

SUPPORTING STATEMENT
H-2A APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION
ICR Number: 1205-0537

Introduction: *This information collection request (ICR) ultimately seeks to revise the H-2A temporary agricultural labor certification program information collection tools to reflect revisions to the information collection activities related to the H-2A Foreign Labor Certification Program, covered under OMB Control Number 1205-0466 (OMB 1205-0466), necessary to accommodate regulatory changes the Department is adopting through final rule RIN 1205-AB89, Temporary Agricultural Employment of H-2A Nonimmigrants in the United States (final rule).*

The Department did not submit an ICR proposing changes to the information collection tools under OMB 1205-0466, however, because the ROCIS database, which is OMB's system for processing requests, allows only one ICR per control number to be pending at any given time, and the existing control number was encumbered by an unrelated ICR when the Department submitted the NPRM in connection with this regulatory action. The Department is therefore submitting the instant ICR under OMB Control Number 1205-0537 (OMB 1205-0537), a temporary control number assigned by OMB when the Department submitted the NPRM for review, for administrative purposes only. Once all of the outstanding actions are completed, the Department intends to submit a non-material change request to transfer the burden from the temporary OMB 1205-0537 to OMB 1205-0466 and proceed to discontinue the OMB 1205-0537.

This supporting statement, along with its accompanying Paperwork Reduction Act package (i.e., updated documents illustrating changes), will be submitted to OMB for final review and approval as part of the larger, regulatory action the Department is pursuing to publish the final rule.

The regulatory changes the Department has announced through the final rule, and submitted to OMB for clearance under OMB 1205-0537, will eventually prompt the following revisions to the currently approved ICs, covered under OMB 1205-0466:

- *A new Form ETA-9142A, Appendix B, H-2A Labor Contractor Surety Bond, and electronic submission to simplify the submission, review, and enforcement of the required bond.*
- *A new Form ETA-232, Domestic Agricultural In-Season Wage Report (Form ETA-232) to replacing the existing Form ETA-232/232A. This is an IC tool that will only collect information from SWAs, not from employers. The SWAs will use the proposed new Form ETA-232 to report to the Office of Foreign Labor Certification (OFLC) the results of wage surveys in compliance with the revised prevailing wage determination methodology discussed in the NPRM. OFLC currently collects information to establish prevailing wage rates for the H-2A program. ETA is now revising the information collection tools, Form ETA-232, Domestic Agricultural In-Season Wage Report, and Form ETA-232A,*

Wage Survey Interview Record, and Form ETA-232, as well as the associated burden imposed on SWAs (currently authorized under OMB Control Number 1205-0017 (OMB 1205-0017); set to expire on March 31, 2023). ETA will request that OMB approves the new Form ETA-232, along with the burden associated with the existing Form ETA-232/232A, under OMB 1205-0466.

- *On October 16, 2015, the U.S. Department published a final rule, at 20 CFR part 655, subpart B, implementing standards and procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in herding or the range production of livestock. See 80 FR 62958. Among the issues addressed in the Final Rule were the program obligations of employers, which included new timekeeping requirements that created a PRA burden (currently authorized under OMB Control Number 1205-0519 (OMB 1205-0519). See 20 CFR 655.210(f). The record retention requirement for job opportunities in herding or the range production of livestock currently housed in 1205-0519 has always been the recordkeeping requirements associated with the information collection requirements in 1205-0466. As a result, ETA is including in this ICR Revision request that the burden currently in OMB 1205-0519 be merged into OMB 1205-0466.*
- *Revisions to the H-2A Temporary Agricultural Labor Certification Program information collection tools, as necessary, to reflect proposed regulatory changes.*

NOTE - *Screenshots of the built-out system supporting the electronic filing of application forms will be cleared with OMB through the non-material change process. The electronic filing systems require updating to address electronic signatures and to reflect the requirements of the final rule, including the addition of new forms and changes to existing forms and instructions.*

A. Justification.

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 Immigration and Nationality Act (INA) establishes the H-2A nonimmigrant visa 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\(a\)\(15\)\(H\)\(ii\)\(a\)](#). Employers must petition the DHS to import temporary workers as H-2A nonimmigrants. See [8 U.S.C. 1184\(c\)\(1\)](#). The INA authorizes DHS to permit employers to import nonimmigrant workers to perform agricultural labor or services of a temporary or seasonal nature under the H-2A visa classification only after the employer has applied to the Department 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). Under the INA, DOL is also authorized to enforce “employer compliance with terms and conditions of employment” in the H-2A program. 8 U.S.C. 1188(g)(2).

The Secretary of Labor (Secretary) has delegated the responsibility of issuing temporary labor certifications, through the Assistant Secretary, Employment and Training Administration (ETA), to ETA’s OFLC. See [Secretary’s Order 06-2010](#). The Secretary has also delegated responsibility for enforcement of the worker protections to the Administrator of the Wage and Hour Division (WHD). See [Secretary’s Order 01-2014](#). OMB Control Number 1205-0466 includes the collection of information related to an employer’s request for nonimmigrant workers, as well as the material terms, wages, and conditions of employment that facilitate the recruitment of U.S. workers and issuance of temporary labor certifications in the H-2A program.

As provided in the Department’s regulations at 20 CFR part 655, subpart B, the information collected through Form ETA-9142A, *H-2A Application for Temporary Employment Certification* (H-2A Application), and all required supporting documentation, constitutes the basis for DOL’s determination that an insufficient number of qualified U.S. workers are available to fill the 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. This determination is required before a petition can be filed with and approved by DHS.

As required by the INA, the Department may not issue a temporary labor certification unless the employer has conducted required recruitment “in addition to, and...within the same time period as, the circulation through the interstate employment service system of the employer’s job offer.” 8 U.S.C. 1188(b)(4). In accordance with the Wagner-Peyser Act of 1933, as amended by Title III of the Workforce Innovation and Opportunity Act, Pub. L. 113-128 (Jul. 22, 2014), the Department has established regulatory standards and procedures governing the Agricultural Recruitment System (ARS), which is administered by SWAs facilitating the intrastate and interstate clearance recruitment of U.S. workers for temporary agricultural employment. 20 CFR part 653, subparts B and F. To access the ARS, the employer must prepare and submit a job order (Form ETA-790/790A) to the SWA serving the area of intended employment describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits that will be offered to prospective workers.

