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

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SUPPORTING STATEMENT
REVISED INFORMATION COLLECTION REQUEST
OMB CONTROL NUMBER 1205-0466

APPLICATION FOR PREVAILING WAGE DETERMINATION
APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION
AND
H-2B REGISTRATION (H-2B PROGRAM ONLY)

A. Justification

A.1. Circumstances that make the collection of information necessary.

The information collection is required by sections 203(b)(3), 212(a)(5)(A), 212(m), (n), (t), 214(c), and 218 of the Immigration and Nationality Act (INA) (8 U.S.C. §§1153(b)(3), 1182(a)(5)(A), 1182(m), (n), (t), 1184(c), and 1188) and Title 8 CFR 214.2 (h). Before an employer may petition for any temporary or permanent skilled or unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The INA requires the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States for the purpose of performing certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary must also certify that there are not sufficient U.S. workers who are able, willing, and qualified to perform such skilled or unskilled labor or services.

In order to certify no adverse effect on the wages of U.S. workers the Secretary must ensure that the employer is offering and paying to foreign workers wages that are no less than the appropriate wage established under the regulations governing the labor certification process for the specific visa program under which the employer is seeking certification to hire foreign workers. The Secretary carries out this responsibility by requiring employers to obtain an appropriate wage rate for the place(s) where the foreign worker(s) will be employed prior to requesting certification from the Secretary. As discussed in greater detail below, although the wage determination process varies among the labor certification programs, this Information Collection Request (ICR) accounts for the wage determination process in the H-2A, H-2B, H-1B, H-1B1, E-3 and PERM labor certification programs, and reflects revisions to the ETA Form 9141 Application for Prevailing Wage Determination, as related to the H-2B Comprehensive Final Rule.

With respect to the Secretary's statutory responsibility to ascertain whether the hiring of particular foreign workers will have an adverse effect on the wages, working conditions, as well as job opportunities of U.S. workers similarly employed, this ICR, OMB Control No. 1205-0466 solely includes information collections (ICs) related to the labor certification process in the H-2A and H-2B programs. These ICs include the ETA Form

9142 Application for Temporary Employment Certification, as well as appendices A.2 (H-2A program) and B.1 (H-2B program). However, the IC related to the approval of labor condition applications in the H-1B, H-1B1 and E-3 programs is not addressed in this ICR but is addressed under the ICR associated with the OMB Control No. 1205-0310. Also, the IC related to the PERM labor certification process is not addressed under this ICR but is addressed under the ICR associated with the OMB Control No. 1205-0451.

Although the H-2A, IC remains unchanged, the H-2B IC is being revised to reflect regulatory changes to 20 CFR Part 655, Subpart A made by the H-2B Comprehensive Final Rule in order to improve the Department's implementation of its statutory mandate, and increase program integrity. These changes are designed to enhance the Secretary's ability to make informed decisions on all applications for H-2B temporary labor certification. Changes to the ETA Form 9141 Application for Prevailing Wage Determination are also reflected in burden calculations for the H-1B, H-1B1, E-3 and PERM programs.

Therefore, in addition to the above referenced changes to the ETA Form 9141, the revised H-2B IC under the OMB Control No. 1205-0466 accounts for changes to the ETA Form 9142 Application for Temporary Employment Certification, and the Appendix B.1 to the ETA Form 9142. In addition, the IC includes a new information collection instrument (ICI), the ETA Form 9155, H-2B Registration, which will allow the Secretary to make a preliminary determination with respect to an employer's temporary need, and issue to the employer an H-2B Registration to be used in connection with subsequent labor certification applications for a period of up to three years. An H-2B employer must register with the Department of Labor (Department) prior to submitting its request for labor certification.

This Supporting Statement reflects both the unchanged burden for the H-2A IC, as well as the revised burden for the H-2B IC reflecting the applicable regulatory changes which are discussed below.

A.2. How, by whom, and for what purpose the information is to be used.

The revised H-2B information collected will be used by the Department's Employment and Training Administration (ETA), to better ascertain the employer's or eligibility for participating in the H-2B program based on a legitimate temporary need for nonagricultural labor or services, including an independent temporary need of H-2B labor contractors. The Department will use the revised information collection to enhance program integrity by ensuring that the employer is offering at least the minimum wages, benefits and working conditions to both U.S. and H-2B nonimmigrant workers. In addition, the revised IC will be used to ascertain that those representing the employer both in the labor certification process and in the process of recruiting temporary foreign workers are acting on behalf of the employer within the scope of their authority and in compliance with the revised regulations. Finally, the information

collection will improve the process for informing U.S. workers of the job opportunities for which employers seek to hire foreign workers, thereby enhancing the labor market test.

Specifically, the revised ICIs and the new ICI will be used by the Department in the manner described below:

ETA Form 9141 Application for Prevailing Wage Determination

The revised ETA Form 9141, Application for Prevailing Wage Determination, will continue to be used by ETA to collect the necessary information from employers to enable the Department to issue a prevailing wage for the occupation based on the location of the job opportunity. The ETA Form 9141 is used in the H-2B and PERM programs, and may be used by employers in the H-1B, H-1B1, E-3, programs. Because the H-2A regulations prescribe a different wage determination process for agricultural occupations, than is used in the H-2B, H-1B and PERM programs, the H-2A program does not use the ETA Form 9141. The revised form reflects regulatory changes made by the Wage Methodology Final Rule (76 FR 3452, et seq., January 19, 2011), as incorporated into the H-2B Comprehensive Final Rule, as well minor additional changes designed to improve the effectiveness of information collection and processing. The retained ICI is requested by ETA in audit and integrity proceedings and is also requested by the Wage and Hour Division during investigations and enforcement proceedings.

ETA Form 9142, Application for Temporary Employment Certification

The revised ETA Form 9142 will continue to be used by to collect information to permit the Department to meet its statutory responsibilities for administering the H-2A and H-2B temporary labor certification programs. The H-2A program enables employers to bring nonimmigrant foreign workers to the U.S. to perform agricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). The H-2B program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101 (a)(15)(H)(ii)(b). The revised form reflects regulatory changes made by the H-2B Comprehensive Final Rule as well as minor additional changes designed to improve the effectiveness of information collection and processing. The use of the ETA Form 9142 remains unchanged in the H-2A program. This revised certified ICI will continue to be requested by ETA in post-adjudication audits and/or integrity proceedings (revocation, debarment) and will also continue to be requested by the Wage and Hour Division during investigations and enforcement proceedings in both the H-2A and the H-2B programs.

ETA Form 9142, Appendix A.2 (H-2A program) and B.1 (H-2B program) Attorney/Agent/Employer Declarations

The Department's regulations require the employer and its attorney and/or agent to attest to complying with specific program requirements in order to obtain a temporary labor certification. These attestations are contained in appendices A.2 (H-2A program) program and B.1 (H-2B program). Although Appendix A.2 remains unchanged,

Appendix B.1 was revised to reflect revised and additional program obligations promulgated by the H-2B Comprehensive Final Rule. In addition to being used during adjudication, the respective appendices will continue to be requested by ETA in post-adjudication audits and/or integrity proceedings (revocation, debarment) and will also continue to be requested by the Wage and Hour Division during investigations and enforcement proceedings in both the H-2A and the H-2B programs.

ETA Form 9155 H-2B Registration (NEW)

The ETA Form 9155, H-2B Registration, will be used by ETA to implement the preliminary process for adjudicating temporary need in accordance with the H-2B Comprehensive Final Rule section 655.11. This form will be used exclusively in the H-2B program.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, the Department intends to make all instruments in this collection both electronically fillable and fileable. At this time, only the current ETA Form 9141 is both a fillable and fileable form and is available online on the Department's iCert Portal at http://icert.doleta.gov/ where it can be accessed by employers who wish to complete and submit it electronically. Both the PDF fillable form and the fileable electronic form (available on the iCert Portal) include guidance in the form of field-specific instructions intended to assist employers with completing the form. Once approved by OMB, the revised ETA 9141 will be available in fillable PDF format through the Department's iCert Portal as well as the OFLC website. The Department will seek OMB approval of the electronically fileable form prior to introducing it for public use.

The current ETA Form 9142 and appendices A.2 and B.1 are available as fillable PDF forms through the Department's iCert Portal http://icert.doleta.gov/ as well as through the ETA's Office of Foreign Labor Certification (OFLC) website at http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142.pdf. The current ETA Form 9142 is not available for electronic filing. Once approved by OMB, the revised ETA Form 9142 and revised appendix B.1 will be available in fillable PDF format through the Department's iCert Portal and the OFLC website. The Department intends to seek OMB approval of the electronically fileable form and appendices, once available, prior to their introduction for public use.

Once approved by OMB, the new ETA Form 9155 will be available in fillable PDF format through the Department's iCert Portal http://icert.doleta.gov/ and the OFLC website. The Department intends to seek OMB approval of electronically fileable form, once available, prior to its introduction for public use.

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The information requested on the ETA Forms 9141, 9142 and 9155 is sufficiently diverse to avoid duplication of activities within the Department for the H-2A, H-2B, H-1B, H-1B1, E-3, and PERM programs. To the extent that there is apparent duplication between the ETA Form 9142 and ETA Form 9155 with respect to an employer's temporary need, the duplicative information on the ETA Form 9142 is necessary for the adjudication of the employer's temporary need in the H-2A program which does not include a preliminary registration process implemented in the H-2B program by the H-2B Comprehensive Final Rule, and does not include the use of the ETA Form 9155.

Any additional duplicative information such as the name, address, and contact information of the employer will be eliminated once the forms are incorporated into the Department's iCert Portal currently in use for other foreign labor certification programs. Once employers provide such information through iCert, the system will populate appropriate fields in all forms accessed by the employer through iCert thereafter.

In addition, to demonstrate compliance with these information collection requirements, DOL will accept responsive records maintained by the employer for other purposes (e.g., records maintained to demonstrate compliance with other labor laws). Additional Information on identified overlapping provisions is available in item A.12.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to hire and import foreign labor. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

The Department would be in direct violation of law and regulations if this information was not collected.

