SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT OF 1995

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SUPPORTING STATEMENT
REVISED INFORMATION COLLECTION REQUEST
OMB CONTROL NUMBER 1205-0509

H-2B APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION
AND
H-2B REGISTRATION (H-2B PROGRAM ONLY)

A. Justification

A.1. Circumstances that make the collection of information necessary.

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)) and 8 CFR 214.2(h)(6). Before an employer may petition for any temporary or permanent skilled or unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the Department of Labor's (Department) implementing regulations, which differ depending on the visa program under which the foreign workers are sought.

The H-2B visa program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H-2B program, the INA and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States on a temporary basis for the purpose of performing non-agricultural services or labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary must certify that qualified U.S. workers are not available to perform such temporary labor or services. (8 CFR 214.2(h)(6)(i)(A), (iii)(A).)

This Information Collection Request (ICR), OMB Control No. 1205-0509, solely includes the information collections (ICs) related to the labor certification process in the H-2B program. The information contained in the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, is the basis for the Secretary's determination that unemployed U.S. workers are not available to perform the services or labor, and that the wages and working conditions of U.S. workers will not be adversely affected by the employment of H-2B workers, before a petition can be approved by the Department of Homeland Security. The Form ETA-9142B is used to collect information to permit the Department to meet its statutory responsibilities for administering the H-2B temporary labor certification program. *Appendix B* of the Form ETA-9142B is used by employers to attest that they will comply with all of the terms, conditions, and obligations of the H-2B program.
This ICR also includes the IC containing Form ETA-9155 *H-2B Registration*. The Form ETA-9155 is a new form required by the new regulations that went into effect

April 29, 2015. It allows the Department to make a preliminary determination with respect to an employer's temporary need, and issue to the employer an *H-2B Registration* to be used in connection with subsequent labor certification applications for a period of up to three consecutive years. An H-2B employer must register with the Department prior to submitting its request for labor certification.

A third IC in the H-2B ICR is the *Seafood Industry Attestation*. This attestation is used specifically by employers in the seafood industry who would like to avail themselves of the staggered entry provision for H-2B workers recently enacted by Congress in the Consolidated and Further Continuing Appropriations Act of 2015, P.L. 113-235.

The H-2B ICR was recently revised to reflect regulatory changes to 20 CFR Part 655, Subpart A, made by the H-2B Comprehensive Interim Final Rule (H-2B Comprehensive IFR) to comply with the court order in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Florida, Mar. 4, 2015). That district court decision vacated the Department's 2008 H-2B regulations, under which the H-2B labor certification program had been operating. This ICR was approved by OMB under emergency procedures for a six month period. The Department is now requesting a three year extension. The burden for the H-2B ICR is discussed below.

A.2. How, by whom, and for what purpose the information is to be used.

The Department's Employment and Training Administration (ETA) uses these information collections to better ascertain the employer's eligibility to participate in the H-2B program based on a legitimate temporary need for nonagricultural labor or services, including an independent temporary need of H-2B labor contractors. The Department also uses these information collections to enhance program integrity by ensuring that the employer is offering at least the minimum wages, benefits and working conditions to both U.S. and H-2B nonimmigrant workers. In addition, the ICs are used to verify that those representing employers both in the labor certification process and in the process of recruiting temporary foreign workers are acting on behalf of the employers within the scope of their authority and in compliance with the revised regulations. Finally, the ICs have improved the process for informing U.S. workers of the job opportunities for which employers seek to hire foreign workers, thereby enhancing the labor market test.

Specifically, the ICs are used by the Department in the manner described below:

<u>Form ETA-9142B, *H-2B Application for Temporary Employment Certification*</u>
The Form ETA-9142B is used to collect information to permit the Department to meet its statutory responsibilities for administering the H-2B temporary labor certification program. The H-2B program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary nature as described in 8 U.S.C. 1101 (a)(15)(H)(ii)(b). The use of the Form ETA-9142B

remains unchanged in the H-2B program. The certified form will continue to be requested by ETA in post-adjudication audits and/or integrity proceedings (revocation, debarment) and will also continue to be requested by the Wage and Hour Division during investigations and enforcement proceedings in the H-2B program.

Form ETA-9142B, Appendix B - Attorney/Agent/Employer Declarations

The Department's regulations require the employer and its attorney and/or agent to attest to complying with specific program requirements in order to obtain a temporary labor certification. These attestations are contained in Appendix B. In addition to being used during adjudication, the appendix will continue to be requested by ETA in post-adjudication audits and/or integrity proceedings (revocation, debarment) and will also continue to be requested by the Wage and Hour Division during investigations and enforcement proceedings in the H-2B program.

Form ETA-9155 *H-2B Registration*

The Form ETA-9155, *H-2B Registration*, will be used by ETA to implement the preliminary process for adjudicating temporary need in accordance with the H-2B Comprehensive IFR section 655.11 for use only in the H-2B program.

Seafood Industry Attestation

This Attestation is used only by those employers in the seafood industry who would like to avail themselves of the staggered entry provision recently enacted by Congress in the Consolidated and Further Continuing Appropriations Act of 2015, P.L. 113-235. In non-seafood industry cases, if an employer's need for H-2B workers is certified by ETA's Office of Foreign Labor Certification (OFLC), the start date of the work on the employer's visa petition to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) for an H-2B visa classification must contain the same start date of work that appears on the DOL certification.[1] When issuing the visa, the Department of State reviews the visa application and the approval notice issued by USCIS to determine visa validity dates. USCIS and U.S. Customs and Border Patrol (CBP) expect H-2B workers to cross into the U.S. within a few days of the start date of work. The 2014 Appropriations Act created an exception for employees in the seafood industry that allows them to cross the border into the U.S. any time between 1 and 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. In order to implement this statutory provision, OFLC, under the H-2B Comprehensive IFR, has codified the requirement that employers in the seafood industry who want to stagger border crossings for H-2B workers certify: (1) that they are an employer in the

[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.")

seafood industry; and (2) if their H-2B workers are crossing into the U.S. between 90 and 120 days following the start date of the work as listed on their ETA-9142B, that they have conducted the "fresh" recruitment required under the statute. To make this certification, employers are required to fill out and provide the H-2B workers with the *Attestation for Employers in the Seafood Industry,* which is available on the OFLC website as an addendum to the ETA-9142B.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, the Department intends to make all instruments in this collection both electronically fillable and fileable. At this time, only the current Form ETA-9142B is both a fillable and fileable form and is available online on the Department's iCert Portal at http://icert.doleta.gov/ where it can be accessed by employers who wish to complete and submit it electronically. Both the PDF fillable form and the fileable electronic form (available on the iCert Portal) include guidance in the form of field-specific instructions intended to assist employers with completing the form. Appendix B is available in fillable PDF format through the Department's iCert Portal as well as the OFLC website. The Department will seek OMB approval of the electronically fileable form prior to introducing it for public use.

When registration of H-2B employers begins, the Form ETA-9155 will be available in fillable PDF format through the Department's iCert Portal http://icert.doleta.gov/ and the OFLC website. The Department intends to seek OMB approval of the electronically fileable form, once available, prior to its introduction for public use.

The *Seafood Industry Attestation* is available on the OFLC website at http://www.foreignlaborcert.doleta.gov/pdf/seafood_attestation_final_04102014.pdf in a PDF format. Because it only requires the employer to sign and date the Attestation and give it to the H-2B worker, it does not need to be fillable or fileable.

