

117TH CONGRESS
1ST SESSION

H. R. 4288

To amend the Immigration and Nationality Act to provide for an H-2C nonimmigrant classification, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2021

Mr. SMUCKER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Oversight and Reform, 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 provide for an H-2C nonimmigrant classification, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workforce for an Ex-
5 panding Economy Act”.

1 **SEC. 2. NONIMMIGRANT CLASSIFICATION FOR H-2C NON-**
2 **IMMIGRANTS.**

3 Section 101(a)(15)(H)(ii) of the Immigration and
4 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended
5 by inserting “(c) who is coming temporarily to the United
6 States to perform services or labor for a registered non-
7 agricultural employer in a registered position (as those
8 terms are defined in section 219A(a)) in accordance with
9 the requirements under section 219A; or” before “(iii)
10 have a residence”.

11 **SEC. 3. ADMISSION OF H-2C NONIMMIGRANT WORKERS.**

12 (a) **ADMISSION OF H-2C NONIMMIGRANT WORK-**
13 **ERS.—**

14 (1) **IN GENERAL.**—Chapter 2 of title II of the
15 Immigration and Nationality Act (8 U.S.C. 1181 et
16 seq.) is amended by adding at the end the following:

17 **“SEC. 219A. ADMISSION OF H-2C NONIMMIGRANT WORK-**
18 **ERS.**

19 “(a) **DEFINITIONS.**—In this section:

20 “(1) **DEPARTMENT.**—Except as otherwise spe-
21 cifically provided, the term ‘Department’ means the
22 Department of Homeland Security.

23 “(2) **ELIGIBLE OCCUPATION.**—The term ‘eligi-
24 ble occupation’ means an eligible occupation de-
25 scribed in subsection (e)(3).

26 “(3) **EMPLOYER.**—

1 “(A) IN GENERAL.—The term ‘employer’
2 means any person or operational unit of a for-
3 profit or nonprofit entity that is operating inde-
4 pendently in a county or metropolitan statistical
5 area and who hires an individual for employ-
6 ment in the United States.

7 “(B) TREATMENT OF SINGLE EM-
8 PLOYER.—For purposes of determining the
9 number of employees or United States workers
10 employed by an employer, a single entity shall
11 be treated as 1 employer.

12 “(4) ENDURING JOB OPENING.—The term ‘en-
13 during job opening’ refers to a job opening that—

14 “(A) remains unfilled on the first day of
15 the month for 3 consecutive months; or

16 “(B) is unfilled for more than 60 days in
17 a period of 90 consecutive days.

18 “(5) FULL EMPLOYMENT AREA.—The term ‘full
19 employment area’ refers to any county or metropoli-
20 tan statistical area where the unemployment rate
21 during the fiscal quarter during which an application
22 is submitted by an employer is equal to or less than
23 4.9 percent.

1 “(6) H-2C NONIMMIGRANT.—The term ‘H-2C
2 nonimmigrant’ means an alien admitted as a non-
3 immigrant pursuant to section 101(a)(15)(H)(ii)(c).

4 “(7) H-2C NONIMMIGRANT STATUS.—The term
5 ‘H-2C nonimmigrant status’ means status granted
6 to an alien admitted as a nonimmigrant pursuant to
7 section 101(a)(15)(H)(ii)(c).

8 “(8) INITIAL H-2C NONIMMIGRANT.—The term
9 ‘initial H-2C nonimmigrant’ means an alien—

10 “(A) issued an H-2C-nonimmigrant visa
11 by the Secretary of State authorizing the ad-
12 mission of that alien to the United States for
13 the first time as an H-2C nonimmigrant; and

14 “(B) does not include an alien on or after
15 the date the alien commences employment in
16 H-2C nonimmigrant status with a registered
17 employer in a registered position.

18 “(9) LAY OFF.—The term ‘lay off’—

19 “(A) means to cause a worker to lose em-
20 ployment, other than through a discharge for
21 inadequate performance, violation of workplace
22 rules, cause, voluntary departure, voluntary re-
23 tirement, or the expiration of a grant or con-
24 tract; and

1 “(B) does not include any situation in
2 which the worker is offered and refused to ac-
3 cept, as an alternative to such loss of employ-
4 ment, a similar employment opportunity with
5 the same employer at equivalent or higher com-
6 pensation and benefits than the position from
7 which the employee was discharged.

8 “(10) METROPOLITAN STATISTICAL AREA.—
9 The term ‘metropolitan statistical area’ means a ge-
10 ographic area designated as a metropolitan statis-
11 tical area by the Director of the Office of Manage-
12 ment and Budget.

13 “(11) REGISTERED EMPLOYER.—The term
14 ‘registered employer’ means an operational business
15 unit of a nonagricultural employer that is operating
16 independently in a full employment area and is des-
17 ignated by the Secretary as a registered employer
18 under subsection (d).

19 “(12) REGISTERED POSITION.—The term ‘reg-
20 istered position’ means a position designated as a
21 registered position under subsection (e).

22 “(13) SCARCITY RECRUITMENT FEE.—The
23 term ‘scarcity recruitment fee’ refers to a payment
24 equal to 5 percent of an H-2C immigrant’s esti-
25 mated annual compensation that a registered em-

1 employer remits to the Secretary as part of the employ-
2 er’s application for a registered position in order to
3 demonstrate said employer’s inability to recruit a
4 United States worker for the position.

5 “(14) SECRETARY.—Except as otherwise spe-
6 cifically provided, the term ‘Secretary’ means the
7 Secretary of Homeland Security.

8 “(15) SINGLE ENTITY.—The term ‘single enti-
9 ty’ means any group treated as a single employer
10 under subsection (b), (c), (m), or (o) of section 414
11 of the Internal Revenue Code of 1986.

12 “(16) SMALL BUSINESS.—The term ‘small busi-
13 ness’ means an employer that employs 50 or fewer
14 full-time equivalent employees.

15 “(17) UNITED STATES WORKER.—The term
16 ‘United States worker’ means an individual who is—

17 “(A) lawfully employed or seeking employ-
18 ment in the United States; and

19 “(B)(i) a national of the United States;

20 “(ii) an alien lawfully admitted for perma-
21 nent residence; or

22 “(iii) any other alien authorized to work in
23 the United States with no limitation as to the
24 alien’s employer.

1 “(18) ZONE 1 OCCUPATION.—The term ‘zone 1
2 occupation’ means an occupation that requires little
3 or no preparation and is classified as a zone 1 occu-
4 pation on—

5 “(A) the Occupational Information Net-
6 work Database (O*NET) on the date of the en-
7 actment of this section; or

8 “(B) such Database or a similar successor
9 database, as designated by the Secretary of
10 Labor, after the date of the enactment of this
11 section.

12 “(19) ZONE 2 OCCUPATION.—The term ‘zone 2
13 occupation’ means an occupation that requires some
14 preparation and is classified as a zone 2 occupation
15 on—

16 “(A) the Occupational Information Net-
17 work Database (O*NET) on the date of the en-
18 actment of this section; or

19 “(B) such Database or a similar successor
20 database, as designated by the Secretary of
21 Labor, after the date of the enactment of this
22 section.

23 “(20) ZONE 3 OCCUPATION.—The term ‘zone 3
24 occupation’ means an occupation that requires me-

1 dium preparation and is classified as a zone 3 occu-
2 pation on—

3 “(A) the Occupational Information Net-
4 work Database (O*NET) on the date of the en-
5 actment of this section; or

6 “(B) such Database or a similar successor
7 database, as designated by the Secretary of
8 Labor, after the date of the enactment of this
9 section.

