

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL  
UNDER THE PAPERWORK REDUCTION ACT OF 1995  
H-2A TEMPORARY EMPLOYMENT CERTIFICATION PROGRAM  
1205-0466  
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## SUPPORTING STATEMENT

### H-2A TEMPORARY EMPLOYMENT CERTIFICATION PROGRAM Forms ETA-9142A, and Appendix A 1205-0466

The Department is requesting a 3-year extension of approval of the Form ETA-9142A *H-2A Application for Temporary Employment Certification*, and *Appendix A* (OMB control number 1205-0466) with revisions to *Appendix A* and the *Final Determination letter*. The Employment and Training Administration (ETA) requires that the ETA-9142A and *Appendix A* be filed by employers wishing to bring in foreign workers to perform agricultural work. The Department is proposing changes to *Appendix A* to mirror the operational process implemented in the H-2B Temporary Employment Certification Program and to conform with the Department's H-2A Final Rule for employers seeking to hire temporary foreign workers for job opportunities in herding and production of livestock on the range. The revisions to the forms are explained in detail below.

*Appendix A*. The Department proposes amending *Appendix A* to ETA-9142A as a means of reducing the post-certification paperwork burden on employers, and where applicable, their attorneys and agents. The bottom of the form currently reads "FOR DEPARTMENT OF LABOR USE ONLY." The Department is proposing to change that to read "TO BE COMPLETED BY EMPLOYER FROM A CERTIFIED FORM ETA-9142A." Currently, when filing electronically, the employer is required to upload a signed copy of the *Appendix A* in order to complete the filing process. Once certified, the Department sends the employer the original certified Form ETA-9142A on blue security paper with a blank *Appendix A* that must be signed again by the employer and, if applicable, its agent and/or attorney. This causes the employers to lose several days in order to obtain a new signature, before filing the original certified Form ETA-9142A and *Appendix A* with the Department of Homeland Security (DHS). Consistent with procedural changes implemented in the H-2B Temporary Employment Certification Program, the Department is proposing to simplify this process by allowing employers to attach the original signed *Appendix A* to the original certified Form ETA-9142A that is submitted to DHS. However, this requires a minor change to *Appendix A* that will allow employers to fill in the bottom portion of the form to reflect the dates of certification that are on the certified Form ETA-9142A. Accordingly, the revision lessens the time it takes to file a petition with DHS's U.S. Citizenship and Immigration Services. The proposed change is administrative in nature and will be carried out by the authority in 20 CFR 655.162. *Appendix A* is also being updated to reflect the requirements of 20 CFR 655.200-235, which are the new regulatory requirements for H-2A employers who are in the sheep and goat herding and range production of livestock occupations and to more fully reflect regulatory

requirements of the H-2A program. The revisions include the requirement that allows them to pay monthly, provide potable water, meals, and tools at no extra charge to the worker.

Burden Statements. The Department proposes to also amend all of the burden statements on each of the forms to let the public know the time required to fill in only that particular form and to remove the reference to, and time for complying with, other information collections as defined by the Paperwork Reduction Act in this Information Collection Request.

## **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. 8 USC 1188.

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 Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, is the basis for the Secretary's determination that no U.S. workers are available. The Form ETA-9142A 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).

### *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 Paperwork Elimination Act of 1995, the forms in this collection can be electronically filed. At this time the Form ETA-9142A is available as a fillable PDF form at [http://www.foreignlaborcert.doleta.gov/pdf/ETA\\_Form\\_9142A.pdf](http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142A.pdf) for manual filing and is also available for electronic filing through the Department's iCert Visa Portal System at <http://icert.doleta.gov>. The *Appendix A* is available electronically at [http://www.foreignlaborcert.doleta.gov/pdf/ETA\\_Form\\_9142A\\_Appendix.pdf](http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142A_Appendix.pdf). It can be submitted by scanning and attaching to the electronically filed Form ETA-9142A in the iCert system. The letter required of employers informing the State Workforce Agency (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 Form ETA-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 about 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 for the regulatory requirement that employers retain the records and supporting documents supporting an *Application for Temporary*

*Employment Certification* for at least three years from the date of certification or determination.

