

November 6, 2018

U.S. Department of Labor, Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105

RE: Comments on ICR, OMB Control No. 1205-0509

Dear Administrator Thompson:

Thank you for the opportunity to comment on the proposed new H-2B Forms. We appreciate efforts to streamline the process.

For some employers the first step in the H-2B process is to complete and file the WH-530. However, for most employers, the first step is to complete the ETA 9141, Application for Prevailing Wage Determination. The ETA 9141 already collects much of the data you are re-collecting here in the 9142 application forms, but was not a part of this comment exercise. The following comments are related to the ETA 9142B, Appendix A, and Appendix B.

ETA 9142B

Section A, Nature of H-2B Application, Item 1

Is the employer seeking to employ H-2B workers under this application who will be exempt from the statutory numerical limit, or "cap," on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status?

Exempt Workers

The employer will not necessarily know if they will employ H-2B workers who will be exempt from the statutory numerical limit or cap. Reasons may include:

- Recruitment of international workers may not be complete – this is usually complete after the employer attempts to fill the positions with U.S. workers
- Legislation may pass after submission of the form

If the answer is yes for more than one worker, the employer would need to check yes. It is unclear how this information would assist in determining if a sufficient number of U.S. workers are available.

This information with respect to international worker eligibility or exemption from the Congressional cap is needed by USCIS after DOL has made the labor certification determination.

Even if the employer originally intended to fill one or more positions with non-exempt H-2B workers, that intention will change if the cap is met and a returning worker exemption is not in place. These employers will attempt to locate otherwise exempt workers (workers who were previously admitted

under the current cap). The information is only useful if USCIS is simultaneously processing the employer's petition for a non-immigrant worker, Form I-129, while the labor market test is being conducted.

Suggestion

Remove this question. It will not provide any useful information to the DOL for the purpose of the labor market test aspect in connection with temporary employment certification.

ETA 9142B**Section F. Employment and Wage Information, Subsection a., Job Opportunity and Minimum Requirements, Item 1.**

Indicate whether a copy of the job order submitted to the State Workforce Agency (SWA) satisfying the requirements at 20 CFR 655.18 is attached to this application.

SWA submission

Regulations call for simultaneous submission of the ETA 9142B and the SWA Job Order. The proposed ETA 9142B appears to require submission of the job order to the SWA prior to signature on the ETA 9142B. Typically, the ETA 9142 is electronically filed in the iCert portal first and then the job order is e-mailed to the state along with the confirmation of filing (with the case number). Many times the job order is drafted on line, placed on hold, and not released until after the filing of the ETA 9142 due to the simultaneous filing requirement.

Suggestion

Change the wording to indicate the anticipated submission date of the job order, or implement a regulatory change to require submission of the job order prior to the submission of the ETA 9142, or change the field to non-mandatory so that the field may be left blank and the job order can be filed after the 9142 application is submitted. Explain if simultaneously means within the same workweek or what the intention is in regards to timing of filing of the job order.

ETA 9142B**Section F. Employment and Wage Information, Subsection a., Job Opportunity and Minimum Requirements, Item 4.****Job Duties**

Description of the specific services or labor to be performed. * (All job duties must be disclosed on this form. Separate attachments will not be accepted)

Suggestion

A character limitation may restrict the list of job duties that may be disclosed. Allow for an attachment if the description exceeds the character limit.

ETA 9142B**Section F. Employment and Wage Information, Subsection a., Job Opportunity and Minimum Requirements, Item 10.**

Special Requirements

List specific requirement of the job.

Work Rules and Itinerary

The block to list specific requirements of the job that are not job duties is small. Some employers have work rules that are a condition of employment. This block is also where the employer may need to disclose the condition of itinerant work that is not a duty and attach an itinerary.

Suggestion

Add an instruction to attach additional pages when necessary.

ETA 9142B

Section F., Subsection b., Item 9a. Additional conditions about the wage rate to be paid.

Briefly describe any conditions about the wage rate to be paid. Please also describe here any bonuses, fringe benefits, subsidized housing or meals, or any other benefits associated with this job opportunity.

Benefits

One small block is available for conditions about the wage rate. Employers may pay bonuses, provide assistance in securing housing, employers may provide transportation to the worksite from a central location for free or at a cost, may provide free uniforms, may offer advances in pay, etc. Benefits are not necessarily a condition of the wage but there is not otherwise a place to disclose terms of the job offer that are not duties or activities that may be a factor in making a decision on accepting or declining the job opportunity.

Suggestion

Give more space or add a new and separate section to add non-mandatory benefits being offered in connection with the job so that workers may be fully apprised.

ETA 9142B

Section F., Subsection b., Item 10 DOL Prevailing Wage Determination Information

Number of Worksite Locations

There is a limit on the number of worksite locations that can be entered on the ETA Form 9141 Request for Prevailing Wage Determination that translates into multiple prevailing wage determinations in some cases.

Suggestion

We would ask that at least 4 PWD Case Numbers be accepted on the face of the form and that additional determinations have a text box where the total number may be entered.