A.7. Special circumstances for conducting information collection.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act, except that the employers must retain records and supporting documents used to complete the forms included in this ICR for at least three years.

A.8. Preclearance notice and summary of public comments.

The public was provided an opportunity to comment on the proposed changes to the information collection for 60 days as part of the public comment period on the Department's H-2B comprehensive Notice of Proposed Rulemaking (RIN 1205-AB58), published on March 18, 2011. 76 FR 15130 et seq. Although the Department did not receive many comments specifically addressing the revised information collection, the Department did receive several comments on the revised recordkeeping requirement in the H-2B program, as well as several proposals for the inclusion of additional information collection elements which the Department accepted. In addition to being discussed at length in the Final Rule preamble discussion, a brief summary of these comments is provided below.

In addition, the public was given 60 days to comment on the Federal Register Notice soliciting comments on the extension without change of the existing information collection published on July 29, 2011 (76 FR 45621, et seq.). The public comments addressed only the ETA Form 9141 but not the ETA Form 9142. Because the comments received in response to the 60-day notice include suggestions for revision of the ETA Form 9141, some of which were incorporated into the revised instrument, the Department is including a summary of these comments and the Department's responses below.

Comments on the revised IC - H-2B Notice of Proposed Rulemaking		
Element	**Comment**	**DOL Response**
Number of H-2B workers employed by the employer	Several commenters suggested that the Department request and track the numbers of H-2B and U.S. workers employed by the employer; with respect to H-2B workers, commenters suggested tracking whether these workers are recruited from the U.S. or from abroad. One commenter additionally requested that the Department also track the age and gender of the H-2B workers employed by the employer.	The Department agrees with the first commenters and has revised Item B.7 on the ETA Form 9142 in order to collect this information. For each category (total workers, U.S. workers, H-2B workers recruited from abroad; H-2B workers recruited from within the U.S.) the revised item requests the employer to provide the number of workers employed by the employer in the job opportunity during the past year. The Department did not adopt the commenter's suggestion regarding the age and gender of H-2B workers as we are not able to incorporate this information into the adjudication of H-2B labor certification applications at this time.
Record Retention	The Department received a number of comments on the document retention requirement in § 655.56 of the Final Rule. Most commenters supported the requirement while others expressed general concerns regarding the relative burden of the requirement, particularly with respect to certain requirements – such as payroll records.	As discussed in the preamble of the H-2B Final Rule, the retention of records is essential to ensuring compliance with program requirements. The Department has narrowly tailored this requirement so as to require the retention of only those records which correspond to essential regulatory requirements. Detailed pay records are

Comments on the revised IC - H-2B Notice of Proposed Rulemaking		
	Commenters offered variations for the duration of the retention period.	necessary for the Department to ensure compliance with the pay obligations with respect to both H-2B and U.S. workers. Finally, the duration of the record retention requirement corresponds to the record retention requirement in the H-2A program and is was
Third party disclosure	The Department received comments requesting that the Department subject to public disclosure the ETA Form 9142, the H-2B Registration, the recruitment report, job order and other documents used in the adjudication of H-2B labor certifications.	As discussed in the preamble discussion of § 655.63 of the H-2B Final Rule, upon approval of the terms and conditions of the job order and acceptance for processing, we will publicly disclosure the job order through the Department's Electronic Job Registry, thus aiding in the visibility of these job opportunities to U.S. workers. As we are committed to transparency, we are contemplating broader future public disclosure after balancing the legitimate interest of protecting privileged information disclosed in the scope of the labor certification process.

Comments on 60-Day FRN Extension Without Change (ETA Form 9141)
The Department received no general comments on the 60-Day Extension Without Change of the Existing Information Collection.

Item Number	Element	Comment	DOL Response

Comments on the revised IC - H-2B Notice of Proposed Rulemaking			
ETA Form 9141/Section D. part a. question 2.	SOC (ONET/OES) Code	One commenter suggested that the electronic field be enabled to permit a filer to type in an SOC code to the extent that it is not contained in the built-in drop down menu; in addition the commenter suggested that the field be enabled to accept more than 1 suggested SOC code as in many cases the position for which a wage is sought is interdisciplinary, and more than one SOC code may be applicable to classify the position.	With respect to the first suggestion, we are unable to adopt it because our ability to issue wages for specific SOC codes is linked to the availability of OES wage data for a particular occupational classification as provided by BLS. With respect to the second suggestion, DOL must select a single OES occupation to issue the wage thus the optional field of Recommended SOC Code follows the same standard. While DOL acknowledges some portion of the applications received are cross disciplinary the majority are not.
Section D. part a. item 2a	Occupational Title	This field should have more space to include more than one suggested ONET/OES occupation title as in many cases where the positions are interdisciplinary more than one field is applicable to classify the position.	DOL must select a single OES occupation to issue the wage thus the optional field of Recommended SOC Occupational Title follows the same standard. While DOL acknowledges some portion of the applications received is cross disciplinary, the majority are not.
Section D. part a. item 3a.	Hourly Work Schedule	Two academic commenters questioned the practical utility of collecting the hourly work schedule, one asserting that the requirement to identify the position as full time or part time is sufficient. Both commenters indicated that many employers offer variable	DOL agrees with these commenters and has removed this question from the revised ETA Form 9141.

Comments on the revised IC - H-2B Notice of Proposed Rulemaking			
		or flexible work schedules which cannot be disclosed on the current form One of these commenters suggested that this field should be converted into an open-ended one to allow for a more accurate description. As an alternative, the commenter suggested that the form be amended to include an option to check 'variable' in addition to including an estimated schedule.	
Section D. part a. item 7; Instructions	Travel requirem ent	One commenter indicated that the instructions to the form do not define what constitutes travel, and requested that we amend the instructions to provide clarification of this requirement.	DOL does not believe the instructions are an appropriate venue for addressing this issue in its entirety. To the extent necessary, DOL will issue guidance addressing this issue in the context of program-specific regulatory requirements.
Section D. part a. Item 8.	Working Condition s	One commenter requested that DOL amend the instructions to the form to define what a 'working condition that affects the rate of pay' is. This commenter suggested that the instructions for this item should clarify whether "working conditions" include money that would be paid above and beyond normal compensation for that job classification due to a specific condition (i.e. hazard pay or differentiated pay, or whether this question contemplates the disclosure of a requirement to lift a specific	We agree with this commenter and have removed this question from the revised ETA Form 9141.

Comments on the revised IC - H-2B Notice of Proposed Rulemaking			
		number of pounds. Finally, the commenter sought clarification of what constitutes a working condition v. a special requirement for purposes of form completion.	
Section D. part b. item 1b.	Major/ field of study	Two commenters suggested that DOL expand the number of characters filers may enter into this field to enable full disclosure of degree options the employer would be willing to consider under the educational requirements for the job opportunity, noting that most of its positions allow for several degree options or are interdisciplinary. One of these commenters noted that including these options in this field rather than D.b.6 would increase the efficiency in adjudications.	DOL is currently unable to expand this field given information technology resource requirements. Employers needing more room may continue on a separate line under (re-designated) item E.b.5.
Section D. part b. question 4; Instructions.	Work experience	One commenter requested a change to the instructions for this item to allow for a distinction between experience gained as a prerequisite for obtaining a graduate degree v. employment experience gained in a particular occupation.	DOL does not believe that an amendment to the form instructions is the appropriate venue for addressing this issue. To the extent necessary, DOL will issue guidance addressing this issue in the context of program-specific regulatory requirements.
Section C; suggested new items 14 and 15	Nature of employer	A commenter suggested that Section C should have two additional field boxes added (box 14 and 15) to indicate the nature of the organization	DOL agrees with this commenter and has added a similar question to the revised ETA Form 9141.

Comments on the revised IC - H-2B Notice of Proposed Rulemaking			
		submitting the prevailing wage request such as: Box 14: Academic/Institution of Higher Education/Non-Profit organization: Yes _____ No _____ and Box 15: Private Company/Industry _____ Yes ____ No	

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

DOL offers no assurances of confidentiality to those responding to this information collection. The information collected is not exempt from full disclosure under the Freedom of Information Act. Generally, however, the Department is required under the Privacy Act to withhold the disclosure of personally identifiable information to the extent such information is supplied in response to the information collection.

A.11. Justification for any sensitive questions.

The information collected does not involve sensitive matters.

A*.12. Estimated hourly burden.*

Based on previous program experience, the Department estimates it will receive approximately 7,977 ETA Form 9142 submissions for the H-2A program, 6,425 ETA Form 9141 and ETA Form 9142 submissions for the H-2B program and 21,798 ETA Form 9141 applications a year for the H-1B program, and 91,637 ETA Form 9141 submissions a year for the PERM program. The hourly burdens are separated by program.

I. The H-2A Program

A. <u>Determination of wages to be paid for H-2A labor certification purposes</u>

As indicated under A.1 above, the ETA Form 9141 is not used in the H-2A program.

However, in order to recruit U.S. workers and complete the ETA Form 9142, an H-2A employer must determine the appropriate wage to pay agricultural employees. The regulations require employers to obtain the appropriate wage in advance of recruitment. Pursuant to the regulations, the employer must offer, recruit at, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR) in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate (CBA), or the Federal or State minimum wage. The Department annually publishes new AEWRs and the employer may locate the appropriate AEWR(s) online through the Office of Foreign Labor Certification website at http://www.foreignlaborcert.doleta.gov/adverse.cfm; the employer can locate the appropriate prevailing hourly or piece rate(s) online in the Office of Foreign Labor Certification Agricultural Online Wage Library at http://www.foreignlaborcert.doleta.gov/aowl.cfm.

