

105TH CONGRESS
2D SESSION

H. R. 3410

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation and to offset those admissions with temporary reductions in diversity and unskilled workers' immigrant visas.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1998

Mr. SMITH of Oregon introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation and to offset those admissions with temporary reductions in diversity and unskilled workers' immigrant visas.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Temporary Agricul-
3 tural Worker Act of 1998”.

4 **SEC. 2. NEW NONIMMIGRANT CATEGORY FOR PILOT PRO-**
5 **GRAM TEMPORARY AND SEASONAL AGRICUL-**
6 **TURAL WORKERS.**

7 (a) ESTABLISHMENT OF NEW CLASSIFICATION.—
8 Section 101(a)(15)(H)(ii) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended—

10 (1) by striking “or (b)” and inserting “(b)”;
11 and

12 (2) by adding at the end the following:

13 “ or (c) having a residence in a foreign country
14 which he has no intention of abandoning who is
15 coming temporarily to the United States pursuant to
16 section 218A to perform such agricultural labor or
17 services of a temporary or seasonal nature;”.

18 (b) NO FAMILY MEMBERS PERMITTED.—Section
19 101(a)(15)(H) of the Immigration and Nationality Act (8
20 U.S.C. 1101(a)(15)(H)) is amended by striking “specified
21 in this paragraph” and inserting “specified in this sub-
22 paragraph (other than in clause (ii)(c))”.

1 **SEC. 3. PILOT PROGRAM FOR ALTERNATIVE AGRICUL-**
2 **TURAL TEMPORARY WORKER PROCESS**
3 **USING ATTESTATION.**

4 (a) IN GENERAL.—The Immigration and Nationality
5 Act is amended by inserting after section 218 the follow-
6 ing:

7 “ALTERNATIVE AGRICULTURAL TEMPORARY WORKER
8 PROGRAM

9 “SEC. 218A. (a) CONDITION FOR EMPLOYMENT OF
10 PILOT PROGRAM ALIENS.—

11 “(1) ESTABLISHMENT OF PILOT PROGRAM; RE-
12 STRICTION OF ADMISSIONS TO PILOT PROGRAM PE-
13 RIOD.—

14 “(A) IN GENERAL.—The Attorney General
15 shall establish a pilot program for the admis-
16 sion of aliens classified as a nonimmigrant
17 under section 101(a)(15)(H)(ii)(c) to perform
18 temporary or seasonal agricultural services pur-
19 suant to a labor condition attestation filed by
20 an employer or an association for the occupa-
21 tion in which the alien will be employed. No
22 alien may be admitted or provided status as a
23 pilot program alien under this section after the
24 last day of the pilot program period specified in
25 subparagraph (B).

1 “(B) PILOT PROGRAM PERIOD.—The pilot
2 program period under this subparagraph is the
3 24-month period beginning on the first day of
4 the first fiscal year beginning 6 months or more
5 after the date of the enactment of the Tem-
6 porary Agricultural Worker Act of 1998.

7 “(2) ADMISSION OF ALIENS.—No alien may be
8 admitted to the United States or provided status as
9 a pilot program alien (as defined in subsection
10 (n)(4)) unless—

11 “(A) the employment of the alien is cov-
12 ered by a currently valid labor condition attes-
13 tation which—

14 “(i) is filed by the employer, or by an
15 association on behalf of the employer, for
16 the occupation in which the alien will be
17 employed;

18 “(ii) has been accepted by the State
19 employment security agency having juris-
20 diction over the area of intended employ-
21 ment; and

22 “(iii) states each of the items de-
23 scribed in paragraph (2) and includes in-
24 formation identifying the employer or asso-

1 ciation and agricultural job opportunities
2 involved;

3 “(B) the employer is not disqualified from
4 employing pilot program aliens pursuant to sub-
5 section (h); and

6 “(C) the employer has not, during the pilot
7 program period, been found by the Attorney
8 General to have employed any aliens in violation
9 of section 274A(a) or this section.

10 “(3) CONTENTS OF LABOR CONDITION ATTES-
11 TATION.—Each labor condition attestation filed by
12 or on behalf of, an employer shall state the follow-
13 ing:

14 “(A) WAGE RATE.—The employer will pay
15 pilot program aliens and all other workers in
16 the occupation not less than the prevailing wage
17 for similarly employed workers in the area of
18 employment, and not less than the applicable
19 Federal, State or local statutory minimum
20 wage.

21 “(B) WORKING CONDITIONS.—The em-
22 ployment of pilot program aliens will not ad-
23 versely affect the working conditions of simi-
24 larly employed workers in the area of employ-
25 ment.

1 “(C) LIMITATION ON EMPLOYMENT.—A
2 pilot program alien will not be employed in any
3 job opportunity which is not temporary or sea-
4 sonal, and will not be employed by the employer
5 in any job opportunity for more than 10
6 months in any 12-consecutive-month period.

7 “(D) NO LABOR DISPUTE.—No pilot pro-
8 gram alien will be employed in any job oppor-
9 tunity which is vacant because its former occu-
10 pant is involved in a strike, lockout or work
11 stoppage in the course of a labor dispute in the
12 occupation at the place of employment.

13 “(E) NOTICE.—The employer, at the time
14 of filing the attestation, has provided notice of
15 the attestation to its workers employed in the
16 occupation in which, and at the place of em-
17 ployment where, pilot program aliens will be
18 employed.

19 “(F) JOB ORDERS.—The employer will file
20 one or more job orders for the occupation (or
21 occupations) covered by the attestation with the
22 State employment security agency no later than
23 the day on which the employer first employs
24 any pilot program aliens in the occupation.

1 “(G) PREFERENCE TO DOMESTIC WORK-
2 ERS.—The employer will give preference to
3 able, willing and qualified United States work-
4 ers who apply to the employer and are available
5 at the time and place needed, for the first 25
6 days after the filing of the job order in an occu-
7 pation or until 5 days before the date employ-
8 ment of workers in the occupation begins,
9 whichever occurs later.

10 “(4) LIMITATION ON NUMBER OF VISAS.—In no
11 case may the number of aliens who are admitted or
12 provided status as a pilot program alien in a fiscal
13 year exceed 20,000.

14 “(5) OPERATION OF PROGRAM IN NOT LESS
15 THAN 5 AREAS.—Alien admissions under this section
16 shall be allocated equally to employers in not less
17 than 5 geographically and agriculturally diverse
18 areas designated by the Secretary of Agriculture.
19 The entire United States shall be encompassed with-
20 in such areas.

