

relatively little is known about the current capacity of tribes to do so, nor how challenges in collecting and reporting data may vary among tribes that have widely different population sizes and locations. For that reason, the Department seeks information on the tribes' current capacity for data collection, analysis and reporting. The following questions may be useful in providing information about this:

- a. Does your tribe collect any population or labor force data? If so, what type of data does your tribe currently collect?
- b. What are the methods used to collect that data, and how might those relate to the size and location of your tribe?
- c. How often are those data collected, updated, and reported?
- d. How many staff (full and part time), including volunteers, are dedicated to such an effort, and if so, does your tribe partner with external organizations for such activities?
- e. If your tribe were to undertake additional data collection and reporting, what types or training and technical assistance might be most useful to your tribe? Would additional computer or internet resources be needed in order to engage more data collection?

(5) *Privacy and Data Security*: Protecting the privacy of individuals and their families has been of increasing importance to tribes, and was an important topic in the consultations conducted with tribes by the Census Bureau in 2019. In light of this, information is requested on the following:

- a. What are the most important issues related to privacy and data security regarding the future reports with labor market information on the Native American work force?
- b. What are the key issues of concern regarding privacy, including access to and security of, tribally-collected data?

(6) *Technical Issues*: There are a number of technical issues that will need to be resolved in order to develop a report on labor market information on the Native American work force that includes the data as required in the law, and possibly other data. Information is sought on relevant issues and possible options to resolve these technical issues, including but not limited to the following:

- a. What are the key issues concerning consistency across tribes for population and labor force counts, especially the number counted as the "service population"?
- b. What are the key issues in regard to the definition and boundaries of

tribal "service areas" and how might those be resolved?

c. Should there be a single data source used, or multiple possible data sources permitted in the report?

d. Should data standards be developed and if so, by whom? and

e. What other technical issues need to be addressed in regard to national survey data or tribally generated data?

### III. Conclusion

The Department invites all tribes and other interested parties to submit information relevant to development of the report, including but not limited to the questions posed in this RFI. The information provided by respondents will help in identifying and clarifying a range of approaches for meeting the requirements of the law, and for generating accurate, reliable and timely population, labor force, and labor market information that will be useful to tribal governments, as well as to Federal and state agencies that provide support to them and their members.

**Suzan G. LeVine,**

*Principal Deputy Assistant Secretary for Employment and Training, Labor.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Labor Certification Process for the Temporary Employment of H-2A and H-2B Foreign Workers in the United States: Annual Update to Allowable Monetary Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the annual updates to allowable monetary charges employers of H-2A workers, in occupations other than herding or production of livestock on the range, may charge these workers when the employer provides three meals per day. This notice also announces the maximum travel subsistence meal reimbursement a worker with receipts may claim under the H-2A and H-2B programs. Finally, this notice includes a reminder regarding employers' obligations with respect to overnight

lodging costs as part of required subsistence.

**DATES:** This annual update is effective on March 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, N-5311, 200 Constitution Avenue NW, Washington, DC 20210, by telephone at 202-693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A or H-2B nonimmigrant temporary workers in the United States unless the petitioner has received an H-2A or H-2B labor certification from the Department. The labor certification generally provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 20 CFR 655.1(a) and 655.100.

#### Allowable Meal Charge

H-2A agricultural employers who are employing workers in occupations other than herding or production of livestock on the range must offer and provide each worker three meals per day or provide the workers free and convenient cooking facilities.<sup>1</sup> See § 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. See *id.* The amount of meal charges is governed by § 655.173.

By regulation, the Department has established the methodology for determining the maximum amount that H-2A agricultural employers may charge workers for providing them with three meals per day. See § 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based on

<sup>1</sup> H-2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. See 20 CFR 655.210(e).

the updated Consumer Price Index for All Urban Consumers for Food (CPI-U for Food), not seasonally adjusted. *See id.* The maximum amount employers may charge workers for providing meals is adjusted annually by the 12-month percentage change in the CPI-U for Food for the prior year (*i.e.*, between December of the year just concluded and December of the prior year). *See id.* The Office of Foreign Labor Certification (OFLC) Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day if the higher amount is justified and sufficiently documented by the employer, as set forth in § 655.173(b).

