

SUPPORTING STATEMENT
H-2A TEMPORARY AGRICULTURAL LABOR CERTIFICATION PROGRAM
OMB Control Number 1205-0466

This ICR seeks an Extension of a currently approved ICR.

The Department of Labor (Department or DOL) is requesting three-year approval for this Information Collection Request (ICR) extension for all information collection activities covered under OMB Control No. 1205-0466, including all forms the Department uses to administer its H-2A temporary agricultural program. This ICR includes: Form ETA-9142A, *Application for Temporary Employment Certification*; Form ETA-9142A, Appendix A, *H-2A Assurances and Obligations*; and Form ETA-790/790A, *H-2A Agricultural Clearance Order*.

The Department requests approval without substantive changes to the following: Form ETA-9142A, *Application for Temporary Employment Certification*; Form ETA-9142A Appendix A, *H-2A Assurances and Obligations*; Form ETA-790/790A, *H-2A Agricultural Clearance Order*. For these forms, the Department has made only minor changes to update relevant website and mailing addresses, and move the PRA Public Burden Statement from the forms to the respective form 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.” INA section 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101 (a)(15)(H)(ii)(a). Employers must petition the Department of Homeland Security (DHS) to employ 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 of Labor (DOL or 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 Office of Foreign Labor Certification (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. This information collection, OMB Control No. 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 contained in Form ETA-9142A, *H-2A Application for Temporary Employment Certification* (H-2A Application), and all 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 workers in the United States will not be adversely affected by the employment of H-2A workers. This determination is required before a petition can be 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), a system administered by State Workforce Agencies (SWA) facilitating the intrastate and interstate clearance recruitment of U.S. workers for temporary agricultural employment. *See* 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 is an essential component of the Department’s H-2A temporary labor certification review. The employer must submit Form ETA-790/790A and all supporting documentation to both the SWA and OFLC, and that form and supporting documentation must satisfy both the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and 20 CFR part 655, subpart B. In all cases, OFLC reviews the content of Form ETA-790/790A in conjunction with the content of Form ETA-9142A, *H-2A Application for Temporary Employment Certification* before issuing an H-2A temporary labor certification.

Statutory Authority: Immigration and Nationality Act, 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, unless a specific exemption applies, a copy of the job order (also known as the agricultural clearance order, Form ETA-790/790A) must be submitted to the SWA serving the area of intended employment. 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 Administrative Law Judges. Where all program requirements are met, the NOA directs the employer to engage in positive recruitment of U.S. workers, 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, and 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 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

An employer must include on the main Form ETA-9142A 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), nature of temporary need, 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 attorney or agent, the form also collects required compliance documentation for the attorney or 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 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.

Finally, the employer identifies the Standard Occupational Classification code and title that most clearly corresponds to the agricultural services or labor to be performed 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 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 also 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 of a worker seeking temporary labor certification, 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, Final Determination: H-2A Temporary Labor Certification Approval

Where the employer's application has met all the regulatory requirements, including the criteria for certification in 20 CFR 655.161, the Department completes and electronically sends Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval* 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 workers in the United States similarly employed. The employer uses the Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval*, as well as any other required documentation to support the filing of an H-2A petition with DHS's U.S. Citizenship and Immigration Services (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) to the SWA for placement on its 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 a copy of the Form ETA-790/790A submitted to the SWA for review. See 20 CFR 655.121.

The 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 employer submits the Form ETA-790/790A to the SWA, and, at the time of filing the Form ETA-9142A with the Department, the employer attaches 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 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., sign and date) 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 completes 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. Employers submit information related to the different crops or agricultural activities that workers are expected to perform, including appropriate wage offer(s), in a variety of paper-based formats, and this *Addendum A* provides an electronic format for collecting this type of information. 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 cover the same occupation or represent comparable work; and (3) the employer is offering wages that will not create adverse effect on the wages of workers in the United States 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 main 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*. Employers submit information disclosing all worksites and housing for workers in a variety of paper-based formats, and *Addendum B* provides an electronic format for collecting this existing information. 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, 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.

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 application to OFLC either electronically or by U.S. mail.¹ The filing of the H-2A *Application for Temporary Employment Certification* and all supporting documentation is supported by the Department's electronic filing system, the Foreign Labor Application Gateway (FLAG system) at <https://flag.dol.gov/>. In circumstances where the application is filed using the traditional paper-based method, OFLC staff manually enters the data and information contained on the paper application into the FLAG system's internal case management system for processing in a similar manner as those filed electronically.