21 “(6) GENERAL ACCOUNTING OFFICE REPORT.—
22 Not later than 90 days after the termination of the
23 pilot program period specified in paragraph (1)(B),
24 the Comptroller General shall prepare and transmit
25 to the Congress a report describing the results of a

1 review of the implementation and enforcement of
2 this section during such period, for the purpose of
3 determining if—

4 “(A) the program has ensured an adequate
5 and timely supply of qualified, eligible workers
6 at the time and place needed for employers;

7 “(B) the program has ensured that pilot
8 program aliens are employed only in authorized
9 employment and that they timely depart the
10 United States when their authorized stay ends;

11 “(C) the program has ensured that imple-
12 mentation of the program is not displacing
13 United States agricultural workers or diminish-
14 ing the terms and conditions of employment of
15 United States agricultural workers; and

16 “(D) an unnecessary regulatory burden
17 has been created for employers hiring workers
18 admitted under this section.

19 “(b) FILING A LABOR CONDITION ATTESTATION.—

20 “(1) FILING BY EMPLOYERS.—Any employer in
21 the United States is eligible to file a labor condition
22 attestation.

23 “(2) FILING BY ASSOCIATIONS ON BEHALF OF
24 EMPLOYER MEMBERS.—An agricultural association
25 may file a labor condition attestation as an agent on

1 behalf of its members. Such an attestation filed by
2 an agricultural association acting as an agent for its
3 members, when accepted, shall apply to those em-
4 ployer members of the association that the associa-
5 tion certifies to the State employment security agen-
6 cy are members of the association and have agreed
7 in writing to comply with the requirements of this
8 section.

9 “(3) PERIOD OF VALIDITY.—A labor condition
10 attestation is valid from the date on which it is ac-
11 cepted by the State employment security agency for
12 the period of time requested by the employer, but
13 not to exceed 12 months.

14 “(4) WHERE TO FILE.—A labor condition attes-
15 tation shall be filed with the State employment secu-
16 rity agency having jurisdiction over the area of in-
17 tended employment of the workers covered by the at-
18 testation. If an employer, or the members of an as-
19 sociation of employers, will be employing workers in
20 an area or areas covered by more than one such
21 agency, the attestation shall be filed with each such
22 agency having jurisdiction over an area where the
23 workers will be employed.

24 “(5) DEADLINE FOR FILING.—A labor condi-
25 tion attestation may be filed at any time up to 12

1 months prior to the date of the employer’s antici-
2 pated need for workers in the occupation (or occupa-
3 tions) covered by the attestation.

4 “(6) FILING FOR MULTIPLE OCCUPATIONS.—A
5 labor condition attestation may be filed for one or
6 more occupations and cover one or more periods of
7 employment.

8 “(7) MAINTAINING REQUIRED DOCUMENTA-
9 TION.—

10 “(A) BY EMPLOYERS.—Each employer cov-
11 ered by an accepted labor condition attestation
12 must maintain a file of the documentation re-
13 quired in subsection (c) for each occupation in-
14 cluded in an accepted attestation covering the
15 employer. The documentation shall be retained
16 for a period of one year following the expiration
17 of an accepted attestation. The employer shall
18 make the documentation available to represent-
19 atives of the Secretary during normal business
20 hours.

21 “(B) BY ASSOCIATIONS.—In complying
22 with subparagraph (A), documentation main-
23 tained by an association filing a labor condition
24 attestation on behalf of an employer shall be
25 deemed to be maintained by the employer.

1 “(8) WITHDRAWAL.—

2 “(A) COMPLIANCE WITH ATTESTATION OB-
3 LIGATIONS.—An employer covered by an ac-
4 cepted labor condition attestation for an occu-
5 pation shall comply with the terms and condi-
6 tions of the attestation from the date the attes-
7 tation is accepted and continuing throughout
8 the period any persons are employed in an occu-
9 pation covered by such an accepted attestation,
10 whether or not pilot program aliens are em-
11 ployed in the occupation, unless the attestation
12 is withdrawn.

13 “(B) TERMINATION OF OBLIGATIONS.—An
14 employer may withdraw a labor condition attes-
15 tation in total, or with respect to a particular
16 occupation covered by the attestation. An asso-
17 ciation may withdraw such an attestation with
18 respect to one or more of its members. To with-
19 draw an attestation the employer or association
20 must notify in writing the State employment se-
21 curity agency office with which the attestation
22 was filed of the withdrawal of the attestation.
23 An employer who withdraws an attestation, or
24 on whose behalf an attestation is withdrawn by
25 an association, is relieved of the obligations un-

1 dertaken in the attestation with respect to the
2 occupation (or occupations) with respect to
3 which the attestation was withdrawn, upon ac-
4 knowledgement by the appropriate State em-
5 ployment security agency of receipt of the with-
6 drawal notice. An attestation may not be with-
7 drawn with respect to any occupation while any
8 pilot program alien covered by that attestation
9 is employed in the occupation.

10 “(C) OBLIGATIONS UNDER OTHER STAT-
11 UTES.—Any obligation incurred by the em-
12 ployer under any other law or regulation as a
13 result of recruitment of United States workers
14 under an offer of terms and conditions of em-
15 ployment required by the pilot program under
16 this section is unaffected by withdrawal of a
17 labor condition attestation.

18 “(c) EMPLOYER RESPONSIBILITIES AND REQUIRE-
19 MENTS FOR EMPLOYING PILOT PROGRAM ALIENS.—

20 “(1) REQUIREMENT TO PAY THE PREVAILING
21 WAGE.—

22 “(A) EFFECT OF THE ATTESTATION.—
23 Employers shall pay each worker in an occupa-
24 tion covered by an accepted labor condition at-
25 testation at least the prevailing wage in the oc-

1 cupation in the area of intended employment.
2 The preceding sentence does not require em-
3 ployers to pay all workers in the occupation the
4 same wage. The employer may, in the sole dis-
5 cretion of the employer, maintain pay differen-
6 tials based on experience, tenure with the em-
7 ployer, skill, or any other work-related factor, if
8 the differential is not based on a criterion for
9 which discrimination is prohibited by the law
10 and all workers in the covered occupation re-
11 ceive at least the prevailing wage.

12 “(B) PAYMENT OF STATE EMPLOYMENT
13 SECURITY AGENCY DETERMINED WAGE SUFFI-
14 CIENT.—The employer may request and obtain
15 a prevailing wage determination from the State
16 employment security agency. If the employer re-
17 quests such a determination, and pays the wage
18 determined, such payment shall be considered
19 sufficient to meet the requirement of this para-
20 graph if the pilot program aliens—

21 “(i) are employed in the occupation
22 for which the employer possesses an ac-
23 cepted labor condition attestation, and for
24 which the employer or association pos-

1 assesses a prevailing wage determination by
2 the State employment security agency, and

3 “(ii) are being paid at least the pre-
4 vailing wage so determined.

