



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-2A Temporary Agricultural Labor Certification Program Forms (OMB Control Number 1205-0466).

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 oversight in the H-2A 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 (PRA). 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 PRA, ETA, within DOL, is providing the public notice and opportunity to comment on proposed revisions to the application Form ETA-9142A, *H-2A Application for Temporary Employment Certification*; Form ETA-9142A, *Appendix A*; and the general instructions to those forms. ETA is also seeking public comment on a proposal to eliminate the issuance of paper-based labor certification decisions through the

creation of a one-page Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval*, which will be issued electronically to employers granted temporary labor certification by DOL.

Lastly, ETA is also seeking public comment on a proposal to implement a revised agricultural clearance order that will be integrated with the Form ETA-9142A. The proposed Form ETA-790/790A, *H-2A Agricultural Clearance Order*, and addenda, provide language to employers to disclose necessary information including, but not limited to, the following: (1) the type of agricultural services or labor needed, number of workers, duration of employment, and minimum qualifications or requirements of the job; (2) the place(s) where work will be performed and the wage rate(s) that will be offered, advertised, and paid to workers in each crop or agricultural activity, as well as any other conditions or deductions from pay not required by law; (3) basic information regarding the geographic location, type, capacity, and applicable standards of the housing for workers; and (4) other required disclosures concerning the provision of meals, transportation and daily subsistence, referral and hiring instructions, and any other material terms and conditions of the job offer. The proposed Form ETA-790/790A will be submitted to the State Workforce Agency (SWA) for review and in advance of filing Form ETA-9142A. A copy of Form ETA-790/790A will then be attached by the employer at the time of filing Form ETA-9142A. The information collected on the ETA-790/790A is used to determine whether the material terms and conditions of employment do not adversely affect similarly employed U.S. workers and, if approved, facilitate the recruitment of U.S. workers through the intrastate and interstate job clearance systems of

the SWA. This proposal will consolidate information collected through the agricultural clearance order Form ETA-790, which is currently authorized under OMB Control Number 1205-0134, into the agency's primary H-2A information collection requirements under OMB Control Number 1205-0466. This consolidation and revision will align all data collection for the H-2A program under a single OMB approved information collection request (ICR).

The information collection for each existing form was approved on June 3, 2016 and expires May 31, 2019. A copy of the proposed ICR 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 that are related to a specific form or a specific form's instructions should identify the form or form's instructions using the form number, e.g., ETA-9142A or Form ETA-790/790A, and should identify the particular area of the form for comment. A copy of the proposed ICR can be obtained by accessing the Office of

Foreign Labor Certification's web site at www.foreignlaborcert.doleta.gov or 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)(a), 214(c), and 218 of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c), and 1188) and 8 CFR 214.2(h)(5) and 20 CFR 655, subpart B. The H-2A visa program enables employers to bring nonimmigrant foreign workers to the United States to perform agricultural work of a seasonal or temporary nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). Before an employer can file a petition with the Department of Homeland Security (DHS) to import temporary workers as H-2A nonimmigrants, the INA and DHS regulations require an employer to first obtain a determination from DOL certifying whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary agricultural worker 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. 8 U.S.C. 1188, INA section

218; 8 CFR 214.2(h)(5)(i), (ii) and (iv)(B). DOL's regulations establish the processes by which an employer must obtain a temporary labor certification from DOL and the rights and obligations of workers and employers. 20 CFR part 655, subpart B.

This ICR, OMB Control No. 1205-0466, includes the collection of information related to the temporary labor certification process and agricultural clearance order process in the H-2A program. The information contained in the application Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, and the job order Form ETA-790/790A, *H-2A Agricultural Clearance Order*, together serve as the basis for the Secretary of Labor's (Secretary) 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-2A workers. Employers use *Appendix A* of the Form ETA-9142A to attest that they will comply with all of the terms, conditions, and obligations of the H-2A program.

ETA is seeking comments on proposed revisions to Form ETA-9142A and appendix, Form ETA-790/790A and addenda, 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-2A visa program.

To promote greater efficiency in issuing temporary labor certification decisions and

minimize delays associated with employers filing H-2A petitions with DHS, ETA is proposing to eliminate the issuance of the paper-based labor certification approval decisions by creating a one-page Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval*, 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. For complete details regarding the proposed revisions to 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 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

In order to meet its statutory responsibilities under the INA, ETA must extend and revise an existing collection of information pertaining to labor certification applications used in the H-2A visa program that allows employers to bring foreign labor to the U.S. on a seasonal or other 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 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 1205-0466. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2019. DOL seeks to extend PRA authorization for this revised information collection for three (3) more years.

In the past, the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal governments, or the Federal government. The Secretary uses the collected information to determine if employers are meeting their statutory and regulatory obligations.

Title: H-2A Temporary Agricultural Employment Certification Program

Type of Review: Revision of a Currently Approved Information Collection

OMB Number: 1205-0466

Affected Public: Individuals or Households, Private Sector – businesses or other for-profits, Government, State, Local and Tribal Governments

Form(s): ETA-9142A, *H-2A Application for Temporary Employment Certification*; ETA-9142A – *Appendix A*; ETA-9142A – *Final Determination: H-2A Temporary Labor Certification Approval*; ETA-790/790A, *H-2A Agricultural Clearance Order*; ETA-790/790A – *Addendum A*; ETA-790/790A – *Addendum B*

Total Annual Respondents: 8,783

Annual Frequency: On Occasion

Total Annual Responses: 273,537

Estimated Time per Response (averages):

- Forms ETA 9142A, Appendix A – 3.66 hours per response.
- Forms ETA 790/790A/790B – .69 hours per response
- Administrative Appeals – 18.48 hours per response

Estimated Total Annual Burden Hours: 52,384.81

Total Annual Burden Cost for Respondents: \$0

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).

Molly E. Conway,
Acting Assistant Secretary,
Employment and Training Administration.
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