

107TH CONGRESS  
1ST SESSION

# S. 1313

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, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. KENNEDY (for himself, Mr. DODD, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “H-2A Reform and Agricultural Worker Adjustment Act  
6 of 2001”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 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. Coverage of H-2A agricultural workers under the Migrant and Seasonal Agricultural Worker Protection Act.

Sec. 302. Right to organize.

Sec. 303. Tax equity and workforce improvement fund.

Sec. 304. Regulations.

Sec. 305. Effective date.

### 1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AGRICULTURAL EMPLOYMENT.**—The term  
 4 “agricultural employment” means any service or ac-  
 5 tivity that is considered to be agricultural under sec-  
 6 tion 3(f) of the Fair Labor Standards Act of 1938  
 7 (29 U.S.C. 203(f)) or agricultural labor under sec-  
 8 tion 3121(g) of the Internal Revenue Code of 1986  
 9 (26 U.S.C. 3121(g)). For purposes of this para-  
 10 graph, agricultural employment includes employment  
 11 under section 101(a)(15)(H)(ii)(a) of the Immigra-  
 12 tion and Nationality Act (8 U.S.C.  
 13 1101(a)(15)(H)(ii)(a)).

14 (2) **DISPLACE.**—In the case of an application  
 15 with respect to one or more H-2A workers by an  
 16 employer, the employer is considered to “displace” a  
 17 United States worker from a job if the employer lays

1 off the worker from a job for which the H-2A work-  
2 er or workers is or are sought.

3 (3) ELIGIBLE.—The term “eligible”, when used  
4 with respect to an individual, means an individual  
5 who is not an unauthorized alien (as defined in sec-  
6 tion 274A(h)(3) of the Immigration and Nationality  
7 Act (8 U.S.C. 1324a(h)(3))).

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

12 (5) H-2A WORKER.—The term “H-2A worker”  
13 means a nonimmigrant described in section  
14 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
15 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

16 (6) JOB OPPORTUNITY.—The term “job oppor-  
17 tunity” means a job opening for temporary full-time  
18 employment at a place in the United States to which  
19 United States workers can be referred.

20 (7) LAYS OFF.—

21 (A) IN GENERAL.—The term “lays off”,  
22 with respect to a worker—

23 (i) means to cause the worker’s loss of  
24 employment, other than through a dis-  
25 charge for inadequate performance, viola-

1           tion of workplace rules, cause, voluntary  
2           departure, voluntary retirement, contract  
3           impossibility (as described in section  
4           218A(b)(4)(D) of the Immigration and  
5           Nationality Act, as added by section 201 of  
6           this Act), temporary layoffs due to weath-  
7           er, markets, or other temporary conditions;  
8           but

9                   (ii) does not include any situation in  
10           which the worker is offered, as an alter-  
11           native to such loss of employment, a simi-  
12           lar employment opportunity with the same  
13           employer (or, in the case of a placement of  
14           a worker with another employer under sec-  
15           tion 218(b)(2)(E) of the Immigration and  
16           Nationality Act, as added by section 201 of  
17           this Act, with either employer described in  
18           such section 218(b)(2)(E)) at equivalent or  
19           higher compensation and benefits than the  
20           position from which the employee was dis-  
21           charged, regardless of whether or not the  
22           employee accepts the offer.

23           (B) STATUTORY CONSTRUCTION.—Nothing  
24           in this paragraph is intended to limit an em-

1            ployee’s rights under a collective bargaining  
2            agreement or other employment contract.

3            (8) SECRETARY.—The term “Secretary” means  
4            the Secretary of Labor.

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

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

17           (11) WORK DAY.—The term “work day” means  
18           any day in which the individual is employed one or  
19           more hours in agriculture.

## 20            **TITLE I—ADJUSTMENT TO** 21            **LAWFUL STATUS**

### 22            **SEC. 101. AGRICULTURAL WORKERS.**

23            (a) TEMPORARY RESIDENT STATUS.—

24            (1) IN GENERAL.—Notwithstanding any other  
25            provision of law, the Attorney General shall adjust

1 the status of an alien who qualifies under this sub-  
2 section to that of an alien lawfully admitted for tem-  
3 porary residence if the Attorney General determines  
4 that the following requirements are satisfied with re-  
5 spect to the alien:

6 (A) PERFORMANCE OF AGRICULTURAL EM-  
7 PLOYMENT IN THE UNITED STATES.—The alien  
8 must establish that the alien has—

9 (i) performed agricultural employment  
10 in the United States for at least 540 hours  
11 or 90 work days, whichever is less, during  
12 any 12 consecutive months during the 18-  
13 month period ending on June 30, 2001; or

14 (ii) applied for lawful residence as a  
15 special agricultural worker under section  
16 210 of the Immigration and Nationality  
17 Act or section 210A of that Act (as in ef-  
18 fect prior to October 25, 1994), was other-  
19 wise eligible, but was denied relief because  
20 the alien’s employment in sugar cane was  
21 determined to fall outside of the section’s  
22 definition of “seasonal agricultural serv-  
23 ices”.

24 (B) APPLICATION PERIOD.—The alien  
25 must apply for such adjustment during the 18-

1 month application period beginning on the 1st  
2 day of the 7th month that begins after the date  
3 of the enactment of this Act.

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

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

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

23 (4) TERMINATION OF TEMPORARY RESIDENT  
24 STATUS.—During the period of temporary resident  
25 status granted an alien under this subsection, the

1 Attorney General may terminate such status only  
2 upon a determination under this Act that the alien  
3 is deportable.

4 (5) RECORD OF EMPLOYMENT.—

5 (A) IN GENERAL.—Each employer of a  
6 worker whose status is adjusted under this sub-  
7 section annually shall—

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

10 (ii) provide a copy of such record to  
11 the Immigration and Naturalization Serv-  
12 ice.

13 (B) SUNSET.—The obligation under sub-  
14 paragraph (A) terminates on the date that is 6  
15 years after the date of enactment of this Act.

16 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-  
17 DENT STATUS.—

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



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

3           (A) PROHIBITION.—No alien whose status  
4 is adjusted under subsection (a) may be termi-  
5 nated from employment by any employer during  
6 the period of temporary resident status except  
7 for just cause.

8           (B) TREATMENT OF COMPLAINTS.—

9           (i) ESTABLISHMENT OF PROCESS.—

10          The Attorney General shall establish a  
11 process for the receipt, initial review, and  
12 disposition in accordance with this sub-  
13 paragraph of complaints by aliens granted  
14 temporary resident status under subsection  
15 (a) who allege that they have been termi-  
16 nated without just cause. No proceeding  
17 shall be conducted under this subpara-  
18 graph with respect to a termination unless  
19 the Attorney General determines that the  
20 complaint was filed not later than 6  
21 months after the date of the termination.

22          (ii) INITIATION OF ARBITRATION.—If

23 the Attorney General finds that a com-  
24 plaint has been filed in accordance with  
25 clause (i) and there is reasonable cause to

1 believe that the complainant was termi-  
2 nated without just cause, the Attorney  
3 General shall initiate binding arbitration  
4 proceedings by requesting the Federal Me-  
5 diation and Conciliation Service to appoint  
6 a mutual arbitrator from the roster of ar-  
7 bitrators maintained by such Service for  
8 the geographical area in which the em-  
9 ployer is located. The procedure and rules  
10 of such Service shall be applicable to the  
11 selection of such arbitrator and to such ar-  
12 bitration proceedings. The Attorney Gen-  
13 eral shall pay the fee and expenses of the  
14 arbitrator.

15 (iii) ARBITRATION PROCEEDINGS.—

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

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

19 (iv) EFFECT OF ARBITRATION FIND-  
20 INGS.—If the Attorney General receives a  
21 finding of an arbitrator that an employer  
22 has terminated an alien granted temporary  
23 resident status under subsection (a) with-  
24 out just cause, the Attorney General shall  
25 credit the alien for the number of days or

1 hours of work lost for purposes of the re-  
2 quirement of subsection (c)(1).

3 (v) TREATMENT OF ATTORNEYS'  
4 FEES.—The parties shall bear the cost of  
5 their own attorneys' fees involved in the  
6 litigation of the complaint.

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

12 (vii) EFFECT ON OTHER ACTIONS OR  
13 PROCEEDINGS.—Any finding of fact or  
14 law, judgment, conclusion, or final order  
15 made by an arbitrator in the proceeding  
16 before the Attorney General shall not be  
17 conclusive or binding in any separate or  
18 subsequent action or proceeding between  
19 the employee and the employee's current or  
20 prior employer brought before an arbi-  
21 trator, administrative agency, court, or  
22 judge of any State or the United States,  
23 regardless of whether the prior action was  
24 between the same or related parties or in-  
25 volved the same facts, except that the arbi-

1           trator's specific finding of the number of  
2           days or hours of work lost by the employee  
3           as a result of the employment termination  
4           may be referred to the Attorney General  
5           pursuant to clause (iv).

6           (C) CIVIL PENALTIES.—

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

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

24          (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

25                (1) AGRICULTURAL WORKERS.—

1 (A) IN GENERAL.—Except as provided in  
2 subparagraph (B), the Attorney General shall  
3 adjust the status of any alien granted lawful  
4 temporary resident status under subsection (a)  
5 to that of an alien lawfully admitted for perma-  
6 nent residence if the Attorney General deter-  
7 mines that the following requirements are satis-  
8 fied:

9 (i) QUALIFYING EMPLOYMENT.—The  
10 alien has performed at least 540 hours or  
11 90 work days, whichever is less, of agricul-  
12 tural employment in the United States, in  
13 each of 3 years during the 4-year period  
14 beginning on the date that the alien first  
15 obtains employment authorization.

16 (ii) APPLICATION PERIOD.—The alien  
17 applies for adjustment of status not later  
18 than the date that is 7 years after the date  
19 of enactment of this Act.

20 (iii) PROOF.—In meeting the require-  
21 ments of clause (i), an alien may submit  
22 the record of employment described in sub-  
23 section (a)(5) or such documentation as  
24 may be submitted under subsection (d)(3).

1                   (iv) DISABILITY.—In determining  
2                   whether an alien has met the requirements  
3                   of clause (i) the Attorney General shall  
4                   credit the alien with any work days lost be-  
5                   cause the alien is unable to work in agri-  
6                   cultural employment due to injury or dis-  
7                   ease arising out of and in the course of the  
8                   alien’s agricultural employment, if the  
9                   alien can establish such disabling injury or  
10                  disease through medical records.