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The information requested on the forms ETA-9142B and ETA-9155 is sufficiently diverse to avoid duplication of activities within the Department for the H-2B program. Any duplicative information such as the name, address, and contact information of the employer will be eliminated once all of the forms are incorporated into the Department's iCert Portal. Once employers provide such information through iCert, the system will populate appropriate fields in all forms accessed by the employer through iCert thereafter.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to hire and import foreign labor. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

The Department would be in direct violation of law and regulations if this information was not collected. The information must be collected to enable DOL to meet its H-2B temporary labor certification obligation by determining whether or not an employer meets the criteria necessary to be issued a labor certification and whether employment of foreign workers will adversely affect the wages or working conditions of U.S. workers similarly employed.

A.7. Special circumstances for conducting information collection.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act, except that the employers must retain records and supporting documents used to complete the forms included in this ICR for at least three years.

A.8. Preclearance notice and summary of public comments.

The Department published a 60-day notice of the extension of this information collection in the *Federal Register* on July 10, 2015 (80 FR 39801). The comment period ended September 8, 2015. The Department received three substantive comments and one comment that was not germane to the information collection. Below is an analysis of the substantive comments and the Department's response.

Appendix B

Comment	Section of Form	OFLC Response
The commenter states that the fifth attestation within Appendix B exceeds regulatory requirements associated with filing, and creates uncertainty in terms of employer obligations, as there is no provision related to "most recent" prevailing wage determination in the regulations. The commenter suggests this language has potential to cause particular confusion to employers that have multiple prevailing wage determinations for multiple job opportunities. The commenter also maintains	Appendix B, Declaration 5	The Department agrees with the comment regarding potential confusion where an employer has filed multiple applications with multiple associated prevailing wages. In order to clarify our expectations, the Department has added the term "for the occupation" after the phrase "The offered wage equals or exceeds the highest of the most recent prevailing wage" in the fifth declaration of Appendix B. The Department disagrees with the comment that the fifth attestation exceeds

that the Department's reiteration of compliance with future changes to applicable minimum wage laws is duplicative and problematic because employers cannot assert that the offered wage equals or exceeds some unknown future wage. The commenter, therefore, recommends that the phrases "most recent" and "will be issued" be stricken from this attestation to remove potential confusion to the filing community.		regulatory requirements, because the attestation is authorized by DOL's regulations. In 2010, the U.S. District Court for the Eastern District of Pennsylvania in *Comité de Apoyo a los Trabajadores Agricolas v. Solis* (CATA I) held that nothing in the H-2B regulations precludes DOL from revising a wage previously issued if the wage is later determined to be a product of a deficient wage methodology. *CATA I*, 2010 WL 4823236, *1-3 (Nov. 24, 2010). Furthermore, the court in *Louisiana Forestry Ass'n v. Solis*, specifically upheld the insertion of the language "will be issued". *Louisiana Forestry Ass'n v. Solis*, 889 F. Supp.2d 711, 738 n.19 (E.D. Pa. 2012) ("The new language in the form, requiring employers seeking labor certification to promise to pay the prevailing wage that 'will be' issued during the validity of the labor certification, simply clarifies for employers that the wages they are required to pay H-2B workers may change if the DOL issues a new prevailing wage determination."). The Department's 2013 Interim Final Wage Rule (2013 Wage IFR), which revised the wage methodology in the H-2B program per court order, simply adopts this legal framework as set forth previously by the court. The 2013 Wage IFR thus notified the regulated community that the new prevailing wage rate would apply to all employers currently employing H-2B workers in the U.S. upon individual notification to the employer of a new prevailing wage determination. *Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part* 2, 78 FR 24,047, 24,055 (Apr. 24, 2013).

		The "most recent prevailing wage that is or will be issued" language in Appendix B, thus, is squarely within DOL's regulatory authority, and is supported by various court decisions. Finally, the Department's reiteration of the necessity for compliance with any future changes to minimum wage standards serves to remind employers that the offered wage must never fall below the applicable Federal, State, or local minimum wage requirements; as such the Department will not make further changes to this section.
Commenter emphasizes that non-licensed agents have been criminally prosecuted for fraudulent activities. The commenter requests that the Department revise the declaration of the employer's representative to parallel declaration language for the employer. to under penalty of perjury to increase the ability of the government to enforce against agent misconduct	Appendix B, Section A	The Department agrees to make the proposed change. The preamble to the 2015 H-2B IFR states that agents and attorneys who file applications on behalf of employers certify under penalty of perjury on the Form ETA-9142B Application for Temporary Employment Certification that everything stated on the application is true and correct. 80 FR 24,042, 24,084 (April 29, 2015). As such, the Appendix language for the attorney/agent declaration has been updated to reflect this regulatory requirement.
Attestation No. 1 in Appendix B states in part that the employer has listed all qualifications and requirements in the job order. Commenter recommends that the attestation be expanded to state that employer has listed all applicable terms and conditions of work in the job order.	Appendix B, Section B.1	The Department declines to make the proposed change. The suggested attestation is inconsistent with and beyond what is required to be stated in the H-2B job order. The Department has articulated in the applicable regulations at 20 CFR 655.18(b) the minimum terms and conditions that an employer must disclose in the job order. As explained in the 2015 H-2B IFR, the Department believes that this list is "necessary and sufficient to provide the worker with adequate information to determine whether to accept the job opportunity." 80 FR 24,042,

		24,063 (April 29, 2015).
Commenter suggests that declarations be expanded to state that employer certifies that it has paid all wages which were due to H-2B workers and corresponding U.S. workers under prior H-2B labor certifications. The commenter suggests that this will assist potential Statute of Limitations difficulties.	New Attestation Suggested	The Department declines to make proposed change. Change not adopted because such a certification is not required by the regulation.
Commenter suggests that Attestation No. 9 be expanded to state that employer and its agents, attorneys, and/or employees "will not seek to receive" payment of any kind for any activity related to obtaining certification or employment from workers.	Appendix B, Section B.9	The Department agrees with the comment, and has revised the form to track this suggestion, pursuant to 655.20(o).
Commenter suggests that the declaration be clarified to explain that disclosure must be made at the time of recruitment of the non-immigrant worker and no later than the payment of visa fees. Commenter also suggests that Employer Declaration certifications be attached to the 9142B.	Appendix B, Section B.20	The Department declines to make the proposed change. Change not made. The Department does not believe this change is necessary, as expectations are disseminated in a Frequently Asked Questions.
The commenter suggests that employers continue to provide the Department with information about foreign labor recruiters throughout the period of certification, as it is possible for the actors to change.	Appendix B, Section B.23	The Department declines to make the proposed change. Change not made, because the regulation does not require continuous updates.
The commenter suggests creating a version of Appendix B that would allow joint employers to sign the same document to ensure that both understand they are each responsible for the assurances listed in Appendix B.	New Field Suggested	The Department declines to make the proposed change. The Department does not have the necessary funds to revise the form and make the corresponding system changes in the iCERT Visa Portal System in which we process the H-2B application electronically at this time. We will take this suggestion under consideration for future form revision. Until the Department has the opportunity to consider such a change in the context of other form modifications, we will continue to

		require that employer-clients and job contractors sign separate versions of the Appendix B and submit to the Chicago NPC.

