
From: Art Read

Sent: Thursday, October 20, 2022 10:46 PM

To: Tulli, Emily L. - SOL <Tulli.Emily.L@dol.gov>; ESSAHEB, KAMAL <KAMAL.ESSAHEB@hq.dhs.gov>

Attachments: JAW CATA Comments 2022-06-22.pdf; Staggered_Crossings_H2B_SEAFOOD.pdf

Subject: Rulemaking DHS to Supplement H-2B Cap with Nearly 65,000 Additional Visas for Fiscal Year 2023

To: Emily Tulli

I am reaching out to raise time urgent concerns relating to the pending rulemaking for 65,000 supplemental visas for the H-2B program announced by DHS last week.

I am attaching comments (**JAW CATA Comments 2022-06-22.pdf**) which were sent to each of you on June 22, 2022 in relationship to the H-2B program. The attached document includes prior comments submitted on July 21, 2021.

The issues raised in these comments remain relevant to the pending rulemaking and have not been addressed in any of the prior rulemaking proceedings.

At a minimum any regulation adopted authorization allocation of supplemental visas should allow a brief comment period by the public to address deficiencies of the agencies H-2B rules in light of the expansion of the H-2B program.

The attached comments at page 3 noted the following:

Failure to Disclose Foreign Labor Recruiters Pursuant to 20 C.F.R. § 655.9

The failure of DOL and DHS to treat the substantial change in the date of need for supplemental visas as requiring an amendment to the job order has the further impact that the requirements of 20 C.F.R. § 655.9 requiring the public disclosure of foreign labor recruiters utilized by H-2B employers are not disclosed (or provided to DOL) where an employer determines to utilize a previously undisclosed foreign labor contractor.

This is particularly consequential for those employers who determine to utilize any of the 11,500 visas reserved for nationals of El Salvador, Guatemala, and Honduras (Northern Central American countries) and Haiti. The failure of the instructions for the H-2B forms and the forms to require supplementation of foreign labor recruiters effectively nullifies the purpose of 20 C.F.R. § 655.9 where recruitment is by a foreign labor recruiter who was not previously disclosed.

Although implementation of the supplemental visa regulations early in the fiscal year may avoid as many H-2B jobs being without active recruitment of U.S. workers on a nationwide basis, the targeting of supplemental visas to specific countries will make the need for amending and updating foreign labor recruiters after initial DOL labor certification a continuing problem.

Another immediate time urgent issue is the procedure adopted by DOL ETA OFLC cutting off recruitment of U.S. workers for staggered crossings seafood industry jobs.

Page 3 of the attached comments includes the following note:

Seafood Industry Staggered Crossings - Form ETA-9142B Seafood Attestation

DOL procedures have failed to implement the requirements of Congressional Appropriation language for seafood industry staggered crossing in the operation of its DOL OFLC job registry at <https://seasonaljobs.dol.gov/>. See DOL discussion of the Congressional requirements at: https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2B_2015_IFR_FAQs_Round9.pdf.

Although those provisions (and proposed Form ETA-9142B Seafood Attestation) require offering potential H-2B positions to any equal or better qualified U.S. workers, OFLC treats seafood industry jobs subject to the staggered crossings as inactive pursuant to 20 C.F.R. § 655.40(c) as of 21 days before the *first* date of need as opposed to the final date of need. In our review of seafood H-2B cases, it appears that the beginning date of need for seafood workers is frequently far in advance of the date on which most workers are brought into the U.S.

DOL needs to ensure that employers authorized to utilize the Seafood Industry staggered crossing rule continue to actively recruit U.S. workers throughout the staggered crossing dates.

Attached “**Staggered Crossings H2B SEAFOOD.pdf**” identifies current posted Seafood Industry FY2023 jobs for which the actual date of need for most of the work force will be in calendar year 2023, but for which DOL’s <https://seasonaljobs.dol.gov/> website and state job service websites will treat these jobs as inactive for U.S. worker employment long before the jobs for most of these positions will be available. See ETA Case number list below. There will be thousands of additional seafood industry jobs that this policy is applied to.

job State	emp Business Name	case Number	Job Order Summary
AK	O'Hara Corporation	H-400-22245-452665	https://seasonaljobs.dol.gov/jobs/H-400-22245-452665
LA	Acadia Processors, LLC	H-400-22239-441821	https://seasonaljobs.dol.gov/jobs/H-400-22239-441821
LA	AMERIPURE PROCESSING COMPANY, INC.	H-400-22184-330067	https://seasonaljobs.dol.gov/jobs/H-400-22184-330067
LA	AMITE OYSTERS L.L.C.	H-400-22186-332104	https://seasonaljobs.dol.gov/jobs/H-400-22186-332104
LA	Aqua Farms Crawfish, Inc.	H-400-22239-441804	https://seasonaljobs.dol.gov/jobs/H-400-22239-441804
LA	Bayou Land Seafood, LLC.	H-400-22252-465022	https://seasonaljobs.dol.gov/jobs/H-400-22252-465022
LA	Beaucoup Crawfish of Eunice	H-400-22220-403006	https://seasonaljobs.dol.gov/jobs/H-400-22220-403006
LA	Boyd's Seafood, Inc.	H-400-22216-397513	https://seasonaljobs.dol.gov/jobs/H-400-22216-397513
LA	Crawfish Processing, LLC	H-400-22249-456143	https://seasonaljobs.dol.gov/jobs/H-400-22249-456143