11                  (B) GROUNDS FOR DENIAL OF ADJUST-  
12                  MENT OF STATUS.—The Attorney General may  
13                  deny an alien adjustment to permanent resident  
14                  status, and provide for termination of the tem-  
15                  porary resident status granted such alien under  
16                  subsection (a), if—

17                         (i) the Attorney General finds by a  
18                         preponderance of the evidence that the ad-  
19                         justment to temporary resident status was  
20                         the result of fraud or willful misrepresenta-  
21                         tion, as described in section  
22                         212(a)(6)(C)(i) of the Immigration and  
23                         Nationality Act (8 U.S.C.  
24                         1182(a)(6)(C)(i)); or

25                         (ii) the alien—

1 (I) commits an act that makes  
2 the alien inadmissible to the United  
3 States under section 212 of the Immi-  
4 gration and Nationality Act (8 U.S.C.  
5 1182), except as provided under sub-  
6 section (e)(2); or

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

10 (C) GROUNDS FOR REMOVAL.—Any alien  
11 granted temporary resident status under sub-  
12 section (a) who does not apply for adjustment  
13 of status under this subsection before the expi-  
14 ration of the application period described in  
15 subparagraph (A)(ii), or who fails to meet the  
16 other requirements of subparagraph (A) by the  
17 end of the applicable period, is deportable and  
18 may be removed under section 240 of the Immi-  
19 gration and Nationality Act (8 U.S.C. 1229a).

20 (2) SPOUSES AND MINOR CHILDREN.—

21 (A) IN GENERAL.—Notwithstanding any  
22 other provision of law, the Attorney General  
23 shall adjust the status of any spouse or minor  
24 child of an alien granted status under para-  
25 graph (1), including any individual who was a



1 minor child on the date such alien was granted  
2 temporary resident status, if the spouse or  
3 minor child applies for such adjustment, or if  
4 the principal alien includes the spouse or minor  
5 child in an application for such adjustment.

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

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

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

19 (d) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

20 (1) TO WHOM MAY BE MADE.—

21 (A) WITHIN THE UNITED STATES.—The  
22 Attorney General shall provide that—

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

1 (I) with the Attorney General,  
2 but only if the applicant is rep-  
3 resented by an attorney; or

4 (II) with a qualified designated  
5 entity (designated under paragraph  
6 (2)), but only if the applicant consents  
7 to the forwarding of the application to  
8 the Attorney General; and

9 (ii) applications for adjustment of sta-  
10 tus under subsection (c) shall be filed di-  
11 rectly with the Attorney General.

12 (B) OUTSIDE THE UNITED STATES.—The  
13 Attorney General, in cooperation with the Sec-  
14 retary of State, shall establish a procedure  
15 whereby an alien may apply for adjustment of  
16 status under subsection (a) at an appropriate  
17 consular office outside the United States.

18 (C) PRELIMINARY APPLICATIONS.—

19 (i) IN GENERAL.—During the applica-  
20 tion period described in subsection  
21 (a)(1)(B), the Attorney General may grant  
22 admission to the United States as a tem-  
23 porary resident and provide an “employ-  
24 ment authorized” endorsement or other ap-  
25 propriate work permit to any alien who

1 presents a preliminary application for ad-  
2 justment of status under subsection (a) at  
3 a designated port of entry on the southern  
4 land border of the United States. An alien  
5 who does not enter through a port of entry  
6 is subject to deportation and removal as  
7 otherwise provided in this Act.

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

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

1           gibility for agricultural worker status is  
2           credible.

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

8           (2) DESIGNATION OF ENTITIES TO RECEIVE AP-  
9           PLICATIONS.—

10           (A) IN GENERAL.—For purposes of receiv-  
11           ing applications under subsection (a), the Attor-  
12           ney General—

13                   (i) shall designate qualified farm labor  
14                   organizations and associations of employ-  
15                   ers; and

16                   (ii) may designate such other persons  
17                   as the Attorney General determines are  
18                   qualified and have substantial experience,  
19                   demonstrate competence, and have tradi-  
20                   tional long-term involvement in the prepa-  
21                   ration and submittal of applications for ad-  
22                   justment of status under section 209, 210,  
23                   or 245 of the Immigration and Nationality  
24                   Act, Public Law 89–732, Public Law 95–

1           145, or the Immigration Reform and Con-  
2           trol Act of 1986.

3           (B) REFERENCES.—Organizations, asso-  
4           ciations, and persons designated under subpara-  
5           graph (A) are referred to in this Act as “quali-  
6           fied designated entities”.

7           (3) PROOF OF ELIGIBILITY.—

8           (A) IN GENERAL.—An alien may establish  
9           that the alien meets the requirement of sub-  
10          section (a)(1)(A) or subsection (c)(1)(A)  
11          through government employment records or  
12          records supplied by employers or collective bar-  
13          gaining organizations, and other reliable docu-  
14          mentation as the alien may provide. The Attor-  
15          ney General shall establish special procedures to  
16          properly credit work in cases in which an alien  
17          was employed under an assumed name.

18          (B) DOCUMENTATION OF WORK HIS-  
19          TORY.—(i) An alien applying for adjustment of  
20          status under subsection (a)(1) or subsection  
21          (c)(1) has the burden of proving by a prepon-  
22          derance of the evidence that the alien has  
23          worked the requisite number of hours or days  
24          (as required under subsection (a)(1)(A) or sub-  
25          section (c)(1)(A)).

1           (ii) If an employer or farm labor con-  
2 tractor employing such an alien has kept proper  
3 and adequate records respecting such employ-  
4 ment, the alien's burden of proof under clause  
5 (i) may be met by securing timely production of  
6 those records under regulations to be promul-  
7 gated by the Attorney General.

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

15           (4) TREATMENT OF APPLICATIONS BY QUALI-  
16 FIED DESIGNATED ENTITIES.—Each qualified des-  
17 ignated entity must agree to forward to the Attorney  
18 General applications filed with it in accordance with  
19 paragraph (1)(A)(ii) but not to forward to the Attor-  
20 ney General applications filed with it unless the ap-  
21 plicant has consented to such forwarding. No such  
22 entity may make a determination required by this  
23 section to be made by the Attorney General. Upon  
24 the request of the alien, a qualified designated entity

1 shall assist the alien in obtaining documentation of  
2 the work history of the alien.

3 (5) LIMITATION ON ACCESS TO INFORMA-  
4 TION.—Files and records prepared for purposes of  
5 this subsection by qualified designated entities oper-  
6 ating under this subsection are confidential and the  
7 Attorney General and the Immigration and Natu-  
8 ralization Service shall not have access to such files  
9 or records relating to an alien without the consent  
10 of the alien, except as allowed by a court order  
11 issued pursuant to paragraph (6).

12 (6) CONFIDENTIALITY OF INFORMATION.—

13 (A) IN GENERAL.—Except as otherwise  
14 provided in this subsection, neither the Attor-  
15 ney General, nor any other official or employee  
16 of the Department of Justice, or bureau or  
17 agency thereof, may—

18 (i) use the information furnished by  
19 the applicant pursuant to an application  
20 filed under this section, the information  
21 provided to the applicant by a person des-  
22 ignated under paragraph (2)(A), or any in-  
23 formation provided by an employer or  
24 former employer, for any purpose other  
25 than to make a determination on the appli-

1 cation, or for enforcement of paragraph  
2 (7);

3 (ii) make any publication whereby the  
4 information furnished by any particular in-  
5 dividual can be identified; or

6 (iii) permit anyone other than the  
7 sworn officers and employees of the De-  
8 partment of Justice, or bureau or agency  
9 thereof, or, with respect to applications  
10 filed with a qualified designated entity,  
11 that qualified designated entity, to examine  
12 individual applications.

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

17 (7) PENALTIES FOR FALSE STATEMENTS IN AP-  
18 PPLICATIONS.—

19 (A) CRIMINAL PENALTY.—Whoever—

20 (i) files an application for adjustment  
21 of status under subsection (a) or (c) and  
22 knowingly and willfully falsifies, conceals,  
23 or covers up a material fact or makes any  
24 false, fictitious, or fraudulent statements  
25 or representations, or makes or uses any



1 false writing or document knowing the  
2 same to contain any false, fictitious, or  
3 fraudulent statement or entry; or

4 (ii) creates or supplies a false writing  
5 or document for use in making such an ap-  
6 plication;

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

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

16 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-  
17 tion 504(a)(11) of Public Law 104–134 (110 Stat.  
18 1321–53 et seq.) shall not be construed to prevent  
19 a recipient of funds under the Legal Services Cor-  
20 poration Act (42 U.S.C. 2996 et seq.) from pro-  
21 viding legal assistance directly related to an applica-  
22 tion for adjustment of status under this section.

23 (9) APPLICATION FEES.—

24 (A) FREE SCHEDULE.—The Attorney Gen-  
25 eral shall provide for a schedule of fees that—

1 (i) shall be charged for the filing of  
2 applications for adjustment under sub-  
3 sections (a) and (c); and

4 (ii) may be charged by qualified des-  
5 ignated entities to help defray the costs of  
6 services provided to such applicants.

7 (B) PROHIBITION ON EXCESS FEES BY  
8 QUALIFIED DESIGNATED ENTITIES.—A quali-  
9 fied designated entity may not charge any fee  
10 in excess of, or in addition to, the fees author-  
11 ized under subparagraph (A)(ii) for services  
12 provided to applicants.

13 (C) DISPOSITION OF FEES.—

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

23 (ii) USE OF FEES FOR APPLICATION  
24 PROCESSING.—Amounts deposited in the  
25 “Agricultural Worker Immigration Status

1 Adjustment Account” shall remain avail-  
2 able to the Attorney General until ex-  
3 pended for processing applications for ad-  
4 justment under subsections (a) and (c).

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

7 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

8 The numerical limitations of sections 201 and 202  
9 of the Immigration and Nationality Act (8 U.S.C.  
10 1151 and 1152) shall not apply to the adjustment  
11 of aliens to lawful permanent resident status under  
12 this section.

