

Justification for Non-substantive Change
OMB Control Number 1205-0509
H-2B Application for Temporary Employment Certification
Seafood Industry Attestation

Action sought:

The Department seeks OMB approval for a non-substantive change to its current information collection (OMB 1205-0509), specifically by a new attestation to its existing ETA Form 9142B applicable only to employers in the seafood industry who permit or require their H2B workers to enter the U.S. beyond the usual time permitted for entry. The new attestation, which will entail an additional burden of 551 hours for a very small number of all H-2B employers, will ensure that seafood industry employers who file an H-2B application (or on whose behalf an H-2B application is filed) understand their obligations under the law and indicate their agreement to recruit for U.S. workers if they plan to bring in H-2B workers more than 90 days after their first day of need.

Background:

The Department of Labor, Office of Foreign Labor Certification, must conduct a new information collection in order to implement immediately a provision in the 2014 Appropriations Act. The information collection consists of a non-substantive change to ETA Form 9142B, "H-2B Application for Temporary Employment Certification," OMB Approval 1205-0509.

- Under the Immigration and Nationality Act, before an employer brings foreign H-2B workers into the U.S. on a temporary basis, DOL's Office of Foreign Labor Certification (OFLC) must certify that there are no U.S. workers willing and capable of performing the temporary work and that the foreign worker's employment will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- To implement the first condition for the importation of foreign workers – assuring that there are no U.S. workers willing and capable of performing the temporary work – OFLC requires employers to recruit U.S. workers, and certify that it has been unsuccessful in locating sufficient numbers of qualified U.S. applicants and that any U.S. workers who applied for the job were rejected only for lawful, job-related reasons.
- If an employer's need for H-2B workers is certified by OFLC, the start date of the work on the employer's visa petition to the Department of Homeland Security (DHS) for an H-2B visa classification must contain the same start date of work on the DOL certification.¹ When issuing the visa, the Department of State reviews the visa application and the approval notice issued by the U.S. Citizenship and

¹ See 8 CFR 214.2(h)(6)(iv)(D) (“[A]n H-2B petition must state an employment start date that is the same as the date of need stated on the approved temporary labor certification.”)

Immigration Services (USCIS) to determine visa validity dates. USCIS and the Customs and Border Patrol expect the H-2B workers to cross into the U.S. within a few days of the start date of work.

- The 2014 Appropriations Act creates an exception for employees in the seafood industry that allows them to cross the border into the U.S. any time between 1 to 120 days after the start date of the work. In addition, if seafood employers want to bring H-2B workers into the U.S. between 90 and 120 days after the start date of work, they must engage in “fresh” recruitment of U.S. workers using the recruitment steps established in the statute. This exception for seafood workers expires on Sept. 30, 2014.
- In order to implement this provision, OFLC must require employers in the seafood industry who want to take advantage of the flexible border crossing established by the statute to certify two facts: (1) that they are an employer in the seafood industry; and (2) if they want H-2B workers to cross into the U.S. between 90 and 120 days following the start date of the work, they have conducted the “fresh” recruitment required under the statute. See attached draft Attestation for Employers in the Seafood Industry, which will be available on the OFLC website as an addendum to the ETA Form 9142B. OFLC will not collect or retain this certification. Employers must sign and date it, and then supply it to the H-2B workers together with other documentation required for admission, and the workers must have it available to show to the State Department Consular Office and DHS’s Customs and Border Patrol Officers at the border upon request.
- This attestation constitutes a non-material change to the “H-2B Application for Temporary Employment Certification.” It seeks only additional information necessary to implement the statutory exception.

Burden Hours:

It is difficult to estimate the costs involved in completing and maintaining the attestation form, because the Department has limited information upon which to assess the scope of employer use of this attestation. We have accordingly provided best estimates based on seafood industry participation in the H-2B program.

