

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

**INFORMATION COLLECTIONS FOR THE H-2A TEMPORARY EMPLOYMENT
LABOR CERTIFICATION PROGRAM
1205-0519**

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SUPPORTING STATEMENT

INFORMATION COLLECTIONS FOR THE H-2A TEMPORARY EMPLOYMENT LABOR CERTIFICATION PROGRAM 1205-0519

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 H-2A temporary labor certification 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 program also includes sheep and goat herders and those working in open-range production of livestock.

The Department is publishing a Final Rule in the H-2A program to add specific provisions to the regulations at 20 CFR 655 subpart B to codify certain procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding or production of livestock on the open range. Among the issues addressed are the program obligations of employers, which include new timekeeping requirements that create a Paperwork Reduction Act burden and must be accounted for in this supporting statement.

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 whether or not employers have met all of their obligations under all Federal laws.

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

The collection does not contain a form and is kept by employers either manually or electronically as is their business practice.

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

The information requested is sufficiently specific 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.

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 created as required by the regulations for at least three years for the H-2A program.

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

In accordance with the Paperwork Reduction Act of 1995, the public was given the opportunity to comment for 60 days on the proposed information collection as part of the Notice of Proposed Rulemaking (NPRM) for the H-2A program (RIN 1205-AB70), which published April 15, 2015, 80 FR 20300. The NPRM included an opportunity to not only comment to the Department, but it also gave the public the opportunity to file comments regarding the information collection directly with the Office of Management and Budget (OMB).

The Department received more than fifty comments about the new recordkeeping requirement as described in the NPRM. Relevant excerpts of comments are included as an attachment to this ICR that may be found both under the supplementary documents and public comments portions of the ICR documents

screen. Each excerpt includes a hyperlink to take interested parties to the complete comment on the regulations.gov Web site. Forty-seven of the comments were against the new requirement and four supported the requirement. Many of those who were against the new requirement misunderstood the requirement and thought that employers would need to keep hourly logs. In actuality, the logs only needed to reflect days on the range and on those days when an employee worked on the ranch or farm, the employer needed to write down the number of hours worked and description of the duties performed. The duties did not need to be accounted for by hour and minutes. Those who agreed with the new requirement thought the burden was minimal.

However, in light of these and other comments, the Department has decided to change this requirement in the Final Rule. Employers will now only be required to notate whether employees spend days on the ranch or on the range and the reason for any prorated salary paid.

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 submitted to the Department unless requested as part of a Wage and Hour investigation. Anything collected during the investigation 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.

Shepherd Timekeeping Requirement.

Employees principally engaged in the open range herding and livestock production are generally statutorily exempt from FLSA minimum wage and overtime under 29 U.S.C. 213(a)(6)(E), and, therefore, the typical FLSA recordkeeping requirements, such as those pertaining to hours worked each day and each workweek, do not apply to employers of such employees. See 29 CFR 516.1, 516.33. The Final Rule adds a requirement, which requires employers to notate whether employees spend days on the ranch or on the range and the reason for any prorated salary paid. Based on the average number of employers filing applications for H-2A workers to perform herding work filed with the Department in 2013 and 2014, the Department estimates that the information collection will affect 485 employers employing foreign shepherders, goat herders, and other workers engaged in the open range production of livestock. The

Department further estimates that it will take each employer, on average, 5 minutes each week to prepare timesheets for its employees, and 1 minute each week to store these timesheets. Thus, the reporting burden for 485 employers is 2,425 minutes (485 employers × 5 minutes) per week, or 40 hours per week. When annualized, the total reporting burden is 2,000 hours per year (40 hours per week × 50 weeks). The total record keeping burden for 485 employers is 485 minutes (485 employers × 1 minute) per week, or 8 hours per week. When annualized, the total recordkeeping burden is 400 hours per year (8 hours per week × 50 weeks). When these two sums are added together, the total employer reporting and recordkeeping burden is 2,400 hours per year.

Annual Burden Hours for H-2A Shepherding Information Collections:
2,000 Reporting Hours
400 Recordkeeping Hours
2,400 Total Hours

Average Time Per Response – 6 minutes

Total H-2A Responses: 25,220
Total H-2A Respondents: 485

When estimating the cost burden of paperwork requirements, the Department used the average salary of a Human Resources Manager based on the national cross-industry mean hourly wage rate for a Human Resources Manager (\$54.88), from the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data,¹ and increased by a factor of 1.43 to account for employee benefits and other compensation, for a total hourly cost of \$78.48. This number was multiplied by the total hourly annual burden created for this new requirement, which, as noted above, is 2,400 hours per year. The total annual respondent hourly costs for this new burden placed on the employers in the shepherding and open range production of livestock is estimated as follows:

Total burden cost of this provision is 2,400 hours × \$78.48 = \$188,352 per year.

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 fulfill this requirement. 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.

¹ Source: Bureau of Labor Statistics, Occupational Employment Statistics: May 2014 National Occupational Employment and Wage Estimates; Management Occupations; Human Resources Manager. <http://www.bls.gov/oes/2014/may/oes113121.htm>

b) Annual costs: There are no annual costs involved with operation and maintenance.

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 investigating compliance with this provision is estimated at \$354 calculated as follows:

Estimated Hours

WHD Investigator Verifying Compliance \$354
Staff (GS-13, Step 5 x 1.69 FLFTE) @ 5 minutes x 10% of employers
 $\$75.84^2 \times 5 \text{ minutes} \div 60 \times 49 \text{ employers} = \310

<u>Estimated Total Cost for Compliance Verification Staff</u>	\$310 =====
Total Cost to Federal Government	\$310

A.15. Reasons for any program changes.

This is a new ICR requests; therefore there are no changes to report.

A.16. Method for publishing results.

The results will not be published unless individual employers are found in violation of other Federal laws and the results of their cases are made public on the Wage and Hour Division website at <http://www.dol.gov/whd/media/press/whdprss.htm> or on the website of the Administrative Law Judges who hear these cases at <http://www.oalj.dol.gov/LIBINA.HTM>

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

There are no forms on which to display the OMB approval.

² Based on 2014 Federal General Schedule Salary Table Rest of the U.S..
https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS_h.pdf

A.18. Explanation of each exception in the certification statement.

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.