

APPENDIX A

**SUPPORTING STATEMENT
 H-2A Temporary Agricultural Labor Certification Program
 OMB Control Number 1205-0466**

Breakdown of Hourly Burden Estimates

***Note:** In this document, the Department of Labor (Department) provides time burden estimates per specific collection activity conducted in connection with the H-2A Temporary Agricultural Labor Certification Program, adjusted to reflect modifications made in response to public comments. The estimates are provided in minutes, but the Department also provides the breakdown on how the total burden hours were calculated, which includes the time estimates in hours (e.g. 5 minutes/0.08hours). This document is to be reviewed in conjunction with the table included in Question 12 of the Supporting Statement.*

Total H-2A Program Burden Estimate → 52,384.81 hours (3,143,089 minutes)

Total H-2A respondents → 8,783

Total Time Cost Estimate = \$4,447,994 (Burden Hours x Hourly Rate (\$84.91))

| Information Collection Activity | Number of Respondents | Frequency | Total Annual Responses | Time Per Response (in hours (minutes))* | Total Annual Burden (in hours) | Hourly Rate | Cost of Time (in dollars)** |
|--|------------------------------|------------------|-------------------------------|--|---------------------------------------|--------------------|------------------------------------|
| A.1 Proof of Agent Relationship | 306 | 19 | 5,814 | .25 (15 min) | 1,453.50 | \$84.91 | \$123,417 |
| A.2 Agent MSPA Registration | 117 | 1 | 117 | .08 (5 min) | 9.36 | \$84.91 | \$795 |
| A.3 Inform of Fee Prohibitions | 5,844 | 1 | 5,844 | .08 (5 min) | 467.52 | \$84.91 | \$39,697 |
| B.1 Determining Offered Wage | 8,783 | 1 | 8,783 | .033 (2 min) | 289.84 | \$84.91 | \$24,610 |
| B.2 Form ETA-790/790A | 8,783 | 1 | 8,783 | .66 (40 min) | 5,796.78 | \$84.91 | \$492,205 |
| C.1 Form ETA-9142A | 8,783 | 1 | 8,783 | .50 (30 min) | 4,391.50 | \$84.91 | \$372,882 |
| C.2 H-2ALC Filing Requirements | 1,129 | 1 | 1,129 | 1.33 (80 min) | 1,501.57 | \$84.91 | \$127,498 |
| C.3 Waiver for Emergency Situations | 318 | 1 | 318 | .50 (30 min) | 159 | \$84.91 | \$13,501 |
| C.4 Modify Application/Job Order | 3,513 | 1 | 3,513 | .15 (15 min) | 878.25 | \$84.91 | \$74,572 |
| C.5 Amend Application/Job Order | 1,493 | 1 | 1,493 | .50 (30 min) | 746.50 | \$84.91 | \$63,835 |
| C.6 Herder Variance Request | 3 | 1 | 3 | .50 (30 min) | 1.5 | \$84.91 | \$127 |
| D.4 Recruitment Report | 8,783 | 1 | 8,783 | 1 (60 min) | 8,783 | \$84.91 | \$745,765 |
| E.1.a Provide Workers With Job Order | 5,844 | 29.92 | 174,879 | .08 | 13,990.32 | \$84.91 | \$1,187,918 |