5 “(C) RELIANCE ON WAGE SURVEY.—In
6 lieu of the procedures of subparagraph (B), an
7 employer may rely on other information, such
8 as an employer generated prevailing wage sur-
9 vey and determination, which meets criteria
10 specified by the Secretary by regulation. In the
11 event of a complaint that the employer has
12 failed to pay the required wage, the Secretary
13 shall investigate to determine if the information
14 upon which the employer relied complied with
15 the criteria for prevailing wage determinations.

16 “(D) ALTERNATE METHODS OF PAYMENT
17 PERMITTED.—

18 “(i) IN GENERAL.—A prevailing wage
19 may be expressed as an hourly wage, a
20 piece rate, a task rate (described in clause
21 (ii)), or other incentive pay system, includ-
22 ing a group rate (described in clause (iii)).
23 The requirement to pay at least the pre-
24 vailing wage in the occupation and area of
25 intended employment does not require an

1 employer to pay by the method of pay in
2 which the prevailing rate is expressed.
3 However, if the employer adopts a method
4 of pay other than the prevailing rate, the
5 burden of proof is on the employer to dem-
6 onstrate that the employer's method of pay
7 is designed to produce earnings equivalent
8 to the earnings that would result from pay-
9 ment of the prevailing rate.

10 “(ii) TASK RATE.—For purposes of
11 this subparagraph, a task rate is an incen-
12 tive payment based on a unit of work per-
13 formed such that the incentive rate varies
14 with the level of effort required to perform
15 individual units of work.

16 “(iii) GROUP RATE.—For purposes of
17 this subparagraph, a group rate is an in-
18 centive payment system in which the pay-
19 ment is shared among a group of workers
20 working together to perform the task.

21 “(E) REQUIRED DOCUMENTATION.—The
22 employer or association shall document compli-
23 ance with this paragraph by retaining on file
24 the employer or association's request for a de-
25 termination by a State employment security

1 agency and the prevailing wage determination
2 received from such agency or other information
3 upon which the employer or association relied to
4 assure compliance with the prevailing wage re-
5 quirement.

6 “(2) REQUIREMENT TO PROVIDE HOUSING AND
7 TRANSPORTATION.—

8 “(A) EFFECT OF THE ATTESTATION.—The
9 employment of pilot program aliens shall not
10 adversely affect the working conditions of
11 United States workers similarly employed in the
12 area of intended employment. The employer’s
13 obligation not to adversely affect working condi-
14 tions shall continue for the duration of the pe-
15 riod of employment by the employer of any pilot
16 program aliens in the occupation and area of
17 intended employment. An employer will be
18 deemed to be in compliance with this attesta-
19 tion if the employer offers at least the benefits
20 required by subparagraphs (B) through (D).
21 The previous sentence does not require an em-
22 ployer to offer more than such benefits.

23 “(B) HOUSING REQUIRED.—

24 “(i) HOUSING OFFER.—The employer
25 must offer to pilot program aliens and

1 United States workers recruited from be-
2 yond normal recruiting distance housing,
3 or a housing allowance, if it is prevailing
4 practice in the occupation and area of in-
5 tended employment to offer housing or a
6 housing allowance to workers who are re-
7 cruited from beyond normal commuting
8 distance.

9 “(ii) HOUSING STANDARDS.—If the
10 employer offers housing to such workers,
11 the housing shall meet (at the option of
12 the employer) applicable Federal farm
13 labor housing standards or applicable local
14 or State standards for rental, public ac-
15 commodation, or other substantially simi-
16 lar class of habitation.

17 “(iii) CHARGES FOR HOUSING.—An
18 employer who offers housing to such work-
19 ers may charge an amount equal to the
20 fair market value (but not greater than the
21 employer’s actual cost) for utilities and
22 maintenance, or such lesser amount as per-
23 mitted by law.

24 “(iv) HOUSING ALLOWANCE AS AL-
25 TERNATIVE.—In lieu of offering housing to

1 such workers, at the employer’s sole discre-
2 tion on an individual basis, the employer
3 may provide a reasonable housing allow-
4 ance. An employer who offers a housing al-
5 lowance to such a worker under this sub-
6 paragraph shall not be deemed to be a
7 housing provider under section 203 of the
8 Migrant and Seasonal Agricultural Worker
9 Protection Act (29 U.S.C. 1823) merely by
10 virtue of providing such housing allowance.

11 “(v) SECURITY DEPOSIT.—The re-
12 quirement, if any, to offer housing to such
13 a worker under this subparagraph shall
14 not preclude an employer from requiring a
15 reasonable deposit to protect against gross
16 negligence or willful destruction of prop-
17 erty, as a condition for providing such
18 housing.

19 “(vi) DAMAGES.—An employer who
20 offers housing to such a worker shall not
21 be precluded from requiring a worker
22 found to have been responsible for damage
23 to such housing which is not the result of
24 normal wear and tear related to habitation

1 to reimburse the employer for the reason-
2 able cost of repair of such damage.

3 “(C) TRANSPORTATION.—If the employer
4 provides transportation arrangements or assist-
5 ance to pilot program aliens, the employer must
6 offer to provide the same transportation ar-
7 rangements or assistance (generally comparable
8 in expense and scope) for other individuals em-
9 ployed by the employer in the occupation at the
10 place of employment who were recruited from
11 beyond normal commuting distance.

12 “(D) WORKERS’ COMPENSATION.—If the
13 employment covered by a labor condition attes-
14 tation is not covered by the State workers’ com-
15 pensation law, the employer must provide, at no
16 cost to the worker, insurance covering injury
17 and disease arising out of and in the course of
18 the workers’ employment which will provide
19 benefits at least equal to those provided under
20 the State workers’ compensation law for com-
21 parable employment.

22 “(E) REQUIRED DOCUMENTATION.—

23 “(i) HOUSING AND TRANSPOR-
24 TATION.—No specific documentation is re-
25 quired to be maintained to evidence com-

1 pliance with the requirements of subpara-
2 graphs (B) and (C). In the event of a com-
3 plaint alleging a failure to comply with
4 such a requirement, the burden of proof
5 shall be on the employer to show that the
6 employer offered the required benefit to
7 the complainant, or that the employer was
8 not required by the terms of this para-
9 graph to offer such benefit to the com-
10 plainant.

11 “(ii) WORKERS’ COMPENSATION.—

12 The employer shall maintain copies of cer-
13 tificates of insurance evidencing compli-
14 ance with subparagraph (D) throughout
15 the period of validity of the labor condition
16 attestation.