The employer will use both the existing approved information collection ETA 790, OMB control number 1205-0134, and the ETA 9142 (OMB control number 1205-0466[1]) to submit its wage rate for approval. As indicated in the Department's Supporting Statement submitted to OMB on August 19, 2009 in connection with the H-2A NPRM Submission (see ICR Ref No.: 200908-1205-004), Appendix A.1, previously used for this purpose, is no longer used in the program. Because Appendix A.1 was inadvertently left in ROCIS after the 2009 ICR submission reflecting its discontinuation, it is now being removed. The hourly burden for the completion and filling of the ETA 790 is accounted for in that information collection. The estimated time required to research the wage rate and reflect it on the Form ETA 9142 is estimated at 10 minutes. The total annual burden of the required wage rate determinations is 1,330 reporting hours (7,977 x 10 minutes ÷ 60 minutes = 1,330 hours).

B. Application for Temporary Employment Certification

Employers submit an Application for Temporary Employment Certification (ETA Form 9142 and Appendix A.2) when they wish to employ a nonimmigrant foreign worker in the H-2A visa classification on a temporary basis to perform agricultural services and/or labor (20 CFR 655.130-132). The form takes approximately one hour to complete. The Department estimates, based on its operating experience over the last three years, that in the upcoming year employers will file approximately 7,977 applications for a total burden of 7,977 reporting hours (7,977 applications x 1 hour = 7,977 hours).

[1] The Form ETA 9142, OMB control number 1205-0466 is the subject of this information collection extension request.

H-2A Labor Contractors (H-2ALC) have additional requirements under 20 CFR 655.132(b). They must submit the list of fixed site employers with whom they have contracted to provide H-2A workers along with copies of the contracts. H-2ALCs who are subject to the Migrant and Seasonal Agricultural Workers Protection Act (MSPA) must also provide copies of their Farm Labor Contractor (FLC) Certificate of Registration issued by the Wage and Hour Division, drivers' licenses, and auto insurance policies. H-2ALCs must also submit original surety bonds pursuant to 20 CFR 655.132(b)(3). Finally, they must supply proof that the proposed housing for the workers complies with the applicable Federal, State, and local laws. The Department anticipates that it will take the 559 H-2ALC employers one hour and 20 minutes to comply with these requirements for a total burden of 745 reporting hours (559 applicants x 80 minutes ÷ 60 minutes = 745 hours).

There are times where employers miss the statutorily mandated deadline for filing an application due to unforeseen circumstances or because they are new to the program and did not realize there was a deadline. In such instances, the employer must request a waiver of the filing deadline (20 CFR 655.134(b)). The Department estimates it will receive 150 such requests based on program experience. The Department estimates it will take employers 30 minutes to write a letter addressed to the Department explaining why they need such a waiver for a total burden of 75 reporting hours (150 requests x 0.5 hours = 75 hours).

Agents filing applications on behalf of employers must submit an agency agreement or similar document authorizing such representation from the employer (20 CFR 655.133(a)). The Department believes it will take an employer and its agent and/or attorney 30 minutes to generate such a document and submit it to the Department. In FY 2010 4,726 applications were filed by agents and attorneys. Therefore, the hourly burden for this collection is 2,363 reporting hours (4,726 filers x .5 hours = 2,363).

Agents who are FLCs must provide a copy of their MSPA FLC Certificate of Registration (20 CFR 655.133(b)). The Department estimates it will take agents only 5 minutes to copy their certificate and attach it to the application. In the past 117 applications have been filed by certified Farm Labor Contractors. Therefore the total reporting burden is 10 reporting hours (117 applications x 5 minutes ÷ 60 minutes = 10 hours).

If an application is deficient, the rule allows the employer to modify the application (20 CFR 655.144). The Department estimates that it will take an employer 30 minutes to modify its application. Last year the Department received 2,344 applications requiring modification. Assuming the same rate in future years this would account for 1,172 reporting hours (2,344 applications x .5 hours = 1,172 hours).

C. Recruitment

Recruitment activities, including advertising for workers and placing job orders, are usual and customary activities of employers. Therefore, under the regulations of the Office of Management and Budget at 5 CFR 1320.3(b), the resources expended by employers to comply with the paperwork burdens of the recruitment provisions at sections 655.150, .151, .153, and .154 of the H-2A final rule is excluded in compiling the paperwork burden estimates under the proposed rule.

Similarly, since the records required to be kept by the employer to demonstrate compliance with the advertising requirements or to prepare the required recruitment report must be retained by employers under the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR 1602.14 (OMB Control No. 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act and the American With Disabilities Act, and 29 CFR 1627.3(b)(3) (OMB Control No. 3046-0018), promulgated pursuant to the Age Discrimination in Employment Act, at 29 CFR 1627.3(b)(3), the burden to maintain such records can be excluded in compiling the paperwork burden under the proposed rule. For example, 29 CFR 1602.14 of the EEOC regulations requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later. . . ."

The records that employers must maintain pursuant to 29 CFR 1627 (b)(3)(a)(1), promulgated pursuant to the Age Discrimination in Employment Act, includes but are not limited to the following:

- Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.

- Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee.

- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.

- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for

overtime work.

However, the time required to prepare the required recruitment report is not excludable in compiling the burden under the regulations. Section 1602.14 of the EEOC regulations does not require an employer to create any records, but rather requires an employer to preserve all personnel or employment records which the employer “made or kept.” Once made or kept (i.e., records received from others that are not immediately discarded), EEOC regulations require that these records be preserved.

Recruitment Report (20 CFR 655.156). All employers that file applications under the non-emergency H-2A filing procedures at 20 CFR 655.130 must prepare and submit a recruitment report summarizing their compliance with the applicable H-2A recruitment requirements. Section 20 CFR 655.156 requires that the recruitment report be signed by the employer and describe recruitment steps undertaken and the results achieved, including the number of hires, and if applicable, the number of U.S. workers rejected, and listing the lawful, job-related reasons for the rejection. In addition, pursuant to section 655.156(b) employers must continue to update the recruitment report for the duration of the recruitment period. An updated recruitment report may be requested by the Certifying Officer along with the resumes or applications of U.S. workers sorted by the reasons they were rejected during an audit under 20 CFR 655.180. The Department estimates that it will take an average of 1 hour for an employer to prepare and update the recruitment report for each application it files. Because the Department anticipates that 7,977 Applications for Temporary Employment Certification will be filed with the Department of Labor, the total annual burden for preparing recruitment reports is estimated to amount to 7,977 recordkeeping hours (7,977 applications x 1 hour = 7,977 hours).

D. <u>Retention of Supporting Documentation 20 CFR 655.167</u>

The Department estimates that employers will spend about 10 minutes per year per application to retain the required wage rate determination, Application for Temporary Employment Certification, and supporting documentation in the two years following the mandated one year retention for companies subject to Title VII and three years for all other employers. This results in an annual burden of 1,330 recordkeeping hours (7,977 applications x 10 minutes ÷ 60 minutes = 1,330 hours).

E. <u>Informing the SWA of a Different Date of Departure</u>

In 20 CFR 655.135(c) the employer is required to inform the SWA if the H-2A workers will be leaving their home country later than the third day preceding the employer’s first date of need. Employers are informed of this requirement in the Certification Letter they receive when the Department certifies their

need for H-2A workers. Previously, this requirement had its own OMB control number (1205-0404). The Department will, as soon as this collection is approved and extended, discontinue that control number

ETA estimates that under the departure date regulation at 655.135(c), the employers that file 7,977 H-2A applications 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 399 employers in a given year. It is estimated that it takes employers about 15 minutes for an employer to comply with the departure date notification requirements. Therefore, it is estimated that it will take employers approximately 100 reporting hours to provide the notification required under the regulation. (399 x 0.25 = 100 hours)

F. Informing DOL and DHS of H-2A Worker Abscondment or Termination

Employers are required, pursuant to 20 CFR 655.122(n), to inform the Department and the Department of Homeland Security (DHS) of the termination of workers for cause and abandonment of the job by workers in writing within two (2) business days of the termination or discovering the abandonment. Based on program experience during the last three years, the Department estimates that it will receive letters/emails from employers in approximately 315 cases and that it will take employers 15 minutes to compose and send such letters/emails for a total of 79 reporting hours (315 cases x 0.25 = 79 hours.)

G. Notification Requirements

The H-2A regulations require employers to notify its H-2A workers of their duty to depart the United States after the contract period ends (20 CFR 655.135(i)) and of their rights by posting a Department issued Workers' Rights Poster (20 CFR 655.135(l)). The rule also requires employers to contractually forbid their foreign labor recruiters from charging the H-2A workers any recruitment fees (20 CFR 655.135(k)).

The requirement to post a government provided poster for disclosure to the public is exempt from the hourly burden calculations because it is specifically excluded from the definition of "collection of information" under 5 CFR 1320.3(c)(2). However, the other two notification requirements are not exempt. The Department estimates that it will take each employer approximately 2 minutes to orally inform its H-2A workers of their duty to leave the U.S. during the workers' orientation at the beginning of the contract period for a total burden of 266 third party disclosure hours (7,977 applications x 2 minutes ÷ 60 minutes = 266 hours).

The Department estimates that it will take 5 minutes for employers to ensure that the contracts they have with foreign labor recruiters comply with 20 CFR

655.135(k) each time they submit an application to the Department. The total burden will be 665 third party disclosure hours (7,977 applications x 5 minutes ÷ 60 minutes = 665 hours).

H. Providing Workers With Copy of Contract

Pursuant to the Department's regulations at 20 CFR 655.122(q), employers must provide to H-2A workers (no later than the time at which the workers apply for the visa) or to workers in corresponding employment (no later than on the day work commences) a copy of the work contract between the employer and the workers in a language understood by the worker as necessary or reasonable. For H-2A workers going from an H-2A employer to a subsequent H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H-2A employer. In the absence of a separate written work contract, the employer may provide copies of the certified ETA 9142, Appendix A.2 and ETA Form 790. Program experience shows that an average of 95,500 H-2A workers are certified by the Department each year. The Department estimates it will take employers approximately 15 minutes to make copies of the work contract (or substitute documentation as described above) and to provide it to each worker for a total of 23,875 third party disclosure hours. (95,500 workers x .25 hours = 23,875 hours)

I. Amending the Application for Temporary Employment Certification

Pursuant to regulations at 20 CFR 655.145, at any time before final determination, an employer may submit a written request to the National Processing Center to amend the H-2A application in order to increase the number of workers requested, or to request minor changes to the period of employment. Program experience shows that approximately 900 amendments are requested each year. The Department estimates it will take employers approximately 30 minutes to make such requests for a total of 450 reporting hours. (900 applications x 0.5 hours = 450 hours)

J. Post-Certification Processes

Extensions (20 CFR 655.170)
After the Department has certified an Application for Temporary Employment Certification for a certain period of employment, an employer may apply to the Department for an extension of that period of employment. If the requested extension is longer than 2 weeks, it must be based on weather factors or some other condition beyond the employer's control (20 CFR 655.170). Such an extension must be requested in writing. The Department estimates that it will take an employer 30 minutes to prepare and send such a request. Program experience shows that approximately 100 employers will make such

requests annually for a total of 50 reporting hours (100 requests x 0.5 hours = 50 hours).

