

**SUPPORTING STATEMENT FOR
H-2 Petitioner's Employment Related or Fee Related Notification
OMB Control No.: 1615-0107
COLLECTION INSTRUMENT(S): No Form**

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

(a) Employment-related Notification:

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

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

(b) Fee-related Notification:

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

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

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

(a) Employment-related Notification:

The information collected by H-2 petitioners is used by USCIS, the U.S. Customs and Border Protection (CBP), and the U.S. Immigration and Customs Enforcement (ICE). Based on the information provided by H-2 petitioners, USCIS will forward the

information received to both ICE and CBP. ICE will use the information for its own future adjudicative use and CBP will use it to collect all liquidated damage payments from H-2 petitioners.

(b) Fee-related Notification:

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

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

USCIS will allow petitioners to submit all notifications electronically by email to CSC-X.H-2AAs@dhs.gov. There is no form for this submission, any information submitted is unique to the respondent.

4. **Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

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

5. **If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

(a) Employment-related Notification:

This collection of information has an impact on small businesses or other small entities. However, this collection does not have a significant economic impact on a substantial number of small entities. First, the 9,900 H-2A employers are projected to use the H-2A program and of those 9,900 program participants, only 900, or 9.1 percent, are expected to be required to report absconders under this notice. Second, USCIS estimates that it will approve most of petitions received for H-2B temporary non-immigrant workers, and that 7,700 petitions per year will be filed by “small entities” as defined under 5 U.S.C. 601 and Small Business Administration (SBA) guidelines. Of these, USCIS estimates that H-2B workers will abscond from only approximately 600 employers. These numbers do not represent a substantial percentage of the small entities that file H-2B petitions. Still, to minimize the burden on the small businesses or entities, USCIS provides a designated e-mail address and, for small businesses or entities without ready access to email, a designated mailing address for employers to send notifications.

(b) Fee-related Notification:

This collection of information has an impact on small businesses or other small entities. However, this collection does not have a significant economic impact on a substantial

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

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

On June 1 2012, USCIS published a 60-day notice in the Federal Register at 77 FR 106. USCIS received 1 comment on the 60-day notice. The one comment USCIS received was regarding the extension of H-2 Petitioner's Employment Related or Fee Related Notification. The comment did not argue for any changes to the notification; rather, it suggested that the federal government should stop admitting foreign workers. This public comment will not result in any changes to the H-2 Petitioner's Employment Related or Fee Related Notification.

On September 10, 2012, USCIS published a 30-day notice in the Federal Register at 77 FR 175. USCIS has received two comments on the 30-day notice, the first of which appeared to be a partial submission of the second. The commenter indicated that the collection of information was not necessary, was not accurate, was a high burden on the taxpayers, and that a fee, if charged, should be \$5,000. The commenter also expressed concern that bringing in foreign workers is harmful to U.S. workers. Congress established the H-2 temporary worker programs to provide employers the ability to bring foreign nationals to the United States to fill temporary agricultural and non-agricultural jobs for which an insufficient number of U.S. workers are available. Employers who seek to employ an H-2 nonimmigrant worker must first obtain an approved temporary labor certification from the U.S. Department of Labor, and then file a Form I-129 Petition for Nonimmigrant Worker with USCIS requesting H-2 status for the prospective foreign national(s). Employers are required to notify USCIS if an H-2 nonimmigrant worker is a no show, absconder, terminated, or the required work is completed early. Employers are also required to notify USCIS of any H-2 worker's payment or agreement to pay prohibited fees to a recruiter, facilitator, or similar employment service. This information collection notice requests comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency; on the accuracy of the agency's estimate of the burden of the proposed collection of information; on enhancing the quality, utility, and clarity of the information to be collected; and on minimizing the burden of the collection of

information on the public. USCIS cannot address comments that are beyond the scope of this information collection notice. USCIS maintains that this information collection is necessary to ensure that the agency is notified of any changes, that the information is collected in a manner which maintains accuracy, and that the reporting burden is kept to a minimum. There is no fee charged because this is a reporting mechanism required by regulation. Since this commenter does not request any changes to the Form I-129, USCIS will not be making any changes to that form as a result of this comment.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

USCIS does not provide payments or gifts to respondents related to this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

There is no assurance of confidentiality for this collection of information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's form whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in**

Item 13 of OMB Form 83-I.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14**

Type of Respondent	Form Name / Form Number	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate	Total Annual Respondent Cost
Business or other for-profit	H-2 Petitioner's Fee Related Notification / No Form	1,500	1	0.5	750	\$25.80	\$19,350.00
Business or other for-profit	H-2 Petitioner's Employment Related Notification / No Form	200	1	0.5	100	\$25.80	\$2,580.00
Total		1,700			850		\$21,930.00

The wage rate category of "Human Resources Assistants" was used in the determination of the rate of \$25.80. The mean wage is \$18.43 times the 1.4 wage rate multiplier for benefits equals \$25.80.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the**

discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.

There are no start-up, capital, operational or maintenance costs associated with this collection of information.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

14. Annual Cost Analysis

Collecting and Processing	\$101,893
Total Cost to the Federal Government	\$101,893

The estimated annual Government cost is $1,700 \times 1 \times \$59.99 = \$101,983$. The estimated cost of the program to the Government is calculated by multiplying the estimated total number of respondents (1,700) multiplied by the number of responses per respondent (1) x one hour (amount of time for a USCIS officer to review and process a notification) x \$59.99 (\$42.85 x 1.4 multiplier) (the hourly wage of a GS-12, Step 6, federal government employee in Los Angeles, California).

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

There are no changes to the hours burden or reporting/recordkeeping costs reported in Items 13 or 14 of the OMB Form 83-I for this collection.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This information collection will not be published for statistical purposes.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

USCIS will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.