17 “(3) REQUIREMENT TO EMPLOY ALIENS IN
18 TEMPORARY OR SEASONAL AGRICULTURAL JOB OP-
19 PORTUNITIES.—

20 “(A) LIMITATIONS.—

21 “(i) IN GENERAL.—The employer may
22 employ pilot program aliens only in agri-
23 cultural employment which is temporary or
24 seasonal.

1 “(ii) SEASONAL BASIS.—For purposes
2 of this section, labor is performed on a sea-
3 sonal basis where, ordinarily, the employ-
4 ment pertains to or is of the kind exclu-
5 sively performed at certain seasons or peri-
6 ods of the year and which, from its nature,
7 may not be continuous or carried on
8 throughout the year.

9 “(iii) TEMPORARY BASIS.—For pur-
10 poses of this section, a worker is employed
11 on a temporary basis where the employ-
12 ment is intended not to exceed 10 months.

13 “(B) REQUIRED DOCUMENTATION.—No
14 specific documentation is required to dem-
15 onstrate compliance with the requirement of
16 subparagraph (A). In the event of a complaint,
17 the burden of proof shall fall on the employer
18 to show that the employment meets such re-
19 quirement.

20 “(4) REQUIREMENT NOT TO EMPLOY ALIENS IN
21 JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR
22 DISPUTE.—

23 “(A) IN GENERAL.—No pilot program
24 alien may be employed in any job opportunity
25 which is vacant because its former occupant is

1 involved in a strike, lockout, or work stoppage
2 in the course of a labor dispute in the occupa-
3 tion at the place of employment.

4 “(B) REQUIRED DOCUMENTATION.—No
5 specific documentation is required to dem-
6 onstrate compliance with the requirement of
7 subparagraph (A). In the event of a complaint,
8 the burden of proof shall fall on the employer
9 to show that the job opportunity in which the
10 pilot program alien was employed was not va-
11 cant because the former occupant was on strike,
12 locked out, or participating in a work stoppage
13 in the course of a labor dispute in the occupa-
14 tion at the place of employment.

15 “(5) NOTICE OF FILING OF LABOR CONDITION
16 ATTESTATION AND SUPPORTING DOCUMENTATION.—

17 “(A) IN GENERAL.—The employer shall—

18 “(i) provide notice of the filing of a
19 labor condition attestation to the appro-
20 priate certified bargaining agent (if any)
21 which represents workers of the employer
22 in the occupation (or occupations) at the
23 place of employment covered by the attes-
24 tation; or

1 “(ii) in the case where no such bar-
2 gaining agent exists, post notice of the fil-
3 ing of such an attestation in at least two
4 conspicuous locations where applications
5 for employment are accepted.

6 “(B) PERIOD FOR POSTING.—The require-
7 ment for a posting under subparagraph (A)(ii)
8 begins on the day the attestation is filed, and
9 continues through the period during which the
10 employer’s job order is required to remain ac-
11 tive pursuant to paragraph (6)(A).

12 “(C) REQUIRED DOCUMENTATION.—The
13 employer shall maintain a copy of the notice
14 provided to the bargaining agent (if any), to-
15 gether with evidence that the notice was pro-
16 vided (such as a signed receipt of evidence of
17 attempt to send the notice by certified or reg-
18 istered mail). In the case where no certified
19 bargaining agent described in subparagraph
20 (A)(i) exists, the employer shall retain a copy of
21 the posted notice, together with information as
22 to the dates and locations where the notice was
23 displayed.

24 “(6) REQUIREMENT TO FILE A JOB ORDER.—

1 “(A) EFFECT OF THE ATTESTATION.—The
2 employer, or an association acting as agent for
3 its members, shall file the information nec-
4 essary to complete a local job order for each oc-
5 cupation covered by an accepted labor condition
6 attestation with the appropriate local office of
7 the State employment security agency having
8 jurisdiction over the area of intended employ-
9 ment, or with the State office of such an agency
10 if workers will be employed in an area within
11 the jurisdiction of more than one local office of
12 such an agency. The job orders shall remain on
13 file for 25 calendar days or until 5 calendar
14 days before the anticipated date of need for
15 workers in the occupation covered by the job
16 order, whichever occurs later. The job order
17 shall provide at least the minimum terms and
18 conditions of employment required for partici-
19 pation in the pilot program.

20 “(B) DEADLINE FOR FILING.—A job order
21 shall be filed under subparagraph (A) no later
22 than the date on which the employer files a pe-
23 tition with the Attorney General for admission
24 or extension of stay for aliens to be employed
25 in the occupation for which the order is filed.

1 “(C) REQUIRED DOCUMENTATION.—The
2 office of the State employment security agency
3 which the employer or association provides with
4 information necessary to file a local job order
5 shall provide the employer with evidence that
6 the information was provided in a timely man-
7 ner as required by this paragraph, and the em-
8 ployer or association shall retain such evidence
9 for each occupation in which pilot program
10 aliens are employed.

11 “(7) REQUIREMENT TO GIVE PREFERENCE TO
12 QUALIFIED UNITED STATES WORKERS.—

13 “(A) FILING 30 DAYS OR MORE BEFORE
14 DATE OF NEED.—If a job order is filed 30 days
15 or more before the anticipated date of need for
16 workers in an occupation covered by a labor
17 condition attestation and for which the job
18 order has been filed, the employer shall offer to
19 employ able, willing, and qualified United
20 States workers who apply to the employer and
21 who will be available at the time and place
22 needed for the job opportunities covered by the
23 attestation until 5 calendar days before the an-
24 ticipated date of need for workers in the occu-
25 pation, or until the employer’s job opportunities

1 in the occupation are filled with qualified
2 United States workers, if that occurs more than
3 5 days before the anticipated date of need for
4 workers in the occupation.

5 “(B) FILING FEWER THAN 30 DAYS BE-
6 FORE DATE OF NEED.—If a job order is filed
7 fewer than 30 days before the anticipated date
8 of need for workers in an occupation covered by
9 such an attestation and for which a job order
10 has been filed, the employer shall offer to em-
11 ploy able, willing, and qualified United States
12 workers who are or will be available at the time
13 and place needed during the first 25 days after
14 the job order is filed or until the employer’s job
15 opportunities in the occupation are filled with
16 United States workers, regardless of whether
17 any of the job opportunities may already be oc-
18 cupied by pilot program aliens.

19 “(C) FILING VACANCIES.—An employer
20 may fill a job opportunity in an occupation cov-
21 ered by an accepted labor condition attestation
22 which remains or becomes vacant after expira-
23 tion of the required preference period specified
24 in subparagraph (A) or (B) of paragraph (6)
25 without regard to such preference.