Instructions to Form ETA-9142B

Comment	Section of Form	OFLC Response
Commenter recommends that the instructions to Form ETA-9142B state that the Form ETA-9142B must be filed no less than 75 calendar days and no more than 90 calendar days before the employers start date of need	Instructions to Form ETA-9142B, Section A	Section A of the Form ETA-9142B deals with nonimmigrant visa information; as such, it is not the appropriate place to relay these instructions. However, OFLC has created a new section to disclose this labeled "When should I file" to clarify filing timelines to the stakeholder community
Commenter indicates that the instructions for Sections C.14 and C.17 are currently identical. Instructions for C.14 need to be revised to indicate that the question is requesting the employer's number of non-family, full-time equivalent employees.	Instructions to Form ETA-9142B, Section C.14	The Department agrees to make the proposed change and has reordered the instructions to accurately track the form.
Commenter recommends that the instructions indicate that a job contractor must have a separate 9142B for each of its employer-clients	Instructions to Form ETA-9142B, Section C.17	The Department agrees that this clarification will assist the filing community, and has amended the form instructions to reflect this suggestion: "Important Note: Where a job contractor files the Form ETA-9142B on behalf of the employer-client, please recall that both the job contractor and employer-client must submit Sections B.9, C and D and Appendix B"
Commenter raises an inconstancy in numerical ordering in the instructions, and recommends that instructions be reordered to realign with the form provisions	Instructions to Form ETA-9142B, Sections F.a.5-6	The Department agrees that with the suggested revisions, and has reordered the instructions to accurately track the form.
Due to a switch in recruitment process under the 2015 H-2B IFR, Commenter recommends that Section H be amended to request only the SWA name and job order number	Instructions to Form ETA-9142B, Section H	Under the 2015 H-2B IFR, employers are now required to conduct recruitment efforts post-acceptance. To clarify this practice, the Department has further revised Section H to remove all instructions and simply include the important

		note, which reads "Important Note…continue to Section I". The Department declines to adapt the commenter's suggestion to continue reference to the job order number and SWA within Section H, as this would require a change to both the form and electronic iCERT portal. OFLC does not currently have resources to make such changes
Commenter notes that instructions continue to reference H-2A instead of H-2B employment	Instructions to Form ETA-9142B, in their entirety	The Department has removed reference to the H-2A program in the instructions to the 9142B

Form ETA-9142B

Comment	Section of Form	OFLC Response
Commenter recommends eliminating the requirement for stakeholder to indicate that they are applying for an H-2B or H-2A visa, as the Form ETA-9142B is specific to the H-2B program.	Form ETA-9142B, Section A	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.
Commenter suggests that Section B be updated to reflect new process for registering temporary need (via Form ETA-	Form ETA-9142B, Section B	Proposed change not made. Given the immediate effective date of the 2015 H-2B Interim Final Rule, the Department

9155) under the 2015 H-2B IFR. Specific form changes contemplated include adding the 9155 Registration Number, Registration approval period and changes to temporary need.		announced that it would require time to operationalize the H-2B registration process. The Department will announce in a future Federal Register notice a separate transition period for the registration process and submission of the Form ETA-9155. Until this time, the Office of Foreign Labor Certification continues to assess the employer's temporary need during the adjudication of the Form ETA-9142B. As the proposed revision does not reflect the current process, it cannot be made. The Department has clarified this position in an Important Note within the Instructions to the Form ETA-9142B, Section B
Commenter recommends revising Section B.9 based on the recruitment process that is expected to be rolled out under the 2015 H-2B IFR. the commenter suggests inserting language indicating that the employer will only complete section B.9 if it has not obtained an Form ETA-9155 Registration approval	Form ETA-9142B, Section B.9	Proposed change not made. Given the immediate effective date of the 2015 H-2B Interim Final Rule, the Department announced that it would require time to operationalize the H-2B registration process. The Department will announce in a future Federal Register notice a separate transition period for the registration process and submission of the Form ETA-9155. Until this time, the OFLC continues to assess the employer's temporary need during the adjudication of the Form ETA-9142B. As the proposed revision does not reflect the current process, it cannot be made. The Department has clarified this position in an Important Note within the Instructions to the Form ETA-9142B, Section B
Two commenters recommend removing reference to H-2A employment types (e.g. association, H-2A labor contractor) as the 9142B is specific to H-2B employment. To avoid confusion, the commenters both recommend that the employer type mirror	Form ETA-9142B, Section C (Important Note & C.17)	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding

those on the proposed 9155 C.17		changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.
The commenter requests that the Department clarify that job contractor requirements in the employment specific fields	Form ETA-9142B, Section D	The Department agrees with the commenter regarding clarification of filing requirements for job contractors, and has updated the Instructions of 9142B to clarify expectations.
Commenter recommends removing all references to H-2A (which occur in the Important Note) and instead replace H-2A references with H-2B.	Form ETA-9142B, Section D	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.

The commenter recommends replacing references to H-2A with H-2B.	Form ETA-9142B, Section E	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.
Two commenters recommend adjusting the Hourly Work Schedule fields to allow employers to describe variations in scheduling (e.g. where there are multiple shifts in a day; variable shifts with different hours for weekend work). One commenter emphasizes that these disclosures are important for workers particularly when invoking their rights to the three-fourths guarantee.	Form ETA-9142B, Section F.a.3	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B substantially in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions

		to the form. We will accompany future form modifications with corresponding operating system changes. In the meantime, the Department suggests that employers continue to disclose variations to workshifts in the Addendum.
The commenter recommends that the Department re-evaluate the necessity of minimum job requirements, which were related to the skill levels associated with prior regulations.	Form ETA-9142B, Section F.b	Proposed change not made. The Department concludes that completion of the Minimum Requirements field in the Form ETA-9142B assists the Certifying Officer in assessing whether experience and skill requirements are normal and accepted within the occupation, and thereby allows the CO to appropriately adjudicate the case. As such, the Department declines to revise this section of the form.
Commenter suggests that the Form be amended to require the 9141 Prevailing Wage Determination tracking number in the 9142B, as we do for PERM. Commenter notes that in the past have been unable to link electronic systems for 9141 and 9142B	Form ETA-9142B, Section G	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B substantially in the future. However, certain changes to the form would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes cannot be funded at this time. The form change proposed here, in concert with others the Department is considering, would fall into that category. The Department will take this proposed change under advisement. At the time a revised form is proposed, stakeholders will also have an opportunity to submit comments in direct response to that form. We will accompany future form modifications with corresponding operating system changes. In the interim, the Department has ammended the

		instructions to the 9142B at section G.3.
Commenter requests that the Department modify the form to allow employers to only supply the minimum rate of pay which has been adjudicated by the NPWC in order to prevent wage exploitation. The commenter references the report *Taken For a Ride* to emphasize that employers paying weekly wages often pay a flat rate regardless of hours worked, thereby failing to meet minimum wage or prevailing wage standards.	Form ETA-9142B, Section G	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B substantially in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes. In the interim, the Department has added an Important Note to the instructions, which clarifies our position on payment for hours worked. Moreover, certification letters do remind employers of their obligation to ensure that the wage rate does not drop below the minimum hourly wage required under the law.
Due to a switch in recruitment process under the 2015 H-2B IFR, two commenters recommend that Section H be amended to request only the SWA name and job order number during processing. Additionally, the commenter suggests that the Department create an H-2B job order form, similar to the ETA Forms 790/795, and ensure that the	Form ETA-9142B, Section H	In response to these suggestions, we have revised Section H of the 9142B so that it is now greyed out and not fillable. This parallels the layout of Section H of the Form ETA-9142B in the iCERT electronic system. We have also updated the Instructions to the Form ETA-9142B to reflect the change to a post-filing recruitment model under the

