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

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SUPPORTING STATEMENT

H-2A APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION
1205-0466

A. Justification

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

The information collection (IC) is required by sections 101(a)(15)(H)(ii)(a); 214(c); and 218 of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1011(a)(15)(H)(ii)(a), 1184(c), and 1188) and 8 CFR 214.2(h). The INA requires the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) 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 similarly employed. The Secretary must also certify that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may petition for any temporary 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 regulations.

The information contained in the ETA Form 9142A is the basis for the Secretary's determination that no U.S. workers are available. The ETA Form 9142A, *H-2A Application for Temporary Employment Certification*, is used to collect information to permit the Department to meet its statutory responsibilities for administering the H-2A temporary labor certification program. 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). 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 reminded of this requirement in the Certification Letter (ETA-9144 – now being merged into this collection and previously approved under OMB Control Number 1205-0404) they receive when the Department certifies their need for H-2A workers.

On April 8, 2012, OMB approved changes to this Information Collection Request (ICR) in conjunction with recent rulemaking resulting in a final rule published on February 21, 2012 (the 2012 H-2B Final Rule). 77 FR 10038. All comments, documents, and forms related to the ICR approved in conjunction with the 2012 H-2B Final Rule can be found on http://www.reginfo.gov. However, a lawsuit was brought in Federal court in the Northern District of Florida, Pensacola Division, against the Department and an order was issued on April 26, 2012 by the court enjoining the Department from implementing the 2012 H-2B Final Rule. (*Bayou Lawn & Landscape Services, et al. v. Hilda L. Solis, et al*., 12-cv-00183-RV-CJK.) In order to administer the H-2A program, it must accordingly revert back to the information

collection instruments used in this collection prior to 2012 H-2B Final Rule. The Department received emergency approval to do so from OMB on April 27, 2012.

The Department is taking this opportunity to separate out the three different ICs that were formerly all contained in 1205-0466 as well as discontinue 1205-0404 by merging it into the new 1205-0466. Specifically, 1205-0466 will contain forms and most regulatory information collection requirements applicable to the H-2A program. The ETA Form 9142 and Appendix A.2 (now to be referred to only as Appendix A) will be known as the ETA Form 9142A, *H-2A Application for Temporary Employment Certification and Appendix A*. Because 1205-0404 is a small ICR having to do specifically with the notification requirements of the 50 percent rule in the H-2A program, it is being merged with the new 1205-0466 after the extension is granted and then 1205-0404 will be discontinued. The ICR, 1205-NEW1, will contain forms and most regulatory information collection requirements applicable to the H-2B program. The ETA Form 9142 and Appendix B.1 (now to be referred to only as Appendix B) will be known as the ETA Form 9142B, *H-2B Application for Temporary Employment Certification and Appendix B*. The ETA Form 9141, *Application for Prevailing Wage Determination*, which is applicable to the H-2B, H-1B, H-1B1, E-3, and PERM programs, will go into its own ICR, 1205-NEW2. The Department sought notice and comment on August 15, 2012 (77 FR 49025) on the further extension of the appropriate forms, the merger of 1205-0404 into 1205-0466, and the separation of forms into individual ICRs.

This Supporting Statement is written with the separation in mind and contains only the information pertinent to the H-2A program including the information for 1205-0404, which is also contained in its own supporting statement for the purposes of a temporary extension until it is discontinued. The information for the H-2B program has been moved to the 1205-NEW1 ICR and for the Prevailing Wage Determination form to the 1205-NEW2 ICR.

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

In order to meet its statutory responsibilities under the INA, the Department must request information from employers seeking to hire and import foreign labor. The Department uses the information collected to determine eligibility of an employer for the H-2A nonimmigrant temporary agricultural worker 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 has completed its conversion of the form in this collection to electronic filing; that conversion will be activated upon approval of this ICR and the Department expects to see a future reduction of burden hours as a result. At this time the ETA Form 9142 is

available as a fillable PDF form at
http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142.pdf for manual filing and will be available for electronic filing through the Department's iCert Visa Portal System at http://icert.doleta.gov/ upon approval of this ICR. The letter required of employers informing the SWA of late arrivals can, in many cases be sent by fax or email.