Recruitment for the employer’s job offer through the ARS, and, therefore, using Form ETA-790/790A are essential components of the Department’s H-2A temporary labor certification review. The NPRM proposed to centralize all information collection submission with OFLC by requiring the employer to submit its job order (Forms ETA-790 and ETA-790A and addenda) and all supporting documentation to OFLC instead of the SWA. The proposal did not include revisions to the requirement that the job order form and supporting documentation satisfy the requirements for agricultural clearance orders in both 20 CFR part 653, subpart F, and 20 CFR part 655, subpart B. The final rule allows OFLC to share the form with the SWA for the SWA’s review and posting in ARS, and OFLC will review the content of Form ETA-790/790A in

conjunction with the content of Form ETA-9142A before issuing an H-2A temporary labor certification. Because the H-2A review process requires OFLC to simultaneously review both ICs before determining whether a request for temporary labor certification may be granted, and the two ICs solicit certain redundant information, the Department received approval to consolidate most of the information collected through for OMB 1205-0134 and the information collected through OMB 1205-0466 into a single ICR (*i.e.*, OMB 1205-0466) in August 2019. This ICR, filed under OMB 1205-0537, carries out this consolidation.

Statutory Authority: Immigration and Nationality Act section 101(a)(15)(H)(ii)(a), [8 U.S.C. 1101\(a\)\(15\)\(H\)\(ii\)\(a\)](#), 1184(c), and 1188

Regulatory Authority: 20 CFR part 653, subparts B and F, and 20 CFR part 655, subpart B

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.

ETA uses this information collection to meet its statutory and regulatory responsibilities for administering the H-2A program. An employer seeking to employ H-2A workers must file a completed Form ETA-9142A (including all supporting documentation) and a job order (also known as the agricultural clearance order, Form ETA-790/790A) for circulation in ARS by the SWA serving the area of intended employment and the SWAs in other states, as appropriate to recruit for the job opportunity. These forms and all supporting documentation constitute the H-2A application.

OFLC reviews H-2A applications submitted by employers for compliance with all applicable program requirements. Upon receiving an application, OFLC issues either a Notice of Deficiency (NOD) or Notice of Acceptance (NOA). Where deficiencies in the application are discovered, the NOD provides the employer with an opportunity to correct the deficiencies or file an appeal with the Department's Office of Administrative Law Judges. Where all program requirements are met, the NOA will direct the employer to engage in positive recruitment of U.S. workers and authorize the SWA to circulate a copy of the approved job order (Form ETA-790/790A) through the interstate clearance system for recruitment of U.S. workers. Also, the NOA will specify a date on which the employer must provide an initial written report of its recruitment efforts such that a temporary labor certification may be granted. See 8 U.S.C. 1188(b)(4).

Upon review of the recruitment report and any other supporting documentation (e.g., workers' compensation insurance coverage, inspection of housing for workers), OFLC may grant a full or partial temporary labor certification determination or deny the employer's H-2A application. In accordance with regulatory requirements, OFLC sends all certified H-2A applications (including the applicable certification fee invoices under 20 CFR 655.163) to the employer or the employer's authorized attorney or agent. The electronic transmission process adopted by the final rule allows OFLC to transmit the certification electronically to DHS's U.S. Citizenship and Immigration Services (USCIS) and a copy to the employer.

The employer must retain the H-2A application and all supporting documentation for three years from the date of certification (for approved applications) or date of determination if the application is denied or withdrawn. *See* 20 CFR 655.167(b). Employers must be prepared to produce all information and records contained in this information collection for DOL or other federal agencies in the event of an audit examination, investigation, or other enforcement proceedings in the H-2A program.

Specifically, the information collected is used by OFLC in the manner described below:

Form ETA-9142A, H-2A Application for Temporary Employment Certification

On Form ETA-9142A, an employer must include information related to its business for the purpose of determining whether the establishment operating in the United States is *bona fide*; the type of application being submitted for processing (e.g., individual employer or agricultural association filing as a joint employer), and contact information for purposes of sending and receiving communications during the course of processing an employer's H-2A application. For an employer represented by an agent, the form also collects required compliance documentation for the agent, such as a current agreement or other documentation demonstrating the agent's authority to represent the employer, and a current Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Certificate of Registration identifying the farm labor contracting activities the agent has authority to perform under the application, if applicable.

For employers operating as H-2A Labor Contractors (H-2ALCs), the current form collects additional information, such as the names of fixed-site agricultural businesses where the workers will be placed, and fully-executed work contract(s) with each fixed-site agricultural business, which assists OFLC in determining compliance with all application filing requirements for H-2ALCs under 20 CFR 655.132. This information is collected on the job order (Form ETA-790A, Addendum B).

Finally, the employer identifies the Standard Occupational Classification code and title that most clearly corresponds to the agricultural services or labor to be performed, which the SWA assigned on the Form ETA-790 and attaches the Form ETA-790/790A containing all the material terms, wages, and working conditions of employment that will be used for recruiting U.S. workers.

This information collection is also used in post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and is requested by the Department's WHD and/or other enforcement agencies during an investigation or enforcement proceedings.

Form ETA-9142A, Appendix A - Attorney/Agent/Employer Declarations

The Department's regulations at 20 CFR 655.130(a) and (d) and 655.135 require an employer and, if applicable, their attorneys or agents to submit a completed *Appendix A* attesting to compliance with all of the terms, assurances, and obligations of the H-2A program in order to obtain a temporary labor certification. For two or more employers operating as joint employers,

the Form ETA-9142A requires disclosure and submission of a signed and dated *Appendix A* completed by each employer in the joint employment relationship. However, if the application is being filed by an agricultural association operating as a joint employer with its employer-members, the agricultural association is responsible for providing a signed and dated *Appendix A* on behalf of its employer-members. See 20 CFR 655.131.

Form ETA-9142A, Appendix B – H-2A Labor Contractor Surety Bond

An employer filing a Form ETA-9142A, *H-2A Application for Temporary Employment Certification* as an H-2ALC must submit a surety bond as proof of its ability to discharge financial obligations under the H-2A program. A certification cannot be issued to an H-2ALC without a compliant surety bond. This *Appendix B* does not impose a new collection requirement; H-2ALCs already submit surety bonds. However, such employers submit bonds in a variety of formats and using various legal terms and language, some of which do not satisfy regulatory requirements. *Appendix B* standardizes the format of the existing collection and simplifies employer responses by including required terms and language. OFLC will use this information to ensure that the surety bond submitted is enforceable for the coverage required.

