

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

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

**IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.**

**H. R. 1268**

Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver’s license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRAIG

Viz:

- 1 On page 231, between lines 3 and 4, insert the fol-
- 2 lowing:

1 **TITLE VII—AGRICULTURAL JOB**  
2 **OPPORTUNITIES, BENEFITS,**  
3 **AND SECURITY ACT OF 2005**

4 **SEC. 701. SHORT TITLE.**

5 This title may be cited as the “Agricultural Job Op-  
6 portunities, Benefits, and Security Act of 2005”.

7 **SEC. 702. DEFINITIONS.**

8 In this title:

9 (1) **AGRICULTURAL EMPLOYMENT.**—The term  
10 “agricultural employment” means any service or ac-  
11 tivity that is considered to be agricultural under sec-  
12 tion 3(f) of the Fair Labor Standards Act of 1938  
13 (29 U.S.C. 203(f)) or agricultural labor under sec-  
14 tion 3121(g) of the Internal Revenue Code of 1986  
15 (26 U.S.C. 3121(g)). For purposes of this para-  
16 graph, agricultural employment includes employment  
17 under section 101(a)(15)(H)(ii)(a) of the Immigra-  
18 tion and Nationality Act (8 U.S.C.  
19 1101(a)(15)(H)(ii)(a)).

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

24 (3) **JOB OPPORTUNITY.**—The term “job oppor-  
25 tunity” means a job opening for temporary full-time

1 employment at a place in the United States to which  
2 United States workers can be referred.

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

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

8 (6) 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 (7) WORK DAY.—The term “work day” means  
18 any day in which the individual is employed 1 or  
19 more hours in agriculture consistent with the defini-  
20 tion of “man-day” under section 3(u) of the Fair  
21 Labor Standards Act of 1938 (29 U.S.C. 203(u)).

## 22 **Subtitle A—Adjustment to Lawful** 23 **Status**

### 24 **SEC. 711. AGRICULTURAL WORKERS.**

25 (a) TEMPORARY RESIDENT STATUS.—

1           (1) IN GENERAL.—Notwithstanding any other  
2 provision of law, the Secretary shall confer upon an  
3 alien who qualifies under this subsection the status  
4 of an alien lawfully admitted for temporary residence  
5 if the Secretary determines that the alien—

6           (A) has performed agricultural employment  
7 in the United States for at least 575 hours or  
8 100 work days, whichever is less, during any 12  
9 consecutive months during the 18-month period  
10 ending on December 31, 2004;

11           (B) applied for such status during the 18-  
12 month application period beginning on the first  
13 day of the seventh month that begins after the  
14 date of enactment of this Act; and

15           (C) is otherwise admissible to the United  
16 States under section 212 of the Immigration  
17 and Nationality Act (8 U.S.C. 1182), except as  
18 otherwise provided under subsection (e)(2).

19           (2) AUTHORIZED TRAVEL.—During the period  
20 an alien is in lawful temporary resident status  
21 granted under this subsection, the alien has the  
22 right to travel abroad (including commutation from  
23 a residence abroad) in the same manner as an alien  
24 lawfully admitted for permanent residence.

1           (3) AUTHORIZED EMPLOYMENT.—During the  
2 period an alien is in lawful temporary resident sta-  
3 tus granted under this subsection, the alien shall be  
4 provided an “employment authorized” endorsement  
5 or other appropriate work permit, in the same man-  
6 ner as an alien lawfully admitted for permanent resi-  
7 dence.

8           (4) TERMINATION OF TEMPORARY RESIDENT  
9 STATUS.—

10           (A) IN GENERAL.—During the period of  
11 temporary resident status granted an alien  
12 under this subsection, the Secretary may termi-  
13 nate such status only upon a determination  
14 under this Act that the alien is deportable.

15           (B) GROUNDS FOR TERMINATION OF TEM-  
16 PORARY RESIDENT STATUS.—Before any alien  
17 becomes eligible for adjustment of status under  
18 subsection (c), the Secretary may deny adjust-  
19 ment to permanent resident status and provide  
20 for termination of the temporary resident status  
21 granted such alien under paragraph (1) if—

22           (i) the Secretary finds, by a prepon-  
23 derance of the evidence, that the adjust-  
24 ment to temporary resident status was the  
25 result of fraud or willful misrepresentation

1 (as described in section 212(a)(6)(C)(i) of  
2 the Immigration and Nationality Act (8  
3 U.S.C. 1182(a)(6)(C)(i)); or

4 (ii) the alien—

5 (I) commits an act that makes  
6 the alien inadmissible to the United  
7 States as an immigrant, except as  
8 provided under subsection (e)(2); or

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

12 (5) RECORD OF EMPLOYMENT.—

13 (A) IN GENERAL.—Each employer of a  
14 worker granted status under this subsection  
15 shall annually—

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

18 (ii) provide a copy of such record to  
19 the Secretary.

20 (B) SUNSET.—The obligation under sub-  
21 paragraph (A) shall terminate on the date that  
22 is 6 years after the date of enactment of this  
23 Act.

24 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-  
25 DENT STATUS.—

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

9           (2) DELAYED ELIGIBILITY FOR CERTAIN FED-  
10          ERAL PUBLIC BENEFITS.—An alien who acquires the  
11          status of an alien lawfully admitted for temporary  
12          residence under subsection (a) as described in para-  
13          graph (1) shall not be eligible, by reason of such ac-  
14          quisition of that status, for any form of assistance  
15          or benefit described in section 403(a) of the Per-  
16          sonal Responsibility and Work Opportunity Rec-  
17          onciliation Act of 1996 (8 U.S.C. 1613(a)) until 5  
18          years after the date on which the Secretary confers  
19          temporary resident status upon that alien under  
20          subsection (a).

21          (3) TERMS OF EMPLOYMENT RESPECTING  
22          ALIENS ADMITTED UNDER THIS SECTION.—

23                 (A) PROHIBITION.—No alien granted tem-  
24                 porary resident status under subsection (a) may  
25                 be terminated from employment by any em-

1           ployer during the period of temporary resident  
2           status except for just cause.

3                   (B) TREATMENT OF COMPLAINTS.—

4                           (i) ESTABLISHMENT OF PROCESS.—

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

17                           (ii) INITIATION OF ARBITRATION.—If

18          the Secretary finds that a complaint has  
19          been filed in accordance with clause (i) and  
20          there is reasonable cause to believe that  
21          the complainant was terminated without  
22          just cause, the Secretary shall initiate  
23          binding arbitration proceedings by request-  
24          ing the Federal Mediation and Conciliation  
25          Service to appoint a mutually agreeable ar-

1           bitrator from the roster of arbitrators  
2           maintained by such Service for the geo-  
3           graphical area in which the employer is lo-  
4           cated. The procedures and rules of such  
5           Service shall be applicable to the selection  
6           of such arbitrator and to such arbitration  
7           proceedings. The Secretary shall pay the  
8           fee and expenses of the arbitrator, subject  
9           to the availability of appropriations for  
10          such purpose.

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

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

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

24 (v) TREATMENT OF ATTORNEY'S  
25 FEES.—The parties shall bear the cost of

1           their own attorney's fees involved in the  
2           litigation of the complaint.

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

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

1 referred to the Secretary pursuant to  
2 clause (iv).

3 (C) CIVIL PENALTIES.—

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

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

21 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

22 (1) AGRICULTURAL WORKERS.—

23 (A) IN GENERAL.—Except as provided in  
24 subparagraph (B), the Secretary shall adjust  
25 the status of an alien granted lawful temporary

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

5 (i) QUALIFYING EMPLOYMENT.—The  
6 alien has performed at least 360 work days  
7 or 2,060 hours, but in no case less than  
8 2,060 hours, of agricultural employment in  
9 the United States, during the 6-year period  
10 beginning after the date of enactment of  
11 this Act.

12 (ii) QUALIFYING YEARS.—The alien  
13 has performed at least 75 work days or  
14 430 hours, but in no case less than 430  
15 hours, of agricultural employment in the  
16 United States in at least 3 nonoverlapping  
17 periods of 12 consecutive months during  
18 the 6-year period beginning after the date  
19 of enactment of this Act. Qualifying peri-  
20 ods under this clause may include non-  
21 consecutive 12-month periods.

22 (iii) QUALIFYING WORK IN FIRST 3  
23 YEARS.—The alien has performed at least  
24 240 work days or 1,380 hours, but in no  
25 case less than 1,380 hours, of agricultural

1 employment during the 3-year period be-  
2 ginning after the date of enactment of this  
3 Act.

