

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

TABLE OF CONTENTS

A. Justification.....	2
A.1. Circumstances that make the collection of information necessary.....	2
A.2. Purpose of information collected, how collected, and by whom.....	2
A.3. Extent to which collection is automated.....	3
A.4. Efforts to identify duplication	3
A.5. Efforts to minimize burden on small businesses.....	3
A.6. Consequences to Federal program if collection not done or done less frequently..	3
A.7. Special circumstances for conducting information collection.....	3
A.8. Summary of public comments.....	4
A.9. Explanation of decision to provide any payment or gift to respondents.....	5
A.10. Assurance of confidentiality provided to respondents.....	5
A.11. Justification for any sensitive questions.....	5
A.12. Estimated hourly burden.....	5
A.13. Estimated cost burden to respondents.....	7
A.14. Estimated cost burden to the Federal government.....	7
A.15. Reasons for any program changes reported in Items 13 or 14	7
A.16. Method for publishing results.....	7
A.17. If seeking approval not to display the expiration date.....	7
A.18. Explanation of each exception in the certification statement	7
B. Collection of Information Employing Statistical Methods.....	8

SUPPORTING STATEMENT
H-2A Shepherd Recordkeeping Requirement
OMB Control Number 1205-0519

A. Justification.

This Information Collection Request (ICR) is seeking a three-year extension without changes for renewal. All information collection requirements are specified in regulations, and ETA associates no forms or instructions with this ICR package.

A1. 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 information collection request (ICR) 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 20 CFR 655.210. The INA requires the Secretary of Labor (Secretary) to certify that any foreign worker seeking to enter the United States (U.S.) for the purpose of performing agricultural labor will not, by doing so, adversely affect wages and working conditions of similarly employed U.S. workers. The Secretary must also certify that there are not sufficient U.S. workers able, willing, and qualified to perform such agricultural labor. Employers must submit an application for certification to the Secretary containing the elements prescribed by the INA and regulations before petitioning the Department of Homeland Security for any temporary agricultural foreign workers.

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 allows employers to hire foreign shepherders, goatherders, and those working in open-range production of livestock.

On October 16, 2015, the Department of Labor (Department) published a Final Rule codifying regulations, at 20 CFR part 655 Subpart B, for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding or open-range production of livestock. See 80 FR 62957. The Final Rule also addressed the program obligations of employers, which included new timekeeping requirements which created a Paperwork Reduction Act (PRA) burden. These requirements and the associated burden were addressed in the 2015 Supporting Statement.

A2. 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.

The Department must request information from employers seeking to hire foreign labor in order to meet its statutory responsibilities under the INA. The Department uses the collected information to determine whether employers engaging in sheep herding, goat herding, or the open-range production of livestock have met their obligations under federal law. In order to determine eligibility for the program based on the amount of work performed, this ICR requires employers to note whether employees spend days on the ranch or on the range. This ICR also requires employers to record a reason for the worker's absence when the employer prorates the required wage.

A3. 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.

This information collection does not require a form and is kept by employers either manually or electronically, according to their business practice.

A4. 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 procedures and documentation requirements are sufficiently specific to avoid duplication.

A5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The information collection is required of small businesses. The recordkeeping requirements involve preexisting information kept by most employers in payroll and other records.

A6. 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.

The Department will be unable to meet its statutory and regulatory mandates if this information is not collected. Employers must record and maintain files to ensure they have complied with the Department's regulations and fulfilled their obligations as an H-2A employer. Should the Wage and Hour Division (WHD) of the Department investigate an employer, these files would be essential to assess compliance.

- A7. *Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.*

There are no special circumstances that would require the information to be collected in any of the manners requiring further explanation under 5 CFR 1320.5.

- A8. *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.

In accordance with the Paperwork Reduction Act of 1995, the public was allowed 60 days to comment through the Federal Register Notice posted on August 23, 2018 (83 FR 42697). The Department received 3 public comments in response. Of those, one comment addressed the ICR only in part, with the remainder of the comment raising concerns with the underlying guestworker programs.

One comment — from the Western Range Association — had no objection to the ICR, stating: “[c]urrent recording by ranchers of generalized data reflecting the time on and off of a range for a worker is currently not burdensome for employers of Western Range Association. This recorded information helps to differentiate open range production of livestock workers from other H-2A workers who have different pay scales and regulatory requirements... [a]llowing ranchers to utilize their own recordkeeping methods and retaining the documents is the best and most efficient process to continue collecting this information.” This commenter also agreed with the Department’s estimate of time burden, as it appeared in the August 23, 2018 60-day Notice.

A second comment — from the Mountain Plains Agricultural Service (MPAS) — mimicked comments from the Western Range Association in that they agreed the obligation and burden estimate proposed by the Department was appropriate and suitable. Additionally, MPAS indicated that the current form of this ICR is not “overly burdensome.”