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

In accordance with the Paperwork Reduction Act of 1995, the public has been given 60 days to comment on this information collection. The 60-day notice soliciting comments on the Extension of a Currently Approved Information Collection was published in the *Federal Register* on December 24, 2015. See, 80 FR 80387. In response to this notice, the Department received one comment thanking the Department for revision of the language at the bottom of Appendix A.

*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 6,062 Form ETA-9142A submissions for the H-2A program. The total hourly burden is 49,194 hours.

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

In order to recruit U.S. workers and complete the Form ETA-9142A, 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. Except where a special procedure is approved, 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, or the Federal or State minimum wage, in effect at the time the work is performed. 20 CFR 655.120(a). The Department publishes new AEWRs annually, which are posted online through the Office of Foreign Labor Certification (OFLC) website at <http://www.foreignlaborcert.doleta.gov/adverse.cfm>; the employer can locate the appropriate prevailing hourly or piece rate(s) online in the OFLC 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-9142A is estimated at 10 minutes. The total annual burden of the required wage rate determinations is 1,010 reporting hours (6,062 x 10 minutes ÷ 60 minutes = 1,010 hours).

#### B. H-2A Application for Temporary Employment Certification

Employers submit an *Application for Temporary Employment Certification* (Form ETA-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 4,607 employers will file approximately 6,062 applications for a total burden of 6,062 reporting hours (6,062 applications x 1 hour = 6,062 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. H-2ALCs must also submit original surety bonds, proof of fully-executed work contracts with fixed-site agricultural businesses, and proof that the proposed housing for the workers complies with the applicable Federal, State, and local laws. Program data shows that there are approximately 350 H-2ALC employers. The Department anticipates that it will take them approximately one hour and 20 minutes to comply with these requirements for a total burden of 467 reporting hours (350 applicants x 80 minutes ÷ 60 minutes = 467 hours).

There are times where employers miss the statutorily mandated deadline for filing an application due to unforeseen circumstances or because they were unfamiliar with program deadlines. In such instances, the employer must request a waiver of the filing deadline. 20 CFR 655.134(b). Based on program experience, the Department estimates it will receive 150 such

requests for waivers. 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 30 minutes ÷ 60 = 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. During the last three years, the Department received an average of 5,773 applications filed by agents and attorneys. Therefore, the hourly burden for this collection is 2,887 reporting hours (5,773 filers x 30 minutes ÷ 60 = 2,887).

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 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 per year. 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 2,527 applications requiring modification. Assuming the same rate in future years this would account for 1,264 reporting hours (2,527 applications x 30 minutes ÷ 60 = 1,264 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, 5 CFR 1320.3(b)(2), 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 the Genetic Information Nondiscrimination 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 necessarily 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 1627.3 (b)(3) (a)(1), promulgated pursuant to the Age Discrimination in Employment Act, includes but are not limited to the following:

- o Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to the employer’s advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.
- o Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee.
- o Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.
- o 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. The EEOC regulations at 29 CFR 1602.14 do not require an employer to create any records, but rather require 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), the 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. The recruitment report must be signed by the employer and describe the recruitment steps undertaken and the results achieved, including



the number of hires, and if applicable, the number of U.S. workers rejected and the lawful, job-related reasons for the rejection. 20 CFR 655.156. 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 6,062 applications will be filed with the Department of Labor, the total annual burden for preparing recruitment reports is estimated to amount to 6,062 recordkeeping hours (6,062 applications x 1 hour = 6,062 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, Form ETA-9142A, *H-2A Application for Temporary Employment Certification*, and supporting documentation in the two years following the mandated one year retention for companies subject to the regulations described in Section C above and three years for all other employers. This results in an annual burden of 1,010 recordkeeping hours (6,062 applications x 10 minutes ÷ 60 minutes = 1,010 hours).

