nonimmigrant is, or
3 the nonimmigrants are, sought and who will be
4 available at the time and place of need.

5 “(F) PROVISION OF INSURANCE.—If the
6 job opportunity is not covered by the State
7 workers’ compensation law, the employer will
8 provide, at no cost to the worker, insurance cov-
9 ering injury and disease arising out of, and in
10 the course of, the worker’s employment which
11 will provide benefits at least equal to those pro-
12 vided under the State’s workers’ compensation
13 law for comparable employment.

14 “(2) JOB OPPORTUNITIES NOT COVERED BY
15 COLLECTIVE BARGAINING AGREEMENTS.—With re-
16 spect to a job opportunity that is not covered under
17 a collective bargaining agreement:

18 “(A) STRIKE OR LOCKOUT.—The specific
19 job opportunity for which the employer is re-
20 questing an H-2A worker is not vacant because
21 the former occupant is on strike or being locked
22 out in the course of a labor dispute.

23 “(B) TEMPORARY OR SEASONAL JOB OP-
24 PORTUNITIES.—The job opportunity is tem-
25 porary or seasonal.

1 “(C) BENEFIT, WAGE, AND WORKING CON-
2 DITIONS.—The employer will provide, at a min-
3 imum, the benefits, wages, and working condi-
4 tions required by section 218A to all workers
5 employed in the job opportunities for which the
6 employer has applied under subsection (a) and
7 to all other workers in the same occupation at
8 the place of employment.

9 “(D) NONDISPLACEMENT OF UNITED
10 STATES WORKERS.—The employer did not dis-
11 place and will not displace a United States
12 worker employed by the employer during the
13 period of employment and for a period of 30
14 days preceding the period of employment in the
15 occupation at the place of employment for
16 which the employer seeks approval to employ
17 H-2A workers.

18 “(E) REQUIREMENTS FOR PLACEMENT OF
19 NONIMMIGRANT WITH OTHER EMPLOYERS.—
20 The employer will not place the nonimmigrant
21 with another employer unless—

22 “(i) the nonimmigrant performs du-
23 ties in whole or in part at 1 or more work
24 sites owned, operated, or controlled by
25 such other employer;

1 “(ii) there are indicia of an employ-
2 ment relationship between the non-
3 immigrant and such other employer; and

4 “(iii) the employer has inquired of the
5 other employer as to whether, and has no
6 actual knowledge or notice that, during the
7 period of employment and for a period of
8 30 days preceding the period of employ-
9 ment, the other employer has displaced or
10 intends to displace a United States worker
11 employed by the other employer in the oc-
12 cupation at the place of employment for
13 which the employer seeks approval to em-
14 ploy H-2A workers.

15 “(F) STATEMENT OF LIABILITY.—The ap-
16 plication form shall include a clear statement
17 explaining the liability under subparagraph (E)
18 of an employer if the other employer described
19 in such subparagraph displaces a United States
20 worker as described in such subparagraph.

21 “(G) PROVISION OF INSURANCE.—If the
22 job opportunity is not covered by the State
23 workers’ compensation law, the employer will
24 provide, at no cost to the worker, insurance cov-
25 ering injury and disease arising out of and in

1 the course of the worker's employment which
2 will provide benefits at least equal to those pro-
3 vided under the State's workers' compensation
4 law for comparable employment.

5 “(H) EMPLOYMENT OF UNITED STATES
6 WORKERS.—

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

13 “(I) CONTACTING FORMER
14 WORKERS.—The employer shall make
15 reasonable efforts through the sending
16 of a letter by United States Postal
17 Service mail, or otherwise, to contact
18 any United States worker the em-
19 ployer employed during the previous
20 season in the occupation at the place
21 of intended employment for which the
22 employer is applying for workers and
23 has made the availability of the em-
24 ployer's job opportunities in the occu-
25 pation at the place of intended em-

1 employment known to such previous
2 workers, unless the worker was termi-
3 nated from employment by the em-
4 ployer for a lawful job-related reason
5 or abandoned the job before the work-
6 er completed the period of employ-
7 ment of the job opportunity for which
8 the worker was hired.

9 “(II) FILING A JOB OFFER WITH
10 THE LOCAL OFFICE OF THE STATE
11 EMPLOYMENT SECURITY AGENCY.—
12 Not later than 28 days prior to the
13 date on which the employer desires to
14 employ an H-2A worker in a tem-
15 porary or seasonal agricultural job op-
16 portunity, the employer shall submit a
17 copy of the job offer described in sub-
18 section (a)(2) to the local office of the
19 State employment security agency
20 which serves the area of intended em-
21 ployment and authorize the posting of
22 the job opportunity on ‘America’s Job
23 Bank’ or other electronic job registry,
24 except that nothing in this subclause
25 shall require the employer to file an

1 interstate job order under section 653
2 of title 20, Code of Federal Regula-
3 tions.

4 “(III) ADVERTISING OF JOB OP-
5 PORTUNITIES.—Not later than 14
6 days prior to the date on which the
7 employer desires to employ an H–2A
8 worker in a temporary or seasonal ag-
9 ricultural job opportunity, the em-
10 ployer shall advertise the availability
11 of the job opportunities for which the
12 employer is seeking workers in a pub-
13 lication in the local labor market that
14 is likely to be patronized by potential
15 farm workers.

16 “(IV) EMERGENCY PROCE-
17 DURES.—The Secretary of Labor
18 shall, by regulation, provide a proce-
19 dure for acceptance and approval of
20 applications in which the employer
21 has not complied with the provisions
22 of this subparagraph because the em-
23 ployer’s need for H–2A workers could
24 not reasonably have been foreseen.

1 “(ii) JOB OFFERS.—The employer has
2 offered or will offer the job to any eligible
3 United States worker who applies and is
4 equally or better qualified for the job for
5 which the nonimmigrant is, or non-
6 immigrants are, sought and who will be
7 available at the time and place of need.

8 “(iii) PERIOD OF EMPLOYMENT.—The
9 employer will provide employment to any
10 qualified United States worker who applies
11 to the employer during the period begin-
12 ning on the date on which the foreign
13 worker departs for the employer’s place of
14 employment and ending on the date on
15 which 50 percent of the period of employ-
16 ment for which the foreign worker who is
17 in the job was hired has elapsed, subject to
18 the following requirements:

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

1 “(II) COMPLAINTS.—Upon re-
2 ceipt of a complaint by an employer
3 that a violation of subclause (I) has
4 occurred, the Secretary of Labor shall
5 immediately investigate. The Sec-
6 retary of Labor shall, within 36 hours
7 of the receipt of the complaint, issue
8 findings concerning the alleged viola-
9 tion. If the Secretary of Labor finds
10 that a violation has occurred, the Sec-
11 retary of Labor shall immediately sus-
12 pend the application of this clause
13 with respect to that certification for
14 that date of need.

15 “(III) PLACEMENT OF UNITED
16 STATES WORKERS.—Prior to referring
17 a United States worker to an em-
18 ployer during the period described in
19 the matter preceding subclause (I),
20 the Secretary of Labor shall make all
21 reasonable efforts to place the United
22 States worker in an open job accept-
23 able to the worker, if there are other
24 job offers pending with the job service

1 that offer similar job opportunities in
2 the area of intended employment.

