

117TH CONGRESS
2D SESSION

H. R. 7239

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2022

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 “Essential Workers for
5 Economic Advancement 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 or less than 7.9
23 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) INDUSTRIES WITH COMPARATIVELY LOW
9 SALES PER EMPLOYEE.—The term ‘industries with
10 comparatively low sales per employee’ means those
11 industries that rank in the lowest ten when dividing
12 sales by the number of employees in the ECNBASIC
13 Dataset, as shown in the ‘All Sectors: Summary Sta-
14 tistics for the U.S.’ using the three-digits North
15 American Industry Classification System (NAICS).
16 This table provides summary statistics for establish-
17 ments and firms with paid employees.

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

20 “(A) issued an H-2C-nonimmigrant visa
21 by the Secretary of State authorizing the ad-
22 mission of that alien to the United States for
23 the first time as an H-2C nonimmigrant; and

24 “(B) does not include an alien on or after
25 the date the alien commences employment in

1 H-2C nonimmigrant status with a registered
2 employer in a registered position.

3 “(10) LAY OFF.—The term ‘lay off’—

4 “(A) means to cause a worker to lose em-
5 ployment, other than through a discharge for
6 inadequate performance, violation of workplace
7 rules, cause, voluntary departure, voluntary re-
8 tirement, or the expiration of a grant or con-
9 tract; and

10 “(B) does not include any situation in
11 which the worker is offered and refused to ac-
12 cept, as an alternative to such loss of employ-
13 ment, a similar employment opportunity with
14 the same employer at equivalent or higher com-
15 pensation and benefits than the position from
16 which the employee was discharged.

17 “(11) METROPOLITAN STATISTICAL AREA.—
18 The term ‘metropolitan statistical area’ means a ge-
19 ographic area designated as a metropolitan statis-
20 tical area by the Director of the Office of Manage-
21 ment and Budget.

22 “(12) REGISTERED EMPLOYER.—The term
23 ‘registered employer’ means an operational business
24 unit of a nonagricultural employer that is operating
25 independently in a full employment area and is des-

1 ignated by the Secretary as a registered employer
2 under subsection (d).

3 “(13) REGISTERED POSITION.—The term ‘reg-
4 istered position’ means a position designated as a
5 registered position under subsection (e).

6 “(14) SCARCITY RECRUITMENT FEE.—The
7 term ‘scarcity recruitment fee’ refers to a payment
8 equal to 5 percent of an H-2C immigrant’s esti-
9 mated annual compensation that a registered em-
10 ployer remits to the Secretary as part of the employ-
11 er’s application for a registered position in order to
12 demonstrate said employer’s inability to recruit a
13 United States worker for the position.

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

17 “(16) SINGLE ENTITY.—The term ‘single enti-
18 ty’ means any group treated as a single employer
19 under subsection (b), (c), (m), or (o) of section 414
20 of the Internal Revenue Code of 1986.

21 “(17) SMALL BUSINESS.—The term ‘small busi-
22 ness’ means an employer that employs fewer than 36
23 full-time employees or fewer than 51 full-time equiv-
24 alent employees.

1 “(18) UNITED STATES WORKER.—The term
2 ‘United States worker’ means an individual who is—

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

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

6 “(ii) an alien lawfully admitted for perma-
7 nent residence; or

8 “(iii) any other alien authorized to work in
9 the United States with no limitation as to the
10 alien’s employer.

11 “(19) ZONE 1 OCCUPATION.—The term ‘zone 1
12 occupation’ means an occupation that requires little
13 or no preparation and is classified as a zone 1 occu-
14 pation on—

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

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

22 “(20) ZONE 2 OCCUPATION.—The term ‘zone 2
23 occupation’ means an occupation that requires some
24 preparation and is classified as a zone 2 occupation
25 on—

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

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

8 “(21) ZONE 3 OCCUPATION.—The term ‘zone 3
9 occupation’ means an occupation that requires me-
10 dium preparation and is classified as a zone 3 occu-
11 pation on—

12 “(A) the Occupational Information Net-
13 work Database (O*NET) on the date of the en-
14 actment of this section; or

15 “(B) such Database or a similar successor
16 database, as designated by the Secretary of
17 Labor, after the date of the enactment of this
18 section.

19 “(b) ADMISSION INTO THE UNITED STATES.—An
20 alien is eligible to be admitted as an H-2C nonimmigrant
21 if the alien—

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

24 “(2) otherwise meets the requirements of this
25 section.

1 “(c) H-2C NONIMMIGRANTS.—

2 “(1) APPLICATION.—An alien seeking to be an
3 H-2C nonimmigrant shall submit an application to
4 the Secretary.

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

8 “(A) That the H-2C nonimmigrant will re-
9 port to such nonimmigrant’s initial employment
10 in a registered position not later than 14 days
11 after such nonimmigrant is admitted.

