

SUPPORTING STATEMENT
H-2B FOREIGN LABOR CERTIFICATION PROGRAM
H-2B APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FORMS
OMB Control No. 1205-0509

The Department of Labor (Department or DOL) is requesting three-year approval for this Information Collection Request (ICR) for forms the Department uses to administer its H-2B temporary non-agricultural program. This ICR includes: Form ETA-9142B, *Application for Temporary Employment Certification*; Form ETA-9142B appendices, *Appendix A - Additional Place(s) of Employment and Wage Information*, *Appendix B - Employer and Attorney/Agent Declaration for H-2B Employers*, *Appendix C - Foreign Labor Recruiter Information*, and *Appendix D – Joint Employer/Job Contractor Information*; Form ETA-9142B, *Final Determination*; Form ETA-9142B, *Seafood Attestation*; Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*; Form ETA-9155, *H-2B Registration*; and accompanying form instructions. The Department respectfully requests the Office of Management and Budget (OMB) grant a delayed implementation period for the Department to perform updates to the electronic filing system resulting from the proposed changes to the H-2B forms. During the period of delayed implementation, the Department requests that the current forms remain valid for public use.

The Department proposes substantive changes to the Form ETA-9142B, *Application for Temporary Employment Certification*, and corresponding changes to the Form ETA-9142B, *General Instructions*, to make improvements to the collection of visa cap exemption information, wage and overtime disclosures, and joint employer designations. The Department also proposes substantive changes to the Form ETA-9142B, *Appendix D*, to collect details for joint employers, as applicable, as well as substantive changes to the Form ETA-9155, *H-2B Registration*, to conform the registration form to changes made to the Form ETA-9142B.

The Department proposes a modification to the collection of visa cap exemption information in the Form ETA-9142B. Currently, the form asks whether the application will be used for cap-exempt or non-cap-exempt workers. The proposed form changes the collection of the information from “Yes” or “No” checkboxes in Section A to numerical collections of the employer’s estimates of the number of cap-subject and cap-exempt workers for the application. This form revision will allow the Department to collect better data to inform its projections for processing resources in light of the H-2B visa semi-annual cap opening and closure. The collection of data in this field also will help the Department provide advice to the Department of Homeland Security (DHS) regarding the nature of H-2B applications the Department has received and will inform the Department’s consultation with DHS concerning potential cap increases after congressional authorization.

The Department proposes changes to the collection of overtime information on the Form ETA-9142B to ensure better disclosure of overtime offered to workers. The proposal modifies the existing collection of overtime information from currently collecting the overtime rate for one worksite of the application filing to collecting the overtime range for all worksites on the application filing. Additionally, the Department proposes to expand Section F for additional

wage rate disclosures, and clarify corresponding form instructions, to allow employers to specify any additional overtime obligations or special circumstances. The Department discloses wage details for the employer's job opportunity on its Seasonal Jobs website at <https://seasonaljobs.dol.gov/> to apprise U.S. workers of wage and overtime offerings for the job opportunity. The proposed changes to the form seek to improve the collection and clarify to both U.S. and H-2B workers whether overtime is offered and any special circumstances that may exist for the offered overtime. Further, these changes will allow the Department to have clearer wage and overtime information available to perform its audits and investigations.

The Department proposes changes to Form ETA-9142B, *Appendix D*, to collect joint employer contact information, regardless of whether the application filing is a job contractor employer-client filing. The form currently collects joint employer details in instances in which a job contractor is filing the H-2B application as a joint employer with an employer-client. The proposed change would also collect joint employer details for any joint employer associated with the H-2B application filing, even where there is not a job contractor employer-client relationship.

The Department also proposes conforming changes to the Form ETA-9155, *H-2B Registration*, and its instructions. The changes conform the Form ETA-9155 to changes made to the Form ETA-9142B and Form ETA-9142B, *Appendix D*, to clarify in the checkboxes for "type of employer" in Section C of the Form ETA-9155 that job contractor filings are a type of joint employer filing. The Department has also made a technical edits to the Form ETA-9142B and Form ETA-9142B, *General Instructions*, in Section G. For the form, the technical edit corrected the wording of the question in Section G regarding the completion of *Appendix D* and inclusion of *Appendix D* with the application. For the form instructions, the technical edit reiterated to job contractors that they must provide copies of their contract(s) or agreement(s) with employer end-clients.

The Department requests approval without substantive changes to the following: Form ETA-9142B appendices (*Appendices A, B, and C*); Form ETA-9142B, *Final Determination*; Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey* and instructions; and the Form ETA-9142B, *Seafood Industry Attestation*. For these forms, the Department has made only minor changes to move the PRA Public Burden Statement from the forms to the respective form instructions. In terms of the Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey* and its instructions, the form is a part of this ICR to preserve the form's information collection.¹

A. Justification

¹ The Department intends to transfer the information collection for the Form ETA-9165 to the ICR for the Form ETA-9141, *Application for Prevailing Wage Determination*, OMB Control Number 1205-0508. The burden for the Form ETA-9165 is included in the ICR for OMB Control Number 1205-0508 as part of a 60-day *Federal Register* notice.

A.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.

The Immigration and Nationality Act (INA), as amended, establishes the H-2B nonimmigrant visa classification for a non-agricultural temporary worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.” INA Section 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). Employers must petition DHS for classification of prospective temporary workers as H-2B nonimmigrants. INA Section 214(c)(1), 8 U.S.C. § 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H-2B visa. Finally, the INA requires that “[t]he question of importing any alien as [an H-2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],² after consultation with appropriate agencies of the Government.” INA Section 214(c)(1); 8 U.S.C. § 1184(c)(1).

DHS consults DOL with respect to the H-2B program, and DOL provides advice on whether U.S. workers capable of performing the temporary services or labor are available. See INA Section 214(c)(1); 8 U.S.C. § 1184(c)(1) (providing for DHS to consult with “appropriate agencies of the Government”). Under DHS regulations, an H-2B petition for temporary employment must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A), (iv)(A). The temporary labor certification serves as DHS’s consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. In April 2015, DHS and DOL jointly promulgated regulations establishing the standards and procedures by which an employer must obtain a prevailing wage and temporary labor certification from DOL. See 20 CFR part 655, subpart A; 29 CFR part 503; 8 CFR 214.2(h)(6)(iii) and (iv). The Office of Foreign Labor Certification (OFLC) within the Employment and Training Administration (ETA) is the component agency responsible for processing employer requests for prevailing wages and applications for temporary labor certification under the H-2B program.

This ICR includes the collection of information related to the issuance of temporary labor certifications in the H-2B program and the use of employer-provided surveys for determining prevailing wages.

Statutory Authority: 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b), 1103(a)(6), and 1184(c)(1)

² Under Section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296, any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other Department of Justice official to DHS by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. See 6 U.S.C. § 557 (2003) (codifying HSA, Title XV, Section 1517); 6 U.S.C. § 542 note; 8 U.S.C. § 1551 note.

Regulatory Authority: 8 CFR 214.2(h)(6); 20 CFR part 655, subpart A; 29 CFR part 503

As provided in the Department's regulations at 20 CFR part 655, subpart A, the information contained in the Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, and all appropriate appendices, constitutes the basis for DOL's determination that an insufficient number of qualified U.S. workers are available to fill the employer's job opportunity, and the employment of nonimmigrant workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. This determination is required before DHS will approve a petition.

A.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.

OFLC uses these information collections to carry out its statutory and regulatory responsibilities for administering the H-2B program. An employer seeking to employ H-2B workers must file a completed *H-2B Application for Temporary Employment Certification* no fewer than 75 calendar days and no more than 90 calendar days before its date of need. See 20 CFR 655.15(b). The *H-2B Application for Temporary Employment Certification* includes the collection of information on the Form ETA-9142B and all required appendices; a valid registration demonstrating the employer's temporary need; a valid prevailing wage determination; a copy of the job order submitted concurrently to the State Workforce Agency (SWA) serving the area of intended employment; a copy of all contracts and agreements with agents and foreign labor recruiters executed in connection with the job opportunities; and all other applicable documentation supporting the application. See 20 CFR 655.15(a).

OFLC reviews an employer's application for temporary labor certification for compliance with all applicable program requirements and issues either a Notice of Deficiency (NOD) or Notice of Acceptance (NOA) of the application within seven business days of receipt. See 20 CFR 655.30(a), 655.31(a), and 655.33(a). Where deficiencies in the application are discovered, the NOD provides the employer with up to 10 business days to correct the deficiencies or file an appeal with the Department's Board of Alien Labor Certification Appeals. See 20 CFR 655.31(a) and (b)(2) and (3). OFLC may issue one or more additional NODs before issuing a decision. See 20 CFR 655.32(a). Where all program requirements are met, the NOA authorizes the recruitment of U.S. workers for the employer's job opportunity and specifies a date on which the employer must provide an initial written report of its recruitment efforts. See 20 CFR 655.33(a) and (b)(1) and 655.48(a). Upon review of the recruitment report, OFLC may grant a full or partial temporary labor certification determination or deny the employer's H-2B application. See 20 CFR 655.52 - 655.54. To determine whether there are insufficient U.S. workers to fill the employer's job opportunity, OFLC will count as available any U.S. worker referred by a SWA or any U.S. worker who applied (or on whose behalf an application is made) directly to the employer, but who was rejected by the employer for other than a lawful job-related reason. See 20 CFR 655.51(b). Thus, a partial temporary labor certification granted by OFLC reduces the number of H-2B workers the employer initially requested by each U.S.

worker who is qualified and available to perform the job. *See* 20 CFR 655.54. OFLC will grant a temporary labor certification only after the employer's H-2B application has met all the requirements for approving a labor certification under 20 CFR part 655, subpart A. *See* 20 CFR 655.50(b). In accordance with regulatory requirements, OFLC sends certified H-2B applications electronically to the employer, and a copy to the employer's attorney or agent if applicable, or, as necessary, by means normally assuring next day delivery. *See* 20 CFR 655.52.