final approved job order is provided to the worker in the native language and copies of translated job orders are filed with the Department		2015 H-2B Interim Final Rule, and indicate response. Further modification to this Section is not currently feasible due to resource limitations. The Department will take under consideration the suggestion to create a universal H-2B job order form.
The commenter recommends replacing references to H-2A with H-2B.	Form ETA-9142B, Section I	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.
The commenter requests that the Department create a new section on the Form ETA-9142B or otherwise collect information related to the recruitment of foreign workers and require employers to update the information whenever it changes.	New Section Proposed for ETA Section 9142B	Proposed change not made. The Department has assured the stakeholder community that it remains committed to amending the Form ETA-9142B in the future. However, changes to the form now would require a substantial financial investment in order to make corresponding changes in the iCERT Visa Portal System in which we process the H-2B application electronically. These system changes are not within the Department's budget at this time. The Department will take

		this proposed change under advisement for future consideration when funds permit. Should the Department revise the form in the future, stakeholders will be provided with an opportunity to comment on any of the proposed revisions to the form. We will accompany future form modifications with corresponding operating system changes.

Form ETA-9155

Comment	Section of Form	OFLC Response
Commenter recommends revising the instructions of Form ETA-9155 to clearly communicate timeline for filing registration	Instructions to Form ETA-9155	Proposed change made. The Department has clarified its expectations for receipt of the Form ETA-9155 in an Important Note within the instructions. .
Commenter requests that form indicate that joint employers will jointly submit requests for registration or alternately modify the form to allow for joint submission directly on the form	Instructions to Form ETA-9155	The Department declines to adopt the recommended change to the form at this time; however we will take this suggestion under consideration for future form revision. Until that time, we will continue to require that employer-clients and job contractors sign separate versions of the Form ETA-9155. To avoid any confusion, the Department has added an Important Note within the instructions explaining that both the job contractor and the employer-client must each submit requests for registration, when the job contractor will be filing the Form ETA-9142B on behalf of the employer-client.
Commenter requests that the Department require signatories to execute the form under penalty of perjury	Form ETA-9155	Proposed change made. The preamble to the Interim Final Rule (at P. 24084) states that agents and attorneys who file applications on behalf of employers certify under penalty of perjury on the Form ETA-9142B Application for Temporary Employment Certification that everything stated on the application is true and correct. As such, the

		Appendix language for the attorney/agent has been updated to reflect to stay consistent with the regulatory language.
Commenter suggests that the Department make the Form ETA-9155 available in the public disclosure format publically available on the iCERT website as an annex to the Form ETA-9142B labor certification or otherwise.	Disclosure Data	The Department declines to adopt this suggestion at this time. It is not required by the regulations and is outside the scope of the comment collection.

Seafood Attestation

Comment	Section of Form	OFLC Response
Commenter suggests requiring that the form be provided to the worker both in English and the worker's native language	Seafood Attestation, Part C	The Department declines to adopt this recommendation. Neither the authorizing statute nor the regulation requires translation.
Commenter requests that employer be required to certify that the job order will remain active with the SWA until 21 days before the last seafood worker is anticipated to begin employment.	New Requirement Proposed for Seafood Attestation	The Department declines to adopt the recommendation as it is unnecessary. The employer already certifies in Form ETA-9124B – Appendix B that he/she will conduct all required recruitment activities pursuant to 20 CFR 655.40 through 655.46.
The form should be expanded to require that any qualified U.S. worker will be entitled to employment as of the last date on which the last H-2B worker will be scheduled to begin employment.	New Requirement Proposed for Seafood Attestation	The Department declines to adopt the recommended change as it is inconsistent with the regulations at 20 CFR 655.15(f) and 655.20(t).

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

DOL offers no assurances of confidentiality to those responding to this information collection. The information collected is not exempt from full disclosure under the Freedom of Information Act. Generally, however, the Department is required under the Privacy Act to withhold the disclosure of personally identifiable information to the extent such information is supplied in response to the information collection.

A.11. Justification for any sensitive questions.

The information collected does not involve sensitive matters.

A.*12. Estimated hourly burden.*

Based on previous program experience, the Department estimates it will receive approximately 5,090 Form ETA-9142B submissions and 3,955 Form ETA-9155 for the H-2B program. The hourly burdens are shown below.

I. The H-2B regulations include the following information collections:

A. Agents and recruiters

Proof of agent relationship (20 CFR 655.8(a)). The regulations require all agents who file H-2B applications on behalf of employers to demonstrate that a bona fide relationship exists between them and the employer. The Department is not requiring any specific form of such documentation and will accept a copy of the agent agreement or other document demonstrating the agent's authority to act on behalf of the employer. We estimate that it takes 30 minutes to write, print, sign, and deliver a letter confirming the relationship. Based on recent experience, we estimate that 496 letters will need to be created between agents or attorneys and their clients and then copied and attached to applications. The hourly burden for this collection is 248 reporting hours. (496 filers x 0.5 hours = 248 hours)

Agent's proof of MSPA registration (20 CFR 655.8(b)). The regulations require agents who are Farm Labor Contractors to provide a copy of their MSPA Certificate of Registration. The Department estimates it takes agents approximately 5 minutes to copy their certificates and attach them to the application. In the past only 13 agents in the H-2B program have been certified Farm Labor Contractors. The hourly burden for this collection is 1 reporting hour. (13 filers x 5 minutes ÷ 60 minutes = 1 hour)

Foreign recruitment contract (20 CFR 655.9). The Department requires employers, attorneys, or agents to provide a copy of all agreements with foreign labor contractors or recruiters who they engage or plan to engage in the international recruitment of H-2B workers. The Department bases its estimate on anecdotal evidence that the majority of H-2B employers employ such foreign agents and recruiters. Therefore, the Department estimates that 3,955 employers will have such contracts attached to their applications and that it takes 5 minutes to copy and attach the contract. The hourly burden for this collection is 330 reporting hours. (3,955 filers x 5 minutes ÷ 60 minutes = 330 hours)

Inform of fee prohibitions (20 CFR 655.20(p) and 29 CFR 503.16(p)). The Department requires employers to prohibit in a written contract any agent or recruiter whom the employer engages in international recruitment of H-2B workers, either directly or indirectly, from seeking or receiving payments or other compensation from prospective workers. Because the Department estimates that 75 percent of employers (3,000) will utilize foreign agents and recruiters and it takes the employer an average of 15 minutes to comply with this requirement, the burden for this collection is 750 third party disclosure hours. (3,000 filers x 15 minutes ÷ 60 minutes = 750 hours)

B. Registration of H-2B employers

Form ETA-9155, H-2B Registration (20 CFR 655.11). The Department requires H-2B employers to register in advance of submitting an *H-2B Application for Temporary Employment Certification* in order to demonstrate their temporary need and qualifications under the H-2B program. This registration step streamlines the adjudication of applications and ensures a more efficient process. The Form ETA-9155 collects job specific information, i.e., explanation of each job opportunity, the employer's temporary need for services or labor, the number of workers needed, the nature of the job classification and/or duties, and the specific dates of need. Once approved, the registration is valid for up to 3 consecutive years from the date of issuance. For purposes of the paperwork burden, the Department is basing its estimates on annual filings instead of every 3 years. We have approximately 3,955 unique employers who participate in the H-2B program each year. Therefore, we estimate receiving 3,955 *H-2B Registration* forms. We estimate that it takes 1 hour to complete and submit the Form ETA-9155 for a total burden of 3,955 reporting hours. (3,955 applications x 1 hour = 3,955 hours) This estimate is based on the first two years of program implementation, but the Department anticipates an over-time reduction in the annual burden as the annual average of H-2B registrations submitted for processing decreases as employers begin receiving H-2B registrations covering up to 3 years.