3 “(iv) STATUTORY CONSTRUCTION.—

4 Nothing in this subparagraph shall be con-
5 strued to prohibit an employer from using
6 such legitimate selection criteria relevant
7 to the type of job that are normal or cus-
8 tomary to the type of job involved so long
9 as such criteria are not applied in a dis-
10 criminatorary manner.

11 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
12 OF EMPLOYER MEMBERS.—

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

19 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
20 EMPLOYERS.—If an association filing an application
21 under paragraph (1) is a joint or sole employer of
22 the temporary or seasonal agricultural workers re-
23 quested on the application, the certifications granted
24 under subsection (e)(2)(B) to the association may be
25 used for the certified job opportunities of any of its

1 producer members named on the application, and
2 such workers may be transferred among such pro-
3 ducer members to perform the agricultural services
4 of a temporary or seasonal nature for which the cer-
5 tifications were granted.

6 “(d) WITHDRAWAL OF APPLICATIONS.—

7 “(1) IN GENERAL.—An employer may withdraw
8 an application filed pursuant to subsection (a), ex-
9 cept that if the employer is an agricultural associa-
10 tion, the association may withdraw an application
11 filed pursuant to subsection (a) with respect to 1 or
12 more of its members. To withdraw an application,
13 the employer or association shall notify the Sec-
14 retary of Labor in writing, and the Secretary of
15 Labor shall acknowledge in writing the receipt of
16 such withdrawal notice. An employer who withdraws
17 an application under subsection (a), or on whose be-
18 half an application is withdrawn, is relieved of the
19 obligations undertaken in the application.

20 “(2) LIMITATION.—An application may not be
21 withdrawn while any alien provided status under sec-
22 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
23 tion is employed by the employer.

24 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
25 Any obligation incurred by an employer under any

1 other law or regulation as a result of the recruit-
2 ment of United States workers or H-2A workers
3 under an offer of terms and conditions of employ-
4 ment required as a result of making an application
5 under subsection (a) is unaffected by withdrawal of
6 such application.

7 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

8 “(1) RESPONSIBILITY OF EMPLOYERS.—The
9 employer shall make available for public examina-
10 tion, within 1 working day after the date on which
11 an application under subsection (a) is filed, at the
12 employer’s principal place of business or work site,
13 a copy of each such application (and such accom-
14 panying documents as are necessary).

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

17 “(A) COMPILATION OF LIST.—The Sec-
18 retary of Labor shall compile, on a current
19 basis, a list (by employer and by occupational
20 classification) of the applications filed under
21 this subsection. Such list shall include the wage
22 rate, number of workers sought, period of in-
23 tended employment, and date of need. The Sec-
24 retary of Labor shall make such list available
25 for examination in the District of Columbia.

1 “(B) REVIEW OF APPLICATIONS.—The
2 Secretary of Labor shall review such an applica-
3 tion only for completeness and obvious inac-
4 curacies. Unless the Secretary of Labor finds
5 that the application is incomplete or obviously
6 inaccurate, the Secretary of Labor shall certify
7 that the intending employer has filed with the
8 Secretary of Labor an application as described
9 in subsection (a). Such certification shall be
10 provided within 7 days of the filing of the appli-
11 cation.

12 “H-2A EMPLOYMENT REQUIREMENTS

13 “SEC. 218A. (a) PREFERENTIAL TREATMENT OF
14 ALIENS PROHIBITED.—Employers seeking to hire United
15 States workers shall offer the United States workers no
16 less than the same benefits, wages, and working conditions
17 that the employer is offering, intends to offer, or will pro-
18 vide to H-2A workers. Conversely, no job offer may im-
19 pose on United States workers any restrictions or obliga-
20 tions which will not be imposed on the employer’s H-2A
21 workers.

22 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
23 CONDITIONS.—Except in cases where higher benefits,
24 wages, or working conditions are required by the provi-
25 sions of subsection (a), in order to protect similarly em-
26 ployed United States workers from adverse effects with

1 respect to benefits, wages, and working conditions, every
2 job offer which must accompany an application under sec-
3 tion 218 shall include each of the following benefit, wage,
4 and working condition provisions:

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

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

15 “(B) TYPE OF HOUSING.—In complying
16 with subparagraph (A), an employer may, at
17 the employer’s election, provide housing that
18 meets applicable Federal standards for tem-
19 porary labor camps or secure housing that
20 meets applicable local standards for rental or
21 public accommodation housing or other sub-
22 stantially similar class of habitation, or in the
23 absence of applicable local standards, State
24 standards for rental or public accommodation
25 housing or other substantially similar class of

1 habitation. In the absence of applicable local or
2 State standards, Federal temporary labor camp
3 standards shall apply.

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

9 “(D) WORKERS ENGAGED IN THE RANGE
10 PRODUCTION OF LIVESTOCK.—The Secretary of
11 Labor shall issue regulations that address the
12 specific requirements for the provision of hous-
13 ing to workers engaged in the range production
14 of livestock.

15 “(E) LIMITATION.—Nothing in this para-
16 graph shall be construed to require an employer
17 to provide or secure housing for persons who
18 were not entitled to such housing under the
19 temporary labor certification regulations in ef-
20 fect on June 1, 1986.

21 “(F) CHARGES FOR HOUSING.—

22 “(i) CHARGES FOR PUBLIC HOUS-
23 ING.—If public housing provided for mi-
24 grant agricultural workers under the aus-
25 pices of a local, county, or State govern-

1 ment is secured by an employer, and use of
2 the public housing unit normally requires
3 charges from migrant workers, such
4 charges shall be paid by the employer di-
5 rectly to the appropriate individual or enti-
6 ty affiliated with the housing's manage-
7 ment.

8 “(ii) DEPOSIT CHARGES.—Charges in
9 the form of deposits for bedding or other
10 similar incidentals related to housing shall
11 not be levied upon workers by employers
12 who provide housing for their workers.
13 However, an employer may require a work-
14 er found to have been responsible for dam-
15 age to such housing which is not the result
16 of normal wear and tear related to habi-
17 tation to reimburse the employer for the
18 reasonable cost of repair of such damage.

19 “(G) HOUSING ALLOWANCE AS ALTER-
20 NATIVE.—

21 “(i) IN GENERAL.—In lieu of offering
22 housing pursuant to subparagraph (A), the
23 employer may provide a reasonable housing
24 allowance, but only if the requirement of
25 clause (ii) is satisfied. Upon the request of

1 a worker seeking assistance in locating
2 housing, the employer shall make a good
3 faith effort to assist the worker in identi-
4 fying and locating housing in the area of
5 intended employment. An employer who of-
6 fers a housing allowance to a worker, or
7 assists a worker in locating housing which
8 the worker occupies, pursuant to this
9 clause shall not be deemed a housing pro-
10 vider under section 203 of the Migrant and
11 Seasonal Agricultural Worker Protection
12 Act (29 U.S.C. 1823) solely by virtue of
13 providing such housing allowance. How-
14 ever, no housing allowance may be used for
15 housing which is owned or controlled by
16 the employer.

17 “(ii) CERTIFICATION.—The require-
18 ment of this clause is satisfied if the Gov-
19 ernor of the State certifies to the Secretary
20 of Labor that there is adequate housing
21 available in the area of intended employ-
22 ment for migrant farm workers, and H-2A
23 workers, who are seeking temporary hous-
24 ing while employed at farm work. Such

1 certification shall expire after 3 years un-
2 less renewed by the Governor of the State.