Form ETA-9142A, H-2A Approval Final Determination: Temporary Agricultural Labor Certification

Where the employer's application has met all the regulatory requirements, including the criteria for certification in 20 CFR 655.161, the Department will complete and electronically send the new Form ETA-9142A, *H-2A Approval Final Determination: Temporary Agricultural Labor Certification* to USCIS with a copy to the employer and, if applicable, the employer's authorized attorney or agent. This one-page certification form provides the official determination that a sufficient number of qualified U.S. workers have not been identified as being available at the time and place needed to fill the job opportunities for which certification is sought, and the employment of the H-2A temporary workers in such labor or services will not adversely affect the wages and working conditions of U.S. workers similarly employed. Upon receipt of the Form ETA-9142A, *H-2A Approval Final Determination: Temporary Agricultural Labor Certification*, the employer may file an H-2A petition with DHS's USCIS.

Form ETA-790/790A, H-2A Agricultural Clearance Order

All employers seeking to employ U.S. workers to perform agricultural services or labor on a temporary, less than year-round basis must submit a completed agricultural clearance order (Form ETA-790/790A) for placement on the ARS intrastate and interstate job clearance systems, as set forth in 20 CFR 653.500. An employer filing the Form ETA-9142A must submit to the Department the Form ETA-790/790A for SWA review. See 20 CFR 655.121.

The amended Form ETA-790/790A consists of two parts. First, the form has a one-page coversheet (Form ETA-790) that is completed, in part, by the employer and is designed to (1) facilitate the SWA's receipt and processing of the job order through its intrastate and interstate job clearance systems, (2) identify the primary employer of the worker(s) sought for the job

opportunity, and (3) designate that the job order will be used in connection with a future Form ETA-9142A for H-2A workers. Second, the employer completes the Form ETA-790A requiring the disclosure of all the material terms and conditions of employment that satisfy the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the job order content requirements set forth in 20 CFR 655.122. The final rule requires the employer to submit the Form ETA-790/790A to OFLC for its coordination with the SWA. At the time of filing the Form ETA-9142A with the Department, OFLC will review the Form ETA-9142A and the Form ETA-790/790A along with any other supporting documentation.

To summarize, the Form ETA-790A collects information related to the employer's job opportunity, including the job title, number of workers needed, period of intended employment, and a description of the agricultural services or labor to be performed. This information permits OFLC to evaluate whether the employer has a bona fide need for temporary labor and whether the duties to be performed qualify as agricultural services or labor under the H-2A program. To ensure no adverse effect on the wages of similarly employed U.S. workers in the area(s) of intended employment, the form collects information on specific crops or agricultural activities, the places of intended employment (i.e., worksites), and the wage rate(s) that will be paid to workers in each crop or agricultural activity, as well as any other conditions or deductions from pay not required by law. In addition, employers are required to disclose the actual minimum qualifications or requirements of the job, including education, training, experience, and any other special requirements. This information is used by the Department to determine whether the job qualifications or requirements are consistent with the normal and accepted qualifications required by U.S. employers who do not use the H-2A program. *See* 20 CFR 655.122(b).

Because the INA mandates that employers participating in the H-2A program provide housing to workers that meets applicable housing standards prior to occupancy, the form also collects basic information regarding the geographic location, type, capacity, and the applicable inspection standards (i.e., local, state, federal) of the housing for workers who are employed under the agricultural clearance order. *See* 8 U.S.C. 1188(c)(4). Finally, the employer provides other disclosures required by regulation related to the provision of meals, transportation, and daily subsistence, and any other material terms and conditions of the job offer, as well as referral and hiring instructions. Employers complete Form ETA-790A by reading and then attesting (i.e., signing and dating) to compliance with the required conditions of employment and assurances for H-2A agricultural clearance orders, as set forth under 20 CFR part 653, subpart F, and 20 CFR part 655, subpart B.

Form ETA-790A, Addendum A - Additional Crops or Agricultural Activities

In circumstances where work is expected to be performed in different agricultural activities, crops, and/or varieties within a single crop other than what is disclosed on the main Form ETA-790A, the employer must complete the *Addendum A* identifying all crops or agricultural activities for the job opportunity, as well as details about the wages that will be offered, advertised, and paid to workers. OFLC uses this information to ensure that (1) all duties to be performed in the crops or agricultural activities qualify under the H-2A program, (2) all crops and/or agricultural activities are disclosed to prospective workers, and

(3) the employer is offering wages that will not create adverse effect on the wages of U.S. workers who are similarly employed.

Form ETA-790A, Addendum B - Additional Worksite and/or Housing Information

In circumstances where the employer needs workers to perform the services or labor at worksites other than the primary one identified on the Form ETA-790A and/or additional housing is needed to accommodate all workers under the job order at the worksite location(s), the employer must complete the *Addendum B*. OFLC uses this information to ensure that (1) all worksite locations are compliant with applicable regulatory requirements regarding an area of intended employment, (2) employers filing as H-2ALCs and joint employers (*i.e.*, two or more individual employers or agricultural associations) properly disclose the name(s) and location(s) of all fixed-site agricultural business or association members, and (3) the housing employers will provide is sufficient to accommodate all workers under the job order and meets applicable standards.

Form ETA-790A, Addendum C - Additional Material Terms and Conditions of the Job Offer

Addendum C alleviates space limitations on the form and supports full disclosure of material terms and conditions of employment in the job order. This addendum supports full disclosure of job opportunity information within the four corners of the Form ETA-790A and in a standardized format, as opposed to employer-created “attachments.”

Form ETA-232, Domestic Agricultural In-Season Wage Report

SWAs currently conduct surveys of wages employers are paying workers to perform specific crop activities and agricultural activities and report their findings to the Department using Form ETA-232, *Domestic Agricultural In-Season Wage Report*, and Form ETA-232A, *Wage Survey Interview Record*. If the Department accepts the survey as establishing the prevailing wage rate for H-2A program purposes, it becomes one of the sources the Department relies on to ensure no adverse effect on the wages and working conditions of U.S. workers similarly employed. The final rule revises and modernizes the current methodology used to conduct H-2A prevailing wage surveys, in part, for consistency with available resources at the state and federal levels and to better meet the aim of producing reliable prevailing wage rates. For example, the SWA may use more modern, less resource intense survey methods (*e.g.*, email) than in-person interviews. Also, the SWA may rely on surveys conducted by a broader range of State agencies and submit those surveys for the Department’s consideration on Form ETA-232, *Domestic Agricultural In-Season Wage Report*, if they meet H-2A program standards. The newly proposed Form ETA-232, *Domestic Agricultural In-Season Wage Report*, collects all the information required by the adopted prevailing wage survey standards, and the Form ETA-232A, *Wage Survey Interview Record*, can be discontinued.

