

**JUSTIFICATION FOR  
NON-SUBSTANTIVE CHANGE REQUEST TO OMB 1205-0466**

**Form: ETA 9142: Application For Temporary Employment Certification,**

**Appendix B.1**

**BACKGROUND:** On August 30, 2010, the U.S. District Court in the Eastern District of Pennsylvania in Comite´ de Apoyo a los Trabajadores Agricolas (CATA) v. Solis, Civil No. 2:09-cv-240-LP, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010), ordered the Department to “promulgate new rules concerning the calculation of the prevailing wage rate in the H-2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order.” To comply with the Court-mandated deadline, the Department issued a Notice of Proposed Rulemaking (NPRM), Wage Methodology for the Temporary Non-agricultural Employment H-2B Program, 75 FR 61578, on Oct. 5, 2010. The NPRM proposed to define the prevailing wage, the rate an employer must offer and pay to its workers to avoid adverse effect, as the highest of the wage rates for the job opportunity under the Davis-Bacon Act (DBA), the McNamara-O’Hara Service Contract Act (SCA), a collective bargaining agreement (CBA), as applicable, or the arithmetic mean of the Occupational Employment Statistics (OES) wage survey, thereby eliminating the stratification of the OES wage data into wage tiers representing four skill levels.

The Department published the Wage Methodology for the Temporary Non-agricultural Employment H-2B Program Final Rule (Wage Final Rule) on January 19, 2011, which establishes a final prevailing wage determination methodology consistent in large part with the methodology in the proposed rule.

The Wage Final Rule requires that the new methodology for calculating the prevailing wage be used for all work performed in the H-2B program on or after January 1, 2012. Because many employers will apply for H-2B workers for periods of up to 10 months, applications could be filed as early as mid-March 2010 that will reference work to be performed both before and after January 1, 2012. Since the wages resulting from the Wage Final Rule's methodology will be different than the wages under the current methodology, this will result in two wage rates being applicable to a single application.

**ACTION SOUGHT:** Therefore the Department seeks OMB approval for a non-substantive change to its current information collection (OMB 1205-0466), specifically by minor changes to Appendix B.1 to its existing ETA 9142. The minor changes to this appendix, which will entail no additional burden, will ensure that employers who file an H-2B application (or on whose behalf an H-2B application is filed) indicate their agreement to pay not only the wage rate determined under the current methodology for work performed before the effective date of the Wage Final Rule, but also the wage rate determined under the Wage Final Rule for work performed on or after the effective date of the Wage Final Rule.