The *H-2B Application for Temporary Employment Certification* and all supporting documentation must be retained by the employer for three years from the date of certification (for approved applications), the date of adjudication (for denied applications), or the date OFLC received the employer's letter of withdrawal (for withdrawn applications). *See* 20 CFR 655.56(b). Employers must be prepared to produce all information and records contained in this ICR for the Department or other federal agencies in the event of an audit examination, investigation, or other enforcement proceedings in the H-2B program. *See* 20 CFR 655.56(c).

Specifically, OFLC uses the information collections in the manner described below:

Form ETA-9142B, *H-2B Application for Temporary Employment Certification*

An employer must include on the Form ETA-9142B basic information related to its business. The Department uses this information to determine whether the establishment operating in the United States is bona fide; contact information of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters; and, if applicable, contact information of an attorney or agent authorized to act on behalf of the employer in labor certification matters. Because the Department routinely sends and receives communications during processing of an employer's application, the Form ETA-9142B requires the entry of a valid email address from both the employer contact and, if applicable, the employer's authorized attorney or agent. If the employer is represented by an agent, the form collects information to assess whether the agent has provided current documentation demonstrating the agent's authority to represent the employer, and, if applicable, a current Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Certificate of Registration identifying the farm labor contracting activities the agent is authorized to perform under this application. *See* 20 CFR 655.8(a)-(b). Similarly, for an employer covered by the MSPA's Certificate of Registration requirement, the form requires the employer to designate and provide a current copy of the Certificate of Registration identifying the farm labor contracting activities the employer is authorized to perform.

The Form ETA-9142B also collects basic information related to the employer's job opportunity and need for H-2B workers, including the job title and occupational classification, number of workers, period of intended employment, designation (*e.g.*, seasonal, peakload) of temporary need, services or labor to be performed, and minimum job requirements. To ensure all work expected to be performed by H-2B workers will be located within one area of intended employment and employment of the H-2B workers will not adversely affect the wages of similarly employed U.S. workers, the form collects information on all places of employment (*i.e.*, worksites) and the wage rates to be paid to workers at those worksites, which allows OFLC

to compare the reported wage rates with the prevailing wage rates the Department issued to the employer for those worksites.

Form ETA-9142B, Appendix A – Additional Place(s) of Employment and Wage Information

In circumstances where work needs to be performed at worksite locations other than the primary location identified on the Form ETA-9142B, the employer must complete *Appendix A* by identifying all places of employment and details about the wage offers for each of those places of employment. See 20 CFR 655.15. OFLC uses this information for review of the area of intended employment for labor certification and to ensure that the employer is offering wages that are at least equal to the prevailing wage covering each place of employment. See 20 CFR 655.10(a) and (d). Additionally, the Department uses the information it collects in *Appendix A* during post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and the Department's Wage and Hour Division (WHD) may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9142B, Appendix B – Employer and Attorney/Agent Declarations for H-2B Employers

To obtain a temporary labor certification, the Department's regulations require an employer, and its attorneys or agents if applicable, to submit a completed *Appendix B* that attests to compliance with all the terms, assurances, and obligations of the H-2B program. See 20 CFR 655.15 and 655.20. For a joint employer and/or for a joint employer operating as a job contractor seeking temporary labor certification, the Form ETA-9142B requires disclosure and submission of a signed and dated *Appendix B* completed by each joint employer and/or job contractor employer-client. See 20 CFR 655.4(d)(1) (citing 20 CFR 655.19). The revisions to this collection of information clarify employer assurances and obligations, including clarifying that an employer is obligated to pay a new prevailing wage if the Department issues an official correction to the employer, unless the Department notifies the employer otherwise. Additionally, the Department uses the information it collects in *Appendix B* during post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9142B, Appendix C – Foreign Labor Recruiter Information

The Department's regulations require an employer who engages or plans to engage any agent(s) or recruiter(s) in the recruitment of prospective H-2B workers to provide the information requested by *Appendix C*. See 20 CFR 655.9(b) and 655.15. *Appendix C* collects basic information on the identities and locations of all persons and entities hired by, or working for, the associated foreign labor recruiter. To provide greater transparency in the recruitment of H-2B workers and prevent program abuse, OFLC uses this information to maintain a publicly available list on its website of the identity and location of any persons or entities hired by or working for these recruiters to recruit prospective foreign workers for the H-2B job opportunities offered by the employer. See 20 CFR 655.9(c). The Department also uses the information it collects in

Appendix C during post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9142B, *Appendix D – Joint Employer/Job Contractor Information*

The Department's regulations require an employer filing as a joint employer or a job contractor acting as a joint employer with its employer-client to submit a single application. See 20 CFR 655.19(a). In filing the application, the job contractor must disclose the identity and contact information of its joint employer or its employer-client by completing the *Appendix D*. See 20 CFR 655.15; 20 CFR 655.19(d)(1). Information on the *Appendix D* permits OFLC to verify whether the executed contracts or other agreements establishing the joint-employer relationship of the workers sought under the application is bona fide and ensure that all advertising requirements unique to job contractors under the regulations are met. See 20 CFR 655.19(b) and (e). The proposed change will modify the *Appendix D* collection to collect information from joint employers functioning as job contractors and, as well as now, collect information from joint employers not functioning as job contractors. In addition to completing *Appendix D*, joint employer entities and job contractors and their employer-clients must each submit *Appendix B* attestations. The Department uses the information it collects in *Appendix D* during post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*

Where the employer's application has met all the regulatory requirements, including the criteria for certification in 20 CFR 655.51, the Department completes and electronically sends (or mails, if electronic delivery is not possible) to the employer and, if applicable, the employer's authorized attorney or agent, the Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*. This one-page certification form provides the official certification that there is not a sufficient number of qualified U.S. workers available at the time and place needed to fill the job opportunities for which certification is sought, and the employment of the H-2B nonimmigrant workers in such labor or services will not adversely affect the wages and working conditions of U.S. workers similarly employed. See 20 CFR 655.50(b). The employer uses the Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*, as well as any other required documentation, to support the filing of an H-2B petition with U.S. Citizenship and Immigration Services (USCIS), within DHS. Additionally, the Department uses the certification information in post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and WHD may use this information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9142B, *Seafood Industry Attestation*

The Department's regulation at 20 CFR 655.15(f) permits only employers in the seafood industry to stagger the entry of their nonimmigrant workers into the United States, in accordance with an approved H-2B petition, at any time during the 120-day period on or after the employer's

certified start date of need, if certain conditions are met. The employer is not required to submit additional information or documentation related to this provision to OFLC with an H-2B application. *See* 20 CFR 655.15(f). An employer seeking to use this regulatory provision must provide each H-2B nonimmigrant worker seeking entry into the United States a copy of the signed and dated *Seafood Industry Attestation*, with instructions that the worker must present the documentation upon request to the Department of State’s consular officers when applying for an H-2B visa, and/or DHS’s U.S. Customs and Border Protection officers when seeking entry into the United States. *See* 20 CFR 655.15(f)(3)(2). Without this attestation, an H-2B nonimmigrant may be denied admission to the United States if seeking to enter at any time other than the designated 20-day period (10 days before and after the start date) surrounding the start date stated in the petition. *See Interim Final Rule, Temporary Non-Agricultural Employment of H-2B Aliens in the United States*, 80 FR 24042, 24061 (Apr. 29, 2015). Seafood industry employers may not bring H-2B nonimmigrant workers into the United States more than 90 days after the start date of need unless the employer conducts new recruitment that begins at least 45 days after, and ends before the 90th day after, the certified start date of need. For this, seafood industry employers must meet the requirements of 20 CFR 655.15(f)(2) and complete a new assessment of the local labor market by: placing two newspaper advertisements on separate Sundays, placing new job orders for the job opportunity with the State Workforce Agency, and posting the job opportunity at the place of employment for at least 10 days. Seafood industry employers must retain the additional recruitment documentation, together with their pre-filing recruitment documentation, for a period of three years from the date of certification. *See* 20 CFR 655.15(f)(3)(3). The Department uses this information in post-adjudication audit examinations and/or program integrity proceedings (*e.g.*, revocation or debarment actions) and WHD may request this information during an investigation or enforcement proceeding. *See* 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*

An employer is required to request and obtain a prevailing wage determination from OFLC’s National Prevailing Wage Center (NPWC) before posting its job order with the SWA serving the area of intended employment and filing the Form ETA-9142B. *See* 20 CFR 655.10(c) and 655.15(a). In limited circumstances, an employer may request that NPWC consider an employer-provided wage survey in making the prevailing wage determination.³ To request a prevailing wage determination based on an employer-provided survey, the employer must complete and file the Form ETA-9165.