3 “(iii) AMOUNT OF ALLOWANCE.—

4 “(I) NONMETROPOLITAN COUN-
5 TIES.—If the place of employment of
6 the workers provided an allowance
7 under this subparagraph is a non-
8 metropolitan county, the amount of
9 the housing allowance under this sub-
10 paragraph shall be equal to the state-
11 wide average fair market rental for
12 existing housing for nonmetropolitan
13 counties for the State, as established
14 by the Secretary of Housing and
15 Urban Development pursuant to sec-
16 tion 8(c) of the United States Hous-
17 ing Act of 1937 (42 U.S.C. 1437f(c)),
18 based on a 2-bedroom dwelling unit
19 and an assumption of 2 persons per
20 bedroom.

21 “(II) METROPOLITAN COUN-
22 TIES.—If the place of employment of
23 the workers provided an allowance
24 under this paragraph is in a metro-
25 politan county, the amount of the

1 housing allowance under this subpara-
2 graph shall be equal to the statewide
3 average fair market rental for existing
4 housing for metropolitan counties for
5 the State, as established by the Sec-
6 retary of Housing and Urban Devel-
7 opment pursuant to section 8(c) of
8 the United States Housing Act of
9 1937 (42 U.S.C. 1437f(c)), based on
10 a 2-bedroom dwelling unit and an as-
11 sumption of 2 persons per bedroom.

12 “(2) REIMBURSEMENT OF TRANSPORTATION.—

13 “(A) TO PLACE OF EMPLOYMENT.—A
14 worker who completes 50 percent of the period
15 of employment of the job opportunity for which
16 the worker was hired shall be reimbursed by the
17 employer for the cost of the worker’s transpor-
18 tation and subsistence from the place from
19 which the worker came to work for the em-
20 ployer (or place of last employment, if the
21 worker traveled from such place) to the place of
22 employment.

23 “(B) FROM PLACE OF EMPLOYMENT.—A
24 worker who completes the period of employment
25 for the job opportunity involved shall be reim-

1 bursed by the employer for the cost of the
2 worker's transportation and subsistence from
3 the place of employment to the place from
4 which the worker, disregarding intervening em-
5 ployment, came to work for the employer, or to
6 the place of next employment, if the worker has
7 contracted with a subsequent employer who has
8 not agreed to provide or pay for the worker's
9 transportation and subsistence to such subse-
10 quent employer's place of employment.

11 “(C) LIMITATION.—

12 “(i) AMOUNT OF REIMBURSEMENT.—

13 Except as provided in clause (ii), the
14 amount of reimbursement provided under
15 subparagraph (A) or (B) to a worker or
16 alien shall not exceed the lesser of—

17 “(I) the actual cost to the worker
18 or alien of the transportation and sub-
19 sistence involved; or

20 “(II) the most economical and
21 reasonable common carrier transpor-
22 tation charges and subsistence costs
23 for the distance involved.

24 “(ii) DISTANCE TRAVELED.—No reim-
25 bursement under subparagraph (A) or (B)

1 shall be required if the distance traveled is
2 100 miles or less, or the worker is not re-
3 siding in employer-provided housing or
4 housing secured through an allowance as
5 provided in paragraph (1)(G).

6 “(D) EARLY TERMINATION.—If the worker
7 is laid off or employment is terminated for con-
8 tract impossibility (as described in paragraph
9 (4)(D)) before the anticipated ending date of
10 employment, the employer shall provide the
11 transportation and subsistence required by sub-
12 paragraph (B) and, notwithstanding whether
13 the worker has completed 50 percent of the pe-
14 riod of employment, shall provide the transpor-
15 tation reimbursement required by subparagraph
16 (A).

17 “(E) TRANSPORTATION BETWEEN LIVING
18 QUARTERS AND WORK SITE.—The employer
19 shall provide transportation between the work-
20 er’s living quarters (i.e., housing provided by
21 the employer pursuant to paragraph (1), includ-
22 ing housing provided through a housing allow-
23 ance) and the employer’s work site without cost
24 to the worker, and such transportation will be

1 in accordance with applicable laws and regula-
2 tions.

3 “(3) REQUIRED WAGES.—

4 “(A) IN GENERAL.—An employer applying
5 for workers under section 218(a) shall offer to
6 pay, and shall pay, all workers in the occupa-
7 tion for which the employer has applied for
8 workers, not less (and is not required to pay
9 more) than the greater of the prevailing wage
10 in the occupation in the area of intended em-
11 ployment or the adverse effect wage rate. No
12 worker shall be paid less than the greater of the
13 hourly wage prescribed under section 6(a)(1) of
14 the Fair Labor Standards Act of 1938 (29
15 U.S.C. 206(a)(1)) or the applicable State min-
16 imum wage.

17 “(B) LIMITATION.—Effective on the date
18 of enactment of the Agricultural Job Oppor-
19 tunity, Benefits, and Security Act of 2003 and
20 continuing for 3 years thereafter, no adverse ef-
21 fect wage rate for a State may be more than
22 the adverse effect wage rate for that State in
23 effect on January 1, 2003, as established by
24 section 655.107 of title 20, Code of Federal
25 Regulations.

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

3 “(i) FIRST ADJUSTMENT.—Unless
4 Congress acts to set a new wage standard
5 applicable to this section, effective on De-
6 cember 1, 2006, the adverse effect wage
7 rate then in effect shall be adjusted by the
8 12 month percentage change in the Con-
9 sumer Price Index for All Urban Con-
10 sumers between December of the preceding
11 year and December of the second pre-
12 ceding year, except that such adjustment
13 shall not exceed 4 percent.

14 “(ii) SUBSEQUENT ANNUAL ADJUST-
15 MENTS.—Effective on March 1, 2007, and
16 each March 1 thereafter, the adverse effect
17 wage rate then in effect shall be adjusted
18 in accordance with the requirements of
19 clause (i).

20 “(D) DEDUCTIONS.—The employer shall
21 make only those deductions from the worker’s
22 wages that are authorized by law or are reason-
23 able and customary in the occupation and area
24 of employment. The job offer shall specify all

1 deductions not required by law which the em-
2 ployer will make from the worker's wages.

3 “(E) FREQUENCY OF PAY.—The employer
4 shall pay the worker not less frequently than
5 twice monthly, or in accordance with the pre-
6 vailing practice in the area of employment,
7 whichever is more frequent.

8 “(F) HOURS AND EARNINGS STATE-
9 MENTS.—The employer shall furnish to the
10 worker, on or before each payday, in one or
11 more written statements the following informa-
12 tion:

13 “(i) The worker's total earnings for
14 the pay period.

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

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

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

24 “(v) An itemization of the deductions
25 made from the worker's wages.

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

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

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

19 “(ii) whether an adverse effect wage
20 rate is necessary to prevent wages of
21 United States farm workers in occupations
22 in which H-2A workers are employed from
23 falling below the wage levels that would
24 have prevailed in the absence of the em-

1 employment of H-2A workers in those occu-
2 pations;

3 “(iii) whether alternative wage stand-
4 ards, such as a prevailing wage standard,
5 would be sufficient to prevent wages in oc-
6 cupations in which H-2A workers are em-
7 ployed from falling below the wage level
8 that would have prevailed in the absence of
9 H-2A employment;

10 “(iv) whether any changes are war-
11 ranted in the current methodologies for
12 calculating the adverse effect wage rate
13 and the prevailing wage; and

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

16 “(H) COMMISSION ON WAGE STAND-
17 ARDS.—

18 “(i) ESTABLISHMENT.—There is es-
19 tablished the Commission on Agricultural
20 Wage Standards under the H-2A program
21 (in this subparagraph referred to as the
22 ‘Commission’).