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.

In accordance with 20 CFR 655.130(c) and 77 Fed. Reg. 59670, 59570 (Sept. 28, 2012), an employer or, if applicable, its authorized attorney or agent, seeking temporary labor certification must submit the Form ETA-9142A and all documentation supporting the H-2A application to OFLC either electronically or by U.S. mail. From December 2012 to July 2019, the electronic filing of the Form ETA-9142A and all supporting documentation was maintained in the Department's iCERT Visa Portal System (iCERT System), which has since been decommissioned. Since July 2019, the electronic filing of the Form ETA-9142A, ETA-790/790A, and all supporting documentation is maintained in the Department's Foreign Labor Application Gateway (FLAG) system at <https://flag.dol.gov/>. Although not mandated by regulation, approximately 99 percent of H-2A applications are filed electronically by employers. In circumstances where an application is filed using the traditional paper-based method, OFLC staff manually enters the data and information contained in the paper application into the FLAG System's internal case management system for processing in a similar manner as those filed electronically. The final rule adopts mandatory electronic filing, absent lack of internet access or the need for an accommodation due to disability. In addition, the final rule accommodates electronic signatures, which allows electronic submission of signed documents and relieves filers of the need to print, sign, scan, and upload collection tools requiring signature. OFLC believes these changes will result in a decrease in the current burden related to the filing of H-2A applications.

The FLAG System permits an employer or, if applicable, its authorized attorney or agent to efficiently prepare and submit H-2A applications for processing by OFLC. During the preparation of H-2A applications, the system provides employers with a series of electronic data checks and prompts to ensure each required field is completed and values entered on the form are valid and consistent with regulatory requirements. The OFLC website and the FLAG System provide access to the general instructions designed to help employers understand what each form collection item means and what kind of entries are required. Where it is not practical to collect supporting documentation using a standard Office of Management and Budget (OMB)-approved appendix, the system permits an employer to upload documentation supporting the application in an acceptable digitized format (e.g., Adobe PDF, Microsoft Word, .TXT). Examples of the supporting documents currently uploaded electronically include copies of the agent agreement with the employer, fully-executed work contracts between the H-2ALCs and fixed-site employers, and MSPA registration(s).

When the employer or, if applicable, its authorized attorney or agent initially enters contact information and establishes a web-based system account, the H-2A Case Preparation Module automatically pre-populates all contact information on the draft Form ETA-9142A, significantly reducing the time and burden for repeated online data entry. Additionally, the H-2A Case Preparation Module provides employers with an option to reuse previously filed applications, which automatically copies information into a new draft Form ETA-9142A. This option significantly reduces the time and burden for online data entry, particularly for those employers who need to access the program to hire nonimmigrant workers for seasonal jobs that predictably

recur each year. OFLC's experience is that the electronic submission of all required documentation, at the time of filing the application, facilitates a more efficient and consistent review of the employer's application, and reduces the incidence of OFLC issuing a NOD to request missing documentation or corrections of errors or inaccuracies.

Similarly, ETA made Form ETA-790/790A, *H-2A Agricultural Clearance Order*, and all addendums available for electronic filing in a manner similar to the Form ETA-9142A. The system permits an employer or, if applicable, its authorized attorney or agent to efficiently prepare a completed Form ETA-790/790A using their web-based system account and, after reading all conditions of employment and assurances for the agricultural clearance order and affixing the employer's signature (including digital signature) under Section I, submit the completed job order electronically. For employers that have recurring seasonal job opportunities, the system allows an employer to prepare multiple Form ETA-790/790As and reuse previously filed job orders, which automatically pre-populate information into a new draft Form ETA-790/790A. Similar to the preparation of the Form ETA-9142A, the "reuse" capability significantly reduces data collection time and burden by pre-populating key sections into a new draft Form ETA-790/790A, including all information related to the job opportunity and requirements, crops or agricultural activities, wage offers, worksite and housing locations, and other worker guarantees (*e.g.*, meals, transportation). After the employer has submitted the initial Form ETA-790/790A and is prepared to file the H-2A application, the system will permit the employer to electronically attach the Form ETA-790/790A to the Form ETA-9142A for submission to ETA.

In compliance with the Government Paperwork Elimination Act, ETA will continue to make all forms and appendices approved under this ICR easily accessible on the OFLC website (<https://www.dol.gov/agencies/eta/foreign-labor>) and electronically fillable and fileable.

The Department seeks OMB approval of the electronically fileable forms and all appendices prior to making them available for public use. However, the revised Form ETA-9142A, *H-2A Approval Final Determination: Temporary Agricultural Labor Certification*, will not be made available in an electronically fillable format, because it is for the Department's use only and not to be completed by the employer or its attorney or agent. When the employer's application has met all regulatory requirements, the system will release the one-page Form ETA-9142A, *H-2A Approval Final Determination: H-2A Temporary Agricultural Labor Certification*, to the employer and, if applicable, its authorized attorney or agent, using email. The form will contain key information reflecting OFLC's decision to grant approval of the employer's request for temporary labor certification. The employer will be able to electronically download, print, and submit the Form ETA-9142A, *H-2A Approval Final Determination: Temporary Agricultural Labor Certification*, along with any other required documentation to support the filing of an H-2A petition to the USCIS for processing.

The final rule also adopts changes to the prevailing wage determination process in the H-2A program, which require revisions to the IC currently authorized under OMB 1205-0017. The IC currently authorized under OMB 1205-0017 collects wage information from the SWAs using Form ETA-232, *Domestic In-Season Agricultural Wage Report*. The Department's revisions to the Form ETA-232, *Domestic In-Season Agricultural Wage Report*, allow SWAs to use modern,

more efficient methods of collecting wage data from employers than appear in current guidance (e.g., in-person interviews). To address IC matters efficiently, in connection with the NPRM, the Department proposed to consolidate the ICR for OMB 1205-0017 into the ICR for OMB 1205-0537, and such change will eventually be reflected under OMB 1205-0466.

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 of activities. No other government agency collects similar information to adjudicate this type of application.

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

The information collected under this information collection is required of small businesses that need to import temporary nonimmigrant workers under the H-2A visa classification of the INA. Approximately 98 percent of the employers who request H-2A certification are small businesses. The Department cannot make any exemptions or eliminate forms for small businesses, because the statute and regulations require all employers seeking temporary labor certification to make the necessary attestations and provide the required information. These forms ensure that the Department relies on a uniform system that allows for these employers to provide the information that is necessary to process their requests for temporary labor certifications.