The Department estimates that this change will affect approximately 152 H-2B employers who would be eligible to use the Seafood Industry Attestation. It will take them 15 minutes to print out, read, and sign the Seafood Industry Attestation for a total of 38 third-party disclosure hours and 152 responses. (152 employers x 15 minutes ÷ 60 = 38 hours)

Each year the seafood industry brings in approximately 4,750 H-2B workers. Under the new law those who come after the first date of need will need to have the Seafood Industry Attestation when they enter the United States. The Department accordingly estimates that 60 percent of H-2B seafood employees are likely to need the Attestation,

a total of 2,850 such workers, and it will take their respective employers 10 minutes per employee to ensure that each employee receives the Attestation for a total of 475 third-party disclosure hours and 2,850 responses. ($4,750 \text{ H-2B workers} \times 60\% \times 10 \text{ minutes} \div 60 = 475$)

The Department estimates that 25 percent of the eligible employers are likely to utilize the 90 – 120 day arrival provisions of the law, which will require that additional recruitment steps be taken to recruit U.S. workers. The Department estimates that it takes employers 1 hour to write and place the advertisements and job order and an average of 1 hour per employer to interview applicants for a total of 76 third-party disclosure hours and 38 responses. ($152 \text{ employers} \times 25\% \times 2 \text{ hours} = 76 \text{ hours}$)

DOL estimates it will take 2 minutes for a seafood worker to present, upon request, the attestation to a State Department Consular Office and/or a DHS Customs and Border Patrol Officers at the border. This results in 2,850 responses and 95 reporting hours. ($2,850 \text{ H-2B seafood workers} \times 2 \text{ minutes} \div 60 = 95 \text{ hours}$) In order to facilitate clearance, DOL is assuming the minor burden for H-2B seafood workers to provide the attestation to other agencies.

It is difficult to estimate the costs involved in completing and maintaining the attestation form. DOL believes that in most companies a Human Resources Manager or its equivalent will perform these activities. In estimating the value of employer burden hours, DOL used the hourly wage rate for a Human Resources Manager (\$47.94), as published by DOL's Occupational Employment Statistics OnLine,² and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$68.55. The total monetized annual value of employer burden hours for the Seafood Industry Attestation is \$40,376. $589 \text{ hours} \times \$68.55 = \$40,376$.

DOL has increased the 2012 national median hourly rate for meat, poultry, and fish cutters and trimmers (\$10.98), (see <http://www.onetonline.org/link/summary/51-3022.00>), by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$15.70 to estimate the monetized value of H-2B workers' burden hours. The total monetized annual value of H-2B workers' burden hours is \$29.83. ($95 \times \$15.70 = \$1,491.5$)

The Department estimates that the cost of the advertisements for two Sundays over all geographic locations will average \$500.00 for a total annual burden of \$5,000. ($38 \text{ employers} \times \$500 = \$19,000$)

Total estimated burdens for the attestation are: 3,002 respondents, 5,738 responses, 684 burden hours, and \$19,000 other burden costs.

Total burdens under the control number, with enactment of this request, are: 8,237 respondents, 38,424 responses, 16,017 burden hours, and \$19,000 in costs.
Cost to the Federal Government

² Source: Bureau of Labor Statistics 2013 O*NET wage data.

The average Federal Government cost³ for a year of operation is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by using the Bureau of Labor Statistics' index for salary plus. The total cost to the Federal Government for the H-2B Attestation for Employers in the Seafood Industry is estimated at \$6,000 and is calculated as follows:

Review of Attestation by State Department Consular Office and/or a DHS Customs and Border Patrol Officers at the border:

95 hours x \$63.16 = \$6,000

[(2,850 Federal workers x 2 minutes ÷ 60 = 95 hours) x (GS-12 Step 5 FLFTE:
\$37.37 x 1.69 = \$63.16)]

DOL notes that the database will not allow an update to the Federal Government cost.

³ The Federal Government cost estimates are based on the U.S. Office of Personnel Management 2012 Salary Tables (which are the same as those for 2013). Please see http://archive.opm.gov/oca/12tables/pdf/rus_h.pdf. The cost estimate for the review of the Attestation uses the locality pay for "the rest of the U.S." as it is difficult to know which port of entry will be used.