| Information Collection Activity | Number of Respondents | Frequency | Total Annual Responses | Time Per Response (in hours (minutes))* | Total Annual Burden (in hours) | Hourly Rate | Cost of Time (in dollars)** |
|---------------------------------------|-----------------------|------------|------------------------|---|--------------------------------|-------------|-----------------------------|
| | | | | (5 min) | | | |
| E.1.b Translate Application/Job Order | 8,783 | 1 | 8,783 | ¹ (60 min) | 8,783 | \$84.91 | \$745,765 |
| E.3 Notice to Leave United States | 8,783 | 1 | 8,783 | ^{.033} (2 min) | 289.84 | \$84.91 | \$24,610 |
| E.4 Petition for Higher Meal Charges | 20 | 1 | 20 | ¹ (60 min) | 20 | \$84.91 | \$1,698 |
| E.5 Substitute Housing for Workers | 30 | 1 | 30 | ^{.33} (20 min) | 9.9 | \$84.91 | \$841 |
| E.6 Workers' Compensation Coverage | 8,783 | 1 | 8,783 | ^{.17} (10 min) | 1,493.11 | \$84.91 | \$126,780 |
| E.7 Complaints Withholding Workers | 1 | 1 | 1 | ^{.50} (30 min) | .5 | \$84.91 | \$42 |
| F.1 Retention of Documents | 8,783 | 1 | 8,783 | ^{.17} (10 min) | 1,493.11 | \$84.91 | \$126,780 |
| G.1 Abandonment/Termination Notice | 9,578 | 1 | 9,578 | ^{.17} (10 min) | 1,628.26 | \$84.91 | \$138,256 |
| G.2 Redetermination Request | 25 | 1 | 25 | ^{.50} (30 min) | 12.5 | \$84.91 | \$1,061 |
| G.3 Extend Period of Certified Work | 200 | 1 | 200 | ^{.50} (30 min) | 100 | \$84.91 | \$8,491 |
| G.4 Administrative Appeals | 56 | 1 | 56 | ^{.33} (20 min) | 18.48 | \$84.91 | \$1,569 |
| G.5 Withdrawal Request | 121 | 1 | 121 | ^{.17} (10 min) | 20.57 | \$84.91 | \$1,747 |
| G.6 H-2A Worker Departure Notice | 88 | 1 | 88 | ^{.033} (2 min) | 2.9 | \$84.91 | \$246 |
| H.2 Audit-imposed Special Procedures | 44 | 1 | 44 | ¹ (60 min) | 44 | \$84.91 | \$3,736 |
| UNDUPLICATED TOTALS | 8,783* | N/A | 273,537 | N/A | 52,384.81 | N/A | \$4,447,994 |

* This column provides estimates in both hours and minutes to ease the review of the information.

** This column has been calculated by multiplying the burden hours x hourly rate and rounded, up or down, to the nearest dollar.

*** The column representing the number of respondents that complete the collection of information steps described in this table cannot be added up as not all employers or agents complete each one of the steps described. The Department estimates, than on a yearly average, 8,783 respondents will provide on average 273,537 responses in connection with this information collection.

A. Agents and recruiters

1. Proof of agent relationship (20 CFR 655.133(a)). The regulations require all agents who file H-2A applications on behalf of employers to demonstrate that a bona fide relationship exists between them and the employer. The Department is not requiring any specific form of such documentation and will accept a copy of the agent –employer agreement or another document demonstrating the agent’s authority to act on behalf of the employer. These agreements must have been executed and readily available at the time of filing Form ETA-9142A, and, for that reason, the Department estimates that it takes, on average, approximately 15 minutes to prepare, print, sign, and electronically upload or deliver a copy of the agreement to the Office of Foreign Labor Certification (OFLC) confirming the relationship. Based on program data collected over the past three

fiscal years, the Department estimates that 306 agent filers will likely execute agreements between themselves and their clients, which they must provide along with Form ETA-9142A. Since a copy of the agreement is required to be submitted with Form ETA-9142A and each agent represents multiple employer-client applications per year, the Department estimates that each agent will need to submit a copy of the required agreement, on average, 19 times per year.

The estimated burden for this collection is 1,453.50 reporting hours (87,210 minutes). (306 agent filers x 19 responses x 15 minutes = 87,210 minutes (1,453.50 hours)).

2. *Agent's proof of MSPA registration (20 CFR 655.133(b)).* The regulations require agents who are Farm Labor Contractors to provide a copy of their Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Certificate of Registration. Because these registrations must already be valid and readily available at the time of filing the Form ETA-9142A, the Department estimates it takes agents approximately 5 minutes to copy their certificates and provide them with the application. In the past, 117 agents in the H-2A program have been certified Farm Labor Contractors per year.