12 “(B) That the H-2C nonimmigrant will
13 accept only registered positions and abide by all
14 terms and conditions of H-2C nonimmigrant
15 status.

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

19 “(3) APPLICATION REVIEW.—The Secretary
20 shall adjudicate an application submitted under
21 paragraph (1) not later than 45 days after the re-
22 ceipt of such application.

23 “(4) FEES.—

24 “(A) IN GENERAL.—Each application sub-
25 mitted under paragraph (1) shall include a fee

1 in the amount determined by the Secretary ad-
2 judicating such application to be necessary to
3 cover the cost of adjudicating the application
4 within 45 days.

5 “(B) PREMIUM PROCESSING.—The Sec-
6 retary and the Secretary of State shall create
7 an expedited process to review an application
8 submitted under paragraph (1) for an addi-
9 tional fee, in an amount determined by such
10 Secretaries.

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

14 “(A) is inadmissible under this Act;

15 “(B) fails to pass a criminal background
16 check or a national security background check;

17 “(C) is from a country determined by the
18 Secretary of State to have repeatedly provided
19 support for acts of international terrorism pur-
20 suant to—

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

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

1 “(iii) section 620A(a) of the Foreign
2 Assistance Act of 1961 (22 U.S.C.
3 2371(a)); or

4 “(D) has not received an offer of employ-
5 ment from a registered employer in a registered
6 position.

7 “(6) EMPLOYMENT.—

8 “(A) INITIAL EMPLOYMENT.—

9 “(i) REPORTING TO EMPLOYMENT.—
10 An initial H–2C nonimmigrant shall report
11 to such nonimmigrant’s initial employment
12 in a registered position not later than 14
13 days after such nonimmigrant is admitted
14 to the United States.

15 “(ii) REPORTING TO THE SEC-
16 RETARY.—An initial H–2C nonimmigrant
17 shall maintain contact with the Secretary
18 after such H–2C nonimmigrant is admit-
19 ted to the United States but before report-
20 ing to the initial employment at an interval
21 that is determined by the Secretary, but
22 not less than every 7 days.

23 “(B) PERIODS OF UNEMPLOYMENT.—An
24 H–2C nonimmigrant—

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

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

7 “(7) INITIAL PERIOD OF AUTHORIZED PRES-
8 ENCE.—An H-2C nonimmigrant may be physically
9 present in the United States for an initial period of
10 not more than a total of 36 months.

11 “(8) RENEWAL.—An H-2C nonimmigrant may
12 renew his or her H-2C nonimmigrant status for not
13 more than 2 additional consecutive periods of au-
14 thorized presence.

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

18 “(10) PENALTIES.—If an H-2C nonimmigrant
19 fails to comply with any other term or condition of
20 H-2C nonimmigrant status or remains in the
21 United States for 10 days after the date of the expi-
22 ration of his or her period of authorized presence
23 without status under the immigration laws, then the
24 Secretary shall mandatorily—

1 “(A) subject such nonimmigrant to the
2 revocation of employment authorization; and

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

5 “(d) REGISTERED EMPLOYER.—

6 “(1) APPLICATION.—An employer seeking to be
7 a registered employer may submit an application to
8 the Secretary. Each such application shall include
9 the following:

10 “(A) Documentation to establish that the
11 employer is a bona fide employer operating in
12 a full employment area.

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

15 “(C) The employer’s Federal tax identifica-
16 tion number or employer identification number
17 issued by the Internal Revenue Service.

18 “(D) The number of H-2C nonimmigrants
19 the employer estimates the employer will seek
20 to employ annually.

21 “(E) Any documented evidence of employer
22 participation in industry recognized training
23 and safety programs for U.S. workers.

24 “(2) REFERRAL FOR FRAUD INVESTIGATION.—

25 The Secretary may refer an application submitted

1 under paragraph (1) or subsection (e)(1)(A) to the
2 Fraud Detection and National Security Directorate
3 of U.S. Citizenship and Immigration Services for po-
4 tential investigation if there is evidence of fraud par-
5 ticular to such application.

