

114TH CONGRESS  
2D SESSION

# S. 2827

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

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IN THE SENATE OF THE UNITED STATES

APRIL 20, 2016

Mr. FLAKE introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 “Willing Workers and  
5       Willing Employers Act of 2016”.

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

8       Section 101(a)(15)(H)(ii) of the Immigration and  
9       Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended  
10      by inserting “(c) who is coming temporarily to the United

1 States to perform services or labor for a registered non-  
 2 agricultural employer in a registered position (as those  
 3 terms are defined in section 219A(a)) in accordance with  
 4 the requirements under section 219A; or” before “(iii)  
 5 have a residence”.

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

7 (a) ADMISSION OF H-2C NONIMMIGRANT WORK-  
 8 ERS.—

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

12 **“SEC. 219A. ADMISSION OF H-2C NONIMMIGRANT WORK-**  
 13 **ERS.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) DEPARTMENT.—Except as otherwise spe-  
 16 cifically provided, the term ‘Department’ means the  
 17 Department of Homeland Security.

18 “(2) ELIGIBLE OCCUPATION.—The term ‘eligi-  
 19 ble occupation’ means an eligible occupation de-  
 20 scribed in subsection (f)(3).

21 “(3) EMPLOYER.—

22 “(A) IN GENERAL.—The term ‘employer’  
 23 means any person or operational unit of a for-  
 24 profit or nonprofit entity that is operating inde-  
 25 pendently in a county or metropolitan statistical

1 area and who hires an individual for employ-  
2 ment in the United States.

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

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

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

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

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

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

23 “(7) H-2C NONIMMIGRANT STATUS.—The term  
24 ‘H-2C nonimmigrant status’ means status granted

1 to an alien admitted as a nonimmigrant pursuant to  
2 section 101(a)(15)(H)(ii)(c).

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

5 “(A) issued an H-2C nonimmigrant visa  
6 by the Secretary of State authorizing the ad-  
7 mission of that alien to the United States for  
8 the first time as an H-2C nonimmigrant; and

9 “(B) does not include an alien on or after  
10 the date the alien commences employment in  
11 H-2C nonimmigrant status with a registered  
12 employer in a registered position.

13 “(9) LAY OFF.—The term ‘lay off’—

14 “(A) means to cause a worker to lose em-  
15 ployment, other than through a discharge for  
16 inadequate performance, violation of workplace  
17 rules, cause, voluntary departure, voluntary re-  
18 tirement, or the expiration of a grant or con-  
19 tract; and

20 “(B) does not include any situation in  
21 which the worker is offered and refused to ac-  
22 cept, as an alternative to such loss of employ-  
23 ment, a similar employment opportunity with  
24 the same employer at equivalent or higher com-

1           pensation and benefits than the position from  
2           which the employee was discharged.

3           “(10) METROPOLITAN STATISTICAL AREA.—

4           The term ‘metropolitan statistical area’ means a ge-  
5           ographic area designated as a metropolitan statis-  
6           tical area by the Director of the Office of Manage-  
7           ment and Budget.

8           “(11) REGISTERED EMPLOYER.—The term

9           ‘registered employer’ means an operational business  
10          unit of a nonagricultural employer that is operating  
11          independently in a full employment area and is des-  
12          ignated by the Secretary as a registered employer  
13          under subsection (e).

14          “(12) REGISTERED POSITION.—The term ‘reg-

15          istered position’ means a position designated as a  
16          registered position under subsection (f).

17          “(13) SCARCITY RECRUITMENT FEE.—The

18          term ‘scarcity recruitment fee’ refers to a payment  
19          equal to 5 percent of an H-2C immigrant’s esti-  
20          mated annual compensation that a registered em-  
21          ployer remits to the Secretary as part of the employ-  
22          er’s application for a registered position in order to  
23          demonstrate said employer’s inability to recruit a  
24          United States worker for the position.

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

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

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

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

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

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

16               “(ii) an alien lawfully admitted for perma-  
 17               nent residence; or

18               “(iii) any other alien authorized to work in  
 19               the United States with no limitation as to the  
 20               alien’s employer.

21          “(18) ZONE 1 OCCUPATION.—The term ‘zone 1  
 22          occupation’ means an occupation that requires little  
 23          or no preparation and is classified as a zone 1 occu-  
 24          pation 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           “(19) ZONE 2 OCCUPATION.—The term ‘zone 2  
9           occupation’ means an occupation that requires some  
10          preparation and is classified as a zone 2 occupation  
11          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          “(20) ZONE 3 OCCUPATION.—The term ‘zone 3  
20          occupation’ means an occupation that requires me-  
21          dium preparation and is classified as a zone 3 occu-  
22          pation on—

23          “(A) the Occupational Information Net-  
24          work Database (O\*NET) on the date of the en-  
25          actment of this section; or

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

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

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

10          “(2) otherwise meets the requirements of this  
11          section.

12          “(c) SUNSET.—No H-2C nonimmigrant may be ad-  
13          mitted after the date that is 10 years after the date that  
14          final regulations to carry out this section are published.

