

**SUPPORTING STATEMENT**  
**H-2A APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION**  
**ICR Number: 1205-0466**

---

**Introduction:** *This information collection request (ICR) proposes to revise the H-2A temporary agricultural labor certification program information collection tools to reflect the proposed revisions to the information collection activities related to the H-2A Foreign Labor Certification Program, covered under Office of Management and Budget (OMB) Control Number 1205-0466 (OMB 1205-0466)*

*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 Notice of Proposed Rulemaking (NPRM). The proposed regulatory changes the Department has announced through the NPRM, and submitted to OMB for clearance under OMB 1205-0466, will eventually prompt the following revisions to the currently approved ICs, covered under OMB 1205-0466:*

- *A new proposed Form ETA-9142A, Appendix C, Owner, Operator, Manager, Supervisor, which reflects the new requirements of the NPRM. The Department’s proposed regulations require an employer to provide the contact information (e.g., name, contact address, contact phone, contact email) of all owners, operators, managers, and supervisors of H-2A employees associated with the Form ETA-9142A.*
- *A new proposed Form ETA-9142A, Appendix D, Foreign Labor Recruiter, which collects basic information on the identities and locations of all persons and entities hired by, or working for, the associated foreign labor recruiter.*
- *Proposed revisions to the H-2A Temporary Agricultural Labor Certification Program information collection tools, as necessary, to reflect proposed regulatory changes and new employer requirements.*

**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 at the time of Final Rule publishing.*

**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 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 workers in the United States similarly employed 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, subpart 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.

**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, subpart 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. 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). *See* 20 CFR 655.141 and 655.143. Where deficiencies in the application are discovered, the NOD provides the employer with an opportunity to correct the deficiencies. If the employer fails to correct all such deficiencies, OFLC will deny certification, at which point the filer may appeal with the Department's Office of Administrative Law Judges. *See* 20 CFR 655.141, 655.142, and 655.171. 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. *See* 20 CFR 655.143. 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. *See* 20 CFR 655.162, 655.164, and 655.165. In accordance with regulatory requirements, OFLC sends all certified H-2A applications, including the applicable certification fee invoices to the employer or the employer's authorized attorney or agent. *See* 20 CFR 655.163. The electronic transmission process allows OFLC to transmit the certification electronically to DHS's U.S. Citizenship and Immigration Services (USCIS) and a copy to the employer. *See* 20 CFR 655.162.

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. *See, e.g.*, 20 CFR 655.180 through 655.182 and 655.184.

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. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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. See 20 CFR 655.132. 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. Employers submit bonds in a variety of formats and using various legal terms and language, some of which do not satisfy regulatory requirements. OFLC will use this information to ensure that the surety bond submitted is enforceable for the coverage required. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

Form ETA-9142A, Appendix C – Owner, Operator, Manager, Supervisor

The Department's proposed regulations require completion of the Form ETA-9142A, *Appendix C*, when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. This new form reflects the Department's proposed regulations, which require an employer to provide the contact information (*e.g.*, name, contact address, contact, phone, contact email) of all owners, operators, managers, and supervisors of H-2A employees associated with the Form ETA-9142A. The Department uses the information it collects in *Appendix C* during post-adjudication audit examinations and/or program integrity proceedings (*e.g.*, revocation or debarment actions), and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.56; 29 CFR 501.6.

Form ETA-9142A, Appendix D – Foreign Labor Recruiter Information

The Department's proposed regulations require an employer who engages or plans to engage any agent(s) or recruiter(s) in the recruitment of prospective H-2A workers to provide the information requested by *Appendix D*. See 20 CFR 655.137. *Appendix D* collects basic information on the identities and locations of all persons and entities hired by, or working for, the associated foreign labor recruiter. To provide greater transparency in the recruitment of H-2A workers and prevent program abuse, OFLC uses this information to maintain a publicly available list on its website of the identity and location of any persons or entities hired by or working for these recruiters to recruit prospective foreign workers for the H-2A job opportunities offered by the employer. See 20 CFR 655.132. The Department also uses the information it collects in *Appendix D* during post-adjudication audit examinations and/or program integrity proceedings (*e.g.*, revocation or debarment actions) and WHD may request the information during an investigation or enforcement proceeding. See 20 CFR 655.132 and 137; 29 CFR 501.6.

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 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 workers in the U.S. 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. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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 into the ARS intrastate and interstate job clearance systems, as set forth in 20 CFR part 653, subpart F. 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. Employers must 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 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). WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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, and 29 CFR part 501.

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 workers in the U.S. who are similarly employed. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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.” WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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*. 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 workers in the U.S. similarly employed. SWAs 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. WHD may request the information during an investigation or enforcement proceeding. 29 CFR 501.6.

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, 59573 (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/>. Employers are mandated by regulation to file electronically, absent lack of internet access or the need for an accommodation due to disability. Under the H-2A program, 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. Additionally, the FLAG System 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.



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. 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.

*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 workers in the U.S. 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 will offer 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.

*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 several 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 1205-0466, 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 Certification 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 1205-0466 do not involve sensitive matters.

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

#### **A. Collection of Information from Employers**

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 1205-0466, 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 16,567 Form ETA-9142A submissions and 16,567 Form ETA-790/790A

submissions for the H-2A program under the provisions of the NPRM.<sup>1</sup> 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 Time Reporting **Burden Appendix** for a detailed breakdown of time reporting burden estimates.

