

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

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**SUPPORTING STATEMENT
H-2A ADVERTISING REQUIREMENT
OMB Control Number 1205-0NEW**

This Information Collection Request (ICR) seeks approval from the Office of Management and Budget (OMB) for a new information collection associated with revisions that the Department of Labor (DOL or Department) is proposing to its regulations governing the recruitment that an employer must conduct in order to obtain a temporary labor certification under the H-2A Program. The proposed revisions, which are detailed in a companion Notice of Proposed Rulemaking (NPRM) published in the Federal Register, closely relate to existing information collections approved for the H-2A Foreign Labor Certification Program under control number 1205-0466. The Department is not submitting this ICR under that control number, however, because the Reginfo.gov database allows only one ICR per control number to be pending at any given time, and the Department anticipates that its existing control number will be encumbered by an unrelated ICR when it submits an ICR related to the Final Rule in this exercise. The Department is therefore submitting the instant ICR under a different control number for administrative purposes only. Once all of the outstanding actions are complete, the Department intends to submit a non-material change request to transfer the burden from this control number to the existing control number for the H-2A Foreign Labor Certification Program (1205-0466) and discontinue use of this control number.

In addition, the final rule ICR will be submitted for approval using the emergency clearance processes outlined in 5 CFR 1320.13. In order to provide participating employers the regulatory relief proposed in the NPRM, DOL will not be subjecting this information collection to a 60-day public comment period. Absent approval of this collection on an emergency basis, DOL will be unable to revise the information collection requirements to lessen employer burden while still ensuring U.S. workers receive the full substantive protections that the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, requires and that the H-2A temporary labor certification program is intended to provide. Accordingly, upon publication of the final rule and approval of this ICR, DOL will initiate a traditional process of engaging the public in order to extend the collection. For Information Collection Budget purposes, burden reductions will be realized once this control number is discontinued.

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.*

The INA establishes the H-2A nonimmigrant classification for a worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services of a temporary or seasonal nature.” 8 U.S.C. 1101 (a)(15)(H)(ii)(a). Although the INA delegates the “question of importing” such workers “in any specific case or specific cases” to the Secretary of Homeland Security “after

consultation with appropriate agencies of the Government, upon petition of the importing employer,” it requires the Secretary of Homeland Security to consult with DOL prior to approving such a petition. 8 U.S.C. 1184(c)(1).¹ Specifically, the INA prohibits the Secretary of Homeland Security from approving a petition to employ an H-2A worker unless the petitioning employer has applied to the Secretary of Labor (Secretary) for a certification that:

- 1) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and
- 2) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1). The Secretary delegated his statutory responsibility to make this certification—known as a temporary labor certification—to the Assistant Secretary for Employment and Training, who has, in turn, delegated it to the Office of Foreign Labor Certification (OFLC). See Secretary’s Order 06-2010 (October 20, 2010); 20 C.F.R. 655.101.

The INA additionally specifies a number of conditions under which DOL cannot grant the temporary labor certification described in 8 U.S.C 1188(a). 8 U.S.C. 1188(b). One such condition is where “[t]he Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.” 8 U.S.C. 1188(b)(4). The INA specifies that the “positive recruitment” this section requires “is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer’s job offer,” and that an employer’s obligation to engage in this recruitment terminates “on the date the H–2A workers depart for the employer’s place of employment.” 8 U.S.C. 1188(b)(4).