10 “(b) ADMISSION INTO THE UNITED STATES.—An
11 alien is eligible to be admitted as an H–2C nonimmigrant
12 if the alien—

13 “(1) has received an offer of employment from
14 a registered employer; and

15 “(2) otherwise meets the requirements of this
16 section.

17 “(c) H–2C NONIMMIGRANTS.—

18 “(1) APPLICATION.—An alien seeking to be an
19 H–2C nonimmigrant shall submit an application to
20 the Secretary.

21 “(2) ATTESTATION.—Each application sub-
22 mitted under paragraph (1) for an alien shall in-
23 clude an attestation as follows:

24 “(A) That the H–2C nonimmigrant will re-
25 port to such nonimmigrant’s initial employment

1 in a registered position not later than 14 days
2 after such nonimmigrant is admitted.

3 “(B) That the H-2C nonimmigrant will
4 accept only registered positions and abide by all
5 terms and conditions of H-2C nonimmigrant
6 status.

7 “(C) That the H-2C nonimmigrant will
8 not bring a family member to the United States
9 in violation of any provision of this Act.

10 “(3) APPLICATION REVIEW.—The Secretary
11 shall adjudicate an application submitted under
12 paragraph (1) not later than 45 days after the re-
13 ceipt of such application.

14 “(4) FEES.—

15 “(A) IN GENERAL.—Each application sub-
16 mitted under paragraph (1) shall include a fee
17 in the amount determined by the Secretary ad-
18 judicating such application to be necessary to
19 cover the cost of adjudicating the application
20 within 45 days.

21 “(B) PREMIUM PROCESSING.—The Sec-
22 retary and the Secretary of State shall create
23 an expedited process to review an application
24 submitted under paragraph (1) for an addi-

1 tional fee, in an amount determined by such
2 Secretaries.

3 “(5) ELIGIBILITY FOR H-2C NONIMMIGRANT
4 STATUS.—No alien may be admitted as an H-2C
5 nonimmigrant if the alien—

6 “(A) is inadmissible under this Act;

7 “(B) fails to pass a criminal background
8 check or a national security background check;

9 “(C) is from a country determined by the
10 Secretary of State to have repeatedly provided
11 support for acts of international terrorism pur-
12 suant to—

13 “(i) section 6(j)(1)(A) of the Export
14 Administration Act of 1979 (50 U.S.C.
15 App. 2405(j)(1)(A)) (or successor statute);

16 “(ii) section 40(d) of the Arms Export
17 Control Act (22 U.S.C. 2780(d)); or

18 “(iii) section 620A(a) of the Foreign
19 Assistance Act of 1961 (22 U.S.C.
20 2371(a)); or

21 “(D) has not received an offer of employ-
22 ment from a registered employer in a registered
23 position.

24 “(6) EMPLOYMENT.—

25 “(A) INITIAL EMPLOYMENT.—

1 “(i) REPORTING TO EMPLOYMENT.—
2 An initial H-2C nonimmigrant shall report
3 to such nonimmigrant’s initial employment
4 in a registered position not later than 14
5 days after such nonimmigrant is admitted
6 to the United States.

7 “(ii) REPORTING TO THE SEC-
8 RETARY.—An initial H-2C nonimmigrant
9 shall maintain contact with the Secretary
10 after such H-2C nonimmigrant is admit-
11 ted to the United States but before report-
12 ing to the initial employment at an interval
13 that is determined by the Secretary, but
14 not less than every 7 days.

15 “(B) PERIODS OF UNEMPLOYMENT.—An
16 H-2C nonimmigrant—

17 “(i) may be unemployed for a period
18 of not more than 45 consecutive days of
19 presence in the United States; and

20 “(ii) shall depart the United States if
21 such H-2C nonimmigrant is unable to ob-
22 tain employment during such period.

23 “(7) INITIAL PERIOD OF AUTHORIZED PRES-
24 ENCE.—An H-2C nonimmigrant may be physically

1 present in the United States for an initial period of
2 not more than a total of 36 months.

3 “(8) RENEWAL.—An H-2C nonimmigrant may
4 renew his or her H-2C nonimmigrant status for not
5 more than 2 additional consecutive periods of au-
6 thorized presence.

7 “(9) TRAVEL.—An H-2C nonimmigrant may
8 travel outside the United States and be readmitted
9 to the United States.

10 “(10) PENALTIES.—If an H-2C nonimmigrant
11 fails to comply with any other term or condition of
12 H-2C nonimmigrant status or remains in the
13 United States for 10 days after the date of the expi-
14 ration of his or her period of authorized presence
15 without status under the immigration laws, then the
16 Secretary shall mandatorily—

17 “(A) subject such nonimmigrant to the
18 revocation of employment authorization; and

19 “(B) initiate and pursue removal under
20 section 237(a)(1)(C)(i).

21 “(d) REGISTERED EMPLOYER.—

22 “(1) APPLICATION.—An employer seeking to be
23 a registered employer may submit an application to
24 the Secretary. Each such application shall include
25 the following:

1 “(A) Documentation to establish that the
2 employer is a bona fide employer operating in
3 a full employment area.

4 “(B) Evidence that the employer is current
5 in payment of payroll taxes.

6 “(C) The employer’s Federal tax identifica-
7 tion number or employer identification number
8 issued by the Internal Revenue Service.

9 “(D) The number of H-2C nonimmigrants
10 the employer estimates the employer will seek
11 to employ annually.

12 “(2) REFERRAL FOR FRAUD INVESTIGATION.—
13 The Secretary may refer an application submitted
14 under paragraph (1) or subsection (e)(1)(A) to the
15 Fraud Detection and National Security Directorate
16 of U.S. Citizenship and Immigration Services for po-
17 tential investigation if there is evidence of fraud par-
18 ticular to such application.

19 “(3) INELIGIBLE EMPLOYERS.—

20 “(A) IN GENERAL.—Notwithstanding any
21 other applicable penalties under law, the Sec-
22 retary shall deny an employer’s application to
23 be a registered employer if the Secretary deter-
24 mines, after notice and an opportunity for a

1 hearing, that the employer submitting such ap-
2 plication—

3 “(i) has, in such application (includ-
4 ing any attestations required by law)—

5 “(I) knowingly misrepresented a
6 material fact;

7 “(II) knowingly made a fraudu-
8 lent statement; or

9 “(III) knowingly failed to comply
10 with the terms of such attestations;

11 “(ii) failed to cooperate in the process
12 established pursuant to subsection (m);

13 “(iii) has been convicted of an offense
14 under chapter 77 of title 18, United States
15 Code, any conspiracy to commit such an
16 offense, or any human trafficking offense
17 under State or territorial law;

18 “(iv) has, within 2 years prior to the
19 date of the application—

20 “(I) been finally adjudicated as
21 having committed any hazardous oc-
22 cupation orders violation resulting in
23 injury or death under the child labor
24 provisions contained in section 12 of
25 the Fair Labor Standards Act of

1 1938 (29 U.S.C. 212) or any perti-
2 nent regulation;

3 “(II) received a final adjudication
4 assessing a civil monetary penalty for
5 a pattern and practice of willful viola-
6 tion of the minimum wage provisions
7 of section 6 of the Fair Labor Stand-
8 ards Act of 1938 (29 U.S.C. 206); or

9 “(III) received a final adjudica-
10 tion assessing a civil monetary penalty
11 for a pattern and practice of willful
12 violation of the overtime provisions of
13 section 7 of the Fair Labor Standards
14 Act of 1938 (29 U.S.C. 207) or any
15 regulations thereunder; or

16 “(v) has, within 2 years prior to the
17 date of application, received a final adju-
18 dication for a willful violation involving in-
19 jury or death—

20 “(I) of section 5 of the Occupa-
21 tional Safety and Health Act of 1970
22 (29 U.S.C. 654);

23 “(II) of any standard, rule, or
24 order promulgated pursuant to section
25 6 of the Occupational Safety and

1 Health Act of 1970 (29 U.S.C. 655);
2 or

3 “(III) of a plan approved under
4 section 18 of the Occupational Safety
5 and Health Act of 1970 (29 U.S.C.
6 667).