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

1 “(I) 4 representatives of agricul-
2 tural employers and 1 representative
3 of the Department of Agriculture,
4 each appointed by the Secretary of
5 Agriculture.

6 “(II) 4 representatives of agricul-
7 tural workers and 1 representative of
8 the Department of Labor, each ap-
9 pointed by the Secretary of Labor.

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

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

20 “(II) whether an adverse effect
21 wage rate is necessary to prevent
22 wages of United States farm workers
23 in occupations in which H-2A work-
24 ers are employed from falling below
25 the wage levels that would have pre-

1 vailed in the absence of the employ-
2 ment of H-2A workers in those occu-
3 pations;

4 “(III) whether alternative wage
5 standards, such as a prevailing wage
6 standard, would be sufficient to pre-
7 vent wages in occupations in which
8 H-2A workers are employed from fall-
9 ing below the wage level that would
10 have prevailed in the absence of H-
11 2A employment;

12 “(IV) whether any changes are
13 warranted in the current methodolo-
14 gies for calculating the adverse effect
15 wage rate and the prevailing wage
16 rate; and

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

19 “(iv) FINAL REPORT.—Not later than
20 June 1, 2007, the Commission shall sub-
21 mit a report to the Congress setting forth
22 the findings of the study conducted under
23 clause (iii).

1 “(v) TERMINATION DATE.—The Com-
2 mission shall terminate upon submitting
3 its final report.

4 “(4) GUARANTEE OF EMPLOYMENT.—

5 “(A) OFFER TO WORKER.—The employer
6 shall guarantee to offer the worker employment
7 for the hourly equivalent of at least three-
8 fourths of the work days of the total period of
9 employment, beginning with the first work day
10 after the arrival of the worker at the place of
11 employment and ending on the expiration date
12 specified in the job offer. For purposes of this
13 subparagraph, the hourly equivalent means the
14 number of hours in the work days as stated in
15 the job offer and shall exclude the worker’s
16 Sabbath and Federal holidays. If the employer
17 affords the United States or H-2A worker less
18 employment than that required under this para-
19 graph, the employer shall pay such worker the
20 amount which the worker would have earned
21 had the worker, in fact, worked for the guaran-
22 teed number of hours.

23 “(B) FAILURE TO WORK.—Any hours
24 which the worker fails to work, up to a max-
25 imum of the number of hours specified in the

1 job offer for a work day, when the worker has
2 been offered an opportunity to do so, and all
3 hours of work actually performed (including vol-
4 untary work in excess of the number of hours
5 specified in the job offer in a work day, on the
6 worker's Sabbath, or on Federal holidays) may
7 be counted by the employer in calculating
8 whether the period of guaranteed employment
9 has been met.

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

17 “(D) CONTRACT IMPOSSIBILITY.—If, be-
18 fore the expiration of the period of employment
19 specified in the job offer, the services of the
20 worker are no longer required for reasons be-
21 yond the control of the employer due to any
22 form of natural disaster, including but not lim-
23 ited to a flood, hurricane, freeze, earthquake,
24 fire, drought, plant or animal disease or pest in-
25 festation, or regulatory drought, before the

1 guarantee in subparagraph (A) is fulfilled, the
2 employer may terminate the worker’s employ-
3 ment. In the event of such termination, the em-
4 ployer shall fulfill the employment guarantee in
5 subparagraph (A) for the work days that have
6 elapsed from the first work day after the arrival
7 of the worker to the termination of employ-
8 ment. In such cases, the employer will make ef-
9 forts to transfer the United States worker to
10 other comparable employment acceptable to the
11 worker. If such transfer is not effected, the em-
12 ployer shall provide the return transportation
13 required in paragraph (2)(D).

14 “(5) MOTOR VEHICLE SAFETY.—

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

17 “(i) IN GENERAL.—Except as pro-
18 vided in clauses (iii) and (iv), this sub-
19 section applies to any H-2A employer that
20 uses or causes to be used any vehicle to
21 transport an H-2A worker within the
22 United States.

23 “(ii) USES OR CAUSES TO BE USED.—

24 (I) In this subsection, the term ‘uses or
25 causes to be used’ applies only to transpor-

1 tation provided by an H-2A employer to
2 an H-2A worker, or by a farm labor con-
3 tractor to an H-2A worker at the request
4 or direction of an H-2A employer.

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

7 “(aa) transportation provided, or
8 transportation arrangements made, by
9 an H-2A worker himself or herself,
10 unless the employer specifically re-
11 quested or arranged such transpor-
12 tation; or

13 “(bb) carpooling arrangements
14 made by H-2A workers themselves,
15 using one of the workers’ own vehi-
16 cles, unless specifically requested by
17 the employer directly or through a
18 farm labor contractor.

19 “(III) The mere providing of a job
20 offer by an employer to an H-2A worker
21 that causes the worker to travel to or from
22 the place of employment, or the payment
23 or reimbursement of the transportation
24 costs of an H-2A worker by an H-2A em-

1 ployer, shall not constitute an arrangement
2 of, or participation in, such transportation.

3 “(iii) AGRICULTURAL MACHINERY
4 AND EQUIPMENT EXCLUDED.—This sub-
5 section does not apply to the transpor-
6 tation of an H-2A worker on a tractor,
7 combine, harvester, picker, or other similar
8 machinery or equipment while such worker
9 is actually engaged in the planting, culti-
10 vating, or harvesting of agricultural com-
11 modities or the care of livestock or poultry
12 or engaged in transportation incidental
13 thereto.

14 “(iv) COMMON CARRIERS EX-
15 CLUDED.—This subsection does not apply
16 to common carrier motor vehicle transpor-
17 tation in which the provider holds itself out
18 to the general public as engaging in the
19 transportation of passengers for hire and
20 holds a valid certification of authorization
21 for such purposes from an appropriate
22 Federal, State, or local agency.

23 “(B) APPLICABILITY OF STANDARDS, LI-
24 CENSING, AND INSURANCE REQUIREMENTS.—

1 “(i) IN GENERAL.—When using, or
2 causing to be used, any vehicle for the pur-
3 pose of providing transportation to which
4 this subparagraph applies, each employer
5 shall—

6 “(I) ensure that each such vehi-
7 cle conforms to the standards pre-
8 scribed by the Secretary of Labor
9 under section 401(b) of the Migrant
10 and Seasonal Agricultural Worker
11 Protection Act (29 U.S.C. 1841(b))
12 and other applicable Federal and
13 State safety standards;

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

18 “(III) have an insurance policy
19 or a liability bond that is in effect
20 which insures the employer against li-
21 ability for damage to persons or prop-
22 erty arising from the ownership, oper-
23 ation, or causing to be operated, of
24 any vehicle used to transport any H-
25 2A worker.

1 “(ii) AMOUNT OF INSURANCE RE-
2 QUIRED.—The level of insurance required
3 shall be determined by the Secretary of
4 Labor pursuant to regulations to be issued
5 under this subsection.