The Department uses the Form ETA-9165 to collect information the NPWC needs to determine whether an employer-provided survey can be used for establishing the H-2B prevailing wage for the employer’s job opportunity, in lieu of a prevailing wage determined using the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS, formerly Occupational Employment Statistics (OES)) program. Additionally, the Department uses this information during post-adjudication audit examinations and/or program integrity proceedings

³ *See* 20 CFR 655.10(f) as modified by Section 112 of the “Department of Labor Appropriations Act, 2016,” Division H, Title I of Pub. L. 114-113 (Dec. 18, 2015). *See also* Department of Labor Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1183, 1564 (2020).

(e.g., revocation or debarment actions), and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

Form ETA-9155, H-2B Registration

Pursuant to 20 CFR 655.11, an employer must establish that its need for the services or labor to be performed in the job opportunity is temporary in nature by filing a request for registration with OFLC's Chicago National Processing Center. The information collected on the Form ETA-9155, *H-2B Registration*, will allow OFLC to determine whether the nature and duration of the employer's need for H-2B workers is temporary. Where OFLC has not operationalized the registration process through a separate notice in the *Federal Register*, H-2B applications are exempt from the registration requirements under 20 CFR 655.11, and the adjudication of the employer's temporary need will continue to occur based on information collected on the Form ETA-9142B. See 20 CFR 655.11(j). Upon implementation of the registration process, the collection of this information will be used in post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and requested by WHD during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 503.17.

A.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.

Pursuant to 20 CFR 655.15(c), an employer or, if applicable, its authorized attorney or agent, seeking temporary labor certification must submit an *H-2B Application for Temporary Employment Certification* and all supporting documentation to OFLC either electronically or by U.S. mail.⁴ The filing of the *H-2B Application for Temporary Employment Certification* and all supporting documentation is supported by the Department's electronic filing system, the Foreign Labor Application Gateway (FLAG system) at <https://flag.dol.gov/>. In circumstances where the application is filed using the traditional paper-based method, OFLC staff manually enters the data and information contained on the paper application into the FLAG system's internal case management system for processing in a similar manner as those filed electronically.

The FLAG system permits an employer or, if applicable, its authorized attorney or agent to efficiently prepare and file H-2B applications for processing by OFLC. During the preparation of applications, the FLAG system provides the application filer with a series of electronic data checks and prompts to ensure each required field is completed and values entered on the form are valid and consistent with regulatory requirements. The OFLC website and the FLAG system's H-2B Case Preparation Module include detailed instructions designed to help the filer understand the form collection items and the kinds of entries that are required. Where it is not practical to collect supporting documentation using a standard OMB-approved appendix, the FLAG system permits the filer to upload documentation supporting the application in an acceptable digitized format (e.g., Adobe PDF, Microsoft Word, .TXT).

⁴ In Fiscal Year 2020, 98.9% of respondents filed H-2B applications electronically, rather than by mail.

When the filer initially enters contact information and establishes a FLAG system account, the H-2B Case Preparation Module automatically pre-populates all contact information on the draft Form ETA-9142B, significantly reducing the time and burden for repeated online data entry. Additionally, the H-2B Case Preparation Module provides filers the option to “reuse” previously filed applications, which automatically copies information into a new draft Form ETA-9142B. Filers who use this option need only change a limited amount of information on the new application to accommodate the job opportunity, such as the number of workers being requested for certification, period of employment, the intended place(s) of employment, and wage information. This option significantly reduces the time and burden for online data entry, particularly for those employers who need to access the program to hire nonimmigrant workers for jobs that predictably recur each year. OFLC’s experience is that the submission of all required documentation, at the time of filing the application, facilitates a more efficient and consistent review of the employer’s application, and reduces the incidence of OFLC returning the incomplete application without further review or issuing a NOD to request missing documentation or corrections for obvious errors or inaccuracies.

In compliance with the Government Paperwork Elimination Act, ETA will continue to make all forms and appendices approved under this ICR easily accessible on both the FLAG System and OFLC website (<https://www.dol.gov/agencies/eta/foreign-labor>) and electronically fillable and fileable. The Department seeks OMB approval of the electronically fileable Form ETA-9142B and its appendices. The Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval* (“Final Determination”), is not made available in an electronically fillable format, because it is for the Department’s use only and is not completed by the employer, or its authorized attorney or agent, if applicable. Where the employer’s application has met all regulatory requirements, the FLAG system sends the one-page *Final Determination*, to the employer and, if applicable, its authorized attorney or agent using email (as available) and pre-populates it with key information reflecting OFLC’s decision to grant approval of the employer’s request for temporary labor certification. The employer downloads, prints, and submits the Final Determination, along with any other required documentation to support the filing of an H-2B petition to the USCIS for processing.

A.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.

The information requested on the Forms ETA-9142B and accompanying appendices, ETA-9165, 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(s), address(es), and contact information of the employer and, if applicable, its authorized attorney or agent will be eliminated once the Department incorporates all form revisions into the electronic filing system. The Department has not yet incorporated Form ETA-9165 into the electronic filing system due to technical challenges doing so. In addition, the collection of the prevailing wage tracking number on the Form ETA-9142B eliminates the need for a filer to re-enter information related to the job opportunity, minimum requirements, and all places of employment. Once the filer selects the prevailing wage case number during the application preparation stage for the Form ETA-9142B, the electronic filing system will auto-populate information related to the job opportunity,

minimum requirements, and the places of employment from the Form ETA-9141 associated with the chosen prevailing wage tracking number. Finally, the procedures and documentation requirements are sufficiently specific to avoid duplication of activities. There is no duplication of information collection requirements because the information collections covered by this ICR only apply to entities seeking H-2B workers.

A.5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The information collected under this ICR is required of small businesses seeking to employ temporary nonimmigrant workers under the H-2B program. The Department cannot make exemptions or eliminate forms for small businesses because regulations require all employers seeking temporary labor certification to make the necessary attestations and provide the information requested. This collection is not disproportionately more burdensome for small entities than large ones because the forms and accompanying appendices are easy to understand and provide all necessary attestations and assurances so that the employer does not need to find the appropriate law or regulation to know how to request a temporary labor certification. It is not possible to reduce the burden on small entities by shortening the forms because the forms collect from all employers the minimum information needed to determine program eligibility and issue a labor certification determination. The use of electronic filing and collection of business email addresses on the forms will serve to minimize the burdens on respondents by increasing the completeness and quality of applications received and enhancing electronic communications during the application review process. Any recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.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.

The information collected under this ICR must be provided at the time an employer needs to request a prevailing wage determination (*i.e.*, when requesting a prevailing wage based on an employer-provided survey) and temporary labor certification to employ nonimmigrant workers under the H-2B visa classification. The Department would be in direct violation of its statutory and regulatory mandates if it did not collect this information. The Department must collect this information to determine whether an insufficient number of qualified U.S. workers is available to fill the employer's job opportunity and that the employment of H-2B nonimmigrant workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Additionally, in the absence of this information collection, the Department would be unable to enforce the rights and obligations of workers and employers under the H-2B program. The collection covered by this ICR is, therefore, essential to the administration of the H 2B temporary labor certification program.

A.7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5(d)(2).

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d)(2).

A.8. If applicable, provide a copy and identify the date 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.

In accordance with the PRA, the Department solicited comments on this proposed collection for 60 days. The Department published the 60-day notice on January 12, 2022 (87 FR 1787), and the comment period expired on March 14, 2022. The Department received four comments from the public. Appendix A to the Supporting Statement (listed as a Supplementary Document in ROCIS) summarizes public comments received and the Department's responses to the comments. The comments are also uploaded into the reginfo.gov database.

In response to the public comments received, the Department has made clarifying changes to the proposed Form ETA-9142B, *General Instructions*. The changes clarify the use of "premium rate" for overtime discussions in the form instructions. No additional changes were made to the proposed collection. The burden estimates were not affected by the public comments received.

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

No payments or gifts will be made to respondents in exchange for the information provided through these information collection tools.

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

The collection of data and information under this ICR are incorporated into the Department's System of Records Notice *Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7*. See 87 FR 8292. The categories of records in this collection include information such as the names and addresses of employers and their authorized attorneys and

agents; material terms and conditions of employment to be offered to an unknown number of nonimmigrant workers; employer-provided wage source documents and surveys; names of agents and recruiters whom employers may engage in the recruitment of prospective H-2B workers, as well as the identity and location of all persons or entities hired by or working for such recruiters or agents, and any of the agents or employees of those persons and entities that are engaged in the recruitment of prospective workers for the H-2B job opportunities offered by the employer. The laws authorizing this program and collection of information provides for compliance with the Privacy Act in all its aspects.

OFLC files associated with prevailing wage determinations and applications for temporary labor certification are retained for a period of five years after closure in accordance with Records Schedule Number DAA-0369-2013-0002. Paper files are retained on-site at the applicable OFLC National Processing Center for six months from the date of the final determination. OFLC digitizes or converts paper records into OFLC archive and scan database(s), which are destroyed once converted to an electronic medium and verified, or when no longer needed for legal or audit purposes in accordance with the records schedule. Paper copies of case files that are not scanned are retained on-site for six months from the date of the final determination and then transferred to the Federal Records Center for the duration of the five-year retention period.

A.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.

The information collections do not involve sensitive matters.

A.12. Provide estimates of the hour burden of the collection of information.

Based on previous program experience, the Department estimates it will receive approximately 9,393 Form ETA-9142B submissions,⁵ 278 Form ETA-9165 submissions, and 5,695 Form ETA-9155 submissions for the H-2B program.⁶ The estimated time reporting burden per H-2B Application Process for Form ETA-9155 is one hour; Form ETA-9165 is 0.42 hours; and Form ETA-9142B is estimated at 0.92 hours, excluding appendices and recordkeeping requirements. While actions associated with the form collection vary depending on the nature and complexity of the employer’s job opportunity and need for temporary nonimmigrant workers, the estimated average hourly reporting burden includes those elements that are common to most applications.