7 “(B) LENGTH OF INELIGIBILITY.—

8 “(i) TEMPORARY INELIGIBILITY.—An
9 employer described in clause (i) or (ii) of
10 subparagraph (A) whose application is de-
11 nied shall not be eligible to be a registered
12 employer for a period that is not less than
13 1 year or a time period determined by the
14 Secretary, whichever is greater, and not
15 more than 2 years.

16 “(ii) PERMANENT INELIGIBILITY.—
17 An employer described in clause (iii), (iv),
18 or (v) of subparagraph (A) shall be perma-
19 nently ineligible to be a registered em-
20 ployer.

21 “(4) TERM OF REGISTRATION.—The Secretary
22 may approve an application only for a term, begin-
23 ning on the date of approval, and ending on the
24 later of—

25 “(A) the date that is 3 years thereafter; or

1 “(B) the date that is 3 months after the
2 date on which the employer has no registered
3 positions.

4 “(5) RENEWAL.—

5 “(A) IN GENERAL.—An employer may sub-
6 mit an application to renew the employer’s sta-
7 tus as a registered employer for additional peri-
8 ods under paragraph (4).

9 “(B) ATTESTATION.—An application for
10 renewal under subparagraph (A) shall include
11 an attestation described in paragraph (7)(A).

12 “(6) FEE.—At the time an employer’s applica-
13 tion to be a registered employer is approved, such
14 employer shall pay a fee of \$500, and shall pay such
15 fee every 3 years thereafter while the employer re-
16 mains a registered employer.

17 “(7) CONTINUED ELIGIBILITY.—

18 “(A) ATTESTATION.—Each registered em-
19 ployer shall attest to the Secretary each year—

20 “(i) that the registered employer has
21 provided the wages and working conditions
22 the registered employer agreed to provide
23 to its H-2C nonimmigrant employees
24 under paragraph (5)(B);

1 “(ii) that the registered employer re-
2 mains a bona fide employer operating in a
3 full employment area; and

4 “(iii) to the number of H-2C non-
5 immigrants the employer employed the
6 prior year.

7 “(B) NO LONGER A FULL EMPLOYMENT
8 AREA.—An employer is ineligible to file an ap-
9 plication for a new permit or to renew an exist-
10 ing permit if the unemployment rate in the
11 county or metropolitan statistical area where
12 the business said employer operates rises so
13 that the area is no longer designated as a full
14 employment area.

15 “(8) NOTICE OF FAILURE OF H-2C NON-
16 IMMIGRANT TO APPEAR.—An employer shall inform
17 the Secretary if an H-2C nonimmigrant does not
18 appear for employment with the employer during the
19 time period specified in subsection (c)(6)(A)(i).

20 “(e) REGISTERED POSITIONS.—

21 “(1) IN GENERAL.—

22 “(A) APPLICATION.—Each employer may
23 submit with an application or renewal under
24 subsection (d) for adjudication to the Secretary
25 an application to designate a registered position

1 for which the employer is seeking to hire an H–
2 2C nonimmigrant at any time during the year
3 without regard to the date the employer needs
4 each position to be filled.

5 “(B) ATTESTATION.—An application sub-
6 mitted under subparagraph (A) shall include a
7 general description of each such position and an
8 attestation to each of the following:

9 “(i) The number of full-time equiva-
10 lent employees of the employer.

11 “(ii) The occupational category, as
12 classified by Bureau of Labor Statistics,
13 for which each registered position is
14 sought.

15 “(iii) That the wages to be paid to H–
16 2C nonimmigrants employed by the em-
17 ployer in each registered position will be
18 the greater of—

19 “(I) the actual wage level paid by
20 the employer to other employees with
21 similar experience and qualifications
22 for such position in the same location;
23 or

24 “(II) the prevailing wage level for
25 the occupational classification of the

1 position in the metropolitan statistical
2 area of the employment, based on the
3 best information available as of the
4 time of filing the application.

5 “(iv) That the employer has carried
6 out the recruiting activities required by
7 paragraph (2)(B).

8 “(v) That, subject to subparagraphs
9 (B) and (C) of paragraph (2)—

10 “(I) there is no equally or better
11 qualified United States worker who
12 has applied for the position and who
13 is ready, willing, and able to fill such
14 position; or

15 “(II) such position qualifies as
16 an enduring job opening.

17 “(vi) That there is not a strike, lock-
18 out, or work stoppage in the course of a
19 labor dispute in the occupation at the place
20 of employment at which the H-2C non-
21 immigrant will be employed. If such strike,
22 lockout, or work stoppage occurs following
23 submission of the application, the employer
24 will provide notification in accordance with
25 all applicable regulations.

1 “(vii)(I) The employer has not laid off
2 and will not lay off a United States worker
3 during the period beginning 45 days prior
4 to and ending 45 days after the date the
5 employer files an application for designa-
6 tion of a position for which the H-2C non-
7 immigrant is sought or hires such H-2C
8 nonimmigrant, unless the employer has
9 made a reasonable effort to contact and
10 offer such United States worker the posi-
11 tion, or documented the legitimate reasons
12 that such United States worker is not
13 qualified or available for the position.

14 “(II) A United States worker is not
15 laid off for purposes of this clause if—

16 “(aa) at the time such worker’s
17 employment is terminated, such work-
18 er is not employed in the same occu-
19 pation and in the same metropolitan
20 statistical area where the registered
21 position is located. A United States
22 worker is not laid off for purposes of
23 this clause if, in the 45 calendar days
24 before the hiring of an H-2C non-
25 immigrant, the employer adds another

1 United States worker so that the total
2 number of United States workers em-
3 ployed by such employer in the same
4 occupation as such H-2C non-
5 immigrant and in the same metropoli-
6 tan statistical area where the reg-
7 istered position is located has not de-
8 creased; or

9 “(bb) in the 45 calendar days
10 after the hiring of an H-2C non-
11 immigrant, the employer adds another
12 United States worker within 5 busi-
13 ness days after laying off a United
14 States worker so that the total num-
15 ber of United States workers em-
16 ployed by such employer in the same
17 occupation as such H-2C non-
18 immigrant and in the same metropoli-
19 tan statistical area where the reg-
20 istered position is located has not de-
21 creased.

22 “(C) DEFINITIONS.—

23 “(i) BEST INFORMATION AVAIL-
24 ABLE.—In subparagraph (B)(iii)(II), the
25 term ‘best information available’, with re-

1 spect to determining the prevailing wage
2 for a position, means—

3 “(I) a controlling collective bar-
4 gaining agreement, to which the em-
5 ployer is a signatory and which sets
6 wages for work performed by H-2C
7 nonimmigrants;

8 “(II) if there is no controlling
9 collective bargaining agreement as set
10 forth in subclause (I), the local, State,
11 or Federal prevailing wage laws or or-
12 dinances, for any time period during
13 which the H-2C nonimmigrant per-
14 forms work on a project for which
15 payment of such wages is required by
16 such laws or ordinances, and the em-
17 ployer has signed a contract agreeing
18 to pay such wages on that project; or

19 “(III) if there is no controlling
20 collective bargaining agreement as set
21 forth in subclause (I) and the H-2C
22 nonimmigrant is not performing work
23 on a project governed by a prevailing
24 wage law or ordinance as set forth in
25 subclause (II)—

1 “(aa) the wage level com-
2 mensurate with the experience,
3 training, and supervision re-
4 quired for the job based on Bu-
5 reau of Labor Statistics data; or

6 “(bb) a legitimate private
7 wage survey of the wages paid
8 for such positions in the metro-
9 politan statistical area.