6 “(iii) EFFECT OF WORKERS’ COM-
7 PENSATION COVERAGE.—If the employer
8 of any H-2A worker provides workers’
9 compensation coverage for such worker in
10 the case of bodily injury or death as pro-
11 vided by State law, the following adjust-
12 ments in the requirements of subparagraph
13 (B)(i)(III) relating to having an insurance
14 policy or liability bond apply:

15 “(I) No insurance policy or liabil-
16 ity bond shall be required of the em-
17 ployer, if such workers are trans-
18 ported only under circumstances for
19 which there is coverage under such
20 State law.

21 “(II) An insurance policy or li-
22 ability bond shall be required of the
23 employer for circumstances under
24 which coverage for the transportation

1 of such workers is not provided under
2 such State law.

3 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
4 ployer shall assure that, except as otherwise provided in
5 this section, the employer will comply with all applicable
6 Federal, State, and local labor laws, including laws affect-
7 ing migrant and seasonal agricultural workers, with re-
8 spect to all United States workers and alien workers em-
9 ployed by the employer, except that a violation of this as-
10 surance shall not constitute a violation of the Migrant and
11 Seasonal Agricultural Worker Protection Act (29 U.S.C.
12 1801 et seq.).

13 “(d) COPY OF JOB OFFER.—The employer shall pro-
14 vide to the worker, not later than the day the work com-
15 mences, a copy of the employer’s application and job offer
16 described in section 218(a), or, if the employer will require
17 the worker to enter into a separate employment contract
18 covering the employment in question, such separate em-
19 ployment contract.

20 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
21 in this section or sections 218 or 218B shall preclude the
22 Secretary of Labor and the Secretary from continuing to
23 apply special procedures and requirements to the admis-
24 sion and employment of aliens in occupations involving the
25 range production of livestock.

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

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

11 “(b) EXPEDITED ADJUDICATION BY THE SEC-
12 RETARY.—The Secretary shall establish a procedure for
13 expedited adjudication of petitions filed under subsection
14 (a) and within 7 working days shall, by fax, cable, or other
15 means assuring expedited delivery, transmit a copy of no-
16 tice of action on the petition to the petitioner and, in the
17 case of approved petitions, to the appropriate immigration
18 officer at the port of entry or United States consulate (as
19 the case may be) where the petitioner has indicated that
20 the alien beneficiary (or beneficiaries) will apply for a visa
21 or admission to the United States.

22 “(c) CRITERIA FOR ADMISSIBILITY.—

23 “(1) IN GENERAL.—An H-2A worker shall be
24 considered admissible to the United States if the
25 alien is otherwise admissible under this section, sec-

1 tion 218, and section 218A, and the alien is not in-
2 eligible under paragraph (2).

3 “(2) DISQUALIFICATION.—An alien shall be
4 considered inadmissible to the United States and in-
5 eligible for nonimmigrant status under section
6 101(a)(15)(H)(ii)(a) if the alien has, at any time
7 during the past 5 years—

8 “(A) violated a material provision of this
9 section, including the requirement to promptly
10 depart the United States when the alien’s au-
11 thorized period of admission under this section
12 has expired; or

13 “(B) otherwise violated a term or condition
14 of admission into the United States as a non-
15 immigrant, including overstaying the period of
16 authorized admission as such a nonimmigrant.

17 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
18 FUL PRESENCE.—

19 “(A) IN GENERAL.—An alien who has not
20 previously been admitted into the United States
21 pursuant to this section, and who is otherwise
22 eligible for admission in accordance with para-
23 graphs (1) and (2), shall not be deemed inad-
24 missible by virtue of section 212(a)(9)(B). If an
25 alien described in the preceding sentence is

1 present in the United States, the alien may
2 apply from abroad for H-2A status, but may
3 not be granted that status in the United States.

4 “(B) MAINTENANCE OF WAIVER.—An
5 alien provided an initial waiver of ineligibility
6 pursuant to subparagraph (A) shall remain eli-
7 gible for such waiver unless the alien violates
8 the terms of this section or again becomes ineli-
9 gible under section 212(a)(9)(B) by virtue of
10 unlawful presence in the United States after
11 the date of the initial waiver of ineligibility pur-
12 suant to subparagraph (A).

13 “(d) PERIOD OF ADMISSION.—

14 “(1) IN GENERAL.—The alien shall be admitted
15 for the period of employment in the application cer-
16 tified by the Secretary of Labor pursuant to section
17 218(e)(2)(B), not to exceed 10 months, supple-
18 mented by a period of up to 1 week before the begin-
19 ning of the period of employment (to be granted for
20 the purpose of travel to the work site) and a period
21 of 14 days following the period of employment (to be
22 granted for the purpose of departure or extension
23 based on a subsequent offer of employment), except
24 that—

1 “(A) the alien is not authorized to be em-
2 ployed during such 14-day period except in the
3 employment for which the alien was previously
4 authorized; and

5 “(B) the total period of employment, in-
6 cluding such 14-day period, may not exceed 10
7 months.

8 “(2) CONSTRUCTION.—Nothing in this sub-
9 section shall limit the authority of the Secretary to
10 extend the stay of the alien under any other provi-
11 sion of this Act.

12 “(e) ABANDONMENT OF EMPLOYMENT.—

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

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

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

5 “(4) VOLUNTARY TERMINATION.—Notwith-
6 standing paragraph (1), an alien may voluntarily
7 terminate his or her employment if the alien prompt-
8 ly departs the United States upon termination of
9 such employment.

10 “(f) REPLACEMENT OF ALIEN.—

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

17 “(A) who abandons or prematurely termi-
18 nates employment; or

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

1 “(2) CONSTRUCTION.—Nothing in this sub-
2 section is intended to limit any preference required
3 to be accorded United States workers under any
4 other provision of this Act.

5 “(g) IDENTIFICATION DOCUMENT.—

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

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

15 “(A) The document shall be capable of re-
16 liably determining whether—

17 “(i) the individual with the identifica-
18 tion and employment eligibility document
19 whose eligibility is being verified is in fact
20 eligible for employment;

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

24 “(iii) the individual whose eligibility is
25 being verified is authorized to be admitted

1 into, and employed in, the United States
2 as an H-2A worker.

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

5 “(C) The document shall—

6 “(i) be compatible with other data-
7 bases of the Secretary for the purpose of
8 excluding aliens from benefits for which
9 they are not eligible and determining
10 whether the alien is unlawfully present in
11 the United States; and

12 “(ii) be compatible with law enforce-
13 ment databases to determine if the alien
14 has been convicted of criminal offenses.

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

17 “(1) EXTENSION OF STAY.—If an employer
18 seeks approval to employ an H-2A alien who is law-
19 fully present in the United States, the petition filed
20 by the employer or an association pursuant to sub-
21 section (a), shall request an extension of the alien’s
22 stay and a change in the alien’s employment.