E. Informing DOL and DHS of H-2A Worker Abandonment or Termination

Employers are required, pursuant to 20 CFR 655.122(n), to inform the Department and the Department of Homeland Security 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 in order to end their liability for transportation and other expenses. Based on program experience during the last three years, the Department estimates that it will receive letters or emails from employers in approximately 1,569 cases and that it will take employers 15 minutes to compose and send such letters or emails for a total of 392 reporting hours (1,569 cases x 15 minutes ÷ 60 = 392 hours).

F. Notification Requirements

The regulations require employers to notify its H-2A workers of their duty to depart the U.S. after the contract period ends, 20 CFR 655.135(i), and of the workers' 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 Workers' Rights 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 202 third party disclosure hours (6,062 applications x 2 minutes ÷ 60 minutes = 202 hours).

The Department estimates that it will take employers 5 minutes 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 505 third party disclosure hours (6,062 applications x 5 minutes ÷ 60 minutes = 505 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 Form ETA-9142A and Form ETA-790 (OMB control number 1205-0137). Program experience indicates that over three years an average of 100,250 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 may be appropriate) and to provide it to each worker, for a total of 25,063 third party disclosure hours (100,250 workers x 15 minutes ÷ 60 = 25,063 hours).

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

Pursuant to regulations at 20 CFR 655.145, at any time before final determination, an employer may submit a written request to the Department 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 requests x 30 minutes ÷ 60 = 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 either to the Department of Homeland Security under 20 CFR 655.170(a) for an extension request of two weeks or less or to the Department for an extension of that period of employment if the requested extension is for more than 2 weeks. The extension request to the Department must be based on weather conditions or other factors beyond the employer's control. 20 CFR 655.170(b). 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 30 minutes ÷ 60 = 50 hours). The Department does not have any information on how many employers utilize the first option and cannot provide a burden calculation for 20 CFR 655.170(a) because those extension requests are filed directly with the Department of Homeland Security.

##### *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. See, e.g., 20 CFR 655.141 (deficiencies); 655.142 modifications; 655.164 (denials); 655.165 (partial certifications); 655.181 (revocation); 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 generally 20 CFR 655.171. Based on current filing patterns, 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).

##### *Withdrawals*

On occasion an employer finds it necessary to withdraw an application. 20 CFR 655.172. A withdrawal request may be sent by email. 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 new determination 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. 20 CFR 655.166. The regulation requires employers wishing to request a new determination to do so via telephone or email, and to confirm the request in writing. The Department estimates it takes employers 30 minutes to make such a request. The Department usually receives 11 such requests each year for a total reporting burden of 6 hours (11 x 30 minutes ÷ 60 = 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. The regulations at 5 CFR 1320.3(h)(6) and (9) exempt from collection requests that require facts or opinions to be submitted from 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, the regulations exempt administrative actions such as audits of specific individuals or entities. 5 CFR 1320.4(a)(2).

#### 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](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 allows an employer to petition for higher meal charges. The Department anticipates receiving 10 such requests and that it will take employers approximately 1 hour to prepare the petition for a total of 10 reporting hours (10 petitions x 1 hour = 10 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 Department. There is no particular form for this type of complaint. The Department estimates it would take an individual 30 minutes to prepare and send such a complaint. The Department rarely receives any complaints under this provision. However, in the last three years it received one complaint. Therefore, the burden for this requirement is 1 reporting hour after rounding up ( $1 \times 30 \text{ minutes} \div 60 = .5 \text{ hours}$ ).

#### L. Housing

Agricultural employers hiring employees outside the commuting area must provide housing for those employees. See 20 CFR 655.122(d). 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 Certifying Officer 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). If, upon inspection, the SWA determines the substituted housing does not meet the applicable standards, the SWA must notify the employer to cure the deficiencies.

The Department estimates that it will take the SWA 30 minutes to generate the SWA certification letter and send it to the Department. Further, the Department estimates that 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 approximately 2/3 of certifications from the SWA and 1/3 from employers.