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 applications, the FLAG 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's H-2A Case Preparation Module include detailed instructions designed to help employers understand the form collection items and the kinds of entries that are required. Where it is not practical to collect supporting documentation using a standard OMB-approved appendix (e.g., contracts with growers; evidence of farm labor contractor registration), the FLAG system permits an employer to upload documentation supporting the application in an acceptable digitized format (e.g., Adobe PDF, Microsoft Word, .TXT).

When the employer or, if applicable, its authorized attorney or agent initially enters contact information and establishes a FLAG 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. Under this option, employers only change a limited set of information on the new application to accommodate the job opportunity, such as the number of workers being requested for certification, period of employment, the intended place(s) of employment, and wage information.

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 jobs that predictably recur each year. OFLC's experience is that the 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 returning the incomplete application without further review or issuing a NOD to request missing documentation or corrections for obvious errors or inaccuracies.

¹ In Fiscal Year 2021, 100% of respondents filed H-2A applications electronically, rather than by mail.

In compliance with the Government Paperwork Elimination Act, ETA will continue to make all forms and appendices approved under this ICR easily accessible on both the FLAG system and OFLC website (<https://www.dol.gov/agencies/eta/foreign-labor/forms>) and electronically fillable and fileable. The Department seeks OMB approval of the electronically fileable Form ETA-9142A and its appendices. The Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval* (“Final Determination”), is not made available in an electronically fillable format, because it is for the Department’s use only and is not completed by the employer, or its authorized attorney or agent, if applicable. Where the employer’s application has met all regulatory requirements, the FLAG system sends the one-page Final Determination, to the employer and, if applicable, its authorized attorney or agent using email (as available) and pre-populates it with key information reflecting OFLC’s decision to grant approval of the employer’s request for temporary labor certification. The employer downloads, prints, and submits the Final Determination, along with any other required documentation to support the filing of an H-2A petition to the USCIS for processing.

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.

To provide employers with a more efficient means of filing H-2A job orders and applications using the Form ETA-790/790A, ETA eliminated duplicative collection of information during the previous PRA renewal cycle for Form ETA-9142A, including all fields related to the employer’s need for temporary workers, job opportunity and requirements, worksite locations (including names of fixed-site agricultural businesses), and wage offer information. As a result of the previous updates, this information is collected solely through the Form ETA-790/790A without the need for employers to repeat the same information on Form ETA-9142A. Information requested on the Form ETA-9142A and accompanying *Appendix A* is sufficiently diverse to avoid duplication of activities within the Department for the H-2A program. The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. The information collections covered under OMB Control No. 1205-0466 only apply to entities seeking H-2A workers; consequently, there is no duplication of information collection requirements.

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 seek to employ 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 information requested. 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 information collection 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 necessary attestations and assurances to minimize the need for the filing employer to find the appropriate law or regulation to know 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 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 under this information collection will need to be provided at the time an employer needs to submit a job order to the SWA serving the area of intended employment (i.e., Form ETA-790/790A) and temporary labor certification to employ nonimmigrant workers under the H-2A visa classification.

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 workers in the United States 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 solicited comments on this information collection for 60 days. The Department published the 60-day notice on March 10, 2022 (87 FR 13760), and the comment period expired on May 9, 2022. The Department did not propose any substantive changes to the information collection in the 60-day FRN. Rather, the Department only proposed non-substantive changes; specifically, it notified the public that it was proposing to update e-mail, mailing, and website address information, transferring the burden statements from the form to the instructions, and similar non-substantive changes. Therefore, any comments suggesting or proposing changes beyond that subject matter are beyond the scope of the FRN.

In response to the 60-day FRN, the Department received three comments from the public. All three comment submissions are out of scope for the Department's consideration as it relates to the form renewal proposal. As it is required, the Department is issuing this 30-day FRN to allow the public an additional 30 days to submit comments to OMB concerning the Department's request to renew the information collection covered under OMB 1205-0466 and to prevent its expiration, which is how the Department has decided to proceed at the moment.

Of note, the Department is still considering changes to the information collection in association with its 2019 H-2A Notice of Proposed Rulemaking.² Any changes to the forms, appendices, instruction, etc., associated with that rulemaking will be addressed separately and the public will be notified through a notice or final rule.

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.

² See Notice of Proposed Rulemaking, *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 84 FR 36168 (Jul. 26, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-07-26/pdf/2019-15307.pdf>.

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

The documents provided are subject to the provisions of the Freedom of Information Act (FOIA) and, if requested, could be disclosed under that statute if not found to be exempt from disclosure under one of the nine FOIA exemptions.