Request for Further Information (RFI) (20 CFR 655.11(g)). The Department issues an RFI to an H-2B employer where the *H-2B Registration* cannot be approved for various reasons such as, but not limited to, where the Form ETA-9155 is incomplete or inaccurate, the employer failed to demonstrate temporary need, and/or the job classification and duties do not appear to qualify as non-agricultural. Program experience shows that we issue an average of approximately 2,711 RFIs a year. We estimate it takes 1 hour to respond to the RFI for a total burden of 2,717 reporting hours. (2,711 applications x 1 hour = 2,711 hours) Based on our discussion above, this estimate is based on the first two years of program implementation, but the Department anticipates a reduction in this burden as that the annual average of RFIs decreases with an anticipated decrease in requests for H-2B

registrations based on the maximum 3 year validity of some H-2B registrations.

C. Prevailing wage determination (20 CFR 655.10(c), 20 CFR 655.13(a), 20 CFR 655.13(b))

The Department requires all employers participating in the H-2B program to obtain a prevailing wage determination (PWD) from the National Prevailing Wage Center (NPWC). The burden calculation for this information collection is accounted for under OMB Control Number 1205-0508.

D. H-2B Application for Temporary Employment Certification

Form ETA-9142B (20 CFR 655.15). The Department requires that once an employer's *H-2B Registration* is granted, the employer can submit an *H-2B Application for Temporary Employment Certification* (Form ETA-9142B) requesting employment of temporary non-agricultural foreign workers. The form takes approximately 1 hour to complete. Based on program experience we estimate 5,090 applications will be filed annually. The total hourly burden for the filing of the Form ETA-9142B is 5,090 reporting hours. (5,090 applications x 1 hour = 5,090 hours)

Waiver of filing timeframes due to emergency situations (20 CFR 655.17). The Department permits an employer who, for good and substantial cause, is unable to meet the regulatory timeframes for filing the *H-2B Registration* and/or the *H-2B Application for Temporary Employment Certification* to request a waiver of such timeframes by submitting a letter of explanation along with the completed application. The Department estimates that it takes an employer 30 minutes to compose, print, and mail such a written request. The Department anticipates receiving 111 such requests for a total burden of 56 reporting hours. (111 requests x 0.5 hours = 56 hours)

Submission of a modified application or job order (20 CFR 655.32). The Department permits employers to modify and resubmit their applications and/or job orders, as appropriate, according to the insufficiencies listed in the Notice of Deficiency. We estimate that one third of the applications will require modification a year. Based on program data under the current regulatory model, we estimate it takes 1 hour to respond to a Notice of Deficiency for a total burden of 1,697 reporting hours. (1,697 applications x 1 hour = 1,697 hours)

Amending the application or job order (20 CFR 655.35). The Department permits employers to amend their applications and/or job orders at any time before the Department makes a final determination to grant or deny the application. The Department anticipates receiving 522 such amendments and

that it takes an employer 30 minutes on average to prepare and file an amendment for a total burden of 261 reporting hours. (522 amendments x 0.5 hours = 261 hours)

E. Recruitment

Recruitment, including advertising for U.S. workers and/or placing job orders, is a usual and customary activity for employers. Therefore, under the regulations of the OMB at 5 CFR 1320.3(b), the resources expended by employers to comply with the recruitment provisions at 20 CFR 655.16 are excluded in compiling the paperwork burden estimates.

Job Order (20 CFR 655.18) The Department's requirement that the employers' job orders meet the standards set forth in 20 CFR 655.18 are subject to the PRA burden calculations. The Department estimates that it takes employers 1 hour to complete the job order and ensure that it includes all of the required information and disclosures in compliance with 20 CFR 655.18. The total burden is 5,090 reporting hours. (5,090 job orders x 1 hour = 5,090 hours) The time required to modify a particular job order in accordance with a request from the Department is accounted for under *Submission of a modified application or job order (20 CFR 655.32)* above.

Contacting former employees (20 CFR 655.43). The Department requires employers to contact their former U.S. workers in the same occupation and place of employment, including those who were laid off within 120 calendar days of the employer's date of need, unless they were dismissed for cause or abandoned the worksite prior to the completion of the last work period. The regulations require that employers contact these employees by mail or other effective means. The Department estimates it takes employers 1 hour per application filed with the Department to contact former employees for a total burden of 5,090 third party disclosure hours. (5,090 applications x 1 hour = 5,090 hours)

Contacting union representatives and other contact requirements (20 CFR 655.45). Where the occupation or industry is customarily unionized or where any of the employer's employees in the same occupation and area of intended employment have a bargaining representative, the regulations require the employer to contact the local union in writing to inquire about the availability of qualified U.S. workers. The Department does not collect data on this requirement as it pertains to H-2B employers specifically; however, the Department's Bureau of Labor Statistics (BLS) does analyze union membership across all industries.[2] Therefore, for the purposes of the PRA, the Department estimates that the H-2B program will have similar union participation and that 11 percent of all employers in the H-2B are obligated to

[2] http://www.bls.gov/news.release/pdf/union2.pdf

make such contact and that it takes employers 15 minutes per application filed with the Department (which we assume is one per employer) to contact union representatives for a total burden of 140 third party disclosure hours. (560 applications x 15 minutes ÷ 60 minutes = 140 hours)

Posting requirement (20 CFR 655.45(b)). Where there is no bargaining representative of the employer's employees, the Department requires the employer to post the availability of the job opportunity in at least two conspicuous locations at the place of anticipated employment for 10 consecutive business days in order to provide reasonable notification to all employees in the job classification and area in which the work is performed by the H-2B workers. Based on the BLS statistics used above, the Department is assuming that 89 percent of employers using the H-2B program do not have employees with bargaining representatives and are required to comply with the posting requirement. The Department estimates it takes employers 30 minutes per application filed with the Department (which we assume are, in some cases, more than one application) to prepare and post the notice for a total burden of 2,265 third party disclosure hours. (4,530 applications x 0.5 hours = 2,265 hours)

Additional employer-conducted recruitment (20 CFR 655.45(c) and 655.46). The Department, at its discretion, can require employers to conduct additional recruitment. We assume that 50 percent of employers or 1,978 are required to perform this additional recruitment. If the additional employer-conducted recruitment consists of placing an additional newspaper advertisement we estimate that it takes an employer approximately 15 minutes to comply with this requirement for a total number of 495 third party disclosure hours. The (1,978 x 15 minutes ÷ 60 = 495 hours)

Proof of recruitment (20 CFR 655.46(c)). The records required to be kept by the employer to demonstrate compliance with the advertising requirements under the regulations must also be retained by employers under the regulations of the Equal Employment Opportunity Commission at 29 CFR 1602.14 (OMB Control No. 3046 -- 0040), promulgated pursuant to Title VII of the Civil Rights Act and the American With Disabilities Act, and 29 CFR 1627.3(b)(3) (OMB Control No. (3046 -- 0018), and promulgated pursuant to the Age Discrimination in Employment Act, at 29 CFR 1627.3(b)(3); therefore, the burden to maintain such records can be excluded in compiling the paperwork burden under the regulations. For example, 29 CFR 1602.14 requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or

apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later. . . ."

