SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT OF 1995

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SUPPORTING STATEMENT
OMB Control Number 1205-0404

PAPERWORK REDUCTION ACT SUBMISSION
Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures to Improve Program Performance

A. Justification

A.1 Circumstances Necessitating Data Collection

Foreign labor certification programs are administered by the Employment and Training Administration (ETA) of the Department of Labor (Department). The H-2A program requires State Workforce Agencies (SWAs) to initially process applications for labor certification filed by U.S. employers wishing to employ foreign workers temporarily in agricultural jobs. SWAs must conduct and monitor recruitment activities by employers seeking qualified U.S. workers on a temporary basis prior to filling the job openings with foreign workers.

The Department's regulation at 20 CFR § 655.103(e) defines the Fifty-percent Rule, which requires the employer, who received labor certification in the H-2A program, to provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the time of need for the foreign worker has elapsed. Section 655.106(e)(1)(ii) mandates that agricultural employers inform the applicable SWAs if the H-2A workers do not depart for the place of employment on or before the first date of need in writing (or orally and then confirmed in writing) as soon as the employer knows that the workers will not depart by the first date of need. This provision is necessary so that the SWA can begin calculation of when to stop referring workers under the Fifty-percent Rule and when the employer can cease active recruitment.

The Department's regulations at 20 CFR § 655.103(e) and § 655.106(e)(1) provide that the date of departure shall be deemed the third day before the first date of need. If the workers depart on or before the date of need, no notice to the SWA will be necessary. However, employers have the option of advising the SWA if workers depart earlier.

The letter such employers must write creates a burden that must be accounted for under the Paperwork Reduction Act of 1995. This information collection has been previously approved by OMB and needs to be extended beyond the current expiration date of November 30, 2008.

A.2 How, by Whom, and For What Purpose the Information is to be Used

The departure date is used to start the running of the contract period for administration of the Fifty-percent rule. 20 CFR 655.103(e) provides that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies to the employer until 50 percent of the work contract period, under which the foreign worker is in the job, has elapsed. The employer's obligation to engage in positive recruitment ends on the date the foreign workers depart for the employer's place of business.

The notification required under the regulations is written by the employer and sent to the SWA. The SWA uses the information to calculate the end of active recruitment requirements and Fifty-percent Rule referral requirements.

A.3 Use of Technology to Reduce Burden

The collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques.

A.4 Efforts to Identify Duplication

ETA is not aware of any other program which requires employers to provide notification when H-2A workers depart for the employer's place of business.

A.5 Methods to Minimize Burden on Small Businesses

The information collection is required of small businesses. However, it must be complied with only if the foreign H-2A worker leaves for the employer's place of business later than three days before the date of need. There is no particular form for notification and can be written in any format.

A.6 Consequences of Less Frequent Data Collection

There would be no means to know when to effectuate the program elements and policies described in item 2 above; i.e., administration of the Fifty-percent rule, to determine when the employer's obligation to terminate positive recruitment occurs and when the employer is no longer required to maintain an active job order on file with the workforce office for the referral by the SWA of qualified U.S. workers.

A.7 Special Circumstances for Data Collection

Employers may file more than one application during a season or quarter. In such instances the employer may have to provide notice of the departure date more than once during a season or quarter.

A.8 Summary of Public Comments

In accordance with the Paperwork Reduction Act of 1995, these reporting requirements were published in the Federal Register on June 26, 2008 (Vol. 73, No. 124, p 36358 et seq), inviting the public to review and comment for a period of 60 days. No comments were received specific to the collection of this information during the allotted time period.

A.9 Payment of Gifts to Respondents

There is no payment to respondents.

A.10 Confidentiality Assurances

The Employment and Training Administration does not consider notification of the departure date to be sensitive information within the scope of the exceptions to the Freedom of Information Act or the Privacy Act.

A.11 Additional Justification for Sensitive Questions

There are no questions of a sensitive nature.

A.12 Estimates of the Burden of Data Collection

ETA estimates that under the departure date regulation at 20 CFR 655.106(e)(1), the 7,700 employers that file H-2A applications (OMB 1205-0015/ETA 750) for temporary agricultural workers will only have to notify the SWA of the actual departure date in about 5% percent of the cases, or about 385 employers in a given year. This data is extracted from the 2007 H-2A case management system.

It is estimated that it takes employers about 15 minutes or ¼ quarter hour for an employer to comply with the departure date notification requirements. Therefore, it is estimated that it will take employers approximately **96 hours** to provide the notification required under the regulation.

The annual cost to respondents (employers) for filing notification is estimated to be $2,400. The preparation of the notification may be done by a company employee, official, proprietor, or chief executive officer. Therefore, the salaries could range from about $10.00 an hour for an employee to $300.00 for a proprietor or chief executive officer of a large farming enterprise. The average hourly remuneration is estimated to be $25.00. This results in an average annual cost to respondents of $2,400 (96 hours x $25.00 = $2,400).

A.13 Estimated Cost to Respondents

1. Start-up/capital costs: There are no start-up costs, as the notification can even be handwritten.
2. Annual costs: There are no annual costs to respondents except those described above in A.12.

A.14 Estimates of Annualized Costs to Federal Government

The only cost to the Federal Government associated with administering the departure-date-notification rule is informing employers of their obligations under the rule at the time the approval letter, which transmits the certification, is sent to the employer. Included in the approval letter, which is about two pages in length, is one paragraph informing employers of their obligations with respect to notifying local employment service offices if the H-2A workers fail to depart for the employers place of business at least three days prior to the date of need. The approval letter takes about half an hour to prepare and mail. It is estimated that, at the most, five minutes of the half hour should be allocated to the paragraph pertaining to departure-date notification. There were 7,700 employers whose applications were certified in FY 2007 and approximately 3,850 hours were spent in preparing and mailing approval letters to H-2A employers. One-sixth, or 642, of the 3,850 hours expended in preparing approval letters can be allocated to the paragraph pertaining to departure-date notification.

The average Federal Government cost for a year of operation, where salaries are involved, is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC.

Therefore, the annualized cost to the Federal Government of a GS-14, Step 5 Analyst is estimated at $46,611 [642 hours x (42.96 x 1.69)].

A.15 Changes in Burden

This submission, like the 2005 submission, bases the burden calculation on the number of employers who have to actually notify the SWA of departure dates. The annual burden for this information collection increased slightly from 84 hours to 96 hours due to an increase in the number of employers certified to employ H-2A workers.

A.16 Publication of Results

No collection of information will be published.

A.17 Approval Not to Display OMB Expiration Date

There are no forms associated with this information collection on which to publish the expiration date.

A.18 Exceptions to OMB Form 83-I

The Department is not seeking any exception to the certification requirements.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.