Appeals (20 CFR 655.171)
Several aspects of the H-2A labor certification process provide the employer with administrative appeal rights including expedited administrative review or a *de novo* hearing (20 CFR 655.141 deficiencies, .142 modifications, .162 denials, .165 partial certifications, .181 revocation, .182 debarment). The employer may request an expedited administrative appeal or a *de novo* hearing to the Board of Alien Labor Certification Appeals (BALCA) in writing in accordance with the procedures prescribed by the specific regulatory provision authorizing the appeal (see above). The Department estimates that it will receive approximately 92 appeals annually and that it will take employers 20 minutes to prepare and send the Notice of Appeal for a total hourly burden of 31 reporting hours (92 appeals x 20 minutes ÷ 60 minutes = 31 hours).[2]

Withdrawals (20 CFR 655.172)
On occasion an employer finds it necessary to withdraw an application (20 CFR 655.172). A withdrawal request may be sent by email, therefore, the Department estimates that it will take employers approximately 10 minutes to prepare and submit a withdrawal request. The Department estimates it will receive 100 such requests annually for a total hourly burden of 17 reporting hours (100 requests x 10 minutes ÷ 60 minutes = 17 hours).

Redeterminations (20 CFR 655.166)
The regulations allow an employer to petition the Department for a redetermination if U.S. workers recruited as a result of the labor market test become unavailable on or during the 30 day period before the date of need (655.166). The Department estimates it takes employers 30 minutes to call or email the Department with its request and then follow-up with a written request. The Department usually receives 11 such requests each year for a total reporting burden of 6 reporting hours. (11 x 0.5 hours = 6 hours)

Integrity Measures (20 CFR 655.180, 655.181, and 655.182)
The Department also uses audits, revocation, and debarment to increase program integrity. All of these integrity measures require the employers to respond to notices from the Department. However, these responses are exempt from the hourly burden calculations. Title 5 CFR 1320.3(h)(6) and (9) exempt from collection requests that require facts or opinions be submitted, which are addressed to a single entity and facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information. Likewise 5 CFR 1320.4(a)

[2] This estimate reflects a typical historic rate of appeals in the H-2A program not including the last (FY 2011) fiscal year where the appeal rate in the program spiked due to ongoing operational challenges related to the implementation of the 2010 H-2A Final Rule. Temporary Agricultural Employment of H-2A Aliens in the United States; Final Rule. 75 FR 6884 (Feb. 12, 2010).

(2) exempts administrative actions such as audits of specific individuals or entities.

K. Meal Charges

Employers who provide three meals a day for their workers may deduct the cost of the meals from the employee's pay checks up to the maximum allowed by 20 CFR 655.173. The Department annually publishes the H-2A allowable meal charges and travel subsistence. Employers may access this information online through the Office of Foreign Labor Certification website at http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm. The time to research the allowable meal charges and retain the necessary information as required under 20 CFR 655.167(c)(5) and 655.122(j) is accounted for under section "D. Retention of Supporting Documentation 20 CFR 655.167 of this Supporting Statement."

In addition, section 655.173 also allows an employer to petition for higher meal charges. The Department anticipates receiving 84 such requests and that it will take employers approximately 1 hour to prepare the petition for a total of 84 reporting hours (84 petitions x 1 hour = 84 hours).

L. Complaints

The proposed rule provides several avenues for aggrieved parties to complain to the Federal Government. The hourly burdens for three of those methods are calculated under other information collections. The hourly burden in utilizing the Job Service Complaint System in 20 CFR 655.185 and 29 CFR 501.2 is accounted for under OMB control number 1205-0039. The hourly burden associated with filing complaints with the Wage and Hour Division of the Department is accounted for under OMB control number 1215-0001. Complaints of immigration discrimination in hiring practices can be filed with the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices on either that office's Charge Form or in a letter addressed to the Special Counsel.

Individuals who would like to file a complaint about unfair employment practices relating specifically to the withholding of U.S. workers until the H-2A workers have arrived in the United States under 20 CFR 655.157 must do so by filing a complaint with the Secretary. There is no form for this type of complaint. The Department estimates it would take an individual 30 minutes to prepare and send such a complaint. However, in over 20 years of program experience, the Department has never received such a complaint; therefore, we estimate that the burden is zero.

Annual Burden Hours for the H-2A Information Collection:

14,489 Reporting Hours;
9,307 Recordkeeping Hours
24,806 Third Party Disclosure Hours

48,602 Total Burden Hours
152,738 Total Responses
7,977 Total Respondents

The estimated average hourly reporting burden includes those elements that are common to the majority of applications.

Estimated Hourly Reporting Burden
Required wage – 10 minutes
ETA Form 9142 – 3 hours[3]
Total estimated hourly reporting burden: 3 hours and 10 minutes

II. H-2B Program

The Department is revising its hourly burden for the H-2B program based on the proposed rule published simultaneously with this submission. The Department previously estimated that it would receive 12,000 applications based on 2006 data and projected increases in the usage of the program based on a previous rulemaking. However, in order to better estimate the potential hourly burden of the collections required to apply for a labor certification as described in this proposed rule, the Department relied upon program experience and program data from fiscal years 2000-2009. Based on information on program usage from these years and the economic analysis in the H-2B Comprehensive Final Rule, the Department estimates that it will receive an average of 6,425 unique employer applicants requesting an average of 115, 500 foreign workers. This is a decrease from the 12,000 applications estimated and used to calculate the burden of the previous ICR submission under the OMB Control No. 1205-0466. The methodology used to arrive at the current lower estimate accounts for the fluctuations in the relative size of the U.S. economy. The Department is also accounting for all collections created by the Final Rule, which require submission of information by 10 or more people, but not necessarily on the ETA Form 9141, ETA Form 9142, Appendix B.1, or the new ETA Form 9155 H-2B Registration form.

The H-2B Final Rule includes the following collections:

[3] This estimate is derived from the sum of hourly estimates for the following elements: Application: 60 minutes; Agency agreement: 30 minutes; Deficiencies: 30 minutes; Recruitment report: 60 minutes.

A. <u>Agents and recruiters</u>

Proof of agent relationship (20 CFR 655.8(a)). The Department proposes requiring all agents who file H-2B applications on behalf of employers to demonstrate that a bona fide relationship exists between them and the employer. The Department is not requiring any specific form of such documentation and will accept a copy of the agent agreement or other document demonstrating the agent's authority to act on behalf of the employer. We estimate that it will take 30 minutes to write, print, sign, and deliver a letter confirming the relationship. Based on recent experience, we estimate that 1,875 letters will be submitted with applications. The hourly burden for this collection is 938 reporting hours (1,875 filers x 0.5 hours = 938 hours).

Agent's proof of MSPA registration (20 CFR 655.8(b)). The proposed rule would require agents who are Farm Labor Contractors to provide a copy of their MSPA Certificate of Registration. The Department estimates it will take agents approximately 5 minutes to copy their certificates and attach them to the application. In the past only 12 agents in the H-2B program have been certified Farm Labor Contractors. The hourly burden for this collection is 1 reporting hour (12 filers x 5 minutes = 1 hour).

Foreign recruitment contract (20 CFR 655.9). The Department proposes to require employers, attorneys, or agents to provide a copy of all agreements with foreign labor contractors or recruiters who they engage or plan to engage in the international recruitment of H-2B workers. This is a new requirement under the proposed rule. The Department bases its estimate on anecdotal evidence that the majority of H-2B employers employ such foreign agents and recruiters. Therefore, the Department estimates that 6,425 employers will have such contracts attached to their applications and that it will take 5 minutes to copy and attach the contract. The hourly burden for this collection is 536 reporting hours. (6,425 filers x 5 minutes ÷ 60 minutes = 536 hours.)

Inform of fee prohibitions (20 CFR 655.20(p) and 29 CFR 503.16(p)). The Department proposes to require employers to prohibit in a written contract any agent or recruiter whom the employer engages in international recruitment of H-2B workers, either directly or indirectly, from seeking or receiving payments or other compensation from prospective workers. Because the Department estimates that 6,425 employers will utilize foreign agents and recruiters and it will take the employer an average of 15 minutes to comply with this requirement, the burden for this collection is 1,606 third party disclosure hours. (6,425 filers x 15 minutes ÷ 60 minutes = 1,606 hours.)

B. Registration of H-2B employers

ETA Form 9155, H-2B Registration (20 CFR 655.11). The Department is proposing to require H-2B employers to register in advance of submitting an Application for Temporary Employment Certification in order to demonstrate their temporary need and qualifications under the H-2B program. This registration step will streamline the adjudication of applications and ensure a more efficient process. The Department has created a new form for this purpose – the ETA Form 9155. The form will collect job specific information, i.e., the employer will be required to register for each job opportunity it has, about the employer's temporary need for services or labor, the number of workers needed, the nature of the job classification and/or duties, and the specific dates of need. Once approved, the registration will be valid for up to 3 consecutive years from the date of issuance. For purposes of the paperwork burden, the Department is basing its estimates on annual filings instead of every 3 years. We have approximately 6,425 unique employers who participate in the H-2B program each year. Therefore, we estimate receiving 6,425 H-2B Registration forms. We estimate that it will take 1 hour to complete and submit the ETA Form 9155 for a total burden of 6,425 reporting hours. (6,425 applications x 1 hour = 6,425 hours.) This estimate is based on the first two years of program implementation but the Department anticipates an overtime reduction in the annual burden as the annual average of H-2B Registrations submitted for processing decreases as employers begin receiving H-2B Registrations covering up to 3 years.