OMB Control Number 1205-0509	Estimated Burden Hours
Form ETA-9142B and appendices	2.17 hours 9142B: 0.92 hours

⁵ The numerical estimation of 9,393 is derived from the average submissions of H-2B applications from Fiscal Years 2019 and 2020. Burden estimates provided are based on average data from Fiscal Years 2019 and 2020 to the extent possible, unless otherwise indicated. Burden estimates are rounded to the nearest whole number or when relevant, the nearest thousandths place of a decimal.

⁶ This is an estimate of projected filings after *Federal Register* notice and implementation of the registration process.

OMB Control Number 1205-0509	Estimated Burden Hours
	Appendix A: 0.25 hours Appendix B: 0.25 hours Appendix C: 0.33 hours Appendix D: 0.17 hours Recordkeeping: 0.25 hours
Form ETA-9142B, <i>Seafood Industry Attestation</i>	0.17 hours
Form ETA-9155, <i>H-2B Registration</i>	1 hour
Form ETA-9165, <i>Employer-Provided Survey Attestation</i>	0.42 hours

I. Hourly Burden Estimates

A. Agents and Recruiters

1. *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 does not require 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. The Department estimates that it takes 0.50 hours to write, print, sign, and deliver a letter confirming the relationship. Based on recent experience, the Department estimates that 548 letters will need to be created between agents or attorneys and their clients and then copied and attached to applications. Based on program data, the Department estimates the 548 letters will be used in the filing of 6,405 applications, for an hourly burden of 3,203 reporting hours (6,405 filings x 0.50 hours = 3,203 hours).
2. *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 0.08 hours to copy their certificates and attach them to the application for approximately 13 Farm Labor Contractor filings. The hourly burden for this collection is 1.04 hours. (13 filings x 0.08 hours = 1.04 hours).
3. *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 57 percent of employers (3,220) will utilize foreign agents and recruiters for 4,546 applications and that it takes the employer an average of 0.25 hours to comply with this requirement, the third-party disclosure burden for this collection is 1,136.50 reporting hours (4,546 filings x 0.25 hours = 1,136.50 hours).

B. Registration of H-2B Employers

1. Form ETA-9155, H-2B Registration (20 CFR 655.11). Upon publication of a future notice in the *Federal Register* announcing implementation of the registration process, the Department will require H-2B employers to submit the Form ETA-9155 to demonstrate that their need for the services or labor to be performed by the nonimmigrant workers is bona fide and temporary in nature, prior to filing the Form ETA-9142B. Requests for registration that are approved will be valid for up to three consecutive years from the date of issuance. For purposes of the paperwork burden, the Department is estimating annual filings. The Department has approximately 5,695 unique employers who participate in the H-2B program each year. Therefore, the Department estimates receiving 5,695 *H-2B Registration* forms upon initial implementation of the registration process. The Department estimates that it will take one hour to complete and submit the Form ETA-9155 for a total burden of 5,695 reporting hours (5,695 applications x 1 hour = 5,695 hours). The number of responses is a projected estimate based on the average number of Form ETA-9142B submissions by employers over the last two fiscal years. After initial implementation, however, the Department anticipates a reduction in the annual burden, as the annual average of H-2B registrations submitted for processing should decrease as employers begin receiving H-2B registrations covering up to three years.
2. Notice of Deficiency/Request for Further Information (RFI) for Form ETA-9155 Registration (20 CFR 655.11(g)). The Department has the authority to issue an RFI to an H-2B employer where the *H-2B Registration* does not meet regulatory requirements, such as 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. It is estimated that an average of 2,711 RFIs will be issued each year and that it will take an hour to respond to each RFI, for a total burden of 2,711 reporting hours (2,711 applications x 1 hour = 2,711 hours).

C. Employer-provided Surveys for Prevailing Wage Determinations

1. Form ETA-9165 (20 CFR 655.10(f) and Department of Labor Appropriations Act, 2016, § 112). The Department requires all employers participating in the H-2B program to obtain a prevailing wage determination from the NPWC by filing the Form ETA-9141 and, if requesting a wage determination based on an employer-provided survey, the Form ETA-9165 and documentation demonstrating the survey satisfies methodological requirements in the H-2B regulations. The Department calculated and accounted for the burden imposed by the Form ETA-9141 separately in the ICR approved under OMB Control Number 1205-0508. The Department estimates the Form ETA-9165 takes approximately 0.42 hours to complete. Based on program experience, the Department estimates it will receive 278 Form ETA-9165 submissions annually. The total hourly burden for the filing of the Form ETA-9165 is 116.76 reporting hours (278 applications x 0.42 hours = 116.76 hours). For more

information on employer-provided surveys, see Subsection I.1 of this section (A.12) below.

D. H-2B Application for Temporary Employment Certification

1. Form ETA-9142B, H-2B Application for Temporary Employment Certification (20 CFR 655.15). The Department requires completion of the Form ETA-9142B when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2B visa classification. The Department estimates the form takes approximately 0.92 hours to complete. Based on program experience, and proposed changes made to the Form ETA-9142B, the Department estimates filers will submit 9,393 applications annually. The total hourly burden for the filing of the Form ETA-9142B is 8,641.56 reporting hours (9,393 applications x 0.92 hours = 8,641.56 hours).
2. Appendix A of Form ETA-9142B (20 CFR 655.10 and 655.15), Additional Place(s) of Employment and Wage Information. The Department requires the employer to submit a completed *Appendix A* if the employer will expect workers to perform the services or labor in geographic locations other than the primary place of employment disclosed on the Form ETA-9142B. Based on program experience, the Department estimates filers will submit 6,404 *Appendix A* forms annually and it will take filers 0.25 hours to complete the form. The total hourly burden for the filing of *Appendix A* is 1,601 reporting hours (6,404 appendices x 0.25 hours = 1,601 hours).
3. Appendix B of Form ETA-9142B (20 CFR 655.4(d)(1), 655.15, and 655.20), Attorney/Agent/Employer Declarations. The Department requires that an employer filing a Form ETA-9142B attach a signed and dated *Appendix B* that declares adherence to the terms and conditions of the job opportunity listed on the Form ETA-9142B. Based on program experience, the Department estimates filers will submit 9,393 *Appendix B* forms annually and that it will take filers 0.25 hours to complete the form. The total hourly burden for the filing of *Appendix B* is 2,348.25 reporting hours (9,393 appendices x 0.25 hours = 2,348.25 hours).
4. Appendix C of Form ETA-9142B (20 CFR 655.9 and 655.15), Foreign Labor Recruiter Information. 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 and requires the completion of *Appendix C*. Based on the Department's observation that the majority of H-2B employers employ foreign agents and recruiters, the Department expects that 2,550 employers will have such agreements attached to their applications, for an estimate of 4,041 *Appendix C* forms filed annually. The Department also estimates that it takes 0.33 hours to complete the appendix. The hourly burden for this collection is 1,333.53 reporting hours (4,041 appendices x 0.33 hours = 1,333.53 hours).
5. Appendix D of Form ETA-9142B (20 CFR 655.15 and 655.19), Joint Employer/Job Contractor Information. The Department requires that when an employer submits a

Form ETA-9142B requesting temporary labor certification, the employer filing as a job contractor must submit a completed *Appendix D* to disclose its employer-client who will jointly employ the workers under the application. The Department also proposes changes to *Appendix D* to collect joint employer details where the joint employer is not a job contractor. The Department estimates that it will take an employer 0.17 hours to disclose joint employer or job contractor information on *Appendix D*. Based on program experience, the Department estimates 20 *Appendix D* forms will be filed annually. The total hourly burden for the filing of *Appendix D* is 3.40 reporting hours (20 appendices x 0.17 hours = 3.40 hours).

6. *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 Application for Temporary Employment Certification* to request a waiver of such timeframes by submitting a letter of explanation with the completed application. The Department estimates that it takes an employer 0.50 hours to compose, print, and send such a written request. The Department anticipates receiving 118 such requests for a total burden of 59 reporting hours (118 requests x 0.50 hours = 59 hours).
7. *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, to resolve deficiencies listed in the NOD. The Department estimates that one third of applications received each year will require modification. Based on program data under the current regulatory model, the Department estimates it takes 1 hour to respond to a NOD for a total burden of 2,872 reporting hours (2,872 applications x 1 hour = 2,872 hours).
8. *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 557 such amendments and that it takes an employer 0.50 hours on average to prepare and file an amendment for a total burden of 278.50 reporting hours (557 amendments x 0.50 hours = 278.50 hours).