15          “(d) H-2C NONIMMIGRANTS.—

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

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

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

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

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

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

12          “(4) FEES.—

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

19               “(B) PREMIUM PROCESSING.—The Sec-  
20               retary and the Secretary of State shall create  
21               an expedited process to review an application  
22               submitted under paragraph (1) for an addi-  
23               tional fee, in an amount determined by such  
24               Secretaries.

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

4                   “(A) is inadmissible under this Act;

5                   “(B) fails to pass a criminal background  
6 check or a national security background check;

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

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

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

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

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

22           “(6) EMPLOYMENT.—

23                   “(A) INITIAL EMPLOYMENT.—

24                   “(i) REPORTING TO EMPLOYMENT.—

25                   An initial H-2C nonimmigrant shall report

1 to such nonimmigrant's initial employment  
2 in a registered position not later than 14  
3 days after such nonimmigrant is admitted  
4 to the United States.

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

13 “(B) PERIODS OF UNEMPLOYMENT.—An  
14 H-2C nonimmigrant—

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

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

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

25 “(8) RENEWAL.—

1           “(A) IN GENERAL.—An H–2C non-  
2 immigrant may renew his or her status as an  
3 H–2C nonimmigrant for additional, consecutive  
4 periods of authorized presence as provided in  
5 this paragraph. Such a renewal may be made  
6 while the H–2C nonimmigrant is inside or out-  
7 side the United States and shall not require the  
8 alien to depart the United States.

9           “(B) FIRST 4 YEARS.—An H–2C non-  
10 immigrant initially admitted to the United  
11 States during the period beginning on the date  
12 that final regulations to carry out the Willing  
13 Workers and Willing Employers Act of 2016  
14 are published and ending on the day before the  
15 date that is 5 years after such date may renew  
16 his or her H–2C nonimmigrant status for not  
17 more than 2 additional consecutive periods of  
18 authorized presence.

19           “(C) YEARS 5 THROUGH 8.—An H–2C  
20 nonimmigrant initially admitted to the United  
21 States during the period beginning on the date  
22 that is 5 years after the date that final regula-  
23 tions to carry out the Willing Workers and  
24 Willing Employers Act of 2016 are published  
25 and ending on the day before the date that is

1           9 years after such date may renew H–2C non-  
2           immigrant status for 1 additional consecutive  
3           period of authorized presence.

4           “(D) SUBSEQUENT ADMISSIONS.—An H–  
5           2C nonimmigrant initially admitted to the  
6           United States after the date that is 9 years  
7           after the date that final regulations to carry out  
8           the Willing Workers and Willing Employers Act  
9           of 2016 are published may not renew H–2C  
10          nonimmigrant status.

11          “(9) TRAVEL.—An H–2C nonimmigrant may  
12          travel outside the United States and be readmitted  
13          to the United States.

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

21                 “(A) subject such nonimmigrant to the  
22                 revocation of employment authorization; and

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

25          “(e) REGISTERED EMPLOYER.—

1           “(1) APPLICATION.—An employer seeking to be  
2           a registered employer may submit an application to  
3           the Secretary. Each such application shall include  
4           the following:

5                   “(A) Documentation to establish that the  
6                   employer is a bona-fide employer operating in a  
7                   full employment area.

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

10                   “(C) The employer’s Federal tax identifica-  
11                   tion number or employer identification number  
12                   issued by the Internal Revenue Service.

13                   “(D) The number of H–2C nonimmigrants  
14                   the employer estimates the employer will seek  
15                   to employ annually.

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

23           “(3) INELIGIBLE EMPLOYERS.—

24                   “(A) IN GENERAL.—Notwithstanding any  
25                   other applicable penalties under law, the Sec-

1           retary shall deny an employer’s application to  
2           be a registered employer if the Secretary deter-  
3           mines, after notice and an opportunity for a  
4           hearing, that the employer submitting such ap-  
5           plication—

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

8                           “(I) knowingly misrepresented a  
9                           material fact;

10                           “(II) knowingly made a fraudu-  
11                           lent statement; or

12                           “(III) knowingly failed to comply  
13                           with the terms of such attestations;

14                           “(ii) failed to cooperate in the process  
15                           established pursuant to subsection (n);

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

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

23                                   “(I) been finally adjudicated as  
24                                   having committed any hazardous oc-  
25                                   cupation orders violation resulting in

1 injury or death under the child labor  
2 provisions contained in section 12 of  
3 the Fair Labor Standards Act of  
4 1938 (29 U.S.C. 212) or any perti-  
5 nent regulation;

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

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

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

23 “(I) of section 5 of the Occupa-  
24 tional Safety and Health Act of 1970  
25 (29 U.S.C. 654);

1 “(II) of any standard, rule, or  
2 order promulgated pursuant to section  
3 6 of the Occupational Safety and  
4 Health Act of 1970 (29 U.S.C. 655);  
5 or

6 “(III) of a plan approved under  
7 section 18 of the Occupational Safety  
8 and Health Act of 1970 (29 U.S.C.  
9 667).

10 “(B) LENGTH OF INELIGIBILITY.—

11 “(i) TEMPORARY INELIGIBILITY.—An  
12 employer described in clause (i) or (ii) of  
13 subparagraph (A) whose application is de-  
14 nied shall not be eligible to be a registered  
15 employer for a period that is not less than  
16 1 year or a time period determined by the  
17 Secretary, whichever is greater, and not  
18 more than 2 years.