The estimated burden for this collection is 9.36 reporting hours (585 minutes). (117 filers x 5 minutes = 585 minutes (9.36 hours)).

3. *Contracts with third parties on fee prohibitions (20 CFR 655.135(k)).* The Department requires employers to prohibit in a written contract any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H-2A workers, from seeking or receiving payments or other compensation from prospective employees. This documentation is to be made available only upon request by the Department or another Federal party (e.g., during audit or investigation). The Department assumes, and therefore estimates, that all employers will utilize foreign agents and recruiters, and it takes the employer an average of 5 minutes to comply with this requirement.

The estimated burden for this collection is 467.52 third party disclosure hours (29,220 minutes). (5,844 contracts x 5 minutes = 29,220 minutes (467.52 hours)).

B. H-2A Agricultural Clearance Order

1. *Determination of offered wage rate(s) (20 CFR 655.120, 122(l)).* To comply with its obligation under §655.122(l), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. To prepare the Form ETA-790A, the employer must determine the appropriate wage of offer, advertise, and pay workers to perform the agricultural services or labor. To assist employers to comply with this regulatory requirement, the Department routinely publishes the AEWRs and any prevailing hourly

wage or piece rates (based on surveys conducted by SWAs) on the OFLC website at <http://www.foreignlaborcert.doleta.gov>. Because the AEWRS represent the same minimum hourly wage rate across an entire state or regional area, irrespective of crop or agricultural activity, and SWA-conducted prevailing wage surveys are infrequently used, the estimated time required to research the applicable minimum wages and disclose a wage offer on the Form ETA-790A is estimated at 2 minutes.

The estimated burden for determining the required offered wage is 289.84 reporting hours (17,566 minutes). (8,783 job orders x 2 minutes = 17,566 minutes (289.84 hours)).

2. Form ETA-790/790A, Addendums A, B, and C (20 CFR 655.121, 655.122). The regulatory requirement that the job order submitted to the SWA and Department must meet the content standards set forth in 20 CFR 653, Subpart F and 20 CFR 655.122 is subject to the PRA burden calculations. The Department estimated that it would take an average employer 2 minutes to complete the proposed Form ETA-790 and 38 minutes to complete the proposed Form ETA-790A and ensure that it includes all of the required material terms and conditions of employment in compliance with regulatory requirements, including completion of the standard addendums to disclose additional crops/agricultural activities, worksites, and housing.

The Department requested and received OMB approval for non-substantive changes to the current Form ETA-9142A to collect additional recruitment fields from employers to ensure that U.S. workers are able to contact employers for available job opportunities. The changes include the collection of the following recruitment contact information to assist U.S. workers: the employer's telephone number and the employer's email address and/or website address. OMB approved the non-substantive changes to the current collection on November 29, 2018. The fields are added to this proposal for the Form ETA-790A in Section G under Recruitment Information, without change to the burden estimate(s). See ICR 201810-1205-004.

In response to public comments received in connection with the Department's 60-day notice, the Department modified *Addendums A* and *B* to simplify the collection format and proposed a new *Addendum C* to collect other additional material terms and conditions of employment that employers currently provide to the Department in free-form "attachments." The updated proposed *Addendums A* and *B* are expected to take an average employer 5 minutes less per submission than originally estimated. These revised addenda are less complex, which reduces the time that is necessary to become initially familiar with, and complete the information collected for submission to the Department, when applicable. Although the new *Addendum C* provides an updated, standardized format for information collection, the information collected is not new and was accounted for in the Department's previous burden estimates. Nevertheless, the Department has updated its burden estimate for the Form ETA-790/790A and addenda to account for the time for an employer to become familiar with the new *Addendum C* and transition its current "attachment" information into the *Addendum C*. The Department estimates it will take an additional 5 minutes for an average employer to become familiar with and

complete *Addendum C*. As a result, the overall burden estimate for the ETA-790/790A remains consistent with the Department's earlier estimate.