E. Recruitment of U.S. Workers

Recruitment activities, including advertising for U.S. workers and/or placing job orders, is a usual and customary activity for employers. Therefore, under 5 CFR 1320.3(b)(2), the resources expended by employers to comply with the recruitment provisions at 20 CFR 655.16 and 655.42 are excluded in compiling the paperwork burden estimates. In addition, employers are already required to maintain personnel or employment records related to hiring under statutes such as the Age Discrimination in Employment Act (ADEA). For example, 29 CFR 1627.3(b)(1), which was promulgated pursuant to the

ADEA, requires employers to maintain records including, but not limited to, the following:

- “Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to [the employer’s] 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 for job openings.”
 - “Any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.”
1. 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 is subject to the PRA burden calculations. The Department estimates that it takes employers one hour to complete the SWA job order and ensure that it includes all required information and disclosures in compliance with 20 CFR 655.18. The total burden is 9,393 reporting hours. (9,393 job orders x 1 hour = 9,393 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)*, below.
 2. 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 during the previous year, 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, disclose the terms of the job order, and solicit their return to the job. The Department estimates that there will be 7,717 applications for which employers will be issued a NOA permitting recruitment and will therefore be required to contact former employees (third-party contacts) and, further, that it takes employers one hour per application filed with the Department to contact former employees. The estimated total burden is 7,717 third-party disclosure hours (7,717 applications with third-party contacts x 1 hour = 7,717 hours).
 3. Contacting Union/Bargaining 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 BLS does analyze union membership across all industries and found that the union membership rate for 2020 was 12 percent (when rounded to the nearest whole number).⁷ Therefore, for the purposes of the PRA, the Department estimates that the H-2B program will have similar union participation and that 12 percent of all employers in the H-2B program (12% of 5,695 = 683.40 or 683) will be obligated to make such contact. The Department estimates employers will take 0.25 hours per application to contact the local union. Because some employers will file more than one application, the Department estimates this requirement will affect 915 applications filed with the Department (683 employers x 1.339 filing frequency rate = 914.54). The total third-party disclosure burden is thus 228.75 hours (915 contacts x 0.25 hours = 228.75 hours).

4. *Notice of Posting Requirement (20 CFR 655.45(b))*. Where there is no bargaining representative of the employer's employees, the employer must post the availability of the job opportunity in at least two conspicuous locations at the place of anticipated employment or in some other manner for 15 consecutive business days, to provide reasonable notification to all employees in the job classification and area in which the work will be performed by the H-2B workers. Based on the BLS statistics used above under *Contacting Union/Bargaining Representatives and Other Contact Requirements (20 CFR 655.45)*, the Department assumes that 88 percent of employers using the H-2B program (88% of 5,695 = 5,011.60 or 5,012) do not have employees with bargaining representatives and will be required to comply with the posting requirement. The Department estimates employers will take 0.50 hours per application to prepare and post the notice. Because some employers will file more than one application, the Department estimates the posting requirement will affect 8,266 applications (5,012 employers x 1.6493 filing frequency rate = 8,266.29 or 8,266). The total third-party disclosure burden is thus 4,133 hours (8,266 applications x 0.50 hours = 4,133 hours).
5. *Additional Employer-conducted Recruitment (20 CFR 655.45(c) and 655.46)*. The Department, at its discretion, can require employers to conduct additional recruitment. The Department assumes that 35 percent of the 9,393 average annual applications, or 3,287.55 or 3,288 applications, will be required to undergo this additional recruitment. If the additional employer-conducted recruitment consists of placing an additional advertisement, the Department estimates that it takes an employer approximately 0.25 hours to comply with this requirement for a total third-party disclosure burden of 822 hours (3,288 applications x 0.25 hours = 822 hours).
6. *Proof of Additional 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 Equal Employment Opportunity Commission regulations at (1) 29 CFR 1602.14 (OMB Control Number 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act, the Americans

⁷ More information on union membership in the United States in 2020 is available here: <https://www.bls.gov/news.release/union2.nr0.htm>.

with Disabilities Act, and the Genetic Information Nondiscrimination Act; and (2) 29 CFR 1627.3(b) (OMB Control Number 3046-0018), promulgated pursuant to the ADEA. Therefore, the burden to maintain such records can be excluded in compiling the paperwork burden under DOL's H-2B regulations. For example, 29 CFR 1602.14 already requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not necessarily 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)...for a period of one year from the date of the making of the record or the personnel action involved, whichever occurs later."

7. SWA Postings, Distribution, and Referrals (20 CFR 655.16(d) and 655.33(b)(3)-(4)). 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. These functions are exempt from the paperwork burden calculations under 5 CFR 1320.3(b)(2), because they are normal functions of SWAs and do not increase this burden.
8. Electronic Job Registry (20 CFR 655.34). The Department posts an employer's approved job order on the Department's Seasonal Jobs website at <https://seasonaljobs.dol.gov/>, which serves as a public repository for H-2B job orders for the duration of the referral period and serves to improve the visibility of H-2B jobs to U.S. workers. This third-party disclosure is performed by the Department and therefore is not included in the calculation of the public burden.
9. 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 estimating the burden. Under this provision, employers must prepare, sign, and retain a written summary report describing the steps undertaken to recruit U.S. workers and the results achieved, including the number of hires and, if applicable, the number of U.S. workers not hired and the lawful job-related reason(s) for not hiring those workers. The employer is required to provide a report of its recruitment efforts to the Department prior to certification and must continue to accept U.S. worker referrals until 21 days before the date of need stated on the H-2B application. See 20 CFR 655.40(c) and 655.51. Additionally, under the audit process described in 20 CFR 655.70, the Department may request the employer submit the final recruitment report contained in the employer's files along with the resumes or applications of U.S. workers that were rejected, organized by the reasons they were rejected. Based on the number of H-2B certifications issued, the Department estimates that employers will prepare approximately 7,717 reports. The Department estimates that it takes employers one hour to prepare a recruitment report for a total burden of 7,717 hours (7,717 reports x 1 hour = 7,717 hours).

F. Worker Rights

1. *Provide Copy of Job Order to Workers (20 CFR 655.20(l) and 29 CFR 503.16(l)).*
The Department requires employers to provide a copy of the job order to both H-2B workers and U.S. workers in corresponding employment. The Department has no available means of calculating the number of U.S. workers 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 will assume for the estimate that the number of requested workers equals the total number of H-2B and corresponding U.S. workers hired (155,511). The Department estimates that it takes employers an average of 0.08 hours to provide each worker with a copy of the job order for a burden of 12,440.88 hours (155,511 workers x .08 hours = 12,440.88 hours). In addition, the Department estimates that 4,886 employers will need to translate job orders for workers and that each job order will be translated once on average. The Department expects these employers to file more than one job order, for a translation frequency rate of 1.4999, and that a typical translation takes one hour to complete. The total burden for translation of the job order is thus 6,864 hours (4,886 employers x 1.499 translation frequency x 1 hour = 7,324.11 or 7,324 hours).
2. *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).
3. *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 who 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 SWAs to go beyond their normal functions, it is therefore not exempt under 5 CFR 1320.3(b)(2). The Department tracks the number of partial certifications it issues due to the availability of qualified U.S. workers and estimates that 21,340 workers are referred by SWAs. The Department estimates it takes SWAs an average of 0.08 hours to explain the job requirements to each worker for a total burden of 1,707.20 third-party disclosure hours (21,340 workers x 0.08 hours = 1,707.20 hours).

G. Retention Requirements

1. *Retention of Documents (20 CFR 655.10(j), 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 and all appendices), and all supporting documentation, to retain all such documents and records not otherwise submitted proving compliance with 20 CFR 655.10(j), 20 CFR 655.11(i), and 655.56. The Department estimates that employers will spend about 0.25 hours per year per application to retain the Form ETA-9142B and supporting documentation, and about 0.17 hours per year per application to retain the Form

ETA-9155 and supporting documentation, in the two years following the mandated year of required retention for companies subject to Title VII and during the three years already mandated for all other employers. This results in an annual burden of 2,348.25 hours for the Form ETA-9142B and its accompanying documents (9,393 applications x 0.25 hours = 2,348.25 hours) and 968.15 hours for the Form ETA-9155 and its supporting documents (5,695 applications x 0.17 hours = 968.15 hours).

2. Exception to Corresponding Employment (20 CFR 655.5 and 655.56(c)(13)). The Department's regulations require an employer to retain collective bargaining agreements, individual employment contracts, and payroll records 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. See 5 CFR 1320.3(b)(2). The Department also estimates that a significant majority of H-2B employers are subject to the Fair Labor Standards Act (FLSA), which requires the retention of payroll records that can be used to demonstrate that an incumbent worker meets the requirements to be excluded from corresponding employment. There is a negligible number of H-2B employers for whom this requirement imposes 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, but this burden will not significantly impact the overall annual burden hours for the H-2B program information collection.

As exact data is not available, the Department continues to estimate that 198 certified H-2B employers are not subject to the FLSA, of which the Department estimates that two percent, or four 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 four incumbent workers needing payroll records to demonstrate the minimum requirements for the corresponding worker exclusion. The Department estimates that it takes one and a half hours to create payroll records for each employee, for a total burden of 24 recordkeeping hours (4 employers x 4 workers x 1.50 hours = 24 hours).

The Department also estimates that all 198 certified H-2B employers need to record the job duties for the four incumbent workers the Department estimates that employers seek to exclude from the definition of corresponding employment. The Department estimates that it takes an employer an average of 0.17 hours to record the job duties for each incumbent worker for a total burden of 134.64 hours (198 employers x 4 workers x 0.17 hours = 134.64 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.