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

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

2 or

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

6 “(3) WORK AUTHORIZATION UPON FILING A
7 PETITION FOR EXTENSION OF STAY.—In the case of
8 an alien who is lawfully present in the United
9 States, the alien is authorized to commence the em-
10 ployment described in a petition under paragraph
11 (1) on the date on which the petition is filed. For
12 purposes of the preceding sentence, the term ‘file’
13 means sending the petition by certified mail via the
14 United States Postal Service, return receipt re-
15 quested, or delivered by guaranteed commercial de-
16 livery which will provide the employer with a docu-
17 mented acknowledgment of the date of receipt of the
18 petition. The employer shall provide a copy of the
19 employer’s petition to the alien, who shall keep the
20 petition with the alien’s identification and employ-
21 ment eligibility document as evidence that the peti-
22 tion has been filed and that the alien is authorized
23 to work in the United States. Upon approval of a
24 petition for an extension of stay or change in the
25 alien’s authorized employment, the Secretary shall

1 provide a new or updated employment eligibility doc-
2 ument to the alien indicating the new validity date,
3 after which the alien is not required to retain a copy
4 of the petition.

5 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
6 TION OF ALIENS WITHOUT VALID IDENTIFICATION
7 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
8 pired identification and employment eligibility docu-
9 ment, together with a copy of a petition for exten-
10 sion of stay or change in the alien’s authorized em-
11 ployment that complies with the requirements of
12 paragraph (1), shall constitute a valid work author-
13 ization document for a period of not more than 60
14 days beginning on the date on which such petition
15 is filed, after which time only a currently valid iden-
16 tification and employment eligibility document shall
17 be acceptable.

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

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

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

1 “(i) IN GENERAL.—Subject to clause
2 (ii), in the case of an alien outside the
3 United States whose period of authorized
4 status as an H–2A worker (including any
5 extensions) has expired, the alien may not
6 again apply for admission to the United
7 States as an H–2A worker unless the alien
8 has remained outside the United States for
9 a continuous period equal to at least $\frac{1}{5}$
10 the duration of the alien’s previous period
11 of authorized status as an H–2A worker
12 (including any extensions).

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

23 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
24 SHEEPHERDERS.—Notwithstanding any other provision
25 of the Agricultural Job Opportunity, Benefits, and Secu-

1 rity Act of 2003, aliens admitted under section
 2 101(a)(15)(H)(ii)(a) for employment as shepherders—

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

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

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

10 “WORKER PROTECTIONS AND LABOR STANDARDS

11 ENFORCEMENT

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

13 “(1) INVESTIGATION OF COMPLAINTS.—

14 “(A) AGGRIEVED PERSON OR THIRD-PARTY
 15 COMPLAINTS.—The Secretary of Labor shall es-
 16 tablish a process for the receipt, investigation,
 17 and disposition of complaints respecting a peti-
 18 tioner’s failure to meet a condition specified in
 19 section 218(b), or an employer’s misrepresenta-
 20 tion of material facts in an application under
 21 section 218(a). Complaints may be filed by any
 22 aggrieved person or organization (including bar-
 23 gaining representatives). No investigation or
 24 hearing shall be conducted on a complaint con-
 25 cerning such a failure or misrepresentation un-
 26 less the complaint was filed not later than 12

1 months after the date of the failure, or mis-
2 representation, respectively. The Secretary of
3 Labor shall conduct an investigation under this
4 subparagraph if there is reasonable cause to be-
5 lieve that such a failure or misrepresentation
6 has occurred.

7 “(B) DETERMINATION ON COMPLAINT.—

8 Under such process, the Secretary of Labor
9 shall provide, within 30 days after the date
10 such a complaint is filed, for a determination as
11 to whether or not a reasonable basis exists to
12 make a finding described in subparagraph (C),
13 (D), (E), or (H). If the Secretary of Labor de-
14 termines that such a reasonable basis exists,
15 the Secretary of Labor shall provide for notice
16 of such determination to the interested parties
17 and an opportunity for a hearing on the com-
18 plaint, in accordance with section 556 of title 5,
19 United States Code, within 60 days after the
20 date of the determination. If such a hearing is
21 requested, the Secretary of Labor shall make a
22 finding concerning the matter not later than 60
23 days after the date of the hearing. In the case
24 of similar complaints respecting the same appli-
25 cant, the Secretary of Labor may consolidate

1 the hearings under this subparagraph on such
2 complaints.

3 “(C) FAILURES TO MEET CONDITIONS.—If
4 the Secretary of Labor finds, after notice and
5 opportunity for a hearing, a failure to meet a
6 condition of paragraph (1)(A), (1)(B), (1)(D),
7 (1)(F), (2)(A), (2)(B), or (2)(G) of section
8 218(b), a substantial failure to meet a condition
9 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
10 (2)(E), or (2)(H) of section 218(b), or a mate-
11 rial misrepresentation of fact in an application
12 under section 218(a)—

13 “(i) the Secretary of Labor shall no-
14 tify the Secretary of such finding and may,
15 in addition, impose such other administra-
16 tive remedies (including civil money pen-
17 alties in an amount not to exceed \$1,000
18 per violation) as the Secretary of Labor
19 determines to be appropriate; and

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

24 “(D) WILLFUL FAILURES AND WILLFUL
25 MISREPRESENTATIONS.—If the Secretary of

1 Labor finds, after notice and opportunity for
2 hearing, a willful failure to meet a condition of
3 section 218(b), a willful misrepresentation of a
4 material fact in an application under section
5 218(a), or a violation of subsection (d)(1)—

6 “(i) the Secretary of Labor shall no-
7 tify the Secretary of such finding and may,
8 in addition, impose such other administra-
9 tive remedies (including civil money pen-
10 alties in an amount not to exceed \$5,000
11 per violation) as the Secretary of Labor
12 determines to be appropriate;

13 “(ii) the Secretary of Labor may seek
14 appropriate legal or equitable relief to ef-
15 fectuate the purposes of subsection (d)(1);
16 and

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

20 “(E) DISPLACEMENT OF UNITED STATES
21 WORKERS.—If the Secretary of Labor finds,
22 after notice and opportunity for hearing, a will-
23 ful failure to meet a condition of section 218(b)
24 or a willful misrepresentation of a material fact
25 in an application under section 218(a), in the

1 course of which failure or misrepresentation the
2 employer displaced a United States worker em-
3 ployed by the employer during the period of em-
4 ployment on the employer's application under
5 section 218(a) or during the period of 30 days
6 preceding such period of employment—

7 “(i) the Secretary of Labor shall no-
8 tify the Secretary of such finding and may,
9 in addition, impose such other administra-
10 tive remedies (including civil money pen-
11 alties in an amount not to exceed \$15,000
12 per violation) as the Secretary of Labor
13 determines to be appropriate; and

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

17 “(F) LIMITATIONS ON CIVIL MONEY PEN-
18 ALTIES.—The Secretary of Labor shall not im-
19 pose total civil money penalties with respect to
20 an application under section 218(a) in excess of
21 \$90,000.

22 “(G) FAILURES TO PAY WAGES OR RE-
23 QUIRED BENEFITS.—If the Secretary of Labor
24 finds, after notice and opportunity for a hear-
25 ing, that the employer has failed to pay the

1 wages, or provide the housing allowance, trans-
2 portation, subsistence reimbursement, or guar-
3 antee of employment, required under section
4 218A(b), the Secretary of Labor shall assess
5 payment of back wages, or other required bene-
6 fits, due any United States worker or H-2A
7 worker employed by the employer in the specific
8 employment in question. The back wages or
9 other required benefits under section 218A(b)
10 shall be equal to the difference between the
11 amount that should have been paid and the
12 amount that actually was paid to such worker.