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

24 “(4) TERM OF REGISTRATION.—The Secretary  
25 may approve an application only for a term, begin-

1       ning on the date of approval, and ending on the  
2       later of—

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

4               “(B) the date that is 3 months after the  
5       date on which the employer has no registered  
6       positions.

7       “(5) RENEWAL.—

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

12              “(B) ATTESTATION.—An application for  
13      renewal under subparagraph (A) shall include  
14      an attestation described in paragraph (7)(A).

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

20              “(7) CONTINUED ELIGIBILITY.—

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

23                      “(i) that the registered employer has  
24                      provided the wages and working conditions  
25                      the registered employer agreed to provide

1 to its H-2C nonimmigrant employees  
 2 under paragraph (5)(B);

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

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

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

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

22 “(f) REGISTERED POSITIONS.—

23 “(1) IN GENERAL.—

24 “(A) APPLICATION.—Each employer may  
 25 submit with an application or renewal under

1 subsection (e) for adjudication to the Secretary  
2 an application to designate a registered position  
3 for which the employer is seeking to hire an H–  
4 2C nonimmigrant at any time during the year  
5 without regard to the date the employer needs  
6 each position to be filled.

7 “(B) SUNSET.—No employer application  
8 shall be approved for a registered position after  
9 the date which is 10 years after the date of pro-  
10 mulgation of final regulations pursuant to en-  
11 actment of this Act.

12 “(C) ATTESTATION.—An application sub-  
13 mitted under subparagraph (A) shall include a  
14 general description of each such position and an  
15 attestation to each of the following:

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

18 “(ii) The occupational category, as  
19 classified by the Bureau of Labor Statis-  
20 tics, for which each registered position is  
21 sought.

22 “(iii) That the wages to be paid to H–  
23 2C nonimmigrants employed by the em-  
24 ployer in each registered position will be  
25 the greater of—

1 “(I) the actual wage level paid by  
2 the employer to other employees with  
3 similar experience and qualifications  
4 for such position in the same location;  
5 or

6 “(II) the prevailing wage level for  
7 the occupational classification of the  
8 position in the metropolitan statistical  
9 area of the employment, based on the  
10 best information available as of the  
11 time of filing the application.

12 “(iv) That the employer has carried  
13 out the recruiting activities required by  
14 paragraph (2)(B).

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

17 “(I) there is no equally or better  
18 qualified United States worker who  
19 has applied for the position and who  
20 is ready, willing, and able to fill such  
21 position; or

22 “(II) such position qualifies as  
23 an enduring job opening.

24 “(vi) That there is not a strike, lock-  
25 out, or work stoppage in the course of a

1 labor dispute in the occupation at the place  
2 of employment at which the H-2C non-  
3 immigrant will be employed. If such strike,  
4 lockout, or work stoppage occurs following  
5 submission of the application, the employer  
6 will provide notification in accordance with  
7 all applicable regulations.

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

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

23 “(aa) at the time such worker’s  
24 employment is terminated, such work-  
25 er is not employed in the same occu-

1           pation and in the same metropolitan  
2           statistical area where the registered  
3           position is located. A United States  
4           worker is not laid off for purposes of  
5           this clause if, in the 45 calendar days  
6           before the hiring of an H-2C non-  
7           immigrant, the employer adds another  
8           United States worker so that the total  
9           number of United States workers em-  
10          ployed by such employer in the same  
11          occupation as such H-2C non-  
12          immigrant and in the same metropoli-  
13          tan statistical area where the reg-  
14          istered position is located has not de-  
15          creased; or

16               “(bb) in the 45 calendar days  
17           after the hiring of an H-2C non-  
18           immigrant, the employer adds another  
19           United States worker within 5 busi-  
20           ness days after laying off a United  
21           States worker so that the total num-  
22           ber of United States workers em-  
23           ployed by such employer in the same  
24           occupation as such H-2C non-  
25           immigrant and in the same metropoli-

1           tan statistical area where the reg-  
2           istered position is located has not de-  
3           creased.

4           “(D) DEFINITIONS.—

5           “(i) BEST INFORMATION AVAIL-  
6           ABLE.—In subparagraph (C)(iii)(II), the  
7           term ‘best information available’, with re-  
8           spect to determining the prevailing wage  
9           for a position, means—

10           “(I) a controlling collective bar-  
11           gaining agreement, to which the em-  
12           ployer is a signatory and which sets  
13           wages for work performed by H–2C  
14           nonimmigrants;

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

1 “(III) if there is no controlling  
 2 collective bargaining agreement as set  
 3 forth in subclause (I) and the H-2C  
 4 nonimmigrant is not performing work  
 5 on a project governed by a prevailing  
 6 wage law or ordinance as set forth in  
 7 subclause (II)—

8 “(aa) the wage level com-  
 9 mensurate with the experience,  
 10 training, and supervision re-  
 11 quired for the job based on Bu-  
 12 reau of Labor Statistics data; or

13 “(bb) a legitimate private  
 14 wage survey of the wages paid  
 15 for such positions in the metro-  
 16 politan statistical area.