H. Post-certification Requirements

1. 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 0.17 hours 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 425 reporting hours (2,500 notifications x 0.17 hours = 425 hours).
2. Redeterminations (20 CFR 655.57). The regulations permit an employer to request a new temporary labor certification determination from the Department if U.S. workers recruited as a result of the labor market test become unavailable on or after 21 calendar days before the date of need. The Department estimates it takes an employer 0.50 hours to contact the Department with its request. The Department estimates that it will receive approximately 11 such requests each year for a total reporting burden of 5.50 hours (11 requests x 0.50 hours = 5.50 hours).
 3. 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 0.50 hours to comply with this requirement for a total burden of 163 reporting hours (326 notices x 0.50 hours = 163 hours).
 4. 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 75 such requests each year. The Department also estimates that it takes the employer one hour to comply with this requirement for a total burden of 75 reporting hours (75 notices x 1 hour = 75 hours).
 5. 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 850 such requests each year. The Department also estimates that it takes the employer 0.17 hours to comply with this requirement for a total burden of 144.50 reporting hours (850 notices x 0.17 hours = 144.50 hours).
 6. Seafood Industry Staggered Entry Provision (20 CFR 655.15(f)). 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 Protection Officers at the border upon request. The employer must also retain a copy of this form in its records. The Department estimates that this requirement will affect approximately 152 H-2B employers who

would be eligible to use the *Seafood Industry Attestation*. It takes them 0.25 hours to print out, read, and sign the *Seafood Industry Attestation* for a total of 38 third-party disclosure hours (152 employers x 0.25 hours = 38 hours).

Each year the seafood industry brings in approximately 4,750 H-2B workers. Under 20 CFR 655.15(f)(3)(2), 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, for a total of 2,850 such workers, and that it takes their respective employers 0.17 hours per employee to ensure that each employee receives the Attestation, for a total third-party disclosure burden of 484.50 hours (2,850 H-2B seafood workers x 0.17 hours = 484.50 hours).

The Department estimates that 38 eligible employers are likely to utilize the 90 to 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 one hour to write and place the advertisements and job order and an average of one hour per employer to interview applicants for a total of 76 third-party disclosure hours (38 employers x 2 hours = 76 hours).

The Department estimates it takes 0.03 hours for a seafood worker to present, upon request, the Attestation to a State Department Consular Officer and/or a DHS Customs and Border Protection Officer at the border. This results in a burden of 85.50 hours (2,850 H-2B seafood workers x 0.03 hours = 85.50 hours).

I. Use of Employer-provided Wage Survey

1. *Employer-provided Wage Surveys (20 CFR 655.10(f) and Department of Labor Appropriations Act, 2016 § 112)*. An employer may choose to submit a survey to establish the prevailing wage for an occupation in the area of intended employment. An employer who submits an employer-provided survey attests that the survey meets the requirements in 20 CFR 655.10(f) as modified by Section 112 of the Department of Labor Appropriations Act, 2016. *See also* Department of Labor Appropriations Act, 2021. The attestation is made on Form ETA-9165. Any employer submitting a wage survey must report on Form ETA-9165 specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey.

As mentioned above in Subsection C.1 of this section (A.12), the Department expects to receive approximately 278 employer-provided surveys each year and that it will take respondents an average of 0.42 hours to complete the Form ETA-9165 with the survey information for a total burden of 116.76 hours (278 employer-provided surveys x 0.42 hours = 116.76 hours).

2. Submission of Supplemental Information by Employer (20 CFR 655.10(g) and 655.13(a) and (b)). Employer-provided surveys are filed with NPWC. If NPWC informs the employer its survey is not acceptable, the employer may submit supplemental information to NPWC by requesting NPWC Director Review under 20 CFR 655.13(a)-(b). The burden for this section of the regulation is already accounted for in the Information Collection for the Prevailing Wage Determination Form ETA-9141 (OMB Control Number 1205-0508).
3. Appeals (20 CFR 655.13(c)). An employer who does not agree with a prevailing wage determination may apply for a new wage determination, appeal under 20 CFR 655.13, or acquiesce to the initial prevailing wage determination. As stated above, the burden calculations for applying for a wage determination and appealing under 20 CFR 655.13 are accounted for in OMB Control Number 1205-0508.
4. Retention of Documentation (20 CFR 655.10(j)). The employer must retain the prevailing wage determination for 3 years from the date of issuance or the date of a final determination on the *H-2B Application for Temporary Employment Certification*, whichever is later. As stated above, the burden calculation for the retention requirement is already accounted for in the Information Collection for OMB Control Number 1205-0508). The employer is not required to retain the survey or the Form ETA-9165.

J. Integrity measures

1. 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 1320.4(a)(2).
2. Certifying Officer (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, the CO may require the employer to undergo supervised recruitment for a defined period of time for any future *Application for Temporary Employment Certification*. Based on its program experience, the Department estimates that employers will be required to undergo assisted recruitment in approximately one half of one percent (0.5%) of applications, for a total of 40.38 or 40 applications. The time required to conduct recruitment is already accounted for in the recruitment burden calculation in Subsection E, above. The Department estimates that an employer engaged in assisted recruitment will spend an additional hour on recruitment activities, resulting in a total of 40 reporting hours (40 assisted recruitment applications x 1 hour = 40 hours).

3. *Cooperation with Investigators (29 CFR 503.16(bb))*. WHD is authorized to investigate employer compliance with 20 CFR 655, subpart A and other applicable law. 29 CFR 503.16 requires employers to cooperate and comply with requests made by WHD investigators as part of this process. However, such responses are exempt from the paperwork burden under 5 CFR 1320.3(h)(9) and 1320.4(a)(2).
4. *Request for Hearing by an Administrative Law Judge (29 CFR 503.43)*. The regulations permit an employer found by WHD 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 45 such requests each year. The Department also estimates that it takes the employer two hours to comply with this requirement for a total burden of 90 reporting hours (45 notices x 2 hours = 90 hours).
5. *Request for Review by the Administrative Review Board (29 CFR 503.51)*. The regulations permit an employer who disagrees with the findings of the Administrative Law Judge to petition in writing for 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 0.50 hours to comply with this requirement for a total burden of 0.50 reporting hours (1 notice x 0.50 hours = 0.50 hours).

Total Annual Burden Hours for the H-2B Information Collection (OMB Control Number 1205-0509):

Total Annual Burden Hours:	86,586
Total Annual Responses:	299,551
Total Respondents:	88,193

II. Total Hourly Cost Estimates

The Department receives applications requesting temporary labor certification under the H-2B program from employers operating across a wide spectrum of industry sectors in the U.S. economy. 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. Thus, to calculate the full cost to the employer, it is necessary to combine the mean hourly wage of human resource managers with the benefits and other compensation received by such employees. The national mean hourly wage for a human resource manager (SOC code 11-3121) is \$64.70,⁸ while benefits averaged 29.2 percent of total employee compensation.⁹ The

⁸ *Occupational Employment and Wages, May 2020: 11-3121 Human Resources Managers*, DOL, BLS, <https://www.bls.gov/oes/current/oes113121.htm>.

⁹ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, https://www.bls.gov/news.release/archives/ecec_12162021.pdf.

estimated average hourly compensation for a human resources manager, including wages and benefits, is thus \$83.59 ($\64.70×1.292). The Department estimates that a human resources manager will take time to complete and retain the forms and supporting documentation in the amount of 79,262 hours.¹⁰

¹⁰ Total estimate number is rounded to two decimal places. The translation of the job order is estimated to be \$100 per job order, which is excluded from the Human Resources manager estimate (86,585.91 hours – 7,324 hours = 79,261.91 hours).

Table of Estimated Burdens¹¹

Information Collection Activity	Number of Respondents	Frequency ¹²	Total Annual Responses ¹³	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Form ETA-9142B	5,695	1.6493	9,393	0.92	8,641.56	\$83.59	\$722,348.00
Form ETA-9142B Appendix A	4,265	1.5015	6,404	0.25	1,601.00	\$83.59	\$133,827.59
Form ETA-9142B Appendix B	5,695	1.6493	9,393	0.25	2,348.25	\$83.59	\$196,290.21
Form ETA-9142B Appendix C	2,550	1.5847	4,041	0.33	1,333.53	\$83.59	\$111,469.77
Form ETA-9142B Appendix D	8	2.5	20	0.17	3.40	\$83.59	\$284.21
H-2B Agents	548	11.688	6,405	0.50	3,203.00	\$83.59	\$267,738.77
MSPA Certificate of Registration	13	1	13	0.08	1.04	\$83.59	\$86.93
Inform of Fee Prohibitions	3220	1.412	4,546	0.25	1,136.50	\$83.59	\$95,000.04
Waiver for Emergency Situations	118	1	118	0.50	59.00	\$83.59	\$4,931.81
Modify Application/Job Order	2872	1	2,872	1.00	2872.00	\$83.59	\$240,070.48
Amend Application/Job Order	557	1	557	0.50	278.50	\$83.59	\$23,279.82
Job Order	5,695	1.6493	9,393	1.00	9,393.00	\$83.59	\$785,160.87
Contact Former Employees	5,239	1.370	7,171	1.00	7,717.00	\$83.59	\$645,064.03
Contact Bargaining Representative	683	1.339	915	0.25	228.75	\$83.59	\$19,121.21
Notice of Posting Requirement	5,012	1.6493	8,266	0.50	4,133.00	\$83.59	\$345,477.47
Additional Employer Recruitment	3,288	1	3288	0.25	822.00	\$83.59	\$68,710.98
Recruitment Report	5,239	1.4729	7,717	1.00	7,717.00	\$83.59	\$645,064.03
Provide Workers with Job Order	5,239	29.6833	155,511	0.08	12,440.88	\$83.59	\$1,039,933.10
Translate Application/Job Order	4,886	1.499	7,324	1.00	7,324.00	\$100.00	\$732,400.00
Information Collection Activity	Number of Respondents	Frequency		Time Per	Total Annual	Hourly Rate	Annual Cost

¹¹ For the burden estimates, the Department has used H-2B program data averages for Fiscal Years 2019 and 2020, with the exception of Appendix A, C, and D data which is based on Fiscal Year 2020 data after implementation of the current form.