The estimated burden is 5,796.78 reporting hours (351,320 minutes). (8,783 job orders x 40 minutes = 351,320 minutes (5,796.78 hours)).

Note: *The time required to modify a particular job order in accordance with a request from the Department is accounted for under Submission of a modified application or job order (20 CFR 655.144) below.*

C. H-2A Application for Temporary Employment Certification

1. Form ETA-9142A Application for H-2A Temporary Employment Certification and Appendix A (20 CFR 655.130-132). The Department requires completion of the Form ETA-9142A when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. With the revisions being proposed under this information collection request (ICR) and the fact that nearly all of the data in sections B, C, and D will be pre-populated from the employer, attorney, or agent's electronic filing account, the main form will take approximately 25 minutes to complete, review, and attach all required documentation. The Department also requires that an employer filing a Form ETA-9142A must also attach a signed and dated *Appendix A* attesting to compliance with all of the terms, assurances, and obligations of the H-2A program to obtain a temporary labor certification. The Department estimates the employer will take another 5 minutes to review and then sign and date the *Appendix A*. Based on recent program experience, we estimate 8,783 applications and appendices will be filed annually.

The estimated burden for the filing of the Form ETA-9142A is 4,391.50 reporting hours (175,660 minutes). (8,783 applications x 30 minutes = 175,660 minutes (4,391.50 hours)).

2. Filing Requirements for H-2ALCs (20 CFR 655.132). The Department requires employers operating as H-2A Labor Contractors (H-2ALCs) must provide additional documentation at the time of filing the Form ETA-9142A. H-2ALC employers must submit a list of fixed-site agricultural businesses with whom they have contracted to provide H-2A workers, copies of the fully-executed contracts, a valid MSPA Certificate of Registration (if applicable), surety bond, and proof that housing and transportation complies with all applicable standards. Recent program data shows that approximately 1,129 applications could be filed by H-2ALCs employers. The Department anticipates that it will take them approximately 1 hour and 20 minutes to comply with these requirements.

The estimated burden for this collection is of 1,501.57 reporting hours (175,660 minutes). (1,129 H-2ALC applications x 80 minutes = 90,320 minutes (1,501.57 hours)).

3. Waiver of filing timeframes due to emergency situations (20 CFR 655.134). The Department permits an employer who did not make use of temporary H-2A workers during the prior year's agricultural season or who has other good and substantial cause (which may include unforeseen changes in market conditions), to request a waiver of the regulatory timeframe for filing the Form ETA-9142A, provided that the Department has sufficient time to test the domestic labor market on an expedited basis to make the labor certification determination. This request must be made at the time of application filing and can be done electronically through the iCERT System. Based on recent program data, collected over the last three fiscal years, the Department estimates it will receive 318 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.

The estimated burden for this collection is of 159 reporting hours (9,540 minutes). (318 requests x 30 minutes = 9,540 minutes (159 hours)).

4. Submission of a modified application or job order (20 CFR 655.141(b)(2), 655.142). The Department permits employers to modify and resubmit their applications and/or job orders, as appropriate, according to the insufficiencies listed in the Notice of Deficiency. Based on program data gathered over the last three fiscal years, the Department estimates that approximately 40 percent of the applications (3,513 applications) will require modification per year. Because the vast majority of deficiency issues are non-substantive corrections and employers can upload modified applications or job orders electronically using the iCERT System, the Department estimates it takes on average 15 minutes to respond to a Notice of Deficiency by submitting a modified application or job order.

The estimated burden for this collection is of 878.25 reporting hours (52,695 minutes). (3,513 modifications x 15 minutes = 52,695 minutes (878.25 hours)).

5. Amending the application or job order (20 CFR 655.145). The Department permits employers to amend their applications and/or job orders at any time before the Department makes a final determination to grant or deny the application. The Department anticipates receiving 1,493 such amendments and that it takes an employer approximately 30 minutes on average to prepare and file an amendment request.

