H. R. 3767

One Hundred Sixth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fourth day of January, two thousand

An Act

To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Visa Waiver Permanent Program Act".

TITLE I—PERMANENT PROGRAM AUTHORIZATION

SEC. 101. ELIMINATION OF PILOT PROGRAM STATUS.

(a) IN GENERAL.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in the section heading, by striking "PILOT";

(2) in subsection (a)—

(A) in the subsection heading, by striking "PILOT";

(B) in the matter preceding paragraph (1), by striking "pilot" both places it appears;

(C) in paragraph (1), by striking "pilot program period (as defined in subsection (e))" and inserting "program"; and

(D) in paragraph (2), in the paragraph heading, by striking "PILOT";

(3) in subsection (b), in the matter preceding paragraph (1), by striking "pilot";

(4) in subsection (c)—

(A) in the subsection heading, by striking "PILOT";

(B) in paragraph (1), by striking "pilot";

(C) in paragraph (2)—

(i) by striking "subsection (g)" and inserting "subsection (f)"; and

(ii) by striking "pilot"; and

(D) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking "(within the pilot program period)";

(ii) in subparagraph (A), in the matter preceding clause (i), by striking "pilot" both places it appears; and

(iii) in subparagraph (B), by striking "pilot";

(5) in subsection (e)(1)—

(A) in the matter preceding subparagraph (A), by striking "pilot"; and

(B) in subparagraph (B), by striking "pilot";

(6) by striking subsection (f) and redesignating subsection (g) as subsection (f); and

(7) in subsection (f) (as so redesignated)—

(A) in paragraph (1)(A) by striking "pilot";

(B) in paragraph (1)(C), by striking "pilot";

(C) in paragraph (2)(A), by striking "pilot" both places it appears;

(D) in paragraph (3), by striking "pilot"; and

(E) in paragraph (4)(A), by striking "pilot".

(b) CONFORMING AMENDMENTS.—

(1) DOCUMENTATION REQUIREMENTS.—Clause (iv) of section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)(iv)) is amended—

(A) in the clause heading, by striking "PILOT"; and

(B) by striking "pilot".

(2) TABLE OF CONTENTS.—The table of contents for the Immigration and Nationality Act is amended, in the item relating to section 217, by striking "pilot".

TITLE II—PROGRAM IMPROVEMENTS

SEC. 201. EXTENSION OF RECIPROCAL PRIVILEGES.

Section 217(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(2)(A)) is amended by inserting ", either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions," after "to extend)".

SEC. 202. MACHINE READABLE PASSPORT PROGRAM.

(a) REQUIREMENT ON ALIEN.—Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) MACHINE READABLE PASSPORT.—On and after October 1, 2007, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.".

(b) REQUIREMENT ON COUNTRY.—Section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B)) is amended to read as follows:

"(B) MACHINE READABLE PASSPORT PROGRAM.—

"(i) IN GENERAL.—Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

"(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES.—In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

"(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

"(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.".

SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON GROUND OF INADMISSIBILITY.

(a) IN GENERAL.—Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)), as amended by section 202, is further amended by adding at the end the following:

"(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.".

(b) VISA APPLICATION SOLE METHOD TO DISPUTE DENIALS OF WAIVER BASED ON GROUND OF INADMISSIBILITY.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 101(a)(6) of this Act, is further amended by adding at the end the following:

"(g) VISA APPLICATION SOLE METHOD TO DISPUTE DENIAL OF WAIVER BASED ON A GROUND OF INADMISSIBILITY.—In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 212(a) that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.".

SEC. 204. EVALUATION OF EFFECT OF COUNTRY'S PARTICIPATION ON LAW ENFORCEMENT AND SECURITY.

(a) INITIAL DESIGNATION.—Section 217(c)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(C)) is amended to read as follows:

"(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

"(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

"(ii) determines that such interests would not be compromised by the designation of the country; and

"(iii) submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign

Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.".

(b) CONTINUATION OF DESIGNATION.—Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) is amended by adding at the end the following:

"(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

"(A) PERIODIC EVALUATIONS.—

"(i) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 5 years)—

"(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

"(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d); and

"(III) shall submit a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I).