Frequency

¹² The Department has derived the frequency by dividing the H-2B fiscal year data for “Total Annual Responses” by the “Number of Respondents.” The frequency is displayed with three decimal places, where necessary, to retain the value of the calculation to the extent possible.

Total Annual Responses

¹³ The figures provided for the total annual responses are rounded to the nearest whole number.

Frequency

H-2B Application for Temporary Employment Certification
 OMB Control No. 1205-0509
 Expiration Date: 05/31/2022

				Response (in hours)	Burden (in hours)		<i>(in dollars)</i>
SWA Informs Applicants of Job Requirements	55	388	21,340	0.08	1,707.20	\$83.59	\$142,704.84
Retention of 9142B Documents	5,695	1,6493	9,393	0.25	2,348.25	\$83.59	\$196,290.21
H-2B Employers not Maintaining Payroll Records	4	4	16	1.50	24.00	\$83.59	\$2,006.16
Job Duties for Incumbent Workers	198	4	792	0.17	134.64	\$83.59	\$11,254.56
Notice of Abandonment or Termination	2,500	1	2,500	0.17	425.00	\$83.59	\$35,525.75
Redetermination Request	11	1	11	0.50	5.50	\$83.59	\$459.75
Extend Period of Certified Work	326	1	326	0.50	163.00	\$83.59	\$13,625.17
Administrative Appeals	75	1	75	1.00	75.00	\$83.59	\$6,269.25
Withdrawal Request	850	1	850	0.17	144.50	\$83.59	\$12,078.76
CO-ordered assisted Recruitment	40	1	40	1.00	40.00	\$83.59	\$3,343.60
Request for ALJ Hearing	45	1	45	2.00	90.00	\$83.59	\$7,523.10
Request for ARB Review	1	1	1	0.50	0.50	\$83.59	\$41.80
UNDUPLICATED TOTALS	70,622	N/A	279,282	N/A	76,411.00	N/A	\$6,507,382.27

Total Annual Responses

H-2B Application for Temporary Employment Certification

OMB Control No. 1205-0509

Expiration Date: 05/31/2022

Information Collection Activity	Number of Respondents	Frequency ¹⁴	Total Annual Responses ¹⁵	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Form ETA-9165	278	1	278	0.42	116.76	\$83.59	\$9,759.97
UNDUPLICATED TOTALS	278	N/A	278	N/A	116.76	N/A	\$9,759.97

Information Collection Activity	Number of Respondents	Frequency ¹⁶	Total Annual Responses ¹⁷	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Seafood Attestation	152	18.75	2,850	0.17	484.50	\$83.59	\$40,499.36
Seafood Staggered Entry Provision	152	1	152	0.25	38.00	\$83.59	\$3,176.42
Seafood 90-120 Day Entry Provision	38	1	38	2.00	76.00	\$83.59	\$6,352.84
Seafood Workers Present Attestation to a State Consular Office	2,850	1	2,850	0.03	85.50	\$83.59	\$7,146.95
UNDUPLICATED TOTALS	3,192	N/A	5,890	N/A	684.00	N/A	\$57,175.57

Frequency

14 The Department has derived the frequency by dividing the H-2B fiscal year data for “Total Annual Responses” by the “Number of Respondents.” The frequency is displayed with three decimal places, where necessary, to retain the value of the calculation to the extent possible.

Total Annual Responses

15 The figures provided for the total annual responses are rounded to the nearest whole number.

Frequency

16 The Department has derived the frequency by dividing the H-2B fiscal year data for “Total Annual Responses” by the “Number of Respondents.” The frequency is displayed with three decimal places, where necessary, to retain the value of the calculation to the extent possible.

Total Annual Responses

17 The figures provided for the total annual responses are rounded to the nearest whole number.

H-2B Application for Temporary Employment Certification

OMB Control No. 1205-0509

Expiration Date: 05/31/2022

Information Collection Activity	Number of Respondents	Frequency ¹⁸	Total Annual Responses ¹⁹	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Form ETA-9155	5,695	1	5,695	1.00	5,695.00	\$83.59	\$476,045.05
NOD for Form ETA-9155	2,711	1	2,711	1.00	2,711.00	\$83.59	\$226,612.49
Retention of 9155 Documents	5,695	1	5,695	0.17	968.15	\$83.59	\$80,927.66
UNDUPLICATED TOTALS	14,101	N/A	14,101	N/A	9,374.15	N/A	\$783,585.20

Information Collection Activity	Number of Respondents	Frequency ²⁰	Total Annual Responses ²¹	Time Per Response (in hours)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Form ETA-9142B and Related Requirements	70,622	Varies	279,282	Varies	76,411.00	Varies	\$6,507,382.27
Form ETA-9165 Requirements	278	Varies	278	Varies	116.76	\$83.59	\$9,759.97
Seafood Attestation Requirements	3,192	Varies	5,890	Varies	684.00	\$83.59	\$57,175.57
Form ETA-9155 and Related Requirements	14,101	Varies	14,101	Varies	9,374.15	\$83.59	\$783,585.20
GRAND TOTAL	88,193	Varies	299,551	Varies	86,586	Varies	\$7,357,903.01

Frequency

¹⁸ The Department has derived the frequency by dividing the H-2B fiscal year data for “Total Annual Responses” by the “Number of Respondents.” The frequency is displayed with three decimal places, where necessary, to retain the value of the calculation to the extent possible.

Total Annual Responses

¹⁹ The figures provided for the total annual responses are rounded to the nearest whole number.

Frequency

²⁰ The Department has derived the frequency by dividing the H-2B fiscal year data for “Total Annual Responses” by the “Number of Respondents.” The frequency is displayed with three decimal places, where necessary, to retain the value of the calculation to the extent possible.

Total Annual Responses

²¹ The figures provided for the total annual responses are rounded to the nearest whole number.

A.13. *Provide an estimate for 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 already reflected on the burden worksheet).*

1. *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 OFLC. 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 an 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.
2. *Annual Costs*: There are no annual costs involved with operation and maintenance because ETA will be 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 that may require employers to expend funds beyond their normal and usual business expenses, as applicable, totaling \$994,413 (\$20,500 + \$732,400 + \$241,513).

Seafood Employers

Specifically, employers are required to run advertisements for additional recruitment of U.S. workers in some cases if they are utilizing the seafood industry's staggered border crossing provisions. For the additional recruitment, the Department estimates that 41 employers will be required to place advertisements in local newspapers on two separate Sundays. The Department estimates that the cost of the advertisements for two days over all geographic locations will average \$500 for a total annual burden of \$20,500 (41 employers x \$500 = \$20,500).

Translation Costs

All employers who use foreign workers who do not speak English will be required to translate their job orders. The Department estimates that for translation of the job order 4,886 employers will pay an average of \$100 for an estimated annual cost of \$732,400 (4,886 employers x 1.499 translation frequency = 7,324 job orders; 7,324 job orders x \$100 = \$732,400).

Form ETA-9165 Survey Costs

For the Form ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*, employers who choose to commission private wage surveys will incur costs. The cost associated with a wage survey conducted by a third party can vary widely and will depend on various factors, such as the scope of the survey, the methodology used, the number of respondents, and the nature of the sample. The Department estimates that it would take a manager (SOC code 11-0000) 8 hours to review the survey. At the mean hourly rate of \$60.81,²² and accounting for

²² *Occupational Employment and Wages, May 2020: 11-0000 Management Occupations*, DOL, BLS, <https://www.bls.gov/oes/current/oes110000.htm>.

benefits averaging 29.2 percent of total employee compensation, the total estimated compensation is \$78.57 per hour to review the survey ($\$60.81 \times 1.292$).²³

The Department estimates that it would take a survey researcher (SOC code 19-3022) a total of 40 hours at \$41.59 per hour ($\$32.19 \text{ per hour} \times 1.292$) to randomly select at least 3 employers and 30 employees (8 hours), collect their wage data (16 hours), calculate the hourly average wage (8 hours), and write a report and provide it to the employer (8 hours). Therefore, the cost for a wage survey is estimated at \$2,292.16 ($(\$78.57 \times 8 = 628.56) + (\$41.59 \times 40 = 1,663.60)$). The Department’s estimate also adds 10 percent to \$2,292.16 to account for a profit for the third-party surveyor. The estimated cost of conducting a wage survey is \$2,521.38 ($\$2,292.16 \times 1.1$). Because surveys are valid for two years and some employers will use state-produced surveys, the Department estimates that one-third (0.333) of the 278 employers that file the Form ETA-9165 or 93 employers ($278 \times 0.333 = 92.57$) will conduct a private wage survey by a third-party each year that is valid for two years. The cost to employers is estimated be \$234,488.34 ($\$2,521.38 \times 93$).