OFLC reviews and evaluates applications for temporary labor certification under the standards and procedures set forth in 20 CFR part 655, subpart B. Under these regulations, an employer may apply for a temporary labor certification by submitting a Form ETA-9142A, *Application for Temporary Employment Certification* to OFLC. OFLC will review the application for compliance with applicable program requirements. See 20 CFR 655.140(a). If all program requirements are met, OFLC will issue a Notice of Acceptance instructing the employer to recruit U.S. workers for its job opportunity, consistent with the recruitment required by the INA and 20 CFR 655.150 through 655.158, and specify a date on which the employer must provide an initial written report of its recruitment efforts to OFLC. See 20 CFR 655.143(a), (b); 20 CFR 655.156. Upon review of this recruitment report, which contains information identifying the

¹ Although the text of section 1184(c)(1) refers to “the Attorney General,” Congress transferred the responsibility to adjudicate nonimmigrant visa petitions from the Attorney General to the Secretary of Homeland Security in the Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296. Under section 1517 of title XV of the HSA, any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other Department of Justice official to DHS “shall be deemed to refer to the Secretary [of Homeland Security].” See 6 U.S.C. 557 (2003) (codifying HSA, Title XV, Section 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

mediums that the employer used to advertise its job opportunity, OFLC may grant a full or partial temporary labor certification for the job opportunity, or deny the application. See 20 CFR 655.162; 20 CFR 655.165.

OFLC will grant a temporary labor certification only if the employer has met all the requirements for certification under 20 CFR 655, Subpart B, including the advertising content requirement in 655.152. 20 CFR 655.161(a). The information contained in an employer's *Application for Temporary Employment Certification* and accompanying recruitment report forms the basis for DOL's determination that qualified U.S. workers are not available to fill the petitioning-employer's job opportunity, and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H-2A workers in that position. DOL must make this determination before a petition can be approved by DHS. See 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c), 1188(a).

This ICR relates to a proposed rule that would change the type of advertisements that prospective H-2A employers must place to recruit U.S. workers for job opportunities, as well as the documentation that these employers must retain to demonstrate that they have complied with the regulatory requirements. Section 655.151 currently requires prospective H-2A employers to place two print advertisements in a newspaper of general circulation serving the area of intended employment. Specifically, under the Departments' existing regulations, an employer seeking H-2A temporary labor certification must place a print advertisement on two separate days, one of which must be a Sunday, in a newspaper of general circulation serving the area of intended employment and appropriate to the occupation and workers likely to apply for the job opportunity. 20 CFR 655.151.

The NPRM issued in association with this ICR proposes to replace the newspaper advertisements that section 655.151 currently requires with an electronic advertisement posted on a website appropriate for the workers who are likely to apply for the job opportunity in the area of intended employment. Under the proposed rule, an employer's electronic advertisement must be posted in a conspicuous location or be easily retrievable through the organization's website for a period of no less than 14 calendar days, be publicly accessible to U.S. applicants at no cost, and comply with the advertising content requirements set forth in section 655.152. This rule would require an employer to retain evidence of its electronic advertisement, including printouts of the webpages in which the advertisement appeared (or other verifiable evidence from the website containing the text of the advertisement) and documentation confirming the dates of publication.

Pursuant to an existing regulation, which the NPRM leaves unchanged, employers that file an *Application for Temporary Employment Certification* requesting H-2A workers must retain certain documents and records, including the advertisements and additional recruitment efforts ordered by OFLC, for three years from the date of certification (if OFLC approves the application) or the date of determination (if OFLC denies the application or the employer withdraws its application). 20 CFR 655.167. Without access to this documentation, OFLC could not assess an employer's compliance with regulatory-required recruitment steps in a post-adjudication audit and/or program integrity proceeding (e.g., revocation or debarment actions), and the Wage and Hour Division (WHD) would not be able to confirm compliance with

regulatory requirements if the employer later becomes the subject of an investigation and/or enforcement proceeding.

The proposed revisions to the advertising required by section 655.151 implicate third-party reporting and document retention requirements that are similar to those that apply to the newspaper advertisements that DOL currently requires under its existing regulations. The Department is seeking approval of both requirements in this ICR, however, because neither requirement was specifically covered by the information collection that OMB approved for the H-2A Temporary Labor Certification Program under control number 1205-0466.