10 “(ii) LEGITIMATE PRIVATE WAGE
11 SURVEY.—In this paragraph, the term ‘le-
12 gitimate private wage survey’ means, in
13 the case of an application under subpara-
14 graph (A), a survey of wages by an entity
15 other than the Federal Government—

16 “(I) for which the data has been
17 collected during the 2-year period im-
18 mediately preceding the date of the
19 application;

20 “(II) that, if a published survey,
21 has been published during the 2-year
22 period immediately preceding the date
23 of the application;

24 “(III) that is of the industry or
25 occupation of intended employment;

1 “(IV) in which the employer job
2 description is similar to the survey job
3 description;

4 “(V) that is across industries
5 that employ workers in the occupa-
6 tion;

7 “(VI) for which the wage deter-
8 mination is based on a weighted or
9 straight average of the relevant wages,
10 or another valid measure of central
11 tendency determined by the Secretary
12 of Labor of relevant wage levels; and

13 “(VII) that identifies a statis-
14 tically valid methodology that was
15 used to collect the data.

16 “(D) PERMIT.—The Secretary shall pro-
17 vide each registered employer whose application
18 submitted under subparagraph (A) is approved
19 with a permit that includes the number and de-
20 scription of such employer’s approved registered
21 positions at the time of such approval.

22 “(E) REGISTRY OF REGISTERED POSI-
23 TIONS.—

1 “(i) MAINTENANCE OF REGISTRY.—

2 The Secretary shall develop and maintain
3 a registry of registered positions.

4 “(ii) AVAILABILITY ON WEBSITE.—

5 Such registry shall be accessible on a
6 website maintained by the Secretary.

7 “(iii) AVAILABILITY ON STATE WORK-

8 FORCE AGENCY WEBSITES.—Each work-
9 force agency of each State shall be linked
10 to such registry.

11 “(iv) CONDITIONS OF AVAILABILITY

12 ON WEBSITE.—

13 “(I) REGISTERED POSITIONS.—

14 Each registered position shall be in-
15 cluded in the registry of registered po-
16 sitions maintained by the Secretary
17 and shall remain available for viewing
18 on such registry throughout the pe-
19 riod of approval under paragraph (5).

20 “(II) AVAILABILITY AND ELIGI-

21 BILITY.—The Secretary shall ensure
22 that the registry indicates whether
23 each registered position in the registry
24 is filled or unfilled.

25 “(2) REQUIREMENTS.—

1 “(A) ELIGIBLE OCCUPATION.—Each reg-
2 istered position shall be for a position in an eli-
3 gible occupation as described in paragraph (3).

4 “(B) RECRUITMENT OF UNITED STATES
5 WORKERS.—

6 “(i) REQUIREMENTS.—A position may
7 not be a registered position unless the reg-
8 istered employer—

9 “(I) advertises the position for a
10 period of 30 days, including the wage
11 range, location or locations, and pro-
12 posed start date—

13 “(aa) on the Internet
14 website maintained by the Sec-
15 retary of Labor for the purpose
16 of such advertising; and

17 “(bb) with the workforce
18 agency of the State where the po-
19 sition will be located; and

20 “(II) except as provided for in
21 subsection (f)(4)(A)(ii), carries out
22 not less than 3 of the recruiting ac-
23 tivities described in subparagraph (C).

24 “(ii) DURATION OF ADVERTISING.—
25 The 30-day periods required by items (aa)

1 and (bb) of clause (i)(I) may occur at the
2 same time.

3 “(C) RECRUITING ACTIVITIES.—Recruiting
4 activities described in this subparagraph shall
5 take place no earlier than 60 days before an
6 employer files an application for a permit to
7 hire an H-2C nonimmigrant and may be con-
8 current with the requirements of subsection
9 (e)(2)(B). A recruiting activity is any of the fol-
10 lowing:

11 “(i) Advertising such position at a job
12 fair.

13 “(ii) Advertising such position on the
14 employer’s external website.

15 “(iii) Advertising such position on a
16 job search Internet website.

17 “(iv) Advertising such position using a
18 presentation or posting at a vocational
19 school, career technical school, community
20 college, high school, or other educational or
21 training site.

22 “(v) Posting such position with a
23 trade association.

24 “(vi) Utilizing a search firm to seek
25 applicants for such position.

1 “(vii) Advertising such position
2 through a recruitment program with a
3 placement office at a vocational school, ca-
4 reer technical school, community college,
5 high school, or other educational or train-
6 ing site.

7 “(viii) Advertising such position with
8 a local library, journal, or newspaper.

9 “(ix) Seeking a candidate for such po-
10 sition through an employee referral pro-
11 gram with incentives.

12 “(x) Advertising such position on
13 radio or television.

14 “(xi) Advertising such position
15 through an advertising, posting, or presen-
16 tation with a newspaper, Internet website,
17 job fair, or community event targeted to
18 constituencies designed to increase em-
19 ployee diversity.

20 “(xii) Advertising such position
21 through a career day presentation at a
22 local high school or community organiza-
23 tion.

24 “(xiii) Providing in-house training for
25 such position.

1 “(xiv) Providing third-party training
2 for such position.

3 “(xv) Advertising such position
4 through recruitment, educational, or other
5 cooperative programs offered by the em-
6 ployer and a local economic development
7 authority.

8 “(xvi) Advertising such position twice
9 in a Sunday edition in a primary daily cir-
10 culation newspaper.

11 “(3) ELIGIBLE OCCUPATION.—

12 “(A) IN GENERAL.—An occupation is an
13 eligible occupation if the occupation—

14 “(i) is a zone 1 occupation, a zone 2
15 occupation, or zone 3 occupation; and

16 “(ii) is not an excluded occupation
17 under subparagraph (B).

18 “(B) OCCUPATIONS REQUIRING COLLEGE
19 DEGREES.—An occupation that is listed in the
20 Occupational Outlook Handbook published by
21 the Bureau of Labor Statistics (or similar suc-
22 cessor publication) that is classified as requir-
23 ing an individual with a bachelor’s degree or
24 higher level of education may not be an eligible
25 occupation.

1 “(C) PUBLICATION.—The Secretary of
2 Labor shall publicize the eligible occupations,
3 designated as zone 1 occupations, zone 2 occu-
4 pations, or zone 3 occupations, on an ongoing
5 basis on a publicly available Internet website.

6 “(4) FILLING OF VACANCIES.—If an H-2C
7 nonimmigrant terminates employment in a reg-
8 istered position or is terminated from such employ-
9 ment by the registered employer, such employer may
10 fill that vacancy by hiring an H-2C nonimmigrant
11 other than an initial H-2C nonimmigrant.

12 “(5) PERIOD OF APPROVAL.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), a registered position shall be
15 approved by the Secretary for a period that be-
16 gins on the date of such approval and ends on
17 the earliest of—

18 “(i) the date the employer’s status as
19 a registered employer is terminated;

20 “(ii) 3 years after the date of such ap-
21 proval;

22 “(iii) 240 days after the date of such
23 approval if such position has not been
24 filled by an H-2C nonimmigrant at any
25 point during such time; or

1 “(iv) upon termination of the reg-
2 istered position by the employer.

3 “(B) RENEWAL.—An approval under sub-
4 paragraph (A) shall be renewed for not more
5 than 2 additional periods at the request of the
6 registered employer as provided in this subpara-
7 graph if such registered employer fulfills the re-
8 quirements of paragraphs (1)(C) and (2).