Request for Further Information (RFI) (20 CFR 655.11(g)). The Department proposes to issue an RFI to an H-2B employer where the H-2B Registration cannot be approved for various reasons such as, but not limited to, where the ETA Form 9155 is incomplete or inaccurate, the employer failed to demonstrate temporary need, and/or the job classification and duties do not appear to qualify as non-agricultural. Program experience shows that we issue an average of approximately 2,711 RFIs a year. We estimate it takes 1 hour to respond to the RFI for a total burden of 2,717 reporting hours. (2,711 applications x 1 hour = 2,711 hours.) Based on our discussion above, this estimate is based on the first two years of program implementation but the Department anticipates a reduction in this burden as that the annual average of RFIs decreases with an anticipated decrease in requests for H-2B Registrations based on the maximum 3 year validity of some H-2B Registrations.

C. Prevailing wage determination (H-2B Program only)

ETA Form 9141 (20 CFR 655.10(c)). The Final Rule requires all employers participating in the H-2B program to obtain a prevailing wage determination (PWD) from the National Prevailing Wage Center (NPWC). As discussed above, employers currently request prevailing wage determinations under

various foreign labor certification programs by submitting an ETA Form 9141. The Department estimates that it will take employers 1 hour to read the instructions, collect all of the necessary information, and complete the form. The Department estimates that it will receive an average of 6,425 prevailing wage requests each year, making the total burden for this collection is 6,425 reporting hours. (6,425 applications x 1 hour = 6,425 hours.). Based on our previous ICR estimate of 12,000 PWD requests filed, this amounts in a burden decrease of 5,575 hours.

Center Director Review of PWDs (20 CFR 655.13(a)). The proposed rule would permit employers who disagree with the prevailing wage determination issued by the NPWC to request review of the determination by the Center Director. The Department, based on program experience, estimates that 110 employers will request such review and that it will take each employer 30 minutes to prepare the request for a total burden of 55 reporting hours. (110 requests x 0.5 hours = 55 hours.)[4]

BALCA review of PWDs (20 CFR 655.13(b)). The Department proposes to permit employers who disagree with the redetermination made by the Center Director to appeal to the Board of Alien Labor Certification Appeals. The Department, based on past program experience, estimates that 5 employers will request an appeal annually and that it will take each employer 30 minutes to prepare the request for a total burden of 3 reporting hours. (5 requests x 0.5 hours = 3 hours.)

D. Application for Temporary Employment Certification (H-2B Program Only).

ETA Form 9142 (20 CFR 655.15). The Department proposes that once an employer's H-2B Registration is granted, the employer can submit an Application for Temporary Employment Certification (ETA Form 9142) requesting employment of temporary non-agricultural foreign workers. The form takes approximately 1 hour to complete. As indicated above, the Department previously estimated employers would file approximately 12,000 applications for a total burden of 12,000 reporting hours. Based on our estimate of 6,425 applications, the total hourly burden for the filing of the ETA Form 9142 is 6,425 reporting hours. (6,425 applications x 1 hour = 6,425 hours.) Based on our estimate of 12,000 PWD requests filed, this amounts in a burden decrease of 5,575 hours.

Waiver of filing timeframes due to emergency situations (20 CFR 655.17). The proposed rule would permit an employer who for good and substantial cause is unable to meet the regulatory timeframes for filing the H-2B

[4] This estimate reflects a typical historic rate of requests for Center Director Review of H-2B PWDs, not including the current fiscal year where the number of requests for Center Director Reviews in the H-2B program spiked due to ongoing litigation and challenges related to the implementation of the H-2B Wage Methodology Final Rule. Please see, *Wage Methodology for the Temporary Non-agricultural Employment H–2B Program, Final Rule*, 76 FR 3452 (January 19, 2011).

Registration and/or the Application for Temporary Employment Certification to request a waiver of such timeframes by submitting a letter of explanation along with the completed application. The Department estimates that it will take an employer 30 minutes to compose, print, and mail such a written request. The Department anticipates receiving 111 such requests for a total burden of 56 reporting hours. (111 requests x 0.5 hours = 56 hours.)

Submission of a modified application or job order (20 CFR 655.32). The Department proposes to permit employers to modify and resubmit their applications and/or job orders, as appropriate, according to the insufficiencies listed in the Notice of Deficiency. We estimate that one third of the applications will require modification a year. Based on program data under the current regulatory model, we estimate it takes 1 hour to respond to a Notice of Deficiency for a total burden of 2,717 reporting hours. (2,711 applications x 1 hour = 2,711 hours.)

Amending the application or job order (20 CFR 655.35). The Department proposes to permit employers to amend their applications and/or job orders at any time before the Department makes a final determination to grant or deny the application. The Department anticipates receiving 522 such amendments and that it will take an employer 30 minutes on average to prepare and file an amendment for a total burden of 261 reporting hours. (522 amendments x 0.5 hours = 261 hours.)

E. Recruitment

Recruitment activities, including advertising for U.S. workers and/or placing job orders is a usual and customary activity for employers. Therefore, under the regulations of the OMB at 5 CFR 1320.3(b), the resources expended by employers to comply with the recruitment provisions at 20 CFR 655.16 of the proposed rule are excluded in compiling the paperwork burden estimates under the proposed rule.

Job Order (20 CFR 655.18) The Department’s requirement that the an employers’ job orders meet the standards set forth in 20 CFR 655.18 of the proposed rule, are subject to the PRA burden calculations. The Department estimates that it will take employers 1 hour to complete the job order and ensure that it includes all of the required information and disclosures in compliance with 20 CFR 655.18). The total burden of 6,425 reporting hours. (6,425 job orders x 1 hour = 6,425 hours.) The time required to modify a particular job order in accordance with a request from the Department is accounted for under *Submission of a modified application or job order (20 CFR 655.32)* above.

Contacting former employees (20 CFR 655.43). The Department is proposing to require employers to contact their former U.S. workers in the same

occupation and place of employment, including those who were laid off within 120 calendar days of the employer's date of need, unless they were dismissed for cause or abandoned the worksite prior to the completion of the last work period. The proposed rule requires that employers contact these employees by mail or other effective means. The Department estimates it will take employers 1 hour per application filed with the Department to contact former employees for a total burden of 6,425 third party disclosure hours. (6,425 applications x 1 hour = 6,425 hours.)

Contacting union representatives other contact requirements (20 CFR 655.45). Where the occupation or industry is customarily unionized or where any of the employer's employees in the same occupation and area of intended employment have a bargaining representative, the proposed rule would require the employer to contact the local union in writing to inquire about the availability of qualified U.S. workers. The Department estimates it will take employers 15 minutes per application filed with the Department to contact union representatives for a total burden of 1,606 third party disclosure hours. (6,425 applications x 15 minutes ÷ 60 minutes = 1,606 hours.)

Posting requirement (20 CFR 655.45(b)). Where there is no bargaining representative of the employer's employees, the Department proposes to require the employer to post the availability of the job opportunity in at least two conspicuous locations at the place of anticipated employment for 10 consecutive business days in order to provide reasonable notification to all employees in the job classification and area in which the work will be performed by the H-2B workers. For simplicity, the Department is assuming that employers using the H-2B program do not have employees with bargaining representatives and that all will be required to comply with the posting requirement. The Department estimates it will take employers 30 minutes per application filed with the Department to prepare and post the notice for a total burden of 3,213 third party disclosure hours. (6,425 applications x 0.5 hours = 3,213 hours.)

Additional employer-conducted recruitment (20 CFR 655.45(c) and 655.46). The proposed rule would authorize the Department, at its discretion, to require employers to conduct additional recruitment. We assume that 50 percent of employers or 3,213 will be required to perform this additional recruitment. If the additional employer-conducted recruitment consists of placing an additional newspaper advertisement we estimate that it will take an employer approximately 5 minutes to comply with this requirement for a total number of 268 third party disclosure hours. The (3,213 x 5 minutes ÷ 60 = 268 hours.)

Proof of recruitment (20 CFR 655.46(c)). The records required to be kept by the employer to demonstrate compliance with the advertising requirements under the proposed rule must also be retained by employers under the regulations of the Equal Employment Opportunity Commission at 29 CFR

1602.14 (OMB Control No. 3046 -- 0040), promulgated pursuant to Title VII of the Civil Rights Act and the American With Disabilities Act, and 29 CFR 1627.3(b)(3) (OMB Control No. (3046 -- 0018), promulgated pursuant to the Age Discrimination in Employment Act, at 29 CFR 1627.3(b)(3), and therefore, the burden to maintain such records can be excluded in compiling the paperwork burden under the proposed rule. For example, 29 CFR 1602.14 requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later. . . ."

The records that employers must maintain pursuant to 29 CFR 1627 (b)(3)(a)(1), that was promulgated pursuant to the Age Discrimination in Employment Act, includes but are not limited to the following:

- Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.

- Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee.

- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.

- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

State Workforce Agencies (SWAs) postings, distribution, and referrals (20 CFR 655.33(b)(4)-(7)). The Department will require SWAs to post the employer's approved job orders, distribute the job orders to other SWAs, where applicable, and refer applicants to the employer. This function is exempt from the paperwork burden calculations under 5 CFR 1320.3(d) because it is a normal function of the SWAs and does not increase their burden.

Electronic Job Registry (20 CFR 655.34). The Department will post an employer's approved job order on the Department's Electronic Job Registry which will serve as a public repository for H-2B job orders for the duration of the referral period and will improve the visibility of H-2B jobs to U.S. workers. This third party disclosure will be performed by the Department and is,

therefore, not included in the calculation of the public burden.