17 “(ii) LEGITIMATE PRIVATE WAGE  
 18 SURVEY.—In this paragraph, the term ‘le-  
 19 gitimate private wage survey’ means, in  
 20 the case of an application under subpara-  
 21 graph (A), a survey of wages by an entity  
 22 other than the Federal Government—

23 “(I) for which the data has been  
 24 collected during the 2-year period im-

1 immediately preceding the date of the  
2 application;

3 “(II) that, if a published survey,  
4 has been published during the 2-year  
5 period immediately preceding the date  
6 of the application;

7 “(III) that is of the industry or  
8 occupation of intended employment;

9 “(IV) in which the employer job  
10 description is similar to the survey job  
11 description;

12 “(V) that is across industries  
13 that employ workers in the occupa-  
14 tion;

15 “(VI) for which the wage deter-  
16 mination is based on a weighted or  
17 straight average of the relevant wages,  
18 or another valid measure of central  
19 tendency determined by the Secretary  
20 of Labor of relevant wage levels; and

21 “(VII) that identifies a statis-  
22 tically valid methodology that was  
23 used to collect the data.

24 “(E) PERMIT.—The Secretary shall pro-  
25 vide each registered employer whose application

submitted under subparagraph (A) is approved with a permit that includes the number and description of such employer's approved registered positions at the time of such approval.

“(F) REGISTRY OF REGISTERED POSITIONS.—

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

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

“(iii) AVAILABILITY ON STATE WORKFORCE AGENCY WEBSITES.—Each workforce agency of each State shall be linked to such registry.

“(iv) CONDITIONS OF AVAILABILITY ON WEBSITE.—

“(I) REGISTERED POSITIONS.—  
Each registered position shall be included in the registry of registered positions maintained by the Secretary and shall remain available for viewing on such registry throughout the period of approval under paragraph (5).

1 “(II) AVAILABILITY AND ELIGI-  
 2 BILITY.—The Secretary shall ensure  
 3 that the registry indicates whether  
 4 each registered position in the registry  
 5 is filled or unfilled.

6 “(2) REQUIREMENTS.—

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

10 “(B) RECRUITMENT OF UNITED STATES  
 11 WORKERS.—

12 “(i) REQUIREMENTS.—A position may  
 13 not be a registered position unless the reg-  
 14 istered employer—

15 “(I) advertises the position for a  
 16 period of 30 days, including the wage  
 17 range, location or locations, and pro-  
 18 posed start date—

19 “(aa) on the Internet  
 20 website maintained by the Sec-  
 21 retary of Labor for the purpose  
 22 of such advertising; and

23 “(bb) with the workforce  
 24 agency of the State where the po-  
 25 sition will be located; and

1 “(II) except as provided for in  
2 subsection (g)(4)(A)(ii), carries out  
3 not less than 3 of the recruiting ac-  
4 tivities described in subparagraph (C).

5 “(ii) DURATION OF ADVERTISING.—  
6 The 30-day periods required by items (aa)  
7 and (bb) of clause (i)(I) may occur at the  
8 same time.

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

17 “(i) Advertising such position at a job  
18 fair.

19 “(ii) Advertising such position on the  
20 employer’s external website.

21 “(iii) Advertising such position on a  
22 job search Internet website.

23 “(iv) Advertising such position using a  
24 presentation or posting at a vocational  
25 school, career technical school, community

1 college, high school, or other educational or  
2 training site.

3 “(v) Posting such position with a  
4 trade association.

5 “(vi) Utilizing a search firm to seek  
6 applicants for such position.

7 “(vii) Advertising such position  
8 through a recruitment program with a  
9 placement office at a vocational school, ca-  
10 reer technical school, community college,  
11 high school, or other educational or train-  
12 ing site.

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

15 “(ix) Seeking a candidate for such po-  
16 sition through an employee referral pro-  
17 gram with incentives.

18 “(x) Advertising such position on  
19 radio or television.

20 “(xi) Advertising such position  
21 through an advertising, posting, or presen-  
22 tation with a newspaper, Internet website,  
23 job fair, or community event targeted to  
24 constituencies designed to increase em-  
25 ployee diversity.

1                   “(xii) Advertising such position  
2 through a career day presentation at a  
3 local high school or community organiza-  
4 tion.

5                   “(xiii) Providing in-house training for  
6 such position.

7                   “(xiv) Providing third-party training  
8 for such position.

9                   “(xv) Advertising such position  
10 through recruitment, educational, or other  
11 cooperative programs offered by the em-  
12 ployer and a local economic development  
13 authority.

14                   “(xvi) Advertising such position twice  
15 in a Sunday edition in a primary daily cir-  
16 culation newspaper.

17                   “(3) ELIGIBLE OCCUPATION.—

18                   “(A) IN GENERAL.—An occupation is an  
19 eligible occupation if the occupation—

20                   “(i) is a zone 1 occupation, a zone 2  
21 occupation, or zone 3 occupation; and

22                   “(ii) is not an excluded occupation  
23 under subparagraph (B).

24                   “(B) OCCUPATIONS REQUIRING COLLEGE  
25 DEGREES.—An occupation that is listed in the

Occupational Outlook Handbook published by the Bureau of Labor Statistics (or similar successor publication) that is classified as requiring an individual with a bachelor's degree or higher level of education may not be an eligible occupation.