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

Total Burden Hours	120,280.83
Total Responses	527,392
Total Respondents	16,567

**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 Specialist 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 (HR) Specialist. Using the total hourly wage for an HR specialist (\$49.30), the estimated opportunity cost of time for an HR specialist to complete the attestation form, notify third parties, and retain records relating to the returning worker requirements, is \$36.98 per response.<sup>2</sup> 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 117,100.76 hours.<sup>3</sup>

**B. Two-week delay notification to 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 the elimination of the notification of a delayed start date to the Certifying Officer requirement. Under the NPRM, the Department is now proposing to require employers to notify workers and the SWA serving the area of intended employment of a delayed start date. This obligation will no longer apply under ICR 1205-0466, it will be reflected in ICR 1205-0134.

**NOTE** - The Department has prepared, and will be submitting to OMB for review, 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

1 The numerical estimation of 16,567 is derived from the average submissions of H-2A applications from three previous full fiscal years based on the Department’s experience. (FY 2020: 14,131; FY 2021: 16,546; and FY 2022: 19,023). The Department estimates that 16,567 respondents will submit, on average, 469,824 responses.

2 Calculation: \$49.30 (average per hour wage, including benefits to wage multiplier, for an HR specialist) × 0.75 (time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements) = \$36.98.

3 Total estimate number is not rounded.

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.

*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.
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.

*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 cost to administer the H-2A program is \$30,596,743. This total is comprised of \$11,971,166 in federal administration costs and \$18,625,577 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 adjudication; 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 are based on the recurring annual costs to administer the H-2A program in recent fiscal years and do not include one-time costs. The table below provides a detailed breakdown of annual H-2A federal administration costs.

<b>Major Cost Category</b>	<b>Cost Activities</b>	<b>Annualized Costs (estimated)</b>
Contracts for Services (not technology related)	<ul style="list-style-type: none"> <li>▪ Case processing and administrative support</li> <li>▪ Mail, data entry, and other clerical support services</li> </ul>	\$5,637,383
Information Technology Contracts	<ul style="list-style-type: none"> <li>▪ Operation and maintenance services</li> <li>▪ Network infrastructure support</li> <li>▪ Hardware &amp; software updates</li> </ul>	\$2,091,205
GSA & DHS Services	<ul style="list-style-type: none"> <li>▪ Rent payments for office space</li> <li>▪ Building security services</li> </ul>	\$480,336
DOL Working Capital Assessment	<ul style="list-style-type: none"> <li>▪ Indirect costs associated with ETA and DOL administrative and executive management services</li> </ul>	\$3,689,687
Mail & Telecommunications	<ul style="list-style-type: none"> <li>▪ Mail Telecommunication services</li> </ul>	\$26,386
Other Costs	<ul style="list-style-type: none"> <li>▪ Travel</li> <li>▪ Printing</li> <li>▪ Office supplies and Equipment</li> </ul>	\$46,169
<b>TOTAL COSTS - FEDERAL ADMINISTRATION</b>		<b>\$11,971,166</b>

For transparency purposes only, the Department discloses in this supporting statement that employers are assessed a fee when 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, with an overall cap of \$1,000. These fees are deposited into the U.S. Treasury and are not available to the Department to offset any federal costs for administering the H-2A program. The Department estimates that annual fee collections are \$4,098,727 (average of annual collections - FY 2020 – FY 2022).

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.

The Department also provides annual grants to State Workforce Agencies (SWAs) in 55 states and U.S. territories for required employment-based immigration activities supporting the foreign labor certification program. Estimated annual costs for the H-2A portion of these activities are \$18,625,577. 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; assisting employers in the effective recruitment of U.S. workers; conducting safety inspections of employer-provided housing for agricultural workers;



performing prevailing practice and wage surveys; and conducting post-certification site visits to support employer compliance with H-2A program requirements.

SWAs submit comprehensive 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 OMB 1205-0466, and the new burden estimates resulting from the proposed changes of the NPRM prompts to OMB 1205-0466, for which approval is sought through this IC for OMB 1205-0466. All estimates have been rounded up to the nearest dollar.

OMB Control Number (1205-0466)	Currently Approved Estimates Under OMB 1205-0466 (As of 12/31/2022)	New Burden Estimates (As reported in NPRM under OMB 1205-0466)	Change In Burden Estimate
Annual Responses	467,843	527,392	+ 59,549
Burden Hours	102,865	120,280.83	+17,415.83
Cost of Time	\$8,103,367	\$5,951,299.15	- \$2,152,067.85

Although there is an increase the total number of annual responses and hours of this ICR, there has been an increase of annual responses. The one main reason why the estimated number of annual responses and burden hours 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 have increased. Additionally, the main reason why the estimated numbers of monetized cost of respondent time associated with this ICR have decreased from the previously approved ICR is the decrease in the hourly rate of a Human Resource employee typically filling and completing the necessary forms associated with this ICR. Previously, the rate of pay for a Human Resource employee was \$83.59 per hour. Currently, the rate of pay is \$49.30 per hour. The reduction in rate is due to the determination that an HR employee could perform these tasks instead of an HR manager, whose rate was used in previous ICRs.

The implementation of the new Form ETA-9142A, Appendix C and Form ETA-9142A, Appendix D, increases the obligations of the employer. Additionally, the additional employer

requirements of related to the NPRM increases the overall burden of the employer. The Department believes that to fulfill its statutory obligations to protect United States workers in the H-2A program, the benefits of these requirements outweigh these increases. Specifically, these additional disclosures related to the recruitment chain are necessary for the Department to carry out its enforcement obligations, protect vulnerable agricultural workers and program integrity, and ensure equitable administration of the H-2A program for law abiding employers.

*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.