13 (2) WAIVER OF CERTAIN GROUNDS OF INAD-  
14 MISSIBILITY.—In the determination of an alien’s ad-  
15 missibility under subsection (a)(1)(C) or an alien’s  
16 eligibility for adjustment of status under subsection  
17 (c)(1)(B)(ii)(I), the following rules shall apply:

18 (A) GROUNDS OF EXCLUSION NOT APPLI-  
19 CABLE.—The provisions of paragraphs (5),  
20 (6)(A), (7)(A), and (9)(B) of section 212(a) of  
21 the Immigration and Nationality Act (8 U.S.C.  
22 1182(a)) shall not apply.

23 (B) WAIVER OF OTHER GROUNDS.—

24 (i) IN GENERAL.—Except as provided  
25 in clause (ii), the Attorney General may

1 waive any other provision of such section  
2 212(a) in the case of individual aliens for  
3 humanitarian purposes, to ensure family  
4 unity, or when it is otherwise in the public  
5 interest.

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

10 (I) Subparagraphs (A) and (B)  
11 of paragraph (2) (relating to crimi-  
12 nals).

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

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

18 (IV) Paragraph (3) (relating to  
19 security and related grounds), except  
20 subparagraph (E).

21 (iii) CONSTRUCTION.—Nothing in this  
22 subparagraph shall be construed as affect-  
23 ing the authority of the Attorney General  
24 other than under this subparagraph to  
25 waive provisions of such section 212(a).

1           (C) SPECIAL RULE FOR DETERMINATION  
2           OF PUBLIC CHARGE.—An alien is not ineligible  
3           for adjustment of status under this section by  
4           reason of a ground of inadmissibility under sec-  
5           tion 212(a)(4) of the Immigration and Nation-  
6           ality Act if the alien demonstrates a history of  
7           employment in the United States evidencing  
8           self-support without reliance on public cash as-  
9           sistance.

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

12           (1) BEFORE APPLICATION PERIOD.—Effective  
13           on the date of the enactment of this Act, the Attor-  
14           ney General shall provide that, in the case of an  
15           alien who is apprehended before the beginning of the  
16           application period described in subsection (a)(1)(B)  
17           and who can establish a nonfrivolous case of eligi-  
18           bility to have the alien’s status adjusted under sub-  
19           section (a) (but for the fact that the alien may not  
20           apply for such adjustment until the beginning of  
21           such period), until the alien has had the opportunity  
22           during the first 30 days of the application period to  
23           complete the filing of an application for adjustment,  
24           the alien—

25                   (A) may not be removed; and

1           (B) shall be granted authorization to en-  
2           gage in employment in the United States and  
3           be provided an “employment authorized” en-  
4           dorsement or other appropriate work permit for  
5           such purpose.

6           (2) DURING APPLICATION PERIOD.—The Attor-  
7           ney General shall provide that, in the case of an  
8           alien who presents a nonfrivolous application for ad-  
9           justment of status under subsection (a) during the  
10          application period described in subsection (a)(1)(B),  
11          including an alien who files such an application  
12          within 30 days of the alien’s apprehension, and until  
13          a final determination on the application has been  
14          made in accordance with this section, the alien—

15                 (A) may not be removed; and

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

21          (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22                 (1) IN GENERAL.—There shall be no adminis-  
23                 trative or judicial review of a determination respect-  
24                 ing an application for adjustment of status under

1 subsection (a) or (c) except in accordance with this  
2 subsection.

3 (2) ADMINISTRATIVE REVIEW.—

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

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

16 (3) JUDICIAL REVIEW.—

17 (A) LIMITATION TO REVIEW OF RE-  
18 MOVAL.—There shall be judicial review of such  
19 a denial only in the judicial review of an order  
20 of removal under section 242 of the Immigra-  
21 tion and Nationality Act (8 U.S.C. 1252).

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

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

7           (h) DISSEMINATION OF INFORMATION ON ADJUST-  
8           MENT PROGRAM.—Beginning not later than the 1st day  
9           of the application period described in subsection (a)(1)(B),  
10          the Attorney General, in cooperation with qualified des-  
11          ignated entities, shall broadly disseminate information re-  
12          specting the benefits that aliens may receive under this  
13          section and the requirements to be satisfied to obtain such  
14          benefits.

15          (i) REGULATIONS.—The Attorney General shall issue  
16          regulations to implement this section not later than the  
17          1st day of the 7th month that begins after the date of  
18          the enactment of this Act.

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

22          (k) FUNDING.—There are hereby appropriated, out  
23          of any money in the Treasury not otherwise appropriated,  
24          \$40,000,000 for each of fiscal years 2002 through 2005  
25          to the Attorney General to carry out this section.



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

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

4 (1) in subparagraph (B), by striking “or” at  
5 the end of clause (ii);

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

8 (3) by inserting after subparagraph (C) the fol-  
9 lowing:

10 “(D) whose status is adjusted to that of lawful  
11 temporary resident under the H-2A Reform and Ag-  
12 ricultural Worker Adjustment Act of 2001,”; and

13 (4) by striking “1990.” and inserting “1990, or  
14 in the case of an alien described in subparagraph  
15 (D), if such conduct is alleged to have occurred prior  
16 to the date on which the alien became lawfully ad-  
17 mitted for temporary residence.”.

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

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

3   **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-**  
4                           **ALITY ACT.**

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

8                           “H-2A EMPLOYER APPLICATIONS

9           “SEC. 218. (a) APPLICATIONS TO THE SEC-  
10 RETARY.—

11                   “(1) IN GENERAL.—No alien may be admitted  
12 to the United States as an H-2A worker, or other-  
13 wise provided status as an H-2A worker, unless the  
14 employer has filed with the Secretary an application  
15 containing—

16                           “(A) the assurances described in sub-  
17 section (b);

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

20                           “(C) the anticipated period (expected be-  
21 ginning and ending dates) for which workers  
22 will be needed; and

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

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

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

11           “(1) JOB OPPORTUNITIES COVERED BY COL-  
12          LECTIVE BARGAINING AGREEMENTS.—With respect  
13          to a job opportunity that is covered under a collec-  
14          tive bargaining agreement:

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

19           “(B) NO STRIKE OR LOCKOUT.—There is  
20          not a strike or lockout in the course of a labor  
21          dispute in the occupational classification at the  
22          place of employment.

23           “(C) NOTIFICATION OF BARGAINING REP-  
24          RESENTATIVES.—The employer, at the time of  
25          filing the application, has provided notice of the

1 filing under this paragraph to the bargaining  
2 representative of the employer's employees in  
3 the occupational classification at the place or  
4 places of employment for which aliens are  
5 sought.

6 “(D) TEMPORARY OR SEASONAL JOB OP-  
7 PORTUNITIES.—The job opportunity is tem-  
8 porary or seasonal.

9 “(E) OFFERS TO UNITED STATES WORK-  
10 ERS.—The employer has offered or will offer  
11 the job to any eligible United States worker  
12 who applies and is equally or better qualified  
13 for the job for which the nonimmigrant is, or  
14 the nonimmigrants are, sought and who will be  
15 available at the time and place of need.

16 “(F) PROVISION OF INSURANCE.—If the  
17 job opportunity is not covered by the State  
18 workers' compensation law, the employer will  
19 provide, at no cost to the worker, insurance cov-  
20 ering injury and disease arising out of, and in  
21 the course of, the worker's employment which  
22 will provide benefits at least equal to those pro-  
23 vided under the State's workers' compensation  
24 law for comparable employment.

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

5           “(A) NO STRIKE OR LOCKOUT.—There is  
6 not a strike or lockout in the course of a labor  
7 dispute in the occupational classification at the  
8 place of employment.

9           “(B) TEMPORARY OR SEASONAL JOB OP-  
10 PORTUNITIES.—The job opportunity is tem-  
11 porary or seasonal.

12           “(C) BENEFIT, WAGE, AND WORKING CON-  
13 DITIONS.—The employer will provide, at a min-  
14 imum, the benefits, wages, and working condi-  
15 tions required by section 218A to all workers  
16 employed in the job opportunities for which the  
17 employer has applied under subsection (a) and  
18 to all other workers in the same occupation at  
19 the place of employment.

20           “(D) NONDISPLACEMENT OF UNITED  
21 STATES WORKERS.—The employer did not dis-  
22 place and will not displace a United States  
23 worker employed by the employer during the  
24 period of employment and for a period of 30  
25 days preceding the period of employment in the

1 occupation at the place of employment for  
2 which the employer seeks approval to employ  
3 H-2A workers.

4 “(E) REQUIREMENTS FOR PLACEMENT OF  
5 NONIMMIGRANT WITH OTHER EMPLOYERS.—

6 The employer will not place the nonimmigrant  
7 with another employer unless—

8 “(i) the nonimmigrant performs du-  
9 ties in whole or in part at one or more  
10 work sites owned, operated, or controlled  
11 by such other employer;

12 “(ii) there are indicia of an employ-  
13 ment relationship between the non-  
14 immigrant and such other employer; and

15 “(iii) the employer has inquired of the  
16 other employer as to whether, and has no  
17 actual knowledge or notice that, during the  
18 period of employment and for a period of  
19 30 days preceding the period of employ-  
20 ment, the other employer has displaced or  
21 intends to displace a United States worker  
22 employed by the other employer in the oc-  
23 cupation at the place of employment for  
24 which the employer seeks approval to em-  
25 ploy H-2A workers.

1           “(F) STATEMENT OF LIABILITY.—The ap-  
2           plication form shall include a clear statement  
3           explaining the liability under subparagraph (E)  
4           of an employer if the other employer described  
5           in such subparagraph displaces a United States  
6           worker as described in such subparagraph.

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

16          “(H) EMPLOYMENT OF UNITED STATES  
17          WORKERS.—

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

24                         “(I) CONTACTING FORMER  
25                         WORKERS.—The employer shall make

1 reasonable efforts through the sending  
2 of a letter by United States Postal  
3 Service mail, or otherwise, to contact  
4 any United States worker the em-  
5 ployer employed during the previous  
6 season in the occupation at the place  
7 of intended employment for which the  
8 employer is applying for workers and  
9 has made the availability of the em-  
10 ployer's job opportunities in the occu-  
11 pation at the place of intended em-  
12 ployment known to such previous  
13 workers, unless the worker was termi-  
14 nated from employment by the em-  
15 ployer for a lawful job-related reason  
16 or abandoned the job before the work-  
17 er completed the period of employ-  
18 ment of the job opportunity for which  
19 the worker was hired.