4 (iv) APPLICATION PERIOD.—The alien  
5 applies for adjustment of status not later  
6 than 7 years after the date of enactment  
7 of this Act.

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

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

24 (B) GROUNDS FOR DENIAL OF ADJUST-  
25 MENT OF STATUS.—The Secretary may deny an

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

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

12 (ii) the alien—

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

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

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

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

16          (2) SPOUSES AND MINOR CHILDREN.—

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

1 or minor child in an application for adjustment  
2 of status to that of a lawful permanent resi-  
3 dent.

4 (B) TREATMENT OF SPOUSES AND MINOR  
5 CHILDREN BEFORE ADJUSTMENT OF STATUS.—

6 A spouse and minor child of an alien granted  
7 temporary resident status under subsection (a)  
8 may not be—

9 (i) removed while such alien maintains  
10 such status, except as provided in subpara-  
11 graph (C); and

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

18 (C) GROUNDS FOR DENIAL OF ADJUST-  
19 MENT OF STATUS AND REMOVAL.—The Sec-  
20 retary may deny an alien spouse or child ad-  
21 justment of status under subparagraph (A) and  
22 may remove such spouse or child under section  
23 240 of the Immigration and Nationality Act (8  
24 U.S.C. 1229a) if the spouse or child—

1 (i) commits an act that makes the  
2 alien spouse or child inadmissible to the  
3 United States under section 212 of such  
4 Act (8 U.S.C. 1182), except as provided  
5 under subsection (e)(2); or

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

9 (d) APPLICATIONS.—

10 (1) TO WHOM MAY BE MADE.—

11 (A) WITHIN THE UNITED STATES.—The  
12 Secretary shall provide that—

13 (i) applications for temporary resident  
14 status under subsection (a) may be filed—

15 (I) with the Secretary, but only if  
16 the applicant is represented by an at-  
17 torney; or

18 (II) with a qualified designated  
19 entity (designated under paragraph  
20 (2)), but only if the applicant consents  
21 to the forwarding of the application to  
22 the Secretary; and

23 (ii) applications for adjustment of sta-  
24 tus under subsection (c) shall be filed di-  
25 rectly with the Secretary.

1           (B) OUTSIDE THE UNITED STATES.—The  
2           Secretary, in cooperation with the Secretary of  
3           State, shall establish a procedure whereby an  
4           alien may apply for temporary resident status  
5           under subsection (a) at an appropriate consular  
6           office outside the United States.

7           (C) PRELIMINARY APPLICATIONS.—

8           (i) IN GENERAL.—During the applica-  
9           tion period described in subsection  
10          (a)(1)(B), the Secretary may grant admis-  
11          sion to the United States as a temporary  
12          resident and provide an “employment au-  
13          thorized” endorsement or other appro-  
14          priate work permit to any alien who pre-  
15          sents a preliminary application for such  
16          status under subsection (a) at a designated  
17          port of entry on the southern land border  
18          of the United States. An alien who does  
19          not enter through a port of entry is subject  
20          to deportation and removal as otherwise  
21          provided in this Act.

22          (ii) DEFINITION.—For purposes of  
23          clause (i), the term “preliminary applica-  
24          tion” means a fully completed and signed  
25          application which contains specific infor-

1           mation concerning the performance of  
2           qualifying employment in the United  
3           States, together with the payment of the  
4           appropriate fee and the submission of pho-  
5           tographs and the documentary evidence  
6           which the applicant intends to submit as  
7           proof of such employment.

8           (iii) ELIGIBILITY.—An applicant  
9           under clause (i) shall otherwise be admis-  
10          sible to the United States under subsection  
11          (e)(2) and shall establish to the satisfac-  
12          tion of the examining officer during an  
13          interview that the applicant’s claim to eli-  
14          gibility for temporary resident status is  
15          credible.

16          (D) TRAVEL DOCUMENTATION.—The Sec-  
17          retary shall provide each alien granted status  
18          under this section with a counterfeit-resistant  
19          document of authorization to enter or reenter  
20          the United States that meets the requirements  
21          established by the Secretary.

22          (2) DESIGNATION OF ENTITIES TO RECEIVE AP-  
23          PLICATIONS.—

1 (A) IN GENERAL.—For purposes of receiv-  
2 ing applications under subsection (a), the Sec-  
3 retary—

4 (i) shall designate qualified farm labor  
5 organizations and associations of employ-  
6 ers; and

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

18 (B) REFERENCES.—Organizations, asso-  
19 ciations, and persons designated under subpara-  
20 graph (A) are referred to in this Act as “quali-  
21 fied designated entities”.

22 (3) PROOF OF ELIGIBILITY.—

23 (A) IN GENERAL.—An alien may establish  
24 that the alien meets the requirement of sub-  
25 section (a)(1)(A) or (c)(1)(A) through govern-

1           ment employment records or records supplied  
2           by employers or collective bargaining organiza-  
3           tions, and other reliable documentation as the  
4           alien may provide. The Secretary shall establish  
5           special procedures to properly credit work in  
6           cases in which an alien was employed under an  
7           assumed name.

8                   (B) DOCUMENTATION OF WORK HIS-  
9           TORY.—

10                   (i) BURDEN OF PROOF.—An alien ap-  
11           plying for status under subsection (a)(1)  
12           or (c)(1) has the burden of proving by a  
13           preponderance of the evidence that the  
14           alien has worked the requisite number of  
15           hours or days (as required under sub-  
16           section (a)(1)(A) or (c)(1)(A)).

17                   (ii) TIMELY PRODUCTION OF  
18           RECORDS.—If an employer or farm labor  
19           contractor employing such an alien has  
20           kept proper and adequate records respect-  
21           ing such employment, the alien's burden of  
22           proof under clause (i) may be met by se-  
23           curing timely production of those records  
24           under regulations to be promulgated by the  
25           Secretary.

1 (iii) SUFFICIENT EVIDENCE.—An  
2 alien can meet the burden of proof under  
3 clause (i) to establish that the alien has  
4 performed the work described in subsection  
5 (a)(1)(A) or (c)(1)(A) by producing suffi-  
6 cient evidence to show the extent of that  
7 employment as a matter of just and rea-  
8 sonable inference.

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

21 (5) LIMITATION ON ACCESS TO INFORMA-  
22 TION.—Files and records prepared for purposes of  
23 this subsection by qualified designated entities oper-  
24 ating under this subsection are confidential and the  
25 Secretary shall not have access to such files or

1 records relating to an alien without the consent of  
2 the alien, except as allowed by a court order issued  
3 pursuant to paragraph (6).

4 (6) CONFIDENTIALITY OF INFORMATION.—

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

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

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

23 (iii) permit anyone other than the  
24 sworn officers and employees of the De-  
25 partment of Homeland Security, or bureau

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

5 (B) REQUIRED DISCLOSURES.—The Sec-  
6 retary shall provide the information furnished  
7 under this section, or any other information de-  
8 rived from such furnished information, to—

9 (i) a duly recognized law enforcement  
10 entity in connection with a criminal inves-  
11 tigation or prosecution, if such information  
12 is requested in writing by such entity; or

13 (ii) an official coroner, for purposes of  
14 affirmatively identifying a deceased indi-  
15 vidual, whether or not the death of such  
16 individual resulted from a crime.

17 (C) CONSTRUCTION.—

18 (i) IN GENERAL.—Nothing in this  
19 paragraph shall be construed to limit the  
20 use, or release, for immigration enforce-  
21 ment purposes or law enforcement pur-  
22 poses of information contained in files or  
23 records of the Department of Homeland  
24 Security pertaining to an application filed  
25 under this section, other than information

1 furnished by an applicant pursuant to the  
2 application, or any other information de-  
3 rived from the application, that is not  
4 available from any other source.

5 (ii) CRIMINAL CONVICTIONS.—Infor-  
6 mation concerning whether the applicant  
7 has at any time been convicted of a crime  
8 may be used or released for immigration  
9 enforcement or law enforcement purposes.

10 (D) CRIME.—Any person who knowingly  
11 uses, publishes, or permits information to be ex-  
12 amined in violation of this paragraph shall be  
13 subject to a fine in an amount not to exceed  
14 \$10,000.

