

1 a request for enrollment in the nonimmigrant agri-
2 cultural worker program.

3 “(2) INFORMATION REQUIRED.—The request
4 must specify for each month concerned—

5 “(A) the total number and qualifications of
6 nonimmigrant agricultural workers required in
7 agricultural employment in each month;

8 “(B) the type of agricultural work required
9 to be performed by these workers;

10 “(C) the anticipated period (expected be-
11 ginning and ending dates) for which workers
12 will be needed;

13 “(D) a copy of the information submitted
14 to the Electronic Job Registry pursuant to sub-
15 section (b)(1); and

16 “(E) the record of United States workers
17 described in subsection (b)(2) at the time of the
18 request.

19 “(3) OPTIONAL INFORMATION ON ALIENS PRE-
20 FERRED.—The person may also include a statement
21 indicating a preference as to country of nationality
22 of aliens (or names of particular aliens) desired to
23 perform agricultural services in any such month.

24 “(d) DETERMINATION OF NUMERICAL LIMITATIONS
25 ON NONIMMIGRANT AGRICULTURAL VISAS BY MONTH

1 AND ANNUALLY.—Based upon requests for enrollment de-
2 scribed in subsection (c), and taking into consideration the
3 historical employment needs of agricultural employers and
4 the reports of United States workers applying for agricul-
5 tural employment listed on requests for enrollment, the
6 Secretary of Agriculture shall advise the Secretary of
7 Homeland Security of a numerical limitation on the
8 issuance of nonimmigrant visas to nonimmigrant agricul-
9 tural workers sufficient to meet the labor needs of agricul-
10 tural employers by month and annually.

11 “(e) STANDARDS FOR APPROVAL OF REQUESTS FOR
12 ENROLLMENT.—

13 “(1) IN GENERAL.—The Secretary of Agri-
14 culture shall approve a request for enrollment sub-
15 mitted under subsection (c)(1) if—

16 “(A) the person is an agricultural employer
17 and the worker is to be employed in agricultural
18 work;

19 “(B) the request complies with the provi-
20 sions of subsection (c) and the request sets
21 forth the need for such workers;

22 “(C) the person has not employed or peti-
23 tioned for a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a) at the time when a request
25 on behalf of the person is pending or granted

1 under this subsection, or during any previous
2 period during which the employer had a request
3 granted under this section; and

4 “(D) the person is not disqualified under
5 subsection (f)(6).

6 “(2) REVIEW OF CERTAIN DENIALS.—Except as
7 provided under subsection (f), a person who is deter-
8 mined not to be eligible under paragraph (1) (other
9 than because of subparagraph (D) thereof) is enti-
10 tled to an expedited review of the determination by
11 the Secretary of Agriculture.

12 “(f) OBLIGATIONS UNDER PROGRAM.—Any person
13 whose request to enroll in the nonimmigrant agricultural
14 worker program has been granted shall ensure as follows:

15 “(1) NO DISPLACEMENT OF THE UNITED
16 STATES WORKERS.—The employer did not displace
17 and will not displace a United States worker em-
18 ployed by the employer, other than for good cause,
19 during the period of employment and for a period of
20 30 days preceding the period of employment in the
21 occupation at the place of employment for which the
22 employer seeks to employ nonimmigrant agricultural
23 workers.

24 “(2) OFFERS TO UNITED STATES WORKERS.—
25 The employer shall offer the job to any eligible

1 United States worker who applies and is equally or
2 better qualified for the job for which the non-
3 immigrant is sought, and will be available at the
4 time and place of need. The employer shall post all
5 such job openings on the Electronic Job Registry ad-
6 ministered by the Employment and Training Admin-
7 istration of the Department of Labor.

8 “(3) WORKERS’ COMPENSATION.—If the job op-
9 portunity is not covered by the State workers’ com-
10 pensation law, the employer will provide, at no cost
11 to United States and nonimmigrant agricultural
12 workers, insurance covering injury and disease aris-
13 ing out of, and in the course of, the worker’s em-
14 ployment which will provide benefits at least equal to
15 those provided under the State’s workers’ compensa-
16 tion law for comparable employment.