20 “(II) FILING A JOB OFFER WITH  
21 THE LOCAL OFFICE OF THE STATE  
22 EMPLOYMENT SECURITY AGENCY.—  
23 Not later than 28 days prior to the  
24 date on which the employer desires to  
25 employ an H-2A worker in a tem-



1           porary or seasonal agricultural job op-  
2           portunity, the employer shall submit a  
3           copy of the job offer described in sub-  
4           section (a)(2) to the local office of the  
5           State employment security agency  
6           which serves the area of intended em-  
7           ployment and authorize the posting of  
8           the job opportunity on ‘America’s Job  
9           Bank’ or other electronic job registry,  
10          except that nothing in this subclause  
11          shall require the employer to file an  
12          interstate job order under section 653  
13          of title 20, Code of Federal Regula-  
14          tions.

15                   “(III) ADVERTISING OF JOB OP-  
16                   PORTUNITIES.—Not later than 14  
17                   days prior to the date on which the  
18                   employer desires to employ an H-2A  
19                   worker in a temporary or seasonal ag-  
20                   ricultural job opportunity, the em-  
21                   ployer shall advertise the availability  
22                   of the job opportunities for which the  
23                   employer is seeking workers in a pub-  
24                   lication in the local labor market that

1 is likely to be patronized by potential  
2 farm workers.

3 “(IV) EMERGENCY PROCE-  
4 DURES.—The Secretary shall, by reg-  
5 ulation, provide a procedure for ac-  
6 ceptance and approval of applications  
7 in which the employer has not com-  
8 plied with the provisions of this sub-  
9 paragraph because the employer’s  
10 need for H-2A workers could not rea-  
11 sonably have been foreseen.

12 “(ii) JOB OFFERS.—The employer has  
13 offered or will offer the job to any eligible  
14 United States worker who applies and is  
15 equally or better qualified for the job for  
16 which the nonimmigrant is, or non-  
17 immigrants are, sought and who will be  
18 available at the time and place of need.

19 “(iii) PERIOD OF EMPLOYMENT.—The  
20 employer will provide employment to any  
21 qualified United States worker who applies  
22 to the employer during the period begin-  
23 ning on the date on which the foreign  
24 worker departs for the employer’s place of  
25 employment and ending on the date on

1           which 50 percent of the period of employ-  
2           ment for which the foreign worker who is  
3           in the job was hired has elapsed, subject  
4           to the following requirements:

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

11                  “(II) COMPLAINTS.—Upon re-  
12                  ceipt of a complaint by an employer  
13                  that a violation of subclause (I) has  
14                  occurred, the Secretary shall imme-  
15                  diately investigate. The Secretary  
16                  shall, within 36 hours of the receipt of  
17                  the complaint, issue findings con-  
18                  cerning the alleged violation. If the  
19                  Secretary finds that a violation has  
20                  occurred, the Secretary shall imme-  
21                  diately suspend the application of this  
22                  clause with respect to that certifi-  
23                  cation for that date of need.

24                  “(III) PLACEMENT OF UNITED  
25                  STATES WORKERS.—Prior to referring

1 a United States worker to an em-  
2 ployer during the period described in  
3 the matter preceding subclause (I),  
4 the Secretary shall make all reason-  
5 able efforts to place the United States  
6 worker in an open job acceptable to  
7 the worker, if there are other job of-  
8 fers pending with the job service that  
9 offer similar job opportunities in the  
10 area of intended employment.

11 “(iv) STATUTORY CONSTRUCTION.—  
12 Nothing in this subparagraph shall be con-  
13 strued to prohibit an employer from using  
14 such legitimate selection criteria relevant  
15 to the type of job that are normal or cus-  
16 tomary to the type of job involved so long  
17 as such criteria are not applied in a dis-  
18 criminatory manner.

19 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
20 OF EMPLOYER MEMBERS.—

21 “(1) IN GENERAL.—An agricultural association  
22 may file an application under subsection (a) on be-  
23 half of one or more of its employer members that  
24 the association certifies in its application has or have

1 agreed in writing to comply with the requirements of  
2 this section and sections 218A through 218C.

3 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
4 EMPLOYERS.—If an association filing an application  
5 under paragraph (1) is a joint or sole employer of  
6 the temporary or seasonal agricultural workers re-  
7 quired on the application, the certifications granted  
8 under subsection (e)(2)(B) to the association may be  
9 used for the certified job opportunities of any of its  
10 producer members named on the application, and  
11 such workers may be transferred among such pro-  
12 ducer members to perform the agricultural services  
13 of a temporary or seasonal nature for which the cer-  
14 tifications were granted.

15 “(d) WITHDRAWAL OF APPLICATIONS.—

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

1 whose behalf an application is withdrawn, is relieved  
2 of the obligations undertaken in the application.

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

7 “(3) OBLIGATIONS UNDER OTHER STATUTES.—  
8 Any obligation incurred by an employer under any  
9 other law or regulation as a result of the recruit-  
10 ment of United States workers or H-2A workers  
11 under an offer of terms and conditions of employ-  
12 ment required as a result of making an application  
13 under subsection (a) is unaffected by withdrawal of  
14 such application.

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

16 “(1) RESPONSIBILITY OF EMPLOYERS.—The  
17 employer shall make available for public examina-  
18 tion, within 1 working day after the date on which  
19 an application under subsection (a) is filed, at the  
20 employer’s principal place of business or work site,  
21 a copy of each such application (and such accom-  
22 panying documents as are necessary).

23 “(2) RESPONSIBILITY OF THE SECRETARY.—

24 “(A) COMPILATION OF LIST.—The Sec-  
25 retary shall compile, on a current basis, a list

1 (by employer and by occupational classification)  
2 of the applications filed under this subsection.  
3 Such list shall include the wage rate, number  
4 of workers sought, period of intended employ-  
5 ment, and date of need. The Secretary shall  
6 make such list available for examination in the  
7 District of Columbia.

8 “(B) REVIEW OF APPLICATIONS.—The  
9 Secretary shall review such an application only  
10 for completeness and obvious inaccuracies. Un-  
11 less the Secretary finds that the application is  
12 incomplete or obviously inaccurate, the Sec-  
13 retary shall certify that the intending employer  
14 has filed with the Secretary an application as  
15 described in subsection (a). Such certification  
16 shall be provided within 7 days of the filing of  
17 the application.

18 “H-2A EMPLOYMENT REQUIREMENTS  
19 “SEC. 218A. (a) PREFERENTIAL TREATMENT OF  
20 ALIENS PROHIBITED.—Employers seeking to hire United  
21 States workers shall offer the United States workers no  
22 less than the same benefits, wages, and working conditions  
23 that the employer is offering, intends to offer, or will pro-  
24 vide to H-2A workers. Conversely, no job offer may im-  
25 pose on United States workers any restrictions or obliga-

1 tions which will not be imposed on the employer’s H–2A  
2 workers.

3 “(b) MINIMUM BENEFITS, WAGES, AND WORKING  
4 CONDITIONS.—Except in cases where higher benefits,  
5 wages, or working conditions are required by the provi-  
6 sions of subsection (a), in order to protect similarly em-  
7 ployed United States workers from adverse effects with  
8 respect to benefits, wages, and working conditions, every  
9 job offer which must accompany an application under sec-  
10 tion 218 shall include each of the following benefit, wage,  
11 and working condition provisions:

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

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

22 “(B) TYPE OF HOUSING.—In complying  
23 with subparagraph (A), an employer may, at  
24 the employer’s election, provide housing that  
25 meets applicable Federal standards for tem-



1           porary labor camps or secure housing that  
2           meets applicable local standards for rental or  
3           public accommodation housing or other sub-  
4           stantially similar class of habitation, or in the  
5           absence of applicable local standards, State  
6           standards for rental or public accommodation  
7           housing or other substantially similar class of  
8           habitation. In the absence of applicable local or  
9           State standards, Federal temporary labor camp  
10          standards shall apply.

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

16           “(D) WORKERS ENGAGED IN THE RANGE  
17          PRODUCTION OF LIVESTOCK.—The Occupa-  
18          tional Safety and Health Administration shall  
19          issue regulations that address the specific re-  
20          quirements for the provision of housing to  
21          workers engaged in the range production of  
22          livestock.

23           “(E) LIMITATION.—Nothing in this para-  
24          graph shall be construed to require an employer  
25          to provide or secure housing for persons who

1           were not entitled to such housing under the  
2           temporary labor certification regulations in ef-  
3           fect on June 1, 1986.

4           “(F) CHARGES FOR HOUSING.—

5           “(i) CHARGES FOR PUBLIC HOUS-  
6           ING.—If public housing provided for mi-  
7           grant agricultural workers under the aus-  
8           pices of a local, county, or State govern-  
9           ment is secured by an employer, and use of  
10          the public housing unit normally requires  
11          charges from migrant workers, such  
12          charges shall be paid by the employer di-  
13          rectly to the appropriate individual or enti-  
14          ty affiliated with the housing’s manage-  
15          ment.

16          “(ii) DEPOSIT CHARGES.—Charges in  
17          the form of deposits for bedding or other  
18          similar incidentals related to housing shall  
19          not be levied upon workers by employers  
20          who provide housing for their workers.  
21          However, an employer may require a work-  
22          er found to have been responsible for dam-  
23          age to such housing which is not the result  
24          of normal wear and tear related to habi-

1           tation to reimburse the employer for the  
2           reasonable cost of repair of such damage.

3           “(G) HOUSING ALLOWANCE AS ALTER-  
4           NATIVE.—

5                   “(i) IN GENERAL.—In lieu of offering  
6           housing pursuant to subparagraph (A), the  
7           employer may provide a reasonable housing  
8           allowance, but only if the requirement of  
9           clause (ii) is satisfied. Upon the request of  
10          a worker seeking assistance in locating  
11          housing, the employer shall make a good  
12          faith effort to assist the worker in identi-  
13          fying and locating housing in the area of  
14          intended employment. An employer who of-  
15          fers a housing allowance to a worker, or  
16          assists a worker in locating housing which  
17          the worker occupies, pursuant to this  
18          clause shall not be deemed a housing pro-  
19          vider under section 203 of the Migrant and  
20          Seasonal Agricultural Worker Protection  
21          Act (29 U.S.C. 1823) solely by virtue of  
22          providing such housing allowance. How-  
23          ever, no housing allowance may be used for  
24          housing which is owned or controlled by  
25          the employer.