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 Form 9142A is sufficiently diverse to avoid duplication of activities within the Department for the H-2A program.

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.

Employers choose how frequently they apply for benefits. The Department cannot issue such benefits without collecting at least basic information on the employer and the job opportunity being offered the foreign worker. 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 the regulatory requirement that employers retain the records and supporting documents used to fill in the forms for at least three years for the H-2A program.

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

The public was given 60 days to comment on this collection from August 15, 2012 to October 15, 2012 (77 FR 49025, Aug. 15, 2012). The Department received two comments on the ETA-9142A information collection. The comments dealt with

specific word changes to the forms to, in one case, eliminate references to H-2B requirements and visa classification and, in another case, to not change the wording in Section C as proposed. The Department agrees with the majority of the suggestions either completely or in part. Specifically, one commenter suggested deleting question 6 of Section H. Recruitment Information: “Additional recruitment activities for H-2B program.” The Department agrees that this question as stated should be removed from the ETA Form 9142A; however it will be amended to read: “Additional recruitment activities for H-2A program,” which will serve as a reminder to employers that they may also have other available sources of recruitment in their search to locate U.S. workers. The same commenter suggested deleting Question 2 in Section I that is a declaration for H-2B applicants only. The Department agrees and will remove this statement as soon as practicable. Finally, this commenter suggested that the question regarding the type of visa be deleted; however, the Department disagrees because the employer’s requirement to provide the type of visa classification serves as recognition from the employer that it has requested the appropriate type of visa for the job opportunity. The second commenter questioned why we changed Section C of the instructions for the types of employers that might file applications and asked the Department to define a new term appearing in the instructions - “main or primary employer.” The Department has taken this comment into consideration and is reverting back to the language used in the current instructions.

Due to budgetary and technological constraints of building an electronic system, the Department will not be able to implement the suggested changes that affect the form itself until after the initial launch of the electronic system. However, the changes to instructions will be implemented immediately.

The Department received one comment from a farm worker advocacy group supporting the language contained in the ETA-9144 letter, which is currently under the 1205-0404 control number.

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.

The information collected is not exempt from full disclosure under the Freedom of Information Act. No assurance of confidentiality is provided.

A.11. Justification for any sensitive questions.

The information collected does not involve sensitive matters.

A.*12. Estimated hourly burden.*

Based on recent program experience, the Department estimates it will receive approximately 7,218 ETA Form 9142 submissions for the H-2A program. The total hourly burden is 44,084 hours.

A. Determination of wages to be paid for H-2A labor certification purposes

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), the prevailing hourly or piece rate, the agreed-upon collective bargaining wage rate (CBA), or the Federal or State minimum wage, in effect at the time the work is performed. 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 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 1,203 reporting hours (7,218 x 10 minutes ÷ 60 minutes = 1,203 hours).

B. H-2A Application for Temporary Employment Certification

Employers submit an H-2A Application for Temporary Employment Certification (ETA Form 9142A) 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 7,218 applications for a total burden of 7,218 reporting hours (7,218 applications x 1 hour = 7,218 hours).

H-2A Labor Contractors (H-2ALCs) 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 fully-executed 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 approximately 559 H-2ALC employers who operate in the H-2A program 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 2011 4,553 applications were filed by agents and attorneys. Therefore, the hourly burden for this collection is 2,277 reporting hours (4,553 filers x .5 hours = 2,277).

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 regulations allow 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, 655.151, 655.153, and 655.154 of the H-2A regulations is excluded in compiling the paperwork burden estimates under the regulations.

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 regulations. 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.

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 7,218 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 7,218 recordkeeping hours (7,218 applications x 1 hour = 7,218 hours).

D. Retention of Supporting Documentation 20 CFR 655.167

The Department estimates that employers will spend about 10 minutes per year per application to retain the required wage rate determination, H-2A 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 1,203 recordkeeping hours (7,218 applications x 10 minutes ÷ 60 minutes = 1,203 hours).

E. 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 business days of the termination or discovery of 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.

