

SUPPORTING STATEMENT

H-2 Petitioner's Employment Related or Fee Related Notification

OMB No. 1615-NEW

A. **Justification:**

1. (a) Employment-related Notification:

USCIS requires H-2 petitioners to notify USCIS when (1) the worker fails to report to work within 5 work days of the employment start date; (2) the labor or services for which H-2 workers were hired is completed more than 30 days early; or (3) the worker absconds from the worksite or is terminated prior to the completion of the labor or services for which he or she was hired. The notification requirement is necessary to ensure that alien workers maintain their nonimmigrant status and will help prevent H-2 workers from engaging in unauthorized employment.

Authority: Section 214(c)(1) of the Immigration and Nationality Act (Act), 8 CFR 214.2(h)(5)(vi), 8 CFR 214.2(h)(6)(i)(F).

(b) Fee-related Notification:

USCIS will deny or revoke (on notice) an H-2 petition if USCIS determines that the petitioner has collected, or entered into an agreement to collect a fee or compensation in connection with obtaining the H-2 employment, or that the petitioner knows or reasonably should know that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service in connection with obtaining the H-2 employment. However, the petitioner who discovers, after the filing of the petition, that the alien worker paid or agreed to pay a facilitator, recruiter, or employment service the

prohibited fees, can avoid denial or revocation by notifying USCIS within 2 work days of obtaining this knowledge.

Authority: 8 CFR 214.2(h)(5)(xi)(A)(4), 8 CFR 214.2(h)(6)(i)(B)(4).

2. (a) Employment-related Notification:

The information collected by H-2 petitioners is used by USCIS, the U.S. Customs and Border Protection (CBP), and the U.S. Immigration and Customs Enforcement (ICE). Based on the information provided by H-2 petitioners, USCIS will forward the information received to both ICE and CBP. ICE will use the information for its own future adjudicative use and CBP will use it to collect all liquidated damage payments from H-2 petitioners.

(b) Fee-related Notification:

The information collected by H-2 petitioners is used by USCIS for its own future adjudicative use.

3. USCIS will allow petitioners to submit all notifications electronically.

4. A review of USCIS inventory revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. (a) Employment-related Notification:

This collection of information has an impact on small businesses or other small entities. However, this collection does not have a significant economic impact on a substantial number of small entities. First, the 9,900 H-2A employers are projected to use the H-2A program and of those 9,900 program participants, only 900, or 9.1 percent, are expected to be required to report absconders under this notice. Second, USCIS estimates that it will approve most of petitions received for H-2B temporary non-

immigrant workers, and that 7,700 petitions per year will be filed by “small entities” as defined under 5 U.S.C. 601 and SBA guidelines. Of these, USCIS estimates that H-2B workers will abscond from only approximately 600 employers. These numbers do not represent a substantial percentage of the small entities that file H-2B petitions. Still, to minimize the burden on the small businesses or entities, USCIS provides a designated e-mail address and, for small businesses or entities without ready access to email, a designated mailing address for employers to send notifications.

(b) Fee-related Notification:

This collection of information has an impact on small businesses or other small entities. However, this collection does not have a significant economic impact on a substantial number of small entities. USCIS estimates that it will receive a total of 200 fee-related notifications. This number does not represent a substantial number of small entities. Still, to minimize the burden on the small entities, USCIS provides a designated e-mail address and, for small businesses or entities without ready access to email, a designated mailing address for employers to send notifications.

6. If the information is not collected, USCIS, ICE, and CBP will not be able to successfully comply with the statutory condition of the H-2 classification. Section 214(c)(1) of the Act provides that the question of importing any alien as a nonimmigrant under the H-2 classification shall be determined by the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, upon petition of the importing employer and it is in the government’s interest to ensure that H-2 workers maintain their nonimmigrant status.

Further, if the information is not collected, USCIS may deny or revoke an H-2

petition based on the determination that the petitioner knows or reasonably should know that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service in connection with obtaining the H-2 employment regardless of the employer’s lack of such knowledge. This information will help USCIS to not penalize an innocent employer.

7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.
8. USCIS is publishing Notices in the Federal Register titled “H-2A Petitioners Employment Related or Fee Related Notification; 1615-ZA75” and “H-2B Petitioner’s Employment-Related or Fee-Related Notification; 1615-ZA76.” These notices request emergency review from the Office of Management and Budget, request public comment on the information collections required by the notices, and provides for a 30-day comment period. USCIS will address any comments prior to publishing the 30-day notice required by the PRA in the Federal Register.
9. USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality.
11. There are no questions of a sensitive nature.

12.	Annual Reporting Burden:	Employment	Fee
	a. Number of Respondents	1,500	200
	b. Number of Responses per Respondent	1	1
	c. Total Annual Response	1,500	200
	d. Hours per Response	.50	.50
	e. Total Annual Reporting Burden	750	100

Total annual reporting burden hours is 850.