"(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Attorney General, in consultation with the Secretary of State.

"(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

"(B) EMERGENCY TERMINATION.—

"(i) IN GENERAL.—In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney General shall immediately terminate the designation of the country as a program country.

"(ii) DEFINITION.—For purposes of clause (i), the term 'emergency' means—

"(I) the overthrow of a democratically elected government;

"(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

"(III) a severe breakdown in law and order affecting a significant portion of the program country's territory;

"(IV) a severe economic collapse in the program country; or

"(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

"(iii) REDESIGNATION.—The Attorney General may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that—

"(I) at least 6 months have elapsed since the effective date of the termination;

"(II) the emergency that caused the termination has ended; and

"(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

"(C) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this paragraph—

"(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

"(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.".

SEC. 205. USE OF INFORMATION TECHNOLOGY SYSTEMS.

(a) IN GENERAL.—Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), as amended by section 203(b), is further amended by adding at the end the following:

"(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

"(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

"(A) SYSTEM.—Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

"(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

"(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

"(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

"(iii) CALCULATION.—The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

"(C) REPORTING.—

"(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—As part of the annual report required to be submitted under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

"(ii) SYSTEM EFFECTIVENESS.—Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

"(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

"(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

"(2) AUTOMATED DATA SHARING SYSTEM.—

"(A) SYSTEM.—The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in

electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

"(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

"(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

"(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

"(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

"(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

"(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

"(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

"(II) Any information described in clause (i) that is obtained from the system by any such officer.

"(III) The results of the application.".

(b) CONFORMING AMENDMENT.—Section 217(e)(1) of the Immigration and Nationality Act (8 U.S.C. 1187(e)(1)) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking the period at the end and inserting ", and"; and

(3) by adding at the end the following:

"(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).".

SEC. 206. CONDITIONS FOR VISA REFUSAL ELIGIBILITY.

Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)), as amended by section 204(b) of this Act, is further amended by adding at the end the following:

"(6) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the

United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.".

SEC. 207. VISA WAIVER INFORMATION.

Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)), as amended by sections 204(b) and 206 of this Act, is further amended by adding at the end the following:

"(7) VISA WAIVER INFORMATION.—

"(A) IN GENERAL.—In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

"(B) REPORTING REQUIREMENT.—On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

"(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

"(ii) the total number of such nationals who received United States visas during the previous calendar year;

"(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

"(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this Act under which the visas were refused; and

"(v) the number of such nationals that were refused under section 214(b) as a percentage of the visas that were issued to such nationals.

"(C) CERTIFICATION.—Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

"(D) CONSIDERATION OF COUNTRIES IN THE VISA WAIVER PROGRAM.—Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

"(E) DEFINITION.—In this paragraph, the term 'appropriate congressional committees' means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and

the Committee on International Relations of the House of Representatives.".

TITLE III—IMMIGRATION STATUS OF ALIEN EMPLOYEES OF INTELSAT AFTER PRIVATIZATION

SEC. 301. MAINTENANCE OF NONIMMIGRANT AND SPECIAL IMMIGRANT STATUS NOTWITHSTANDING INTELSAT PRIVATIZATION.

(a) OFFICERS AND EMPLOYEES.—

(1) AFTER PRIVATIZATION.—In the case of an alien who, during the 6-month period ending on the day before the date of privatization, was continuously an officer or employee of INTELSAT, and pursuant to such position continuously maintained, during such period, the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(iv)), the alien shall be considered as maintaining such nonimmigrant status on and after the date of privatization, but only during the period in which the alien is an officer or employee of INTELSAT or any successor or separated entity of INTELSAT.

(2) PRECURSORY EMPLOYMENT WITH SUCCESSOR BEFORE PRIVATIZATION COMPLETION.—In the case of an alien who commences service as an officer or employee of a successor or separated entity of INTELSAT before the date of privatization, but after the date of the enactment of the ORBIT Act (Public Law 106–180; 114 Stat. 48) and in anticipation of privatization, if the alien, during the 6-month period ending on the day before such commencement date, was continuously an officer or employee of INTELSAT, and pursuant to such position continuously maintained, during such period, the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(iv)), the alien shall be considered as maintaining such nonimmigrant status on and after such commencement date, but only during the period in which the alien is an officer or employee of any successor or separated entity of INTELSAT.