6 “(3) INELIGIBLE EMPLOYERS.—

7 “(A) IN GENERAL.—Notwithstanding any
8 other applicable penalties under law, the Sec-
9 retary shall deny an employer’s application to
10 be a registered employer if the Secretary deter-
11 mines, after notice and an opportunity for a
12 hearing, that the employer submitting such ap-
13 plication—

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

16 “(I) knowingly misrepresented a
17 material fact;

18 “(II) knowingly made a fraudu-
19 lent statement; or

20 “(III) knowingly failed to comply
21 with the terms of such attestations;

22 “(ii) failed to cooperate in the process
23 established pursuant to subsection (m);

24 “(iii) has been convicted of an offense
25 under chapter 77 of title 18, United States

1 Code, any conspiracy to commit such an
2 offense, or any human trafficking offense
3 under State or territorial law;

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

6 “(I) been finally adjudicated as
7 having committed any hazardous oc-
8 cupation orders violation resulting in
9 injury or death under the child labor
10 provisions contained in section 12 of
11 the Fair Labor Standards Act of
12 1938 (29 U.S.C. 212) or any perti-
13 nent regulation;

14 “(II) received a final adjudication
15 assessing a civil monetary penalty for
16 a pattern and practice of willful viola-
17 tion of the minimum wage provisions
18 of section 6 of the Fair Labor Stand-
19 ards Act of 1938 (29 U.S.C. 206); or

20 “(III) received a final adjudica-
21 tion assessing a civil monetary penalty
22 for a pattern and practice of willful
23 violation of the overtime provisions of
24 section 7 of the Fair Labor Standards

1 Act of 1938 (29 U.S.C. 207) or any
2 regulations thereunder; or

3 “(v) has, within 2 years prior to the
4 date of application, received a final adju-
5 dication for a willful violation involving in-
6 jury or death—

7 “(I) of section 5 of the Occupa-
8 tional Safety and Health Act of 1970
9 (29 U.S.C. 654);

10 “(II) of any standard, rule, or
11 order promulgated pursuant to section
12 6 of the Occupational Safety and
13 Health Act of 1970 (29 U.S.C. 655);
14 or

15 “(III) of a plan approved under
16 section 18 of the Occupational Safety
17 and Health Act of 1970 (29 U.S.C.
18 667).

19 “(B) LENGTH OF INELIGIBILITY.—

20 “(i) TEMPORARY INELIGIBILITY.—An
21 employer described in clause (i) or (ii) of
22 subparagraph (A) whose application is de-
23 nied shall not be eligible to be a registered
24 employer for a period that is not less than
25 1 year or a time period determined by the

1 Secretary, whichever is greater, and not
2 more than 2 years.

3 “(ii) PERMANENT INELIGIBILITY.—
4 An employer described in clause (iii), (iv),
5 or (v) of subparagraph (A) shall be perma-
6 nently ineligible to be a registered em-
7 ployer.

8 “(4) TERM OF REGISTRATION.—The Secretary
9 may approve an application only for a term, begin-
10 ning on the date of approval, and ending on the
11 later of—

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

13 “(B) the date that is 3 months after the
14 date on which the employer has no registered
15 positions.

16 “(5) RENEWAL.—

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

21 “(B) ATTESTATION.—An application for
22 renewal under subparagraph (A) shall include
23 an attestation described in paragraph (7)(A).

24 “(6) FEE.—At the time an employer’s applica-
25 tion to be a registered employer is approved, such

1 employer shall pay a fee of \$500, and shall pay such
2 fee every 3 years thereafter while the employer re-
3 mains a registered employer.

4 “(7) CONTINUED ELIGIBILITY.—

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

7 “(i) that the registered employer has
8 provided the wages and working conditions
9 the registered employer agreed to provide
10 to its H-2C nonimmigrant employees
11 under paragraph (5)(B);

12 “(ii) that the registered employer re-
13 mains a bona fide employer operating in a
14 full employment area; and

15 “(iii) to the number of H-2C non-
16 immigrants the employer employed the
17 prior year.

18 “(B) NO LONGER A FULL EMPLOYMENT
19 AREA.—An employer is ineligible to file an ap-
20 plication for a new permit or to renew an exist-
21 ing permit if the unemployment rate in the
22 county or metropolitan statistical area where
23 the business said employer operates rises so
24 that the area is no longer designated as a full
25 employment area.

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

6 “(e) REGISTERED POSITIONS.—

7 “(1) IN GENERAL.—

8 “(A) APPLICATION.—Each employer may
9 submit with an application or renewal under
10 subsection (d) for adjudication to the Secretary
11 an application to designate a registered position
12 for which the employer is seeking to hire an H-
13 2C nonimmigrant at any time during the year
14 without regard to the date the employer needs
15 each position to be filled.

16 “(B) ATTESTATION.—An application sub-
17 mitted under subparagraph (A) shall include a
18 general description of each such position and an
19 attestation to each of the following:

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

22 “(ii) The occupational category, as
23 classified by Bureau of Labor Statistics,
24 for which each registered position is
25 sought.

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

5 “(I) the actual wage level paid by
6 the employer to other employees with
7 similar experience and qualifications
8 for such position in the same location;
9 or

10 “(II) the prevailing wage level for
11 the occupational classification of the
12 position in the metropolitan statistical
13 area of the employment, based on the
14 best information available as of the
15 time of filing the application.

16 “(iv) That the employer has carried
17 out the recruiting activities required by
18 paragraph (2)(B).