1           “(ii) CERTIFICATION.—The require-  
2           ment of this clause is satisfied if the Gov-  
3           ernor of the State certifies to the Secretary  
4           that there is adequate housing available in  
5           the area of intended employment for mi-  
6           grant farm workers, and H-2A workers,  
7           who are seeking temporary housing while  
8           employed at farm work. Such certification  
9           shall expire after 3 years unless renewed  
10          by the Governor of the State.

11          “(iii) AMOUNT OF ALLOWANCE.—

12                 “(I) NONMETROPOLITAN COUN-  
13                 TIES.—If the place of employment of  
14                 the workers provided an allowance  
15                 under this subparagraph is a non-  
16                 metropolitan county, the amount of  
17                 the housing allowance under this sub-  
18                 paragraph shall be equal to the state-  
19                 wide average fair market rental for  
20                 existing housing for nonmetropolitan  
21                 counties for the State, as established  
22                 by the Secretary of Housing and  
23                 Urban Development pursuant to sec-  
24                 tion 8(c) of the United States Hous-  
25                 ing Act of 1937 (42 U.S.C. 1437f(c)),

1 based on a 2-bedroom dwelling unit  
2 and an assumption of 2 persons per  
3 bedroom.

4 “(II) METROPOLITAN COUN-  
5 TIES.—If the place of employment of  
6 the workers provided an allowance  
7 under this paragraph is in a metro-  
8 politan county, the amount of the  
9 housing allowance under this subpara-  
10 graph shall be equal to the statewide  
11 average fair market rental for existing  
12 housing for metropolitan counties for  
13 the State, as established by the Sec-  
14 retary of Housing and Urban Devel-  
15 opment pursuant to section 8(c) of  
16 the United States Housing Act of  
17 1937 (42 U.S.C. 1437f(c)), based on  
18 a 2-bedroom dwelling unit and an as-  
19 sumption of 2 persons per bedroom.

20 “(2) REIMBURSEMENT OF TRANSPORTATION.—

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

1           tation and subsistence from the place from  
2           which the worker came to work for the em-  
3           ployer (or place of last employment, if the  
4           worker traveled from such place) to the place of  
5           employment.

6           “(B) FROM PLACE OF EMPLOYMENT.—A  
7           worker who completes the period of employment  
8           for the job opportunity involved shall be reim-  
9           bursed by the employer for the cost of the  
10          worker’s transportation and subsistence from  
11          the place of employment to the place from  
12          which the worker, disregarding intervening em-  
13          ployment, came to work for the employer, or to  
14          the place of next employment, if the worker has  
15          contracted with a subsequent employer who has  
16          not agreed to provide or pay for the worker’s  
17          transportation and subsistence to such subse-  
18          quent employer’s place of employment.

19          “(C) LIMITATION.—

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

1                   “(I) the actual cost to the worker  
2                   or alien of the transportation and sub-  
3                   sistence involved; or

4                   “(II) the most economical and  
5                   reasonable common carrier transpor-  
6                   tation charges and subsistence costs  
7                   for the distance involved.

8                   “(ii) DISTANCE TRAVELED.—No reim-  
9                   bursement under subparagraph (A) or (B)  
10                  shall be required if the distance traveled is  
11                  100 miles or less, or the worker is not re-  
12                  siding in employer-provided housing or  
13                  housing secured through an allowance as  
14                  provided in paragraph (1)(G).

15                  “(D) EARLY TERMINATION.—If the worker  
16                  is laid off or employment is terminated for con-  
17                  tract impossibility (as described in paragraph  
18                  (4)(D)) before the anticipated ending date of  
19                  employment, the employer shall provide the  
20                  transportation and subsistence required by sub-  
21                  paragraph (B) and, notwithstanding whether  
22                  the worker has completed 50 percent of the pe-  
23                  riod of employment, shall provide the transpor-  
24                  tation reimbursement required by subparagraph  
25                  (A).

1           “(E) TRANSPORTATION BETWEEN LIVING  
2           QUARTERS AND WORK SITE.—The employer  
3           shall provide transportation between the work-  
4           er’s living quarters (i.e., housing provided by  
5           the employer pursuant to paragraph (1), includ-  
6           ing housing provided through a housing allow-  
7           ance) and the employer’s work site without cost  
8           to the worker, and such transportation will be  
9           in accordance with applicable laws and regula-  
10          tions.

11          “(3) REQUIRED WAGES.—

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



1           “(B) DEDUCTIONS.—The employer shall  
2           make only those deductions from the worker’s  
3           paycheck which are authorized by law or are  
4           reasonable and customary in the occupation and  
5           area of employment. The job offer shall specify  
6           all deductions not required by law which the  
7           employer will make from the worker’s paycheck.

8           “(C) REPORT ON WAGE PROTECTIONS.—  
9           Not later than January 1, 2004, the Resources,  
10          Community and Economic Development Divi-  
11          sion, and the Health, Education and Human  
12          Services Division, of the General Accounting  
13          Office shall jointly prepare and transmit to the  
14          Secretary of Labor and to the Committee on  
15          the Judiciary of the House of Representatives  
16          and the Committee on the Judiciary of the Sen-  
17          ate a report which shall address—

18                   “(i) whether the adverse effect wage  
19                   rate is effective in preventing the wages of  
20                   United States farm workers from being de-  
21                   pressed in occupations in which H-2A  
22                   workers are employed;

23                   “(ii) whether alternative wage protec-  
24                   tions, such as a prevailing wage standard,

1 are sufficient to prevent such wage depres-  
2 sion;

3 “(iii) whether any changes are war-  
4 ranted in the current methodologies for  
5 calculating the adverse effect wage rate  
6 and the prevailing wage; and

7 “(iv) recommendations for future  
8 wage protections under the this section.

9 “(D) COMMISSION ON WAGE STAND-  
10 ARDS.—

11 “(i) ESTABLISHMENT.—There is es-  
12 tablished the Commission on Agricultural  
13 Wage Standards under the H-2A program  
14 (in this subparagraph referred to as the  
15 ‘Commission’).

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

18 “(I) 4 representatives of agricul-  
19 tural employers and 1 representative  
20 of the Department of Agriculture,  
21 each appointed by the Secretary of  
22 Agriculture.

23 “(II) 4 representatives of agricul-  
24 tural workers and 1 representative of

1 the Department of Labor, each ap-  
2 pointed by the Secretary of Labor.

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

5 “(I) whether the adverse effect  
6 wage rate is effective in preventing  
7 the wages of United States farm  
8 workers from being depressed in occu-  
9 pations in which H-2A workers are  
10 employed;

11 “(II) whether alternative wage  
12 protections, such as a prevailing wage  
13 standard, are sufficient to prevent  
14 such wage depression;

15 “(III) whether any changes are  
16 warranted in the current methodolo-  
17 gies for calculating the adverse effect  
18 wage rate and the prevailing wage;  
19 and

20 “(IV) recommendations to raise  
21 farm workers earnings and to reduce  
22 farm worker poverty while ensuring a  
23 profitable, efficient, labor-intensive ag-  
24 ricultural sector with a minimum of  
25 governmental intervention.

1           “(iv) FINAL REPORT.—Not later than  
2           January 1, 2004, the Commission shall  
3           submit a report to the Congress setting  
4           forth the findings of the study conducted  
5           under clause (iii).

6           “(v) TERMINATION DATE.—The Com-  
7           mission shall terminate upon submitting  
8           its final report.

9           “(4) GUARANTEE OF EMPLOYMENT.—

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

1 would have earned had the worker, in fact,  
2 worked for the guaranteed number of hours.

3 “(B) FAILURE TO WORK.—Any hours  
4 which the worker fails to work, up to a max-  
5 imum of eight hours on a work day, when the  
6 worker has been offered an opportunity to do  
7 so, and all hours of work actually performed  
8 (including voluntary work in excess of eight  
9 hours on a work day, on the worker’s Sabbath,  
10 or on Federal holidays) may be counted by the  
11 employer in calculating whether the period of  
12 guaranteed employment has been met.

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

20 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
21 fore the expiration of the period of employment  
22 specified in the job offer, the services of the  
23 worker are no longer required for reasons be-  
24 yond the control of the employer due to any  
25 form of natural disaster, including but not lim-

1           ited to a flood, hurricane, freeze, earthquake,  
2           fire, drought, plant or animal disease or pest in-  
3           festation, or regulatory drought, before the  
4           guarantee in subparagraph (A) is fulfilled, the  
5           employer may terminate the worker’s employ-  
6           ment. In the event of such termination, the em-  
7           ployer shall fulfill the employment guarantee in  
8           subparagraph (A) for the work days that have  
9           elapsed from the first work day after the arrival  
10          of the worker to the termination of employ-  
11          ment. In such cases, the employer will make ef-  
12          forts to transfer the United States worker to  
13          other comparable employment acceptable to the  
14          worker. If such transfer is not effected, the em-  
15          ployer shall provide the return transportation  
16          required in paragraph (2)(D).

17          “(c) COMPLIANCE WITH LABOR LAWS.—An em-  
18          ployer shall assure that, except as otherwise provided in  
19          this section the employer will comply with all applicable  
20          Federal, State, and local labor laws, including laws affect-  
21          ing migrant and seasonal agricultural workers, with re-  
22          spect to all United States workers and alien workers em-  
23          ployed by the employer, except that a violation of this sub-  
24          section shall not constitute a violation of the Migrant and

1 Seasonal Agricultural Worker Protection Act (29 U.S.C.  
2 1801 et seq.).

3 “(d) DISCLOSURE OF TERMS AND CONDITIONS OF  
4 EMPLOYMENT.—With respect to H–2A aliens recruited  
5 from outside the United States, the disclosure required  
6 under section 201(c) of the Migrant and Seasonal Agricul-  
7 tural Worker Protection Act (29 U.S.C. 1821(c)) may be  
8 made at any time prior to the time the alien is issued a  
9 visa permitting entry into the United States, except that  
10 if a fee is paid by the alien to a person who has been  
11 authorized by the employer or an association of employers  
12 to recruit aliens on behalf of the employer for employment  
13 as an H–2A worker, the disclosure shall be made not later  
14 than the time such fee is paid to such person.