F. 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 regulations also require 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 241 third party disclosure hours (7,218 applications x 2 minutes ÷ 60 minutes = 241 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 602 third party disclosure hours (7,218 applications x 5 minutes ÷ 60 minutes = 602 hours).

G. 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 9142A and ETA Form 790 (OMB control number 1205-0137). Program experience shows that over three years an average of 80,757 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 20,189 third party disclosure hours. (80,757 workers x .25 hours = 20,189 hours)

H. Amending the H-2A Application for Temporary Employment Certification (ETA 9142)

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)

I. Post-Certification Processes

Extensions
After the Department has certified an H-2A 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
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; 655.142 modifications; 655.164 denials; 655.165 partial certifications; 655.181 revocation; and 655.182 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).[1]

Withdrawals

[1] 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 to 443 due to operational challenges related to the implementation of the 2010 H-2A Final Rule. These issues have ceased and the appeal rate has accordingly dropped. In FY 2012, to date, the Department has received three to four appeals per month except for the peak filing month of February where 36 appeals were filed. These issues have ceased and the appeal rate has accordingly dropped.

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
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 hours. (11 x 0.5 hours = 5.5 hours)

Integrity Measures
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) exempts administrative actions such as audits of specific individuals or entities.

J. 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, which includes lodging, where necessary. 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).

K. Complaints

The regulations provide 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.

L. Housing

Agricultural employers hiring employees outside the commuting area must provide housing for those employees. If provided by the employer, housing must be inspected and approved by the local SWA; if the housing is a rental or public accommodation, the employer must document to the satisfaction of the CO that the housing complies with the applicable standards. The regulations further require that if certified housing becomes unavailable the employer must promptly notify the SWA in writing of the change in accommodations and the reason(s) for such change and provide the SWA evidence of compliance with the applicable local, State, or Federal safety and health standards. See 20 CFR 655.122(d)(6). The SWA, in turn, must inspect the new housing and notify the CO and employer in writing to cure the deficiencies if the housing does not meet the applicable housing standards.

The Department estimates that it will take the SWA 30 minutes to generate the SWA certification letter and send it to the CNPC and it will take employers 15 minutes to write a statement self-certifying that their rented housing complies with local, State, or Federal standards and enclose it with their application. The Department receives about 2/3 from the SWA and 1/3 from employers for a total burden of 3,005 reporting hours [(7,218 applications x .666 x .5 hours) + (7218 applications x .333 x .25 hours) = 3,005 hours]. The Department

estimates that approximately 25 employers change the housing for their employees at the last minute and must inform the SWA in writing of this change. The Department estimates it takes an employer 20 minutes to compose a letter to the SWA for a total of 8 reporting hours (25 x 20 minutes ÷ 60). Of those 25, approximately 5 fail the new inspection and the SWA must inform the CO in writing of the failure to pass inspection for a total of 2 reporting burden hours (5 x 20 minutes ÷ 60).

M. Workers' Compensation

The regulations at 20 CFR 655.122(e) require an agricultural employer to provide proof of workers' compensation insurance coverage to the CO and if necessary write a note stating that they will extend it beyond its current expiration date if it will expire during the time the H-2A workers are working for the employer. The Department estimates that it will take employers an average of 10 minutes to copy their insurance policy and in some cases write a note attesting to their plan to extend the policy and attach it to their application for a total burden of 1,203 reporting hours (7,218 applications x 10 minutes ÷ 60 = 1,203 hours).

N. Fifty Percent Rule Requirements

The Department's regulation at 20 CFR 655.135(d) defines the 50 percent rule, which requires the employer, who received labor certification in the H-2A program, to provide employment to any qualified, eligible U.S. worker who applies to the employer until 50 percent of the time of need for the foreign worker has elapsed. 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 reminded of this requirement in the Certification Letter (ETA-9144) they receive when the Department certifies their need for H-2A workers. This provision is necessary so that the SWA can begin its calculation of when to stop referring workers under the 50 percent rule and when the employer can cease accepting referrals.