Recruitment Report (20 CFR 655.48). Also, the time needed to prepare the recruitment report in 20 CFR 655.48 of the proposed rule is not excludable in compiling the burden. Under this proposed provision, employers must prepare, sign, and retain a written summary report describing the recruitment steps undertaken and the results achieved, including the number of hires, and if applicable the number of U.S. workers rejected, summarized by the lawful job related reasons for such rejection. Additionally, under the proposed audit process detailed in 20 CFR 655.70, the Department may request the employer submit such a recruitment report along with the resumes or applications of U.S. workers sorted by the reasons they were rejected. The Department estimates that it will take employers 1 hour to prepare a recruitment report for a total burden of 6,425 reporting hours. (6,425 reports x 1 hour = 6,425 hours.)

F. <u>Worker's rights</u>

Provide copy of job order to workers (20 CFR 655.20(l) and 29 CFR 503.16(l)). The Department proposes to require employers to provide both the H-2B workers and U.S. workers in corresponding employment a copy of the job order. The Department has no available means of calculating how many U.S. workers are in corresponding employment. However, the Department does not always approve the total number of H-2B workers requested by the employer because it may find, for example, that the employer failed to hire qualified U.S. workers. Therefore, the Department assumes that the number of requested workers equals the total number of H-2B workers hired (115,500), adjusted for the number of workers hired by employers in the reforestation industry who are already subject to this requirement under MSPA or 102,012. The Department estimates it will take employers an average of 5 minutes to provide each worker with a copy of the job order. (102,012 workers x 5 minutes ÷ 60 minutes = 8,501 hours.). In addition, the Department estimates that 83.9 percent of H-2B workers from top ten program use countries do not speak English, resulting in the need to translate the job order. The Department estimates that 3,328 employers will need to translate their job orders. The Department estimates that a typical translation will take 1 hour, to complete. (3,328 employers x 1 hour = 3,328 hours). The resulting total burden for this third party disclosure is 11,829 hours.

Post notice of worker rights (20 CFR 655.20(m) and 29 CFR 503.16(m)). The proposed rule would require employers to post and maintain in a conspicuous location at the place of employment a poster provided by the Department that sets out the rights and protections for H-2B workers and workers in corresponding employment. However, this burden is exempt from the PRA under 5 CFR 1320.3(c)(2).

SWA informs applicants of requirements (20 CFR 655.47). The proposed rule would require SWAs to only refer individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity that they are qualified and will be available for employment. Since this requirement would be specific to the H-2B program and calls for the SWAs to go beyond their normal functions, it is, therefore, not exempt under 5 CFR 1320.3(d). The Department has never collected data on how many overall referrals the SWAs make under any of its foreign labor certification programs. However, the Department does track the number of partial certifications it issues due to the employers' failure to hire the qualified U.S. workers that are referred by the SWAs. The number of rejected U.S. applicants averages about 60,000 a year. The Department estimates it will take SWAs an average of 5 minutes to explain the job requirements to each worker for a total burden of 5,000 third party disclosure hours. (60,000 workers x 5 minutes ÷ 60 minutes = 5,000 hours.)

G. Retention Requirements

Retention of documents (20 CFR 655.10(h), 655.11(i),and 655.56). The Department proposes to require employers who file an H-2B Registration (ETA Form 9155), Application for Prevailing Wage Determination (ETA Form 9141), and Application for Temporary Employment Certification (ETA Form 9142) to retain any documents and records not otherwise submitted proving compliance with 20 CFR 655.10, 655.12(h), and 655.56. An employer whose application is approved is required to retain all such records for a period of 3 years from the final date of applicability of the H-2B Registration or Certification. An employer whose H-2B Registration or Certification is denied or withdrawn is also required to retain all records for 3 years, to be measured from the date of the final registration decision or date of receipt of the employers written request for withdrawal. The Department estimates that employers will spend about 10 minutes per year, per application to retain the required wage rate determination, Application for Temporary Employment Certification, and supporting documentation in the 2 years following the mandated 1 year of required retention for companies subject to Title VII and during the 5 years already mandated for all other employers. This results in an annual burden of 1,071 recordkeeping hours (6,425 applications x 10 minutes ÷ 60 minutes = 1,071 hours).

Exception to Corresponding Employment (20 CFR 655.5, 655.56(c)(13)). The Department added a new record retention requirement to § 655.56, which requires employers to retain collective bargaining agreements, individual employment contracts, and payroll records in order to substantiate any claim that certain incumbent workers are not included in corresponding employment.

The Department estimates that there is no burden associated with the retention of collective bargaining agreements or individual employment contracts, as employers maintain these records during their normal course of business.

The Department also estimates that a significant majority of H-2B employers are subject to the Fair Labor Standards Act (FLSA) that requires the retention of payroll records, which can be used to demonstrate that an incumbent worker meets the requirements to be excluded from corresponding employment. There are a negligible number of H-2B employers for whom this requirement would impose new recordkeeping burdens either because they are not subject to the FLSA or they do not keep these records in the ordinary course of business and this burden will not significantly impact the overall annual burden hours for the H-2B program information collection.

The Department estimates 198 certified H-2B employers are not subject to the FLSA, of which we estimate that 2 percent, or 4 employers, do not maintain payroll records in the ordinary course of business. For each of these H-2B employers, the Department estimates that there are 4 incumbent workers needing payroll records to demonstrate the minimum requirements for the corresponding worker exclusion. The Department estimates that it will take 1.5 hours to create payroll records for each employee, for a total burden of 24 recordkeeping hours. (4 employers x 4 workers x 1.5 hours = 24 hours)

The Department also estimates that all 198 certified H-2B employers will need to record the job duties for the 4 incumbent workers we estimate that employers will seek to exclude from the definition of corresponding employment. We estimate that it will take an employer an average of 10 minutes to record the job duties for each incumbent worker for a total burden of 132 hours. (198 employers x 4 workers x 10 minutes ÷ 60 minutes = 132 hours) If all incumbent worker job categories are the same, this burden will be less, but the Department has not way at this time of estimating how many job categories will be the same.

Based on our estimates, the total burden associated with the new record retention requirement in § 655.56 is 156 recordkeeping hours.

H. Post-certification requirements

Notification of abandonment or termination (20 CFR 655.20(y) and 29 CFR 503.16(y)). The proposed rule would require employers to notify the Department when any of their H-2B workers voluntarily abandon the job or are terminated before the certified end date of employment. The Department estimates it will take employers an average of 10 minutes to write an email to the Department to meet this requirement. The Department receives

approximately 2,500 such emails each year for a total burden of 417 reporting hours. (2,500 notifications x 10 minutes ÷ 60 minutes = 417 hours.)

Redeterminations (20 CFR 655.57)
The Final Rule will allow an employer to petition the Department for a redetermination if U.S. workers recruited as a result of the labor market test become unavailable on or during the 10-day period before the date of need. The Department estimates it takes employers 30 minutes to call or email the Department with its request and then follow-up with a written request. The Department estimates that it will receive approximately 11 such requests each year for a total reporting burden of 6 hours. (11 x 0.5 hours = 6 hours).

Extension of the certified period of employment (20 CFR 655.60). The proposed rule would permit employers, under certain circumstances involving weather conditions or other factors beyond the control of the employer, to request in writing an extension of the certified period of employment. The Department estimates that it will receive approximately 326 such requests each year. The Department also estimates that it will take the employer 30 minutes to comply with this requirement for a total burden of 163 reporting hours. (326 notices x 0.5 hours = 163 hours.)

Administrative Appeals (20 CFR 655.61). The Department proposes to permit an employer whose certification is denied to request administrative review of the decision by the Board of Alien Labor Certification Appeals. To do so an employer must submit a written request for review within 10 business days from the date of determination. The Department estimates that it will receive approximately 110 such requests each year. The Department also estimates that it will take the employer 1 hour to comply with this requirement for a total burden of 110 reporting hours. (110 notices x 1 hour = 110 hours.)

Request for withdrawal (20 CFR 655.62). The proposed rule would permit employers to request withdrawal of an application after it has been accepted for processing, but before it is adjudicated. The Department estimates that it will receive approximately 184 such requests each year. The Department also estimates that it will take the employer 10 minutes to comply with this requirement for a total burden of 31 reporting hours. (184 notices x 10 minutes ÷ 60 minutes = 31 hours.)

I. <u>Integrity measures</u>

Audit, revocation, and debarment (20 CFR 655.70, 655.72, and 655.73). The proposed rule would authorize the Department at its discretion to audit applications to ensure program integrity. Based on the results of these audits or other information, the Department may revoke a certified application and/or place an employer, agent, or attorney in debarment proceedings. These

processes require employers to respond to notices sent by the Department. However, such responses are exempt from the paperwork burden under 5 CFR 1320.3(h)(6) & (9) and 5 CFR 1320.4(a)(2).

CO-ordered assisted recruitment (20 CFR 655.71). In cases where the employer violated the terms of the program and the Department determines that the violation does not warrant debarment, under the Final Rule some employers will be required to receive assistance in conducting recruitment during their next participation in the program (20 CFR 655.71). In the past employers were required to undergo a similar process called supervised recruitment. Based on its program experience, the Department estimates that employers will be required to undergo assisted recruitment in approximately one half of one percent of the applications in the initial stages of the implementation of the Final Rule. This burden may need adjustment in future as program experience increases and more employers are required to undergo assisted recruitment. The time required to conduct recruitment is already accounted for in the recruitment burden calculation above. In addition, the Department estimates that an employer will spend an additional one hour in additional reporting incident to this manner of recruitment. Such additional reporting results in 32 reporting hours. (6,425 applications x 0.005 x 1 hour = 32 hours).

Cooperation with investigators (29 CFR 503.16(bb)). The Department's Wage and Hour Division is authorized to investigate employer compliance with the provisions of this regulation. The proposed rule would require employers to cooperate with and comply with any requests made by Wage and Hour Division investigators as part of this process. However, such responses are exempt from the paperwork burden under (9) and 5 CFR 1320.4(a)(2).