13 “(2) STATUTORY CONSTRUCTION.—Nothing in
14 this section shall be construed as limiting the au-
15 thority of the Secretary of Labor to conduct any
16 compliance investigation under any other labor law,
17 including any law affecting migrant and seasonal ag-
18 ricultural workers, or, in the absence of a complaint
19 under this section, under section 218 or 218A.

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

1 “(1) The providing of housing or a housing al-
2 lowance as required under section 218A(b)(1).

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

5 “(3) The payment of wages required under sec-
6 tion 218A(b)(3) when due.

7 “(4) The benefits and material terms and con-
8 ditions of employment expressly provided in the job
9 offer described in section 218(a)(2), not including
10 the assurance to comply with other Federal, State,
11 and local labor laws described in section 218A(c),
12 compliance with which shall be governed by the pro-
13 visions of such laws.

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

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

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

20 “(c) PRIVATE RIGHT OF ACTION.—

21 “(1) MEDIATION.—Upon the filing of a com-
22 plaint by an H-2A worker aggrieved by a violation
23 of rights enforceable under subsection (b), and with-
24 in 60 days of the filing of proof of service of the
25 complaint, a party to the action may file a request

1 with the Federal Mediation and Conciliation Service
2 to assist the parties in reaching a satisfactory reso-
3 lution of all issues involving all parties to the dis-
4 pute. Upon a filing of such request and giving of no-
5 tice to the parties, the parties shall attempt medi-
6 ation within the period specified in subparagraph
7 (B).

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

14 “(B) 90-DAY LIMIT.—The Federal Medi-
15 ation and Conciliation Service may conduct me-
16 diation or other non-binding dispute resolution
17 activities for a period not to exceed 90 days be-
18 ginning on the date on which the Federal Medi-
19 ation and Conciliation Service receives the re-
20 quest for assistance unless the parties agree to
21 an extension of this period of time.

22 “(C) AUTHORIZATION.—There is hereby
23 authorized to be appropriated annually not to
24 exceed \$500,000 to the Federal Mediation and
25 Conciliation Service to carry out this section,

1 provided that, any contrary provision of law
2 notwithstanding, the Director of the Federal
3 Mediation and Conciliation Service is author-
4 ized to conduct the mediation or other dispute
5 resolution activities from any other appro-
6 priated funds available to the Director and to
7 reimburse such appropriated funds when the
8 funds are appropriated pursuant to this author-
9 ization, such reimbursement to be credited to
10 appropriations currently available at the time of
11 receipt thereof.

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

23 “(3) ELECTION.—An H-2A worker who has
24 filed an administrative complaint with the Secretary
25 of Labor may not maintain a civil action under

1 paragraph (2) unless a complaint based on the same
2 violation filed with the Secretary of Labor under
3 subsection (a)(1) is withdrawn prior to the filing of
4 such action, in which case the rights and remedies
5 available under this subsection shall be exclusive.

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

14 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
15 ments by employees purporting to waive or modify
16 their rights under this Act shall be void as contrary
17 to public policy, except that a waiver or modification
18 of the rights or obligations in favor of the Secretary
19 of Labor shall be valid for purposes of the enforce-
20 ment of this Act. The preceding sentence may not
21 be construed to prohibit agreements to settle private
22 disputes or litigation.

23 “(6) AWARD OF DAMAGES OR OTHER EQUI-
24 TABLE RELIEF.—

1 “(A) If the court finds that the respondent
2 has intentionally violated any of the rights en-
3 forceable under subsection (b), it shall award
4 actual damages, if any, or equitable relief.

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

8 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
9 CLUSIVE REMEDY.—

10 “(A) Notwithstanding any other provision
11 of this section, where a State’s workers’ com-
12 pensation law is applicable and coverage is pro-
13 vided for an H-2A worker, the workers’ com-
14 pensation benefits shall be the exclusive remedy
15 for the loss of such worker under this section
16 in the case of bodily injury or death in accord-
17 ance with such State’s workers’ compensation
18 law.

19 “(B) The exclusive remedy prescribed in
20 subparagraph (A) precludes the recovery under
21 paragraph (6) of actual damages for loss from
22 an injury or death but does not preclude other
23 equitable relief, except that such relief shall not
24 include back or front pay or in any manner, di-

1 rectly or indirectly, expand or otherwise alter or
2 affect—

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

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

7 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

8 If it is determined under a State workers’ compensa-
9 tion law that the workers’ compensation law is not
10 applicable to a claim for bodily injury or death of an
11 H-2A worker, the statute of limitations for bringing
12 an action for actual damages for such injury or
13 death under subsection (c) shall be tolled for the pe-
14 riod during which the claim for such injury or death
15 under such State workers’ compensation law was
16 pending. The statute of limitations for an action for
17 actual damages or other equitable relief arising out
18 of the same transaction or occurrence as the injury
19 or death of the H-2A worker shall be tolled for the
20 period during which the claim for such injury or
21 death was pending under the State workers’ com-
22 pensation law.

23 “(9) PRECLUSIVE EFFECT.—Any settlement by
24 an H-2A worker and H-2A employer reached
25 through the mediation process required under sub-

1 section (c)(1) shall preclude any right of action arising out of the same facts between the parties in any
2 Federal or State court or administrative proceeding,
3 unless specifically provided otherwise in the settlement agreement.
4

5
6 “(10) SETTLEMENTS.—Any settlement by the
7 Secretary of Labor with an H-2A employer on behalf of an H-2A worker of a complaint filed with the
8 Secretary of Labor under this section or any finding
9 by the Secretary of Labor under subsection
10 (a)(1)(B) shall preclude any right of action arising
11 out of the same facts between the parties under any
12 Federal or State court or administrative proceeding,
13 unless specifically provided otherwise in the settlement agreement.
14
15

16 “(d) DISCRIMINATION PROHIBITED.—

17 “(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application
18 under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other
19 manner discriminate against an employee (which
20 term, for purposes of this subsection, includes a
21 former employee and an applicant for employment)
22 because the employee has disclosed information to
23 the employer, or to any other person, that the em-
24
25

1 ployee reasonably believes evidences a violation of
2 section 218 or 218A or any rule or regulation per-
3 taining to section 218 or 218A, or because the em-
4 ployee cooperates or seeks to cooperate in an inves-
5 tigation or other proceeding concerning the employ-
6 er’s compliance with the requirements of section 218
7 or 218A or any rule or regulation pertaining to ei-
8 ther of such sections.

9 “(2) DISCRIMINATION AGAINST H-2A WORK-
10 ERS.—It is a violation of this subsection for any per-
11 son who has filed an application under section
12 218(a), to intimidate, threaten, restrain, coerce,
13 blacklist, discharge, or in any manner discriminate
14 against an H-2A employee because such worker has,
15 with just cause, filed a complaint with the Secretary
16 of Labor regarding a denial of the rights enumer-
17 ated and enforceable under subsection (b) or insti-
18 tuted, or caused to be instituted, a private right of
19 action under subsection (c) regarding the denial of
20 the rights enumerated under subsection (b), or has
21 testified or is about to testify in any court pro-
22 ceeding brought under subsection (c).

23 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
24 PRIATE EMPLOYMENT.—The Secretary of Labor and the
25 Secretary shall establish a process under which an H-2A

1 worker who files a complaint regarding a violation of sub-
2 section (d) and is otherwise eligible to remain and work
3 in the United States may be allowed to seek other appro-
4 priate employment in the United States for a period not
5 to exceed the maximum period of stay authorized for such
6 nonimmigrant classification.