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

21 “(I) there is no equally or better
22 qualified United States worker who
23 has applied for the position and who
24 is ready, willing, and able to fill such
25 position; or

1 “(II) such position qualifies as
2 an enduring job opening.

3 “(vi) That there is not a strike, lock-
4 out, or work stoppage in the course of a
5 labor dispute in the occupation at the place
6 of employment at which the H-2C non-
7 immigrant will be employed. If such strike,
8 lockout, or work stoppage occurs following
9 submission of the application, the employer
10 will provide notification in accordance with
11 all applicable regulations.

12 “(vii)(I) The employer has not laid off
13 and will not lay off a United States worker
14 during the period beginning 45 days prior
15 to and ending 45 days after the date the
16 employer files an application for designa-
17 tion of a position for which the H-2C non-
18 immigrant is sought or hires such H-2C
19 nonimmigrant, unless the employer has
20 made a reasonable effort to contact and
21 offer such United States worker the posi-
22 tion, or documented the legitimate reasons
23 that such United States worker is not
24 qualified or available for the position.

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

3 “(aa) at the time such worker’s
4 employment is terminated, such work-
5 er is not employed in the same occu-
6 pation and in the same metropolitan
7 statistical area where the registered
8 position is located. A United States
9 worker is not laid off for purposes of
10 this clause if, in the 45 calendar days
11 before the hiring of an H-2C non-
12 immigrant, the employer adds another
13 United States worker so that the total
14 number of United States workers em-
15 ployed by such employer in the same
16 occupation as such H-2C non-
17 immigrant and in the same metropoli-
18 tan statistical area where the reg-
19 istered position is located has not de-
20 creased; or

21 “(bb) in the 45 calendar days
22 after the hiring of an H-2C non-
23 immigrant, the employer adds another
24 United States worker within 5 busi-
25 ness days after laying off a United

1 States worker so that the total num-
2 ber 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.

9 “(viii) The number of workers whose
10 jobs and job stability depend on the peti-
11 tioned job positions being filled.

12 “(C) DEFINITIONS.—

13 “(i) BEST INFORMATION AVAIL-
14 ABLE.—In subparagraph (B)(iii)(II), the
15 term ‘best information available’, with re-
16 spect to determining the prevailing wage
17 for a position, means—

18 “(I) a controlling collective bar-
19 gaining agreement, to which the em-
20 ployer is a signatory and which sets
21 wages for work performed by H-2C
22 nonimmigrants;

23 “(II) if there is no controlling
24 collective bargaining agreement as set
25 forth in subclause (I), the local, State,

1 or Federal prevailing wage laws or or-
2 dinances, for any time period during
3 which the H-2C nonimmigrant per-
4 forms work on a project for which
5 payment of such wages is required by
6 such laws or ordinances, and the em-
7 ployer has signed a contract agreeing
8 to pay such wages on that project; or

9 “(III) if there is no controlling
10 collective bargaining agreement as set
11 forth in subclause (I) and the H-2C
12 nonimmigrant is not performing work
13 on a project governed by a prevailing
14 wage law or ordinance as set forth in
15 subclause (II)—

16 “(aa) the wage level com-
17 mensurate with the experience,
18 training, and supervision re-
19 quired for the job based on Bu-
20 reau of Labor Statistics data; or

21 “(bb) a legitimate private
22 wage survey of the wages paid
23 for such positions in the metro-
24 politan statistical area.

1 “(ii) LEGITIMATE PRIVATE WAGE
2 SURVEY.—In this paragraph, the term ‘le-
3 gitimate private wage survey’ means, in
4 the case of an application under subpara-
5 graph (A), a survey of wages by an entity
6 other than the Federal Government—

7 “(I) for which the data has been
8 collected during the 2-year period im-
9 mediately preceding the date of the
10 application;

11 “(II) that, if a published survey,
12 has been published during the 2-year
13 period immediately preceding the date
14 of the application;

15 “(III) that is of the industry or
16 occupation of intended employment;

17 “(IV) in which the employer job
18 description is similar to the survey job
19 description;

20 “(V) that is across industries
21 that employ workers in the occupa-
22 tion;

23 “(VI) for which the wage deter-
24 mination is based on a weighted or
25 straight average of the relevant wages,

1 or another valid measure of central
2 tendency determined by the Secretary
3 of Labor of relevant wage levels; and
4 “(VII) that identifies a statis-
5 tically valid methodology that was
6 used to collect the data.

7 “(D) PERMIT.—The Secretary shall pro-
8 vide each registered employer whose application
9 submitted under subparagraph (A) is approved
10 with a permit that includes the number and de-
11 scription of such employer’s approved registered
12 positions at the time of such approval.

13 “(E) REGISTRY OF REGISTERED POSI-
14 TIONS.—

15 “(i) MAINTENANCE OF REGISTRY.—
16 The Secretary shall develop and maintain
17 a registry of registered positions.