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

“(4) FILLING OF VACANCIES.—If an H-2C nonimmigrant terminates employment in a registered position or is terminated from such employment by the registered employer, such employer may fill that vacancy by hiring an H-2C nonimmigrant other than an initial H-2C nonimmigrant.

“(5) PERIOD OF APPROVAL.—

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

“(i) the date the employer's status as a registered employer is terminated;

1 “(ii) 3 years after the date of such ap-  
 2 proval;

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

7 “(iv) upon termination of the reg-  
 8 istered position by the employer.

9 “(B) RENEWAL.—

10 “(i) IN GENERAL.—An approval under  
 11 subparagraph (A) shall be renewed at the  
 12 request of the registered employer as pro-  
 13 vided in this subparagraph if such reg-  
 14 istered employer fulfills the requirements  
 15 of paragraphs (1)(C) and (2).

16 “(ii) FIRST 4 YEARS.—An approval  
 17 granted during the period beginning on the  
 18 date that final regulations to carry out the  
 19 Willing Workers and Willing Employers  
 20 Act of 2016 are published and ending on  
 21 the day before the date that is 5 years  
 22 after such date may be renewed for not  
 23 more than 2 additional periods.

24 “(iii) YEARS 5 THROUGH 8.—An ap-  
 25 proval granted during the period beginning

1 on the date that is 5 years after the date  
2 final regulations to carry out the Willing  
3 Workers and Willing Employers Act of  
4 2016 are published and ending on the day  
5 before the date that is 9 years after such  
6 date may be renewed for 1 additional pe-  
7 riod.

8 “(iv) SUBSEQUENT APPROVALS.—An  
9 approval granted after the date that is 9  
10 years after the date final regulations to  
11 carry out the Willing Workers and Willing  
12 Employers Act of 2016 are published may  
13 not be renewed.

14 “(C) RENEWING EMPLOYER EXEMPTION.—  
15 Renewals of registered positions by employers  
16 shall not be counted toward the limits estab-  
17 lished under paragraph (1)(A) or (2)(D) of sub-  
18 section (g) or counted for the purposes of a nu-  
19 merical limitation under subparagraph (B) or  
20 (C) of subsection (g)(2).

21 “(D) SECRETARY AUTHORITY TO TERMI-  
22 NATE REGISTERED POSITION.—The Secretary  
23 shall terminate a registered position if the Sec-  
24 retary determines—

1 “(i) that an employer has purposefully  
2 allowed a registered position to be used for  
3 an alien to gain admission to the United  
4 States as an H-2C nonimmigrant with no  
5 intention of such alien working for such  
6 registered employer; or

7 “(ii) that there exists a pattern and  
8 practice of initial H-2C nonimmigrants  
9 failing to report in accordance with the  
10 time period specified in subsection  
11 (d)(6)(A)(i).

12 “(6) FEES.—

13 “(A) REGISTRATION FEE.—

14 “(i) IN GENERAL.—At the time an ap-  
15 plication to register a position is approved  
16 and after each renewal of such position,  
17 each registered employer shall pay a fee in  
18 an amount determined by the Secretary.

19 “(ii) USE OF FEE.—Except as other-  
20 wise provided in this section, a fee col-  
21 lected under clause (i) shall be used to  
22 fund any action to carry out this section,  
23 except for subsection (r) and subsection  
24 (q)(2).

1           “(B) PROHIBITION ON OTHER FEES.—A  
2 registered employer may not be required to pay  
3 an additional fee other than any fees specified  
4 in this Act.

5           “(7) INITIAL REVIEW OF APPLICATIONS.—

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

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

17           “(ii) if the Secretary determines that  
18 the application is incomplete, facially in-  
19 valid, or obviously inaccurate, the Sec-  
20 retary shall—

21           “(I) not later than 10 business  
22 days after the date on which such ap-  
23 plication was filed, notify the appli-  
24 cant of the deficiencies to be corrected

1 by means ensuring same or next day  
2 delivery; and

3 “(II) not later than 10 business  
4 days after receipt of the corrected ap-  
5 plication, approve or deny the applica-  
6 tion and provide the applicant with  
7 notice of such action by means ensur-  
8 ing same or next day delivery.

9 “(B) PREMIUM PROCESSING.—The Sec-  
10 retary shall establish a process for expedited  
11 processing of applications under this section,  
12 subject to the payment of an additional fee, as  
13 determined by the Secretary.

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

19 “(8) EXPEDITED REVIEW.—Not later than 1  
20 year after the date of enactment of the Willing  
21 Workers and Willing Employers Act of 2016, the  
22 Secretary shall promulgate regulations to provide for  
23 an expedited procedure for the review of a denial of  
24 an application under this section by the Secretary.

25 “(g) NUMERICAL LIMITATION.—

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

5           “(A) For the first full fiscal year after the  
6 effective date of the Willing Workers and Will-  
7 ing Employers Act of 2016 that aliens are ad-  
8 mitted as H–2C nonimmigrants, 65,000.

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

12           “(2) SUBSEQUENT FISCAL YEARS.—

13           “(A) DEFINITION OF CURRENT FISCAL  
14 YEAR AND PRECEDING FISCAL YEAR.—In this  
15 paragraph:

16           “(i) CURRENT FISCAL YEAR.—The  
17 term ‘current fiscal year’ means the fiscal  
18 year for which the calculation of the nu-  
19 merical limits under this paragraph is  
20 being performed.