Thus, the total burden of 2,524 reporting hours  $[(6,062 \text{ applications} \times .666 \times 30 \text{ minutes} \div 60) + (6,062 \text{ applications} \times .333 \times 15 \text{ minutes} \div 60) = 2,524 \text{ hours}]$ . The Department estimates that approximately 25 employers change the housing for their employees 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  $(25 \times 20 \text{ minutes} \div 60 \text{ minutes} = 8 \text{ hours})$ . Of those 25, approximately 5 fail the new inspection and the SWA must inform the CO in writing of the failure to pass inspection. The Department estimates it taken an employer 20 minutes to compose a letter to the CO, for a total of 2 reporting burden hours  $(5 \times 20 \text{ minutes} \div 60 \text{ minutes} = 2 \text{ hours})$ .

#### 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, to write a note stating that they will extend it beyond its current expiration date. 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 1,010 reporting hours  $(6,062 \text{ applications} \times 10 \text{ minutes} \div 60 \text{ minutes} = 1,010 \text{ hours})$ .

#### N. Fifty Percent Rule Requirements

The Department's regulations require employers to continue to consider for employment and hire any qualified and eligible U.S. worker who applies to the position until the end of the first half of the contract period. 20 CFR 655.135(d). This program component is referred to as the 50 percent rule. Employers are also 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. 20 CFR 655.135(c). Employers are reminded of this requirement in the Final Determination letter (Form ETA-9144). 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.

The Department estimates that under the departure date regulation at 20 CFR 655.135(c), the employers that file 6,062 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 applications, or about 303 applications 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 76 reporting

hours to provide the notification required under the regulation (303 applications x 15 minutes ÷ 60 = 76 hours).

O. Variance Request by Employers in Herding Occupations

The Department's regulations for employers requesting foreign workers for herding and livestock production on the range that allow employers to request a variance from the requirements to provide potable water and separate sleeping facilities for each worker as described in 20 CFR 655.235. The variance requests must be in writing and submitted with the application at the time of filing to the Certifying Officer. The Department estimates it will take employers 30 minutes to write a letter requesting the variance(s). This requirement went into effect in November 2015 and the Department has no program experience to base its estimate of how many employers will request variances. Therefore, at this time we estimate that zero employers will make such requests.

Annual Burden Hours for H-2A Information Collections:

16,352 Reporting Hours  
7,072 Recordkeeping Hours  
25,770 Third Party Disclosure Hours  
49,194 Total Hours

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

Total H-2A Responses: 160,773

Total H-2A Respondents: 4,870 (4,607 employers + 209 Agents/Lawyers + 54 SWAs)

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 (\$56.35), based on the U.S.

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Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data,<sup>1</sup> and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$80.58. 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: 49,194 hours x \$80.59 = \$3,931,392

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
Research Wage Rate	6,062	1	6,062	10 Min.	1,010	\$80.58	\$81,386
Submit H-2A Application	6,062	1	6,062	1 Hour	6,062	\$80.58	\$488,476
H-2ALC Requirements	350	1	350	80 Minutes	467	\$80.58	\$37,631
Mandated Deadline For Filing	150	1	150	30 Min.	75	\$80.58	\$6,044
Employers Submit Agency Agreement	5,773	1	5,773	30 Min.	2,887	\$80.58	\$232,634
MSPA FLC Certificate Registration	117	1	117	5 Minutes	10	\$80.58	\$806
Deficient Application	2,527	1	2,527	30 Min.	1,264	\$80.58	\$101,853
Non-emergency H-2A Filing	6,062	1	6,062	1 Hour	6,062	\$80.58	\$488,476
Wage Rate Determination	6,062	1	6,062	10 Minutes	1,010	\$80.58	\$81,386
Termination of Workers	1,569	1	1,569	15 Minutes	392	\$80.58	\$31,587
Poster for Disclosure	6,062	1	6,062	2 Minutes	202	\$80.58	\$16,277
Foreign Labor Recruiters	6,062	1	6,062	5 Minutes	505	\$80.58	\$40,693
Copy of	100,250	1	100,250	15 Min.	25,063	\$80.58	\$2,019,577

<sup>1</sup> Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2014 National Occupational Employment and Wage Estimates; Management Occupations



