

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2337

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

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## IN THE SENATE OF THE UNITED STATES

JULY 21, 1998

Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. CRAIG, Mr. GRAHAM, Mr. GORTON, Mr. BUMPERS, Mr. HATCH, Mr. McCONNELL, and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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

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

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Agricultural Job Opportunity Benefits and Security Act  
4 of 1998”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Agricultural worker registries.
- Sec. 4. Employer applications and assurances.
- Sec. 5. Search of registry.
- Sec. 6. Issuance of visas and admission of aliens.
- Sec. 7. Employment requirements.
- Sec. 8. Enforcement and penalties.
- Sec. 9. Alternative program for the admission of temporary H-2A workers.
- Sec. 10. Inclusion in employment-based immigration preference allocation.
- Sec. 11. Migrant and seasonal Head Start program.
- Sec. 12. Regulations.
- Sec. 13. Funding from Wagner-Peyser Act.
- Sec. 14. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) ADVERSE EFFECT WAGE RATE.—The term  
10 “adverse effect wage rate” means the rate of pay for  
11 an agricultural occupation that is 5-percent above  
12 the prevailing rate of pay for that agricultural occu-  
13 pation in an area of intended employment, if the av-  
14 erage hourly equivalent of the prevailing rate of pay  
15 for the occupation is less than the prior year’s aver-  
16 age hourly earnings of field and livestock workers  
17 for the State (or region that includes the State), as  
18 determined by the Secretary of Agriculture. No ad-  
19 verse effect wage rate shall be more than the prior

1 year's average hourly earnings of field and livestock  
2 workers for the State (or region that includes the  
3 State), as determined by the Secretary of Agri-  
4 culture.

5 (2) AGRICULTURAL EMPLOYMENT.—The term  
6 “agricultural employment” means any service or ac-  
7 tivity included within the provisions of section 3(f)  
8 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
9 203(f)) or section 3121(g) of the Internal Revenue  
10 Code of 1986 and the handling, planting, drying,  
11 packing, packaging, processing, freezing, or grading  
12 prior to delivery for storage of any agricultural or  
13 horticultural commodity in its unmanufactured  
14 state.

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

20 (4) EMPLOYER.—The term “employer” means  
21 any person or entity, including any independent con-  
22 tractor and any agricultural association, that em-  
23 ploys workers.

24 (5) JOB OPPORTUNITY.—The term “job oppor-  
25 tunity” means a specific period of employment for a

1 worker in one or more specified agricultural activi-  
2 ties.

3 (6) PREVAILING WAGE.—The term “prevailing  
4 wage” means with respect to an agricultural activity  
5 in an area of intended employment, the rate of  
6 wages that includes the 51st percentile of employees  
7 in that agricultural activity in the area of intended  
8 employment, expressed in terms of the prevailing  
9 method of pay for the agricultural activity in the  
10 area of intended employment.

11 (7) REGISTERED WORKER.—The term “reg-  
12 istered worker” means an individual whose name ap-  
13 pears in a registry.

14 (8) REGISTRY.—The term “registry” means an  
15 agricultural worker registry established under sec-  
16 tion 3(a).

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

19 (10) UNITED STATES WORKER.—The term  
20 “United States worker” means any worker, whether  
21 a United States citizen, a United States national, or  
22 an alien who is authorized to work in the job oppor-  
23 tunity within the United States other than an alien  
24 admitted pursuant to section 101(a)(15)(H)(ii)(a) or

1 218 of the Immigration and Nationality Act, as in  
2 effect on the effective date of this Act.

3 **SEC. 3. AGRICULTURAL WORKER REGISTRIES.**

4 (a) ESTABLISHMENT OF REGISTRIES.—

5 (1) IN GENERAL.—The Secretary of Labor shall  
6 establish and maintain a system of registries con-  
7 taining a current database of eligible United States  
8 workers who seek to perform temporary or seasonal  
9 agricultural work and the employment status of such  
10 workers—

11 (A) to ensure that eligible United States  
12 workers are informed about available agricul-  
13 tural job opportunities;

14 (B) to maximize the work period for eligi-  
15 ble United States workers; and

16 (C) to provide timely referral of such work-  
17 ers to temporary and seasonal agricultural job  
18 opportunities in the United States.

19 (2) COVERAGE.—

20 (A) SINGLE STATE OR GROUP OF  
21 STATES.—Each registry established under para-  
22 graph (1) shall include the job opportunities in  
23 a single State, or a group of contiguous States  
24 that traditionally share a common pool of sea-  
25 sonal agricultural workers.

1 (B) REQUESTS FOR INCLUSION.—Each  
2 State requesting inclusion in a registry, or hav-  
3 ing any group of agricultural producers seeking  
4 to utilize the registry, shall be represented by  
5 a registry or by a registry of contiguous States.

6 (b) REGISTRATION.—

7 (1) IN GENERAL.—An eligible individual who  
8 seeks employment in temporary or seasonal agricul-  
9 tural work may apply to be included in the registry  
10 for the State or States in which the individual seeks  
11 employment. Such application shall include—

12 (A) the name and address of the individ-  
13 ual;

14 (B) the period or periods of time (includ-  
15 ing beginning and ending dates) during which  
16 the individual will be available for temporary or  
17 seasonal agricultural work;

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

20 (D) the specific qualifications and work ex-  
21 perience possessed by the applicant;

22 (E) the type or types of temporary or sea-  
23 sonal agricultural work the applicant is willing  
24 to perform;

1 (F) such other information as the appli-  
2 cant wishes to be taken into account in refer-  
3 ring the applicant to temporary or seasonal ag-  
4 ricultural job opportunities; and

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

7 (2) VALIDATION OF EMPLOYMENT AUTHORIZA-  
8 TION.—No person may be included on any registry  
9 unless the Attorney General has certified to the Sec-  
10 retary of Labor that the person is authorized to be  
11 employed in the United States.

12 (3) WORKERS REFERRED TO JOB OPPORTUNI-  
13 TIES.—The name of each registered worker who is  
14 referred and accepts employment with an employer  
15 pursuant to section 5 shall be classified as inactive  
16 on each registry on which the worker is included  
17 during the period of employment involved in the job  
18 to which the worker was referred, unless the worker  
19 reports to the Secretary that the worker is no longer  
20 employed and is available for referral to another job  
21 opportunity. A registered worker classified as inac-  
22 tive shall not be referred pursuant to section 5.