9 “(C) RENEWING EMPLOYER EXEMPTION.—
10 Renewals of registered positions by employers
11 shall not be counted toward the limits estab-
12 lished under paragraph (1)(A) or (2)(D) of sub-
13 section (f) or counted for the purposes of a nu-
14 merical limitation under subparagraph (B) or
15 (C) of subsection (f)(2).

16 “(D) SECRETARY AUTHORITY TO TERMI-
17 NATE REGISTERED POSITION.—The Secretary
18 shall terminate a registered position if the Sec-
19 retary determines—

20 “(i) that an employer has purposefully
21 allowed a registered position to be used for
22 an alien to gain admission to the United
23 States as an H-2C nonimmigrant with no
24 intention of such alien working for such
25 registered employer; or

1 “(ii) that there exists a pattern and
2 practice of initial H-2C nonimmigrants
3 failing to report in accordance with the
4 time period specified in subsection
5 (c)(6)(A)(i).

6 “(6) FEES.—

7 “(A) REGISTRATION FEE.—

8 “(i) IN GENERAL.—At the time an ap-
9 plication to register a position is approved
10 and after each renewal of such position,
11 each registered employer shall pay a fee in
12 an amount determined by the Secretary.

13 “(ii) USE OF FEE.—Except as other-
14 wise provided in this section, a fee col-
15 lected under clause (i) shall be used to
16 fund any action to carry out this section,
17 except for subsection (q) and subsection
18 (p)(2).

19 “(B) PROHIBITION ON OTHER FEES.—A
20 registered employer may not be required to pay
21 an additional fee other than any fees specified
22 in this Act.

23 “(7) INITIAL REVIEW OF APPLICATIONS.—

24 “(A) IN GENERAL.—For applications filed
25 and considered under paragraph (1)—

1 “(i) unless the Secretary determines
2 that the application is incomplete, facially
3 invalid, or obviously inaccurate, the Sec-
4 retary, not later than 10 business days
5 after the date on which such application
6 was filed, shall either approve or reject the
7 application and provide the applicant with
8 notice of such action by means ensuring
9 same or next day delivery; and

10 “(ii) if the Secretary determines that
11 the application is incomplete, facially in-
12 valid, or obviously inaccurate, the Sec-
13 retary shall—

14 “(I) not later than 10 business
15 days after the date on which such ap-
16 plication was filed, notify the appli-
17 cant of the deficiencies to be corrected
18 by means ensuring same or next day
19 delivery; and

20 “(II) not later than 10 business
21 days after receipt of the corrected ap-
22 plication, approve or deny the applica-
23 tion and provide the applicant with
24 notice of such action by means ensur-
25 ing same or next day delivery.

1 “(B) PREMIUM PROCESSING.—The Sec-
2 retary shall establish a process for expedited
3 processing of applications under this section,
4 subject to the payment of an additional fee, as
5 determined by the Secretary.

6 “(C) FEE REDUCTION.—The Secretary
7 shall reduce the registration fee under para-
8 graph (6) by 5 percent for each day the applica-
9 tion is delayed beyond the required review peri-
10 ods under subparagraph (A).

11 “(8) EXPEDITED REVIEW.—Not later than 1
12 year after the date of enactment of the Workforce
13 for an Expanding Economy Act, the Secretary shall
14 promulgate regulations to provide for an expedited
15 procedure for the review of a denial of an application
16 under this section by the Secretary.

17 “(f) NUMERICAL LIMITATION.—

18 “(1) REGISTERED POSITIONS.—Subject to
19 paragraphs (3), (4), and (5), the maximum number
20 of registered positions that may be approved by the
21 Secretary for a fiscal year is as follows:

22 “(A) For the first full fiscal year after the
23 effective date of the Workforce for an Expand-
24 ing Economy Act that aliens are admitted as
25 H–2C nonimmigrants, 65,000.

1 “(B) For each fiscal year after that first
2 fiscal year, the level calculated for that fiscal
3 year under paragraph (2).

4 “(2) SUBSEQUENT FISCAL YEARS.—

5 “(A) DEFINITION OF CURRENT FISCAL
6 YEAR AND PRECEDING FISCAL YEAR.—In this
7 paragraph:

8 “(i) CURRENT FISCAL YEAR.—The
9 term ‘current fiscal year’ means the fiscal
10 year for which the calculation of the nu-
11 merical limits under this paragraph is
12 being performed.

13 “(ii) PRECEDING FISCAL YEAR.—The
14 term ‘preceding fiscal year’ means the fis-
15 cal year immediately preceding the current
16 fiscal year.

17 “(B) NUMERICAL LIMITATION.—Subject to
18 subparagraph (D), the maximum number of
19 registered positions that may be approved by
20 the Secretary for a fiscal year after the first fis-
21 cal year referred to in paragraph (1)(A) shall
22 be equal to—

23 “(i) 65,000 for the first fiscal year in
24 which the program is implemented; and

25 “(ii) in any subsequent fiscal year—

1 “(I) if the total number of reg-
2 istered positions allocated for that fis-
3 cal year are allotted within the first
4 quarter of that fiscal year, then an
5 additional 20 percent of the allocated
6 number shall be made available imme-
7 diately and the allocated amount for
8 the following fiscal year shall increase
9 by 20 percent of the original allocated
10 amount in the prior fiscal year;

11 “(II) if the total number of reg-
12 istered positions allocated for that fis-
13 cal year are allotted within the second
14 quarter of that fiscal year, then an
15 additional 15 percent of the allocated
16 number shall be made available imme-
17 diately and the allocated amount for
18 the following fiscal year shall increase
19 by 15 percent of the original allocated
20 amount in the prior fiscal year;

21 “(III) if the total number of reg-
22 istered positions allocated for that fis-
23 cal year are allotted within the third
24 quarter of that fiscal year, then an
25 additional 10 percent of the allocated

1 number shall be made available imme-
2 diately and the allocated amount for
3 the following fiscal year shall increase
4 by 10 percent of the original allocated
5 amount in the prior fiscal year;

6 “(IV) if the total number of reg-
7 istered positions allocated for that fis-
8 cal year are allotted within the last
9 quarter of that fiscal year, then the
10 allocated amount for the following fis-
11 cal year shall increase by 10 percent
12 of the original allocated amount in the
13 prior fiscal year; and

14 “(V) with the exception of the
15 first subsequent fiscal year to the fis-
16 cal year in which the program is im-
17 plemented, if fewer registered posi-
18 tions were allotted the previous fiscal
19 year than the number of registered
20 positions allocated for that year and
21 the reason was not due to processing
22 delays or delays in promulgating regu-
23 lations, then the allocated amount for
24 the following fiscal year shall decrease

1 by 10 percent of the allocated amount
2 in the prior fiscal year.

3 “(C) MINIMUM AND MAXIMUM LEVELS.—
4 Notwithstanding the number of registered posi-
5 tions calculated under subparagraph (B), the
6 number of registered positions made available
7 for a fiscal year under this paragraph may not
8 be less than 45,000 or more than 85,000.

9 “(D) SUBSEQUENT ALLOCATIONS.—
10 “(i) IN GENERAL.—Subject to the
11 limitations under subparagraph (C)—

12 “(I) the maximum number of
13 registered positions available for the
14 current fiscal year calculated under
15 subparagraph (B) may be increased
16 for the 6-month period beginning on
17 the first day of the current fiscal year
18 by 5 percent of the maximum number
19 of registered positions allocated for
20 that 6-month period under subsection
21 (h)(1), if all such allocated registered
22 positions have been approved prior to
23 the 6th month of that 6-month period;
24 and

1 “(II) the maximum number of
2 registered positions available for the
3 current fiscal year calculated under
4 subparagraph (B) may be increased
5 for the 6-month period ending on the
6 last day of the current fiscal year by
7 5 percent of the maximum number of
8 registered positions allocated for that
9 6-month period under subsection
10 (h)(2), if all such allocated registered
11 positions have been approved prior to
12 the 6th month of that 6-month period.