17 “(4) LABOR DISPUTE.—The person shall not
18 employ a nonimmigrant agricultural worker for a
19 specific job opportunity for which the employer is re-
20 questing a nonimmigrant agricultural worker be-
21 cause the former occupant of the job is on strike or
22 being locked out in the course of a labor dispute.

23 “(5) NOT USED FOR NONAGRICULTURAL SERV-
24 ICES.—The person shall not employ a nonimmigrant

1 agricultural worker for services other than agricul-
2 tural services.

3 “(6) VIOLATION OF PROGRAM REQUIRE-
4 MENTS.—If the Secretary of Agriculture determines,
5 after an opportunity for a hearing, that an enrolled
6 employer has violated this subsection the Secretary
7 may impose penalties, including fines and, in cases
8 of serious violations, the disqualification of the em-
9 ployer from future enrollment in the program for a
10 period of up to three years.

11 “(g) ALLOCATION OF VISAS.—

12 “(1) PREFERENCE SYSTEM.—Nonimmigrant
13 agricultural workers who are subject to the numer-
14 ical limitations specified in subsection (d) shall be al-
15 lotted nonimmigrant visas and work authority as fol-
16 lows:

17 “(A) IDENTIFIED WORKERS.—Visas shall
18 first be made available to qualified non-
19 immigrant agricultural workers specifically
20 identified pursuant to subsection (c)(3).

21 “(B) PREVIOUSLY EMPLOYED WORKERS.—
22 Visas shall next be made available to qualified
23 nonimmigrant agricultural workers who have
24 previously been employed in agricultural em-
25 ployment in the United States, providing pri-

1 ority in consideration among such workers in
2 the order of the length of time in which they
3 were employed.

4 “(C) ORDER IN WHICH APPLIED.—The re-
5 maining visas shall be made available to other
6 qualified nonimmigrant agricultural workers
7 strictly in the chronological order in which they
8 apply. Waiting lists of applicants shall be main-
9 tained in accordance with regulations prescribed
10 by the Secretary of State.

11 “(2) TREATMENT OF SPOUSES AND CHIL-
12 DREN.—A spouse or child of such a worker is not
13 entitled to visa or such status by virtue of such rela-
14 tionship, but may be provided the same status as
15 such a worker if the spouse or child also is a quali-
16 fied nonimmigrant agricultural worker to perform
17 agricultural employment.

18 “(3) CRIMINAL BACKGROUND CHECK.—In the
19 addition to any other examination required under
20 this Act, no visa or other documentation may be
21 issued to an alien under section 101(a)(15)(W) until
22 the alien has obtained successful clearance of the se-
23 curity and criminal background checks specified by
24 the Secretary of Homeland Security for purposes of
25 this section.

1 “(h) APPLICATION FOR AN INCREASE WHERE EX-
2 TRAORDINARY AND UNUSUAL CIRCUMSTANCES.—

3 “(1) IN GENERAL.—If an agricultural employer
4 (or association or representative thereof) establishes
5 that extraordinary and unusual circumstances have
6 resulted in a significant change in the employer’s
7 need for nonimmigrant agricultural workers speci-
8 fied in the application, or in the availability of do-
9 mestic workers who are able, willing, and qualified
10 to perform agricultural employment, the employer
11 may apply to the Secretary of Agriculture (in such
12 form and manner as the Secretary shall provide) for
13 an increase in the numerical limitations otherwise
14 established under subsection (d) to accommodate
15 such emergency need. If approved, the Secretary
16 shall forward the application to the Secretary of
17 Homeland Security with a recommendation on the
18 additional number of nonimmigrant agricultural
19 worker visas found necessary.

20 “(2) TIMELY DETERMINATION ON APPLICA-
21 TION.—The Secretary of Agriculture shall make a
22 determination on an application under subparagraph
23 (A) and forward its recommendations to the Sec-
24 retary of Homeland Security within 72 hours of the
25 date the application is completed.

1 “(3) INCREASE IN LIMITATION.—To the extent
2 the application is approved, the Secretary of Home-
3 land Security shall provide for an appropriate in-
4 crease in the appropriate numerical limitation within
5 72 hours.

6 “(i) ENTRY OF WORKERS.—

7 “(1) IN GENERAL.—An alien may not be admit-
8 ted to the United States as a nonimmigrant agricul-
9 tural worker during the three-year period beginning
10 on the most recent date (if any) on which the alien
11 violated a material term or condition of a previous
12 admission as a nonimmigrant agricultural worker.