23 (4) REMOVAL OF NAMES FROM A REGISTRY.—  
24 The Secretary shall remove from all registries the  
25 name of any registered worker who, on 3 separate

1 occasions within a 3-month period, is referred to a  
2 job opportunity pursuant to this section, and who  
3 declines such referral or fails to report to work in  
4 a timely manner.

5 (5) VOLUNTARY REMOVAL.—A registered work-  
6 er may request that the worker’s name be removed  
7 from a registry or from all registries.

8 (6) REMOVAL BY EXPIRATION.—The applica-  
9 tion of a registered worker shall expire, and the Sec-  
10 retary shall remove the name of such worker from  
11 all registries if the worker has not accepted a job op-  
12 portunity pursuant to this section within the preced-  
13 ing 12-month period.

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

18 (c) CONFIDENTIALITY OF REGISTRIES.—The Sec-  
19 retary shall maintain the confidentiality of the registries  
20 established pursuant to this section, and the information  
21 in such registries shall not be used for any purposes other  
22 than those authorized in this Act.

23 (d) ADVERTISING OF REGISTRIES.—The Secretary  
24 shall widely disseminate, through advertising and other  
25 means, the existence of the registries for the purpose of



1 encouraging eligible United States workers seeking tem-  
2 porary or seasonal agricultural job opportunities to reg-  
3 ister.

4 **SEC. 4. EMPLOYER APPLICATIONS AND ASSURANCES.**

5 (a) APPLICATIONS TO THE SECRETARY.—

6 (1) IN GENERAL.—Not later than 21 days prior  
7 to the date on which an agricultural employer de-  
8 sires to employ a registered worker in a temporary  
9 or seasonal agricultural job opportunity, the em-  
10 ployer shall apply to the Secretary for the referral  
11 of a United States worker through a search of the  
12 appropriate registry, in accordance with section 5.  
13 Such application shall—

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

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

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

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

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

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

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

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

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

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

23          (b) AMENDMENT OF APPLICATIONS.—Prior to receiv-  
24          ing a referral of workers from a registry, an employer may  
25          amend an application under this subsection if the employ-

1 er's need for workers changes. If an employer amends an  
2 application on a date which is later than 21 days prior  
3 to the date on which the workers on the amended applica-  
4 tion are sought to be employed, the Secretary may delay  
5 issuance of the report described in section 5(b) by the  
6 number of days by which the filing of the amended appli-  
7 cation is later than 21 days before the date on which the  
8 employer desires to employ workers.

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

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

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

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

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

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

12 (3) ASSURANCE OF PROVISION OF REQUIRED  
13 WAGES AND BENEFITS.—The employer shall assure  
14 that the employer will provide the wages and bene-  
15 fits required by subsections (a), (b), and (c) of sec-  
16 tion 7 to all workers employed in job opportunities  
17 for which the employer has applied under subsection  
18 (a) and to all other workers in the same occupation  
19 at the place of employment.

20 (4) ASSURANCE OF EMPLOYMENT.—The em-  
21 ployer shall assure that the employer will refuse to  
22 employ individuals referred under section 5, or ter-  
23 minate individuals employed pursuant to this Act,  
24 only for lawful job-related reasons, including lack of  
25 work.

1           (5) ASSURANCE OF COMPLIANCE WITH LABOR  
2 LAWS.—

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

11           (B) LIMITATIONS.—The disclosure re-  
12 quired under section 201(a) of the Migrant and  
13 Seasonal Agricultural Worker Protection Act  
14 (29 U.S.C. 1821(a)) may be made at any time  
15 prior to the time the alien is issued a visa per-  
16 mitting entry into the United States.

17           (6) ASSURANCE OF ADVERTISING OF THE REG-  
18 ISTRY.—The employer shall assure that the em-  
19 ployer will, from the day an application for workers  
20 is submitted under subsection (a), and continuing  
21 throughout the period of employment of any job op-  
22 portunity for which the employer has applied for a  
23 worker from the registry, post in a conspicuous place  
24 a poster to be provided by the Secretary advertising  
25 the availability of the registry.

1           (7) ASSURANCE OF CONTACTING FORMER  
2 WORKERS.—The employer shall assure that the em-  
3 ployer has made reasonable efforts through the  
4 sending of a letter by United States Postal Service  
5 mail, or otherwise, to contact any eligible worker the  
6 employer employed during the previous season in the  
7 occupation at the place of intended employment for  
8 which the employer is applying for registered work-  
9 ers, and has made the availability of the employer’s  
10 job opportunities in the occupation at the place of  
11 intended employment known to such previous work-  
12 er, unless the worker was terminated from employ-  
13 ment by the employer for a lawful job-related reason  
14 or abandoned the job before the worker completed  
15 the period of employment of the job opportunity for  
16 which the worker was hired.

17           (8) ASSURANCE OF PROVISION OF WORKERS  
18 COMPENSATION.—The employer shall assure that if  
19 the job opportunity is not covered by the State work-  
20 ers’ compensation law, that the employer will pro-  
21 vide, at no cost to the worker, insurance covering in-  
22 jury and disease arising out of and in the course of  
23 the worker’s employment which will provide benefits  
24 at least equal to those provided under the State

1 workers' compensation law for comparable employ-  
2 ment.

3 (9) ASSURANCE OF UNEMPLOYMENT INSUR-  
4 ANCE COVERAGE.—The employer shall assure that if  
5 the employer's employment is not covered employ-  
6 ment under the State's unemployment insurance  
7 law, the employer will provide unemployment insur-  
8 ance coverage for the employer's United States  
9 workers at the place of employment for which the  
10 employer has applied for workers under subsection  
11 (a).

12 (d) WITHDRAWAL OF APPLICATIONS.—

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

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

5           (3) OBLIGATIONS UNDER OTHER STATUTES.—  
6 Any obligation incurred by an employer under any  
7 other law or regulation as a result of recruitment of  
8 United States workers under an offer of terms and  
9 conditions of employment required as a result of  
10 making an application under subsection (a) is unaf-  
11 fected by withdrawal of such application.

12           (e) REVIEW OF APPLICATION.—

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

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

24           (3) REJECTION OF APPLICATIONS.—If the Sec-  
25 retary determines that an application fails to meet



1       1 or more of the requirements of subsection (a), the  
2       Secretary, as expeditiously as possible, but in no  
3       case later than 7 days after the receipt of such ap-  
4       plication, shall—

5               (A) notify the employer of the rejection of  
6       the application and the reasons for such rejec-  
7       tion, and provide the opportunity for the  
8       prompt resubmission of an amended applica-  
9       tion; and

10              (B) offer the applicant an opportunity to  
11       request an expedited administrative review or a  
12       de novo administrative hearing before an ad-  
13       ministrative law judge of the rejection of the  
14       application.