The records that employers must maintain pursuant to 29 CFR 1627 (b)(3)(a)(1), that was promulgated pursuant to the Age Discrimination in Employment Act, includes but are not limited to the following:

- Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.

- Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee.

- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.

- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

State Workforce Agencies (SWAs) postings, distribution, and referrals (20 CFR 655.33(b)(4)-(7)). The Department requires SWAs to post the employer's approved job orders, distribute the job orders to other SWAs, where applicable, and refer applicants to the employer. This function is exempt from the paperwork burden calculations under 5 CFR 1320.3(d) because it is a normal function of the SWAs and does not increase their burden.

Electronic Job Registry (20 CFR 655.34). The Department posts an employer's approved job order on the Department's Electronic Job Registry which serves as a public repository for H-2B job orders for the duration of the referral period and will improve the visibility of H-2B jobs to U.S. workers. This third party disclosure is performed by the Department and is, therefore, not included in the calculation of the public burden.

Recruitment Report (20 CFR 655.48). The time needed to prepare the recruitment report in 20 CFR 655.48 of the regulations is not excludable in compiling the burden. Under this provision, employers must prepare, sign, and retain a written summary report describing the recruitment steps undertaken and the results achieved, including the number of hires, and if applicable the number of U.S. workers rejected, summarizing the lawful job related reasons for such rejection. Additionally, under the audit process detailed in 20 CFR 655.70, the Department may request the employer submit such a recruitment report along with the resumes or applications of U.S.

workers sorted by the reasons they were rejected. The Department estimates that it takes employers 1 hour to prepare a recruitment report for a total burden of 5,090 reporting hours. (5,090 reports x 1 hour = 5,090 hours)

F. Worker's rights

Provide copy of job order to workers (20 CFR 655.20(l) and 29 CFR 503.16(l)). The Department requires employers to provide both the H-2B workers and U.S. workers in corresponding employment a copy of the job order. The Department has no available means of calculating how many U.S. workers are in corresponding employment. However, the Department does not always approve the total number of H-2B workers requested by the employer because it may find, for example, that the employer failed to hire qualified U.S. workers. Therefore, the Department assumes that the number of requested workers equals the total number of H-2B and corresponding U.S. workers hired (103,061). The Department estimates it takes employers an average of 5 minutes to provide each worker with a copy of the job order. (103,061 workers x 5 minutes ÷ 60 minutes = 8,588 hours) In addition, the Department estimates that 85 percent of H-2B workers from top ten program use countries do not speak English, resulting in the need to translate the job order. The Department estimates that 3,328 employers need to translate their job orders. The Department estimates that a typical translation takes 1 hour, to complete. (3,328 employers x 1 hour = 3,328 hours) The resulting total burden for this third party disclosure is 11,916 hours.

Post notice of worker rights (20 CFR 655.20(m) and 29 CFR 503.16(m)). The regulations require employers to post and maintain in a conspicuous location at the place of employment a poster provided by the Department that sets out the rights and protections for H-2B workers and workers in corresponding employment. However, this burden is exempt from the PRA under 5 CFR 1320.3(c)(2).

SWA informs applicants of requirements (20 CFR 655.47). The regulations require SWAs to only refer individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity that they are qualified and will be available for employment. Because this requirement would be specific to the H-2B program and calls for the SWAs to go beyond their normal functions, it is, therefore, not exempt under 5 CFR 1320.3(d). The Department has never collected data on how many overall referrals the SWAs make under any of its foreign labor certification programs. However, the Department does track the number of partial certifications it issues due to the employers' failure to hire the qualified U.S. workers that are referred by the SWAs. The number of rejected U.S. applicants averages about 15,000 a year. The Department estimates it takes SWAs an average of 5 minutes to explain the job requirements to each

worker for a total burden of 1,250 third party disclosure hours. (15,000 workers x 5 minutes ÷ 60 minutes = 1,250 hours)

G. Retention Requirements

Retention of documents (20 CFR 655.10(h), 655.11(i),and 655.56). The Department requires employers who file an *H-2B Registration* (Form ETA-9155) and *H-2B Application for Temporary Employment Certification* (Form ETA-9142) to retain any documents and records not otherwise submitted proving compliance with 20 CFR 655.12(h), and 655.56. An employer whose application is approved is required to retain all such records for a period of 3 years from the final date of applicability of the *H-2B Registration* or Certification. An employer whose *H-2B Registration* or Certification is denied or withdrawn is also required to retain all records for 3 years, to be measured from the date of the final registration decision or date of receipt of the employer's written request for withdrawal. The Department estimates that employers spend about 10 minutes per year, per application to retain the *H-2B Application for Temporary Employment Certification*, and supporting documentation in the 2 years following the mandated 1 year of required retention for companies subject to Title VII and during the 5 years already mandated for all other employers. This results in an annual burden of 848 recordkeeping hours. (5,090 applications x 10 minutes ÷ 60 minutes = 848 hours)

Exception to Corresponding Employment (20 CFR 655.5, 655.56(c)(13)). The Department added a new record retention requirement to § 655.56, which requires employers to retain collective bargaining agreements, individual employment contracts, and payroll records in order to substantiate any claim that certain incumbent workers are not included in corresponding employment. The Department estimates that there is no burden associated with the retention of collective bargaining agreements or individual employment contracts, as employers maintain these records during their normal course of business.

The Department also estimates that a significant majority of H-2B employers are subject to the Fair Labor Standards Act (FLSA) that requires the retention of payroll records, which can be used to demonstrate that an incumbent worker meets the requirements to be excluded from corresponding employment. There are a negligible number of H-2B employers for whom this requirement would impose new recordkeeping burdens either because they are not subject to the FLSA or they do not keep these records in the ordinary course of business and this burden will not significantly impact the overall annual burden hours for the H-2B program information collection.

The Department estimates 198 certified H-2B employers are not subject to the FLSA, of which we estimate that 2 percent, or 4 employers, do not maintain

payroll records in the ordinary course of business. For each of these H-2B employers, the Department estimates that there are 4 incumbent workers needing payroll records to demonstrate the minimum requirements for the corresponding worker exclusion. The Department estimates that it takes 1.5 hours to create payroll records for each employee, for a total burden of 24 recordkeeping hours. (4 employers x 4 workers x 1.5 hours = 24 hours)

The Department also estimates that all 198 certified H-2B employers need to record the job duties for the 4 incumbent workers we estimate that employers seek to exclude from the definition of corresponding employment. We estimate that it takes an employer an average of 10 minutes to record the job duties for each incumbent worker for a total burden of 132 hours. (198 employers x 4 workers x 10 minutes ÷ 60 minutes = 132 hours) If all incumbent worker job categories are the same, this burden will be less, but the Department has no way at this time of estimating how many job categories will be the same.

Based on our estimates, the total burden associated with the new record retention requirement in § 655.56 is 156 recordkeeping hours.