15 (7) PENALTIES FOR FALSE STATEMENTS IN AP-  
16 PPLICATIONS.—

17 (A) CRIMINAL PENALTY.—Any person  
18 who—

19 (i) files an application for status  
20 under subsection (a) or (c) and knowingly  
21 and willfully falsifies, conceals, or covers  
22 up a material fact or makes any false, fic-  
23 titious, or fraudulent statements or rep-  
24 resentations, or makes or uses any false  
25 writing or document knowing the same to

1                   contain any false, fictitious, or fraudulent  
2                   statement or entry; or

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

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

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

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

22                  (9) APPLICATION FEES.—

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

1 (i) shall be charged for the filing of  
2 applications for status under subsections  
3 (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 Secretary until expended for  
3 processing applications for status under  
4 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 eli-  
15 gibility for status under subsection (a)(1)(C) or an  
16 alien’s eligibility for adjustment of status under sub-  
17 section (c)(1)(B)(ii)(I), the following rules shall  
18 apply:

19 (A) GROUNDS OF EXCLUSION NOT APPLI-  
20 CABLE.—The provisions of paragraphs (5),  
21 (6)(A), (7)(A), and (9)(B) of section 212(a) of  
22 the Immigration and Nationality Act (8 U.S.C.  
23 1182(a)) shall not apply.

24 (B) WAIVER OF OTHER GROUNDS.—

1 (i) IN GENERAL.—Except as provided  
2 in clause (ii), the Secretary may waive any  
3 other provision of such section 212(a) in  
4 the case of individual aliens for humani-  
5 tarian purposes, to ensure family unity, or  
6 if otherwise in the public interest.

7 (ii) GROUNDS THAT MAY NOT BE  
8 WAIVED.—Paragraphs (2)(A), (2)(B),  
9 (2)(C), (3), and (4) of such section 212(a)  
10 may not be waived by the Secretary under  
11 clause (i).

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

17 (C) SPECIAL RULE FOR DETERMINATION  
18 OF PUBLIC CHARGE.—An alien is not ineligible  
19 for status under this section by reason of a  
20 ground of inadmissibility under section  
21 212(a)(4) of the Immigration and Nationality  
22 Act (8 U.S.C. 1182(a)(4)) if the alien dem-  
23 onstrates a history of employment in the United  
24 States evidencing self-support without reliance  
25 on public cash assistance.

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

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

16 (A) may not be removed; and

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

22 (2) DURING APPLICATION PERIOD.—The Sec-  
23 retary shall provide that, in the case of an alien who  
24 presents a nonfrivolous application for temporary  
25 resident status under subsection (a) during the ap-

1        plication period described in subsection (a)(1)(B),  
2        including an alien who files such an application  
3        within 30 days of the alien’s apprehension, and until  
4        a final determination on the application has been  
5        made in accordance with this section, the alien—

6                (A) may not be removed; and

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

12        (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

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

17                (2) ADMINISTRATIVE REVIEW.—

18                (A) SINGLE LEVEL OF ADMINISTRATIVE  
19                APPELLATE REVIEW.—The Secretary shall es-  
20                tablish an appellate authority to provide for a  
21                single level of administrative appellate review of  
22                such a determination.

23                (B) STANDARD FOR REVIEW.—Such ad-  
24                ministrative appellate review shall be based  
25                solely upon the administrative record estab-

1           lished at the time of the determination on the  
2           application and upon such additional or newly  
3           discovered evidence as may not have been avail-  
4           able at the time of the determination.

5           (3) JUDICIAL REVIEW.—

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

11                   (B) STANDARD FOR JUDICIAL REVIEW.—

12                  Such judicial review shall be based solely upon  
13                  the administrative record established at the  
14                  time of the review by the appellate authority  
15                  and the findings of fact and determinations  
16                  contained in such record shall be conclusive un-  
17                  less the applicant can establish abuse of discre-  
18                  tion or that the findings are directly contrary to  
19                  clear and convincing facts contained in the  
20                  record considered as a whole.

21           (h) DISSEMINATION OF INFORMATION ON ADJUST-  
22           MENT PROGRAM.—Beginning not later than the first day  
23           of the application period described in subsection (a)(1)(B),  
24           the Secretary, in cooperation with qualified designated en-  
25           tities, shall broadly disseminate information respecting the

1 benefits that aliens may receive under this section and the  
2 requirements to be satisfied to obtain such benefits.

3 (i) REGULATIONS.—The Secretary shall issue regula-  
4 tions to implement this section not later than the first day  
5 of the seventh month that begins after the date of enact-  
6 ment of this Act.

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

10 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated to the Secretary to carry  
12 out this section \$40,000,000 for each of fiscal years 2006  
13 through 2009.

14 **SEC. 712. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

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

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

21 (3) by inserting after subparagraph (C) the fol-  
22 lowing:

23 “(D) who is granted status as a lawful tem-  
24 porary resident under the Agricultural Job Oppor-  
25 tunity, Benefits, and Security Act of 2005,”; and

1           (4) by striking “1990.” and inserting “1990, or  
2           in the case of an alien described in subparagraph  
3           (D), if such conduct is alleged to have occurred be-  
4           fore the date on which the alien was granted lawful  
5           temporary resident status.”.

6           (b) EFFECTIVE DATE.—The amendments made by  
7           subsection (a) shall take effect on the first day of the sev-  
8           enth month that begins after the date of enactment of this  
9           Act.

10           **Subtitle B—Reform of H-2A**  
11           **Worker Program**

12           **SEC. 721. AMENDMENT TO THE IMMIGRATION AND NATION-**  
13           **ALITY ACT.**

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

17                           “H-2A EMPLOYER APPLICATIONS

18                   “SEC. 218. (a) APPLICATIONS TO THE SECRETARY  
19           OF LABOR.—

20                   “(1) IN GENERAL.—No alien may be admitted  
21           to the United States as an H-2A worker, or other-  
22           wise provided status as an H-2A worker, unless the  
23           employer has filed with the Secretary of Labor an  
24           application containing—

25                           “(A) the assurances described in sub-  
26           section (b);

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

3           “(C) the anticipated period (expected be-  
4           ginning and ending dates) for which the work-  
5           ers will be needed; and

6           “(D) the number of job opportunities in  
7           which the employer seeks to employ the work-  
8           ers.

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

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

19                 “(1) JOB OPPORTUNITIES COVERED BY COL-  
20                 LECTIVE BARGAINING AGREEMENTS.—With respect  
21                 to a job opportunity that is covered under a collec-  
22                 tive bargaining agreement:

23                         “(A) UNION CONTRACT DESCRIBED.—The  
24                         job opportunity is covered by a union contract

1           which was negotiated at arm's length between a  
2           bona fide union and the employer.

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

8           “(C) NOTIFICATION OF BARGAINING REP-  
9           PRESENTATIVES.—The employer, at the time of  
10          filing the application, has provided notice of the  
11          filing under this paragraph to the bargaining  
12          representative of the employer's employees in  
13          the occupational classification at the place or  
14          places of employment for which aliens are  
15          sought.

16          “(D) TEMPORARY OR SEASONAL JOB OP-  
17          PORTUNITIES.—The job opportunity is tem-  
18          porary or seasonal.

19          “(E) OFFERS TO UNITED STATES WORK-  
20          ERS.—The employer has offered or will offer  
21          the job to any eligible United States worker  
22          who applies and is equally or better qualified  
23          for the job for which the nonimmigrant is, or  
24          the nonimmigrants are, sought and who will be  
25          available at the time and place of need.

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

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

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

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

22           “(C) BENEFIT, WAGE, AND WORKING CON-  
23 DITIONS.—The employer will provide, at a min-  
24 imum, the benefits, wages, and working condi-  
25 tions required by section 218A to all workers

1 employed in the job opportunities for which the  
2 employer has applied under subsection (a) and  
3 to all other workers in the same occupation at  
4 the place of employment.

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

14 “(E) REQUIREMENTS FOR PLACEMENT OF  
15 NONIMMIGRANT WITH OTHER EMPLOYERS.—  
16 The employer will not place the nonimmigrant  
17 with another employer unless—

18 “(i) the nonimmigrant performs du-  
19 ties in whole or in part at 1 or more work  
20 sites owned, operated, or controlled by  
21 such other employer;

22 “(ii) there are indicia of an employ-  
23 ment relationship between the non-  
24 immigrant and such other employer; and

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

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

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

1           vided under the State’s workers’ compensation  
2           law for comparable employment.