The percentage change in the CPI-U for Food between December 2019 and December 2020 was 3.9 percent.<sup>2</sup> Thus, the annual update to the H-2A allowable meal charge is calculated by multiplying the current allowable meal charge (\$12.68) by the 12-month percentage change in the CPI-U for Food between December 2019 and December 2020 ( $\$12.68 \times 1.039 = \$13.17$ ). Accordingly, the updated maximum allowable charge under §§ 655.122(g) and 655.173 is \$13.17 per day, and an employer is not permitted to charge a worker more than \$13.17 per day unless the OFLC Certifying Officer approves a higher charge, as authorized under § 655.173(b).<sup>3</sup>

### Reimbursement for Travel-Related Subsistence

H-2B and H-2A employers must pay reasonable travel and subsistence costs, including the costs of meals and lodging, incurred by workers during travel to the worksite from the place from which the worker has come to work for the employer and from the place of employment to the place from which the worker departed to work for the employer, as well as any such costs incurred by the worker incident to obtaining a visa authorizing entry to the United States for the purpose of H-2A or H-2B employment. *See* §§ 655.122(h)(1) and (2) and 655.20(j)(1)(i) and (ii).

Specifically, an H-2A employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of daily travel-related subsistence between the employer's worksite and the place from which the worker has come to work for the employer, if the worker completes 50

percent of the work contract period. The employer must provide (or pay at the time of departure) the worker's return costs upon the worker completing the contract or being dismissed without cause. *See* § 655.122(h)(1) and (2).

Similarly, an H-2B employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker has come to work for the employer—if the worker completes 50 percent of the job order period—and upon the worker completing the job order period or being dismissed early (for any reason), return costs as well. *See* § 655.20(j)(1)(i) and (ii).

The minimum amount of daily travel subsistence expense for meals for which a worker is entitled to reimbursement must be at least as much as the employer would charge for providing the worker with three meals per day during employment (if applicable). Under no circumstances may the employer reimburse workers less than the amount permitted under § 655.173(a) (*i.e.*, the current year's daily meal charge amount of \$13.17). The maximum amount an employer is required to reimburse workers for daily travel-related subsistence, as evidenced with receipts, is equal to the standard Continental United States (CONUS) per diem rate, as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A and now found at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. *See* Maximum Per Diem Reimbursement Rates for the Continental United States, 85 FR 50025 (Aug. 17, 2020) (2020 Update). The standard CONUS meals and incidental expenses rate is \$55.00 per day for 2021.<sup>4</sup> Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the standard CONUS meals and incidental expenses rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may limit the meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals, or \$41.25, based on the GSA per diem schedule. *See* 2020 Update, 85 FR at 50025. If a worker does not provide receipts, the employer is not obligated

to reimburse above the minimum stated at § 655.173, as specified above.

If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period but is not responsible for unauthorized detours. The employer also is responsible for the costs of return transportation and subsistence, including lodging costs where necessary, as described above. These requirements apply equally to instances where the worker is traveling within the U.S. to the employer's worksite. *See* §§ 655.122(h)(1) and (2) and 655.20(j)(1)(i) and (ii).

For further information on when the employer is responsible for lodging costs, please see the Department's H-2A Frequently Asked Questions on Travel and Daily Subsistence, on OFLC's website at <https://www.dol.gov/agencies/eta/foreign-labor>.

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Contractor Veterans' Employment Report (VETS-4212)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Veterans' Employment and Training Service (VETS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before April 9, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular

<sup>2</sup> Consumer Price Index—December 2020, published January 13, 2020 at [https://www.bls.gov/news.release/archives/cpi\\_01132021.pdf](https://www.bls.gov/news.release/archives/cpi_01132021.pdf).

<sup>3</sup> In 2020, the maximum allowable charge under 20 CFR 655.122(g) and 655.173 was \$12.68 per day. *See* 85 FR 16133 (Mar. 20, 2020).

<sup>4</sup> Maximum Per Diem Reimbursement Rates for the Continental United States (CONUS), 85 FR 50025 (Aug. 17, 2020); *see also* <https://www.gsa.gov/travel/plan-book/per-diem-rates/mie-breakdown>.