18 “(ii) AVAILABILITY ON WEBSITE.—
19 Such registry shall be accessible on a
20 website maintained by the Secretary.

21 “(iii) AVAILABILITY ON STATE WORK-
22 FORCE AGENCY WEBSITES.—Each work-
23 force agency of each State shall be linked
24 to such registry.

1 “(iv) CONDITIONS OF AVAILABILITY
2 ON WEBSITE.—

3 “(I) REGISTERED POSITIONS.—

4 Each registered position shall be in-
5 cluded in the registry of registered po-
6 sitions maintained by the Secretary
7 and shall remain available for viewing
8 on such registry throughout the pe-
9 riod of approval under paragraph (5).

10 “(II) AVAILABILITY AND ELIGI-
11 BILITY.—The Secretary shall ensure
12 that the registry indicates whether
13 each registered position in the registry
14 is filled or unfilled.

15 “(2) REQUIREMENTS.—

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

19 “(B) RECRUITMENT OF UNITED STATES
20 WORKERS.—

21 “(i) REQUIREMENTS.—A position may
22 not be a registered position unless the reg-
23 istered employer—

24 “(I) advertises the position for a
25 period of 30 days, including the wage

range, location or locations, and proposed start date—

“(aa) on the Internet website maintained by the Secretary of Labor for the purpose of such advertising; and

“(bb) with the workforce agency of the State where the position will be located; and

“(II) except as provided for in subsection (f)(4)(A)(ii), carries out not less than 3 of the recruiting activities described in subparagraph (C).

“(ii) DURATION OF ADVERTISING.—

The 30-day periods required by items (aa) and (bb) of clause (i)(I) may occur at the same time.

“(C) RECRUITING ACTIVITIES.—Recruiting activities described in this subparagraph shall take place no earlier than 60 days before an employer files an application for a permit to hire an H-2C nonimmigrant and may be concurrent with the requirements of subsection (e)(2)(B). A recruiting activity is any of the following:

1 “(i) Advertising such position at a job
2 fair.

3 “(ii) Advertising such position on the
4 employer’s external website.

5 “(iii) Advertising such position on a
6 job search Internet website.

7 “(iv) Advertising such position using a
8 presentation or posting at a vocational
9 school, career technical school, community
10 college, high school, or other educational or
11 training site.

12 “(v) Posting such position with a
13 trade association.

14 “(vi) Utilizing a search firm to seek
15 applicants for such position.

16 “(vii) Advertising such position
17 through a recruitment program with a
18 placement office at a vocational school, ca-
19 reer technical school, community college,
20 high school, or other educational or train-
21 ing site.

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

1 “(ix) Seeking a candidate for such po-
2 sition through an employee referral pro-
3 gram with incentives.

4 “(x) Advertising such position on
5 radio or television.

6 “(xi) Advertising such position
7 through an advertising, posting, or presen-
8 tation with a newspaper, Internet website,
9 job fair, or community event targeted to
10 constituencies designed to increase em-
11 ployee diversity.

12 “(xii) Advertising such position
13 through a career day presentation at a
14 local high school or community organiza-
15 tion.

16 “(xiii) Providing in-house training for
17 such position.

18 “(xiv) Providing third-party training
19 for such position.

20 “(xv) Advertising such position
21 through recruitment, educational, or other
22 cooperative programs offered by the em-
23 ployer and a local economic development
24 authority.

1 “(xvi) Advertising such position twice
2 in a Sunday edition in a primary daily cir-
3 culation newspaper.

4 “(xvii) Advertising such position on-
5 site at the business location.

6 “(xviii) Advertising such position
7 through major social media platforms.

8 “(xix) Advertising such position
9 through public listservs, newsletters, and
10 email updates.

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 the enactment of the Essential
13 Workers for Economic Advancement Act, the Sec-
14 retary shall promulgate regulations to provide for an
15 expedited procedure for the review of a denial of an
16 application 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 Essential Workers for Eco-
24 nomic Advancement Act that aliens are admit-
25 ted as 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 “(C) PRIORITY CONSIDERATION.—The
20 Secretary shall give priority consideration to ap-
21 proving registered positions for small business
22 employers who are in industries with compara-
23 tively low sales per employee, as measured by
24 the Census Bureau’s Economic Census, that, as

1 part of a robust effort to recruit U.S. work-
2 ers—

3 “(i) promote hiring programs for jus-
4 tice-involved youth by having their main
5 trade association or industry sponsored
6 foundation participate in the Employment
7 and Training Administration, U.S. Depart-
8 ment of Labor, Pathway Home grant pro-
9 gram to support expanded services to eligi-
10 ble, incarcerated individuals in State cor-
11 rectional facilities or local jails prior- and
12 post-release to help eliminate the gap be-
13 tween release and enrollment into a reentry
14 program leading to employment, or a fu-
15 ture equivalent Federal grant program;

16 “(ii) promote nationally recognized
17 employee safety and health programs, in-
18 cluding programs that promote best prac-
19 tices to lessen the spread of COVID–19;

20 “(iii) hire workers under the Work
21 Opportunity Tax Credit with the priority
22 consideration applicable only for those oc-
23 cupations that fall within the top five
24 Standard Occupational Classifications as

1 measured by total number of certifications
2 by occupation; or

3 “(iv) participate in industry appren-
4 ticeship, training, or certification pro-
5 grams.