13 “(ii) LOTTERY ALLOCATION.—Addi-
14 tional registered positions made available
15 under clause (i) during a 6-month period
16 shall be allocated 3 weeks prior to the last
17 day of that 6-month period by lottery
18 among registered employers that submit
19 applications in accordance with this section
20 for such positions.

21 “(3) SPECIAL ALLOCATIONS OF REGISTERED
22 POSITIONS.—

23 “(A) AUTHORITY TO MAKE AVAILABLE.—
24 In addition to the number of registered posi-
25 tions made available for a fiscal year under

1 paragraphs (1) and (3), the Secretary shall
2 make additional registered positions available,
3 up to the maximum number of registered posi-
4 tions specified in paragraph (3)(C), for the fis-
5 cal year for a specific registered employer as
6 described in this paragraph, if—

7 “(i)(I) the maximum number of reg-
8 istered positions available under paragraph
9 (2)(B) have been approved for the fiscal
10 year and none remain available for alloca-
11 tion; or

12 “(II) such registered employer is lo-
13 cated in a full employment area;

14 “(ii) such registered employer has
15 paid a scarcity recruitment fee; or

16 “(iii) in the case of registered employ-
17 ers with 50 or fewer employees, such reg-
18 istered employer has carried out not less
19 than 7 of the recruiting activities described
20 in subsection (e)(2)(C) and posts the posi-
21 tion, including the wage range, location,
22 and initial date of employment, for not less
23 than 30 days—

24 “(I) on the Internet website
25 maintained by the Secretary of Labor

1 for the purpose of such advertising;
2 and

3 “(II) with the workforce agency
4 of the State where the position will be
5 located.

6 “(B) RECRUITMENT.—

7 “(i) LIMITATION FOR INITIAL H-2C
8 NONIMMIGRANTS.—Except as provided in
9 clause (ii), an initial H-2C nonimmigrant
10 may only enter the United States for ini-
11 tial employment pursuant to a special allo-
12 cation under this paragraph if the reg-
13 istered employer has carried out at least 7
14 of the recruiting activities described in sub-
15 section (e)(2)(C) or has paid a scarcity re-
16 cruitment fee.

17 “(ii) EXCEPTION.—A registered em-
18 ployer may register a position pursuant to
19 a special allocation under this paragraph
20 by conducting at least 3 of the recruiting
21 activities described in subsection (e)(2)(C),
22 however a position registered pursuant to
23 this clause may not be filled by an initial
24 H-2C nonimmigrant.

25 “(iii) ADVERTISING THE POSITION.—

1 “(I) REQUIREMENT.—Any reg-
2 istered employer registering any posi-
3 tion under the special allocation au-
4 thority shall post the position, includ-
5 ing the wage range, location or loca-
6 tions, and initial date of employment,
7 for not less than 30 days—

8 “(aa) on the Internet
9 website maintained by the Sec-
10 retary of Labor for the purpose
11 of such advertising; and

12 “(bb) with the workforce
13 agency of the State where the po-
14 sition will be located.

15 “(II) TIMING.—The 30-day peri-
16 ods required by items (aa) and (bb) of
17 subclause (I) may occur at the same
18 time.

19 “(4) UNFILLED POSITIONS.—If an H-2C non-
20 immigrant has not been employed in registered posi-
21 tion during any portion of the 240-day period after
22 the date of the approval of the position, the reg-
23 istered position shall be terminated and added to the
24 number of positions made available for the next 6-

1 month allocation period under paragraph (1) or (2)
2 of subsection (i).

3 “(g) FEDERAL PUBLIC BENEFITS.—

4 “(1) IN GENERAL.—H–2C nonimmigrants—

5 “(A) are not entitled to the premium as-
6 sistance tax credit authorized under section
7 36B of the Internal Revenue Code of 1986;

8 “(B) shall be subject to the rules applica-
9 ble to individuals who are not lawfully present
10 as set forth in subsection (e) of such section;
11 and

12 “(C) shall not be allowed any credit under
13 section 24 or 32 of the Internal Revenue Code
14 of 1986, and, in the case of a joint return, no
15 credit shall be allowed under either such section
16 if both spouses are H–2C nonimmigrants.

17 “(2) EMPLOYER FEE.—For purposes of sub-
18 sections (a)(2), (b)(1)(B), and (c)(2)(A) of section
19 4980H of the Internal Revenue Code of 1986, the
20 H–2C nonimmigrant shall be treated as a full-time
21 employee certified as having enrolled in a qualified
22 health plan with respect to which an applicable pre-
23 mium tax credit or cost-sharing reduction is allowed
24 or paid with respect to the employee.

25 “(h) ALLOCATION OF REGISTERED POSITIONS.—

1 “(1) IN GENERAL.—

2 “(A) FIRST 6-MONTH PERIOD.—The num-
3 ber of registered positions available under para-
4 graph (2) of subsection (f) (except those made
5 available under subparagraph (E) of such para-
6 graph) for the 6-month period beginning on the
7 first day of a year is 50 percent of the max-
8 imum number of registered positions available
9 for such year under paragraph (1)(A)(i) or
10 (2)(B) of subsection (f). Such registered posi-
11 tions shall be allocated as described in this sub-
12 section.

13 “(B) SECOND 6-MONTH PERIOD.—The
14 number of registered positions available under
15 paragraph (2) of subsection (f) (except those
16 made available under subparagraph (E) of such
17 paragraph) for the 6-month period ending on
18 the last day of a year is the maximum number
19 of registered positions available for such year
20 under paragraph (1)(A)(i) or (2)(B) of sub-
21 section (f) minus the number of registered posi-
22 tions approved during the 6-month period re-
23 ferred to in subparagraph (A). Such registered
24 positions shall be allocated as described in this
25 subsection.

1 “(2) SMALL BUSINESSES.—

2 “(A) IN GENERAL.—The Secretary shall
3 reserve not less than one quarter of the number
4 of registered positions initially allocated for
5 each 6-month period under subsection (f)(2)(B)
6 only for a registered employer that is a small
7 business unless—

8 “(i) any such registered positions are
9 not approved in the first 4 months of each
10 6-month period; or

11 “(ii) less than one quarter of the reg-
12 istered positions initially allocated for the
13 6-month period remain available after the
14 first month.

15 “(B) CONDITION MET.—If a condition re-
16 ferred to in clause (i) or (ii) of subparagraph
17 (A) is met, any remaining registered positions
18 shall be available for any registered employer.

19 “(i) PORTABILITY.—

20 “(1) NONIMMIGRANT PORTABILITY.—An H-2C
21 nonimmigrant who is employed in a registered posi-
22 tion may—

23 “(A) be employed at any worksite if the
24 registered employer advertised such location

1 under subsection (e)(2)(B)(i)(I) or
2 (f)(3)(B)(iii);

3 “(B) terminate such employment at any
4 time, for any reason; and

5 “(C) seek and accept employment with an-
6 other registered employer in any other reg-
7 istered position within the terms and conditions
8 of the H-2C nonimmigrant visa.

9 “(2) EMPLOYER PORTABILITY.—A registered
10 employer who employs an H-2C nonimmigrant
11 may—

12 “(A) employ such nonimmigrant at any
13 worksite if the registered employer advertised
14 such location under subsection (e)(2)(B)(i)(I)
15 or (f)(3)(B)(iii);

16 “(B) terminate such employment at any
17 time for any reason if such reason is lawful for
18 United States workers; and

19 “(C) seek and hire another H-2C non-
20 immigrant in accordance with subsection (e)(4).