The estimated burden for this collection is of 746.50 reporting hours (44,790 minutes). (1,493 amendments x 30 minutes = 44,790 minutes (746.50 hours)).

6. Variance Request by Employers in Herding Occupation (20 CFR 655.235). The Department's regulations for employers requesting foreign workers for herding and livestock production on the range¹ allow employers to request a variance from the requirements to provide potable water and separate sleeping facilities for each worker. The variance requests must be in writing and submitted at the time of filing the Form ETA-9142A. The Department estimates it will take employers 30 minutes to write a letter requesting the variance(s). The Department anticipates receiving 3 such variance

¹ Range is defined in the Department's H-2A regulations at 20 CFR 655.201.

requests and that it takes an employer 30 minutes on average to prepare and file a variance request.

The estimated burden for this information collection is of 1.5 reporting hours (90 minutes). (3 amendments x 30 minutes = 90 minutes (1.5 hours)).

D. Recruitment of U.S. Workers

Recruiting for job vacancies, including advertising and/or placing job orders, are usual and customary activities for employers. Therefore, under the regulations of the Office of Management and Budget (OMB) at 5 CFR 1320.3(b), the resources expended by employers to comply with the placing of job orders, receiving referrals of prospective U.S. applicants, contacting former seasonal employees, and other related advertising activities at 20 CFR 655.121, 151, 153, and 154 are excluded in compiling the paperwork burden estimates.

1. *Proof of recruitment.* The records employers are required to keep to demonstrate compliance with the advertising requirements under 20 CFR 655.167(b) must also be retained by employers under the regulations of the Equal Employment Opportunity Commission 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 29 CFR 1627.3 (OMB Control No. (3046 -0018), promulgated pursuant to the Age Discrimination in Employment Act. Therefore, the burden to maintain such records can be excluded in compiling the paperwork burden under OMB's regulations. See 5 CFR 1320. For example, 29 CFR 1602.14 requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to ... 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." 29 CFR 1627.3 of the Age Discrimination in Employment Act requires employers to keep the following for a period of one year:

- Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.
- Promotion, demotion, transfer, selection for training, layoff, recalls or discharges of any employee.
- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.
- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

2. State Workforce Agencies (SWAs) postings, distribution, and referrals (20 CFR 655.150, 655.155). The Department requires SWAs to post the employer's approved job orders, distribute the job orders to other SWAs, where applicable, and refer prospective U.S. applicants to the employer. This function is exempt from the paperwork burden calculations under 5 CFR 1320.3(d), because it is a normal function of the SWAs and does not increase their burden.
3. Electronic Job Registry (20 CFR 655.144). The Department posts an employer's approved job order on the Department's electronic Job Registry which serves as a public repository for approved H-2A job orders for the duration of the referral period and serves to improve the visibility of H-2A jobs to U.S. workers. This third party disclosure is performed by the Department and is, therefore, not included in the calculation of the public burden.
4. Recruitment Report (20 CFR 655.156). The time needed to prepare the recruitment report in 20 CFR 655.156 of the regulations is not excludable in compiling the burden. Under this provision, employers must prepare, sign, and retain a written summary report describing the recruitment steps undertaken to recruit for U.S. workers and the results achieved, including the number of hires, and, if applicable, the number of U.S. workers rejected, summarizing the lawful job-related reasons for such rejection. The employer is required to provide a report of its recruitment efforts to the Department prior to certification and must continue to accept U.S. worker referrals until 50 percent of the work contract period has elapsed. Employers are required to update the recruitment report for the duration of the regulatory recruitment period. Additionally, under the audit process detailed in 20 CFR 655.180, the Department may request the employer submit the final recruitment report contained in the employer's files along with the resumes or applications of U.S. workers sorted by the lawful job-related reasons they were rejected. The Department estimates that it takes employers 60 minutes to prepare such a recruitment report.