job State	emp Business Name	case Number	Job Order Summary
LA	D & R Supply, Inc.	H-400-22184-329898	https://seasonaljobs.dol.gov/jobs/H-400-22184-329898
LA	J. Bernard Seafood Processing, Inc.	H-400-22239-441820	https://seasonaljobs.dol.gov/jobs/H-400-22239-441820
LA	Miller and LaHaye, LLC	H-400-22239-441818	https://seasonaljobs.dol.gov/jobs/H-400-22239-441818
LA	Processor's Inc.	H-400-22278-511372	https://seasonaljobs.dol.gov/jobs/H-400-22278-511372
LA	West Farms Crawfish, LLC	H-400-22239-441789	https://seasonaljobs.dol.gov/jobs/H-400-22239-441789
MD	G. W. Hall & Son LLC	H-400-22224-414285	https://seasonaljobs.dol.gov/jobs/H-400-22224-414285
MD	G. W. Hall & Son, LLC	H-400-22252-464266	https://seasonaljobs.dol.gov/jobs/H-400-22252-464266
MD	Lindy's Seafood, Inc.	H-400-22224-413594	https://seasonaljobs.dol.gov/jobs/H-400-22224-413594
MD	Lindy's Seafood, Inc.	H-400-22208-380182	https://seasonaljobs.dol.gov/jobs/H-400-22208-380182
MD	Old Salty's Seafood, Inc.	H-400-22228-418116	https://seasonaljobs.dol.gov/jobs/H-400-22228-418116
MD	Rippons Bros Seafood, Inc.	H-400-22221-405516	https://seasonaljobs.dol.gov/jobs/H-400-22221-405516
MD	Russell Hall Seafood, Inc.	H-400-22224-414380	https://seasonaljobs.dol.gov/jobs/H-400-22224-414380
MD	The J. M. Clayton Company, Inc.	H-400-22216-397367	https://seasonaljobs.dol.gov/jobs/H-400-22216-397367
NC	Beaufort Inlet Seafood Co., Inc.	H-400-22186-331892	https://seasonaljobs.dol.gov/jobs/H-400-22186-331892
NC	Capt. Neill's Seafood, Inc.	H-400-22194-349502	https://seasonaljobs.dol.gov/jobs/H-400-22194-349502
NC	County Road Seafood LLC	H-400-22195-352423	https://seasonaljobs.dol.gov/jobs/H-400-22195-352423
NC	Diamond Shoal Seafood, Inc	H-400-22188-337643	https://seasonaljobs.dol.gov/jobs/H-400-22188-337643
NC	Fulcher's Point Pride Seafood, Inc.	H-400-22188-337810	https://seasonaljobs.dol.gov/jobs/H-400-22188-337810
NC	Fulcher's Seafood LLC	H-400-22188-337868	https://seasonaljobs.dol.gov/jobs/H-400-22188-337868
NC	Pamlico Packing Co., Inc.	H-400-22187-333916	https://seasonaljobs.dol.gov/jobs/H-400-22187-333916
NC	Pamlico Packing Company, Inc.	H-400-22184-330054	https://seasonaljobs.dol.gov/jobs/H-400-22184-330054
NC	Quality Seafood Co., Inc.	H-400-22189-339451	https://seasonaljobs.dol.gov/jobs/H-400-22189-339451
NC	Shell Point Shellfish, LLC	H-400-22199-358792	https://seasonaljobs.dol.gov/jobs/H-400-22199-358792
VA	Bonums Oyster Co., Inc.	H-400-22187-334290	https://seasonaljobs.dol.gov/jobs/H-400-22187-334290

job State	emp Business Name	case Number	Job Order Summary
VA	Cowart Seafood Corp.	H-400-22187-335148	https://seasonaljobs.dol.gov/jobs/H-400-22187-335148
VA	Purcell's Seafood, Inc.	H-400-22184-330060	https://seasonaljobs.dol.gov/jobs/H-400-22184-330060
VA	Sea Farms, Inc.	H-400-22184-330094	https://seasonaljobs.dol.gov/jobs/H-400-22184-330094
VA	W. Ellery Kellum, Inc.	H-400-22184-330056	https://seasonaljobs.dol.gov/jobs/H-400-22184-330056

Thank you.

From:

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From: Art Read

Sent: Wednesday, June 22, 2022 6:40:24 PM

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Cc: Jessica Culley (jculley@cata-farmworkers.org) <jculley@cata-farmworkers.org>; MigrationthatWorks-Advocacy Committee <migrationthatworks-advocacy-committee@googlegroups.com>

Subject: Agency Information Collection Activities for H-2B Foreign Labor Certification Program, 87 Fed. Reg. 31259-31260 (May 23, 2022)

June 22, 2022

Office of Management and Budget

Comment Submitted through:

https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202204-1205-003

RE: Agency Information Collection Activities for H-2B Foreign Labor Certification Program, 87 Fed. Reg. 31259-31260 (May 23, 2022)

Dear Office of Management and Budget:

These comments are submitted by Justice at Work (Pennsylvania) formerly Friends of Farmworkers, Inc. and our long-time client Comité de Apoyo a los Trabajadores Agrícolas (CATA).

See Attached **“JAW CATA Comments 2022-06-22.pdf”**

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