21 “(3) AT-WILL EMPLOYMENT.—Notwithstanding
22 any other provision of law, employment pursuant to
23 this section shall be considered at-will unless speci-
24 fied by a contract agreed to by the H-2C non-
25 immigrant and the registered employer.

1 “(j) PROMOTION.—A registered employer may pro-
2 mote an H-2C nonimmigrant if the H-2C nonimmigrant
3 has been employed with that employer for a period of not
4 less than 12 months. Such a promotion shall not increase
5 the total number of registered positions available to that
6 employer.

7 “(k) ASSESSING THE IMPACT OF THE H-2C PRO-
8 GRAM.—

9 “(1) STUDY.—The Director of the Bureau of
10 the Census, jointly with the Secretary, the Secretary
11 of Energy, the Secretary of Health and Human
12 Services, the Secretary of Housing and Urban De-
13 velopment, the Secretary of the Interior, the Sec-
14 retary of Labor, the Secretary of Transportation,
15 the Secretary of the Treasury, and the Attorney
16 General, shall undertake a study examining the im-
17 pacts of this section as well as a possible future per-
18 manent H-2C program on the infrastructure of, and
19 quality of life in, the participating metropolitan sta-
20 tistical areas and counties.

21 “(2) REPORT.—Not later than 3 years after the
22 date of the enactment of the Workforce for an Ex-
23 panding Economy Act, the Director of the Bureau
24 of the Census shall submit to Congress a report on

1 the findings of the study required by paragraph (1),
2 including the following information:

3 “(A) An estimate of legal and illegal immi-
4 grants in participating counties and metropoli-
5 tan statistical areas, the estimated change in
6 those populations since commencement of the
7 program, and the estimated change to the num-
8 ber of United States workers in such counties
9 and metropolitan statistical areas.

10 “(B) The impact of H-2C nonimmigrants
11 on employment and wage rates for United
12 States workers in State labor markets affected
13 by worker inflows into the full employment
14 areas where the program operates. The study
15 should pay particular attention to the industries
16 and services in which H-2C nonimmigrants are
17 concentrated. It should take into consideration
18 equilibrating labor flows in and out of said full
19 employment areas, and it should consider asso-
20 ciated costs and benefits, including those re-
21 lated to public services, infrastructure mainte-
22 nance, business startups, investment, and over-
23 all economic activity.

24 “(C) The impact of H-2C nonimmigrants
25 on home ownership rates, housing prices, and

1 the demand for low-income and subsidized
2 housing in participating counties and metropoli-
3 tan statistical areas and the public expenditures
4 required to maintain current median standards
5 in these areas and the degree to which those
6 standards will deteriorate if such expenditures
7 are not forthcoming.

8 “(D) The impact of H-2C nonimmigrants
9 on access to quality health care in participating
10 counties and metropolitan statistical areas, on
11 the cost of health care and health insurance,
12 and an estimate of the public expenditures re-
13 quired to maintain current median standards
14 and the degree to which those standards will
15 deteriorate if such expenditures are not forth-
16 coming.

17 “(E) The impact of H-2C nonimmigrants
18 on the criminal justice system in participating
19 counties and metropolitan statistical areas, and
20 an estimate of associated public costs.

21 “(F) The impact of permitting non-sea-
22 sonal low skilled workers that currently do not
23 qualify for H-2C nonimmigrant status to qual-
24 ify for H-2C nonimmigrant status or of cre-
25 ating a new program to provide nonimmigrant

1 status for such non-seasonal low skilled work-
2 ers, including—

3 “(i) any impact on United States
4 workers;

5 “(ii) any impact on employers that
6 are utilizing H–2C nonimmigrants;

7 “(iii) any impact on employers that do
8 not qualify to employ H–2C non-
9 immigrants; and

10 “(iv) any impact on H–2C non-
11 immigrants.

12 “(1) H–2C NONIMMIGRANT PROTECTIONS.—

13 “(1) WAIVER OF RIGHTS PROHIBITED.—

14 “(A) IN GENERAL.—An H–2C non-
15 immigrant may not be required to waive any
16 substantive rights or protections under this Act.

17 “(B) CONSTRUCTION.—Nothing in this
18 paragraph may be construed to affect the inter-
19 pretation of any other law.

20 “(2) PROHIBITION ON TREATMENT AS INDE-
21 PENDENT CONTRACTORS.—

22 “(A) IN GENERAL.—Notwithstanding any
23 other provision of law—

24 “(i) an H–2C nonimmigrant is prohib-
25 ited from being treated as an independent

1 contractor under any Federal or State law;
2 and

3 “(ii) no person, including any em-
4 ployer, labor contractor, or any person who
5 is affiliated with or contracts with an em-
6 ployer or labor contractor, may treat an
7 H-2C nonimmigrant as an independent
8 contractor.

9 “(B) CONSTRUCTION.—Subparagraph (A)
10 may not be construed to prevent registered em-
11 ployers who operate as independent contractors
12 from employing H-2C nonimmigrants.

13 “(3) PAYMENT OF FEES.—A fee related to the
14 hiring of an H-2C nonimmigrant required to be paid
15 by an employer under this Act shall be paid by the
16 employer and may not be deducted from the wages
17 or other compensation paid to an H-2C non-
18 immigrant.

19 “(4) TAX RESPONSIBILITIES.—An employer
20 shall comply with all applicable Federal, State, and
21 local tax laws with respect to each H-2C non-
22 immigrant employed by the employer.

23 “(5) WHISTLEBLOWER PROTECTION.—It shall
24 be unlawful for an employer of an H-2C non-
25 immigrant to intimidate, threaten, restrain, coerce,

1 retaliate, discharge, or in any other manner discrimi-
2 nate against an employee or former employee be-
3 cause the employee or former employee—

4 “(A) discloses information to the employer
5 or any other person that the employee or
6 former employee reasonably believes that the
7 employer or other person has committed a vio-
8 lation of this section; or

9 “(B) cooperates or seeks to cooperate in an
10 investigation or other proceeding concerning
11 compliance with the requirements of this sec-
12 tion.

13 “(m) ENFORCEMENT.—

14 “(1) COMPLAINT PROCESS.—The Secretary
15 shall, by rule, establish a process for the receipt, in-
16 vestigation, and disposition of complaints by an ag-
17 grieved employee, applicant, or H-2C nonimmigrant
18 respecting a violation of this section.

19 “(2) FILING DEADLINE.—No investigation or
20 hearing shall be conducted on a complaint con-
21 cerning a violation under this section unless the
22 complaint was filed not later than 3 months after
23 the date of such violation.

24 “(3) REASONABLE BASIS.—The Secretary shall
25 conduct an investigation under this subsection if

1 there is reasonable basis to believe that a violation
2 of this section has occurred. The process established
3 under this subsection shall provide that, not later
4 than 30 days after a complaint is filed, the Sec-
5 retary shall determine if there is reasonable cause to
6 find such a violation.

7 “(4) NOTICE AND HEARING.—

8 “(A) IN GENERAL.—Not later than 30
9 days after the Secretary finds a reasonable
10 basis under paragraph (3), the Secretary shall
11 issue a notice to the interested parties and offer
12 an opportunity for a hearing on the complaint,
13 in accordance with section 556 of title 5,
14 United States Code.

15 “(B) HEARING DEADLINE.—Not later than
16 60 days after the date of a hearing under this
17 paragraph, the Secretary shall make a finding
18 on the matter.

