

**SUPPORTING STATEMENT FOR  
Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers  
Essential to the U.S. Food Supply Chain  
OMB Control No.: 1615-NEW  
COLLECTION INSTRUMENT(S): ATT-H2B**

**A. Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

As a result of disruptions and uncertainty to the U.S. economy and international travel caused by the global novel Coronavirus Disease 2019 (COVID-19) public health emergency, the Department of Homeland Security (the Department or DHS), U.S. Citizenship and Immigration Services (USCIS), is publishing a temporary final rule, RIN 1615-AC58, Temporary Changes to Requirements Affecting H-2B Nonimmigrants Due to the COVID-19 National Emergency (“H-2B COVID-19 rule”) to address the needs of H-2B employers engaged in temporary nonagricultural services or labor essential to the U.S. food supply chain for a legal and available workforce. The H-2B COVID-19 rule temporarily removes certain limitations on employers or U.S. agents seeking to hire certain H-2B workers already in the United States to provide temporary services or labor essential to the U.S. food production and supply chain, and certain H-2B workers, who are essential to the U.S. food supply chain, seeking to extend their stay. Form ATT-H2B will be used by H-2B petitioners during the 120-day period after the effective date of the rule to request flexibilities authorized thereunder.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

As of the effective date of the H-2B COVID-19 rule, employers who submitted or are submitting Form I-129, Petition for a Nonimmigrant Worker, to request an extension of stay with a change of employer and/or an H-2B extension of stay beyond the 3 year maximum pursuant to 8 CFR 214.2(h)(23), will be able to submit Form ATT-H2B to affirm that the workers named in the petition will be performing work that is essential to the U.S. food supply chain as required by 8 CFR 214.2(h)(23)(i). Receipt of the form by USCIS triggers the flexibilities under the rule because the H-2B worker will perform services or labor essential to the U.S. food supply chain.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or**

**other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Form ATT-H2B will be posted to the USCIS forms webpage at [www.uscis.dhs.gov/i-129](http://www.uscis.dhs.gov/i-129). The form will be available as a fillable PDF and can be completed electronically. It must be printed, signed, and submitted to USCIS by mail.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Form ATT-H2B is unique to the H-2B COVID-19 temporary final rule. There is no other information collection in the USCIS form inventory that collects the same information.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This collection of information may have an impact on small business or other small entities. The form collects the minimum amount of information needed to associate the Attestation to a pending or newly submitted Form I-129 petition, and for the employer to indicate their agreement with the attestation language.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If this information is not collected, USCIS will not be able to record or track Form I-129 H-2B petitions for a change of employer or an H-2B extension of stay pursuant to 8 CFR 214.2(h)(23) submitted by employers requesting the flexibilities afforded by the H-2B COVID-19 temporary final rule.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government**

- contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. **If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

On May 14, 2020, USCIS published a temporary final rule in the Federal Register at 85 FR 28843.

USCIS is requesting OMB approval of this collection of information under 5 CFR 1320.13 Emergency Processing. The H-2B COVID-19 temporary final rule, which requires the submission of the Attestation, does not have a delayed effective date that would allow USCIS to complete the PRA form revision process before accepting

attestations from employers seeking to hire H-2B workers essential to the U.S. food supply chain. The provisions of the H-2B COVID-19 rule will be effective immediately and H-2B petitioners will be able to request the flexibilities provided thereunder during a 120 day-period following the publication of the temporary final rule in the Federal Register.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

USCIS does not provide any payment for benefit sought.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.**

There is no assurance of confidentiality.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information**

**collection activities should not be included here. Instead, this cost should be included in Item 14.**

		A	B	C (=AxB)	D	E (=Cx D)	F	(=ExF)
Type of Respondent	Form Name / Form Number	#. of Respondents	#. of Responses per Respondent	# of Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Business or other for-profit	Form ATT-H2B	10,000	1	10,000	0.167	1,670	\$54.84	\$91,583
<b>Total</b>				<b>10,000</b>		<b>1,670</b>		<b>\$91,583</b>

\* The above Average Hourly Wage Rate is the [May 2018 Bureau of Labor Statistics](#) average wage for Business and Financial Operations Occupations of \$37.56 times the wage rate benefit multiplier of 1.46 (to account for benefits provided) equaling \$54.84.

The 10,000 respondent estimate is based on the maximum number of respondents USCIS can estimate, but may be an overestimate as it is based on the labor certification data from the U.S. Department of Labor and number of worker positions, in the specific occupational grouping, namely meat, poultry, and fish cutters and trimmers, rather than number of labor certifications or H-2B petitions. See, [https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2020/H-2B Selected Statistics FY2020 Q2.pdf](https://www.foreignlaborcert.doleta.gov/pdf/PerformanceData/2020/H-2B%20Selected%20Statistics%20FY2020%20Q2.pdf). This occupational classification comprises at least some of the workers that could be considered essential to the U.S. food supply chain. Under the temporary final rule, only one Attestation per petition would be required, and USCIS permits the grouping of multiple beneficiaries on a single petition, however, this estimate is the best approximation as USCIS does not know how many H-2B petitions requesting an extension of stay will be filed in the 120 days following the date of publication of the temporary final rule in the Federal Register, and of those how many would be filed under the temporary final rule requesting H-2B workers to perform temporary nonagricultural services or labor essential to the U.S. food supply chain.

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition,**

**expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the government; or, (4) as part of customary and usual business or private practices.**

The cost to respondents for this collection of information is estimated at \$3.75 per response. The total estimated cost to respondents is \$37,500.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The cost to the government for this collection of information is covered under the costs approved for Form I-129, Petition for a Nonimmigrant Worker, OMB Control number 1615-0009.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

USCIS is reporting an estimated annual time burden to respondents of 1,670 hours as a result of this new information collection.

USCIS is reporting an estimated cost burden to respondents of \$37,500 as a result of this new information collection.

- 16. For collections of information whose results will be published, outline plans for**

**tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This information collection will not be published for statistical purposes.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

USCIS will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submission,” of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.

**B. Collections of Information Employing Statistical Methods.**

There is no statistical methodology involved with this collection.