This collection of information is not disproportionately more burdensome for small entities than it is for large ones, because the forms and accompanying appendices are easy to understand and provide all of the attestations and assurances necessary for the filing employer to understand how to request a temporary labor certification.

This information collection does not impose any extra requirements on small entities; these forms collect from all H-2A employers the minimally required information to determine program eligibility and allow DOL to issue a temporary labor certification determination.

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 information collected from employers under this IC will need to be provided at the time an employer needs to submit a job order (i.e., Form ETA-790/790A) and temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. Information collected from SWAs on the Form ETA-232, *Domestic Agricultural In-Season Wage Report*, will need to be provided annually to ensure current prevailing wage information is available for

the Department and employers to use in determining the appropriate wage offer to H-2A workers.

The Department would be in direct violation of its statutory and regulatory mandates if this information was not collected. The information must be collected to enable the Department to meet its obligation to determine whether an insufficient number of qualified U.S. workers are available to fill the employer's job opportunity and the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H-2A workers. Additionally, in the absence of this information collection, the Department would be unable to efficiently enforce the rights and obligations of workers and employers under the H-2A program.

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 or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d) (2). The Department's regulations, however, require that employers retain applications for temporary employment certifications and all supporting documentation for three years from the date of certification (for approved applications) or date of determination if the application is denied or withdrawn. See 20 CFR 655.167(b). The Department requires that employers retain and maintain supporting documentation, because it is essential information in post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and in the Department's WHD investigations or enforcement proceedings.

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 Department offered the public 60 days to comment on the proposed changes to this information collection via a notice included in the NPRM published in the Federal Register. *See* 84 FR 36168 (Jul. 26, 2019). The Department did not receive public comments regarding the proposed changes to the IC; however, public comments on the proposed regulatory changes to the NPRM, and the Department's subsequent decisions included in the final rule, required some revisions to the proposed IC. Most of the revisions involved changes to the language included in the forms and instructions to reflect the regulatory changes adopted via the final rule. For example, the Department decided not to adopt a proposed optional pre-filing recruitment provision and, as a result, has removed the related collection field it proposed to add to the Form ETA-9142A. In addition, the Department decided not to adopt a proposed change to the timeframe of an employer's required recruitment period and, as a result, has revised language in the IC to reflect the Department's decision to retain existing "50 percent rule" recruitment period. On the Form ETA-790A, Form ETA-790A, Addendum B, and Form ETA-790/790A, General Instructions, the Department revised the collection of information regarding housing to simplify completion for employers and more clearly identify the type of documentation required to demonstrate compliance with the applicable housing standards. The Department adopted a prevailing wage survey criteria provision in the final rule, although with some revision to the survey criteria proposed in the NPRM. Accordingly, the Department has revised the Form ETA-232 to collect information that reflects the survey criteria adopted in the final rule.

In addition, the Department determined to further revise the proposed IC to clarify program requirements in response to public comments on substantive proposals in the NPRM that seemed to indicate public confusion. For example, comments reflected confusion regarding joint employment and the role of agricultural associations. For clarity, the Department revised Form ETA-9142A, Item A.1, to separately collect information identifying the application as a single employer's filing or a joint employers' filing (now Item A.1) and, if an agricultural association is involved in the application, the agricultural employer's role as an agent, sole employer, or joint employer with its members (now Item A.1a). The Department also added language to the employer assurances section of the Form ETA-9142A, Appendix A (Item B.1) to clarify the parameters for joint employment of workers for and joint employers' responsibilities for individual employers not filing with an agricultural association.

Finally, the Department further revised the proposed IC, as necessary, to correct typographical and formatting issues, to improve readability and accessibility, and to clarify program requirements. While all of these revisions are non-substantive, the most noticeable appear in the Form ETA-790A and Form ETA-790A, General Instructions, where the Department further explained the information collection related to the number of workers an employer needs to fulfill its temporary or seasonal need (Item A.2) and additional information regarding wage offers, in particular piece rate offers (Item A.8e and Addendum B).

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 provided in response to this information collection.

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

This information collection provides no express assurance of confidentiality. As a practical matter, however, the Agency would only release information that is commonly made available through public access files and/or in accordance with the Freedom of Information Act (FOIA). FOIA has a number of disclosure exemptions including ones that might relate to confidential business information which could cause substantial harm to a person or that person's business position.

Although the Department does not directly request sensitive personal identifiable information through this IC, the public provides data and documentation that might, in some instances, cause the Privacy Act to be triggered. The collection of data and information under this OMB 1205-0466, which eventually will reflect the changes contained in OMB 1205-0537, is incorporated into the Department's System of Records Notice (SORN) DOL/ETA-7. Employers submit H-2A requests through the electronic filing system that is also the repository of information collected from employers in connection with other labor certification and prevailing wage applications. Part of the information provided by employers is made publicly available, as labor certification programs are programs from which the public may voluntarily choose to benefit.

Labor Condition Application collection activities are covered under the Statement of Records Notice (SORN DOL/ETA-7; *Foreign Labor Certification System and Employer Application Case Files*) at 81 FR 25765, published on April 29, 2016. This SORN identifies the categories of records in the system containing OFLC records including records of a sensitive nature. OFLC's Case Files are retained for a period of 5 years after close in accordance with Records Schedule Number DAA-0369-2013-0002. Paper files are retained on-site at national processing centers for six months from the date of final determination. OFLC will continuously scan or convert paper records into OFLC Archive and Scan database(s). Paper copies of employer applications that are scanned will be 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 after close, and then transferred to Federal Records Center for duration of five-year retention period.

The categories of records in this 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 provide for compliance with the Privacy Act in all its aspects.

Under routine uses for this system of records, case files developed in processing labor certification applications, labor condition applications, or labor attestations may be released as

follows: in connection with appeals of denials before DOL Office of Administrative Law Judges and Federal courts, records may be released to the employers that filed such applications, their representatives, to named foreign workers or their representatives,; and in connection with administration and enforcement of immigration laws and regulations, records may be released to such agencies as the DOL Office of Inspector General, Department of Justice, DOL WHD, DHS, and the Department of State.

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.

The information collections tools covered under OMB 1205-0537 do not involve sensitive matters.

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

NOTE - The Department has prepared, and will be submitting to OMB for review in the ICR, a **“Burden Statement Appendix to the Supporting Statement”** to its response to Question A.12 of this supporting statement. This will detail a specific breakdown of the number of responses and the annual burden hours, as well as the cost associated with each collection activity conducted in connection with this program. The Appendix offers information regarding the specific activity that causes a burden on the public when collecting information or imposing a requirement, the type of respondents and the volume, and the number of responses received from those respondents, in addition to the reporting hours per form or collection tool and the cost associated with each activity.