1 “(D) JOB-RELATED REQUIREMENTS.—No
2 employer shall be required to initially employ a
3 worker who fails to meet lawful job-related em-
4 ployment criteria, nor to continue the employ-
5 ment of a worker who fails to meet lawful job-
6 related standards of conduct and performance,
7 including failure to meet minimum productivity
8 standards after a 3-day break-in period.

9 “(E) REQUIRED DOCUMENTATION.—No
10 specific documentation is required to dem-
11 onstrate compliance with the requirements of
12 this paragraph. In the event of a complaint, the
13 burden of proof shall be on the complainant to
14 show that the complainant applied for the job
15 and was available at the time and place needed.
16 If the complainant makes such a showing, the
17 burden of proof shall be on the employer to
18 show that the complainant was not qualified or
19 that the preference period had expired.

20 “(d) REQUIREMENTS OF NOTICE OF CERTAIN
21 BREAKS IN EMPLOYMENT.—

22 “(1) IN GENERAL.—The employer (or the asso-
23 ciation acting as agent for the employer) shall notify
24 the Attorney General within 7 days if a pilot pro-

1 gram alien prematurely abandons the alien’s employ-
2 ment.

3 “(2) OUT-OF-STATUS.—A pilot program alien
4 who abandons the alien’s employment shall be con-
5 sidered to have failed to maintain nonimmigrant sta-
6 tus as an alien described in section
7 101(a)(15)(H)(ii)(c) and shall leave the United
8 States or be subject to removal under section
9 237(a)(1)(C)(i).

10 “(e) ACCEPTANCE BY STATE EMPLOYMENT SECUR-
11 RITY AGENCY.—The State employment security agency
12 shall review labor condition attestations submitted by em-
13 ployers or associations pursuant to this section only for
14 completeness and obvious inaccuracies. Unless such an
15 agency finds that the application is incomplete or obvi-
16 ously inaccurate, the agency shall accept the attestation
17 within 7 days of the date of filing of the attestation, and
18 return a copy to the applicant marked ‘accepted’.

19 “(f) PUBLIC REGISTRY.—The Secretary shall main-
20 tain a registry of all accepted labor condition attestations
21 and make such registry available for public inspection.

22 “(g) RESPONSIBILITIES OF THE STATE EMPLOY-
23 MENT SECURITY AGENCIES.—

24 “(1) DISSEMINATION OF LABOR MARKET IN-
25 FORMATION.—The Secretary shall direct State em-

1 employment security agencies to disseminate non-em-
2 ployer-specific information about potential labor
3 needs based on accepted attestations filed by em-
4 ployers. Such dissemination shall be separate from
5 the clearance of job orders through the Interstate
6 and Intrastate Clearance Systems, and shall create
7 no obligations for employers except as provided in
8 this section.

9 “(2) REFERRAL OF WORKERS ON STATE EM-
10 PLOYMENT SECURITY AGENCY JOB ORDERS.—Such
11 agencies holding job orders filed by employers cov-
12 ered by approved labor condition attestations shall
13 be authorized to refer any able, willing, and qualified
14 eligible job applicant who will be available at the
15 time and place needed and who is authorized to
16 work in the United States, including pilot program
17 aliens who are seeking additional work in the United
18 States and whose eligibility to remain in the United
19 States pursuant to subsection (i) has not expired, on
20 job orders filed by holders of accepted attestations.

21 “(h) ENFORCEMENT AND PENALTIES.—

22 “(1) ENFORCEMENT AUTHORITY.—

23 “(A) INVESTIGATION OF COMPLAINTS.—

24 The Secretary shall establish a process for the
25 receipt, investigation, and disposition of com-

1 plaints respecting an employer’s failure to meet
2 a condition specified in subsection (a) or an em-
3 ployer’s misrepresentation of material facts in
4 such an application. Complaints may be filed by
5 any aggrieved person or organizations (includ-
6 ing bargaining representatives). No investiga-
7 tion or hearing shall be conducted on a com-
8 plaint concerning such a failure or misrepresen-
9 tation unless the complaint was filed not later
10 than 2 years after the date of the failure or
11 misrepresentation, respectively. The Secretary
12 shall conduct an investigation under this sub-
13 paragraph if there is reasonable cause to believe
14 that such a failure or misrepresentation has oc-
15 curred.

16 “(B) WRITTEN NOTICE OF FINDINGS AND
17 OPPORTUNITY FOR APPEAL.—After an inves-
18 tigation has been conducted, the Secretary shall
19 issue a written determination as to whether or
20 not any violation described in subparagraph (A)
21 has been committed. The Secretary’s deter-
22 mination shall be served on the complainant
23 and the employer, and shall provide an oppor-
24 tunity for an appeal of the Secretary’s decision

1 to an administrative law judge, who may con-
2 duct a de novo hearing.

3 “(2) REMEDIES.—

4 “(A) BACK WAGES.—Upon a final deter-
5 mination that the employer has failed to pay
6 wages as required under this section, the Sec-
7 retary may assess payment of back wages due
8 to any United States worker or pilot program
9 alien employed by the employer in the specific
10 employment in question. The back wages shall
11 be equal to the difference between the amount
12 that should have been paid and the amount
13 that actually was paid to such worker.

14 “(B) FAILURE TO PAY WAGES.—Upon a
15 final determination that the employer has failed
16 to pay the wages required under this section,
17 the Secretary may assess a civil money penalty
18 up to \$1,000 for each failure, and may rec-
19 ommend to the Attorney General the disquali-
20 fication of the employer from the employment
21 of pilot program aliens for a period of time de-
22 termined by the Secretary not to exceed 1 year.

23 “(C) OTHER VIOLATIONS.—If the Sec-
24 retary, as a result of an investigation pursuant
25 to a complaint, determines that an employer

1 covered by an accepted labor condition attesta-
2 tion has—

3 “(i) filed an attestation which mis-
4 represents a material fact; or

5 “(ii) failed to meet a condition speci-
6 fied in subsection (a),

7 the Secretary may assess a civil money penalty
8 not to exceed \$1,000 for each violation. In de-
9 termining the amount of civil money penalty to
10 be assessed, the Secretary shall consider the se-
11 riousness of the violation, the good faith of the
12 employer, the size of the business of the em-
13 ployer being charged, the history of previous
14 violations by the employer, whether the em-
15 ployer obtained a financial gain from the viola-
16 tion, whether the violation was willful, and
17 other relevant factors.

18 “(D) PROGRAM DISQUALIFICATION.—Upon
19 a second final determination that an employer
20 has failed to pay the wages required under this
21 section, the Secretary shall report such deter-
22 mination to the Attorney General and the At-
23 torney General shall disqualify the employer
24 from any subsequent employment of pilot pro-
25 gram aliens.