13 “(2) DISQUALIFICATION FOR COMMISSION OF
14 CRIME.—An alien who commits a crime while in the
15 United States as a nonimmigrant agricultural work-
16 er shall be ineligible to retain such status and shall
17 be required to depart from the United States.

18 “(3) CONTINUOUS EMPLOYMENT.—Non-
19 immigrant agricultural workers admitted under this
20 program shall be continuously employed or actively
21 seeking employment in agricultural employment
22 throughout the term of their admission.

23 “(4) DIRECTION OF NONIMMIGRANT AGRICUL-
24 TURAL WORKERS TO EMPLOYMENT OPPORTUNI-
25 TIES.—The Secretary of State and Secretary of Ag-

1 riculture, in consultation with the Secretary of
2 Labor, shall establish a system for providing infor-
3 mation on available agricultural employment oppor-
4 tunities to individuals whose applications for non-
5 immigrant agricultural visas have been approved if
6 those individuals are not named by an employer or
7 do not have a letter of employment opportunity pro-
8 vided by a person enrolled in the program.

9 “(j) APPLICABILITY OF EMPLOYMENT LAWS.—All
10 Federal, State, and local employment related laws applica-
11 ble to United States agricultural workers shall apply to
12 nonimmigrant agricultural workers admitted pursuant to
13 this program.

14 “(k) BIOMETRIC IDENTIFICATION CARD.—The Sec-
15 retary of Homeland Security shall provide each non-
16 immigrant agricultural worker with an identification card
17 that contains—

18 “(1) an encrypted , machine-readable, electronic
19 identification strip that is unique to the alien to
20 whom the card is issued;

21 “(2) biometric identifiers, including fingerprints
22 and a digital photograph; and

23 “(3) physical security features designed to pre-
24 vent tampering, counterfeiting, or duplication of the
25 card for fraudulent purposes.

1 “(1) TRUST FUND.—

2 “(1) ESTABLISHMENT.—The Secretary of Agri-
3 culture shall establish by regulation a trust fund the
4 purpose of which is to provide, without further ap-
5 propriation, funds for the administration and the en-
6 forcement of the program under this section, for the
7 cost of the cards issued under subsection (k), for a
8 monetary incentive for nonimmigrant agricultural
9 workers to return to their country of origin upon ex-
10 piration of their visas under the program, and for
11 payment with respect to emergency medical services
12 furnished to nonimmigrant agricultural workers. The
13 Secretary of Agriculture in consultation with the
14 Secretary of the Treasury shall promulgate such
15 other regulations as may be necessary to carry out
16 this subsection.

17 “(2) PAYMENT OF FICA AND FUTA AMOUNTS
18 INTO TRUST FUND.—In the case of employment of
19 a nonimmigrant agricultural worker—

20 “(A) the employer shall provide for pay-
21 ment into the trust fund established under
22 paragraph (1) of the sum of—

23 “(i) an amount equivalent to the
24 amount of excise taxes which the employer
25 would pay under the chapter 21 of the In-

1 ternal Revenue Code of 1986 with respect
2 to such employment if it were considered
3 employment for the purpose of such Act;
4 and

5 “(ii) an amount equivalent to (and in
6 lieu of) the amount of excise taxes which
7 the employer would otherwise pay under
8 chapter 23 of such Code with respect to
9 such employment: and

10 “(B) there shall be deducted from the
11 wages of the worker and paid into such trust
12 fund an amount equivalent to the amount of ex-
13 cise taxes that the employee would pay under
14 such chapter 21 with respect to such employ-
15 ment if it were considered employment for the
16 purposes of such Act.

17 “(3) EXPENDITURES FROM TRUST FUND.—

18 “(A) USE OF EMPLOYER CONTRIBUTIONS
19 FOR ADMINISTRATION.—Amounts described in
20 paragraph (2)(A) paid into the trust fund shall
21 be used for the purpose of administering and
22 enforcing the program under this section and
23 for the cost of the cards issued under sub-
24 section (k).