Information Collection Activity	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Average Burden in hours (minutes) ¹	Total Annual Burden (in hours)	Hourly Rate	Total Burden Cost (in dollars) ²
A. Agents and recruiters							
A.1 Proof of Agent Relationship	314	19	5,966	.25 (15 min)	1,491.50	\$83.59	\$124,674.49
A.2 Agent MSPA Registration	76	1	76	.083 (5 min)	6.33	\$83.59	\$529.40
A.3 Inform of Fee Prohibitions	9,627	1	9,627	.083 (5 min)	802.25	\$83.59	\$67,060.08
Unduplicated Totals	10,017		15,669		2,300.08		\$192,263.97
B. H-2A Agricultural Clearance Order							

¹ This column provides estimates in both hours and minutes to ease the review of the information.

² This column has been calculated by multiplying the burden hours by the hourly rate, rounded, up or down, to the nearest dollar.

B.1 Determining Offered Wage	14,586	1	14,586	.033 (2 min)	486.20	\$83.59	\$40,641.46
B.2 Form ETA-790/790A	14,586	1	14,586	.67 (40 min)	9,724.00	\$83.59	\$812,829.16
Unduplicated Totals	29,172		29,172		10,210.20		\$853,470.62
C. H-2A Application for Temporary Employment Certification							
C.1 Form ETA-9142A	14,586	1	14,586	.55 (33 min)	8,022.30	\$83.59	\$670,584.06
C.2 H-2ALC Filing Requirements	2,203	1	2,203	1.33 (80 min)	2,937.33	\$83.59	\$245,531.69
C.3 Waiver for Emergency Situations	1,255	1	1,255	.50 (30 min)	627.50	\$83.59	\$52,452.73
C.4 Modify Application/Job Order	5,196	1	5,196	.25 (15 min)	1,299	\$83.59	\$108,583.41
C.5 Amend Application/Job Order	2,480	1	2,480	.50 (30 min)	1,240	\$83.59	\$103,651.60
C.6 Herder Variance Request	5	1	5	.50 (30 min)	2.50	\$83.59	\$208.98
Unduplicated Totals	25,725		25,725		14,128.63		\$1,181,012.46
D. Recruitment of U.S. Workers							
D.2 SWA Wage Survey	223	19	4,237	3.30	13,982.10	\$48.98	\$684,843.26
D.4 Recruitment Report	14,586	1	14,586	1 (60 min)	14,586	\$83.59	\$1,219,243.74
Unduplicated Totals	14,586		18,823		28,568.10		\$1,904,087
E. Worker Guarantees & Rights							
E.1.a Provide Workers With Job Order	14,586	20	291,720	.083 (5 min)	24,310	\$83.59	\$2,032,072.90
E.1.b Translate Application/Job Order	14,586	1	14,586	1 (60 min)	14,586	\$83.59	\$1,219,243.74
E.3 Notice to Leave United States	14,586	1	14,586	.033 (2 min)	486.20	\$83.59	\$40,641.46
E.4 Petition for Higher Meal Charges	30	1	30	1 (60 min)	30	\$83.59	\$2,507.70
E.5 Substitute Housing for Workers	48	1	48	.33 (20 min)	16	\$83.59	\$1,337.44
E.6 Workers' Compensation Coverage	14,586	1	14,586	.17 (10 min)	2,431	\$83.59	\$203,207.29
E.7 Complaints Withholding Workers	1	1	1	.50 (30 min)	0.5	\$83.59	\$41.80
Unduplicated Totals	58,423		335,557		41,859.70		\$3,499,052.32
F. Retention Requirements							
F.1 Retention of Documents ³	14,586	1	14,586	.17 (10 min)	2,431.00	\$83.59	\$203,207.29
Unduplicated Totals	14,586		14,586		2,431.00		\$203,207.29
G. Post-adjudication requirements							
G.1 Abandonment/Termination Notice	15,892	1	15,892	.17 (10 min)	2,648.67	\$83.59	\$221,402.05

³ The record keeping requirement for job opportunities in herding or production of livestock on the range, which is currently housed in 1205-0519, is merged into the record retention requirement reported here. The average number of respondents subject to the record keeping requirement for herding or production of livestock on the range is 842, based on data from FY 2019 (1,026), FY 2020 (930) and FY 2021 (568).

G.2 Redetermination Request	38	1	38	.50 (30 min)	19	\$83.59	\$1,588.21
G.3 Extend Period of Certified Work	332	1	332	.50 (30 min)	166	\$83.59	\$13,875.94
G.4 Administrative Appeals	102	1	102	.33 (20 min)	34	\$83.59	\$2,842.06
G.5 Withdrawal Request	288	1	288	.17 (10 min)	48	\$83.59	\$4,012.32
G.6 H-2A Worker Departure Notice	145	1	145	.033 (2 min)	4.83	\$83.59	\$404.02
G.7 Foreign Contact Information	11,449	1	11,449	0.033	381.63	\$83.59	\$31,900.73
Unduplicated Totals	28,246		28,246		3,302.13		\$276,025.33
H. Integrity measures							
H.2 Special Procedures	65	1	65	1 (60 min)	65	\$83.59	\$5,433.35
Unduplicated Totals	65		65		65		\$5,433.35

OVERALL TOTAL BURDEN HOURS AND ANNUAL COST TO RESPONDENT ESTIMATES							
A. Agents and recruiters	10,017		15,669		2,300.08		\$192,263.97
B. H-2A Agricultural Clearance Order	29,172		29,172		10,210.20		\$853,470.62
C. H-2A Application for Temporary Employment Certification	25,725		25,725		14,128.63		\$1,181,012.46
D. Recruitment of U.S. Workers	14,586		18,823		28,568		\$1,904,087
E. Worker Guarantees & Rights	58,423		335,557		41,859.70		\$3,499,052.32
F. Retention Requirements	14,586		14,586		2,431.00		\$203,207.29
G. Post-adjudication requirements	28,246		28,246		3,302.13		\$276,025.33
H. Integrity measures	65		65		65		\$5,433.35
GRAND TOTALS	14,586*		467,843		102,864.74		\$8,114,552.33

A. Collection of Information from Employers

In addition to the revisions proposed in this ICR submission, the Department is adjusting the hourly burden estimates for this information collection due to its updated reporting estimates for the estimated number of respondents and the time burden hours associated with collection tools covered under OMB 1205-0537, later to be reflected in the burden hours associated with OMB 1205-0466.