The NPRM additionally proposes minor revisions to two other sections, but neither is substantive or imposes a burden that must be accounted for under this ICR. Specifically, the NPRM proposes to (1) amend section 655.171(c)(ii), which specifies document retention requirements, to correct an incorrect cross reference and delete a reference to print advertisements in professional, trade, or ethnic publications; and (2) amend 655.225(d), which specifies the post acceptance requirements for positions engaged in the herding or production of livestock on the range, to delete the reference to “a newspaper of general circulation” in order to conform with the proposed change to the type of advertising required by section 655.151. Neither of these proposed changes is substantive or imposes a burden that must be accounted for under this supporting statement.

- 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.*

Under the Departments’ existing regulations, the advertisements that an employer places to recruit U.S. workers must contain all of the content required by 20 CFR 655.152. The content required by this section would also apply to the electronic advertisement proposed in the NPRM. An employer’s compliance with these content requirements ensures that U.S. workers are adequately informed of available job opportunities. The Department’s existing regulations also require an employer to retain evidence that its advertisements complied with the content required by section 655.152 for three years from the date of certification (if OFLC approves the application) or the date of determination (if OFLC denies the application or the employer withdraws its application). 20 CFR 655.167. Employers must be prepared to produce this documentation to DOL or other federal agencies in the event of an audit examination, investigation, or other enforcement proceeding involving the employer’s participation in the H-2A program.

- 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.*

The proposed rule utilizes information technology—namely, the internet—to reduce the burden of complying with the requirement to recruit U.S. workers for available job opportunities.

Specifically, the NPRM proposes to replace print newspaper advertisements with an electronic advertisement posted on the internet. Because information about available job opportunities can be easily disseminated and obtained via the internet, this change will reduce the advertising costs incurred under the current rule and, at the same time, assure that job opportunities are more broadly advertised to U.S. workers seeking employment. The proposed change therefore uses information technology to reduce employer burden and improve the labor market test that DOL relies on to determine whether qualified U.S. workers are available to fill a job opportunity.

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.*

The Department is not aware of any duplicative information collection requirements. The information collections covered by this ICR only apply to entities that submit an *H-2A Application for Temporary Employment Certification* to DOL. Because the documents that participating employers must retain under this ICR will be used to assess whether they have placed an advertisement that complied with the regulatory requirements set forth in 20 CFR 655.152, it is unlikely that any other existing information could fulfill this purpose.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The information collection covered by this ICR will impact all entities that submit an *Application for Temporary Employment Certification*, including small businesses who wish to employ H-2A temporary nonimmigrant workers. DOL cannot make any exemptions or eliminate requirements for small businesses, because the INA and the Department's implementing regulations require all employers seeking a temporary labor certification under the H-2A program to advertise and recruit for U.S. workers. DOL cannot determine whether qualified U.S. workers are available to fill a job opportunity unless the employer performs the labor market test that is required under these regulations. DOL has considered the memorandum that OMB issued to all heads of departments and agencies on June 22, 2012, regarding Reducing Reporting and Paperwork Burdens;² however, the Department has determined that it would not be appropriate to exempt small entities (including small businesses) from the electronic advertisement required in the proposed rule, because this advertisement is necessary to apprise U.S. workers of the job opportunity, and responses to this advertisement (or the lack thereof) are an integral part of DOL's determination as to whether qualified U.S. workers are available. For similar reasons, it would be inappropriate to exempt small entities (including small businesses) from the regulatory requirement to retain documentation demonstrating compliance with the advertising requirements, because this requirement is necessary to ensure that DOL will have access to the information that it needs to assess employer compliance. Nevertheless, DOL expects the burden associated with advertising to be reduced for all employers seeking H-2A temporary labor certification, because the proposed rule eliminates the current requirement to place print newspaper advertisements and replaces it with a requirement to use more efficient and less costly online methods to recruit U.S. workers.

² Office of Management and Budget Memorandum "Reducing Reporting and Paperwork Burden" (June 22, 2012), available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/memos/reducing-reporting-and-paperwork-burdens.pdf>.