15              (4) REJECTION FOR PROGRAM VIOLATIONS.—

16       The Secretary shall reject the application of an em-  
17       ployer under this section if the employer has been  
18       determined to be ineligible to employ workers under  
19       section 8(b) or subsection (b)(2) of section 218 of  
20       the Immigration and Nationality Act (8 U.S.C.  
21       1188).

22       **SEC. 5. SEARCH OF REGISTRY.**

23              (a) SEARCH PROCESS AND REFERRAL TO THE EM-  
24       PLOYER.—Upon the approval of an application under sec-  
25       tion 4(e), the Secretary shall promptly begin a search of

1 the registry of the State (or States) in which the work  
2 is to be performed to identify registered workers with the  
3 qualifications requested by the employer. The Secretary  
4 shall contact such qualified registered workers and deter-  
5 mine, in each instance, whether the worker is ready, will-  
6 ing, and able to accept the employer's job opportunity and  
7 will commit to work for the employer at the time and place  
8 needed. The Secretary shall provide to each worker who  
9 commits to work for the employer the employer's name,  
10 address, telephone number, the location where the em-  
11 ployer has requested that employees report for employ-  
12 ment, and a statement disclosing the terms and conditions  
13 of employment.

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

1           (c) NOTICE OF INSUFFICIENT WORKERS.—If the re-  
2 port provided to the employer under subsection (b) does  
3 not include referral of a sufficient number of registered  
4 workers to fill all of the employer’s job opportunities in  
5 the occupation for which the employer applied under sec-  
6 tion 4(a), the Secretary shall indicate in the report the  
7 number of job opportunities for which registered workers  
8 could not be referred, and promptly transmit a copy of  
9 the report to the Attorney General and the Secretary of  
10 State, by electronic or other means ensuring next day de-  
11 livery.

12 **SEC. 6. ISSUANCE OF VISAS AND ADMISSION OF ALIENS.**

13           (a) IN GENERAL.—

14               (1) NUMBER OF ADMISSIONS.—The Secretary  
15 of State shall promptly issue visas to, and the Attor-  
16 ney General shall admit, a sufficient number of eligi-  
17 ble aliens designated by the employer to fill the job  
18 opportunities of the employer—

19                       (A) upon receipt of a copy of the report  
20 described in section 5(c);

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

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

1 (D) upon receipt of a report under sub-  
2 section (d).

3 (2) PROCEDURES.—The admission of aliens  
4 under paragraph (1) shall be subject to the proce-  
5 dures of section 218A of the Immigration and Na-  
6 tionality Act, as added by this Act.

7 (3) AGRICULTURAL ASSOCIATIONS.—Aliens ad-  
8 mitted pursuant to a report described in paragraph  
9 (1) may be employed by any member of the agricul-  
10 tural association that has made the certification re-  
11 quired by section 4(a)(2)(B).

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

13 (1) APPLICATION TO THE SECRETARY OF  
14 STATE.—If the employer has not received a referral  
15 of sufficient workers pursuant to section 5(b) or a  
16 report of insufficient workers pursuant to section  
17 5(c), by the date that is 7 days before the date on  
18 which the work is anticipated to begin, the employer  
19 may submit an application for alien workers directly  
20 to the Secretary of State, with a copy of the applica-  
21 tion provided to the Attorney General, seeking the  
22 issuance of visas to and the admission of aliens for  
23 employment in the job opportunities for which the  
24 employer has not received referral of registered  
25 workers. Such an application shall include a copy of

1 the employer's application under section 4(a), to-  
2 gether with evidence of its timely submission. The  
3 Secretary of State may consult with the Secretary of  
4 Labor in carrying out this paragraph.

5 (2) EXPEDITED CONSIDERATION BY SECRETARY  
6 OF STATE.—The Secretary of State shall, as expedi-  
7 tiously as possible, but not later than 5 days after  
8 the employer files an application under paragraph  
9 (1), issue visas to, and the Attorney General shall  
10 admit, a sufficient number of eligible aliens des-  
11 ignated by the employer to fill the job opportunities  
12 for which the employer has applied under that para-  
13 graph.

14 (c) REDETERMINATION OF NEED.—

15 (1) REQUESTS FOR REDETERMINATION.—

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

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

1                   (ii) the worker is not ready, willing,  
2                   able, or qualified to perform the work re-  
3                   quired; or

4                   (iii) the worker abandons the employ-  
5                   ment or is terminated for a lawful job-re-  
6                   lated reason.

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

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

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

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

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

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

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

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

17 **SEC. 7. EMPLOYMENT REQUIREMENTS.**

18          (a) REQUIRED WAGES.—

19               (1) IN GENERAL.—An employer applying under  
20               section 4(a) for workers shall offer to pay, and shall  
21               pay, all workers in the occupation or occupations for  
22               which the employer has applied for workers from the  
23               registry, not less (and is not required to pay more)  
24               than the greater of the prevailing wage in the occu-

1       pation in the area of intended employment or the  
2       adverse effect wage rate.

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

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

18          (4) ALTERNATIVE METHODS OF PAYMENT PER-  
19      MITTED.—

20           (A) IN GENERAL.—A prevailing wage may  
21      be expressed as an hourly wage, a piece rate, a  
22      task rate, or other incentive payment method,  
23      including a group rate. The requirement to pay  
24      at least the prevailing wage in the occupation  
25      and area of intended employment does not re-



1           quire an employer to pay by the method of pay  
2           in which the prevailing rate is expressed, except  
3           that, if the employer adopts a method of pay  
4           other than the prevailing rate, the burden of  
5           proof is on the employer to demonstrate that  
6           the employer's method of pay is designed to  
7           produce earnings equivalent to the earnings  
8           that would result from payment of the prevail-  
9           ing rate.

10           (B) COMPLIANCE WHEN PAYING AN IN-  
11           CENTIVE RATE.—In the case of an employer  
12           that pays a piece rate or task rate or uses any  
13           other incentive payment method, including a  
14           group rate, the employer shall be considered to  
15           be in compliance with any applicable hourly  
16           wage requirement if the average of the hourly  
17           earnings of the workers, taken as a group, the  
18           activity for which a piece rate, task rate, or  
19           other incentive payment, including a group rate,  
20           is paid, for the pay period, is at least equal to  
21           the required hourly wage.

22           (C) TASK RATE.—For purposes of this  
23           paragraph, the term “task rate” means an in-  
24           centive payment method based on a unit of  
25           work performed such that the incentive rate

1 varies with the level of effort required to per-  
2 form individual units of work.