15 “PROCEDURE FOR ADMISSION AND EXTENSION OF STAY  
16 OF H–2A WORKERS

17 “SEC. 218B. (a) PETITIONING FOR ADMISSION.—An  
18 employer, or an association acting as an agent or joint  
19 employer for its members, that seeks the admission into  
20 the United States of an H–2A worker may file a petition  
21 with the Attorney General. The petition shall be accom-  
22 panied by an accepted and currently valid certification  
23 provided by the Secretary under section 218(e)(2)(B) cov-  
24 ering the petitioner.

25 “(b) EXPEDITED ADJUDICATION BY THE ATTORNEY  
26 GENERAL.—The Attorney General shall establish a proce-

1 dure for expedited adjudication of petitions filed under  
2 subsection (a) and within 7 working days shall, by fax,  
3 cable, or other means assuring expedited delivery, trans-  
4 mit a copy of notice of action on the petition to the peti-  
5 tioner and, in the case of approved petitions, to the appro-  
6 priate immigration officer at the port of entry or United  
7 States consulate (as the case may be) where the petitioner  
8 has indicated that the alien beneficiary (or beneficiaries)  
9 will apply for a visa or admission to the United States.

10 “(c) CRITERIA FOR ADMISSIBILITY.—

11 “(1) IN GENERAL.—An H-2A worker shall be  
12 considered admissible to the United States if the  
13 alien is otherwise admissible under this section, sec-  
14 tion 218, and section 218A, and the alien is not in-  
15 eligible under paragraph (2).

16 “(2) DISQUALIFICATION.—An alien shall be  
17 considered inadmissible to the United States and in-  
18 eligible for nonimmigrant status under section  
19 101(a)(15)(H)(ii)(a) if the alien has, at any time  
20 during the past 5 years—

21 “(A) violated a material provision of this  
22 section, including the requirement to promptly  
23 depart the United States when the alien’s au-  
24 thorized period of admission under this section  
25 has expired; or



1           “(B) otherwise violated a term or condition  
2 of admission into the United States as a non-  
3 immigrant, including overstaying the period of  
4 authorized admission as such a nonimmigrant.

5           “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
6 FUL PRESENCE.—

7           “(A) IN GENERAL.—An alien who has not  
8 previously been admitted into the United States  
9 pursuant to this section, and who is otherwise  
10 eligible for admission in accordance with para-  
11 graphs (1) and (2), shall not be deemed inad-  
12 missible by virtue of section 212(a)(9)(B). If an  
13 alien described in the preceding sentence is  
14 present in the United States, the alien may  
15 apply from abroad for H-2A worker status, but  
16 may not be granted that status by adjustment  
17 in the United States.

18           “(B) MAINTENANCE OF WAIVER.—An  
19 alien provided an initial waiver of ineligibility  
20 pursuant to subparagraph (A) shall remain eli-  
21 gible for such waiver unless the alien violates  
22 the terms of this section or again becomes ineli-  
23 gible under section 212(a)(9)(B) by virtue of  
24 unlawful presence in the United States after

1           the date of the initial waiver of ineligibility pur-  
2           suant to subparagraph (A).

3           “(d) PERIOD OF ADMISSION.—

4           “(1) IN GENERAL.—The alien shall be admitted  
5           for the period of employment in the application, cer-  
6           tified by the Secretary pursuant to section  
7           218(e)(2)(B), not to exceed 10 months, supple-  
8           mented by a period of up to 1 week before the begin-  
9           ning of the period of employment (to be granted for  
10          the purpose of travel to the work site) and a period  
11          of 14 days following the period of employment (to be  
12          granted for the purpose of departure or extension  
13          based on a subsequent offer of employment), except  
14          that—

15                 “(A) the alien is not authorized to be em-  
16                 ployed during such 14-day period except in the  
17                 employment for which the alien was previously  
18                 authorized; and

19                 “(B) the total period of employment, in-  
20                 cluding such 14-day period, may not exceed 10  
21                 months.

22           “(2) CONSTRUCTION.—Nothing in this sub-  
23           section shall limit the Attorney General’s authority  
24           to extend the stay of the alien under any other pro-  
25           vision of this Act.

1 “(e) ABANDONMENT OF EMPLOYMENT.—

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

9 “(2) REPORT BY EMPLOYER.—The employer  
10 (or association acting as agent for the employer)  
11 shall notify the Attorney General within 7 days of an  
12 H-2A worker’s having prematurely abandoned em-  
13 ployment.

14 “(3) REMOVAL BY THE ATTORNEY GENERAL.—  
15 The Attorney General shall promptly remove from  
16 the United States any H-2A worker who violates  
17 any term or condition of the worker’s nonimmigrant  
18 status.

19 “(4) VOLUNTARY TERMINATION.—Notwith-  
20 standing paragraph (1), an alien may voluntarily  
21 terminate his or her employment if the alien prompt-  
22 ly departs the United States upon termination of  
23 such employment.

24 “(f) REPLACEMENT OF ALIEN.—

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

7           “(A) who abandons or prematurely termi-  
8 nates employment; or

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

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

20           “(g) IDENTIFICATION DOCUMENT.—

21           “(1) IN GENERAL.—Each alien authorized to be  
22 admitted under section 101(a)(15)(H)(ii)(a) shall,  
23 upon receipt of a visa, be given an identification and  
24 employment eligibility document to verify eligibility

1 for employment in the United States and verify such  
2 person's proper identity.

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

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

8 “(i) the individual with the identifica-  
9 tion and employment eligibility document  
10 whose eligibility is being verified is in fact  
11 eligible for employment;

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

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

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

21 “(C) The document shall—

22 “(i) be compatible with other data-  
23 bases of the Attorney General for the pur-  
24 pose of excluding aliens from benefits for  
25 which they are not eligible and determining

1           whether the alien is unlawfully present in  
2           the United States; and

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

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

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

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

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

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

22                   “(3) WORK AUTHORIZATION UPON FILING A  
23                   PETITION FOR EXTENSION OF STAY.—In the case of  
24                   an alien who is lawfully present in the United  
25                   States, the alien is authorized to commence the em-

1       employment described in a petition under paragraph  
2       (1) on the date on which the petition is filed. For  
3       purposes of the preceding sentence, the term ‘file’  
4       means sending the petition by certified mail via the  
5       United States Postal Service, return receipt re-  
6       quested, or delivered by guaranteed commercial de-  
7       livery which will provide the employer with a docu-  
8       mented acknowledgment of the date of sending the  
9       receipt of the petition. The employer shall provide a  
10      copy of the employer’s petition to the alien, who  
11      shall keep the petition with the alien’s identification  
12      and employment eligibility document as evidence  
13      that the petition has been filed and that the alien is  
14      authorized to work in the United States. Upon ap-  
15      proval of a petition for an extension of stay or  
16      change in the alien’s authorized employment, the At-  
17      torney General shall provide a new or updated em-  
18      ployment eligibility document to the alien indicating  
19      the new validity date, after which the alien is not re-  
20      quired to retain a copy of the petition.

21           “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-  
22      TION OF ALIENS WITHOUT VALID IDENTIFICATION  
23      AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-  
24      pired identification and employment eligibility docu-  
25      ment, together with a copy of an petition for exten-

1 sion of stay or change in the alien’s authorized em-  
2 ployment that complies with the requirements of  
3 paragraph (1), shall constitute a valid work author-  
4 ization document for a period of not more than 60  
5 days beginning on the date on which such petition  
6 is filed, after which time only a currently valid iden-  
7 tification and employment eligibility document shall  
8 be acceptable.

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

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

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

17 “(i) IN GENERAL.—Subject to clause  
18 (ii), in the case of an alien outside the  
19 United States whose period of authorized  
20 status as an H–2A worker (including any  
21 extensions) has expired, the alien may not  
22 again apply for admission to the United  
23 States as an H–2A worker unless the alien  
24 has remained outside the United States for  
25 a continuous period equal to at least  $\frac{1}{5}$



1 the duration of the alien’s previous period  
2 of authorized status as an H-2A worker  
3 (including any extensions).

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

14 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS  
15 SHEEPHERDERS.—Notwithstanding any other provision  
16 of this section, aliens admitted under section  
17 101(a)(15)(H)(ii)(a) for employment as shepherders—

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

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

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

1 “WORKER PROTECTIONS AND LABOR STANDARDS  
2 ENFORCEMENT

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

4 “(1) INVESTIGATION OF COMPLAINTS.—

5 “(A) AGGRIEVED PERSON OR THIRD-PARTY  
6 COMPLAINTS.—The Secretary shall establish a  
7 process for the receipt, investigation, and dis-  
8 position of complaints respecting a petitioner’s  
9 failure to meet a condition specified in section  
10 218(b), or an employer’s misrepresentation of  
11 material facts in an application under section  
12 218(a). Complaints may be filed by any ag-  
13 grievied person or organization (including bar-  
14 gaining representatives). No investigation or  
15 hearing shall be conducted on a complaint con-  
16 cerning such a failure or misrepresentation un-  
17 less the complaint was filed not later than 12  
18 months after the date of the failure, or mis-  
19 representation, respectively. The Secretary shall  
20 conduct an investigation under this subpara-  
21 graph if there is reasonable cause to believe  
22 that such a failure or misrepresentation has oc-  
23 curred.

24 “(B) DETERMINATION ON COMPLAINT.—

25 Under such process, the Secretary shall provide,

1 within 30 days after the date such a complaint  
2 is filed, for a determination as to whether or  
3 not a reasonable basis exists to make a finding  
4 described in subparagraph (C), (D), (E), or  
5 (F). If the Secretary determines that such a  
6 reasonable basis exists, the Secretary shall pro-  
7 vide for notice of such determination to the in-  
8 terested parties and an opportunity for a hear-  
9 ing on the complaint, in accordance with section  
10 556 of title 5, United States Code, within 60  
11 days after the date of the determination. If  
12 such a hearing is requested, the Secretary shall  
13 make a finding concerning the matter not later  
14 than 60 days after the date of the hearing. In  
15 the case of similar complaints respecting the  
16 same applicant, the Secretary may consolidate  
17 the hearings under this subparagraph on such  
18 complaints.