Request for hearing by Administrative Law Judge (29 CFR 503.43). The proposed rule would permit an employer found by the Wage and Hour Division to be in violation of the regulations to request in writing review of the decision by the Administrative Law Judge of the Department. The Department estimates that it will receive approximately two such requests each year. The Department also estimates that it will take the employer 2 hours to comply with this requirement for a total burden of 4 reporting hours. (2 notices x 2 hours = 4 hours.)

Request for hearing with Administrative Review Board *(29 CFR 503.51)*. The proposed rule would permit an employer who disagrees with the findings of the Administrative Law Judge to request in writing review of the decision by the Administrative Review Board of the Department. The Department estimates that it will receive approximately one such request each year. The Department also estimates that it will take the employer 30 minutes to comply with this requirement for a total burden of 1 reporting hour. (1 notice x 0.5 hours = 0.5 hours.)

Total Annual Burden Hours for the H-2B Information Collection

40,173 Reporting Hours
1,227 Recordkeeping Hours
29,947 Third Party Disclosure Hours

71,347 Total Burden Hours
257,652 Total Responses
6,425 Total Repondents

The estimated average hourly reporting burden includes those elements that are common to the majority of applications.

Estimated Time Reporting Burden Per H-2B Application Process
ETA Form 9155 – 1 hour
ETA Form 9141 – 1 hour
ETA Form 9142 – 4 hours[5]

III. The H-1B program (including H-1B1 and E-3)

A. Determination of wages to be paid for purposes of approval of a Labor Condition Application.

In order to complete the ETA Form 9035, Labor Condition Application (OMB control number 1205-0310), an employer must determine the appropriate wage to pay the foreign worker. The regulations require employers to determine the appropriate wage in advance of submitting the Labor Condition Application (LCA). Unlike in the H-2B and PERM programs, under the Department's regulations at 20 CFR 655.731, an H-1B, H-1B1 or E-3 employer has the option of requesting a prevailing wage determination from the NPWC using the ETA Form 9141 which includes reviewing the Department's wage information available through the Online Wage Library at http://www.flcdatacenter.com/OESWizardStart.aspx. The employer may choose not to request a formal prevailing wage determination and instead rely on the wage information available through the Department's Online Wage Library without requesting a formal prevailing wage determination from the NPWC, or the employer may rely on another legitimate source of wage information such as a collective bargaining agreement or another source. The first option, however, has a distinct advantage of affording the employer a safe harbor in the case of an investigation by the Wage and Hour Division. If the employer chooses to request a prevailing wage determination from the NPWC

[5] The estimation of the hourly burden for the ETA 9142 H-2B process took into consideration the average hourly burden for Application 1 hour or 60 minutes, Notice of Deficiency/Modification 1 hour or 60 minutes, unique H-2B job order 1.0 hour or 60 minutes and Recruitment Report 1 hour or 60 minutes.

using ETA Form 9141, it will take the employer approximately 1 hour to complete and file the prevailing wage request with the NPWC using the ETA Form 9141. Those employers who choose to look up the wage themselves require only 15 minutes to do so. Program experience has shown that at least 90 percent of applicants use the first two methods, and 10 percent rely on another legitimate source of wage information such as collective bargaining agreements and other sources. The Department receives an average of 361,927 Labor Condition Applications filed on the ETA Form 9035 a year of which 21,798 request prevailing wage determinations from the NPWC using the ETA Form 9141.

In the H-1B program, the employer may, in the course of requesting a prevailing wage determination from the NPWC submit its own survey to the NPWC for validation, if it meets the requirements of 20 CFR 655.40(g). If the NPWC finds the survey provided by the employer unacceptable, the employer may submit supplemental information for the NPWC's consideration. The Department has found that in the past employers challenged the determination and/or submitted supplemental information in approximately 3.5 percent of the prevailing wage determination requests and that it will take employers 1 hour to prepare such requests. The Department further found that two-thirds of those employers appeal the final decision of the Certifying Officer to the Center Director and only one or two appeal the Center Director's decision to the Board of Alien Labor Certification Appeals (BALCA). The Department estimates it takes an employer 30 minutes each to prepare the appeal to both the Center Director and BALCA. The total annual burden associated with the H-1B prevailing wage is 98,800 reporting hours. (21,798 x 1 hour = 21,798 hours) + (303,936 x 15 minutes ÷ 60 minutes = 75,984 hours) +(21,798 x 0.035 x 1 hours = 763 hours) + (763 x 0.667 x 0.5 hours = 254 hours) + (2 x 0.5 hours = 1 hour).

B. <u>Retention of Supporting Documentation</u>

The Department estimates that employers will spend about 10 minutes per year, to retain the documentation of its compliance with the required wage rate under 20 CFR 655.731, including, if applicable, the prevailing wage determination and any required supporting documentation during the requisite retention period. This results in an annual burden of 60,321 recordkeeping hours. Record keeping burden for determining the appropriate wage without a PWD (361,927 x 10 minutes ÷ 60 minutes = 60,321 hours).

Total Annual Burden Hours for the H-1B Information Collections:

98,800 Reporting Hours
60,321 Recordkeeping Hours

159,121 Total Burden Hours

724,872 Total Responses
361,927 Total Respondents

Average Time Per Application Process:

ETA Form 9141 only – 1 hour

III. The H-1C program – No longer in use

The H-1C program, which allowed certain hospitals in the United States to obtain visas for foreign nurses, has sunset. Therefore, the previous burden numbers for that program are not included for this extension request.

IV. The PERM program

A. Determination of wages to be paid for labor certification

In order to recruit U.S. workers and complete the ETA Form 9089, Application for Permanent Employment Certification (OMB control number 1205-0451), an employer must obtain the appropriate wage in advance of filing the ETA Form 9089 by submitting the Application for Prevailing Wage Determination ETA Form 9141 to the NPWC and receiving a prevailing wage determination. Program experience shows that the majority of employers will accept the NPWC's determination and will, therefore, only spend 1 hour preparing and submitting the Application for Prevailing Wage Determination (ETA Form 9141) to the NPWC. In the PERM program, the employer has the option of submitting its own survey if it meets the requirements of 20 CFR 656.40(g) for NPWC validation. If the NPWC finds the survey provided by the employer unacceptable, the employer may submit supplemental information for the NPWC's consideration. The PERM program also allows employers to appeal the prevailing wage determination. The Department has found that in the past employers challenged the determination and/or submitted supplemental information in approximately 3.5 percent of the prevailing wage determination requests and that it will take employers 1 hour to prepare such requests. The Department further found that 2.32 percent of those employers appeal the decision of the Certifying Officer to the Center Director and only one or two appeal the Center Director's decision to the Board of Alien Labor Certification Appeals (BALCA). The Department estimates it takes an employer 30 minutes each to prepare the appeal to both the Center Director and BALCA. The total annual burden of the PERM prevailing wage determinations is 94,882 reporting hours. (91,637 x 1 hour = 91,637 hours) + (91,637 x 0.035 x 1 hour = 3,207) + (3,207 x 0.0232 x 0.5 hours = 37 hours) + (2 x 0.5 hours = 1 hour).

B. Retention of Supporting Documentation

The Department estimates that employers will spend about 10 minutes per year per application to retain an application and required supporting documentation in the four years following the mandated one year retention for companies subject to Title VII and five years for all other employers. This results in an annual burden of 15,273 recordkeeping hours (91,637 applications x 10 minutes ÷ 60 minutes = 15,273 hours).

Total Annual Burden Hours for the PERM Information Collection related to

ETA Form 9141 only –
94,882 Reporting Hours
15,273 Recordkeeping Hours

110,155 Total Burden Hours
186,557 Total Responses
91,637 Total Respondents

Average Time Per Application Process
ETA Form 9141 only – 1 hour

VI. Total Hourly Cost

Employers filing applications for temporary and permanent alien employment certification may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. However, the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager ($52.21), based on the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data,[6] and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $74.66. This number was multiplied by the total hourly annual burden for the information collection for each foreign labor certification program in order to arrive at total annual respondent hourly costs for all information collections under this extension request. The total annual respondent hourly costs are estimated as follows:

[6] Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2010 National Occupational Employment and Wage Estimates; Management Occupations.

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H-2A	48,602 x $74.66	=	$3,628,625
H-2B	71,347 x $74.66	=	$5,326,767
H-1B	159,121 x $74.66	=	$11,879,973
H-1C	0 x $74.66	=	$0
PERM	110,155 x $74.66	=	$8,224,172
Total:	389,225 hours		$29,059,537

Total hours for H-2A IC: 48,602
Total hours for H-2B IC 340,623

Total annual respondent hour costs under OMB control No. 1205-0466 are 389,225 hours x $74.66 = $29,059,537 of which $5,326,767 is attributed to the H-2B Comprehensive Final Rule.

A.13. Estimated cost burden to respondents.

a. Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from the Department's Office of Foreign Labor Certification. To participate in the program the employer is required to generate records and retain them. The only necessary supplies needed to store and maintain the records are filing cabinets and filing folders, however employers have the option of maintaining records in electronic format. The Department estimates that the initial cost to employers is minimal because it is a customary and usual business practice for businesses to have storage space whether physical or electronic.