3 (D) GROUP RATE.—For purposes of this  
4 paragraph, the term “group rate” means an in-  
5 centive payment method in which the payment  
6 is shared among a group of workers working to-  
7 gether to perform the task.

8 (b) REQUIREMENT TO PROVIDE HOUSING.—

9 (1) IN GENERAL.—An employer applying under  
10 section 4(a) for registered workers shall offer to pro-  
11 vide housing at no cost (except for charges per-  
12 mitted by paragraph (5)) to all workers employed in  
13 job opportunities to which the employer has applied  
14 under that section, and to all other workers in the  
15 same occupation at the place of employment, whose  
16 permanent place of residence is beyond normal com-  
17 muting distance.

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

1 ards for rental or public accommodation housing or  
2 other substantially similar class of habitation.

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

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

13 (5) CHARGES FOR HOUSING.—

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

21 (B) SECURITY DEPOSIT.—An employer  
22 who provides housing to workers pursuant to  
23 paragraph (1) may require, as a condition for  
24 providing such housing, a deposit not to exceed  
25 \$50 from workers occupying such housing to

1 protect against gross negligence or willful de-  
2 struction of property.

3 (C) DAMAGES.—An employer who provides  
4 housing to workers pursuant to paragraph (1)  
5 may require a worker found to have been re-  
6 sponsible for damage to such housing which is  
7 not the result of normal wear and tear related  
8 to habitation to reimburse the employer for the  
9 reasonable cost of repair of such damage.

10 (6) REDUCED USER FEE FOR WORKERS PRO-  
11 VIDED HOUSING.—An employer shall receive a credit  
12 of 40 percent of the payment otherwise due pursu-  
13 ant to section 218(b) of the Immigration and Na-  
14 tionality Act on the earnings of alien workers to  
15 whom the employer provides housing pursuant to  
16 paragraph (1).

17 (7) HOUSING ALLOWANCE AS ALTERNATIVE.—

18 (A) IN GENERAL.—In lieu of offering  
19 housing pursuant to paragraph (1), subject to  
20 subparagraphs (B) through (D), the employer  
21 may on a case-by-case basis provide a reason-  
22 able housing allowance. An employer who offers  
23 a housing allowance to a worker pursuant to  
24 this subparagraph shall not be deemed to be a  
25 housing provider under section 203 of the Mi-

1 grant and Seasonal Agricultural Worker Protec-  
2 tion Act (29 U.S.C. 1823) solely by virtue of  
3 providing such housing allowance.

4 (B) LIMITATION.—At any time after the  
5 date that is 3 years after the effective date of  
6 this Act, the governor of the State may certify  
7 to the Secretary that there is not sufficient  
8 housing available in an area of intended em-  
9 ployment of migrant farm workers or aliens  
10 provided status pursuant to this Act who are  
11 seeking temporary housing while employed at  
12 farm work. Such certification may be canceled  
13 by the governor of the State at any time, and  
14 shall expire after 5 years unless renewed by the  
15 governor of the State.

16 (C) EFFECT OF CERTIFICATION.—If the  
17 governor of the State makes the certification of  
18 insufficient housing described in subparagraph  
19 (A) with respect to an area of employment, em-  
20 ployers of workers in that area of employment  
21 may not offer the housing allowance described  
22 in subparagraph (A) after the date that is 5  
23 years after such certification of insufficient  
24 housing for such area, unless the certification

1 has expired or been canceled pursuant to sub-  
2 paragraph (B).

3 (D) AMOUNT OF ALLOWANCE.—The  
4 amount of a housing allowance under this para-  
5 graph shall be equal to the statewide average  
6 fair market rental for existing housing for non-  
7 metropolitan counties for the State in which the  
8 employment occurs, as established by the Sec-  
9 retary of Housing and Urban Development pur-  
10 suant to section 8(c) of the United States  
11 Housing Act of 1937 (42 U.S.C. 1437f(c)),  
12 based on a 2-bedroom dwelling unit and an as-  
13 sumption of 2 persons per bedroom.

14 (c) REIMBURSEMENT OF TRANSPORTATION.—

15 (1) TO PLACE OF EMPLOYMENT.—A worker  
16 who is referred to a job opportunity under section  
17 5(a), or an alien employed pursuant to this Act, who  
18 completes 50 percent of the period of employment of  
19 the job opportunity for which the worker was hired,  
20 may apply to the Secretary for reimbursement of the  
21 cost of the worker's transportation and subsistence  
22 from the worker's permanent place of residence (or  
23 place of last employment, if the worker traveled  
24 from such place) to the place of employment to  
25 which the worker was referred under section 5(a).

1           (2) FROM PLACE OF EMPLOYMENT.—A worker  
2 who is referred to a job opportunity under section  
3 5(a), or an alien employed pursuant to this Act, who  
4 completes the period of employment for the job op-  
5 portunity involved, may apply to the Secretary for  
6 reimbursement of the cost of the worker's transpor-  
7 tation and subsistence from the place of employment  
8 to the worker's permanent place of residence (or  
9 place of next employment, if the worker travels from  
10 the place of current employment to a subsequent  
11 place of employment and is otherwise ineligible for  
12 reimbursement under paragraph (1) with respect to  
13 such subsequent place of employment).

14           (3) LIMITATION.—

15           (A) AMOUNT OF REIMBURSEMENT.—Ex-  
16 cept as provided in subparagraph (B), the  
17 amount of reimbursement provided under para-  
18 graph (1) or (2) to a worker or alien shall not  
19 exceed the lesser of—

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

23                   (ii) the most economical and reason-  
24 able transportation and subsistence costs  
25 that would have been incurred had the

1 worker or alien used an appropriate com-  
2 mon carrier, as determined by the Sec-  
3 retary.

4 (B) DISTANCE TRAVELED.—No reimburse-  
5 ment under paragraph (1) or (2) shall be re-  
6 quired if the distance traveled is 100 miles or  
7 less.

8 (4) USE OF TRUST FUND.—Reimbursements  
9 made by the Secretary to workers or aliens under  
10 this subsection shall be considered to be administra-  
11 tive expenses for purposes of section 218A(b)(4) of  
12 the Immigration and Nationality Act, as added by  
13 this Act.

14 (d) ESTABLISHMENT OF PILOT PROGRAM FOR AD-  
15 VANCING TRANSPORTATION COSTS.—

16 (1) IN GENERAL.—The Secretary shall establish  
17 a pilot program for the issuance of vouchers to  
18 United States workers who are referred to job op-  
19 portunities under section 5(a) for the purpose of en-  
20 abling such workers to purchase common carrier  
21 transportation to the place of employment.