3                   “(H) EMPLOYMENT OF UNITED STATES  
4           WORKERS.—

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

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

1 nated from employment by the em-  
2 ployer for a lawful job-related reason  
3 or abandoned the job before the work-  
4 er completed the period of employ-  
5 ment of the job opportunity for which  
6 the worker was hired.

7 “(II) FILING A JOB OFFER WITH  
8 THE LOCAL OFFICE OF THE STATE  
9 EMPLOYMENT SECURITY AGENCY.—  
10 Not later than 28 days before the  
11 date on which the employer desires to  
12 employ an H-2A worker in a tem-  
13 porary or seasonal agricultural job op-  
14 portunity, the employer shall submit a  
15 copy of the job offer described in sub-  
16 section (a)(2) to the local office of the  
17 State employment security agency  
18 which serves the area of intended em-  
19 ployment and authorize the posting of  
20 the job opportunity on ‘America’s Job  
21 Bank’ or other electronic job registry,  
22 except that nothing in this subclause  
23 shall require the employer to file an  
24 interstate job order under section 653

1 of title 20, Code of Federal Regula-  
2 tions.

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

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

24 “(ii) JOB OFFERS.—The employer has  
25 offered or will offer the job to any eligible

1 United States worker who applies and is  
2 equally or better qualified for the job for  
3 which the nonimmigrant is, or non-  
4 immigrants are, sought and who will be  
5 available at the time and place of need.

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

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

23 “(II) COMPLAINTS.—Upon re-  
24 ceipt of a complaint by an employer  
25 that a violation of subclause (I) has

1 occurred, the Secretary of Labor shall  
2 immediately investigate. The Sec-  
3 retary of Labor shall, within 36 hours  
4 of the receipt of the complaint, issue  
5 findings concerning the alleged viola-  
6 tion. If the Secretary of Labor finds  
7 that a violation has occurred, the Sec-  
8 retary of Labor shall immediately sus-  
9 pend the application of this clause  
10 with respect to that certification for  
11 that date of need.

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

24 “(iv) STATUTORY CONSTRUCTION.—  
25 Nothing in this subparagraph shall be con-

1           strued to prohibit an employer from using  
2           such legitimate selection criteria relevant  
3           to the type of job that are normal or cus-  
4           tomary to the type of job involved so long  
5           as such criteria are not applied in a dis-  
6           criminatorary manner.

7           “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
8 OF EMPLOYER MEMBERS.—

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

15          “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
16          EMPLOYERS.—If an association filing an application  
17          under paragraph (1) is a joint or sole employer of  
18          the temporary or seasonal agricultural workers re-  
19          quested on the application, the certifications granted  
20          under subsection (e)(2)(B) to the association may be  
21          used for the certified job opportunities of any of its  
22          producer members named on the application, and  
23          such workers may be transferred among such pro-  
24          ducer members to perform the agricultural services

1 of a temporary or seasonal nature for which the cer-  
2 tifications were granted.

3 “(d) WITHDRAWAL OF APPLICATIONS.—

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

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

21 “(3) OBLIGATIONS UNDER OTHER STATUTES.—  
22 Any obligation incurred by an employer under any  
23 other law or regulation as a result of the recruit-  
24 ment of United States workers or H-2A workers  
25 under an offer of terms and conditions of employ-

1       ment required as a result of making an application  
2       under subsection (a) is unaffected by withdrawal of  
3       such application.

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

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

12            “(2) RESPONSIBILITY OF THE SECRETARY OF  
13      LABOR.—

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

23            “(B) REVIEW OF APPLICATIONS.—The  
24      Secretary of Labor shall review such an applica-  
25      tion only for completeness and obvious inac-

1 curacies. Unless the Secretary of Labor finds  
2 that the application is incomplete or obviously  
3 inaccurate, the Secretary of Labor shall certify  
4 that the intending employer has filed with the  
5 Secretary of Labor an application as described  
6 in subsection (a). Such certification shall be  
7 provided within 7 days of the filing of the appli-  
8 cation.

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

19 “(b) MINIMUM BENEFITS, WAGES, AND WORKING  
20 CONDITIONS.—Except in cases where higher benefits,  
21 wages, or working conditions are required by the provi-  
22 sions of subsection (a), in order to protect similarly em-  
23 ployed United States workers from adverse effects with  
24 respect to benefits, wages, and working conditions, every  
25 job offer which shall accompany an application under sec-

1 tion 218(b)(2) shall include each of the following benefit,  
2 wage, and working condition provisions:

3 “(1) REQUIREMENT TO PROVIDE HOUSING OR A  
4 HOUSING ALLOWANCE.—

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

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

1 State standards, Federal temporary labor camp  
2 standards shall apply.

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

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

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

20 “(F) CHARGES FOR HOUSING.—

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

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

7 “(ii) DEPOSIT CHARGES.—Charges in  
8 the form of deposits for bedding or other  
9 similar incidentals related to housing shall  
10 not be levied upon workers by employers  
11 who provide housing for their workers. An  
12 employer may require a worker found to  
13 have been responsible for damage to such  
14 housing which is not the result of normal  
15 wear and tear related to habitation to re-  
16 imburse the employer for the reasonable  
17 cost of repair of such damage.

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

20 “(i) IN GENERAL.—If the requirement  
21 under clause (ii) is satisfied, the employer  
22 may provide a reasonable housing allow-  
23 ance instead of offering housing under sub-  
24 paragraph (A). Upon the request of a  
25 worker seeking assistance in locating hous-

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

16                 “(ii) CERTIFICATION.—The require-  
17                 ment of this clause is satisfied if the Gov-  
18                 ernor of the State certifies to the Secretary  
19                 of Labor that there is adequate housing  
20                 available in the area of intended employ-  
21                 ment for migrant farm workers, and H-2A  
22                 workers, who are seeking temporary hous-  
23                 ing while employed at farm work. Such  
24                 certification shall expire after 3 years un-  
25                 less renewed by the Governor of the State.

1 “(iii) AMOUNT OF ALLOWANCE.—

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

19 “(II) METROPOLITAN COUN-  
20 TIES.—If the place of employment of  
21 the workers provided an allowance  
22 under this paragraph is in a metro-  
23 politan county, the amount of the  
24 housing allowance under this subpara-  
25 graph shall be equal to the statewide

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

10 “(2) REIMBURSEMENT OF TRANSPORTATION.—

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

21 “(B) FROM PLACE OF EMPLOYMENT.—A  
22 worker who completes the period of employment  
23 for the job opportunity involved shall be reim-  
24 bursed by the employer for the cost of the  
25 worker’s transportation and subsistence from

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

9 “(C) LIMITATION.—

10 “(i) AMOUNT OF REIMBURSEMENT.—

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

15 “(I) the actual cost to the worker

16 or alien of the transportation and sub-  
17 sistence involved; or

18 “(II) the most economical and

19 reasonable common carrier transpor-  
20 tation charges and subsistence costs  
21 for the distance involved.

22 “(ii) DISTANCE TRAVELED.—No reim-

23 bursement under subparagraph (A) or (B)  
24 shall be required if the distance traveled is  
25 100 miles or less, or the worker is not re-

1           siding in employer-provided housing or  
2           housing secured through an allowance as  
3           provided in paragraph (1)(G).

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

15          “(E) TRANSPORTATION BETWEEN LIVING  
16          QUARTERS AND WORK SITE.—The employer  
17          shall provide transportation between the work-  
18          er’s living quarters and the employer’s work site  
19          without cost to the worker, and such transpor-  
20          tation will be in accordance with applicable laws  
21          and regulations.

22          “(3) REQUIRED WAGES.—

23          “(A) IN GENERAL.—An employer applying  
24          for workers under section 218(a) shall offer to  
25          pay, and shall pay, all workers in the occupa-

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

11                 “(B) LIMITATION.—Effective on the date  
12           of enactment of the Agricultural Job Oppor-  
13           tunity, Benefits, and Security Act of 2005 and  
14           continuing for 3 years thereafter, no adverse ef-  
15           fect wage rate for a State may be more than  
16           the adverse effect wage rate for that State in  
17           effect on January 1, 2003, as established by  
18           section 655.107 of title 20, Code of Federal  
19           Regulations.