1 “(B) USE OF EMPLOYEE CONTRIBUTIONS
2 FOR REPAYMENT OF EMPLOYEE CONTRIBU-
3 TIONS UPON RETURN TO COUNTRY OF ORI-
4 GIN.—Except as provided in subparagraph (C),
5 amounts described in paragraph (2)(B) paid
6 into the trust fund with respect to a non-
7 immigrant agricultural worker shall, upon ap-
8 plication by the worker at the United States
9 consulate nearest the worker’s residence in the
10 country of origin, be paid to the worker if the
11 worker demonstrates the compliance of the
12 worker with the terms and conditions of the
13 program.

14 “(C) USE OF EMPLOYEE CONTRIBUTIONS
15 ATTRIBUTABLE TO HI TAXES FOR EMERGENCY
16 MEDICAL SERVICES FOR NONIMMIGRANT AGRI-
17 CULTURAL WORKERS.—

18 “(i) IN GENERAL.—Amounts de-
19 scribed in paragraph (2)(B) paid into the
20 trust fund which relate to excise tax in sec-
21 tion 3101(b) of the Internal Revenue Code
22 of 1986 shall be used to provide payment
23 with respect to emergency medical services
24 (as defined in clause (iii)) for non-
25 immigrant agricultural workers.

1 “(ii) ADMINISTRATION.—The Sec-
2 retary of Agriculture shall establish rules,
3 in consultation with the Secretary of
4 Health and Human Services, with respect
5 to the payments under this subparagraph,
6 including methods for determining quali-
7 fications for payment and the amount of
8 payment to be made with respect to emer-
9 gency medical services.

10 “(iii) EMERGENCY MEDICAL SERVICES
11 DEFINED.—In this subparagraph, the term
12 ‘emergency medical services’ means those
13 items and services required to be provided
14 under section 1867 of the Social Security
15 Act (42 U.S.C. 1395dd) with respect to an
16 individual who is a nonimmigrant agricul-
17 tural worker and does not include items
18 and services for which coverage under
19 workers’ compensation is required under
20 subsection (f)(3) with respect to the work-
21 er.

22 “(m) SEMIANNUAL REPORTS TO CONGRESS.—The
23 Secretary of Agriculture shall report to Congress semi-
24 annually regarding the program under this section. Each
25 such report shall include a statement of the number of

1 nonimmigrant visas issued under the program, an evalua-
2 tion of the effectiveness of the program, a description of
3 any problems related to the enforcement of the program,
4 and any recommendations for legislation relating to the
5 program.

6 “(n) MISCELLANEOUS PROVISIONS.—

7 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
8 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
9 ANCE.—An alien admitted as a nonimmigrant agri-
10 cultural worker is not eligible for any program of fi-
11 nancial assistance under Federal law (whether
12 through grant, loan, guarantee, or otherwise) on the
13 basis of financial need, as such programs are identi-
14 fied by the Secretary of Agriculture in consultation
15 with other appropriate heads of the various depart-
16 ments and agencies of Government.

17 “(2) EXPANSION OF CONSULATES.—The Sec-
18 retary of State is authorized to take such steps as
19 may be necessary in order to expand and establish
20 consulates in foreign countries in which aliens are
21 likely to apply to become nonimmigrant agricultural
22 workers under the program to the extent such ex-
23 pansion is fully covered by the funds obtained in
24 subsection (l)(3)(A).

1 “(3) PREEMPTION.—The provisions of this sec-
2 tion preempt any State or local law on the same sub-
3 ject.

4 “(o) DEFINITIONS.—For purposes of this section and
5 section 101(a)(15)(W):

6 “(1) AGRICULTURAL EMPLOYMENT.—The term
7 ‘agricultural employment’ has the meaning given
8 such term in section 3 of the Migrant and Seasonal
9 Agricultural Worker Protection Act (29 U.S.C.
10 1802), without regard to whether the specific service
11 or activity is temporary or seasonal.

12 “(2) TEMPORARY PERIOD.—The term ‘tem-
13 porary period’ means that period during which a
14 nonimmigrant agricultural worker may remain in
15 the United States to perform agricultural employ-
16 ment, not to exceed 10 months in any 12 month pe-
17 riod.”.

18 “(2) CLERICAL AMENDMENT.—The table of con-
19 tents of such Act is amended by inserting after the
20 item relation to section 219 the following new item:

“Sec. 220. Nonimmigrant agricultural worker program.”.