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Contracts							
Temporary Employment Certification	900	1	900	30 Min.	450	\$80.58	\$3,626
Extensions	100	1	100	30 Min.	50	\$80.58	\$4,029
Appeals	92	1	92	20 Min.	31	\$80.58	\$2,498
Withdrawals	100	1	100	10 Min.	17	\$80.58	\$1,370
Redeterminations	11	1	11	30 Min.	6	\$80.58	\$483
Meals Charges	10	1	10	1 Hour	10	\$80.58	\$806
Complaints	1	1	1	30 Min.	1	\$80.58	\$81
SWAs inform OFLC about housing	54	74.76	4,037	30 Min.	2,019	\$80.58	\$162,691
Employer's certify rental housing	2,019	1	2,019	15 Min	505	\$80.58	\$40,666
Changing Housing	25	1	25	20 Min.	8	\$80.59	\$645
Housing inspection failure reports	5	1	5	20 Minutes	2	\$80.58	\$161
Workers' Compensation	6,062	1	6,062	10 Minutes	1,010	\$80.58	\$81,386
50% Rule Requirements	303	1	303	15 Minutes	76	\$80.58	\$6,124
Sleeping and water delivery variance request	0	1	0	30 minutes	0	\$80.58	\$0
<b>Unduplicated Totals</b>			<b>160,773</b>		<b>49,194</b>	<b>\$80.58</b>	<b>\$3,931,392.00</b>

\* See Section 12, subsection III.

*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 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 100,250, the Department estimates the maximum cost to employers will be \$1,608,700 [(6,062 applications x \$100) + (100,250 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 \$1,590,842 calculated as follows:

Estimated Hours - Data Entry/Review

<u>NPC Staff Cost for Verifying the Offered Wage Rate</u>	\$213,958
Staff (GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes	
$\$70.59^2 \times 6,062 \times 0.5 \text{ hours} = \$213,958$	
<u>SWA Cost to Post Job Order and Refer Applicants</u>	\$390,514
Staff (Equivalent of GS-12, Step 5 x 1.69 FLFTE) @ 1 hour	
$\$64.42^3 \times 6,062 = \$390,514$	
<u>SWA Cost to Write to CO About Change of Housing</u>	\$161
Staff (Equivalent of GS-12, Step 5 x 1.69 FLFTE) @ 30 minutes	
$\$64.42 \times 5 \times .5 \text{ hours} = \$161$	

Staff Cost for Adjudicating Applications \$942,549

<sup>2</sup> Based on 2015 Federal General Schedule Salary Table for Chicago, IL.

<sup>3</sup> Based on 2015 Federal General Schedule Salary Table for the Rest of the United States.

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Staff (GS-12, Step 5 x 1.69 FLFTE) @ 1.5 hours  
 $\$70.59 \times 6,062 \times 1.5 \text{ hours} = \$641,875$   
 Manager (GS-14, Step 5 x 1.69) @ 30 minutes  
 $\$99.20 \times 6,062 \times 0.5 \text{ hours} = \$300,675$

Staff Cost for Informing Employer of Late Arrival Obligation    **\$35,660**  
 Staff (GS-12, Step 5 x 1.69 FLFTE) @ 5 minutes  
 $\$70.59 \times (6,062 \times 5 \text{ minutes} \div 60) = \$35,660$

<u>Estimated Total Cost for H-2A</u>	
Staff	= \$1,582,842
Printing/Mailing	= \$ 8,000
	<b>\$1,590,842</b>
	=====
Total Cost to Federal Government	<b>\$1,590,842</b>

*A.15. Reasons for any program changes reported in Items 13 or 14.*

This ICR requests a change of 12,556 responses (from 148,217 to 160,773) and 5,020 burden hours (from 44,174 to 49,194). The burden costs are slightly higher because the number of H-2A workers has increased. The ICR requests a change of \$79,330 (from \$1,529,370 to \$1,608,700).

The changes reflected in this ICR are attributed to the decrease in the number of applications filed and an increase in the number of workers certified.

The Department has also removed the ETA-9144, Final Letter of Determination, out of the main IC and placed it into supplemental documents because it was created as courtesy for employers and simply reminds them of their obligations that are outlined in *Appendix A*.

*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 also has a

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".*

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.