6 “(i) PORTABILITY.—

7 “(1) NONIMMIGRANT PORTABILITY.—An H–2C
8 nonimmigrant who is employed in a registered posi-
9 tion may—

10 “(A) be employed at any worksite if the
11 registered employer advertised such location
12 under subsection (e)(2)(B)(i)(I) or
13 (f)(3)(B)(iii);

14 “(B) terminate such employment at any
15 time, for any reason;

16 “(C) in the case of an initial H–2C worker,
17 after one year of employment with the initial
18 H–2C registered employer, seek and accept em-
19 ployment with another registered employer in
20 any other registered position within the terms
21 and conditions of the H–2C nonimmigrant visa;
22 and

23 “(D) in the case of an H–2C worker who
24 is no longer an initial H–2C worker, or who has
25 completed one year with their initial H–2C reg-

1 istered employer, seek and accept employment
2 with another registered employer in any other
3 registered position within the terms and condi-
4 tions of the H-2C nonimmigrant visa.

5 “(2) EMPLOYER PORTABILITY.—A registered
6 employer who employs an H-2C nonimmigrant
7 may—

8 “(A) employ such nonimmigrant at any
9 worksite if the registered employer advertised
10 such location under subsection (e)(2)(B)(i)(I)
11 or (f)(3)(B)(iii);

12 “(B) terminate such employment at any
13 time for any reason if such reason is lawful for
14 United States workers;

15 “(C) in the case of an initial H-2C worker
16 brought into the United States by the employer
17 to fill a registered position, the employer may
18 after the one-year anniversary date of that
19 worker’s employment term, seek and hire an-
20 other H-2C nonimmigrant to replace the initial
21 H-2C worker in accordance with subsection
22 (e)(4); and

23 “(D) in the case of H-2C workers who are
24 not initial H-2C workers, seek and hire another

1 H-2C nonimmigrant in accordance with sub-
2 section (e)(4).

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

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

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

16 “(1) STUDY.—The Director of the Bureau of
17 the Census, jointly with the Secretary, the Secretary
18 of Energy, the Secretary of Health and Human
19 Services, the Secretary of Housing and Urban De-
20 velopment, the Secretary of the Interior, the Sec-
21 retary of Labor, the Secretary of Transportation,
22 the Secretary of the Treasury, and the Attorney
23 General, shall undertake a study examining the im-
24 pacts of this section as well as a possible future per-
25 manent H-2C program on the infrastructure of, and

1 quality of life in, the participating metropolitan sta-
2 tistical areas and counties.

3 “(2) REPORT.—Not later than 3 years after the
4 date of the enactment of the Essential Workers for
5 Economic Advancement Act, the Director of the Bu-
6 reau of the Census shall submit to Congress a report
7 on the findings of the study required by paragraph
8 (1), including the following information:

9 “(A) An estimate of legal and illegal immi-
10 grants in participating counties and metropoli-
11 tan statistical areas, the estimated change in
12 those populations since commencement of the
13 program, and the estimated change to the num-
14 ber of United States workers in such counties
15 and metropolitan statistical areas.

16 “(B) The impact of H–2C nonimmigrants
17 on employment and wage rates for United
18 States workers in State labor markets affected
19 by worker inflows into the full employment
20 areas where the program operates. The study
21 should pay particular attention to the industries
22 and services in which H–2C nonimmigrants are
23 concentrated. It should take into consideration
24 equilibrating labor flows in and out of said full
25 employment areas, and it should consider asso-

1 ciated costs and benefits, including those re-
2 lated to public services, infrastructure mainte-
3 nance, business startups, investment, and over-
4 all economic activity.

5 “(C) The impact of H-2C nonimmigrants
6 on home ownership rates, housing prices, and
7 the demand for low-income and subsidized
8 housing in participating counties and metropoli-
9 tan statistical areas and the public expenditures
10 required to maintain current median standards
11 in these areas and the degree to which those
12 standards will deteriorate if such expenditures
13 are not forthcoming.

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

23 “(E) The impact of H-2C nonimmigrants
24 on the criminal justice system in participating

1 counties and metropolitan statistical areas, and
2 an estimate of associated public costs.