19 “(5) ATTORNEY’S FEES.—

20 “(A) AWARD.—A complainant who prevails
21 in an action under this subsection with respect
22 to a claim related to wages or compensation for
23 employment shall be entitled to an award of
24 reasonable attorney’s fees and costs.

1 “(B) FRIVOLOUS COMPLAINTS.—A com-
2 plainant who files a frivolous complaint under
3 this subsection shall be liable for the reasonable
4 attorney’s fees and costs of the person named
5 in the complaint.

6 “(6) POWER OF THE SECRETARY.—The Sec-
7 retary may bring an action in any court of com-
8 petent jurisdiction—

9 “(A) to seek remedial action, including in-
10 junctive relief;

11 “(B) to recover the damages described in
12 subsection (n)(2); or

13 “(C) to ensure compliance with terms and
14 conditions described in subsection (l)(5).

15 “(7) OTHER RIGHTS OF EMPLOYEES.—The
16 rights and remedies provided to H-2C non-
17 immigrants under this section are in addition to any
18 other contractual or statutory rights and remedies of
19 the workers, and are not intended to alter or affect
20 such rights and remedies.

21 “(8) COMPLIANCE.—De minimis variations
22 from the registered position’s duties described in the
23 application and related materials or from the posi-
24 tion’s general description provided in the attestation
25 or the advertising requirements pursuant to sub-

1 section (e), including de minimis work or work inci-
2 dental to the job, shall be permitted and not be
3 cause for complaint, referral, investigation, audit, or
4 penalties.

5 “(n) PENALTIES.—

6 “(1) IN GENERAL.—If, after notice and an op-
7 portunity for a hearing, the Secretary finds a viola-
8 tion of this section, the Secretary may impose ad-
9 ministrative remedies and penalties, including re-
10 quiring the payment of—

11 “(A) back wages; and

12 “(B) benefits.

13 “(2) CIVIL PENALTIES.—The Secretary may
14 bring an action for a civil monetary penalty—

15 “(A) for a violation of this section—

16 “(i) in an amount not more than
17 \$3,000 for the first violation and \$4,000
18 per violation for each subsequent violation;
19 or

20 “(ii) if the violation was committed
21 knowingly, a fine in an amount not more
22 than \$5,000 per violation;

23 “(B) for intentionally failing to comply
24 with the protections of United States workers
25 required under this section or with the protec-

1 tion of whistleblowers under subsection (l)(5), a
2 fine in an amount not more than \$25,000 per
3 violation; or

4 “(C) for knowingly failing to materially
5 comply with the terms of other representations
6 made in petitions, applications, certifications, or
7 attestations under this section—

8 “(i) a fine in an amount not more
9 than \$4,000 per violation; and

10 “(ii) upon the occasion of a third of-
11 fense of failure to comply with representa-
12 tions, a fine in an amount not to exceed
13 \$5,000 per violation and designation as an
14 ineligible employer, pursuant to subsection
15 (d)(3)(B)(i).

16 “(3) CRIMINAL PENALTY.—Any H-2C non-
17 immigrant who intentionally fails to report to a reg-
18 istered position in the time period specified in sub-
19 section (c)(6)(A)(i) or a registered employer who
20 knowingly facilitates an H-2C nonimmigrant to in-
21 tentionally fail to report in the time period specified
22 above shall—

23 “(A) for a first offense, be fined in accord-
24 ance with title 18, United States Code, in an

1 amount up to \$5,000, or imprisoned for not
2 more than 90 days; and

3 “(B) for each subsequent offense, be fined
4 in accordance with title 18, United States Code,
5 in an amount up to \$10,000, or imprisoned for
6 not more than 1 year, or both.

7 “(o) MONITORING.—

8 “(1) ELECTRONIC MONITORING SYSTEM.—

9 “(A) REQUIREMENT FOR SYSTEM.—The
10 Secretary, through U.S. Citizenship and Immi-
11 gration Services, shall implement an electronic
12 monitoring system to monitor the presence and
13 employment of H-2C nonimmigrants, including
14 a requirement that registered employers update
15 the system when H-2C nonimmigrants start
16 and end employment in registered positions.
17 The system shall be operational not later than
18 6 months following the date of the publication
19 of the final regulations to carry out this section.

20 “(B) RELATIONSHIP TO SEVIS.—Such sys-
21 tem shall be modeled on the Student and Ex-
22 change Visitor Information System (SEVIS)
23 and SEVIS II tracking system of U.S. Immi-
24 gration and Customs Enforcement.

1 “(C) INTERACTION WITH REGISTRY.—
2 Such system shall interact with the registry re-
3 ferred to in subsection (e)(1)(E) to ensure that
4 the Secretary designates and updates approved
5 registered positions as being filled or unfilled.

6 “(D) EMPLOYER.—The employer shall no-
7 tify such system after offering employment to
8 an H-2C nonimmigrant.

9 “(E) ACCESS FOR SECRETARY OF
10 STATE.—The Secretary of State shall have ac-
11 cess to such system to verify an alien’s offer of
12 employment with a registered employer prior to
13 admission as an H-2C nonimmigrant.

14 “(2) MANDATORY E-VERIFY USE.—No reg-
15 istered employer may employ an H-2C non-
16 immigrant without participating in the E-Verify
17 Program described in section 403(a) of the Illegal
18 Immigration Reform and Immigrant Responsibility
19 Act of 1996 (8 U.S.C. 1324a note) or an employ-
20 ment eligibility verification system patterned on such
21 Program’s verification system. Any such system—

22 “(A) shall respond to inquiries made by
23 registered employers by providing an employee’s
24 employment eligibility; and

1 “(B) shall not be used, subject to a civil
2 monetary penalty determined by the Secretary
3 by rule—

4 “(i) by any department, bureau, or
5 other agency of the United States Govern-
6 ment, any other public or private entity, or
7 any individual to monitor the movement of
8 United States workers; or

9 “(ii) for inquiries related to a United
10 States worker other than—

11 “(I) to provide such worker’s eli-
12 gibility for employment in the United
13 States; or

14 “(II) to ensure secure, appro-
15 priate, and nondiscriminatory use of
16 such system, notwithstanding any
17 other provision of law.

18 “(p) REQUIREMENT TO COMPLY WITH BIOMETRIC
19 ENTRY AND EXIT SYSTEM.—Any alien entering the
20 United States or present in the United States on a visa
21 issued under section 101(a)(15)(H)(ii)(c) shall comply
22 with the requirements of the entry and exit data system
23 required by section 7208 of the Intelligence Reform and
24 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), in-

1 cluding the biometric identification requirements, after
2 such requirements are implemented.

3 “(q) RULEMAKING.—Not later than 1 year after the
4 date of the enactment of the Workforce for an Expanding
5 Economy Act, the Secretary shall, by rule, provide for a
6 means by which any renewal, attestation, or application
7 filed pursuant to this section may be made electronically.”.

8 (2) TABLE OF CONTENTS AMENDMENT.—The
9 table of contents in the first section of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1101 et seq.) is
11 amended by adding after the item relating to section
12 219 the following:

“Sec. 219A. Admission of H-2C nonimmigrant workers.”.

13 (b) INTENTION TO ABANDON FOREIGN RESI-
14 DENCE.—Section 214(h) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1184(h)) is amended by inserting
16 “(H)(ii)(d),” after “(H)(i)(b) or (c),”.

17 (c) PROHIBITION ON FAMILY MEMBERS.—Section
18 101(a)(15)(H) of the Immigration and Nationality Act (8
19 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
20 the end and inserting “him, except that the Secretary of
21 State shall not issue a visa under clause (ii)(d) to a spouse
22 or child seeking to enter into the United States under such
23 clause unless such spouse has received an offer of employ-

1 ment by a registered employer as defined in section
2 219A;”.

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