(b) IMMEDIATE FAMILY MEMBERS.—

(1) ALIENS MAINTAINING STATUS.—

(A) AFTER PRIVATIZATION.—An alien who, on the day before the date of privatization, was a member of the immediate family of an alien described in subsection (a)(1), and had the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(iv)) on such day, shall be considered as maintaining such nonimmigrant status on and after the date of privatization, but, only during the period in which the alien described in subsection (a)(1) is an officer or employee of INTELSAT or any successor or separated entity of INTELSAT.

(B) AFTER PRECURSORY EMPLOYMENT.—An alien who, on the day before a commencement date described in subsection (a)(2), was a member of the immediate family of

the commencing alien, and had the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(iv)) on such day, shall be considered as maintaining such nonimmigrant status on and after such commencement date, but only during the period in which the commencing alien is an officer or employee of any successor or separated entity of INTELSAT.

(2) ALIENS CHANGING STATUS.—In the case of an alien who is a member of the immediate family of an alien described in paragraph (1) or (2) of subsection (a), the alien may be granted and may maintain status as a nonimmigrant described in section 101(a)(15)(G)(iv) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(iv)) on the same terms as an alien described in subparagraph (A) or (B), respectively, of paragraph (1).

(c) SPECIAL IMMIGRANTS.—For purposes of section 101(a)(27)(I) (8 U.S.C. 1101(a)(27)(I)) of the Immigration and Nationality Act, the term "international organization" includes INTELSAT or any successor or separated entity of INTELSAT.

SEC. 302. TREATMENT OF EMPLOYMENT FOR PURPOSES OF OBTAINING IMMIGRANT STATUS AS A MULTINATIONAL EXECUTIVE OR MANAGER.

(a) IN GENERAL.—Notwithstanding section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)), in the case of an alien described in subsection (b)—

(1) any services performed by the alien in the United States as an officer or employee of INTELSAT or any successor or separated entity of INTELSAT, and in a capacity that is managerial or executive, shall be considered employment outside the United States by an employer described in section 203(b)(1)(C) of such Act (8 U.S.C. 1153(b)(1)(C)), if the alien has the status of a lawful nonimmigrant described in section 101(a)(15)(G)(iv) of such Act (8 U.S.C. 1101(a)(15)(G)(iv)) during such period of service; and

(2) the alien shall be considered as seeking to enter the United States in order to continue to render services to the same employer.

(b) ALIENS DESCRIBED.—An alien described in this subsection is an alien—

(1) whose nonimmigrant status is maintained pursuant to section 301(a); and

(2) who seeks adjustment of status after the date of privatization to that of an alien lawfully admitted for permanent residence under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) based on section 203(b)(1)(C) of such Act (8 U.S.C. 1153(b)(1)(C)) during the period in which the alien is—

(A) an officer or employee of INTELSAT or any successor or separated entity of INTELSAT; and

(B) rendering services as such an officer or employee in a capacity that is managerial or executive.

SEC. 303. DEFINITIONS.

For purposes of this title—

(1) the terms "INTELSAT", "separated entity", and "successor entity" shall have the meaning given such terms in the ORBIT Act (Public Law 106–180; 114 Stat. 48);

(2) the term "date of privatization" means the date on which all or substantially all of the then existing assets of INTELSAT are legally transferred to one or more stock corporations or other similar commercial entities; and

(3) all other terms shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. AMENDMENT TO SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding the following new paragraph:

"(10) An amended H–1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.".

SEC. 402. THE IMMIGRANT INVESTOR PILOT PROGRAM.

(a) EXTENSION OF PROGRAM.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "seven years" and inserting "ten years".

(b) DETERMINATIONS OF JOB CREATION.—Section 610(c) of such Act is amended by inserting ", improved regional productivity, job creation, or increased domestic capital investment" after "increased exports".

SEC. 403. PARTICIPATION OF BUSINESS AIRCRAFT IN THE VISA WAIVER PROGRAM.