Based on recent program experience, the Department estimates it will receive, on average, approximately 14,586 Form ETA-9142A submissions and 14,586 Form ETA-790/790A submissions for the H-2A program under the provisions of the final rule.⁴ All actions associated

⁴ The numerical estimation of 14,586 is derived from the average submissions of H-2A applications from three previous full fiscal years based on the Department's experience implementing the 2010 H-2A Final Rule. (FY 2019: 13,081; FY 2020:

with the collection vary depending on nature and complexity of the employer's job opportunity and need for temporary nonimmigrant workers, as well as the employer's familiarity with the program. The estimated reporting burden is calculated using the number of expected responses to each element and the estimated time to complete each element. Please see the Time Reporting **Burden Appendix** for a detailed breakdown of time reporting burden estimates.

Total Hourly Cost Estimates

The Department receives applications requesting temporary labor certification under the H-2A visa program from employers operating across a wide spectrum of agricultural activities and commodities in the U.S. economy. While it is difficult to estimate the costs involved, the Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as published by the Department's Occupational Employment Statistics survey,⁵ and increased it by a factor of 1.292 to account for employee benefits and other compensation for a total hourly cost of \$83.59.⁶ The total compensation is \$83.59 ($\64.70×1.292) for a Human Resources manager. The Department estimates the total cost by multiplying the compensation for a Human Resources manager by the total time to complete and retain the forms and supporting documentation in the amount of 88,268.23 hours.⁷

B. Collection of U.S. Worker Wage Information from SWAs

The Department is adjusting the hourly burden estimates for this information collection due to its updated reporting estimates for the time burden hours associated with survey standards adopted in the final rule and the revised Form ETA-232, *Domestic Agricultural In-Season Wage Report*. The revised collection tool simplifies and modernizes the collection. OFLC believes that eliminating in-person interviews and codifying SWA use of electronic methods to conduct surveys will reduce time burden significantly and render the current Form ETA-232A obsolete. Further, the final rule permits SWAs to leverage other state agencies' wage surveys, provided those surveys satisfy H-2A prevailing wage methodology requirements, which further reduces the SWA's burden in responding to this collection. The SWA will attach the proposed Form ETA-232 to the survey for submission to OFLC.

Based on recent program experience, the Department estimates it will receive, on average, approximately 223 Form ETA-232 submissions annually.⁸ All actions associated with the collection vary depending on whether the SWA uses another state agency's survey or conducts

14,131; and FY 2021: 16,546). The Department estimates that 14,586 respondents will submit, on average, 468,033 responses.

⁵ Source: *Bureau of Labor Statistics May 2020 National Occupational Employment and Wage Estimates; Management Occupations*. <https://www.bls.gov/oes/current/oes113121.htm>.

⁶ In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$64.70), as published by DOL's Occupational Employment Statistics survey (*Employer Costs for Employee Compensation – September 2021*, DOL, BLS, www.bls.gov/news.release/archives/ecec_12162021.pdf), and increased it by a factor of 1.292 to account for employee benefits and other compensation, for a total hourly cost of \$83.59.

⁷ Total estimate number is rounded.

its own survey, as well as the SWA's familiarity with the survey methodology requirements. The estimated reporting burden is calculated using the number of expected responses and the estimated time to complete each response. Please see the Time Reporting **Burden Appendix** for a detailed breakdown of time reporting burden estimates.

Total Hourly Cost Estimates

SWAs are funded under reimbursable annual grants. The grants allow for costs related to the preparation and submission of all required financial and programmatic reports, including the surveying and submission of prevailing wage results using Form ETA-232, *Domestic In-Season Agricultural Wage Report*. The average hourly wage for Compensation, Benefits, and Job Analysis Specialists, who the Department believes are likely to perform these functions, is \$35.49.⁹ Including benefits averaging 38 percent of total employee compensation, the estimated average hourly compensation for a Compensation, Benefits, and Job Analysis Specialist is \$48.98 (\$35.49 x 1.38).¹⁰ At an estimated 1,190 total hours to complete, validate, and submit information on the Form ETA-232, the total estimated annual cost of these activities is \$58,286.

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).

1. *Start-up/Capital Costs*: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC to file an application. To participate in the program, the employer is required to generate records and retain them. Employers may retain these records in the manner they regularly choose to retain employment records, including electronic format. The Department estimates that the initial cost to employers is minimal because it is a customary and usual business practice for businesses to have storage space whether physical or electronic. Regarding the Form ETA-232, *Domestic Agricultural In-Season Wage Report*, there are no start-up costs for the SWAs, which are the only respondents and receive Federal grants to respond to this collection. See Question A.14.
2. *Annual Costs*: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms and the web-based data collection and reporting system. ETA will also make the Form ETA-790A available in Spanish.

⁸ This estimate is the average number of surveys received in FY2020 and FY2021; DOL received 217 ETA-232s in FY2020 and 229 ETA-232s in FY2021.

⁹ *Occupational Employment and Wages, May 2021: 11-3121, Compensation, Benefits, and Job Analysis Specialists*, DOL, BLS, www.bls.gov/oes/current/oes131141.htm.

¹⁰ The estimate is the result of multiplying the average hourly rate by a factor of 1.292 to account for employee benefits and other compensation, for a total hourly cost of \$48.98. *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, www.bls.gov/news.release/archives/ecec_12162021.pdf.

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 estimates that the annual costs to administer the H-2A program amount are \$26,432,198. This total is comprised of \$10,206,598 in federal administration costs and \$16,225,600 in state-level costs funded by federal grants.

Federal administrative costs include expenses for the staff who process H-2A applications; IT systems that support application-filing and case-processing operations; rent; supplies; equipment; and agency indirect costs, which include support for human resources, financial and administrative oversight, and grants and contracts management. Estimated annual costs for the federal administration of the H-2A program are \$10,206,598. This estimate is based on recurring annual costs to administer the program in recent fiscal years and does not include costs associated with funding appropriated on a one-time occurrence basis. Based on past obligations and expenditures, the table below provides a detailed breakdown of the annualized costs associated with federal administration of the H-2A program by major cost category.