20                 “(C) REQUIRED WAGES AFTER 3-YEAR  
21           FREEZE.—

22                         “(i) FIRST ADJUSTMENT.—If Con-  
23           gress does not set a new wage standard  
24           applicable to this section before the first  
25           March 1 that is not less than 3 years after

1 the date of enactment of this section, the  
2 adverse effect wage rate for each State be-  
3 ginning on such March 1 shall be the wage  
4 rate that would have resulted if the ad-  
5 verse effect wage rate in effect on January  
6 1, 2003, had been annually adjusted, be-  
7 ginning on March 1, 2006, by the lesser  
8 of—

9 “(I) the 12 month percentage  
10 change in the Consumer Price Index  
11 for All Urban Consumers between De-  
12 cember of the second preceding year  
13 and December of the preceding year;  
14 and

15 “(II) 4 percent.

16 “(ii) SUBSEQUENT ANNUAL ADJUST-  
17 MENTS.—Beginning on the first March 1  
18 that is not less than 4 years after the date  
19 of enactment of this section, and each  
20 March 1 thereafter, the adverse effect  
21 wage rate then in effect for each State  
22 shall be adjusted by the lesser of—

23 “(I) the 12 month percentage  
24 change in the Consumer Price Index  
25 for All Urban Consumers between De-

1                   cember of the second preceding year  
2                   and December of the preceding year;  
3                   and

4                   “(II) 4 percent.

5                   “(D) DEDUCTIONS.—The employer shall  
6                   make only those deductions from the worker’s  
7                   wages that are authorized by law or are reason-  
8                   able and customary in the occupation and area  
9                   of employment. The job offer shall specify all  
10                  deductions not required by law which the em-  
11                  ployer will make from the worker’s wages.

12                  “(E) FREQUENCY OF PAY.—The employer  
13                  shall pay the worker not less frequently than  
14                  twice monthly, or in accordance with the pre-  
15                  vailing practice in the area of employment,  
16                  whichever is more frequent.

17                  “(F) HOURS AND EARNINGS STATE-  
18                  MENTS.—The employer shall furnish to the  
19                  worker, on or before each payday, in 1 or more  
20                  written statements—

21                         “(i) the worker’s total earnings for  
22                         the pay period;

23                         “(ii) the worker’s hourly rate of pay,  
24                         piece rate of pay, or both;

1           “(iii) the hours of employment which  
2           have been offered to the worker (broken  
3           out by hours offered in accordance with  
4           and over and above the three-quarters  
5           guarantee described in paragraph (4);

6           “(iv) the hours actually worked by the  
7           worker;

8           “(v) an itemization of the deductions  
9           made from the worker’s wages; and

10          “(vi) if piece rates of pay are used,  
11          the units produced daily.

12          “(G) REPORT ON WAGE PROTECTIONS.—  
13          Not later than June 1, 2007, the Comptroller  
14          General of the United States shall prepare and  
15          transmit to the Secretary of Labor, the Com-  
16          mittee on the Judiciary of the Senate, and  
17          Committee on the Judiciary of the House of  
18          Representatives, a report that addresses—

19                 “(i) whether the employment of H-2A  
20                 or unauthorized aliens in the United States  
21                 agricultural work force has depressed  
22                 United States farm worker wages below  
23                 the levels that would otherwise have pre-  
24                 vailed if alien farm workers had not been  
25                 employed in the United States;

1           “(ii) whether an adverse effect wage  
2 rate is necessary to prevent wages of  
3 United States farm workers in occupations  
4 in which H-2A workers are employed from  
5 falling below the wage levels that would  
6 have prevailed in the absence of the em-  
7 ployment of H-2A workers in those occu-  
8 pations;

9           “(iii) whether alternative wage stand-  
10 ards, such as a prevailing wage standard,  
11 would be sufficient to prevent wages in oc-  
12 cupations in which H-2A workers are em-  
13 ployed from falling below the wage level  
14 that would have prevailed in the absence of  
15 H-2A employment;

16           “(iv) whether any changes are war-  
17 ranted in the current methodologies for  
18 calculating the adverse effect wage rate  
19 and the prevailing wage; and

20           “(v) recommendations for future wage  
21 protection under this section.

22           “(H) COMMISSION ON WAGE STAND-  
23 ARDS.—

24           “(i) ESTABLISHMENT.—There is es-  
25 tablished the Commission on Agricultural

1 Wage Standards under the H-2A program  
2 (in this subparagraph referred to as the  
3 ‘Commission’).

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

6 “(I) 4 representatives of agricul-  
7 tural employers and 1 representative  
8 of the Department of Agriculture,  
9 each appointed by the Secretary of  
10 Agriculture.

11 “(II) 4 representatives of agricul-  
12 tural workers and 1 representative of  
13 the Department of Labor, each ap-  
14 pointed by the Secretary of Labor.

15 “(iii) FUNCTIONS.—The Commission  
16 shall conduct a study that shall address—

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

1           “(II) whether an adverse effect  
2           wage rate is necessary to prevent  
3           wages of United States farm workers  
4           in occupations in which H-2A work-  
5           ers are employed from falling below  
6           the wage levels that would have pre-  
7           vailed in the absence of the employ-  
8           ment of H-2A workers in those occu-  
9           pations;

10           “(III) whether alternative wage  
11           standards, such as a prevailing wage  
12           standard, would be sufficient to pre-  
13           vent wages in occupations in which  
14           H-2A workers are employed from fall-  
15           ing below the wage level that would  
16           have prevailed in the absence of H-2A  
17           employment;

18           “(IV) whether any changes are  
19           warranted in the current methodolo-  
20           gies for calculating the adverse effect  
21           wage rate and the prevailing wage  
22           rate; and

23           “(V) recommendations for future  
24           wage protection under this section.

1                   “(iv) FINAL REPORT.—Not later than  
2                   June 1, 2007, the Commission shall sub-  
3                   mit a report to the Congress setting forth  
4                   the findings of the study conducted under  
5                   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 the  
19                   number of hours in the work days as stated in  
20                   the job offer and shall exclude the worker’s  
21                   Sabbath and Federal holidays. If the employer  
22                   affords the United States or H-2A worker less  
23                   employment than that required under this para-  
24                   graph, the employer shall pay such worker the  
25                   amount which the worker would have earned

1 had the worker, in fact, worked for the guaran-  
2 teed number of hours.

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

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

22 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
23 fore the expiration of the period of employment  
24 specified in the job offer, the services of the  
25 worker are no longer required for reasons be-



1 transport an H-2A worker within the  
2 United States.

3 “(ii) DEFINED TERM.—In this para-  
4 graph, the term ‘uses or causes to be  
5 used’—

6 “(I) applies only to transpor-  
7 tation provided by an H-2A employer  
8 to an H-2A worker, or by a farm  
9 labor contractor to an H-2A worker  
10 at the request or direction of an H-  
11 2A employer; and

12 “(II) does not apply to—

13 “(aa) transportation pro-  
14 vided, or transportation arrange-  
15 ments made, by an H-2A work-  
16 er, unless the employer specifi-  
17 cally requested or arranged such  
18 transportation; or

19 “(bb) car pooling arrange-  
20 ments made by H-2A workers  
21 themselves, using 1 of the work-  
22 ers’ own vehicles, unless specifi-  
23 cally requested by the employer  
24 directly or through a farm labor  
25 contractor.

1                   “(iii) CLARIFICATION.—Providing a  
2 job offer to an H-2A worker that causes  
3 the worker to travel to or from the place  
4 of employment, or the payment or reim-  
5 bursement of the transportation costs of  
6 an H-2A worker by an H-2A employer,  
7 shall not constitute an arrangement of, or  
8 participation in, such transportation.

9                   “(iv) AGRICULTURAL MACHINERY AND  
10 EQUIPMENT EXCLUDED.—This subsection  
11 does not apply to the transportation of an  
12 H-2A worker on a tractor, combine, har-  
13 vester, picker, or other similar machinery  
14 or equipment while such worker is actually  
15 engaged in the planting, cultivating, or  
16 harvesting of agricultural commodities or  
17 the care of livestock or poultry or engaged  
18 in transportation incidental thereto.

19                   “(v) COMMON CARRIERS EX-  
20 CLUDED.—This subsection does not apply  
21 to common carrier motor vehicle transpor-  
22 tation in which the provider holds itself out  
23 to the general public as engaging in the  
24 transportation of passengers for hire and  
25 holds a valid certification of authorization

1                   for such purposes from an appropriate  
2                   Federal, State, or local agency.