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.*

As previously mentioned, the rule proposed in the NPRM would continue to require that advertisements placed under 20 C.F.R. 655.151 comply with the content requirements in 20 CFR 655.152. Absent such a requirement, the electronic advertisements that employers place under the proposed rule might not provide sufficient information to apprise U.S. workers of available job opportunities, which would negatively impact the labor market test that DOL relies upon to determine whether able, willing, and qualified U.S. workers are available at the time and place needed. Another existing regulation, 20 CFR 655.167, would require employers to retain evidence of their electronic advertisements for three years from the date of certification (if OFLC approves the application) or the date of determination (if OFLC denies the application or the employer withdraws its application). 20 CFR 655.167. If employers are not required to retain such evidence, they may decline to do so, and it would not be available for DOL to review in a post-adjudication audit, program integrity proceeding (e.g., revocation or debarment actions) or WHD investigation and/or enforcement proceeding. Without access to this evidence, DOL could not determine whether an employer has actually posted the electronic advertisement required by proposed section 655.151, or whether the advertisement that the employer posted complied with the content required by section 655.152. If DOL cannot determine whether an employer has complied with the recruitment required by its regulations, the integrity of the labor market test will be significantly compromised, and DOL will not be able to meet its regulatory mandate to assess whether qualified U.S. workers are available to fill an employer's job opportunity. The documentation covered by this ICR is therefore essential to the administration of the H-2A temporary labor certification program.

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 secrets, 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*

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d) (2).

8. *If applicable, provide a copy and identify the date 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. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.*

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

As previously mentioned, this ICR is being submitted using emergency clearance procedures, because the public will not have at least 60-days to comment as generally required. See 44 U.S.C. 3507(j). The Department is, however, offering the public 30 days to comment on the information collections contained in the proposed rule. The Department will properly review and consider the public comments it receives in connection with the *Federal Register* notice during this comment period, including any comments related to the documentation requirement covered by this ICR, and it will provide a response to such comments when the Final Rule is published and in the supporting statement for the ICR.

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

No payments or gifts will be made to respondents in exchange for the information provided through these information collection tools.

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

The Department does not offer any assurance of confidentiality related to the third-party disclosure and record keeping requirements covered by this ICR. As noted elsewhere, however, this ICR essentially amends the H-2A information collection requirements approved under control number 1205-0466, including the generally applicable documentation retention

requirement in 20 CFR 655.167. The documents provided to ETA pursuant to the general H-2A collection are subject to the provisions of the Freedom of Information Act (FOIA) and, if requested, could be disclosed under that statute if not found to be exempt from disclosure under one of the nine FOIA exemptions.

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)), that information provided is protected under the Privacy Act, to the extent that law applies, and incorporated into the Department's System of Records Notice DOL/ETA-7. The categories of records in that collection include information on employers and their authorized attorneys and agents, such as the names, addresses, and types of businesses; material terms and conditions of employment to be offered to unknown numbers of U.S. and nonimmigrant workers; and all obligations and assurances related to an employer being granted temporary labor certification by the Department. The laws authorizing this program and collection of information provides for compliance with the Privacy Act in all its aspects.

Under routine uses for this system of records, OFLC may release the case files that it develops when it adjudicates labor certification applications and performs post-adjudication audits or other integrity proceedings, which may include the advertising records covered by this ICR, as part of the administrative record that is used for appeals before DOL's Office of Administrative Law Judges (OALJ) and litigation in federal courts, and in connection with the Federal government's administration and enforcement of immigration laws and regulations. In such situations, OFLC may release records to the employers that filed such applications and their representatives; foreign workers or their representatives; OALJ; federal courts; and federal agencies such as the DOL Office of Inspector General, the Department of Justice, WHD, DHS, and the Department of State.