3 “(F) The impact of permitting non-sea-
4 sonal low skilled workers that currently do not
5 qualify for H-2C nonimmigrant status to qual-
6 ify for H-2C nonimmigrant status or of cre-
7 ating a new program to provide nonimmigrant
8 status for such non-seasonal low skilled work-
9 ers, including—

10 “(i) any impact on United States
11 workers;

12 “(ii) any impact on employers that
13 are utilizing H-2C nonimmigrants;

14 “(iii) any impact on employers that do
15 not qualify to employ H-2C non-
16 immigrants; and

17 “(iv) any impact on H-2C non-
18 immigrants.

19 “(G) The impact on local tax revenues re-
20 ceived from industries employing H-2C work-
21 ers, by industry.

22 “(I) H-2C NONIMMIGRANT PROTECTIONS.—

23 “(1) WAIVER OF RIGHTS PROHIBITED.—

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

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

7 “(2) PROHIBITION ON TREATMENT AS INDE-
8 PENDENT CONTRACTORS.—

9 “(A) IN GENERAL.—Notwithstanding any
10 other provision of law—

11 “(i) an H–2C nonimmigrant is prohib-
12 ited from being treated as an independent
13 contractor under any Federal or State law;
14 and

15 “(ii) no person, including any em-
16 ployer, labor contractor, or any person who
17 is affiliated with or contracts with an em-
18 ployer or labor contractor, may treat an
19 H–2C nonimmigrant as an independent
20 contractor.

21 “(B) CONSTRUCTION.—Subparagraph (A)
22 may not be construed to prevent registered em-
23 ployers who operate as independent contractors
24 from employing H–2C nonimmigrants.

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

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

11 “(5) WHISTLEBLOWER PROTECTION.—It shall
12 be unlawful for an employer of an H-2C non-
13 immigrant to intimidate, threaten, restrain, coerce,
14 retaliate, discharge, or in any other manner discrimi-
15 nate against an employee or former employee be-
16 cause the employee or former employee—

17 “(A) discloses information to the employer
18 or any other person that the employee or
19 former employee reasonably believes that the
20 employer or other person has committed a vio-
21 lation of this section; or

22 “(B) cooperates or seeks to cooperate in an
23 investigation or other proceeding concerning
24 compliance with the requirements of this sec-
25 tion.

1 “(m) ENFORCEMENT.—

2 “(1) COMPLAINT PROCESS.—The Secretary
3 shall, by rule, establish a process for the receipt, in-
4 vestigation, and disposition of complaints by an ag-
5 grievied employee, applicant, or H-2C nonimmigrant
6 respecting a violation of this section.

7 “(2) FILING DEADLINE.—No investigation or
8 hearing shall be conducted on a complaint con-
9 cerning a violation under this section unless the
10 complaint was filed not later than 3 months after
11 the date of such violation.

12 “(3) REASONABLE BASIS.—The Secretary shall
13 conduct an investigation under this subsection if
14 there is reasonable basis to believe that a violation
15 of this section has occurred. The process established
16 under this subsection shall provide that, not later
17 than 30 days after a complaint is filed, the Sec-
18 retary shall determine if there is reasonable cause to
19 find such a violation.

20 “(4) NOTICE AND HEARING.—

21 “(A) IN GENERAL.—Not later than 30
22 days after the Secretary finds a reasonable
23 basis under paragraph (3), the Secretary shall
24 issue a notice to the interested parties and offer
25 an opportunity for a hearing on the complaint,

1 in accordance with section 556 of title 5,
2 United States Code.

3 “(B) HEARING DEADLINE.—Not later than
4 60 days after the date of a hearing under this
5 paragraph, the Secretary shall make a finding
6 on the matter.

7 “(5) ATTORNEY’S FEES.—

8 “(A) AWARD.—A complainant who prevails
9 in an action under this subsection with respect
10 to a claim related to wages or compensation for
11 employment shall be entitled to an award of
12 reasonable attorney’s fees and costs.

13 “(B) FRIVOLOUS COMPLAINTS.—A com-
14 plainant who files a frivolous complaint under
15 this subsection shall be liable for the reasonable
16 attorney’s fees and costs of the person named
17 in the complaint.

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

21 “(A) to seek remedial action, including in-
22 junctive relief;

23 “(B) to recover the damages described in
24 subsection (n)(2); or

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

3 “(7) OTHER RIGHTS OF EMPLOYEES.—The
4 rights and remedies provided to H-2C non-
5 immigrants under this section are in addition to any
6 other contractual or statutory rights and remedies of
7 the workers, and are not intended to alter or affect
8 such rights and remedies.