1 “(3) ROLE OF ASSOCIATIONS.—

2 “(A) VIOLATION BY AN ASSOCIATION.—An
3 employer on whose behalf a labor condition at-
4 testation is filed by an association acting as its
5 agent is fully responsible for such attestation,
6 and for complying with the terms and condi-
7 tions of this section, as though the employer
8 had filed the attestation itself. If such an em-
9 ployer is determined to have violated a require-
10 ment of this section, the penalty for such viola-
11 tion shall be assessed against the employer who
12 committed the violation and not against the as-
13 sociation or other members of the association.

14 “(B) VIOLATION BY AN ASSOCIATION ACT-
15 ING AS AN EMPLOYER.—If an association filing
16 a labor condition attestation on its own behalf
17 as an employer is determined to have commit-
18 ted a violation under this subsection which re-
19 sults in disqualification from the program under
20 paragraph (2)(D), no individual member of
21 such association may be the beneficiary of the
22 services of a pilot program alien in an occupa-
23 tion in which such alien was employed by the
24 association during the period such disqualifica-
25 tion is in effect, unless such member files a

1 labor condition attestation as an individual em-
2 ployer or such an attestation is filed on the em-
3 ployer's behalf by an association with which the
4 employer has an agreement that the employer
5 will comply with the requirements of this sec-
6 tion.

7 “(i) PROCEDURE FOR ADMISSION OR EXTENSION OF
8 PILOT PROGRAM ALIENS.—

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

11 “(A) PETITIONING FOR ADMISSION.—An
12 employer or an association acting as agent for
13 its members who seeks the admission into the
14 United States of pilot program aliens may file
15 a petition with the District Director of the Im-
16 migration and Naturalization Service having ju-
17 risdiction over the location where the aliens will
18 be employed. The petition shall be accompanied
19 by an accepted and currently valid labor condi-
20 tion attestation covering the petitioner. The pe-
21 tition may be for named or unnamed individual
22 or multiple beneficiaries.

23 “(B) EXPEDITED ADJUDICATION BY DIS-
24 TRICT DIRECTOR.—If an employer's petition for
25 admission of pilot program aliens is correctly

1 filled out, and the employer is not ineligible to
2 employ pilot program aliens, the District Direc-
3 tor (or the Director’s designee) shall approve
4 the petition within 3 working days of receipt of
5 the petition and accepted labor condition attes-
6 tation and immediately (by fax, cable, or other
7 means assuring expedited delivery) transmit a
8 copy of the approved petition to the petitioner
9 and to the appropriate immigration officer at
10 the port of entry or United States consulate (as
11 the case may be) where the petitioner has indi-
12 cated that the alien beneficiary (or bene-
13 ficiaries) will apply for a visa or admission to
14 the United States.

15 “(C) UNNAMED BENEFICIARIES SELECTED
16 BY PETITIONER.—The petitioning employer or
17 association or its representative shall approve
18 the issuance of visas to beneficiaries who are
19 unnamed on a petition for admission granted to
20 the employer or association.

21 “(D) CRITERIA FOR ADMISSIBILITY.—

22 “(i) IN GENERAL.—An alien shall be
23 admissible under this section if the alien is
24 otherwise admissible under this Act and

1 the alien is not debarred pursuant to the
2 provisions of clause (ii).

3 “(ii) DISQUALIFICATION.—An alien
4 shall be debarred from admission or being
5 provided status as a pilot program alien
6 under this section if the alien has, at any
7 time during the past 5 years—

8 “(I) violated a material provision
9 of this section, including the require-
10 ment to promptly depart the United
11 States when the alien’s authorized pe-
12 riod of admission under this section
13 has expired; or

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

19 “(E) PERIOD OF ADMISSION.—The alien
20 shall be admitted for the period requested by
21 the petitioner not to exceed 10 months, or the
22 remaining validity period of the petitioner’s ap-
23 proved labor condition attestation, whichever is
24 less, plus an additional period of 14 days, dur-
25 ing which the alien shall seek authorized em-

1 employment in the United States. During the 14-
2 day period following the expiration of the alien’s
3 work authorization, the alien is not authorized
4 to be employed unless the original petitioner or
5 a subsequent petitioner has filed an extension
6 of stay on behalf of the alien pursuant to para-
7 graph (2). In no case may the period of admis-
8 sion extend beyond the last day of the pilot pro-
9 gram period specified in subsection (a)(1)(B).

10 “(F) ISSUANCE OF IDENTIFICATION AND
11 EMPLOYMENT ELIGIBILITY DOCUMENT.—

12 “(i) IN GENERAL.—The Attorney
13 General shall cause to be issued to each
14 pilot program alien a card in a form which
15 is resistant to counterfeiting and tamper-
16 ing for the purpose of providing proof of
17 identity and employment eligibility under
18 section 274A.

19 “(ii) DESIGN OF CARD.—Each card
20 issued pursuant to clause (i) shall be de-
21 signed in such a manner and contain a
22 photograph and other identifying informa-
23 tion (such as date of birth, sex, and distin-
24 guishing marks) that would allow an em-
25 ployer to determine with reasonable cer-

1 tainty that the bearer is not claiming the
2 identity of another individual, and shall—

3 “(I) contain a fingerprint or
4 other biometric identifying data (or
5 both);

6 “(II) specify the date of the
7 alien’s authorization as a pilot pro-
8 gram alien;

9 “(III) specify the expiration date
10 of the alien’s work authorization; and

11 “(IV) specify the alien’s admis-
12 sion number or alien file number.

13 “(2) EXTENSION OF STAY.—

14 “(A) APPLICATION FOR EXTENSION OF
15 STAY.—If a petitioner seeks to employ a pilot
16 program alien already in the United States, the
17 petitioner shall file with the Attorney General
18 an application for an extension of the alien’s
19 stay. The application for extension of stay shall
20 be accompanied by a currently valid labor con-
21 dition attestation.

22 “(B) LIMITATION ON FILING AN APPLICA-
23 TION FOR EXTENSION OF STAY.—An applica-
24 tion may not be filed for an extension of an
25 alien’s stay for a period of more than 10

1 months, or later than the last day of the pilot
2 program period specified in subsection
3 (a)(1)(B), whichever occurs first. An applica-
4 tion for extension of stay may not be filed dur-
5 ing the pendency of an alien's previous author-
6 ized period of employment, nor after the alien's
7 authorized stay in the United States has ex-
8 pired.

