



11 May 20

## Decision Memorandum

**TO:** Paul Ray  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

**THROUGH:** Elizabeth A. Cappello  
Department of Homeland Security, Chief Information Officer (Acting)

**FROM:** Bill McElhaney  
Chief Information Officer

**WILLIAM S MCELHANEY**

Digitally signed by WILLIAM S MCELHANEY  
Date: 2020.05.11 08:50:52 -04'00'

**SUBJECT:** Request for Emergency Office of Management and Budget Paperwork Reduction Act Clearance – Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Essential to the U.S. Food Supply Chain

**Purpose:** USCIS is requesting emergency approval of this collection of information under 5 CFR 1320.13.

**Background:** 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 (“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. As of the effective date of the H-2B COVID-19 rule, USCIS will have to have the ability to begin accepting attestations from employers that H-2B workers named on a Form I-129, Petition for a Nonimmigrant Worker (H-2B petition), which is or was submitted to request a change of

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employer or an H-2B extension of stay pursuant to 8 CFR 214.2(h)(23), will be performing work that is essential to the U.S. food supply chain as defined in 8 CFR 214.2(h)(23)(i).

**Discussion:** In order to urgently address the needs of employers and U.S. agents for a legal workforce to provide services or labor essential to the U.S. food supply chain, USCIS is seeking emergency processing under 5 CFR 1320.13 of the new Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Essential to the U.S. Food Supply Chain. This Attestation, signed under penalty of perjury under the laws of the United States of America, is required evidence under the H-2B COVID-19 rule and is being submitted by H-2B petitioners to demonstrate that the petitioner and H-2B worker qualify for the flexibilities under the rule because the H-2B worker will perform services or labor essential to the U.S. food supply chain. Therefore, the receipt of the Attestation triggers those flexibilities both for petitioners submitting the Attestation with their I-129 petitions on or after the effective date of the temporary final rule, and for those whose I-129 petitions were filed on or after March 1, 2020, and are pending on or after the effective date of the temporary final rule, and who submit the Attestation thereafter. The Attestation is a separate document from the Form I-129, and its use will only be authorized during the effective period of the H-2B COVID-19 rule, i.e. 120 days after the date of publication of the H-2B COVID-19 rule in the Federal Register. Instructions regarding when and under what circumstances the Attestation must be submitted are included on the Attestation itself and USCIS is not modifying the I-129 form or instructions as a result of the changes made by the temporary final rule. Therefore, this Attestation would receive a new OMB control number and would not be captured within OMB Control number 1615-0009, which covers the Form I-129, Petition for a Nonimmigrant Worker.

The H-2B COVID-19 rule, which requires the submission of the Attestation, does not have a delayed effective date that would allow USCIS to complete the Paperwork Reduction Act (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. In addition, the H-2B COVID-19 rule will allow employers with pending H-2B petitions as of the effective date of this rule to also take advantage of the flexibilities by submitting the attestation to USCIS.

USCIS certifies that the requirements of 5 CFR 1320.13(a)(1) are met and that:

- The subject collection of information is needed immediately and is essential to the mission of the agency; and
- The agency cannot reasonably comply with the normal collection procedures because public harm is reasonably likely to result if normal clearance procedures are followed.

USCIS greatly appreciates the timely consideration of this request.