

BILLING CODE: 4510-FP-P

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; H-2B Foreign Labor Certification Program**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training (ETA) sponsored information collection request (ICR) revision titled, “H-2B Foreign Labor Certification Program,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201812-1205-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201812-1205-002) (this link will only become active on the day following publication of this notice) or by contacting

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL\_PRA\_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA\_submission@omb.eop.gov.

Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; or by email: DOL\_PRA\_PUBLIC@dol.gov.

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL\_PRA\_PUBLIC@dol.gov.

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the H-2B Foreign Labor Certification Program information collection. 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 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 503; 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 a prevailing wage in the occupational classification in lieu of a prevailing wage determined using the Bureau of Labor Statistics Occupational Employment Statistics (OES) program. The information contained in the 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 the Form ETA-9155, *H-2B Registration*, which 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.

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 additional place(s) of employment and, if applicable, multiple wage offers for the job opportunity. 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 more effectively to 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, *Final Determination: H-2B 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.

Finally, ETA is requesting a three-year extension, without change, of 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.

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. The DOL obtains OMB approval for this information collection under Control Number 1205-0509. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the *Federal Register* on September 7, 2018 (83 FR 45469).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within thirty (30) days of publication of this notice in the *Federal Register*. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0509. The OMB 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.

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

*OMB Control Number:* 1205-0509.

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

*Total Estimated Number of Respondents:* 85,057.

*Annual Frequency:* On Occasion.

*Total Estimated Number of Responses: 286,978.*

*Total Estimated Annual Time Burden: 80,748 hours.*

*Total Estimated Annual Other Costs Burden: \$931,287.*

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

Dated: December 21, 2018.

**Michel Smyth,**

*Departmental Clearance Officer.*

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