H. Post-certification requirements

Notification of abandonment or termination (20 CFR 655.20(y) and 29 CFR 503.16(y)). The regulations require employers to notify the Department when any of their H-2B workers voluntarily abandon the job or are terminated before the certified end date of employment. The Department estimates it takes employers an average of 10 minutes to write an email to the Department to meet this requirement. The Department receives approximately 2,500 such emails each year for a total burden of 417 reporting hours. (2,500 notifications x 10 minutes ÷ 60 minutes = 417 hours)

Redeterminations (20 CFR 655.57)
The Regulations allow an employer to petition the Department for a redetermination if U.S. workers recruited as a result of the labor market test become unavailable on or during the 10-day period before the date of need. The Department estimates it takes employers 30 minutes to call or email the Department with its request and then follow-up with a written request. The Department estimates that it will receive approximately 11 such requests each year for a total reporting burden of 6 hours. (11 x 0.5 hours = 6 hours)

Extension of the certified period of employment (20 CFR 655.60). The regulations permit employers, under certain circumstances involving weather conditions or other factors beyond the control of the employer, to request in writing an extension of the certified period of employment. The Department estimates that it will receive approximately 326 such requests each year. The

Department also estimates that it takes the employer 30 minutes to comply with this requirement for a total burden of 163 reporting hours. (326 notices x 0.5 hours = 163 hours)

Administrative Appeals (20 CFR 655.61). The regulations permit an employer whose certification is denied to request administrative review of the decision by the Board of Alien Labor Certification Appeals. To do so an employer must submit a written request for review within 10 business days from the date of determination. The Department estimates that it will receive approximately 22 such requests each year. The Department also estimates that it takes the employer 1 hour to comply with this requirement for a total burden of 22 reporting hours. (22 notices x 1 hour = 22 hours)

Request for withdrawal (20 CFR 655.62). The regulations permit employers to request withdrawal of an application after it has been accepted for processing, but before it is adjudicated. The Department estimates that it will receive approximately 233 such requests each year. The Department also estimates that it takes the employer 10 minutes to comply with this requirement for a total burden of 39 reporting hours. (233 notices x 10 minutes ÷ 60 minutes = 39 hours)

Seafood Industry Staggered Entry Provision (20 CFR 655.15). If an employer in the Seafood Industry wants to stagger the entry of its H-2B workers it must prepare the addendum to the Form ETA-9142B *Seafood Industry Attestation* and in some cases conduct the "fresh" recruitment as required under the statute. OFLC does 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 Officer and/or DHS's Customs and Border Patrol Officers at the border upon request.
The Department estimates that this provision will affect approximately 152 H-2B employers who are eligible to use the Seafood Industry Attestation. It takes them 15 minutes to print out, read, and sign the *Seafood Industry Attestation* for a total of 38 third-party disclosure hours. (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 takes their respective employers 10 minutes per employee to ensure that each employee receives the Attestation for a total of 475 third-party disclosure hours. (4,750 H-2B workers x 60% x 10 minutes ÷ 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. (152 employers x 25% x 2 hours = 76 hours)

DOL estimates it takes 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 95 third-party disclosure hours. (2,850 H-2B seafood workers x 2 minutes ÷ 60 = 95 hours)

I. Integrity measures

Audit, revocation, and debarment (20 CFR 655.70, 655.72, and 655.73). The regulations authorize the Department at its discretion to audit applications to ensure program integrity. Based on the results of these audits or other information, the Department may revoke a certified application and/or place an employer, agent, or attorney in debarment proceedings. These processes require employers to respond to notices sent by the Department. However, such responses are exempt from the paperwork burden under 5 CFR 1320.3(h)(6) & (9) and 5 CFR 1320.4(a)(2).

CO-ordered assisted recruitment (20 CFR 655.71). In cases where the employer violated the terms of the program and the Department determines that the violation does not warrant debarment, under the regulations some employers are required to receive assistance in conducting recruitment during their next participation in the program (20 CFR 655.71). In the past employers were required to undergo a similar process called supervised recruitment. Based on its program experience, the Department estimates that employers will be required to undergo assisted recruitment in approximately one half of one percent of the applications in the initial stages of the implementation of the new regulations. This burden may need adjustment in the future as program experience increases and more employers are required to undergo assisted recruitment. The time required to conduct recruitment is already accounted for in the recruitment burden calculation above. In addition, the Department estimates that an employer will spend an additional one hour in additional reporting incident to this manner of recruitment. Such additional reporting results in 25 reporting hours. (5,090 applications x 0.005 x 1 hour = 25 hours)

Cooperation with investigators (29 CFR 503.16(bb)). The Department's Wage and Hour Division is authorized to investigate employer compliance with the provisions of this regulation. The regulations require employers to cooperate

with and comply with any requests made by Wage and Hour Division investigators as part of this process. However, such responses are exempt from the paperwork burden under (9) and 5 CFR 1320.4(a)(2).

Request for hearing by Administrative Law Judge (29 CFR 503.43). The regulations permit an employer found by the Wage and Hour Division to be in violation of the regulations to request in writing review of the decision by the Administrative Law Judge of the Department. The Department estimates that it will receive approximately two such requests each year. The Department also estimates that it takes the employer 2 hours to comply with this requirement for a total burden of 4 reporting hours. (2 notices x 2 hours = 4 hours)

Request for hearing with Administrative Review Board *(29 CFR 503.51)*. The regulations permit an employer who disagrees with the findings of the Administrative Law Judge to request in writing review of the decision by the Administrative Review Board of the Department. The Department estimates that it will receive approximately one such request each year. The Department also estimates that it takes the employer 30 minutes to comply with this requirement for a total burden of 1 reporting hour. (1 notice x 0.5 hours = 0.5 hours)

Total Annual Burden Hours for the H-2B Information Collection

25,206 Reporting Hours
1,004 Recordkeeping Hours
22,590 Third Party Disclosure Hours
=====
48,800 Total Burden Hours

180,185 Total Responses
7,355 Total Respondents

The estimated average hourly reporting burden includes those elements that are common to the majority of applications.

Estimated Time Reporting Burden Per H-2B Application Process
Form ETA-9155 – 1 hour
Form ETA-9142B – 1 hour
All other information collections in the H-2B program – 15 minutes per response

II. Total Hourly Cost

Employers filing applications for temporary and permanent alien employment certification may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. However, the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager ($53.45), based on the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data,[3] and increased these wages by 1.43 percent to account for employee benefits and other non-wage compensation. Therefore, the total hourly cost of a Human Resources Manager is $76.43. This number was multiplied by the total hourly annual burden for the information collection for each foreign labor certification program in order to arrive at total annual respondent hourly costs for all information collections under this extension request. The total annual respondent hourly costs are estimated as follows:

Total H-2B 48,800 x $76.43 = $3,729,784

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
H-2B Agents	496	1	496	.50 hrs.	248	$76.43	$18,954.64
MSPA Certificate Registration	13	1	13	5 mins.	1	$76.43	$76.43
Foreign Recruitment Contract	3955	1	3955	5 mins.	330	$76.43	$25,221.90
Inform of Fee Prohibitions	3000	1	3000	15 mins.	750	$76.43	$57,322.50
Form ETA-9155	3955	1	3955	1 hr.	3955	$76.43	$302,280.65
RFI	2711	1	2711	1 hr.	2711	$76.43	$207,201.73
Form ETA-9142B	3955	1.29	5090	1 hr.	5090	$76.43	$389,028.70
Waiver of Filing Timeframes due to Emergency Situations	111	1	111	.50 hrs.	56	$76.43	$4,280.08
Submission of a Modified Application/Job Order	1697	1	1697	1 hr.	1697	$76.43	$129,701.71
Amending the Application/Job Order	522	1	522	.50 hrs.	261	$76.43	$19,948.23
Job Order	3955	1.29	5090	1 hr.	5090	$76.43	$389,028.70
Contacting	3955	1.29	5090	1 hr.	5090	$76.43	$389,028.70

