SEC. 543. Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in fiscal year 2017 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor, may increase the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) in such fiscal year above such limitation by not more than the highest num- ber of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limi- tation.

SEC. 111. (a) FLEXIBILITY WITH RESPECT TO THE CROSSING OF H–2B NONIMMIGRANTS WORKING IN THE SEAFOOD INDUSTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if a petition for H–2B nonimmigrants filed by an em- ployer in the seafood industry is granted, the em- ployer may bring the nonimmigrants described in the petition into the United States at any time dur- ing the 120-day period beginning on the start date for which the employer is seeking the services of the nonimmigrants without filing another petition.

(2) REQUIREMENTS FOR CROSSINGS AFTER 90TH DAY.—An employer in the seafood industry may not bring H–2B nonimmigrants into the United States after the date that is 90 days after the start date for which the employer is seeking the services of the nonimmigrants unless the employer—

(A) completes a new assessment of the local labor market by—

(i) listing job orders in local news- papers on 2 separate Sundays; and

(ii) posting the job opportunity on the appropriate Department of Labor Elec- tronic Job Registry and at the employer's place of employment; and

(B) offers the job to an equally or better qualified United States worker who—

(i) applies for the job; and

(ii) will be available at the time and place of need.

(3) EXEMPTION FROM RULES WITH RESPECT TO STAGGERING.—The Secretary of Labor shall not consider an employer in the seafood industry who brings H–2B nonimmigrants into the United States during the 120-day period specified in paragraph (1) to be staggering the date of need in violation of sec- tion 655.20(d) of title 20, Code of Federal Regula- tions, or any other applicable provision of law.

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date for which the employer is seeking the services of the nonimmigrants unless the employer—

(A) completes a new assessment of the local labor market by—

(i) listing job orders in local news- papers on 2 separate Sundays; and

(ii) posting the job opportunity on the appropriate Department of Labor Elec- tronic Job Registry and at the employer's place of employment; and

(B) offers the job to an equally or better qualified United States worker who—

(i) applies for the job; and

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(3) EXEMPTION FROM RULES WITH RESPECT TO STAGGERING.—The Secretary of Labor shall not consider an employer in the seafood industry who brings H–2B nonimmigrants into the United States during the 120-day period specified in paragraph (1) to be staggering the date of need in violation of sec- tion 655.20(d) of title 20, Code of Federal Regula- tions, or any other applicable provision of law.

(b) H–2B NONIMMIGRANTS DEFINED.—In this sec- tion, the term ''H–2B nonimmigrants'' means aliens ad-mitted to the United States pursuant to

section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)).

SEC. 112. The determination of prevailing wage for the purposes of the H–2B program shall be the greater of—(1) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position in the same location; or (2) the prevailing wage level for the occupational classification of the posi-tion in the geographic area in which the H–2B non- immigrant will be employed, based on the best information available at the time of filing the petition. In the deter-mination of prevailing wage for the purposes of the H–2B program, the Secretary shall accept private wage sur-veys even in instances where Occupational Employment Statistics survey data are available unless the Secretary determines that the methodology and data in the provided survey are not statistically supported.

SEC. 113. None of the funds in this Act shall be used to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any references thereto. Further, for the purpose of regulating admission of temporary workers under the H–2B program, the defi-nition of temporary need shall be that provided in 8 CFR 2 214.2(h)(6)(ii)(B).