7 “(f) ROLE OF ASSOCIATIONS.—

8 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
9 TION.—An employer on whose behalf an application
10 is filed by an association acting as its agent is fully
11 responsible for such application, and for complying
12 with the terms and conditions of sections 218 and
13 218A, as though the employer had filed the applica-
14 tion itself. If such an employer is determined, under
15 this section, to have committed a violation, the pen-
16 alty for such violation shall apply only to that mem-
17 ber of the association unless the Secretary of Labor
18 determines that the association or other member
19 participated in, had knowledge, or reason to know,
20 of the violation, in which case the penalty shall be
21 invoked against the association or other association
22 member as well.

23 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
24 AS AN EMPLOYER.—If an association filing an appli-
25 cation as a sole or joint employer is determined to

1 have committed a violation under this section, the
2 penalty for such violation shall apply only to the as-
3 sociation unless the Secretary of Labor determines
4 that an association member or members participated
5 in or had knowledge, or reason to know of the viola-
6 tion, in which case the penalty shall be invoked
7 against the association member or members as well.

8 “DEFINITIONS

9 “SEC. 218D. For purposes of sections 218 through
10 218C:

11 “(1) AGRICULTURAL EMPLOYMENT.—The term
12 ‘agricultural employment’ means any service or ac-
13 tivity that is considered to be agricultural under sec-
14 tion 3(f) of the Fair Labor Standards Act of 1938
15 (29 U.S.C. 203(f)) or agricultural labor under sec-
16 tion 3121(g) of the Internal Revenue Code of 1986
17 (26 U.S.C. 3121(g)). For purposes of this para-
18 graph, agricultural employment includes employment
19 under section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide
21 union’ means any organization in which employees
22 participate and which exists for the purpose of deal-
23 ing with employers concerning grievances, labor dis-
24 putes, wages, rates of pay, hours of employment, or
25 other terms and conditions of work for agricultural
26 employees. Such term does not include an organiza-

1 tion formed, created, administered, supported, domi-
2 nated, financed, or controlled by an employer or em-
3 ployer association or its agents or representatives.

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

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

14 “(5) EMPLOYER.—The term ‘employer’ means
15 any person or entity, including any farm labor con-
16 tractor and any agricultural association, that em-
17 ploys workers in agricultural employment.

18 “(6) H–2A EMPLOYER.—The term ‘H–2A em-
19 ployer’ means an employer who seeks to hire 1 or
20 more nonimmigrant aliens described in section
21 101(a)(15)(H)(ii)(a).

22 “(7) H–2A WORKER.—The term ‘H–2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

1 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
2 tunity’ means a job opening for temporary full-time
3 employment at a place in the United States to which
4 United States workers can be referred.

5 “(9) LAYS OFF.—

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

8 “(i) means to cause the worker’s loss
9 of employment, other than through a dis-
10 charge for inadequate performance, viola-
11 tion of workplace rules, cause, voluntary
12 departure, voluntary retirement, contract
13 impossibility (as described in section
14 218A(b)(4)(D)), or temporary layoffs due
15 to weather, markets, or other temporary
16 conditions; but

17 “(ii) does not include any situation in
18 which the worker is offered, as an alter-
19 native to such loss of employment, a simi-
20 lar employment opportunity with the same
21 employer (or, in the case of a placement of
22 a worker with another employer under sec-
23 tion 218(b)(2)(E), with either employer de-
24 scribed in such section) at equivalent or
25 higher compensation and benefits than the

1 position from which the employee was dis-
2 charged, regardless of whether or not the
3 employee accepts the offer.

4 “(B) STATUTORY CONSTRUCTION.—Noth-
5 ing in this paragraph is intended to limit an
6 employee’s rights under a collective bargaining
7 agreement or other employment contract.

8 “(10) REGULATORY DROUGHT.—The term ‘reg-
9 ulatory drought’ means a decision subsequent to the
10 filing of the application under section 218 by an en-
11 tity not under the control of the employer making
12 such filing which restricts the employer’s access to
13 water for irrigation purposes and reduces or limits
14 the employer’s ability to produce an agricultural
15 commodity, thereby reducing the need for labor.

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

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

21 (B) from its nature, it may not be contin-
22 uous or carried on throughout the year.

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

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

4 “(14) UNITED STATES WORKER.—The term
5 ‘United States worker’ means any worker, whether
6 a United States citizen or national, a lawfully admit-
7 ted permanent resident alien, or any other alien,
8 who is authorized to work in the job opportunity
9 within the United States, except an alien admitted
10 or otherwise provided status under section
11 101(a)(15)(H)(ii)(a).”.

12 (b) TABLE OF CONTENTS.—The table of contents of
13 the Immigration and Nationality Act (8 U.S.C. 1101 et
14 seq.) is amended by striking the item relating to section
15 218 and inserting the following:

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

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

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

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

“Sec. 218D. Definitions.”.

16 **TITLE III—MISCELLANEOUS**
17 **PROVISIONS**

18 **SEC. 301. DETERMINATION AND USE OF USER FEES.**

19 (a) SCHEDULE OF FEES.—The Secretary shall estab-
20 lish and periodically adjust a schedule of fees for the em-
21 ployment of aliens under this Act, and a collection process
22 for such fees from employers participating in the program
23 provided under this Act. Such fees shall be the only fees

1 chargeable to employers for services provided under this
2 Act.

3 (b) DETERMINATION OF SCHEDULE.—

4 (1) IN GENERAL.—The schedule under sub-
5 section (a) shall reflect a fee rate based on the num-
6 ber of job opportunities indicated in the employer’s
7 application under section 218 of the Immigration
8 and Nationality Act, as added by section 201 of this
9 Act, and sufficient to provide for the direct costs of
10 providing services related to an employer’s author-
11 ization to employ eligible aliens pursuant to this Act,
12 to include the certification of eligible employers, the
13 issuance of documentation, and the admission of eli-
14 gible aliens.

15 (2) PROCEDURE.—

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

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

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

3 (c) USE OF PROCEEDS.—Notwithstanding any other
4 provision of law, all proceeds resulting from the payment
5 of the alien employment user fees shall be available with-
6 out further appropriation and shall remain available with-
7 out fiscal year limitation to reimburse the Secretary, the
8 Secretary of State, and the Secretary of Labor for the
9 costs of carrying out sections 218 and 218B of the Immi-
10 gration and Nationality Act, as added by section 201 of
11 this Act, and the provisions of this Act.

12 **SEC. 302. REGULATIONS.**

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

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

22 (c) REGULATIONS OF THE SECRETARY OF LABOR.—
23 The Secretary of Labor shall consult with the Secretary
24 of Agriculture and the Secretary on all regulations to im-

1 plement the duties of the Secretary of Labor under this
2 Act.

3 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

4 All regulations to implement the duties of the Secretary,
5 the Secretary of State, and the Secretary of Labor created
6 under sections 218, 218A, 218B, and 218C of the Immi-
7 gration and Nationality Act, as added by section 201, shall
8 take effect on the effective date of section 201 and shall
9 be issued not later than 1 year after the date of enactment
10 of this Act.

11 **SEC. 303. EFFECTIVE DATE.**

12 (a) IN GENERAL.—Except as otherwise provided, sec-
13 tions 201 and 301 shall take effect on the date that is
14 1 year after the date of enactment of this Act.

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

○