In addition, the employer will request the information from surveyors needed to complete the Form ETA-9165. The Department estimates that this will cost employers \$6,491.10. This is based on an estimate that a Survey Researcher (SOC code 19-3022) will spend, on average, 0.83 hours to compile the information necessary to complete the new form and transmit it to the employer. In estimating employer costs, the Department used the national cross-industry mean hourly wage rate for a Survey Researcher (\$32.19) and multiplied these wages by 1.292 to account for employee benefits and other non-wage compensation.²⁴ The total hourly cost of a Survey Researcher is thus \$41.59 ($\32.19×1.292). However, the Department estimates that one-third (0.333) of the 278 employers that will file the Form ETA-9165 and provide surveys will utilize state-provided surveys and will incur no cost, or 93 employers (278×0.333). Therefore, it is estimated that 185 employers will incur costs ($278 - 93$). Thus, this cost to employers is calculated as follows: $\$41.59 \times 0.83 \text{ hours} \times 185 \text{ employers} = \$6,386.14$. The Department’s estimate also adds 10 percent to \$6,386.14 to account for a profit for the third-party surveyor. The estimated cost of conducting a wage survey is \$7,024.75 ($\$6,386.14 \times 1.1$).

The total cost for the Form ETA-9165 survey process is estimated to be \$241,513.09 ($\$234,488.34 + \$7,024.75$).

Activity	Annual Cost
Seafood Employers’ Additional Recruitment	\$20,500
Job Order Translation Costs	\$732,400
Form ETA-9165 Survey Costs	\$241,513

²³ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

²⁴ See *id.*

TOTAL	\$994,413
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A.14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Department estimates that the annual costs to administer the H-2B program amount to \$14,593,731. This total is comprised of \$10,570,431 in federal administration costs and \$4,023,300 in state-level costs funded by federal grants.

Federal administrative costs include IT systems that support H-2B application-filing and case-processing operations; rent; supplies; equipment; and agency indirect costs, which include support for human resources, financial and administrative oversight, and grants and contracts management. Estimated annual costs for the federal administration of the H-2B program are \$10,570,431. This estimate is based on recurring annual costs administering the program in recent fiscal years and does not include costs associated with funding appropriated on a one-time occurrence basis. Based on past obligations and expenditures, the table below provides a detailed breakdown of the annualized costs associated with federal administration of the H-2B program by major cost category.

Major Cost Category	Cost Activities	Annualized Costs (estimated)
Contracts for Services (not technology related)	<ul style="list-style-type: none"> ▪ Case processing and administrative support for operations ▪ Mail, data entry, and other clerical support services 	\$5,292,139
Information Technology Contracts	<ul style="list-style-type: none"> ▪ Application development services & network infrastructure support ▪ Hardware & software updates 	\$1,068,163
General Services Administration & DHS Services	<ul style="list-style-type: none"> ▪ Rent payments for office space ▪ Security services 	\$894,405
DOL Working Capital Assessment	<ul style="list-style-type: none"> ▪ Indirect costs associated with DOL administrative and executive management services 	\$3,243,328
Supplies & Equipment	<ul style="list-style-type: none"> ▪ General office supplies ▪ Computers, printers, and other office related equipment 	\$19,173
Mail & Telecommunications	<ul style="list-style-type: none"> ▪ Mail or overnight delivery services ▪ Phone and other telecommunication related charges 	\$16,064
Other Costs	<ul style="list-style-type: none"> ▪ Travel ▪ Costs from Other Government Agencies 	\$37,159
TOTAL COSTS - FEDERAL ADMINISTRATION		\$10,570,431

The Department also provides annual grants to SWAs in 54 states and U.S. territories for required employment-based immigration activities in support of the foreign labor certification program. Estimated annual costs for the H-2B portion of these activities are \$4,023,300 and are

supported by Federal funds appropriated into the State Unemployment Insurance and Employment Service Operations Account. State-level H-2B activities include, but are not limited to, reviewing and placing job orders to recruit U.S. workers for available positions and processing required notifications for amendments to job orders received from employers and the Department. SWAs submit annual work plans to OFLC to establish continued eligibility for these grants in accordance with the requirements of their foreign labor certification grant agreements. These work plans describe the specific activities and workload expectations of each SWA during the upcoming year.

A.15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The Department proposes substantive changes to the Form ETA-9142B, *Application for Temporary Employment Certification*, and corresponding changes to the Form ETA-9142B, *General Instructions*, to make improvements to the collection of visa cap exemption information, wage and overtime disclosures, and joint employer designations. The Department also proposes substantive changes to the Form ETA-9142B, *Appendix D*, to collect details for joint employers, as applicable, as well as substantive changes to the Form ETA-9155, *H-2B Registration*, to conform the registration form to changes made to the Form ETA-9142B.

The Department proposes a modification to the collection of visa cap exemption information in the Form ETA-9142B. Currently, the form asks whether the application will be used for cap-exempt or non-cap-exempt workers. The proposed form changes the collection of the information from “Yes” or “No” checkboxes in Section A to numerical collections of the employer’s estimates of the number of cap-subject and cap-exempt workers for the application. This form revision will allow the Department to collect better data to inform its projections for processing resources in light of the H-2B visa semi-annual cap opening and closure. The collection of data in this field also will help the Department provide advice to the Department of Homeland Security (DHS) regarding the nature of H-2B applications the Department has received and will inform the Department’s consultation with DHS concerning potential cap increases after congressional authorization.

The Department proposes changes to the collection of overtime information on the Form ETA-9142B to ensure better disclosure of overtime offered to workers. The proposal modifies the existing collection of overtime information from currently collecting the overtime rate for one worksite of the application filing to collecting the overtime range for all worksites on the application filing. Additionally, the Department proposes to expand Section F for additional wage rate disclosures, and clarify corresponding form instructions, to allow employers to specify any additional overtime obligations or special circumstances. The Department discloses wage details for the employer’s job opportunity on its Seasonal Jobs website at <https://seasonaljobs.dol.gov/> to apprise U.S. workers of wage and overtime offerings for the job opportunity. The proposed changes to the form seek to improve the collection and clarify to both U.S. and H-2B workers whether overtime is offered and any special circumstances that may exist for the offered overtime. Further, these changes will allow the Department to have clearer wage and overtime information available to perform its audits and investigations.

The Department proposes changes to Form ETA-9142B, *Appendix D*, to collect joint employer contact information, regardless of whether the application filing is a job contractor employer-client filing. The form currently collects joint employer details in instances in which a job contractor is filing the H-2B application as a joint employer with an employer-client. The proposed change would also collect joint employer details for any joint employer associated with the H-2B application filing, even where there is not a job contractor employer-client relationship.

The Department also proposes conforming changes to the Form ETA-9155, *H-2B Registration*, and its instructions. The changes conform the Form ETA-9155 to changes made to the Form ETA-9142B and Form ETA-9142B, *Appendix D*, to clarify in the checkboxes for “type of employer” in Section C of the Form ETA-9155 that job contractor filings are a type of joint employer filing. The Department has also made a technical edits to the Form ETA-9142B and Form ETA-9142B, *General Instructions*, in Section G. For the form, the technical edit corrected the wording of the question in Section G regarding the completion of *Appendix D* and inclusion of *Appendix D* with the application. For the form instructions, the technical edit reiterated to job contractors that they must provide copies of their contract(s) or agreement(s) with employer end-clients.

The Department proposes modifications to the Form ETA-9142B collection to collect better data for cap-subject and cap-exempt application designations. The data requested on the application should be readily accessible as it is based on the total number of workers entered on the application. Also on the form, the Department proposes to collect an overtime range, in lieu of a single wage for overtime, and expansion of the form section for disclosure of any additional wage details. In terms of *Appendix D*, the Department proposes to modify the *Appendix D* collection for completion of the appendix by *any* joint employer, not just joint employers that function as job contractors.

The Department estimates an increase to the number of respondents from the prior estimate of 85,057 to a new estimate of 88,193 annual respondents based on a review of filing data. Similarly, the Department estimates an increase in the number of H-2B filings with responses increasing from 286,978 to 299,551 annually. The data reflect an increase in employers using the H-2B program and H-2B application filings. While the total annual cost estimates have also increased, the cost increases for this Supporting Statement are based on a lower HR manager rate than the previous estimate. This is due to a decrease in the BLS cost adjustment factor used to calculate benefits and other compensation for HR managers. The HR manager rate used for the previous Supporting Statement was \$86.69 and the new HR manager rate used for this Supporting Statement is \$83.59. For the HR manager calculations, the benefits factor decreased from a prior factor of 1.317²⁵ to a current factor of 1.292.²⁶

A.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

²⁵ *Employer Costs for Employee Compensation – December 2017*, DOL, BLS, https://www.bls.gov/news.release/archives/ecec_03202018.pdf.

²⁶ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, <https://www.bls.gov/news.release/archives/ecec12162021.pdf>.

schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

OFLC discloses information about employer applicants to the public through its website at <https://www.dol.gov/agencies/eta/foreign-labor>. For the H-2B program and except for Federal Employer Identification Numbers, information contained on employer applications for temporary labor certification (Form ETA-9142B) are publicly accessible in easy-to-download Microsoft Excel formats. Job order information is publicly accessible through the Seasonal Jobs website at <https://seasonaljobs.dol.gov/>. For statistical purposes, information collected through this collection are periodically aggregated to provide the public with information on program usage on a quarterly and annual basis. Finally, pursuant to 20 CFR 655.9, the Department uses the information collected on the Form ETA-9142B, *Appendix C*, to provide the public access to the names and locations of foreign labor recruiters that U.S. employers are engaging or planning to engage in the international recruitment of H-2B workers for the job opportunity. The Department publishes this information at least quarterly.

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

The Department will display the expiration date for OMB approval.

A.18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

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.