The estimated burden for this collection is of 8,783 reporting hours (526,980 minutes). (8,783 recruitment reports x 60 minutes = 526,980 minutes (8,783 hours)).

E. Worker Guarantees & Rights

1. Provide copy of job order or work contract to workers (20 CFR 655.122(q)). The Department requires employers to provide H-2A workers (no later than the time at which the workers apply for the visa with the Department of State) or to U.S. 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 one certified H-2A employer to a subsequent certified H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent certified 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-790A.

The Department has no available means of calculating how many U.S. workers are in corresponding employment. However, the Department does not always approve the total number of H-2A workers requested by the employer, because it may find, for example, that the employer failed to hire qualified U.S. workers. Therefore, the Department assumes, in principle, that the number of requested workers (174,879²) equals the total number of H-2A workers certified/hired and corresponding U.S. workers hired.

- a. The Department estimates it takes employers an average of 5 minutes to provide each worker with a copy of the Form ETA-9142A and Form ETA-790A. **The estimated burden for this collection is of 13,990.32 hours (874,395 minutes).** (174,879 workers x 5 minutes = 874,395 minutes (13,990.32 hours)).
 - b. In addition, the Department estimates that all employers will need to translate Form ETA-9142A and their responses entered on Form ETA-790A into a language other than English (e.g., Spanish), when using the application and job order as its work contract. The Department estimates that all employers need to translate their job orders for a total of 8,783 translations. The Department estimates that a typical translation takes 60 minutes, to complete. **The estimated burden for this collection is of 8,783 hours (526,980 minutes).** (8,783 job orders x 60 minutes = 526,980 minutes (8,783 hours)).
2. *Post notice of worker rights (20 CFR 655.135(l)).* The regulations require employers to post and maintain in a conspicuous location at the place of employment a poster provided by the Department that sets out the rights and protections for H-2A workers and workers in corresponding employment. However, this burden is exempt from the PRA under 5 CFR 1320.3(c)(2).
 3. *Notify workers of duty to leave the United States (20 CFR 655.135(i)).* The regulations require the employer to inform H-2A workers employed under the certified Form ETA-9142A and Form ETA-790A of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, unless the H-2A worker is being sponsored by another subsequent H-2A employer. The Department estimates that it will take each employer approximately 2 minutes to inform its H-2A workers of their duty to leave the U.S. during the workers' orientation at the beginning of the contract period.

The estimated burden associated with third party disclosures is of 289.84 hours (17,566 minutes). (8,783 applications x 2 minutes = 17,566 minutes (289.84 hours)).

4. *Petition for higher meal charges (20 CFR 655.173).* Pursuant to 20 CFR 655.122(g), the employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer must

² The numerical estimation of 174,879 is the average number of workers requested by employers for temporary labor certification on H-2A applications from three previous fiscal years based on the Department's experience implementing the 2010 H-2A Final Rule. (FY 2015: 145,767; FY 2016: 172,654; and FY 2017: 206,217).

state the charge, if any, to the worker for such meals. 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 through a notice in the *Federal Register* and through the OFLC website at <http://www.foreignlaborcert.doleta.gov>. If an employer's cost to provide meals is higher than the published amount, the employer may request approval to charge more, based on evidence of allowable costs. The time to retain the necessary information as required under 20 CFR 655.167(c)(5) and 655.122(j) is accounted for under the burden for retention of supporting documentation at 20 CFR 655.167 of this supporting statement. The Department anticipates receiving 20 such requests and that it will take employers approximately 60 minutes to prepare this type of request.

The estimated burden for this collection is of 20 reporting hours (1,200 minutes). (20 petitions x 60 minutes = 1,200 minutes (20 hours)).