ETA 9142B - Proposed Form Appendix A

Additional Worksite and Wage Information Choice 1

The information collected on this Appendix is already (separately and as a prerequisite to filing the ETA 9142) collected on ETA Form 9141. This is an extensive data entry exercise in the wage process. This Appendix is a duplicate collection of information.

Suggestion

Do not impose a new and separate form for wage and worksite information. Accept the issued ETA 9141 referenced in Section F., Subsection B., Item 10, DOL Prevailing Wage Determination Information.

ETA 9142B - Proposed Form Appendix A**Additional Worksite and Wage Information – Choice 2**

The form appears to call for the same entry each time one or more worker is going to any particular city on any particular date, although the wage and worksite information will be exactly the same for each entry.

The Appendix does not meet criteria for an itinerary in conformance with the special procedures for treeplanting and related reforestation occupations with or without the duplicated fields. Some reforestation employers have excess of 1,000 worksites.

If two different crews are at the same place at the same time, will the system allow duplicate entries? How many different worksites (cities) could be allowed on one application?

Suggestion

A repetitive entry process is duplicative and unnecessary to convey wage and worksite information. Eliminate the “to” and “from” date fields, and total workers fields from the Appendix A for Additional Worksite and Wage Information, to reduce data entry by employers/agents. Items a through e, numbers 7 and 8 duplicate data collection and need to be removed from the Appendix A. Date of need information is already collected on the ETA 9142B, Section B, Item 5, Begin Date, and Item 6, End Date. Items a through e, number 6 duplicate data collection and need to be removed. Number of workers is already collected on the ETA 9142 B, in Section B, Item 4.

If technically possible, provide the information already data entered into the iCert portal from the issued wage determinations in a format whereby an employer may select worksites with corresponding wages to include in their 9142 application.

Explain how to attach the itinerary with the number of workers per crew and total number of crews.

ETA 9142 – Proposed Appendix B**Section B. Employer Declaration, Number 17**

The employer has disclosed how it will provide transportation and subsistence costs in the job order. The employer will either advance all visa, visa-related, border crossing, subsistence, and transportation expenses to workers traveling to the employer’s worksite from the workers’ place of recruitment, pay for them directly, or reimburse such expenses, other than travel and subsistence, in the first workweek and reimburse the remainder of the expenses no later than the time workers complete 50 percent of the period covered by the job order. (Advancement of transportation and subsistence costs to U.S. workers employed under this application is required when it is the prevailing practice of non H-2B employers in the occupation in the area of intended employment or when the employer extends such benefits to similarly situated H-2B workers.) Provided that workers work until the end of the certified period of employment or are dismissed from employment for any reason before the end of that period, the employer will pay for such workers’ return transportation to the place of recruitment and daily

subsistence if the workers have no immediate subsequent H-2B employment. All employer-provided transportation must comply with all applicable Federal, State, or local laws and regulations.

Transportation Reimbursement

The employer may have a combination of providing and reimbursing transportation. The employer will now know in advance where U.S. workers are coming from and how they intend to travel. The employer may not have details on where international workers are coming from. Factors regarding how transportation will be advanced, provided or reimbursed may include where the workers are coming from, the proximity to the worksite location, the availability of transportation, whether the worker has a vehicle or not, or how many workers are coming from any particular location.

Suggestion

Allow employer to disclose a combination of methods.

Add that the amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

ETA 9142 – Proposed Appendix B**Section B. Employer Declaration, Number 19**

The employer will provide a copy of the job order to all H-2B workers no later than when the worker applies for a visa if located abroad, no later than the time of the job offer by the subsequent H-2B employer if the H-2B worker is changing employment from one H-2B employer to a subsequent H-2B employer, and to U.S. workers employed under this application no later than on the day work commences. The disclosure must be in a language understood by the workers, as necessary or reasonable.

Disclosure

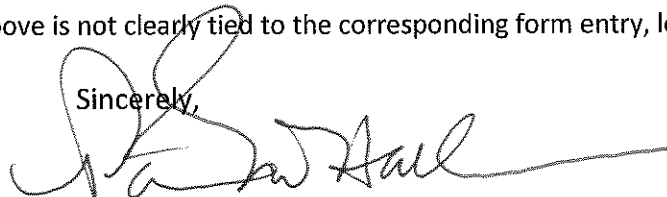
The job order forms vary from state to state. The disclosure must be in a language that is necessary and reasonable. Since the job order issued by the State is not in a language understood by the workers, you have to be able to send a separate disclosure and not give the job order to somebody who does not understand it. In addition, the state job orders may contain an abbreviated version of the employment offer due to electronic capacity restrictions. And finally, there is no requirement that the State provide a copy of a job order to the employer. The employer is required to apply to open a job order with the State Workforce Agency.

Suggestion

Change the reference to require employers provide a copy of the job OFFER and not the job order.

In the event that any comment above is not clearly tied to the corresponding form entry, let us know and we can clarify. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Hall', with a long horizontal flourish extending to the right.

Patricia Hall
Vice President