9 “(C) WORK AUTHORIZATION UPON FILING
10 AN APPLICATION FOR EXTENSION OF STAY.—

11 An employer may begin employing an alien al-
12 ready in the United States in pilot program
13 alien status on the day the employer files its
14 application for extension of stay. For the pur-
15 pose of this requirement, the term ‘filing’
16 means sending the application by certified mail
17 via the United States Postal Service, return re-
18 ceipt requested, or delivered by guaranteed
19 commercial delivery which will provide the em-
20 ployer with a documented acknowledgment of
21 the date of sending and receipt of the applica-
22 tion. The employer shall provide a copy of the
23 employer's application for extension of stay to
24 the alien, who shall keep the application with
25 the alien's identification and employment eligi-

1 bility document as evidence that the extension
2 has been filed and that the alien is authorized
3 to work in the United States. Upon approval of
4 an application for extension of stay, the Attor-
5 ney General shall provide a new or updated em-
6 ployment eligibility document to the alien indi-
7 cating the new validity date, after which the
8 alien is not required to retain a copy of the ap-
9 plication for extension of stay.

10 “(D) LIMITATION ON EMPLOYMENT AU-
11 THORIZATION OF PILOT PROGRAM ALIENS
12 WITHOUT VALID IDENTIFICATION AND EMPLOY-
13 MENT ELIGIBILITY CARD.—An expired identi-
14 fication and employment eligibility document,
15 together with a copy of an application for ex-
16 tension of stay, shall constitute a valid work au-
17 thorization document for a period of not more
18 than 60 days from the date of application for
19 the extension of stay, after which time only a
20 currently valid identification and employment
21 eligibility document shall be acceptable.

22 “(3) LIMITATION ON AN INDIVIDUAL’S STAY IN
23 PILOT PROGRAM STATUS.—An alien having status as
24 a pilot program alien may not have the status ex-
25 tended for a continuous period longer than 2 years

1 unless the alien remains outside the United States
2 for an uninterrupted period of 6 months. An absence
3 from the United States may break the continuity of
4 the period for which a nonimmigrant visa issued
5 under section 101(a)(15)(H)(ii)(c) is valid. If the
6 alien has resided in the United States 10 months or
7 less, an absence breaks the continuity of the period
8 if its lasts for at least 2 months. If the alien has re-
9 sided in the United States 10 months or more, an
10 absence breaks the continuity of the period if it lasts
11 for at least one-fifth the duration of the stay.

12 “(j) TRUST FUND TO ASSURE WORKER RETURN.—

13 “(1) ESTABLISHMENT.—The Attorney General
14 shall provide for the establishment of an interest-
15 bearing trust fund (in this section referred to as the
16 ‘Trust Fund’) for the purpose of providing a mone-
17 tary incentive for pilot program aliens to return to
18 their country of origin upon expiration of their visas
19 under this section.

20 “(2) WITHHOLDING OF WAGES; PAYMENT INTO
21 THE TRUST FUND.—

22 “(A) IN GENERAL.—Employers of pilot
23 program aliens shall—

24 “(i) withhold from the wages of their
25 pilot program alien workers an amount

1 equivalent to 25 percent of the wages of
2 each pilot program alien worker and pay
3 such withheld amount into the Trust Fund
4 in accordance with paragraph (3); and

5 “(ii) pay to the Trust Fund an
6 amount equivalent to the Federal tax on
7 the wages paid to pilot program aliens that
8 the employer would be obligated to pay
9 under the Federal Unemployment Tax Act
10 and the Federal Insurance Contributions
11 Act.

12 Amounts withheld under clause (i) shall be
13 maintained in such interest bearing account
14 with such a financial institution as the Attorney
15 General shall specify.

16 “(3) DISTRIBUTION OF FUNDS.—Amounts paid
17 into the Trust Fund on behalf of a worker, and held
18 pursuant to paragraph (2)(A)(i) and interest earned
19 thereon, shall be paid by the Attorney General to the
20 worker if—

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

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

4 “(C) in connection with the application,
5 the worker tenders the identification and em-
6 ployment authorization card issued to the work-
7 er pursuant to subsection (i)(1)(F) and estab-
8 lishes that the worker is identified as the per-
9 son to whom the card was issued based on the
10 biometric identification information contained
11 on the card.

12 “(4) ADMINISTRATIVE EXPENSES.—The
13 amounts paid into the Trust Fund and held pursu-
14 ant to paragraph (2)(A)(ii), and interest earned
15 thereon, shall be paid to the Attorney General, the
16 Secretary of Labor, and the Secretary of State in
17 amounts equivalent to the expenses incurred by such
18 officials in the administration of section
19 101(a)(15)(H)(ii)(c) and this section.

20 “(5) REGULATIONS.—The Attorney General
21 shall prescribe regulations to carry out this sub-
22 section.

23 “(k) INVESTMENT OF TRUST FUND.—

24 “(1) IN GENERAL.—It shall be the duty of the
25 Secretary of the Treasury to invest such portion of

1 the Trust Fund as is not, in the Secretary's judg-
2 ment, required to meet current withdrawals. Such
3 investments may be made only in interest-bearing
4 obligations of the United States or in obligations
5 guaranteed as to both principal and interest by the
6 United States. For such purpose, such obligations
7 may be acquired—

8 “(A) on original issue at the price; or

9 “(B) by purchase of outstanding obliga-
10 tions at the market price.

11 The purposes for which obligations of the United
12 States may be issued under chapter 31 of title 31,
13 United States Code, are hereby extended to author-
14 ize the issuance at par of special obligations exclu-
15 sively to the Trust Fund. Such special obligations
16 shall bear interest at a rate equal to the average
17 rate of interest, computed as to the end of the cal-
18 endar month next preceding the date of such issue,
19 borne by all marketable interest-bearing obligations
20 of the United States then forming a part of the pub-
21 lic debt, except that where such average rate is not
22 a multiple of one-eighth of 1 percent next lower than
23 such average rate. Such special obligations shall be
24 issued only if the Secretary of the Treasury deter-
25 mines that the purchase of other interest-bearing ob-

1 ligations of the United States, or of obligations
2 guaranteed as to both principal and interest by the
3 United States on original issue or at the market
4 price, is not in the public interest.

5 “(2) SALE OF OBLIGATION.—Any obligation ac-
6 quired by the Trust Fund (except special obligations
7 issued exclusively to the Trust Fund) may be sold by
8 the Secretary of the Treasury at the market price,
9 and such special obligations may be redeemed at par
10 plus accrued interest.

11 “(3) CREDITS TO TRUST FUND.—The interest
12 on, and the proceeds from the sale or redemption of,
13 any obligations held in the Trust Fund shall be
14 credited to and form a part of the Trust Fund.

