

SUPPORTING STATEMENT
H-2A SHEEPHERDER RECORDKEEPING REQUIREMENT
OMB Control No. 1205-0519

This Information Collection Request (ICR) seeks approval under the Paperwork Reduction Act of 1995 (PRA) for the extension, without change, of Office of Management and Budget (OMB) Control Number 1205-0519, *H-2A Shepherd Recordkeeping Requirement* for the herding and production of livestock on the range. All information collection requirements are specified in regulations, and the U.S Department of Labor (Department) associates no forms or instructions with this ICR package.

A. Justification

A.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.

This 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 the temporary employment of foreign workers in job opportunities in herding and production of livestock on the range will not adversely affect wages and working conditions of similarly employed U.S. workers. The Secretary must also certify that there are not sufficient able, willing, qualified and available U.S. workers to perform these jobs. Employers must submit an application for temporary labor certification to the Secretary containing the elements prescribed by the INA and corresponding 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 employ foreign workers to perform herding or production of livestock on the range, including the care, husbandry, and herding of sheep, cattle, goats, horses, and other domestic hooved animals.

On October 16, 2015, the Department published a final rule codifying regulation 20 CFR part 655, subpart B, for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding or range production of livestock.¹ The Final Rule also addressed the program obligations of employers, which included new timekeeping requirements that created a PRA burden. These requirements and the associated burden were addressed in the 2015 and 2018 Supporting Statement for this information collection.

¹ See Final Rule, *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958 (Oct. 16, 2015), available at <https://www.govinfo.gov/content/pkg/FR-2015-10-16/pdf/2015-26252.pdf>.

Statutory Authority: 8 U.S.C. §§ 1101(a)(15)(H)(i)(B), 1101(a)(15)(H)(i)(B)(1), 1101(a)(15)(E)(iii), 1182(n) and (t), and 1184(c).

Regulatory Authority: 20 CFR part 655, subpart B, and 5 CFR 1320.4(a)(2).

A.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.

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 engaged in herding, or the 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 record 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 pursuant to 20 CFR 655.210(g)(2). Such records, as required by 20 CFR 655.210(f)(2), will enable the employer, and the Department, if necessary, to determine whether the worker performed work on the range for the majority (meaning more than 50 percent) of the workdays in the work contract period, as required under 20 CFR 655.200(b)(2).

A.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.

This information collection does not require employers to complete a form. The Department's regulations require employers to retain required records either manually or electronically, according to their business practice.

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

A.5. 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 participating in the H-2A program administered by the Department. The burden on small business concerns is minimal. Even though the information collection is required of small businesses who want to hire foreign workers, the recordkeeping requirements largely involve information that already exists in payroll and other records maintained by most employers for other purposes.

A.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.

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. The Department would be in direct violation of federal law and regulations because should the Wage and Hour Division (WHD) of the Department investigate an employer, these files would be essential to assess compliance.

A.7. 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(d)(2).

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).

A.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.

In accordance with the PRA, the Department published this ICR in the *Federal Register* on November 15, 2021, at 86 FR 63069, for a 60-day public comment period. The Department received one non-substantive, out of scope comment from the public.

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

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

A.10. 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.

A.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.

This information collection does not involve sensitive matters.

A.12. 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 livestock on the range. 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 WHD 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 983 employers employing foreign workers engaged in herding or production of livestock on the range, including the care, husbandry, and herding of sheep, cattle, goats, horses, and other domestic hooved animals. This estimate is based on the average number of employers filing applications with the Department for H-2A workers to perform herding or production of livestock on the range in Fiscal Year (FY) 2019 (1,026), FY 2020 (815) and FY 2021 (1,109). The Department estimates it will take each employer, on average, five minutes each week to prepare timesheets for its employees and one minute each week to store those timesheets.

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, \$64.70, from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Occupational Employment and Wage Statistics survey wage data, increased by a factor of 1.292 to account for employee benefits and other compensation; a total hourly cost of \$84.59.² This number was multiplied by the total time

² DOL believes that in most companies, a Human Resources Manager will perform these activities. The national mean hourly wage for a human resource manager is \$64.70 (*Occupational Employment and Wages, May 2020: 11-3121 Human Resources*

burden for this ICR requirement, 5,116.60 hours per year. The estimated total annual respondent time cost for this burden is \$432,390.25.

Annual responses to record and report weekly data for 983 employers x 52 weeks = 51,116 responses per year. The burden cost of this provision calculated as 51,116 responses x .0833 hours x \$84.59 per hour = \$360,180.84. Annual responses to file a timesheet for 983 employers x 52 weeks = 51,116 responses per year. The burden cost of this provision calculated as 51,116 responses x .0167 hours x \$84.59 per hour = \$72,209.41. The total cost for this information collection is estimated at \$432,390.25 (\$360,180.84 + \$72,209.41).

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	Avg. Burden Per Response (In hours)	Total Annual Burden (In hours)	Avg. Hourly Compensation	Total Annual Respondent Cost
H-2A Preparing Time Sheet	983	52	51,116	.0833	4,257.96	\$84.59	\$360,180.84
H-2A Filing Time Sheet	983	52	51,116	.0167	853.64	\$84.59	\$72,209.41
Unduplicated Totals	983	-----	51,116	0.1	5,111.60	-----	\$432,390.25

A.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).

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 repository where data is stored and managed (e.g., filing cabinet). The Department estimates a zero 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 A.12.

A.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

Managers, DOL, BLS, www.bls.gov/oes/current/oes113121.htm), while benefits averaged 29.2 percent of total employee compensation (*Employer Costs for Employee Compensation – September 2021*, U.S. Department of Labor, Bureau of Labor Statistics, https://www.bls.gov/news.release/archives/ecec_12162021.htm). The estimated average hourly compensation for a human resources manager, including wages and benefits, is \$84.59 (\$64.70 x 1.292).

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 the 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.

A.15. 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. Additionally, previous burden was calculated in 2018 and reflected the lower rate of participation.

A.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.

A.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.

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

A.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. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.