21           “(ii) PRECEDING FISCAL YEAR.—The  
22 term ‘preceding fiscal year’ means the fis-  
23 cal year immediately preceding the current  
24 fiscal year.

1           “(B) NUMERICAL LIMITATION.—Subject to  
2           subparagraph (D), the maximum number of  
3           registered positions that may be approved by  
4           the Secretary for a fiscal year after the first fis-  
5           cal year referred to in paragraph (1)(A) shall  
6           be equal to—

7                   “(i) 65,000 for the first fiscal year in  
8                   which the program is implemented;

9                   “(ii) in any subsequent fiscal year—

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

20                   “(II) if the total number of reg-  
21                   istered positions allocated for that fis-  
22                   cal year are allotted within the second  
23                   quarter of that fiscal year, then an  
24                   additional 15 percent of the allocated  
25                   number shall be made available imme-

1 diately and the allocated amount for  
2 the following fiscal year shall increase  
3 by 15 percent of the original allocated  
4 amount in the prior fiscal year;

5 “(III) if the total number of reg-  
6 istered positions allocated for that fis-  
7 cal year are allotted within the third  
8 quarter of that fiscal year, then an  
9 additional 10 percent of the allocated  
10 number shall be made available imme-  
11 diately and the allocated amount for  
12 the following fiscal year shall increase  
13 by 10 percent of the original allocated  
14 amount in the prior fiscal year;

15 “(IV) if the total number of reg-  
16 istered positions allocated for that fis-  
17 cal year are allotted within the last  
18 quarter of that fiscal year, then the  
19 allocated amount for the following fis-  
20 cal year shall increase by 10 percent  
21 of the original allocated amount in the  
22 prior fiscal year; and

23 “(V) with the exception of the  
24 first subsequent fiscal year to the fis-  
25 cal year in which the program is im-

1                   plemented, if fewer registered posi-  
2                   tions were allotted the previous fiscal  
3                   year than the number of registered  
4                   positions allocated for that year and  
5                   the reason was not due to processing  
6                   delays or delays in promulgating regu-  
7                   lations, then the allocated amount for  
8                   the following fiscal year shall decrease  
9                   by 10 percent of the allocated amount  
10                  in the prior fiscal year.

11                  “(C) MINIMUM AND MAXIMUM LEVELS.—  
12                  Notwithstanding the number of registered posi-  
13                  tions calculated under subparagraph (B), the  
14                  number of registered positions made available  
15                  for a fiscal year under this paragraph may not  
16                  be less than 45,000 or more than 85,000.

17                  “(D) SUBSEQUENT ALLOCATIONS.—  
18                  “(i) IN GENERAL.—Subject to the  
19                  limitations under subparagraph (C)—

20                          “(I) the maximum number of  
21                          registered positions available for the  
22                          current fiscal year calculated under  
23                          subparagraph (B) may be increased  
24                          for the 6-month period beginning on  
25                          the first day of the current fiscal year

1 by 5 percent of the maximum number  
2 of registered positions allocated for  
3 that 6-month period under subsection  
4 (i)(1), if all such allocated registered  
5 positions have been approved prior to  
6 the 6th month of that 6-month period;  
7 and

8 “(II) the maximum number of  
9 registered positions available for the  
10 current fiscal year calculated under  
11 subparagraph (B) may be increased  
12 for the 6-month period ending on the  
13 last day of the current fiscal year by  
14 5 percent of the maximum number of  
15 registered positions allocated for that  
16 6-month period under subsection  
17 (i)(2), if all such allocated registered  
18 positions have been approved prior to  
19 the 6th month of that 6-month period.

20 “(ii) LOTTERY ALLOCATION.—Addi-  
21 tional registered positions made available  
22 under clause (i) during a 6-month period  
23 shall be allocated 3 weeks prior to the last  
24 day of that 6-month period by lottery  
25 among registered employers that submit

1 applications in accordance with this section  
2 for such positions.

3 “(3) SPECIAL ALLOCATIONS OF REGISTERED  
4 POSITIONS.—

5 “(A) AUTHORITY TO MAKE AVAILABLE.—

6 In addition to the number of registered posi-  
7 tions made available for a fiscal year under  
8 paragraphs (1) and (3), the Secretary shall  
9 make additional registered positions available,  
10 up to the maximum number of registered posi-  
11 tions specified in paragraph (3)(C), for the fis-  
12 cal year for a specific registered employer as  
13 described in this paragraph, if—

14 “(i)(I) the maximum number of reg-  
15 istered positions available under paragraph  
16 (2)(B) have been approved for the fiscal  
17 year and none remain available for alloca-  
18 tion; or

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

21 “(ii) such registered employer has  
22 paid a scarcity recruitment fee; or

23 “(iii) in the case of registered employ-  
24 ers with 50 or fewer employees, such reg-  
25 istered employer has carried out not less

1 than 7 of the recruiting activities described  
 2 in subsection (f)(2)(C) and posts the posi-  
 3 tion, including the wage range, location,  
 4 and initial date of employment, for not less  
 5 than 30 days—

6 “(I) on the Internet website  
 7 maintained by the Secretary of Labor  
 8 for the purpose of such advertising;  
 9 and

10 “(II) with the workforce agency  
 11 of the State where the position will be  
 12 located.