22 (2) LIMITATION.—A voucher may only be pro-  
23 vided to a worker under paragraph (1) if the job op-  
24 portunity involved requires that the worker tempo-  
25 rarily relocate to a place of employment that is more



1 than 100 miles from the worker's permanent place  
2 of residence or last place of employment, and the  
3 worker attests that the worker cannot travel to the  
4 place of employment without such assistance from  
5 the Secretary.

6 (3) NUMBER OF VOUCHERS.—The Secretary  
7 shall award vouchers under the pilot program under  
8 paragraph (1) to workers referred from each registry  
9 in proportion to the number of workers registered  
10 with each such registry.

11 (4) REIMBURSEMENT.—

12 (A) USE OF TRUST FUND.—Reimburse-  
13 ments for the cost of vouchers provided by the  
14 Secretary under this subsection for workers who  
15 complete at least 50 percent of the period of  
16 employment of the job opportunity for which  
17 the worker was hired shall be considered to be  
18 administrative expenses for purposes of section  
19 218A(b)(4) of the Immigration and Nationality  
20 Act, as added by this Act.

21 (B) OF SECRETARY.—A worker who re-  
22 ceives a voucher under this subsection who fails  
23 to complete at least 50 percent of the period of  
24 employment of the job opportunity for which  
25 the worker was hired under the job opportunity

1           involved shall reimburse the Secretary for the  
2           cost of the voucher.

3           (5) REPORT AND CONTINUATION OF PRO-  
4           GRAM.—

5           (A) COLLECTION OF DATA.—The Sec-  
6           retary shall collect data on—

7                   (i) the extent to which workers receiv-  
8                   ing vouchers under this subsection report,  
9                   in a timely manner, to the jobs to which  
10                  such workers have been referred;

11                  (ii) whether such workers complete  
12                  the job opportunities involved; and

13                  (iii) the extent to which such workers  
14                  do not complete at least 50 percent of the  
15                  period of employment the job opportunities  
16                  for which the workers were hired.

17           (B) REPORT.—Not later than 6 months  
18           after the expiration of the second fiscal year  
19           during which the program under this subsection  
20           is in operation, the Secretary, in consultation  
21           with the Secretary of Agriculture, shall prepare  
22           and submit to the Committee on the Judiciary  
23           of the Senate and the Committee on the Judici-  
24           ary of the House of Representatives, a report,  
25           based on the data collected under subparagraph

1 (A), concerning the results of the program es-  
2 tablished under this section. Such report shall  
3 contain the recommendations of the Secretary  
4 concerning the termination or continuation of  
5 such program.

6 (C) TERMINATION OF PROGRAM.—The rec-  
7 ommendations of the Secretary in the report  
8 submitted under subparagraph (B) shall be-  
9 come effective upon the expiration of the 90-day  
10 period beginning on the date on which such re-  
11 port is submitted unless Congress enacts a joint  
12 resolution disapproving such recommendations.

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

15 (1) IN GENERAL.—An employer that applies for  
16 registered workers under section 4(a) shall, as a con-  
17 dition for the approval of such application, continue  
18 to offer employment to qualified, eligible United  
19 States workers who are referred under section 5(b)  
20 after the employer receives the report described in  
21 section 5(b).

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

1 (A) after 50 percent of the anticipated pe-  
2 riod of employment shown on the employer's  
3 application under section 4(a) has elapsed; or

4 (B) during any period in which the em-  
5 ployer is employing no aliens in the occupation  
6 for which the United States worker was re-  
7 ferred; or

8 (C) during any period when the Secretary  
9 is conducting a search of a registry for job op-  
10 portunities in the occupation and area of in-  
11 tended employment to which the worker has  
12 been referred, or other occupations in the area  
13 of intended employment for which the worker is  
14 qualified that offer substantially similar terms  
15 and conditions of employment.

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

1           (4) REFERRAL OF WORKERS DURING 50-PER-  
2           CENT PERIOD.—The Secretary shall make all rea-  
3           sonable efforts to place a registered worker in an  
4           open job acceptable to the worker, including avail-  
5           able jobs not listed on the registry, before referring  
6           such worker to an employer for a job opportunity al-  
7           ready filled by, or committed to, an alien admitted  
8           pursuant to this Act.

9   **SEC. 8. ENFORCEMENT AND PENALTIES.**

10   (a) ENFORCEMENT AUTHORITY.—

11           (1) INVESTIGATION OF COMPLAINTS.—

12                   (A) IN GENERAL.—The Secretary shall es-  
13                   tablish a process for the receipt, investigation,  
14                   and disposition of complaints respecting an em-  
15                   ployer's failure to meet a condition specified in  
16                   section 4 or an employer's misrepresentation of  
17                   material facts in an application under that sec-  
18                   tion. Complaints may be filed by any aggrieved  
19                   person or any organization (including bargain-  
20                   ing representatives). No investigation or hear-  
21                   ing shall be conducted on a complaint concern-  
22                   ing such a failure or misrepresentation unless  
23                   the complaint was filed not later than 12  
24                   months after the date of the failure or mis-  
25                   representation, as the case may be. The Sec-

1           retary shall conduct an investigation under this  
2           paragraph if there is reasonable cause to believe  
3           that such a failure or misrepresentation has oc-  
4           curred.

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

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

22                   (b) REMEDIES.—

23                   (1) BACK WAGES.—Upon a final determination  
24          that the employer has failed to pay wages as re-  
25          quired under this section, the Secretary may assess

1 payment of back wages due to any United States  
2 worker or alien described in section  
3 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
4 ality Act employed by the employer in the specific  
5 employment in question. The back wages shall be  
6 equal to the difference between the amount that  
7 should have been paid and the amount that actually  
8 was paid to such worker.

9 (2) FAILURE TO PAY WAGES.—Upon a final de-  
10 termination that the employer has failed to pay the  
11 wages required under this Act, the Secretary may  
12 assess a civil money penalty up to \$1,000 for each  
13 failure, and may recommend to the Attorney General  
14 the disqualification of the employer from the employ-  
15 ment of aliens described in section  
16 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
17 ality Act for a period of time determined by the Sec-  
18 retary not to exceed 1 year.