Various worker advocacy groups submitted combined comments. Their submission included: (1) comments on this ICR; (2) a copy of the comments these worker advocates submitted in response to the Department's H-2A proposed rule, published April 15, 2015 (which, when finalized, gave rise to the instant recordkeeping requirement) (80 FR 20300); and (3) samples of two ETA-790 forms completed by employers. In sum, the worker advocates maintained – as they did when the proposed rule was published — that the recordkeeping requirement, in its current form, is inadequate as a means of assessing employer compliance; that the exemption for herder and open range employers (from the more detailed recordkeeping requirement that applies to other H-2A employers) should be eliminated; and that the Department should add safeguards to the herder/open-range recordkeeping requirement.¹ Any change to the underlying information collection requirements would require notice and comment rulemaking, a process that falls outside of the ICR approval process; consequently, the Department has decided not to act on this set of comments. For ease of reference, similar comments were addressed by the Department in the preamble to the H-2A Final Rule, published on October 16, 2015 (80 FR 62957). For additional specifics, we refer readers to the preamble to the final rule, available at <https://www.gpo.gov/fdsys/pkg/FR-2015-10-16/pdf/2015-26252.pdf>. The worker advocates' submission of sample, completed employer ETA-790 forms also did not address the ICR, and falls outside the scope of the ICR clearance process. Similarly, areas for improving enforcement and compliance of this recordkeeping is outside of the scope of clearing the ICR. For these reasons, the Department declines to make changes to the subject information collection requirements.

A9. 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 requested.

A10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No assurance of confidentiality is provided. The information collected is not submitted to the Department unless requested as part of a Wage and Hour investigation. As a practical matter, information from an investigation file would only be disclosed in accordance with the Freedom of Information Act.

¹ The worker advocacy groups contend that this proposed collection "...is inadequate as a means of fulfilling the Department's responsibility to determine whether employers have met their obligations under federal law...Worker advocates have many examples of employers who have failed to maintain the required records..." Additionally, the commenters state that this ICR, as written, allows for employers to misclassify herders and range livestock workers. Lastly, the commenters list ways in which the Department may be able to enforce compliance with the recordkeeping requirements in lieu of making changes to this ICR.

A11. 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.

This collection does not involve sensitive information.

A12. Provide estimates of the hour burden of the collection of information.

In 2015, the Department published a Final Rule for the H-2A program adding specific provisions to the regulations at 20 CFR Part 655 Subpart B for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding or production of open-range livestock. This Final Rule addressed the recordkeeping obligations of employers, including timekeeping requirements, which created a PRA burden that must be accounted for in this supporting statement. The Final Rule added the requirement that employers notate whether employees spent days on the ranch or on the range and the reason for the employee's absence when the employer prorated the required wage. The Department associates no PRA reporting burden with this collection, as responses would only be provided in response to an investigation conducted by the Wage and Hour Division to determine whether an employer has complied with specific requirements. See 5 CFR 1320.4(a)(2).

The Department estimates this information collection will affect 654 employers utilizing foreign shepherders, goatherders, and workers engaged in open-range production of livestock. This estimate is based on the average number of employers filing applications with the Department for H-2A workers to perform herding work in Fiscal Year 2016 (600) and Fiscal Year 2017 (707). The Department estimates it will take each employer, on average, 5 minutes each week to prepare timesheets for its employees and 1 minute each week to store those timesheets each week.

The Department's cost burden estimate used the average salary of a Human Resources Manager based on the national cross-industry mean hourly wage rate, \$57.79, from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Occupational Employment Statistics survey wage data,² increased by a factor of 1.44 to account for employee benefits and other compensation; a total hourly cost of \$83.22. This number was multiplied by the total time burden for this IC requirement, 3,270 hours per year. The estimated total annual respondent time cost for this burden is \$272,129.40.

Annual responses to record and report weekly data for 654 employers x 52 weeks = 34,008 responses per year. The burden cost of this provision calculated as 34,008 responses x 6 minutes x \$83.22 = \$283,031.

² Source: Bureau of Labor Statistics, Occupational Employment Statistics: May 2018 National Occupational Employment and Wage Estimates; Management Occupations; Human Resources Manager. <http://www.bls.gov/oes/2017/may/oes113121.htm>

The following table can be used as a guide to calculate the total burden of this information collection.

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response (minutes)	Total Annual Burden (hours)	Rate* (per hour)	Monetized Value of Time
H-2A Preparing Time Sheet	654	52	34,008	5 minutes	2,834	\$83.22	\$235,845
H-2A Filing Time Sheet	654	52	34,008	1 minute	567	\$83.22	\$47,186
Unduplicated Totals	654	52	34,008	6 minutes	3,401	\$83.22	\$283,031

A13. 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).

a) Start-up costs: There are no start-up costs. Employers are required to generate and retain records to participate in the H-2A program. The only necessary supply is a filing cabinet. The Department estimates a minimal initial cost to employers because it is customary for businesses to have storage space.

b) Annual costs: There are no annual costs beyond those described in A12.

A14. 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.

The Department associates no Federal costs with this information collection, in accordance with exception to PRA coverage codified at 5 CFR 1320.4(a)(2). As previously noted, DOL would only review records covered by this information collection in association with an investigation of a particular entity to determine compliance with specific requirements.

A15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The estimated burden hours increased because the number of employers participating in the program increased. The previous burden was calculated in 2015 and reflected the lower rate of participation.

A16. 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.

The Department does not intend to publish the results of this information collection.

A17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

A18. 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. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.