9 “(8) COMPLIANCE.—De minimis variations
10 from the registered position’s duties described in the
11 application and related materials or from the posi-
12 tion’s general description provided in the attestation
13 or the advertising requirements pursuant to sub-
14 section (e), including de minimis work or work inci-
15 dental to the job, shall be permitted and not be
16 cause for complaint, referral, investigation, audit, or
17 penalties.

18 “(n) PENALTIES.—

19 “(1) IN GENERAL.—If, after notice and an op-
20 portunity for a hearing, the Secretary finds a viola-
21 tion of this section, the Secretary may impose ad-
22 ministrative remedies and penalties, including re-
23 quiring the payment of—

24 “(A) back wages; and

25 “(B) benefits.

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

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

4 “(i) in an amount not more than
5 \$3,000 for the first violation and \$4,000
6 per violation for each subsequent violation;
7 or

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

11 “(B) for intentionally failing to comply
12 with the protections of United States workers
13 required under this section or with the protec-
14 tion of whistleblowers under subsection (l)(5), a
15 fine in an amount not more than \$25,000 per
16 violation; or

17 “(C) for knowingly failing to materially
18 comply with the terms of other representations
19 made in petitions, applications, certifications, or
20 attestations under this section—

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

23 “(ii) upon the occasion of a third of-
24 fense of failure to comply with representa-
25 tions, a fine in an amount not to exceed

1 \$5,000 per violation and designation as an
2 ineligible employer, pursuant to subsection
3 (d)(3)(B)(i).

4 “(3) CRIMINAL PENALTY.—Any H–2C non-
5 immigrant who intentionally fails to report to a reg-
6 istered position in the time period specified in sub-
7 section (c)(6)(A)(i) or a registered employer who
8 knowingly facilitates an H–2C nonimmigrant to in-
9 tentionally fail to report in the time period specified
10 above shall—

11 “(A) for a first offense, be fined in accord-
12 ance with title 18, United States Code, in an
13 amount up to \$5,000, or imprisoned for not
14 more than 90 days; and

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

19 “(o) MONITORING.—

20 “(1) ELECTRONIC MONITORING SYSTEM.—

21 “(A) REQUIREMENT FOR SYSTEM.—The
22 Secretary, through U.S. Citizenship and Immi-
23 gration Services, shall implement an electronic
24 monitoring system to monitor the presence and
25 employment of H–2C nonimmigrants, including

1 a requirement that registered employers update
2 the system when H-2C nonimmigrants start
3 and end employment in registered positions.
4 The system shall be operational not later than
5 6 months following the date of the publication
6 of the final regulations to carry out this section.

7 “(B) RELATIONSHIP TO SEVIS.—Such sys-
8 tem shall be modeled on the Student and Ex-
9 change Visitor Information System (SEVIS)
10 and SEVIS II tracking system of U.S. Immi-
11 gration and Customs Enforcement.

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

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

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

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

9 “(A) shall respond to inquiries made by
10 registered employers by providing an employee’s
11 employment eligibility; and

12 “(B) shall not be used, subject to a civil
13 monetary penalty determined by the Secretary
14 by rule—

15 “(i) by any department, bureau, or
16 other agency of the United States Govern-
17 ment, any other public or private entity, or
18 any individual to monitor the movement of
19 United States workers; or

20 “(ii) for inquiries related to a United
21 States worker other than—

22 “(I) to provide such worker’s eli-
23 gibility for employment in the United
24 States; or

1 “(II) to ensure secure, appro-
2 priate, and nondiscriminatory use of
3 such system, notwithstanding any
4 other provision of law.

5 “(p) REQUIREMENT TO COMPLY WITH BIOMETRIC
6 ENTRY AND EXIT SYSTEM.—Any alien entering the
7 United States or present in the United States on a visa
8 issued under section 101(a)(15)(H)(ii)(c) shall comply
9 with the requirements of the entry and exit data system
10 required by section 7208 of the Intelligence Reform and
11 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), in-
12 cluding the biometric identification requirements, after
13 such requirements are implemented.

14 “(q) RULEMAKING.—Not later than 1 year after the
15 date of the enactment of the Essential Workers for Eco-
16 nomic Advancement Act, the Secretary shall, by rule, pro-
17 vide for a means by which any renewal, attestation, or ap-
18 plication filed pursuant to this section may be made elec-
19 tronically.”.

20 (2) TABLE OF CONTENTS AMENDMENT.—The
21 table of contents in the first section of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1101 et seq.) is
23 amended by adding after the item relating to section
24 219 the following:

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

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

5 (c) PROHIBITION ON FAMILY MEMBERS.—Section
6 101(a)(15)(H) of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
8 the end and inserting “him, except that the Secretary of
9 State shall not issue a visa under clause (ii)(d) to a spouse
10 or child seeking to enter into the United States under such
11 clause unless such spouse has received an offer of employ-
12 ment by a registered employer as defined in section
13 219A;”.

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