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the information provided is protected under the Privacy Act.

The collection of data and information under this ICR are incorporated into the Department's System of Records Notice Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7. *See* 87 FR 8292. 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 to DOL Office of Administrative Law Judges and Federal courts; 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 covered under do not involve sensitive matters.

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

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 a general improvement of the methodology for estimating the time burden hours associated with collection tools covered under OMB Control No. 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.³ All actions associated 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 Supporting Statement, Appendix, for a detailed breakdown of time reporting burden estimates.

Total Annual Burden Hours for the H-2A Information Collection:

Total Burden Hours	88,268.23
Total Responses	458,114
Total Respondents	14,586

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 (\$65.67), as published by the Department’s Occupational Employment Statistics survey,⁴ and increased it by a factor of 1.295 to account for employee benefits and other compensation for a total hourly cost of \$85.04.⁵ The total compensation is \$85.04 ($\65.67×1.295) 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 88,268.23⁶ hours.

The Department has prepared, and will be submitting to OMB for review, an **Appendix** to its response to Question 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.

³ 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: 14,131; and FY 2021: 16,546). The Department estimates that 14,586 respondents will submit, on average, 458,114 responses.

⁴ Source: Bureau of Labor Statistics May 2021 National Occupational Employment and Wage Estimates; Management Occupations. <https://www.bls.gov/oes/current/oes113121.htm>.

⁵ Employer Costs for Employee Compensation – December 2021, DOL, BLS, https://www.bls.gov/news.release/archives/ecec_03182022.pdf.

⁶ Total estimate number is rounded.

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 in order 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.
2. *Maintenance and Operation Costs*: 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).

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.

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 for operations 	\$4,997,849
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.⁷ 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.

⁷ These 54 respondents receive funding under the Wagner-Peyser Act. The Commonwealth of the Northern Mariana Islands is not covered by the Act.

The Department only proposed non-substantive changes; specifically, it notified the public that it was proposing to update e-mail, mailing, and website address information, and transferring the burden statements from the form to the instructions. These non-substantive changes did not impact or result in any change to the estimated burdens or costs.

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 being requested under this ICR. All estimates have been rounded up to the nearest dollar.

OMB Control Number (1205-0466)	Previous Estimates	Current Estimates	Change
Annual Responses	273,537	458,114	+ 184,577
Burden Hours	52,385	88,268.23	+ 35,883.23
Cost of Time	\$4,447,994.22	\$7,506,330.56	+ \$3,058,336.34

There has been an increase of total burden hours. The estimated number of annual responses, burden hours, and monetized cost of respondent time associated with this ICR have increased from previous estimates. Employer use of the H-2A program has significantly increased over the last three fiscal years. In FY 2021, the Department received approximately 16,546 employer applications requesting temporary labor certification, a 26.5 percent increase over the workload received during FY 2019.⁸ To more accurately estimate the annual burden hours under this ICR, the Department utilized a three-year average of the total number of respondents that file applications during the three precedent fiscal years (14,586, compared to the previous estimate of 8,783 respondents provided during the last renewal cycle). This increase in filings is outside the control of the Department. As a result, the Department estimates based on this increase on the number of respondents that the total annual burden hours will increase from the previously approved 273,537 annual burden hours to 458,114 annual burden hours. This shows an increment of 184,577 estimated burden hours per year for the next validity period. The total annual cost estimates have also increased. The cost increases for this Supporting Statement are based on a higher HR manager rate than the previous estimate. This is due to an increase in the BLS cost adjustment factor used to calculate benefits and other compensation for HR managers. The HR manager rate used for the 2019 information collection renewal was \$84.91, the 60-day FRN the rate was \$83.59, and for this Supporting Statement the rate is \$85.04. For the HR

⁸ The number of workers requested by respondents is provided only for informational purposes about the scope of the program. Although respondents requesting large numbers of workers are more likely to have more complicated collections, only a few collection steps are significantly increased for respondents with requesting a large number of workers (e.g., providing each worker with a copy of the job order) and those may be minimized (e.g., group distribution).

manager calculations, the benefits factor decreased since the 2019 information collection renewal from a factor of 1.43, to the 60-day FRN a factor of 1.292,⁹ and currently to a factor of 1.295.¹⁰

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.

⁹ *Employer Costs for Employee Compensation – September 2021*, DOL, BLS, https://www.bls.gov/news.release/archives/ecec_12162021.pdf.

¹⁰ *Employer Costs for Employee Compensation – December 2021*, DOL, BLS, https://www.bls.gov/news.release/archives/ecec_03182022.pdf.