19 (3) OTHER VIOLATIONS.—If the Secretary, as a  
20 result of an investigation pursuant to a complaint,  
21 determines that an employer covered by an applica-  
22 tion under section 4(a) has—

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

1 (B) failed to meet a condition specified in  
2 section 4,  
3 the Secretary may assess a civil money penalty not  
4 to exceed \$1,000 for each violation and may rec-  
5 ommend to the Attorney General the disqualification  
6 of the employer for substantial violations in the em-  
7 ployment of any United States workers or aliens de-  
8 scribed in section 101(a)(15)(ii)(a) of the Immigra-  
9 tion and Nationality Act for a period of time deter-  
10 mined by the Secretary not to exceed 1 year. In de-  
11 termining the amount of civil money penalty to be  
12 assessed, or whether to recommend disqualification  
13 of the employer, the Secretary shall consider the se-  
14 riousness of the violation, the good faith of the em-  
15 ployer, the size of the business of the employer being  
16 charged, the history of previous violations by the em-  
17 ployer, whether the employer obtained a financial  
18 gain from the violation, whether the violation was  
19 willful, and other relevant factors.

20 (4) PROGRAM DISQUALIFICATION.—

21 (A) 3 YEARS FOR SECOND VIOLATION.—

22 Upon a second final determination that an em-  
23 ployer has failed to pay the wages required  
24 under this Act or committed other substantial  
25 violations under paragraph (3), the Secretary



1 shall report such determination to the Attorney  
2 General and the Attorney General shall dis-  
3 qualify the employer from the employment of  
4 aliens described in section 101(a)(15)(H)(ii)(a)  
5 of the Immigration and Nationality Act for a  
6 period of 3 years.

7 (B) PERMANENT FOR THIRD VIOLATION.—

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

18 (c) ROLE OF ASSOCIATIONS.—

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

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

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

21 **SEC. 9. ALTERNATIVE PROGRAM FOR THE ADMISSION OF**  
22 **TEMPORARY H-2A WORKERS.**

23        (a) AMENDMENTS TO THE IMMIGRATION AND NA-  
24        TIONALITY ACT.—

1           (1) ELECTION OF PROCEDURES.—Section  
2           214(c)(1) of the Immigration and Nationality Act (8  
3           U.S.C. 1184(c)(1)) is amended—

4                   (A) by striking the fifth and sixth sen-  
5                   tences;

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

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

11                   “(B) Notwithstanding subparagraph (A),  
12                   in the case of the importing of any non-  
13                   immigrant alien described in section  
14                   101(a)(15)(H)(ii)(a), the importing employer  
15                   may elect to import the alien under the proce-  
16                   dures of section 218 or section 218A, except  
17                   that any employer that applies for registered  
18                   workers under section 4(a) of the Agricultural  
19                   Job Opportunity Benefits and Security Act of  
20                   1998 shall import nonimmigrants described in  
21                   section 101(a)(15)(H)(ii)(a) only in accordance  
22                   with section 218A. For purposes of subpara-  
23                   graph (A), with respect to the importing of non-  
24                   immigrants under section 218, the term ‘appro-  
25                   priate agencies of Government’ means the De-

1           partment of Labor and includes the Depart-  
2           ment of Agriculture.”.

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

7           “ALTERNATIVE PROGRAM FOR THE ADMISSION OF  
8                                   TEMPORARY H-2A WORKERS

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

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

13                                   “(A) CRITERIA FOR ADMISSIBILITY.—

14   “(i) IN GENERAL.—An alien described  
15   in section 101(a)(15)(H)(ii)(a) of the Im-  
16   migration and Nationality Act shall be ad-  
17   missible under this section if the alien is  
18   designated pursuant to section 6 of the  
19   Agricultural Job Opportunity Benefits and  
20   Security Act of 1998, otherwise admissible  
21   under this Act, and the alien is not ineli-  
22   gible under clause (ii).

23   “(ii) DISQUALIFICATION.—An alien  
24   shall be ineligible for admission to the  
25   United States or being provided status

1 under this section if the alien has, at any  
2 time during the past 5 years—

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

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

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

22 “(B) PERIOD OF ADMISSION.—The alien  
23 shall be admitted for the period requested by  
24 the employer not to exceed 10 months, or the  
25 ending date of the anticipated period of employ-

1           ment on the employer’s application for reg-  
2           istered workers, whichever is less, plus an addi-  
3           tional period of 14 days, during which the alien  
4           shall seek authorized employment in the United  
5           States. During the 14-day period following the  
6           expiration of the alien’s work authorization, the  
7           alien is not authorized to be employed unless an  
8           employer who is authorized to employ such  
9           worker has filed an extension of stay on behalf  
10          of the alien pursuant to paragraph (2).

11                   “(C) ABANDONMENT OF EMPLOYMENT.—

12                           “(i) IN GENERAL.—An alien admitted  
13                           or provided status under this section who  
14                           abandons the employment which was the  
15                           basis for such admission or providing sta-  
16                           tus shall be considered to have failed to  
17                           maintain nonimmigrant status as an alien  
18                           described in section 101(a)(15)(H)(ii)(a)  
19                           and shall depart the United States or be  
20                           subject to removal under section  
21                           237(a)(1)(C)(i).

22                           “(ii) REPORT BY EMPLOYER.—The  
23                           employer (or association acting as agent  
24                           for the employer) shall notify the Attorney  
25                           General within 7 days of an alien admitted

1 or provided status under this Act who pre-  
2 maturely abandons the alien's employment.

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

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

12 “(ii) DESIGN OF CARD.—Each card  
13 issued pursuant to clause (i) shall be de-  
14 signed in such a manner and contain a  
15 photograph and other identifying informa-  
16 tion (such as date of birth, sex, and distin-  
17 guishing marks) that would allow an em-  
18 ployer to determine with reasonable cer-  
19 tainty that the bearer is not claiming the  
20 identity of another individual, and shall—

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

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

1                   “(III) specify the alien’s admis-  
2                   sion number or alien file number.

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

5                   “(A) EXTENSION OF STAY.—If an em-  
6                   ployer with respect to whom a report or applica-  
7                   tion described in section 6(a)(1) of the Agricul-  
8                   tural Job Opportunity Benefits and Security  
9                   Act of 1998 has been submitted seeks to em-  
10                  ploy an alien who has acquired status under  
11                  this section and who is present in the United  
12                  States, the employer shall file with the Attorney  
13                  General an application for an extension of the  
14                  alien’s stay or a change in the alien’s author-  
15                  ized employment. The application shall be ac-  
16                  companied by a copy of the appropriate report  
17                  or application described in section 6 of the Ag-  
18                  ricultural Job Opportunity Benefits and Secu-  
19                  rity Act of 1998.