OFLC retains case files associated with applications for temporary labor certification for a period of five years after close in accordance with Records Schedule Number DAA-0369-2013-0002. Paper files are retained on-site at the applicable OFLC processing center(s) for six months from the date of the final determination. OFLC digitizes or converts paper records into OFLC Archive and Scan database(s), which are destroyed once converted to an electronic medium and verified, or when no longer needed for legal or audit purposes in accordance with the records schedule. Paper copies of case files that are not scanned are retained on-site for six months from the date of the final determination and then transferred to the Federal Records Center for the duration of the five-year retention period.

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 persons from whom the information is requested, and any steps to be taken to obtain their consent.*

The information collections do not involve sensitive matters.

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.*
 - * 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 under “Annual Cost to Federal Government.”*

I. Hourly Burden Estimates

- A. *Electronic Advertisement (20 CFR 655.151)*. Under the proposed rule, an employer seeking H-2A temporary labor certification must place an electronic advertisement on a website that is appropriate for workers who are likely to apply for the job opportunity in the area of intended employment. The electronic advertisement must be posted in a conspicuous location or be easily retrievable through the organization’s website for a period of no less than 14 calendar days, publicly accessible to U.S. applicants at no cost, and satisfy the requirements set forth in 20 CFR 655.41. Employers have broad discretion to select a website that is best suited to advertise their job opportunities and meet regulatory requirements.

Based on previous program experience, the Department estimates it will certify approximately 9,796³ Form ETA-9142A *Applications for Temporary Employment Certification* submissions per year. Under the proposed rule, each of these applications will require the placement of an electronic advertisement that meets the standards set forth in 20 CFR 655.151 and 655.152. This requirement is subject to the PRA burden calculations. While many recruitment techniques, including advertising, are usual and customary business activities, the Department estimates that it will take employers approximately 5 minutes to place an electronic advertisement on a website and ensure that its advertisement includes all of the information and disclosures required by 20 CFR 655.152. The total burden is 816 third-party disclosure hours. (9,796 job orders x 5 minutes = 816 hours).⁴

³ The numerical estimation of 9,796 is derived from the average number of H-2A applications that DOL has certified in the past three fiscal years. Specifically, this average is based on 8,721 H-2A certifications in FY 2015; 9,751 certifications in FY 2016; and 10,917 certifications in FY 2017. Burden estimates are rounded to the nearest whole number or when relevant, the nearest thousandths place of a decimal.

⁴ In order to obtain 816 hours, DOL conducted the following calculation $9,796 \times 0.08333 = 816.3006$. DOL then rounded the

The Department notes that, in previously approved information collections for the H-2A program under 1205-0466, it has considered the cost of newspapers advertisements to be a usual and customary expense that all employers incur. Upon further consideration, however, the Department now believes that its regulations present a unique burden to ensure that the advertisement an employer posts addresses all applicable regulatory requirements. This ICR contemplates that additional burden.

- B. *Proof of Electronic Advertisements (20 CFR 655.151(c))*. Under the proposed rule, an employer must retain proof of its recruitment. The Department estimates that it will take an employer approximately 2 minutes to print and file the evidence of its electronic advertisement that is required by 20 CFR 655.151(c). The total burden is therefore 326 recordkeeping hours. (9,796 employers x 2 minutes = 326 hours)⁵.

Because regulations issued by the Equal Employment Opportunity Commission require an employer to retain employment records for at least one year—specifically, (1) 29 CFR 1602.14 (OMB Control Number 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act; and (2) 29 CFR 1627.3(b) (OMB Control Number 3046-0018), promulgated pursuant to the ADEA—the retention of such records is a customary and usual business practice that does not impose any additional burden. Consequently, the Department is not allocating any burden hours to maintain such records in compiling the paperwork burden for this ICR.