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

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

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

18                   “(II) ensure that each driver has  
19                   a valid and appropriate license, as  
20                   provided by State law, to operate the  
21                   vehicle; and

22                   “(III) have an insurance policy  
23                   or a liability bond that is in effect  
24                   which insures the employer against li-  
25                   ability for damage to persons or prop-

1                   erty arising from the ownership, oper-  
2                   ation, or causing to be operated, of  
3                   any vehicle used to transport any H-  
4                   2A worker.

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

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

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

1                   “(II) An insurance policy or li-  
2                   ability bond shall be required of the  
3                   employer for circumstances under  
4                   which coverage for the transportation  
5                   of such workers is not provided under  
6                   such State law.

7           “(c) COMPLIANCE WITH LABOR LAWS.—An em-  
8     ployer shall assure that, except as otherwise provided in  
9     this section, the employer will comply with all applicable  
10    Federal, State, and local labor laws, including laws affect-  
11    ing migrant and seasonal agricultural workers, with re-  
12    spect to all United States workers and alien workers em-  
13    ployed by the employer, except that a violation of this as-  
14    surance shall not constitute a violation of the Migrant and  
15    Seasonal Agricultural Worker Protection Act (29 U.S.C.  
16    1801 et seq.).

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

24           “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing  
25    in this section, section 218, or section 218B shall preclude

1 the Secretary of Labor and the Secretary from continuing  
2 to apply special procedures and requirements to the ad-  
3 mission and employment of aliens in occupations involving  
4 the range production of livestock.

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

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

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

26 “(c) CRITERIA FOR ADMISSIBILITY.—

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

6           “(2) DISQUALIFICATION.—An alien shall be  
7           considered inadmissible to the United States and in-  
8           eligible for nonimmigrant status under section  
9           101(a)(15)(H)(ii)(a) if the alien has, at any time  
10          during the past 5 years—

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

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

20           “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
21          FUL PRESENCE.—

22                  “(A) IN GENERAL.—An alien who has not  
23                  previously been admitted into the United States  
24                  pursuant to this section, and who is otherwise  
25                  eligible for admission in accordance with para-

1 graphs (1) and (2), shall not be deemed inad-  
2 missible by virtue of section 212(a)(9)(B). If an  
3 alien described in the preceding sentence is  
4 present in the United States, the alien may  
5 apply from abroad for H-2A status, but may  
6 not be granted that status in the United States.

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

16 “(d) PERIOD OF ADMISSION.—

17 “(1) IN GENERAL.—The alien shall be admitted  
18 for the period of employment in the application cer-  
19 tified by the Secretary of Labor pursuant to section  
20 218(e)(2)(B), not to exceed 10 months, supple-  
21 mented by a period of not more than 1 week before  
22 the beginning of the period of employment for the  
23 purpose of travel to the work site and a period of  
24 14 days following the period of employment for the

1       purpose of departure or extension based on a subse-  
2       quent offer of employment, except that—

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

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

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

14              “(e) ABANDONMENT OF EMPLOYMENT.—

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

22              “(2) REPORT BY EMPLOYER.—The employer, or  
23              association acting as agent for the employer, shall  
24              notify the Secretary not later than 7 days after an  
25              H-2A worker prematurely abandons employment.

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

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

10          “(f) REPLACEMENT OF ALIEN.—

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

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

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

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

5           “(g) IDENTIFICATION DOCUMENT.—

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

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

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

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

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

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

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

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

5                   “(C) The document shall—

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

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

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

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

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

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

2           or

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

6           “(3) WORK AUTHORIZATION UPON FILING A  
7           PETITION FOR EXTENSION OF STAY.—

8           “(A) IN GENERAL.—An alien who is law-  
9           fully present in the United States may com-  
10          mence the employment described in a petition  
11          under paragraph (1) on the date on which the  
12          petition is filed.

13          “(B) DEFINITION.—For purposes of sub-  
14          paragraph (A), the term ‘file’ means sending  
15          the petition by certified mail via the United  
16          States Postal Service, return receipt requested,  
17          or delivered by guaranteed commercial delivery  
18          which will provide the employer with a docu-  
19          mented acknowledgment of the date of receipt  
20          of the petition.

21          “(C) HANDLING OF PETITION.—The em-  
22          ployer shall provide a copy of the employer’s pe-  
23          tition to the alien, who shall keep the petition  
24          with the alien’s identification and employment  
25          eligibility document as evidence that the peti-

1           tion has been filed and that the alien is author-  
2           ized to work in the United States.

3                   “(D) APPROVAL OF PETITION.—Upon ap-  
4           proval of a petition for an extension of stay or  
5           change in the alien’s authorized employment,  
6           the Secretary shall provide a new or updated  
7           employment eligibility document to the alien in-  
8           dicating the new validity date, after which the  
9           alien is not required to retain a copy of the pe-  
10          tition.

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

24                   “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN  
25          STATUS.—

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

5           “(B) REQUIREMENT TO REMAIN OUTSIDE  
6 THE UNITED STATES.—

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

19           “(ii) EXCEPTION.—Clause (i) shall  
20 not apply in the case of an alien if the  
21 alien’s period of authorized status as an  
22 H-2A worker (including any extensions)  
23 was for a period of not more than 10  
24 months and such alien has been outside  
25 the United States for at least 2 months



1 section 218(a). Complaints may be filed by any  
2 aggrieved person or organization (including bar-  
3 gaining representatives). No investigation or  
4 hearing shall be conducted on a complaint con-  
5 cerning such a failure or misrepresentation un-  
6 less the complaint was filed not later than 12  
7 months after the date of the failure, or mis-  
8 representation, respectively. The Secretary of  
9 Labor shall conduct an investigation under this  
10 subparagraph if there is reasonable cause to be-  
11 lieve that such a failure or misrepresentation  
12 has occurred.

13 “(B) DETERMINATION ON COMPLAINT.—  
14 Under such process, the Secretary of Labor  
15 shall provide, within 30 days after the date  
16 such a complaint is filed, for a determination as  
17 to whether or not a reasonable basis exists to  
18 make a finding described in subparagraph (C),  
19 (D), (E), or (H). If the Secretary of Labor de-  
20 termines that such a reasonable basis exists,  
21 the Secretary of Labor shall provide for notice  
22 of such determination to the interested parties  
23 and an opportunity for a hearing on the com-  
24 plaint, in accordance with section 556 of title 5,  
25 United States Code, within 60 days after the

1 date of the determination. If such a hearing is  
2 requested, the Secretary of Labor shall make a  
3 finding concerning the matter not later than 60  
4 days after the date of the hearing. In the case  
5 of similar complaints respecting the same appli-  
6 cant, the Secretary of Labor may consolidate  
7 the hearings under this subparagraph on such  
8 complaints.

9 “(C) FAILURES TO MEET CONDITIONS.—If  
10 the Secretary of Labor finds, after notice and  
11 opportunity for a hearing, a failure to meet a  
12 condition of paragraph (1)(A), (1)(B), (1)(D),  
13 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
14 218(b), a substantial failure to meet a condition  
15 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),  
16 (2)(E), or (2)(H) of section 218(b), or a mate-  
17 rial misrepresentation of fact in an application  
18 under section 218(a)—

19 “(i) the Secretary of Labor shall no-  
20 tify the Secretary of such finding and may,  
21 in addition, impose such other administra-  
22 tive remedies (including civil money pen-  
23 alties in an amount not to exceed \$1,000  
24 per violation) as the Secretary of Labor  
25 determines to be appropriate; and

1           “(ii) the Secretary may disqualify the  
2           employer from the employment of aliens  
3           described in section 101(a)(15)(H)(ii)(a)  
4           for a period of 1 year.

5           “(D) WILLFUL FAILURES AND WILLFUL  
6           MISREPRESENTATIONS.—If the Secretary of  
7           Labor finds, after notice and opportunity for  
8           hearing, a willful failure to meet a condition of  
9           section 218(b), a willful misrepresentation of a  
10          material fact in an application under section  
11          218(a), or a violation of subsection (d)(1)—

12           “(i) the Secretary of Labor shall no-  
13          tify the Secretary of such finding and may,  
14          in addition, impose such other administra-  
15          tive remedies (including civil money pen-  
16          alties in an amount not to exceed \$5,000  
17          per violation) as the Secretary of Labor  
18          determines to be appropriate;

19           “(ii) the Secretary of Labor may seek  
20          appropriate legal or equitable relief to ef-  
21          fectuate the purposes of subsection (d)(1);  
22          and

23           “(iii) the Secretary may disqualify the  
24          employer from the employment of H-2A  
25          workers for a period of 2 years.