(a) ENTRY OF BUSINESS AIRCRAFT.—Section 217(a)(5) of the Immigration and Nationality Act (as redesignated by this Act) is amended by striking all after "carrier" and inserting the following: ", including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e). The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.".

(b) ROUND-TRIP TICKET.—Section 217(a)(8) of the Immigration and Nationality Act (as redesignated by this Act) is amended by

inserting "or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations" after "regulations".

(c) AUTOMATED SYSTEM CHECK.—Section 217(a) (8 U.S.C. 1187(a)) of the Immigration and Nationality Act is amended by adding at the end the following: "Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.".

(d) CARRIER AGREEMENT REQUIREMENTS TO INCLUDE BUSINESS AIRCRAFT.—

(1) IN GENERAL.—Section 217(e) (8 U.S.C. 1187(e)) of the Immigration and Nationality Act is amended—

(A) by striking "carrier" each place it appears and inserting "carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title"; and

(B) in paragraph (2), by striking "carrier's failure" and inserting "failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title".

(2) BUSINESS AIRCRAFT REQUIREMENTS.—Section 217(e) (8 U.S.C. 1187(e)) of the Immigration and Nationality Act is amended by adding at the end the following new paragraph:

"(3) BUSINESS AIRCRAFT REQUIREMENTS.—

"(A) IN GENERAL.—For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

"(B) COLLECTIONS.—In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal

to the total amount of fees assessed for issuance of non-immigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h).".

(e) REPORT REQUIRED.—Not later than two years after the date of the enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate assessing the effectiveness of the program implemented under the amendments made by this section for simplifying the admission of business travelers from visa waiver program countries and compliance with the Immigration and Nationality Act by such travelers under that program.

SEC. 404. MORE EFFICIENT COLLECTION OF INFORMATION FEE.

Section 641(e) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208) is amended—

(1) in paragraph (1)—

(A) by striking "an approved institution of higher education and a designated exchange visitor program" and inserting "the Attorney General";

(B) by striking "the time—" and inserting the following: "a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act."; and

(C) by striking subparagraphs (A) and (B);

(2) by amending paragraph (2) to read as follows:

"(2) REMITTANCE.—The fees collected under paragraph (1) shall be remitted by the alien pursuant to a schedule established by the Attorney General for immediate deposit and availability as described under section 286(m) of the Immigration and Nationality Act.";

(3) in paragraph (3)—

(A) by striking "has" the first place it appears and inserting "seeks"; and

(B) by striking "has" the second place it appears and inserting "seeks to";

(4) in paragraph (4)—

(A) by inserting before the period at the end of the second sentence of subparagraph (A) the following: ", except that, in the case of an alien admitted under section 101(a)(15)(J) of the Immigration and Nationality Act as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40"; and

(B) by adding at the end of subparagraph (B) the following new sentence: "Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a)."; and

(5) by adding at the end the following new paragraphs:

"(5) PROOF OF PAYMENT.—The alien shall present proof of payment of the fee before the granting of—

"(A) a visa under section 222 of the Immigration and Nationality Act or, in the case of an alien who is exempt from the visa requirement described in section 212(d)(4)

of the Immigration and Nationality Act, admission to the United States; or

"(B) change of nonimmigrant classification under section 248 of the Immigration and Nationality Act to a classification described in paragraph (3).

"(6) IMPLEMENTATION.—The provisions of section 553 of title 5, United States Code (relating to rule-making) shall not apply to the extent the Attorney General determines necessary to ensure the expeditious, initial implementation of this section.".

SEC. 405. NEW TIME-FRAME FOR IMPLEMENTATION OF DATA COLLECTION PROGRAM.

Section 641(g)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208) is amended to read as follows:

"(1) EXPANSION OF PROGRAM.—Not later than 12 months after the submission of the report required by subsection (f), the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.".

SEC. 406. TECHNICAL AMENDMENTS.

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208) is amended—

(1) in subsection (h)(2)(A), by striking "Director of the United States Information Agency" and inserting "Secretary of State"; and

(2) in subsection (d)(1), by inserting "institutions of higher education or exchange visitor programs" after "by".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.