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



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

3 “(C) WORK AUTHORIZATION UPON FILING  
4 AN APPLICATION FOR EXTENSION OF STAY.—  
5 An employer may begin employing an alien who  
6 is present in the United States who has ac-  
7 quired status under this Act on the day the em-  
8 ployer files an application for extension of stay.  
9 For the purpose of this requirement, the term  
10 ‘filing’ means sending the application by cer-  
11 tified mail via the United States Postal Service,  
12 return receipt requested, or delivered by guar-  
13 anteed commercial delivery which will provide  
14 the employer with a documented acknowledg-  
15 ment of the date of sending and receipt of the  
16 application. The employer shall provide a copy  
17 of the employer’s application to the alien, who  
18 shall keep the application with the alien’s iden-  
19 tification and employment eligibility document  
20 as evidence that the application has been filed  
21 and that the alien is authorized to work in the  
22 United States. Upon approval of an application  
23 for an extension of stay or change in the alien’s  
24 authorized employment, the Attorney General  
25 shall provide a new or updated employment eli-

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

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

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

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

9           “(b) TRUST FUND.—

10           “(1) ESTABLISHMENT.—There is established in  
11           the Treasury of the United States a trust fund (in  
12           this section referred to as the ‘Trust Fund’) for the  
13           purpose of funding the costs of administering this  
14           section and, in the event of an adverse finding by  
15           the Attorney General under subsection (c), for the  
16           purpose of providing a monetary incentive for aliens  
17           described in section 101(a)(15)(H)(ii)(a) to return  
18           to their country of origin upon expiration of their  
19           visas under this section.

20           “(2) TRANSFERS TO TRUST FUND.—

21           “(A) IN GENERAL.—There is appropriated  
22           to the Trust Fund amounts equivalent to the  
23           sum of the following:

24                   “(i) Such employers shall pay to the  
25                   Secretary of the Treasury a user fee in an

1 amount equivalent to so much of the Fed-  
2 eral tax that is not transferred to the  
3 States on the earnings of such aliens that  
4 the employer would be obligated to pay  
5 under the Federal Unemployment Tax Act  
6 and the Federal Insurance Contributions  
7 Act if the earnings were subject to such  
8 Acts. Such payment shall be in lieu of any  
9 other employer fees for the benefits pro-  
10 vided to employers pursuant to this Act or  
11 in connection with the admission of aliens  
12 pursuant to section 218A.

13 “(ii) In the event of an adverse find-  
14 ing by the Attorney General under sub-  
15 section (c), employers of aliens under this  
16 section shall withhold from the wages of  
17 such aliens an amount equivalent to 20  
18 percent of the earnings of each alien and  
19 pay such withheld amount to the Secretary  
20 of the Treasury.

21 “(B) TREATMENT OF AMOUNTS.—  
22 Amounts paid to the Secretary of the Treasury  
23 under subparagraph (A) shall be treated as em-  
24 ployment taxes for purposes of subtitle C of the  
25 Internal Revenue Code of 1986.

1           “(C) TREATMENT AS OFFSETTING RE-  
2           CEIPTS.—Amounts appropriated to the Trust  
3           Fund under this paragraph shall be treated as  
4           offsetting receipts.

5           “(3) ADMINISTRATIVE EXPENSES.—Amounts  
6           transferred to the Trust Fund pursuant to para-  
7           graph (2)(A)(ii), shall, without further appropria-  
8           tion, be paid to the Attorney General, the Secretary  
9           of Labor, the Secretary of State, and the Secretary  
10          of Agriculture in amounts equivalent to the expenses  
11          incurred by such officials in the administration of  
12          section 101(a)(15)(H)(ii)(a) and this section.

13          “(4) DISTRIBUTION OF FUNDS.—In the event  
14          of an adverse finding by the Attorney General under  
15          subsection (c), amounts transferred to the Trust  
16          Fund pursuant to paragraph (2)(A)(ii), and interest  
17          earned thereon under paragraph (6), shall be held  
18          on behalf of an alien and shall be available, without  
19          further appropriation, to the Attorney General for  
20          payment to the alien if—

21                 “(A) the alien applies to the Attorney Gen-  
22                 eral (or the designee of the Attorney General)  
23                 for payment within 30 days of the expiration of  
24                 the alien’s last authorized stay in the United  
25                 States;

1           “(B) in such application the alien estab-  
2           lishes that the alien has complied with the  
3           terms and conditions of this section; and

4           “(C) in connection with the application,  
5           the alien tenders the identification and employ-  
6           ment authorization card issued to the alien pur-  
7           suant to subsection (a)(1)(D) and establishes  
8           that the alien is identified as the person to  
9           whom the card was issued based on the biomet-  
10          ric identification information contained on the  
11          card.

12          “(5) MIGRANT AGRICULTURAL WORKER HOUS-  
13          ING.—Such funds as remain in the Trust Fund after  
14          the payments described in paragraph (4) shall be  
15          used by the Secretary of Agriculture, in consultation  
16          with the Secretary, for the purpose of increasing the  
17          stock of in-season migrant worker housing in areas  
18          where such housing is determined to be insufficient  
19          to meet the needs of migrant agricultural workers,  
20          including aliens admitted under this section.

21          “(6) REGULATIONS.—The Secretary of the  
22          Treasury, in consultation with the Attorney General,  
23          shall prescribe regulations to carry out this sub-  
24          section.

1           “(7) INVESTMENT OF PORTION OF TRUST  
2           FUND.—

3           “(A) IN GENERAL.—It shall be the duty of  
4           the Secretary of the Treasury to invest such  
5           portion of the amounts transferred to the Trust  
6           Fund pursuant to paragraph (2)(A)(i), and, if  
7           applicable, paragraph (2)(A)(ii), as is not, in  
8           the Secretary’s judgment, required to meet cur-  
9           rent withdrawals. Such investments may be  
10          made only in interest-bearing obligations of the  
11          United States or in obligations guaranteed as to  
12          both principal and interest by the United  
13          States. For such purpose, such obligations may  
14          be acquired—

15                 “(i) on original issue at the price; or

16                 “(ii) by purchase of outstanding obli-  
17                 gations at the market price.