1           “(E) DISPLACEMENT OF UNITED STATES  
2 WORKERS.—If the Secretary of Labor finds,  
3 after notice and opportunity for hearing, a will-  
4 ful failure to meet a condition of section 218(b)  
5 or a willful misrepresentation of a material fact  
6 in an application under section 218(a), in the  
7 course of which failure or misrepresentation the  
8 employer displaced a United States worker em-  
9 ployed by the employer during the period of em-  
10 ployment on the employer’s application under  
11 section 218(a) or during the period of 30 days  
12 preceding such period of employment—

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

20           “(ii) the Secretary may disqualify the  
21 employer from the employment of H-2A  
22 workers for a period of 3 years.

23           “(F) LIMITATIONS ON CIVIL MONEY PEN-  
24 ALTIES.—The Secretary of Labor shall not im-  
25 pose total civil money penalties with respect to

1 an application under section 218(a) in excess of  
2 \$90,000.

3 “(G) FAILURES TO PAY WAGES OR RE-  
4 QUIRED BENEFITS.—If the Secretary of Labor  
5 finds, after notice and opportunity for a hear-  
6 ing, that the employer has failed to pay the  
7 wages, or provide the housing allowance, trans-  
8 portation, subsistence reimbursement, or guar-  
9 antee of employment, required under section  
10 218A(b), the Secretary of Labor shall assess  
11 payment of back wages, or other required bene-  
12 fits, due any United States worker or H-2A  
13 worker employed by the employer in the specific  
14 employment in question. The back wages or  
15 other required benefits under section 218A(b)  
16 shall be equal to the difference between the  
17 amount that should have been paid and the  
18 amount that actually was paid to such worker.

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

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

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

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

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

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

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

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

23           “(7) The prohibition of discrimination under  
24 subsection (d)(2).

25           “(c) PRIVATE RIGHT OF ACTION.—

1           “(1) MEDIATION.—Upon the filing of a com-  
2           plaint by an H–2A worker aggrieved by a violation  
3           of rights enforceable under subsection (b), and with-  
4           in 60 days of the filing of proof of service of the  
5           complaint, a party to the action may file a request  
6           with the Federal Mediation and Conciliation Service  
7           to assist the parties in reaching a satisfactory reso-  
8           lution of all issues involving all parties to the dis-  
9           pute. Upon a filing of such request and giving of no-  
10          tice to the parties, the parties shall attempt medi-  
11          ation within the period specified in subparagraph  
12          (B).

13           “(A) MEDIATION SERVICES.—The Federal  
14          Mediation and Conciliation Service shall be  
15          available to assist in resolving disputes arising  
16          under subsection (b) between H–2A workers  
17          and agricultural employers without charge to  
18          the parties.

19           “(B) 90-DAY LIMIT.—The Federal Medi-  
20          ation and Conciliation Service may conduct me-  
21          diation or other non-binding dispute resolution  
22          activities for a period not to exceed 90 days be-  
23          ginning on the date on which the Federal Medi-  
24          ation and Conciliation Service receives the re-

1           quest for assistance unless the parties agree to  
2           an extension of this period of time.

3                   “(C) AUTHORIZATION.—

4                           “(i) IN GENERAL.—Subject to clause  
5                           (ii), there are authorized to be appro-  
6                           priated to the Federal Mediation and Con-  
7                           ciliation Service \$500,000 for each fiscal  
8                           year to carry out this section.

9                           “(ii) MEDIATION.—Notwithstanding  
10                          any other provision of law, the Director of  
11                          the Federal Mediation and Conciliation  
12                          Service is authorized to conduct the medi-  
13                          ation or other dispute resolution activities  
14                          from any other appropriated funds avail-  
15                          able to the Director and to reimburse such  
16                          appropriated funds when the funds are ap-  
17                          propriated pursuant to this authorization,  
18                          such reimbursement to be credited to ap-  
19                          propriations currently available at the time  
20                          of receipt.

21                          “(2) MAINTENANCE OF CIVIL ACTION IN DIS-  
22                          TRICT COURT BY AGGRIEVED PERSON.—An H-2A  
23                          worker aggrieved by a violation of rights enforceable  
24                          under subsection (b) by an agricultural employer or  
25                          other person may file suit in any district court of the

1 United States having jurisdiction of the parties,  
2 without regard to the amount in controversy, with-  
3 out regard to the citizenship of the parties, and  
4 without regard to the exhaustion of any alternative  
5 administrative remedies under this Act, not later  
6 than 3 years after the date the violation occurs.

7 “(3) ELECTION.—An H-2A worker who has  
8 filed an administrative complaint with the Secretary  
9 of Labor may not maintain a civil action under  
10 paragraph (2) unless a complaint based on the same  
11 violation filed with the Secretary of Labor under  
12 subsection (a)(1) is withdrawn before the filing of  
13 such action, in which case the rights and remedies  
14 available under this subsection shall be exclusive.

15 “(4) PREEMPTION OF STATE CONTRACT  
16 RIGHTS.—Nothing in this Act shall be construed to  
17 diminish the rights and remedies of an H-2A worker  
18 under any other Federal or State law or regulation  
19 or under any collective bargaining agreement, except  
20 that no court or administrative action shall be avail-  
21 able under any State contract law to enforce the  
22 rights created by this Act.

23 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-  
24 ments by employees purporting to waive or modify  
25 their rights under this Act shall be void as contrary

1 to public policy, except that a waiver or modification  
2 of the rights or obligations in favor of the Secretary  
3 of Labor shall be valid for purposes of the enforce-  
4 ment of this Act. The preceding sentence may not  
5 be construed to prohibit agreements to settle private  
6 disputes or litigation.

7 “(6) AWARD OF DAMAGES OR OTHER EQUI-  
8 TABLE RELIEF.—

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

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

16 “(7) WORKERS’ COMPENSATION BENEFITS; EX-  
17 CLUSIVE REMEDY.—

18 “(A) Notwithstanding any other provision  
19 of this section, where a State’s workers’ com-  
20 pensation law is applicable and coverage is pro-  
21 vided for an H-2A worker, the workers’ com-  
22 pensation benefits shall be the exclusive remedy  
23 for the loss of such worker under this section  
24 in the case of bodily injury or death in accord-

1           ance with such State’s workers’ compensation  
2           law.

3                   “(B) The exclusive remedy prescribed in  
4           subparagraph (A) precludes the recovery under  
5           paragraph (6) of actual damages for loss from  
6           an injury or death but does not preclude other  
7           equitable relief, except that such relief shall not  
8           include back or front pay or in any manner, di-  
9           rectly or indirectly, expand or otherwise alter or  
10          affect—

11                           “(i) a recovery under a State workers’  
12                           compensation law; or

13                           “(ii) rights conferred under a State  
14                           workers’ compensation law.

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

16           If it is determined under a State workers’ compensa-  
17           tion law that the workers’ compensation law is not  
18           applicable to a claim for bodily injury or death of an  
19           H-2A worker, the statute of limitations for bringing  
20           an action for actual damages for such injury or  
21           death under subsection (c) shall be tolled for the pe-  
22           riod during which the claim for such injury or death  
23           under such State workers’ compensation law was  
24           pending. The statute of limitations for an action for  
25           actual damages or other equitable relief arising out

1 of the same transaction or occurrence as the injury  
2 or death of the H-2A worker shall be tolled for the  
3 period during which the claim for such injury or  
4 death was pending under the State workers' com-  
5 pensation law.

6 “(9) PRECLUSIVE EFFECT.—Any settlement by  
7 an H-2A worker and H-2A employer reached  
8 through the mediation process required under sub-  
9 section (c)(1) shall preclude any right of action aris-  
10 ing out of the same facts between the parties in any  
11 Federal or State court or administrative proceeding,  
12 unless specifically provided otherwise in the settle-  
13 ment agreement.

14 “(10) SETTLEMENTS.—Any settlement by the  
15 Secretary of Labor with an H-2A employer on be-  
16 half of an H-2A worker of a complaint filed with the  
17 Secretary of Labor under this section or any finding  
18 by the Secretary of Labor under subsection  
19 (a)(1)(B) shall preclude any right of action arising  
20 out of the same facts between the parties under any  
21 Federal or State court or administrative proceeding,  
22 unless specifically provided otherwise in the settle-  
23 ment agreement.