For transparency purposes only, the Department discloses in this supporting statement that there is a fee that employers are assessed when the Form ETA-9142A is certified by the Department. In accordance with 20 CFR 655.163, the fee is comprised of \$100 plus \$10 for each H-2A worker position certified under the Form ETA-9142A, with an overall cap of \$1,000. In the case of an agricultural association acting as a joint employer applying on behalf of its employer-members, there is no additional fee to the agricultural association filing the Form ETA-9142A, and the aggregate fees for all employer-members of H-2A workers under the certified Form ETA-9142A must be paid by one check or money order. All fees must be received by OFLC no more than 30 days after the date of certification. Those fees are deposited into the General Treasury and not available to the Department to offset any Federal Government costs for administering the H-2A program.

Based on program data over the last three fiscal years, the Department estimates that 96 percent of all employers' requests for temporary labor certification will be certified for the full number of H-2A worker positions requested. We estimate that the aggregate annual fee costs to employers will be approximately \$3,692,705 (average of the three most recently completed fiscal years' collections; FY 2019 – FY 2021).

Major Cost Category	Cost Activities	Annualized Costs (estimated)
Contracts for Services (not technology related)	<ul style="list-style-type: none"> ▪ Mail, data entry, and other clerical support services ▪ Case processing and administrative support 	\$4,997,849

	for operations	
Information Technology Contracts	<ul style="list-style-type: none"> ▪ Application development services & network infrastructure support ▪ Hardware & software updates 	\$1,117,341
GSA & DHS Services	<ul style="list-style-type: none"> ▪ Rent payments for office space ▪ Security clearance services 	\$927,952
DOL Working Capital Assessment	<ul style="list-style-type: none"> ▪ Indirect costs associated with ETA and DOL administrative and executive management services 	\$3,115,302
Supplies & Equipment	<ul style="list-style-type: none"> ▪ General office supplies ▪ Computers, printers, and other office related equipment 	\$1,980
Mail & Telecommunications	<ul style="list-style-type: none"> ▪ Mail or overnight delivery services ▪ Phone and other telecommunication related charges 	\$12,828
Other Costs	<ul style="list-style-type: none"> ▪ Travel ▪ Printing and other Government Agency Services 	\$33,346
TOTAL COSTS - FEDERAL ADMINISTRATION		\$10,206,598

There are 54 SWA respondents, including the 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.¹¹ Funding for these grants is provided through annual appropriations. The estimated annual cost for the H-2A portion of these activities is \$16,225,600. State-level H-2A activities include, but are not limited to: reviewing and placing job orders to recruit U.S. workers; receiving and processing required notifications from employers and the Department; providing assistance to employers in the effective recruitment of U.S. workers; conducting safety inspections of employer-provided housing for H-2A agricultural workers; and performing prevailing practice and wage surveys used to set the wages and working standards for a number of occupations within the state.

SWAs submit annual work plans to OFLC to establish continued eligibility for these grants. These work plans describe the specific activities and workload expectations of each SWA during the upcoming year.

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

The total number of responses, burden hours, and monetized costs associated with all collections under this ICR differ from previous estimates. The answer provided to A.12 provides more information regarding this burden increase. The chart below shows the changes in burden requested under this ICR, by showing the [burden last approved by OMB in connection with](#)

¹¹ These 54 respondents receive funding under the Wagner-Peyser Act. The Commonwealth of the Northern Mariana Islands is not covered by the Act.

[OMB 1205-0466](#), and the new burden estimates resulting from the changes the final rule prompts to OMB 1205-0466, for which approval is sought through this IC for OMB 1205-0537. All estimates have been rounded up to the nearest dollar.

OMB Control Number (1205-0466)	Currently Approved Estimates Under OMB 1205-0466 (As of 08/31/2019) ¹²	New Burden Estimates (As reported in Final Rule under OMB 1205-0537)	Change In Burden Estimate
Annual Responses	273,537	467,843	+ 194,306
Burden Hours	52,385	102,865	+ 50,480
Cost of Time	\$2,521,940	\$8,103,367	+ \$5,581,427

There has been an increase of total burden hours. The one main reason why the estimated numbers of annual responses, burden hours, and monetized cost of respondent time associated with this ICR have increased from the previously approved burden is the increase on the number of applications filed with OFLC to request certifications.

Integrating the burden and costs related to Form ETA-232, which is currently authorized under ICR 1205-0017, will eventually increase the total burden under ICR 1205-0466. In connection with the request for approval to integrate ICR 1205-0017, the Department requests approval to revise the collection (*i.e.*, the new Form ETA-232) for use in the H-2A program under OMB 1205-0466. Modernizing wage data collection methods and permitting the SWA to leverage other state agency surveys should reduce the SWA’s burden per response to this information collection by 70 percent, from 11 hours per response to 3.30 hours per response. This revision would reduce the SWA’s burden in responding to the Form ETA-232 by 7.70 hours but would increase the burden of this ICR by 3.30 hours per SWA response.

As described at the beginning of the Supporting Statement, the record retention requirement for job opportunities in herding or the range production of livestock currently housed in 1205-0519 has always been the recordkeeping requirements associated with the information collection requirements in 1205-0466. As a result, ETA is including in this ICR Revision request that the burden currently in OMB 1205-0519 be merged into OMB 1205-0466. Adding this burden to 1205-0466 would add 5 minutes for 842 of the 14,586 respondents covered in 1205-0466 for a total burden increase of 70 hours. However, the respondents who are subject to this additional burden are not subject to other recordkeeping burdens applicable to respondents with job opportunities other than herding or production of livestock on the range, such as recording start and end time of the workday. As a result, merging the burden of OMB 1205-0519 into OMB 1205-0466 does not increase the overall record retention burden of OMB 1205-0466.

¹² The ICR Extension request for OMB Control Number 1205-0466 is currently pending at OIRA.

In addition, estimated burden hours for employers had changed from the estimate provided for the NPRM, reflecting the Department's decision not to adopt two optional information collections proposed in the NPRM. First, the Department did not adopt the proposal to allow an employer the option of staggering the entry of some of its H-2A workers under a single certification. Second, the Department did not adopt the proposal to allow an employer to request post-certification changes to specific worksites in the area of intended employment where H-2A workers are authorized to work. These decisions eliminated the related notification and document retention burden that had been included in the estimated burden hours of the NPRM. Despite the estimated increase in burden hours overall, due in part to the increased volume of responses and the transfer of information collection tools currently covered under ICR OMB 1205-0017 into this collection (OMB 1205-0466), the proposed forms are intended to reduce the overall burden and costs associated with each individual information collection response.

Although the Department proposes a new Form ETA-9142A, Appendix B, *H-2A Labor Contractor Surety Bond*, the collection tool simplifies and facilitates an existing response requirement.

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.

No collection of information will be published.

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.

The Department displays the expiration date for OMB approval on the form and instructions.

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.