19 “(C) FAILURES TO MEET CONDITIONS.—If  
20 the Secretary finds, after notice and oppor-  
21 tunity for a hearing, a failure to meet a condi-  
22 tion of paragraph (1)(A), (1)(B), (1)(D),  
23 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
24 218(b), a substantial failure to meet a condition  
25 of paragraph (1)(C) or (E), or paragraph

1 (2)(C), (2)(D), (2)(E), or (2)(H) of section  
2 218(b), or a material misrepresentation of fact  
3 in an application under section 218(a)—

4 “(i) the Secretary shall notify the At-  
5 torney General of such finding and may, in  
6 addition, impose such other administrative  
7 remedies (including civil money penalties in  
8 an amount not to exceed \$1,000 per viola-  
9 tion) as the Secretary determines to be ap-  
10 propriate; and

11 “(ii) the Attorney General may dis-  
12 qualify the employer from the employment  
13 of aliens described in section  
14 101(A)(15)(H)(ii)(a) for a period of 1  
15 year.

16 “(D) WILLFUL FAILURES AND WILLFUL  
17 MISREPRESENTATIONS.—If the Secretary finds,  
18 after notice and opportunity for hearing, a will-  
19 ful failure to meet a condition of section 218(b),  
20 a willful misrepresentation of a material fact in  
21 an application under section 218(a), or a viola-  
22 tion of subsection (b)—

23 “(i) the Secretary shall notify the At-  
24 torney General of such finding and may, in  
25 addition, impose such other administrative

1 remedies (including civil money penalties in  
2 an amount not to exceed \$5,000 per viola-  
3 tion) as the Secretary determines to be ap-  
4 propriate; and

5 “(ii) the Attorney General may dis-  
6 qualify the employer from the employment  
7 of H-2A workers for a period of 2 years.

8 “(E) DISPLACEMENT OF UNITED STATES  
9 WORKERS.—If the Secretary finds, after notice  
10 and opportunity for hearing, a willful failure to  
11 meet a condition of section 218(b) or a willful  
12 misrepresentation of a material fact in an appli-  
13 cation under section 218(a), in the course of  
14 which failure or misrepresentation the employer  
15 displaced a United States worker employed by  
16 the employer during the period of employment  
17 on the employer’s application under section  
18 218(a) or during the period of 30 days pre-  
19 ceding such period of employment—

20 “(i) the Secretary shall notify the At-  
21 torney General of such finding and may, in  
22 addition, impose such other administrative  
23 remedies (including civil money penalties in  
24 an amount not to exceed \$15,000 per vio-

1           lation) as the Secretary determines to be  
2           appropriate; and

3           “(ii) the Attorney General may dis-  
4           qualify the employer from the employment  
5           of H-2A workers for a period of 3 years.

6           “(F) LIMITATIONS ON CIVIL MONEY PEN-  
7           ALTIES.—The Secretary shall not impose total  
8           civil money penalties with respect to an applica-  
9           tion under section 218(a) in excess of \$90,000.

10          “(G) FAILURES TO PAY WAGES OR RE-  
11          QUIRED BENEFITS.—If the Secretary finds,  
12          after notice and opportunity for a hearing, that  
13          the employer has failed to pay the wages, or  
14          provide the housing allowance, transportation,  
15          subsistence reimbursement, or guarantee of em-  
16          ployment, required under section 218A(b), the  
17          Secretary shall assess payment of back wages,  
18          or other required benefits, due any United  
19          States worker or H-2A worker employed by the  
20          employer in the specific employment in ques-  
21          tion. The back wages or other required benefits  
22          under section 218A(b) shall be equal to the dif-  
23          ference between the amount that should have  
24          been paid and the amount that actually was  
25          paid to such worker.

1           “(2) STATUTORY CONSTRUCTION.—Nothing in  
2           this section shall be construed as limiting the au-  
3           thority of the Secretary to conduct any compliance  
4           investigation under any other labor law, including  
5           any law affecting migrant and seasonal agricultural  
6           workers, or, in the absence of a complaint under this  
7           section, under section 218 or 218A.

8           “(b) DISCRIMINATION PROHIBITED.—It is a violation  
9           of this subsection for an employer who has filed an appli-  
10          cation under section 218(a), to intimidate, threaten, re-  
11          strain, coerce, blacklist, discharge, or in any other manner  
12          discriminate against an employee (which term, for pur-  
13          poses of this subsection, includes a former employee and  
14          an applicant for employment) because the employee has  
15          disclosed information to the employer, or to any other per-  
16          son, that the employee reasonably believes evidences a vio-  
17          lation of section 218 or 218A or any rule or regulation  
18          pertaining to section 218 or 218A, or because the em-  
19          ployee cooperates or seeks to cooperate in an investigation  
20          or other proceeding concerning the employer’s compliance  
21          with the requirements of section 218 or 218A or any rule  
22          or regulation pertaining to either of such sections.

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

1 worker who files a complaint regarding a violation of sub-  
2 section (b) 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 “(d) 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 deter-  
18 mines that the association or other member partici-  
19 pated in, had knowledge, or reason to know, of the  
20 violation, in which case the penalty shall be invoked  
21 against the association or other association member  
22 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 determines that an as-  
4 sociation member or members participated in or had  
5 knowledge, or reason to know, of the violation, in  
6 which case the penalty shall be invoked against the  
7 association member or members as well.

8 “DEFINITIONS

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

11 “(1) ADVERSE AFFECT WAGE RATE.—The term  
12 ‘adverse effect wage rate’ means the annual weight-  
13 ed average hourly wage rate of earnings for field and  
14 livestock workers (combined) for the State (or region  
15 that includes the State) as published annually by the  
16 Department of Agriculture based on the Depart-  
17 ment’s quarterly wage survey.

18 “(2) AGRICULTURAL EMPLOYMENT.—The term  
19 ‘agricultural employment’ means any service or ac-  
20 tivity that is considered to be agricultural under sec-  
21 tion 3(f) of the Fair Labor Standards Act of 1938  
22 (29 U.S.C. 203(f)) or agricultural labor under sec-  
23 tion 3121(g) of the Internal Revenue Code of 1986  
24 (26 U.S.C. 3121(g)). For purposes of this para-  
25 graph, agricultural employment includes employment  
26 under section 101(a)(15)(H)(ii)(a).

1           “(3) BONA FIDE UNION.—The term ‘bona fide  
2 union’ means any organization in which employees  
3 participate and which exists for the purpose of deal-  
4 ing with employers concerning grievances, labor dis-  
5 putes, wages, rates of pay, hours of employment, or  
6 other terms and conditions of work for agricultural  
7 employees. Such term does not include an organiza-  
8 tion formed, created, administered, supported, domi-  
9 nated, financed, or controlled by an employer or em-  
10 ployer association or its agents or representatives.

11           “(4) DISPLACE.—In the case of an application  
12 with respect to one or more H-2A workers by an  
13 employer, the employer is considered to ‘displace’ a  
14 United States worker from a job if the employer lays  
15 off the worker from a job for which the H-2A work-  
16 er or workers is or are sought.

17           “(5) ELIGIBLE.—The term ‘eligible’, when used  
18 with respect to an individual, means an individual  
19 who is not an unauthorized alien (as defined in sec-  
20 tion 274A(h)(3)).

21           “(6) EMPLOYER.—The term ‘employer’ means  
22 any person or entity, including any farm labor con-  
23 tractor and any agricultural association, that em-  
24 ploys workers in agricultural employment.

1           “(7) H-2A EMPLOYER.—The term ‘H-2A em-  
2           ployer’ means an employer who seeks to hire one or  
3           more nonimmigrant aliens described in section  
4           101(a)(15)(H)(ii)(a).

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

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

12          “(10) LAYS OFF.—

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

15                         “(i) means to cause the worker’s loss  
16                         of employment, other than through a dis-  
17                         charge for inadequate performance, viola-  
18                         tion of workplace rules, cause, voluntary  
19                         departure, voluntary retirement, contract  
20                         impossibility (as described in section  
21                         218A(b)(4)(D)), or temporary layoffs due  
22                         to weather, markets, or other temporary  
23                         conditions; but

24                         “(ii) does not include any situation in  
25                         which the worker is offered, as an alter-

1           native to such loss of employment, a simi-  
2           lar employment opportunity with the same  
3           employer (or, in the case of a placement of  
4           a worker with another employer under sec-  
5           tion 218(b)(2)(E), with either employer de-  
6           scribed in such section) at equivalent or  
7           higher compensation and benefits than the  
8           position from which the employee was dis-  
9           charged, regardless of whether or not the  
10          employee accepts the offer.

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

15           “(11) PREVAILING WAGE.—The term ‘pre-  
16          vailing wage’ means, with respect to an agricultural  
17          occupation in an area of intended employment, the  
18          rate of wages that includes the 51st percentile of  
19          employees in that agricultural activity in the area of  
20          intended employment, expressed in terms of the pre-  
21          vailing method of pay for the agricultural activity in  
22          the area of intended employment.

23           “(12) REGULATORY DROUGHT.—The term ‘reg-  
24          ulatory drought’ means a decision subsequent to the  
25          filing of the application under section 218 by an en-

1 tity not under the control of the employer making  
2 such filing which restricts the employer's access to  
3 water for irrigation purposes and reduces or limits  
4 the employer's ability to product an agricultural  
5 commodity, thereby reducing the need for labor.

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

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

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

13 “(14) SECRETARY.—The term ‘Secretary’  
14 means the Secretary of Labor.

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

18 “(16) UNITED STATES WORKER.—The term  
19 ‘United States worker’ means any worker, whether  
20 a United States citizen or national, a lawfully admit-  
21 ted permanent resident alien, or any other alien,  
22 who is authorized to work in the job opportunity  
23 within the United States, except an alien admitted  
24 or otherwise provided status under section  
25 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 the Immigration and Nationality Act (8 U.S.C. 1101 et  
 3 seq.) is amended by striking the item relating to section  
 4 218 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.”.

