



DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities for H-2B Foreign Labor Certification

Program; Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor’s (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled “H-2B Foreign Labor Certification Program,” and related information collection and retention requirements (OMB Control Number 1205-0509), which covers Forms ETA-9142B, Appendices A, B, C, and D, ETA-9142B, Final Determination, H-2B Seafood Industry Attestation, and related form instructions. This action seeks to renew these forms. The Department also proposes to eliminate the Form ETA-9155, H-2B Registration and pertinent instructions, as employers are not required to complete and submit this form. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To submit written comments and/or request a copy of this ICR (e.g. forms, instructions; supporting documentation; etc.), for free, please send an email to Brian Pasternak, Administrator, Office of Foreign Labor Certification, by email at ETA.OFLC.Forms@dol.gov.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator,

Office of Foreign Labor Certification, by email at ETA.OFLC.Forms@dol.gov.

(Authority: 44 U.S.C. 3506(c)(2)(A).)

SUPPLEMENTARY INFORMATION: DOL, in its continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program ensures the public provides all necessary data in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This 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 nature. *See* 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. *See* 20 CFR 655, subpart A; 29 CFR part 503; 8 CFR 214.2(h)(6)(iii)-(iv). The information contained in the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, and corresponding appendices serves 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.

ETA is seeking comments on the proposed renewal of the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, its instructions, Form ETA-9142B, Appendices A- D, and Form ETA-9142B, *Final Determination*. *Appendix A* requires an employer to use a standard format to disclose additional place(s) of employment and, if applicable, multiple wage offers for the job opportunity. 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. The Department is making a non-substantive change to a footnote in the appendix to update the Appropriations funding bill. *Appendix C* requires 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. *See* 20 CFR 655.9(b). *Appendix D* requires joint employers, whether filing as job contractors or not, to disclose the name and contact information of the employer-client or other joint employer. The ICR contains a one-page Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*, which is 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 sends the certification documents printed on standard paper in a manner that ensures overnight delivery. DOL seeks to renew these forms.

Additionally, ETA is seeking comments on a proposed three-year renewal without change for the Form ETA-9142B, *Seafood Industry Attestation*. 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.

Finally, ETA is additionally seeking comments on its proposal to eliminate the Form ETA-9155, *H-2B Registration*. The Department had developed this form to facilitate the H-2B registration process and assist in determining whether the nature and duration of an employer's need for H-2B workers is temporary, but the form was not implemented. Pursuant to court order,¹ the Department created an internal process to issue registration numbers in lieu of the form, and thus employers are not required to complete the Form ETA-9155. The Department is, therefore, proposing to eliminate this form, its instructions, and the estimated time, recordkeeping, and cost burdens associated with it as employers are not required to complete nor file it in order to register.

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 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

¹ *Padilla Construction Company, et. al. v. Martin J. Walsh, et. al.*, No. 2:18-cv-1214 (C.D. Cal. Nov. 2, 2022).

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. DOL notes that existing information collection requirements submitted to OMB receive a month-to-month extension while they undergo review.

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 OMB, under the PRA, approves it and the collection tool 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.

Interested parties are encouraged to provide comments to the contact shown in the ADDRESSES section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0509.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

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;

- 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 submission of responses).

Agency: DOL-ETA.

Action: Revision.

Title of Collection: H-2B Foreign Labor Certification Program.

OMB Control Number: 1205-0509.

Affected Public: Private Sector (businesses or other for-profits); Not-for-profit Institutions; Government, State, Local and Tribal Governments.

Form(s): ETA-9142B, ETA-9142B General Instructions, ETA-9142B, Appendices A, B, C, and D, Form ETA-9142B, Final Determination, Form ETA-9142B, Seafood Industry Attestation.

Total Estimated Number of Annual Respondents: 106,925.

Frequency: On Occasion.

Total Estimated Annual Responses: 445,871.

Average Time per Response: 2 hours and 45 minutes.

Total Estimated Annual Time Burden: 128,851 hours.

Total Estimated Annual Other Costs Burden: \$1,771,920.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Labor.