II. Total Hourly Cost Estimates

The Department receives applications requesting temporary labor certification under the H-2A program from employers operating across a wide spectrum of industry sectors in the U.S. economy. Salaries for employers and/or their employees who perform the disclosure and recordkeeping functions required by the proposed regulation may range depending on who the employer tasks with performing these functions. However, the Department believes that in most companies, a Human Resources manager will perform these activities. The wages used for the analysis come from Department's Bureau of Labor Statistics (BLS) Occupational Employment Survey for June 2017. From this survey the full cost to the employer includes all fringe benefits as well as the wage. From the BLS Employer Costs for Employee Compensation for June 2017, DOL combined the mean hourly wage of human resource managers with the benefits and other compensation received by such employees. The national mean hourly wage for a human resource manager (SOC code 11-3121) is \$59.38.⁶ The average percentage of benefits in total is 31.7 percent,⁷ giving a markup of the wage to the total compensation of \$1.46 (1/1-0.317). The total compensation is therefore \$86.69 (\$59.38 × \$1.46) for a Human Resources manager.

outcome to obtain 816 third-party disclosure hours.

⁵ In order to obtain 326 hours, DOL conducted the following calculation $9,796 \times 0.0333 = 326.2068$. DOL then rounded the outcome to obtain 326 recordkeeping hours.

⁶ *Occupational Employment and Wages, December 2017: 11-3121 Human Resources Managers*, DOL, BLS, <https://www.bls.gov/oes/current/oes113121.htm>. (Last accessed 08/13/2018.)

⁷ *Employer Costs for Employee Compensation – December 2017*, DOL, BLS (Mar. 20, 2018, 10:00 AM), <https://www.bls.gov/news.release/pdf/ecec.pdf>. (Last accessed 08/13/2018.)

Table of Estimated Burdens⁸

Information Collection Activity	Number of Respondents	Frequency	Total Annual Responses ⁹	Time Per Response (in minutes)	Total Annual Burden (in hours)	Hourly Rate	Annual Cost (in dollars)
Placement of Electronic Advertisement (3 rd Party Disclosure)	9,796	1	9,796	5 minutes	816 hours	\$86.69	\$67,878.27
Retention of Initial Electronic Advertising (Recordkeeping)	9,796	1	9,796	2 minutes	326 hours	\$86.69	\$28,260.94
UNDUPLICATED TOTALS	9,796	NA	19,592	NA	1,142 hours	NA	\$96,139.21

13. Provide an estimate for 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 already reflected on the burden worksheet).

* 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 collections 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.

1. Start-up/Capital Costs: There are no start-up costs. The only necessary supplies needed to store and maintain the records are filing cabinets and filing folders; however, employers have the option of maintaining records in an electronic format. The Department estimates that the initial cost to employers is minimal because it is a

⁸ For the burden estimates, the Department has used H-2A program data averages for Fiscal Years 2015, 2016 and 2017.

⁹ The figures provided for the total annual responses are rounded to the nearest whole number.

customary and usual business practice for businesses to have storage space, whether physical or electronic.

2. *Annual Costs*: There are no annual costs involved with this information collection because an employer may post its website on a variety of websites that do not charge a fee, e.g., Craigslist.
14. *Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table*

This information collection imposes no additional costs to the Department to administer the H-2A program. The Federal costs for processing H-2A applications is accounted for under control number 1205-0466. The cost of reviewing records disclosed to WHD during the course of that agency's investigations to determine compliance with applicable standards are excluded from PRA burden calculations, in accordance with 5 CFR 1320.4(a)(2).

15. *Explain the reasons for any program changes or adjustments reported on the burden worksheet.*

This is a new information collection request. The proposed regulatory changes create a Paperwork Reduction Act burden that is not currently accounted for under OMB approved ICR 1205-0466 authorizing the collection of information under the H-2A program.

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.*

No collection of information will be published.

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

The Department will display the expiration date for OMB approval.

18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions,"*

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

B. Collection of Information Employing Statistical Methods

H-2A Advertising Requirement
OMB Control No. 1205-0NEW
November 2018

This information collection does not employ statistical methods.