5. Substitute Housing for Workers (20 CFR 655.122(d)(6)). The regulations require that the employer provide housing that meets applicable standards at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. However, if after a request to certify housing, such housing becomes unavailable for reasons outside the employer's control, the employer may substitute other rental or public accommodation housing that is in compliance with the applicable local, State, or Federal housing standards. 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 housing standards. The Department estimates that approximately 30 employers might change the housing for their employees and will inform the SWA in writing of this change and provide all required information. The Department estimates it takes an employer 20 minutes to compose an email or letter to the SWA explaining the changes and the modified housing option that it will provide to foreign workers.

The estimated burden for this information collection is of 9.9 reporting hours (600 minutes). (30 housing notifications x 20 minutes = 600 minutes (9.9 hours)).

6. Workers' Compensation (20 CFR 655.122(e)). The regulations require that the H-2A employer provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. Prior to issuance of the temporary labor certification, the employer must provide the Department with proof of workers' compensation insurance coverage meeting regulatory requirements and, if necessary, provide a signed statement attesting that it will renew coverage to ensure the insurance policy is valid during the entire period of employment. 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 their intention to renew or extend the policy and electronically upload or attach it to their application.

The estimated burden for this information collection is of 1,493.11 reporting hours (87,830 minutes). (8,783 applications x 10 minutes = 87,830 minutes (1,493.11 hours)).

7. *Complaint related to withholding U.S. workers.* 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 (WHD) 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.

However, if any employer who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the worksite of H-2A workers in order to force the hiring of U.S. workers during the recruitment period, the employer may submit a complaint to the Department and clearly identify the person or entity who the employer believes has withheld the U.S. workers and provide all relevant facts to support the allegation. 20 CFR 655.157. 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. Based on past experience, the Department expects to receive one complaint each year.

The estimated burden for this requirement is half of a reporting hour (30 minutes). (1 x 30 minutes = 30 minutes (.5 hours)).

F. Retention Requirements

1. *Retention of documents (20 CFR 655.167).* The Department requires all employers who file an *H-2A Application for Temporary Employment Certification* (Form ETA-9142A and all appendices), and all supporting documentation (inclusive of the job order, Form ETA-790) to retain all such documents and records not otherwise submitted proving compliance with 20 CFR 655, Subpart B. The Department estimates that employers spend about 10 minutes per year, per application to retain the Form ETA-9142A and all supporting documentation in the two years following the mandated one year of required retention for companies subject to Title VII and during the five years already mandated for all other employers.

This results in an estimated annual burden of 1,493.11 recordkeeping hours (87,830 minutes). (8,783 applications x 10 minutes = 87,830 minutes (1,493.11 hours)).

G. Post-adjudication requirements

1. *Notification of abandonment or termination (20 CFR 655.122(n))*. In order to negate a continuing liability for wages and benefits for a worker who is terminated for cause or voluntarily abandons employment, employers are required to notify the Department and the Department of Homeland Security (DHS), as applicable, no later than two working days after the termination or abandonment. Based on recent experience, the Department estimates it takes employers an average of 10 minutes to notify the Departments in writing in order to meet this requirement. The Department receives approximately 9,578 such notifications each year and estimates that it will receive the same approximate volume of notifications during the next validity cycle.

The estimated burden for this information collection is of 1,628.26 reporting hours (95,780 minutes). (9,578 notifications x 10 minutes = 95,780 minutes (1,628.26 hours)).

2. *Redeterminations (20 CFR 655.166)*. The regulations permit an employer to petition the Department for a redetermination 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. The Department estimates it takes employers approximately 30 minutes to call or email the Department with its request and then follow-up with a written request. Based on recent experience, the Department estimates that it will receive approximately, on average, 25 such requests each year.

The estimated burden for this collection is of 12.5 hours reporting hours (750 minutes). (25 requests x 30 minutes = 750 minutes (12.5 hours)).

3. *Extension of the certified period of employment (20 CFR 655.170)*. The regulations permit employers, under certain circumstances involving weather conditions or other factors beyond the control of the employer, to request in writing an extension of the certified period of employment for more than two weeks (i.e., long-term requests). All requests for an extension of two weeks or less (i.e., short-term requests) are submitted directly to DHS U.S. Citizenship and Immigration Services and not subject to the burden disclosure in connection with this ICR. The Department estimates that it will receive, on average, approximately 200 long-term extension requests each year. The Department also estimates that it takes the employer approximately 30 minutes to comply with this requirement.