ETA estimates that under the departure date regulation at 20 CFR 655.135(c), the employers that file 7,218 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 361 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 90 reporting hours to provide the notification required under the regulation. (361 x 0.25 = 90 hours)

Annual Burden Hours for H-2A Information Collections:
14,721 Reporting Hours

8,421 Recordkeeping Hours
21,032 Third Party Disclosure Hours
44,174 Total Hours

Average Time Per Application Process
Prevailing wage – 10 minutes
ETA Form 9142A – 1 hour
Other H-2A ICs – 20 minutes

Total H-2A Responses: 148,217
Total H-2A Respondents: 7,218

V. Total Hourly Cost

Employers filing applications for temporary 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 entities a Human Resources Manager, or similarly situated employee, 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,[2] 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:

Total Burden Cost 44,174 x $74.66 = $3,298,031

A.13. Estimated cost burden to respondents.

Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the programs. Anyone without computer

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

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access can request the forms from OFLC. However, to participate in the H-2A program, employers are required to generate records and retain them. The only necessary supplies needed to store and maintain the records are filing cabinets and (optimally) filing folders. 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.

However, there is a one-time fee the H-2A employer must pay the Department after its application has been approved. The regulations indicate that an employer 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 100% approval rate and the same amount of foreign workers as in previous years at 80,757, the Department estimates the maximum cost to employers will be $1,529,370 [(7,218 applicants x $100) + (80,757 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 OMB approval, the web-based data collection and reporting system.

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

The average Federal Government cost 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 is estimated at $1,156,324 calculated as follows:

Estimated Hours - Data Entry/Review

NPC Staff Cost for Verifying the Offered Wage Rate $249,743
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes
$69.20[3] x 7,218 x 0.5 hours = $249,743

SWA Cost to Post Job Order and Refer Applicants $455,889
Staff (Equivalent of GS-12, Step 5 x 1.69 FLFTE) @ 1 hour
$63.16[4] x 7,218 = $455,889

SWA Cost to Write to CO About Change of Housing $158
Staff (Equivalent of GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes

[3] Based on 2012 Federal General Schedule Salary Table for Chicago, IL.
[4] Based on 2012 Federal General Schedule Salary Table for the Rest of the United States.

$63.16 x 5 x .5 hours = $158

Data Entry — $ 39,735
(A small portion of data from the applications will be entered for public disclosure purposes)
Clerical (GS-6, Step 3 x 1.69 FLFTE) @ 10 minutes
$ 33.03[5] x 7,218 applications x 10 minutes ÷ 60 = $39,735

Staff Cost for Adjudicating Applications — $749.228
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1.5 hours
$69.20 x 7,218 x 1.5 hours = $749,228

Staff Cost for Informing Employer of Late Arrival Obligation — $41,624
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 5 minutes
69.20 x (7,218 x 5 minutes ÷ 60) = $41,624

Estimated Total Cost for H-2A

Staff	= $1,536,377
Printing/Mailing	= $ 8,000
	$1,544,377
	=========
Total Cost to Federal Government	**$1,544,377**

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 956,530 responses (from 1,104,747 to 148,217) and 424,728 burden hours (from 468,902 to 44,174). The burden costs are slightly lower because the number of H-2A workers has decreased. The ICR requests a change of $75,900 (from $1,605,270 to $1,529,370).

The changes reflected in this ICR are attributed to the separation of this ICR into three distinct ICRs, specifically 1205-0466 (for H-2A ICs); 1205-NEW1 (for H-2B ICs); and 1205-NEW2 (for prevailing wage determination ICs) and the addition of the burden from 1205-0404 into 1205-0466.

The Department has updated the burden entries in ROCIS for this ICR to contain only the burdens for the H-2A information collections contained in this Supporting Statement.

[5] Based on 2012 Federal General Schedule Salary Table for Chicago, IL.

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. The Department is also contemplating creating an Labor Certification Registry to allow all the data we collect to be made available online and in downloadable formats – while protecting any personally identifiable information as well as any governing legal constraints such as the Privacy Act, the Trade Secrets Act and the Confidential Information Protection and Statistical Efficiency Act.

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 the 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.