[3] Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2013 National Occupational Employment and Wage Estimates; Management Occupations. http://www.bls.gov/oes/2013/may/oes113121.htm

Former Employees							
Contracting Union Representatives and Other Req.	560	1	560	15 mins.	140	$76.43	$10,700.20
Posting Requirement	3395	1.34	4530	.50 hr.	2,265	$76.43	$173,113.95
Add'l Employer Conducted Recruitment	1978	1	1978	15 mins.	495	$76.43	$37,832.85
Recruitment Report	3955	1.29	5090	1 hr.	5090	$76.43	$389,028.70
Provide copy of Job order* to Workers	3955	27.92	103,061	5 mins.	8588	$76.43	$656,380.84
Translating to of Application to English (Job Orders)	3,328	1	3,328	1 hr.	3,328	76.43	$254,359.04
SWA Informs Applicants of Requirements	54	300	15,000	5 mins.	1250	$76.43	$95,537.50
Retention of Documents	3955	1.29	5090	10 mins.	848	$76.43	$64,812.64
H-2B Employers Who Do Not Maintain Payroll Records …	4	4	16	1.5 hrs.	24	$76.43	$1,834.32
Job Duties for Incumbent Workers	198	4	792	10 mins.	132	$76.43	$10,088.76
Notification of Abandonment or Termination	2500	1	2500	10 mins.	417	$76.43	$31,871.31
Redetermination	11	1	11	.50 hr.	6	$76.43	$458.58
Extension of the Certification Period of Employment	326	1	326	.50 hr.	163	$76.43	$12,458.09
Administrative Appeals	22	1	22	1 hr.	22	$76.43	$1,681.46
Request for Withdrawal	233	1	233	10 mins.	39	$76.43	$2,980.77
Seafood Industry Staggered Entry Provision	152	1	152	15 mins.	38	$76.43	$2904.34
Attestation	152	18.75	2,850	10 mins.	475	$76.43	$36,304.25
Employers that use 90-120 Day Arrival Provisions	38	1	38	2 hrs.	76	$76.43	$5,808.68
Seafood Workers Presenting Attestation to a State Consular Office	2850	1	2,850	2 mins.	95	$76.43	$7,260.85
Co-ordered assisted Recruitment	25	1	25	1 hr.	25	$76.43	$1,910.75
Request for Hearing by Administrative Law Judge	2	1	2	2 hrs.	4	$76.43	$305.72
Request for	1	1	1	.50 hr.	1 hr.	$76.43	$76.43

Hearing with Administrative Review Board							
Unduplicated Totals	***7,355***	***NA***	***180,185***	***NA***	***48,800***	***$76.43***	***$3,729,784***

* See Section 12, subsection II.

A.13. Estimated cost burden to respondents.

a. Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from the Department's Office of Foreign Labor Certification. To participate in the program the employer is required to generate records and retain them. The only necessary supplies needed to store and maintain the records are filing cabinets and filing folders, however employers have the option of maintaining records in electronic format. The Department estimates that the initial cost to employers is minimal because it is a customary and usual business practice for businesses to have storage space whether physical or electronic.

b. Annual costs: There are no annual costs involved with operation and maintenance because ETA is responsible for the annual maintenance costs for the free downloadable forms and the web-based data collection and reporting system.

However, there are several provisions in the regulations that require employers to expend funds beyond their normal and usual business expenses. Specifically, employers are required to run additional advertisements if they are utilizing the seafood industry's staggered border crossing provisions. Also, all employers who use foreign workers who do not speak English are required to translate their job orders. These expenses are estimated to cost employers $351,800 each year as described below.

Additional recruitment for seafood industry: The Department estimates that 38 employers are required to place additional recruitment. 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 $19,000. (38 employers x $500 = $19,000)

Translation costs: The Department estimates that 3,328 employers will need to translate their job orders. We estimate that it will cost them an average of $100.00 annually to translate their job orders for an annual cost of $332,800.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost[4] 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 benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC. The total cost to the Federal Government for the H-2B program is estimated at $2,186,905 and is calculated as follows:

Estimated Hours - Data Entry/Review

Staff Cost for Adjudicating Requests for H-2B Registrations $665,187
H-2B Registration (Form ETA-9155)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1.5 hours
$70.59 x 5,090 x 1.5 hours = $538,955
Manager (GS-14, Step 5 x 1.69) @ 15 minutes
$99.20 x 5,090 x .25 hours = $126,232

Data Entry $1,719
(A small (2 percent) sampling of requests are data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$ 33.70 x 102 requests x 0.5 hour = $1,719

Staff Cost for Adjudicating H-2B Applications for Temporary Employment Certification (Form ETA-9142) $611,767

Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1 hour
$70.59 x 5,090 x 1 hour = $359,303
Manager (GS-14, Step 5 x 1.69) @ 30 minutes
$99.20 x 5,090 x 0.5 hours = $252,464

Staff Cost for RFIs or Modified Applications $873,963
(30 percent of applications are modified and 30 percent of registrations will need additional information)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 3 hours
$70.59 x 3,054 x 3 hours = $ 646,746
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$99.20 x 3,054 x 0.75 hours = $227,217

[4] The Federal Government cost estimates are based on the U.S. Office of Personnel Management 2015 Salary Tables. Please see: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/general-schedule/. The cost estimate calculation for the adjudication of H-2B temporary employment certification applications relies on the locality pay schedule for the Chicago-Naperville-Michigan City, IL-IN-WI area to reflect the locations of ETA's National Processing Center for temporary programs.

Staff Cost for Appealed Applications and H-2B Registrations $13,578
Administrative Law Judge (AL/3C x 1.69)[5] @ 1 hour
$123.44 x 110 x 1 hour = $13,578

Staff Cost for Assisted Recruitment $8,132
(0.5% of applications are estimated as requiring assisted recruitment)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 2.5 hours
$70.59 x 25 x 2.5 hours = $4,412
Manager (GS-14, Step 5 x 1.69) @ 1.5 hours
$99.20 x 25 x 1.5 hours = $3,720

Review of Seafood Attestation $6,059
by State Department Consular Officer
or a DHS Customs and Border Patrol Officers at the border:

95 hours x $63.78 = $6,059
[(2,850 Federal workers x 2 minutes ÷ 60 = 95 hours) x
(GS-12 Step 5 FLFTE: $37.74 x 1.69 = $63.78)]

Estimated Total Cost

Staff	$2,180,405
Printing/Mailing	$ 6,500
TOTAL COST TO FEDERAL GOVERNMENT	**$2,186,905**

A.15. Reasons for any program changes.

None of the discretionary changes made in response to public comments are expected to change burden. The agency is correcting some inadvertent math errors from the most recent submission. These changes to the estimates show a decrease of 4,257 responses (from 184,442 to 180,185) and an increase of 808 burden hours (from 47,992 to 48,800).

A.16. Method for publishing results.

OFLC discloses information about employer applicants to the public on its public access webpage at http://www.flcdatacenter.com/CaseData.aspx. For the H-2B

[5] Based on 2015 Pay Scale for Administrative Judges in the Washington Baltimore Northern Virginia Metro Area Locality Pay. Please see http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/ALJ_LOC.pdf

program, the name, address, phone number, agent, and contact person of the employer; the number of foreign workers requested; the occupation; the salary proposed; and the prevailing wage, along with final determination by the Department are all disclosed on the website.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

The Department will display the expiration date for OMB approval on all affected forms.

A.18. Explanation of each exception in the certification statement.

The Department is not seeking any exception to the certification requirements.

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.