The estimated burden for this collection is of 100 reporting hours (6,000 minutes). (200 notices x 30 minutes = 6,000 minutes (100 hours)).

4. *Administrative Appeals (20 CFR 655.141, 142, 164, 165, 181, and 182)*. 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 in writing in accordance with the procedures prescribed by the specific regulatory provision authorizing the appeal. *See generally* 20 CFR 655.171. Based on past experience, the Department estimates that it will receive approximately 56 appeals annually and that it will take employers 20 minutes to prepare and send the Notice of Appeal.

The estimated burden for this collection is of 18.48 reporting hours (1,120 minutes). (56 appeals x 20 minutes = 1,120 minutes (18.48 hours)).

5. *Request for withdrawal (20 CFR 655.172)*. The regulations permit employers to request withdrawal of an application after it has been accepted for processing, but before it is adjudicated. Based on program data over the last three fiscal years, the Department estimates that it will receive, on average, approximately 121 such requests each year. The Department also estimates that it takes the employer 10 minutes to comply with this requirement.

The estimated burden for this collection is of 20.57 reporting hours (1,210 minutes). (121 requests x 10 minutes = 1,210 minutes (20.57 hours)).

6. *H-2A worker departure date (20 CFR 655.135(c))*. 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. This program component is referred to as the "50 percent rule." Pursuant to 20 CFR 655.135(c), 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 date of need. This regulatory notification requirement is necessary so that the SWA can understand when it can cease active recruitment of U.S. workers, and the employer can understand when positive recruitment will end.

Based on program experience, employers rarely have a need to provide such notification to the SWA, because all employers conduct their positive recruitment activities well in advance of the third day preceding the employer's date of need. Thus, the Department assumes that only 1 percent of 8,783 employer applications will have to provide the required notification to the SWA of the actual departure date, or about 88 applications per year. It is estimated that it takes employers about 2 minutes for an employer to provide an email notification to the SWA in compliance with the departure date notification requirements.

The Department estimates that it will take employers approximately 2.90 reporting hours (176 minutes) to provide the notification required under the regulation. (88 applications x 2 minutes = 176 minutes (2.90 hours)).

H. Integrity measures

1. *Audit, revocation, and debarment (20 CFR 655.180, 655.181, and 655.182)*. The regulations authorize the Department at its discretion to audit applications or conduct

investigations through WHD to ensure program integrity. Based on the results of these audits, investigations, or other information, the Department may revoke a certified application and/or place an employer, agent, or attorney in debarment proceedings. These processes require employers to respond to notices sent by the Department. However, such responses are exempt from the paperwork burden under 5 CFR 1320.3(h) (6) & (9) and 5 CFR 1320.4(a)(2).

2. *Audit-imposed special procedures for less than substantial violations (20 CFR 655.183).* In cases where OFLC determines the employer (or attorney or agent) has committed less than substantial violations, the OFLC Administrator may require the employer to conform to special procedures before and after the temporary labor certification determination. These special procedures may include special on-site positive recruitment and streamlined interviewing and referral techniques. The special procedures must be reasonable and designed to enhance U.S. worker recruitment and retention in the next year as a condition for receiving a temporary agricultural labor certification. Based on its program experience, the Department estimates that employers will be required to undergo assisted recruitment in approximately one-half of one percent of employer applications received in a year. The time required to conduct recruitment is already accounted for in the recruitment burden calculation above. In addition, the Department estimates that an employer will spend an additional 60 minutes in additional reporting incident to this manner of recruitment.

The Department estimates that such additional reporting results in 44 reporting hours (2,640 minutes). (44 applications x 60 minutes = 2,640 minutes (44 hours)).