Employment-related Notification: This figure was derived by multiplying the number of respondents (1,500) x frequency of response (1) x hours per response 0.5 hour per response.

USCIS has no basis for estimating the number of this employment-related related notification as there has been no record of absconders or no good way of estimating the number of absconders. It is difficult to provide a reliable estimate. However, there are several reports on the unauthorized aliens in the United States and how they arrived in the country including those who were admitted lawfully and overstayed their visas.¹ For example, the Pew Hispanic Center estimates that some 1 to 1.5% of foreign nationals entering the country on nonimmigrant visas have overstayed.² Using this figure, DHS estimates that approximately 1.25% of aliens who are admitted on the nonimmigrant visas overstay. Although overstay is not absconding, USCIS assumes that most aliens who overstay likely to have absconded from their authorized status or employment prior to overstaying. We do not know the precise number, however, assuming that 1.25% of aliens who were admitted on the H-2A or the H-2B visas will overstay, using this logic, USCIS can also assume that 70% of such population would have absconded.

In cost benefit analysis of the H-2A final rule titled “Temporary Agricultural Workers within the H-2A Nonimmigrant Classification,” USCIS estimates that changes in the H-2A rule would result in 110,000 H-2A workers in the United States each year.

Based on the past numbers of approved H-2A petitions and that of H-2A workers

1 Population Estimates, Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2006, Department of Homeland Security, Office of Immigration Statistics. Survey of Mexican Migrants, Part One, Pew Hispanic Center (March 2, 2005)

2 Fact Sheet Modes of Entry for the Unauthorized Migrant Population, Pew Hispanic Center (May 22, 2006)

included in those petitions, it is estimated that each petitioner requests an average of 11 employees on a petition. Therefore USCIS estimates that it may receive anywhere between 88 and 963 employment-related notifications each year.³ For the purpose of estimating the hour burden of collection of information, USCIS uses 900 as the number of respondents for the H-2A classification.

The Act provides that the total number of aliens who enter the United States pursuant to H-2B visas is limited to a total of 66,000 for the fiscal year. Based on this limitation on the number of H-2B workers and using the same logic of the 1.25 overstay rate and the 70% of overstays who abscond, in cost benefit analysis of the H-2B final rule titled “Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers,” USCIS estimates that 578 H-2B workers per year will abscond. For the purpose of estimating the hour burden of collection of information, USCIS uses 600 as the number of respondents for the H-2B classification.

Fee-related Notification: This figure was derived by multiplying the number of respondents (200) x frequency of response (1) x hours per response 0.5 hour per response (30 minutes). There is no good way of estimating the number of employers discovered that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service in connection with obtaining the H-2A or H-2B employment after the filing of a petition. It is difficult to provide a reliable estimate, but for the purpose of estimating the hour burden of collection of information, USCIS uses 200 as the number of respondents during the first year. After this program is implemented, USCIS will have a record of the number of reports received and be able to provide a more accurate estimate with subsequent submissions of this information collection request.

³ $1.25\% \times 110,000 \times 70\% = 963$. $963/11 = 88$.

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in question 14.

14. Annual Cost Analysis

Printing Cost	\$	0
Collecting and Processing	\$	66,742
Total Cost to Program	\$	66,742
Fee Charge	\$	0
Total Annual Cost to Government	\$	66,742

Government cost

The estimated annual Government cost is \$66,742. The estimated cost of the program to the Government is calculated by multiplying the estimated number of respondents (1,500) multiplied by the number of responses per respondent (1) x one hour (amount of time for a USCIS officer to review and process a notification) x \$39.26 (the hourly wage of a GS-12, Step 5, federal government employee in California); plus the estimated number of respondents (200) multiplied by the number of responses per respondent (1) x one hour (amount of time for a USCIS officer to review and process a notification) x \$39.26 (the hourly wage of a GS-12, Step 5, federal government employee in California).

Public Cost

The estimated annual public cost is \$23,894. The estimated cost of the program to the public is calculated by multiplying the estimated number of respondents (1,500) x the number of responses per respondent (1), x .50 the hours per response (30 minutes) x \$28.11 (the hourly employer cost for employee compensation); plus the estimated number of respondents (200) x the number of responses per respondent (1) x .50 the hours per response (30 Minutes) x \$28.11 (the hourly employer cost for employee

compensation)

15. This is a new information collection as required by the Notices titled: “H-2A Petitioner’s Employment Related or Fee Related Notification; 1615-ZA75” and “H-2B Petitioner’s Employment-Related or Fee-Related Notification; 1615-ZA76,” and to the Final Rules titled “Changes to Requirements Affecting H-2A Nonimmigrants; 1615-AB65” and “Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers; 1615-AB67.”
16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. Since the information collection is contained in the regulations USCIS will not display the expiration date for OMB approval of this information collection.
18. USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not applicable.

C. Certification and Signature

D. PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

Sunday Aigbe,

Chief,

Date:

Regulatory Management Division,
U.S. Citizenship and Immigration Services.