13 “(B) RECRUITMENT.—

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

24 “(ii) EXCEPTION.—A registered em-  
 25 ployer may register a position pursuant to

1 a special allocation under this paragraph  
 2 by conducting at least 3 of the recruiting  
 3 activities described in subsection (f)(2)(C),  
 4 however a position registered pursuant to  
 5 this clause may not be filled by an initial  
 6 H-2C nonimmigrant.

7 “(iii) ADVERTISING THE POSITION.—

8 “(I) REQUIREMENT.—Any reg-  
 9 istered employer registering any posi-  
 10 tion under the special allocation au-  
 11 thority shall post the position, includ-  
 12 ing the wage range, location or loca-  
 13 tions, and initial date of employment,  
 14 for not less than 30 days—

15 “(aa) on the Internet web-  
 16 site maintained by the Secretary  
 17 of Labor for the purpose of such  
 18 advertising; and

19 “(bb) with the workforce  
 20 agency of the State where the po-  
 21 sition will be located.

22 “(II) TIMING.—The 30-day peri-  
 23 ods required by items (aa) and (bb) of  
 24 subclause (I) may occur at the same  
 25 time.

1           “(4) UNFILLED POSITIONS.—If an H–2C non-  
 2           immigrant has not been employed in a registered po-  
 3           sition during any portion of the 240-day period after  
 4           the date of the approval of the position, the reg-  
 5           istered position shall be terminated and added to the  
 6           number of positions made available for the next 6-  
 7           month allocation period under paragraph (1) or (2)  
 8           of subsection (j).

9           “(h) FEDERAL PUBLIC BENEFITS.—

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

11                   “(A) are not entitled to the premium as-  
 12                   sistance tax credit authorized under section  
 13                   36B of the Internal Revenue Code of 1986;

14                   “(B) shall be subject to the rules applica-  
 15                   ble to individuals who are not lawfully present  
 16                   as set forth in subsection (e) of such section;  
 17                   and

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

23           “(2) EMPLOYER FEE.—For purposes of sub-  
 24           sections (a)(2), (b)(1)(B), and (c)(2)(A) of section  
 25           4980H of the Internal Revenue Code of 1986, the

1 H-2C nonimmigrant shall be treated as a full-time  
 2 employee certified as having enrolled in a qualified  
 3 health plan with respect to which an applicable pre-  
 4 mium tax credit or cost-sharing reduction is allowed  
 5 or paid with respect to the employee.

6 “(i) ALLOCATION OF REGISTERED POSITIONS.—

7 “(1) IN GENERAL.—

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

19 “(B) SECOND 6-MONTH PERIOD.—The  
 20 number of registered positions available under  
 21 paragraph (2) of subsection (g) (except those  
 22 made available under subparagraph (E) of such  
 23 paragraph) for the 6-month period ending on  
 24 the last day of a year is the maximum number  
 25 of registered positions available for such year

under paragraph (1)(A)(i) or (2)(B) of subsection (g) minus the number of registered positions approved during the 6-month period referred to in subsection (A). Such registered positions shall be allocated as described in this subsection.

“(2) SMALL BUSINESSES.—

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

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

“(ii) less than one quarter of the registered positions initially allocated for the 6-month period remain available after the first month.

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

“(j) PORTABILITY.—

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

4           “(A) be employed at any worksite if the  
5       registered employer advertised such location  
6       under subsection (f)(2)(B)(i)(I) or  
7       (g)(3)(B)(iii);

8           “(B) terminate such employment at any  
9       time, for any reason; and

10          “(C) seek and accept employment with an-  
11       other registered employer in any other reg-  
12       istered position within the terms and conditions  
13       of the H-2C nonimmigrant visa.

14          “(2) EMPLOYER PORTABILITY.—A registered  
15       employer who employs an H-2C nonimmigrant  
16       may—

17          “(A) employ such nonimmigrant at any  
18       worksite if the registered employer advertised  
19       such location under subsection (f)(2)(B)(i)(I) or  
20       (g)(3)(B)(iii);

21          “(B) terminate such employment at any  
22       time for any reason if such reason is lawful for  
23       United States workers; and

24          “(C) seek and hire another H-2C non-  
25       immigrant in accordance with subsection (f)(4).

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

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

12          “(l) ASSESSING THE IMPACT OF THE H-2C PRO-  
13          GRAM.—

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

1           “(2) REPORT.—Not later than 3 years after the  
2           date of the enactment of the Willing Workers and  
3           Willing Employers Act of 2016, the Director of the  
4           Bureau of the Census shall submit to Congress a re-  
5           port on the findings of the study required by para-  
6           graph (1), including the following information:

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

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

1 nance, business startups, investment, and over-  
2 all economic activity.

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

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

21 “(E) The impact of H-2C nonimmigrants  
22 on the criminal justice system in participating  
23 counties and metropolitan statistical areas, and  
24 an estimate of associated public costs.

