



BILLING CODE – 4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Proposed Revision of a Currently Approved Collection; Request for Comments; H-2B Temporary Non-Agricultural Labor Certification Program Forms (OMB Control Number 1205-0509).

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice and Request for Comment.

SUMMARY: The Department of Labor (DOL), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight of the H-2B labor certification program, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. In accordance with the Paperwork Reduction Act (PRA), ETA, within DOL, is providing the public notice and opportunity to comment on proposed revisions to the H-2B Foreign Labor Certification Program information collection.

The information collection for each existing form was approved on December 31, 2015 and expires December 31, 2018. A copy of the proposed information collection request

can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted by the following methods:

- *Email (encouraged):* ETA.OFLC.Forms@dol.gov.
- *Mail:* William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box PPII 12-200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.
- *Fax:* 202-513-7395.

INSTRUCTIONS: Comments which are related to specific forms should identify that form or form instruction using the form number, e.g. Form ETA-9142B or Form ETA-9165, etc., and should identify the particular area of the form for comment. A copy of the proposed information collection request (ICR) can be obtained by contacting the Office of Foreign Labor Certification as listed above.

FOR FURTHER INFORMATION CONTACT: William W. Thompson II, Administrator, Office of Foreign Labor Certification, 202-513-7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1-877-889-5627 (this is the TTY toll-free Federal Information Relay Service number), Box PPII 12-200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by Sections 101(a)(15)(H)(ii)(b) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(c)), as well as 8 CFR 214.2(h)(6), 20 CFR 655, Subpart A, and 29 CFR 503. The H-2B program enables employers to bring nonimmigrant foreign workers to the United States to perform non-agricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). The Department of Homeland Security (DHS) consults with DOL with respect to the H-2B program, and DOL provides advice on whether U.S. workers capable of performing the temporary services or labor are available. *See* 8 U.S.C. 1184(c)(1), INA Section 214(c)(1) (providing for DHS to consult with “appropriate agencies of the Government”). Under DHS regulations, an H-2B petition for temporary employment must be accompanied by an approved temporary labor certification from DOL, which serves as DOL’s consultative advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A), (iv)(A). DHS and DOL jointly promulgated regulations establishing the processes by which an employer must obtain a prevailing wage and temporary labor certification from DOL, and the rights and obligations of workers and

employers. 20 CFR 655, Subpart A; 8 CFR 214.2(h)(6)(iii)-(iv).

This ICR, OMB Control No. 1205-0509, includes the collection of information related to the use of employer-provided surveys for determining prevailing wages and the temporary labor certification process in the H-2B program. The Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*, is used to collect information that permits ETA to determine whether an employer-provided survey can be used to establish H-2B prevailing wages in the occupational classification in lieu of prevailing wages available under the Bureau of Labor Statistics Occupational Employment Statistics (OES) program. The information contained in the application Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, and corresponding appendices serve as the basis for the Secretary's determination that qualified U.S. workers are not available to perform the services or labor needed by the employer, and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H-2B workers. This determination is required before a petition can be approved by DHS. Employers use *Appendix B* of the Form ETA-9142B to attest that they will comply with all of the terms, conditions, and obligations of the H-2B program.

ETA is seeking comments on proposed revisions to the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*; Form ETA-9142B, *Appendix B*; Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*; and the instructions accompanying those forms. The proposed revisions will better align information

collection requirements with DOL's current regulatory framework, provide greater clarity to employers on regulatory requirements, standardize and streamline information collection to reduce employer time and burden preparing applications, and promote greater efficiency and transparency in ETA's review and issuance of labor certification decisions under the H-2B program.

ETA is also seeking comments on its proposed implementation of three new appendices to the Form ETA-9142B. The proposed *Appendix A* would require an employer to use a standard format to disclose multiple worksites and, if applicable, multiple wage offers for the job opportunity within an area of intended employment. Proposed *Appendix C* would require an employer to use a standard format to disclose the identity and location of all foreign labor recruiters. In order to recruit prospective foreign workers for the job opportunities offered by the employer under the Form ETA-9142B, the employer, and its attorney or agent (as applicable), must provide the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agent(s) or employee(s) of those person and entities. 20 CFR 655.9(b). Collection of this information in a standard format will also permit ETA to more effectively comply with 20 CFR 655.9(c), which requires the maintenance of a publicly available list of foreign labor recruiters and the location(s) in which they are operating. Proposed *Appendix D* would require an employer filing as a job contractor to disclose the name and contact information of its employer-client, as required by 20 CFR 655.19(d)(1). These appendices will establish a more efficient and standardized method of collecting information currently submitted by employers to the Department using a variety of paper-

based documents that are separately attached to the Form ETA-9142B.

To promote greater efficiency in issuing temporary labor certification decisions and minimize delays associated with employers filing H-2B petitions with DHS, ETA is seeking to eliminate the issuance of paper-based labor certification decisions by proposing the creation of a one-page Form ETA-9142B, *Labor Certification Determination*, which will be issued electronically to employers granted temporary labor certification by DOL. In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.

Finally, ETA is requesting a three-year extension, without change, of the Form ETA-9142B, *Seafood Industry Attestation* and Form ETA-9155, *H-2B Registration*. Employers in the seafood industry who wish to stagger the entry of H-2B workers into the United States between 90 and 120 days after the certified start date of need will need to complete the Form ETA-9142B, *Seafood Industry Attestation* and provide a copy to each H-2B worker to present, upon request by DHS, when seeking entry into the United States. The information collected on the Form ETA-9155, *H-2B Registration* allows ETA to determine whether the nature and duration of the employer's need for H-2B workers is temporary. Where ETA has not operationalized the registration process through a separate notice in the *Federal Register*, H-2B applications are exempt from the registration requirements under 20 CFR 655.11, and the adjudication of the employer's temporary need will continue to occur based on information collected on the Form ETA-

9142B. For complete details regarding this ICR, contact the office listed in the **ADDRESSES** section above.

II. Review Focus

DOL is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This revision request will allow ETA to meet its statutory and regulatory responsibilities pertaining to labor certification applications that are used in the H-2B program and that allow employers to bring foreign labor to the United States on a temporary basis.

This information collection is subject to the PRA. A Federal agency generally cannot

conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. DOL obtains OMB approval for this information collection under control number 1205-0509.

Title of Collection: H-2B Temporary Non-Agricultural Employment Certification Program.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Number: 1205-0509.

Affected Public: Individuals or Households; Private Sector (businesses or other for-profit institutions); Federal Government; and State, Local and Tribal Governments.

Form(s): ETA-9142B, *H-2B Application for Temporary Employment Certification*; ETA-9142B, *Labor Certification Determination*; ETA-9142B – Appendix A; ETA-9142B – Appendix B; ETA-9142B – Appendix C; ETA-9142B – Appendix D; ETA-9142B, *Seafood Industry Attestation*; ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*; and ETA-9155, *H-2B Registration*.

Total Estimated Number of Annual Respondents: 85,057.

Annual Frequency: On Occasion.

Total Estimated Number of Annual Responses: 286,978.

Estimated Time per Response: Various.

Total Estimated Annual Burden Hours: 80,201.

Total Estimated Annual Burden Cost for Respondents: \$705,400.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (e.g., confidential business information or personally identifiable information such as a social security number).

Rosemary Lahasky,
Deputy Assistant Secretary
Employment and Training Administration
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