However, there is a one-time fee the H-2A applicant must pay the Department after its application has been approved. The H-2A regulations stipulates that the applicant who receives an approved labor certification must pay $100 plus $10 for each foreign worker requested with an overall cap of $1,000 per application. Assuming a 95% approval rate and the same amount of approved foreign workers as in previous years at 95,550, the Department estimates the maximum cost to employers will be $1,712,815 [(7,977 applicants x .95 x $100) + (95,500 foreign workers x $10)].

b. Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms and, subject to future OMB approval, the web-based data collection and reporting system.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost[7] for a year of operation 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. The total cost to the Federal Government for the H-2A and the H-2B programs and the prevailing wage determinations for H-1B, H-1B1, E-3, H-1C, and PERM is estimated at $ and is calculated as follows:

I. H-2A program:

Estimated Hours - Data Entry/Review

NPC Staff Cost for Verifying the Offered Wage Rate $276,044
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes
$69.21 x 7,977 x 0.5 hours = $276,044

SWA Cost to Post Job Order and Refer Applicants $552,088
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1 hour
$69.21 x 7,977 x 1 hour = $552,088

Data Entry $1,322
(A small (1%) sampling of prevailing wage applications are data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$33.04 x 80 applications x 0.5 hours = $1,322

Staff Cost for Adjudicating Applications (ETA Form 9142) $828,132
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1.5 hours
$69.21 x 7,977 x 1.5 hours = $828,132

Management Cost for Review of Applications $182,836
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$97.24 x 2,507 x 0.75 hours = $182,836

Staff Cost for Receiving and Logging Notifications
(modifications, amendments, extensions, withdrawals) $29,377

[7] The Federal Government cost estimates are based on the U.S. Office of Personnel Management 2011 Salary Tables. Please see: http://www.opm.gov/oca/11tables/index.asp. The cost estimate for the adjudication of prevailing wage applications (for the H-2B, H-1B, H-1B1, E-3 and PERM programs) uses wage data from the locality pay schedule for the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA area; the cost estimate calculation for the adjudication of H-2A and H-2B temporary employment certification applications relies on the locality pay schedule for the Chicago-Naperville-Michigan City, IL-IN-WI area to reflect the locations of ETA's National Processing Centers.

Staff (GS-9, Step 5 x 1.69 FLFTE) @ 15 minutes
$47.71 x 2,463 x 15 minutes ÷ 60 minutes = $29,377

Staff Cost for Adjudication of Extensions $14,465
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes
$69.21 x 418 x 0.5 hours = $14,465

Management Review of Petitions for Meal Charges $6,126
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$97.24 x 84 x 0.75 hours = $6,126

Staff Cost for Appealed Applications $7,546
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$97.24 x 92 appeals x 0.75 hours = $6,710
Administrative Law Judge (AL/3C x 1.69) @ 1 hour
$97.09 x 92 appeals x 1 hour = $836

Estimated Total Cost for H-2A

Staff	= $ 1,897,936
Printing/Mailing	
Total	= $ 8,961
	$ 1,906,897

II. H-2B program:

Estimated Hours - Data Entry/Review

Staff Cost for Adjudicating Requests for H-2B Registrations $823,203
H-2B Registration (ETA Form 9155)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1.5 hours
$69.21 x 6,425 x 1.5 hours = $667,011
Manager (GS-14, Step 5 x 1.69) @ 15 minutes
$97.24 x 6,425 x .25 hours = $156,192

Data Entry $2,131
(A small (2 percent) sampling of requests will be data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$ 33.04 x 129 requests x 0.5 hour = $2,131

NPC Cost for Prevailing Wage Determinations (ETA Form 9141) $220,763
Staff (GS-12, Step 5 x 1.69 FLFTE) @ .5 hours
$68.72 x 6,425 x 0.5 hours = $220,763

Data Entry Cost for Prevailing Wage Applications $2,116
(A small (2 percent) sampling of applications will be data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$32.80 x 129 applications x 0.5 hour = $2,116

Staff Cost for Appealed Prevailing Wage Determinations $25,472
Center Director (GS-15 Step 5 x 1.69) @ 2 hours
$113.58 x 110 requests for Center Director Review x 2 hours = $24,987
Administrative Law Judge (AL/3C x 1.69) @ 1 hour
$97.09 x 5 administrative appeals x 1 hour = $485

Staff Cost for Adjudicating Applications for Temporary Employment Certification (ETA Form 9142) $477,058
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1 hour
$69.21 x 6,425 x 1 hour = $444,674
Manager (GS-14, Step 5 x 1.69) @ 30 minutes
$97.24 x 6,425 x 0.5 hours = $312,384

Data Entry for H-2B Applications $2,131
(A small (2 percent) sampling of applications will be data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$ 33.04 x 129 applications x 0.5 hour = $2,131

Staff Cost for RFIs or Modified Applications $1,081,559
(30 percent of applications are modified and 30 percent of registrations will need additional information)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 3 hours
$69.21 x 3,855 x 3 hours = $ 800,414
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$97.24 x 3,855 x 0.75 hours = $281,145

Staff Cost for Appealed Applications and H-2B Registrations $10,680
Administrative Law Judge (AL/3C x 1.69) @ 1 hour
$97.09 x 110 x 1 hour = $10,680

Staff Cost for Assisted Recruitment $10,205
(0.5% of applications are estimated as requiring assisted recruitment)
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 2.5 hours
$69.21 x 32 x 2.5 hours = $5,537
Manager (GS-14, Step 5 x 1.69) @ 1.5 hours
$97.24 x 32 x 1.5 hours = $4,668

Estimated Total Cost for H-2B

Staff	$2,655,318
Printing/Mailing	
Total	$ 6,500
	$2,661,818

III. H-1B program (including H-1B1 and E-3):

APPLICATIONS FOR PREVAILING WAGE ONLY

Staff Cost for Adjudicating Prevailing Wage Applications $1,123,469
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 45 minutes
$68.72 x 21,798 x 0.75 hours = $1,123,469

Data Entry Cost for Prevailing Wage Applications $7,150
(A small (2 percent) sampling of applications will be data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$32.80 x 436 applications x 0.5 hour = $7,150

Staff Cost for Appealed Prevailing Wage Applications $171,069
(3.5% of applications are appealed)
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$96.55 x 763 x 0.75 hours = $55,251
(66.7% of those request Center Director Review)
Center Director (GS-15 Step 5 x 1.69) @ 2 hours
$113.58 x 509 x 2 hours = $115,624
(2 applications are appealed to BALCA)
Administrative Law Judge (AL/3C x 1.69) @ 1 hour
$97.09. x 2 x 1 hour = $194

Estimated Total Cost for H-1B **$1,301,688**

IV. H-1C program: The H-1C program is no longer in effect.

V. PERM program:

APPLICATIONS FOR PREVAILING WAGE ONLY

Staff Cost for Adjudicating Prevailing Wage Applications $4,722,971
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 45 minutes
$68.72 x 91,637 x 0.75 hours = $4,722,971

Data Entry Cost for Prevailing Wage Applications $30,061
(A small (2 percent) sampling of applications will be data entered for statistical purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 30 minutes
$32.80 x 1833 applications x 0.5 hour = $30,061

Staff Cost for Appealed Prevailing Wage Applications $ 249,231
(3.5% of applications are appealed)
Manager (GS-14, Step 5 x 1.69) @ 45 minutes
$96.55 x 3,207 x 0.75 hours = $232,227
(2.32% of those request Center Director Review)
Center Director (GS-15 Step 5 x 1.69) @ 2 hours
$113.58 x 74 x 2 hours = $16,810
(2 applications are appealed to BALCA)
Administrative Law Judge (AL/C3 x 1.69) @ 1 hour
$97.09 x 2 x 1 hour = $194

Estimated Total Cost for PERM **$5,002,263**
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TOTAL COST TO FEDERAL GOVERNMENT **$10,872,666**

A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.

This ICR requests a change of 627,917 responses (from 693,902 to 1,321,819), 123,785 burden hours (from 513,010 to 389,225), and $137,475 in other burden costs (from $1,575,340 to $1,712,815)

The changes reflected in this ICR are attributed to the 2012 H-2B Comprehensive Final Rule[8] and the 2010 H-2A Final Rule. Previously this Information Collection Request (ICR) contained the burden and cost estimates for the H-2A and H-2B rulemaking that occurred in 2008 and became effective in January of 2009. The Department created two distinct ICs within the one ICR. This submission also corrects the estimated burden totals for a prior rulemaking that OMB preapproved and the Department inadvertently failed to activate when received in late 2009 to account for the then new regulations in the H-2A program. The current rulemaking modifies the existing H-2B regulations and, due to revisions to the ETA Form 9141, also affect the burden hours for the prevailing wage function in the H-1B (including H-1B1 and E-3) and PERM programs. The changes in the number of responses in both the H-2A and H-2B ICs are due to new requirements in the proposed rule and

[8] Changes in the cost burden are also attributable to higher wage rates in the private sector, as well as higher Federal Government pay rates.

better calculations of the information collections required. The decrease in burden hours, however, is due to updated data on program usage, and the sunset of the H-1C program. Agency experience shows that fewer employers are utilizing these programs than previously estimated. Current estimates are based on the annual average of actual applications received over the course of three years.

The Department has updated the burden entries in ROCIS for both the H-2B and the H-2A information collections to reflect the information contained in this Supporting Statement.

In addition, the Department has updated the burden estimates to account for updated information not affected by this rule. These updated estimates include . . .

In addition, as indicated in A.12 above, the Appendix A.1 to the ETA Form 9142 was removed from the Department's August 19, 2009 ICR submission (see, ICR Ref No.: 200908-1205-004), but was inadvertently left in ROCIS. It is now being removed.

A.16. Method for publishing results.

OFLC discloses information about employer applicants to the public on its public access webpage at http://www.flcdatacenter.com/CaseData.aspx.

For the H-2A program, the name and address of the employer; the number of foreign workers requested and certified; the occupation; the rate of pay; the hours per week guaranteed; and the date certification begins and ends, along with final determination by the Department, and are all disclosed on the website.

For the H-2B program, the name, address, phone number, agent, and contact person of the employer; the number of foreign workers requested; the occupation; the salary proposed; and the prevailing wage, along with final determination by the Department are all disclosed on the website.

For the H-1B program, the name and address of the employer; the number of foreign workers requested; the occupation; the salary proposed; and the prevailing wage, its source and year of publication, along with final determination by the Department and the dates of validity are all disclosed on the website.

For the PERM program, the name and address of the employer; the citizenship of the foreign worker for whom certification is sought; the occupation; the salary proposed; and the prevailing wage, along with final determination by the Department are all disclosed on the website.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

The Department will display the expiration date for OMB approval on all affected forms.

A.18. Explanation of each exception in the certification statement identified in Item 19 “Certification for Paperwork Reduction Act Submissions” on OMB Form 83-1.

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

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.