“(F) The impact of permitting non-seasonal low skilled workers that currently do not qualify for H-2C nonimmigrant status to qualify for H-2C nonimmigrant status or of creating a new program to provide nonimmigrant status for such non-seasonal low skilled workers, including—

“(i) any impact on United States workers;

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

“(iii) any impact on employers that do not qualify to employ H-2C nonimmigrants; and

“(iv) any impact on H-2C nonimmigrants.

“(m) H-2C NONIMMIGRANT PROTECTIONS.—

“(1) WAIVER OF RIGHTS PROHIBITED.—

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

“(B) CONSTRUCTION.—Nothing in this paragraph may be construed to affect the interpretation of any other law.

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

3           “(A) IN GENERAL.—Notwithstanding any  
4       other provision of law—

5           “(i) an H–2C nonimmigrant is prohib-  
6       ited from being treated as an independent  
7       contractor under any Federal or State law;  
8       and

9           “(ii) no person, including any em-  
10      ployer, labor contractor, or any person who  
11      is affiliated with or contracts with an em-  
12      ployer or labor contractor, may treat an  
13      H–2C nonimmigrant as an independent  
14      contractor.

15          “(B) CONSTRUCTION.—Subparagraph (A)  
16      may not be construed to prevent registered em-  
17      ployers who operate as independent contractors  
18      from employing H–2C nonimmigrants.

19          “(3) PAYMENT OF FEES.—

20          “(A) IN GENERAL.—A fee related to the  
21      hiring of an H–2C nonimmigrant required to be  
22      paid by an employer under this Act shall be  
23      paid by the employer and may not be deducted  
24      from the wages or other compensation paid to  
25      an H–2C nonimmigrant.

1           “(B) EXCLUDED COSTS.—Notwithstanding  
2           any other provision of law, an employer may  
3           choose not to pay the cost of housing in the  
4           United States or transportation from an H-2C  
5           nonimmigrant’s home to the location of a reg-  
6           istered position and the cost of obtaining a for-  
7           eign passport.

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

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

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

23                 “(B) cooperates or seeks to cooperate in an  
24                 investigation or other proceeding concerning

1 compliance with the requirements of this sec-  
2 tion.

3 “(n) ENFORCEMENT.—

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

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

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

22 “(4) NOTICE AND HEARING.—

23 “(A) IN GENERAL.—Not later than 30  
24 days after the Secretary finds a reasonable  
25 basis under paragraph (3), the Secretary shall

1 issue a notice to the interested parties and offer  
2 an opportunity for a hearing on the complaint,  
3 in accordance with section 556 of title 5,  
4 United States Code.

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

9 “(5) ATTORNEY’S FEES.—

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

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

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

23 “(A) to seek remedial action, including in-  
24 junctive relief;

1 “(B) to recover the damages described in  
2 subsection (o)(2); or

3 “(C) to ensure compliance with terms and  
4 conditions described in subsection (m)(5).

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

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

20 “(o) PENALTIES.—

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

1 “(A) back wages; and

2 “(B) benefits.

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

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

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

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

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

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

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

1                   “(ii) upon the occasion of a third of-  
 2                   fense of failure to comply with representa-  
 3                   tions, a fine in an amount not to exceed  
 4                   \$5,000 per violation and designation as an  
 5                   ineligible employer, pursuant to subsection  
 6                   (e)(3)(B)(i).

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

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

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

22                 “(p) MONITORING.—

23                 “(1) ELECTRONIC MONITORING SYSTEM.—

24                 “(A) REQUIREMENT FOR SYSTEM.—The  
 25                 Secretary, through U.S. Citizenship and Immi-

1           gration Services, shall implement an electronic  
2           monitoring system to monitor the presence and  
3           employment of H-2C nonimmigrants, including  
4           a requirement that registered employers update  
5           the system when H-2C nonimmigrants start  
6           and end employment in registered positions.  
7           The system shall be operational not later than  
8           6 months following the date of the publication  
9           of the final regulations to carry out this section.

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

15           “(C) INTERACTION WITH REGISTRY.—  
16           Such system shall interact with the registry re-  
17           ferred to in subsection (f)(1)(F) to ensure that  
18           the Secretary designates and updates approved  
19           registered positions as being filled or unfilled.

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

23           “(E) ACCESS FOR SECRETARY OF  
24           STATE.—The Secretary of State shall have ac-  
25           cess to such system to verify an alien’s offer of

1 employment with a registered employer prior to  
2 admission as an H-2C nonimmigrant.

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

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

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

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

22 “(ii) for inquiries related to a United  
23 States worker other than—

1 “(I) to provide such worker’s eli-  
2 gibility for employment in the United  
3 States; or

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

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

17 “(r) RULEMAKING.—Not later than 1 year after the  
18 date of the enactment of the Willing Workers and Willing  
19 Employers Act of 2016, the Secretary shall, by rule, pro-  
20 vide for a means by which any renewal, attestation, or ap-  
21 plication filed pursuant to this section may be made elec-  
22 tronically.”.

23 (2) TABLE OF CONTENTS AMENDMENT.—The  
24 table of contents in the first section of the Immigra-  
25 tion and Nationality Act (8 U.S.C. 1101 et seq.) is

1       amended by adding after the item relating to section  
2       219 the following:

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

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

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