24 “(d) DISCRIMINATION PROHIBITED.—

1           “(1) IN GENERAL.—It is a violation of this sub-  
2           section for any person who has filed an application  
3           under section 218(a), to intimidate, threaten, re-  
4           strain, coerce, blacklist, discharge, or in any other  
5           manner discriminate against an employee (which  
6           term, for purposes of this subsection, includes a  
7           former employee and an applicant for employment)  
8           because the employee has disclosed information to  
9           the employer, or to any other person, that the em-  
10          ployee reasonably believes evidences a violation of  
11          section 218 or 218A or any rule or regulation per-  
12          taining to section 218 or 218A, or because the em-  
13          ployee cooperates or seeks to cooperate in an inves-  
14          tigation or other proceeding concerning the employ-  
15          er’s compliance with the requirements of section 218  
16          or 218A or any rule or regulation pertaining to ei-  
17          ther of such sections.

18           “(2) DISCRIMINATION AGAINST H-2A WORK-  
19          ERS.—It is a violation of this subsection for any per-  
20          son who has filed an application under section  
21          218(a), to intimidate, threaten, restrain, coerce,  
22          blacklist, discharge, or in any manner discriminate  
23          against an H-2A employee because such worker has,  
24          with just cause, filed a complaint with the Secretary  
25          of Labor regarding a denial of the rights enumer-

1       ated and enforceable under subsection (b) or insti-  
2       tuted, or caused to be instituted, a private right of  
3       action under subsection (c) regarding the denial of  
4       the rights enumerated under subsection (b), or has  
5       testified or is about to testify in any court pro-  
6       ceeding brought under subsection (c).

7       “(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE  
8       EMPLOYMENT.—The Secretary of Labor and the Sec-  
9       retary shall establish a process under which an H-2A  
10      worker who files a complaint regarding a violation of sub-  
11      section (d) and is otherwise eligible to remain and work  
12      in the United States may be allowed to seek other appro-  
13      priate employment in the United States for a period not  
14      to exceed the maximum period of stay authorized for such  
15      nonimmigrant classification.

16      “(f) ROLE OF ASSOCIATIONS.—

17              “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-  
18      TION.—An employer on whose behalf an application  
19      is filed by an association acting as its agent is fully  
20      responsible for such application, and for complying  
21      with the terms and conditions of sections 218 and  
22      218A, as though the employer had filed the applica-  
23      tion itself. If such an employer is determined, under  
24      this section, to have committed a violation, the pen-  
25      alty for such violation shall apply only to that mem-

1       ber of the association unless the Secretary of Labor  
2       determines that the association or other member  
3       participated in, had knowledge, or reason to know,  
4       of the violation, in which case the penalty shall be  
5       invoked against the association or other association  
6       member as well.

7               “(2) VIOLATIONS BY AN ASSOCIATION ACTING  
8       AS AN EMPLOYER.—If an association filing an appli-  
9       cation as a sole or joint employer is determined to  
10      have committed a violation under this section, the  
11      penalty for such violation shall apply only to the as-  
12      sociation unless the Secretary of Labor determines  
13      that an association member or members participated  
14      in or had knowledge, or reason to know of the viola-  
15      tion, in which case the penalty shall be invoked  
16      against the association member or members as well.

17                               “DEFINITIONS

18      “SEC. 218D. For purposes of sections 218 through  
19 218D:

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

1 graph, agricultural employment includes employment  
2 under section 101(a)(15)(H)(ii)(a).

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

13 “(3) DISPLACE.—The term ‘displace’, in the  
14 case of an application with respect to 1 or more H-  
15 2A workers by an employer, means laying off a  
16 United States worker from a job for which the H-  
17 2A worker or workers is or are sought.

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

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

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

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

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

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

1           “(A) ordinarily, it pertains to or is of the  
2           kind exclusively performed at certain seasons or  
3           periods of the year; and

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

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

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

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

19          (b) TABLE OF CONTENTS.—The table of contents of  
20          the Immigration and Nationality Act (8 U.S.C. 1101 et  
21          seq.) is amended by striking the item relating to section  
22          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.”.

1                   **Subtitle C—Miscellaneous**  
2                   **Provisions**

3 **SEC. 731. DETERMINATION AND USE OF USER FEES.**

4           (a) SCHEDULE OF FEES.—The Secretary shall estab-  
5 lish and periodically adjust a schedule of fees for the em-  
6 ployment of aliens under this title and the amendments  
7 made by this title, and a collection process for such fees  
8 from employers participating in the program provided  
9 under this Act. Such fees shall be the only fees chargeable  
10 to employers for services provided under this Act.

11           (b) DETERMINATION OF SCHEDULE.—

12               (1) IN GENERAL.—The schedule under sub-  
13 section (a) shall reflect a fee rate based on the num-  
14 ber of job opportunities indicated in the employer’s  
15 application under section 218 of the Immigration  
16 and Nationality Act, as added by section 721 of this  
17 Act, and sufficient to provide for the direct costs of  
18 providing services related to an employer’s author-  
19 ization to employ eligible aliens pursuant to this Act,  
20 to include the certification of eligible employers, the  
21 issuance of documentation, and the admission of eli-  
22 gible aliens.

23               (2) PROCEDURE.—

24                   (A) IN GENERAL.—In establishing and ad-  
25 justing such a schedule, the Secretary shall

1           comply with Federal cost accounting and fee  
2           setting standards.

3                   (B) PUBLICATION AND COMMENT.—The  
4           Secretary shall publish in the Federal Register  
5           an initial fee schedule and associated collection  
6           process and the cost data or estimates upon  
7           which such fee schedule is based, and any sub-  
8           sequent amendments thereto, pursuant to which  
9           public comment shall be sought and a final rule  
10          issued.

11          (c) USE OF PROCEEDS.—Notwithstanding any other  
12       provision of law, all proceeds resulting from the payment  
13       of the alien employment user fees shall be available with-  
14       out further appropriation and shall remain available with-  
15       out fiscal year limitation to reimburse the Secretary, the  
16       Secretary of State, and the Secretary of Labor for the  
17       costs of carrying out sections 218 and 218B of the Immi-  
18       gration and Nationality Act, as added by section 721 of  
19       this Act, and the provisions of this Act.

20       **SEC. 732. REGULATIONS.**

21          (a) REGULATIONS OF THE SECRETARY.—The Sec-  
22       retary shall consult with the Secretary of Labor and the  
23       Secretary of Agriculture on all regulations to implement  
24       the duties of the Secretary under this title and the amend-  
25       ments made by this title.

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

2 The Secretary of State shall consult with the Secretary,  
3 the Secretary of Labor, and the Secretary of Agriculture  
4 on all regulations to implement the duties of the Secretary  
5 of State under this title and the amendments made by this  
6 title.

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

8 The Secretary of Labor shall consult with the Secretary  
9 of Agriculture and the Secretary on all regulations to im-  
10 plement the duties of the Secretary of Labor under this  
11 title and the amendments made by this title.

12 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—

13 All regulations to implement the duties of the Secretary,  
14 the Secretary of State, and the Secretary of Labor created  
15 under sections 218, 218A, 218B, and 218C of the Immi-  
16 gration and Nationality Act, as added by section 721 of  
17 this Act, shall take effect on the effective date of section  
18 721 and shall be issued not later than 1 year after the  
19 date of enactment of this Act.

20 **SEC. 733. RELIGIOUS ORGANIZATIONS.**

21 Section 274(a)(1) of the Immigration and Nationality  
22 Act (8 U.S.C. 1324(a)(1)) is amended by adding at the  
23 end the following:

24 “(C) It is not a violation of clauses (ii), (iii), or (iv)  
25 of subparagraph (A) for a religious denomination de-

1 scribed in section 101(a)(27)(C)(i) or an affiliated reli-  
2 gious organization described in section  
3 101(a)(27)(C)(ii)(III), or their agents or officers, to en-  
4 courage, invite, call, allow, or enable an alien who is  
5 present in the United States in violation of law to perform  
6 the work described in section 101(a)(27)(C)(ii)(I), as a  
7 volunteer who is not compensated as an employee, not-  
8 withstanding the provision of room, board, travel, and  
9 other basic living expenses.”.

10 **SEC. 734. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except as otherwise provided, sec-  
12 tions 721 and 731 shall take effect 1 year after the date  
13 of enactment of this Act.

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