15 “(4) REPORT TO CONGRESS.—It shall be the
16 duty of the Secretary of the Treasury to hold the
17 Trust Fund, and (after consultation with the Attor-
18 ney General) to report to the Congress each year on
19 the financial condition and the results of the oper-
20 ations of the Trust Fund during the preceding fiscal
21 year and on its expected condition and operations
22 during the next fiscal year. Such report shall be
23 printed as both a House and a Senate document of
24 the session of the Congress to which the report is
25 made.

1 “(l) MISCELLANEOUS PROVISIONS.—

2 “(1) APPLICABILITY OF LABOR LAWS.—Except
3 as provided in paragraphs (2), (3), and (4), all Fed-
4 eral, State, and local labor laws (including laws af-
5 fecting migrant farm workers) applicable to United
6 States workers shall also apply to pilot program
7 aliens.

8 “(2) LIMITATION OF WRITTEN DISCLOSURE IM-
9 POSED UPON RECRUITERS.—Any disclosure required
10 of recruiters under section of 201(a) of the Migrant
11 and Seasonal Agricultural Worker Protection Act
12 (29 U.S.C. 1821(a)) need not be given to pilot pro-
13 gram aliens prior to the time their visa is issued per-
14 mitting entry into the United States.

15 “(m) REGULATIONS.—

16 “(1) SELECTION OF AREAS.—The Secretary of
17 Agriculture shall select the areas under subsection
18 (a)(4) not later than 60 days after the date of the
19 enactment of the Temporary Agricultural Worker
20 Act of 1998.

21 “(2) REGULATIONS OF THE SECRETARY.—The
22 Secretary shall consult with the Secretary of Agri-
23 culture, and the Attorney General shall approve, all
24 regulations dealing with the approval of labor condi-
25 tion attestations for pilot program aliens and en-

1 enforcement of the requirements for employing pilot
2 program aliens under an approved attestation. The
3 Secretary shall promulgate, and the Attorney Gen-
4 eral shall approve, such regulations not later than
5 90 days after the date of the enactment of the Tem-
6 porary Agricultural Worker Act of 1998.

7 “(3) REGULATIONS OF THE ATTORNEY GEN-
8 ERAL.—The Attorney General shall consult with the
9 Secretary of Agriculture on all regulations dealing
10 with the approval of petitions for admission or ex-
11 tension of stay of pilot program aliens and the re-
12 quirements for employing pilot program aliens and
13 the enforcement of such requirements. The Attorney
14 General shall promulgate such regulations not later
15 than 90 days after the date of the enactment of the
16 Temporary Agricultural Worker Act of 1998.

17 “(n) DEFINITIONS.—For the purpose of this section:

18 “(1) AGRICULTURAL ASSOCIATION.—The term
19 ‘agricultural association’ means any nonprofit or co-
20 operative association of farmers, growers, or ranch-
21 ers incorporated or qualified under applicable State
22 law, which recruits, solicits, hires, employs, fur-
23 nishes, or transports any agricultural workers.

24 “(2) AGRICULTURAL EMPLOYMENT.—The term
25 ‘agricultural employment’ means any service or ac-

1 tivity included within the provisions of section 3(f)
2 of the Fair Labor Standards Act of 1938 (29 U.S.C.
3 203(f)) or section 3121(g) of the Internal Revenue
4 Code of 1986 and the handling, planting, drying,
5 packing, packaging, processing, freezing, or grading
6 prior to delivery for storage of any agricultural or
7 horticultural commodity in its unmanufactured
8 state.

9 “(3) EMPLOYER.—The term ‘employer’ means
10 any person or entity, including any independent con-
11 tractor and any agricultural association, that em-
12 ploys workers.

13 “(4) PILOT PROGRAM ALIEN.—The term ‘pilot
14 program alien’ means an alien admitted to the
15 United States or provided status as a nonimmigrant
16 under section 101(a)(15)(H)(ii)(c).

17 “(5) SECRETARY.—The term ‘Secretary’ means
18 the Secretary of Labor.

19 “(6) UNITED STATES WORKER.—The term
20 ‘United States worker’ means any worker, whether
21 a United States citizen, a United States national, or
22 an alien, who is legally permitted to work in the job
23 opportunity within the United States other than an
24 alien admitted pursuant to this section.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 of the Immigration and Nationality Act is amended by in-
3 serting after the item relating to section 218 the following
4 new item:

“Sec. 218A. Alternative agricultural temporary worker program.”.

5 **SEC. 4. TEMPORARY REDUCTIONS IN DIVERSITY AND UN-**
6 **SKILLED WORKERS’ IMMIGRANT VISAS.**

7 (a) TEMPORARY REDUCTION IN DIVERSITY VISAS.—

8 (1) IN GENERAL.—Beginning with the second
9 fiscal year in which the pilot program under sections
10 101(a)(15)(H)(ii)(c) and 218A of the Immigration
11 and Nationality Act is implemented, subject to para-
12 graph (2), the number of visas available for a fiscal
13 year under section 201(e) of that Act shall be re-
14 duced by 5,000 from the number of visas otherwise
15 available under such section 201(e) for such fiscal
16 year.

17 (2) LIMITATION.—In no case shall the reduc-
18 tion under paragraph (1) for a fiscal year exceed
19 one-half of the total number of aliens who were ad-
20 mitted to the United States, or provided status as
21 a nonimmigrant, pursuant to the pilot program dur-
22 ing the previous fiscal year.

23 (b) TEMPORARY REDUCTION IN UNSKILLED WORK-
24 ERS’ VISAS.—

1 (1) IN GENERAL.—Beginning with the second
2 fiscal year in which the pilot program under sections
3 101(a)(15)(H)(ii)(c) and 218A of the Immigration
4 and Nationality Act is implemented, subject to para-
5 graph (2), the number of visas available for a fiscal
6 year under section 203(b)(3)(A)(iii) of that Act shall
7 be reduced by 5,000 from the number of visas other-
8 wise available under such section 203(b)(3)(A)(iii)
9 for such fiscal year.

10 (2) LIMITATION.—In no case shall the reduc-
11 tion under paragraph (1) for a fiscal year exceed
12 one-half of the total number of aliens who were ad-
13 mitted to the United States, or provided status as
14 a nonimmigrant, pursuant to the pilot program dur-
15 ing the previous fiscal year.

16 (c) CONSTRUCTION.—This section shall not be con-
17 strued to supersede or affect the temporary reductions in
18 visa availability made by subsections (d) and (e) of section
19 203 of the Nicaraguan Adjustment and Central American
20 Relief Act (8 U.S.C. 1101 note; 8 U.S.C. 1153 note). The
21 reductions required under this section are in addition to,
22 and not in lieu of, the reductions required under that Act.

○