18          The purposes for which obligations of the  
19          United States may be issued under chapter 31  
20          of title 31, United States Code, are hereby ex-  
21          tended to authorize the issuance at par of spe-  
22          cial obligations exclusively to the Trust Fund.  
23          Such special obligations shall bear interest at a  
24          rate equal to the average rate of interest, com-  
25          puted as to the end of the calendar month next

1 preceding the date of such issue, borne by all  
2 marketable interest-bearing obligations of the  
3 United States then forming a part of the public  
4 debt, except that where such average rate is not  
5 a multiple of one-eighth of 1 percent next lower  
6 than such average rate. Such special obligations  
7 shall be issued only if the Secretary of the  
8 Treasury determines that the purchase of other  
9 interest-bearing obligations of the United  
10 States, or of obligations guaranteed as to both  
11 principal and interest by the United States on  
12 original issue or at the market price, is not in  
13 the public interest.

14 “(B) SALE OF OBLIGATION.—Any obliga-  
15 tion acquired by the Trust Fund (except special  
16 obligations issued exclusively to the Trust  
17 Fund) may be sold by the Secretary of the  
18 Treasury at the market price, and such special  
19 obligations may be redeemed at par plus ac-  
20 crued interest.

21 “(C) CREDITS TO TRUST FUND.—The in-  
22 terest on, and the proceeds from the sale or re-  
23 demption of, any obligations held in the Trust  
24 Fund shall be credited to and form a part of



1 the amounts transferred to the Trust Fund  
2 pursuant to paragraph (2)(A)(i).

3 “(D) REPORT TO CONGRESS.—It shall be  
4 the duty of the Secretary of the Treasury to  
5 hold the Trust Fund, and (after consultation  
6 with the Attorney General) to report to the  
7 Congress each year on the financial condition  
8 and the results of the operations of the Trust  
9 Fund during the preceding fiscal year and on  
10 its expected condition and operations during the  
11 next fiscal year. Such report shall be printed as  
12 both a House and a Senate document of the  
13 session of the Congress to which the report is  
14 made.

15 “(e) STUDY BY THE ATTORNEY GENERAL.—The At-  
16 torney General shall conduct a study to determine whether  
17 aliens under this section depart the United States in a  
18 timely manner upon the expiration of their period of au-  
19 thorized stay. If the Attorney General finds that a signifi-  
20 cant number of aliens do not so depart and that a financial  
21 inducement is necessary to assure such departure, then  
22 the Attorney General shall so report to Congress and,  
23 upon receipt of the report, subsections (b)(2)(A)(ii) and  
24 (b)(4) shall take effect.”.

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

6 (c) CONFORMING AMENDMENT.—The table of con-  
7 tents of the Immigration and Nationality Act is amended  
8 by inserting after the item relating to section 218 the fol-  
9 lowing new item:

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

10 (d) REPEAL AND ADDITIONAL CONFORMING AMEND-  
11 MENTS.—

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

14 (2) TECHNICAL AMENDMENTS.—(A) Section  
15 218A of the Immigration and Nationality Act is re-  
16 designated as section 218.

17 (B) The table of contents of that Act is amend-  
18 ed by striking the item relating to section 218A.

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

22 (3) TERMINATION OF EMPLOYER ELECTION.—  
23 Section 214(c)(1)(B) of the Immigration and Na-  
24 tionality Act is amended to read as follows:

1 “(B) Notwithstanding subparagraph (A), the proce-  
 2 dures of section 218 shall apply to the importing of any  
 3 nonimmigrant alien described in section  
 4 101(a)(15)(H)(ii)(a).”.

5 (4) MAINTENANCE OF CERTAIN SECTION 218  
 6 PROVISIONS.—Section 218 (as redesignated by para-  
 7 graph (2) of this subsection) is amended by adding  
 8 at the end the following:

9 “(d) MISCELLANEOUS PROVISIONS.—(1) The Attor-  
 10 ney General shall provide for such endorsement of entry  
 11 and exit documents of nonimmigrants described in section  
 12 101(a)(15)(H)(ii) as may be necessary to carry out this  
 13 section and to provide notice for purposes of section 274A.

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

18 (5) EFFECTIVE DATE.—The repeal and amend-  
 19 ments made by this subsection shall take effect 5  
 20 years after the date of enactment of this Act.

21 **SEC. 10. INCLUSION IN EMPLOYMENT-BASED IMMIGRATION**

22 **PREFERENCE ALLOCATION.**

23 (a) AMENDMENT OF THE IMMIGRATION AND NA-  
 24 TIONALITY ACT.—Section 203(b)(3)(A) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1153(b)(3)(A)) is  
2 amended—

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

4 and

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

6 “(iii) AGRICULTURAL WORKERS.—

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

13 (b) CONFORMING AMENDMENT.—Section  
14 203(b)(3)(B) of the Immigration and Nationality Act (8  
15 U.S.C. 1153(b)(3)(A)) is amended by striking “subpara-  
16 graph (A)(iii)” and inserting “subparagraph (A)(iv)”.

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

21 **SEC. 11. MIGRANT AND SEASONAL HEAD START PROGRAM.**

22 (a) IN GENERAL.—Section 637(12) of the Head  
23 Start Act (42 U.S.C. 9832(12)) is amended—

24 (1) by inserting “and seasonal” after “mi-  
25 grant”; and

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

7           (b) FUNDS SET-ASIDE.—Section 640(a) (42 U.S.C.  
8 9835(a)) is amended—

9           (1) in paragraph (2), strike “13” and insert  
10          “14”;

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

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

15               “(8) In determining the need for migrant and  
16          seasonal Head Start programs and services, the Sec-  
17          retary shall consult with the Secretary of Labor,  
18          other public and private entities, and providers. Not-  
19          withstanding paragraph (2)(A), after conducting  
20          such consultation, the Secretary shall further adjust  
21          the amount available for such programs and serv-  
22          ices, taking into consideration the need and demand  
23          for such services.”.

1 **SEC. 12. REGULATIONS.**

2 (a) REGULATIONS OF THE ATTORNEY GENERAL.—

3 The Attorney General shall consult with the Secretary and  
4 the Secretary of Agriculture on all regulations to imple-  
5 ment the duties of the Attorney General under this Act.

6 (b) REGULATIONS OF THE SECRETARY OF STATE.—

7 The Secretary of State shall consult with the Attorney  
8 General on all regulations to implement the duties of the  
9 Secretary of State under this Act.

10 **SEC. 13. FUNDING FROM WAGNER-PEYSER ACT.**

11 If additional funds are necessary to pay the start-up  
12 costs of the registries established under section 3(a), such  
13 costs may be paid out of amounts available to Federal or  
14 State governmental entities under the Wagner-Peyser Act  
15 (29 U.S.C. 49 et seq.).

16 **SEC. 14. EFFECTIVE DATE.**

17 This Act and the amendments made by this Act shall  
18 take effect 180 days after the date of enactment of this  
19 Act.

○