5 **TITLE III—MISCELLANEOUS**  
 6 **PROVISIONS**

7 **SEC. 301. COVERAGE OF H-2A AGRICULTURAL WORKERS**  
 8 **UNDER THE MIGRANT AND SEASONAL AGRI-**  
 9 **CULTURAL WORKER PROTECTION ACT.**

10 (a) DEFINITIONS.—Section 3 of the Migrant and  
 11 Seasonal Agricultural Worker Protection Act (29 U.S.C.  
 12 1802) is amended—

13 (1) in paragraph (8)(B)—

14 (A) by striking “does not” and all that fol-  
 15 lows through “(i) any” and inserting “does not  
 16 include any”;

17 (B) by striking “; or” and inserting a pe-  
 18 riod; and

19 (C) by striking clause (ii); and

20 (2) in paragraph (10)(B)—

21 (A) by striking “; or” at the end of clause  
 22 (ii) and inserting a period; and

23 (B) by striking clause (iii).

1           (b) **EFFECTIVE DATE.**—The amendments made by  
2 subsection (a) shall apply to the employment, recruitment,  
3 referral, or utilization of the services of an individual oc-  
4 ccurring on or after the date that is 1 year after the date  
5 of the enactment of this Act.

6 **SEC. 302. RIGHT TO ORGANIZE.**

7           (a) **IN GENERAL.**—Title IV of the Migrant and Sea-  
8 sonal Agricultural Worker Protection Act (29 U.S.C. 1841  
9 et seq.) is amended by adding at the end the following  
10 new section:

11 **“SEC. 405. RIGHT TO ORGANIZE.**

12           “(a) **IN GENERAL.**—Migrant and seasonal agricul-  
13 tural workers shall have the right to self-organization, to  
14 form, join, or assist labor organizations, to bargain collec-  
15 tively through representatives of their own choosing, and  
16 to engage in other concerted activities for the purpose of  
17 collective bargaining or other mutual aid or protection.

18           “(b) **PROHIBITION.**—No person shall interfere with,  
19 restrain, or coerce any migrant or seasonal agricultural  
20 worker in the exercise of the rights guaranteed in sub-  
21 section (a).”.

22           (b) **EFFECTIVE DATE.**—The amendment made by  
23 subsection (a) shall become effective on the date that is  
24 1 year after the date of the enactment of this Act.

1 **SEC. 303. TAX EQUITY AND WORKFORCE IMPROVEMENT**  
2 **FUND.**

3 (a) **ESTABLISHMENT OF ACCOUNT.**—There is estab-  
4 lished in the general fund of the Treasury a separate ac-  
5 count, which shall be known as the “Agricultural Worker  
6 Account” for the purpose of improving labor management  
7 practices in agriculture. Notwithstanding any other provi-  
8 sion of law, there shall be deposited as offsetting receipts  
9 into the account all fees collected under subsection (b)(1).

10 (b) **PAYMENTS INTO ACCOUNT.**—

11 (1) **IN GENERAL.**—Except as provided in para-  
12 graph (2), the Secretary shall collect a fee from an  
13 employer of an H-2A worker in an amount equiva-  
14 lent to 13.85 percent of total wages paid to the H-  
15 2A worker during the period of employment. Fees  
16 collected under this paragraph shall be deposited in  
17 the Treasury in accordance with subsection (a).

18 (2) **EXCEPTION.**—Paragraph (1) does not apply  
19 to an employer in a case where the job opportunity  
20 is covered by a union contract that was negotiated  
21 at arm’s-length between a bona fide union and the  
22 employer.

23 (c) **DISTRIBUTION OF FUNDS.**—The amounts paid  
24 into the Agricultural Worker Account shall be used as fol-  
25 lows:



1           (1) LABOR MANAGEMENT COMMITTEES.—40  
 2 percent of the amounts deposited into the Agricultural  
 3 tural Worker Account shall remain available to the  
 4 Federal Mediation and Conciliation Service until ex-  
 5 pended for assistance to labor management commit-  
 6 tees described in subsection (d).

7           (2) DEMONSTRATION PROGRAMS AND  
 8 PROJECTS.—40 percent of the amounts deposited in  
 9 the Agricultural Worker Account shall remain avail-  
 10 able to the Secretary of Labor until expended for  
 11 demonstration programs and projects described in  
 12 subsection (e).

13           (3) ADMINISTRATIVE EXPENSES.—20 percent  
 14 of the amounts deposited into the Agricultural  
 15 Worker Account shall remain available to the Attor-  
 16 ney General, the Secretary of Labor, and the Sec-  
 17 retary of State until expended in amounts equivalent  
 18 to the expenses incurred by such officials in the ad-  
 19 ministration of the H-2A program.

20           (d) ASSISTANCE TO LABOR MANAGEMENT COMMIT-  
 21 TEES.—

22           (1) ESTABLISHMENT OF FARM, AREA, OR IN-  
 23 DUSTRYWIDE COMMITTEES.—

24           (A) The Federal Mediation and Concilia-  
 25 tion Service shall provide assistance in the es-

1           tablishment and operation of farm, area, and  
2           industrywide labor management committees  
3           that—

4                   (i) have been organized jointly by em-  
5                   ployers and labor organizations rep-  
6                   resenting employees in that farm, area, or  
7                   industry; and

8                   (ii) are established for the purpose of  
9                   improving labor management relationships,  
10                  job security, organizational effectiveness,  
11                  enhancing economic development and pro-  
12                  ductivity, or involving workers in decisions  
13                  affecting their jobs, including improving  
14                  communication with respect to subjects of  
15                  mutual concern.

16           (B) The Federal Mediation and Concilia-  
17           tion Service shall enter into contracts and make  
18           grants, where necessary or appropriate, to fulfill  
19           its responsibilities under this section.

20           (2) RESTRICTIONS ON GRANTS, CONTRACTS, OR  
21           OTHER ASSISTANCE.—

22                   (A) REPRESENTATION BY LABOR ORGANI-  
23                   ZATIONS; COLLECTIVE BARGAINING AGREE-  
24                   MENTS.—No grant may be made, no contract  
25                   may be entered into, and no other assistance

1           may be provided under the provisions of this  
2           section to a farm or ranch labor management  
3           committee unless the employees at that farm or  
4           ranch are represented by a labor organization  
5           and there is in effect at that farm or ranch a  
6           collective bargaining agreement.

7           (B) PARTICIPATION IN LABOR MANAGE-  
8           MENT COMMITTEES.—No grant may be made,  
9           no contract may be entered into, and no other  
10          assistance may be provided under the provisions  
11          of this section to an area or industrywide labor  
12          management committee unless its participants  
13          include any labor organizations certified or rec-  
14          ognized as the representative of the employees  
15          of an employer participating in such committee.  
16          Nothing shall prohibit participation in an area  
17          or industrywide committee by an employer not  
18          represented by a labor organization.

19          (C) RIGHT TO ORGANIZE AND COLLECTIVE  
20          BARGAINING.—No grant may be made under  
21          the provisions of this section to any labor man-  
22          agement committee which the Secretary finds to  
23          have as one of its purposes the discouragement  
24          of the exercise of the right to organize or the

1 interference with collective bargaining at any  
2 ranch or farm.

3 (e) DEMONSTRATION PROGRAMS AND PROJECTS.—

4 (1) IN GENERAL.—The Secretary of Labor shall  
5 use funds available under section 303(c)(2) to estab-  
6 lish demonstration projects to improve labor man-  
7 agement practices in agriculture and use the existing  
8 farm labor force more efficiently. These projects may  
9 include, but are not limited to—

10 (A) projects to enhance the recruitment of  
11 workers and demonstrate the feasibility of es-  
12 tablishing migrant itineraries through the provi-  
13 sion of worker transportation and support serv-  
14 ices;

15 (B) local job referral and labor-sharing  
16 networks;

17 (C) workplace literacy programs for mi-  
18 grant and seasonal farmworkers, including  
19 workers who reside part of the year in Mexico;

20 (D) bilingual workers' rights hotlines;

21 (E) occupational safety and health pro-  
22 grams;

23 (F) development and implementation of  
24 labor-saving and other workplace technologies;

1 (G) establishment of agricultural sector-  
2 based cross-training and development consor-  
3 tiums;

4 (H) customized training for individual em-  
5 ployers; and

6 (I) agricultural career-laddering training,  
7 and development.

8 (2) GRANTS.—

9 (A) ELIGIBILITY.—To carry out the pro-  
10 grams and projects described in paragraph  
11 (1)(A), the Secretary of Labor shall award  
12 grants to farmworker unions and other farm-  
13 worker community-based organizations, and  
14 higher education institutions.

15 (B) COLLABORATIVE EFFORTS.—Consider-  
16 ation in the awarding of grants should be given  
17 to any proposal demonstrating collaboration be-  
18 tween a union or other farmworker organization  
19 and an employer or employer organization.

20 (C) ALLOCATION OF GRANTS.—In making  
21 grants under this paragraph, the Secretary  
22 shall make every effort to fairly distribute the  
23 grants across different geographic areas of the  
24 country but give priority to those areas of the

1 country employing substantial numbers of H-  
2 2A workers.

3 (3) REQUIREMENTS FOR GRANT APPLICA-  
4 TION.—Applications for grants shall include an  
5 agreement that the program or project shall be sub-  
6 ject to evaluation by the Secretary of Labor to meas-  
7 ure its effectiveness.

8 **SEC. 304. REGULATIONS.**

9 (a) REGULATIONS OF THE ATTORNEY GENERAL.—  
10 The Attorney General shall consult with the Secretary of  
11 Labor and the Secretary of Agriculture on all regulations  
12 to implement the duties of the Attorney General under  
13 this Act.

14 (b) REGULATIONS OF THE SECRETARY OF STATE.—  
15 The Secretary of State shall consult with the Attorney  
16 General, the Secretary of Labor, and the Secretary of Ag-  
17 riculture on all regulations to implement the duties of the  
18 Secretary of State under this Act.

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

24 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—  
25 All regulations to implement the duties of the Attorney

1 General, the Secretary of State, and the Secretary of  
2 Labor under this title and the amendments made by sec-  
3 tions 201 and 301 shall take effect on the effective date  
4 of such title and amendments and shall be issued not later  
5 than 1 year after the date of the enactment of this Act.

6 **SEC. 305. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Except as otherwise provided, this  
8 title and the amendments made by sections 201 and 301  
9 shall take effect on the date that is 1 year after the date  
10 of the enactment of this Act.

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

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