

APPENDIX

SUPPORTING STATEMENT H-2A APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION OMB Control Number 1205-0466

Breakdown of Hourly Burden Estimates

***Note:** In this document, the Department of Labor (Department) provides time burden estimates per specific collection activity conducted in connection with the H-2A labor certification program. The estimates are provided in minutes, but the Department also provides the breakdown on how the total burden hours were calculated, which includes the time estimates in hours (e.g., 5 minutes/0.083 hours). This document is to be reviewed in conjunction with the table included in Question 12 of the Supporting Statement.*

Total H-2A Program Burden Estimate 120,280.83 hours

Total H-2A respondents à 16,567

Total Time Cost Estimate = \$5,951,299.15 (Burden Hours (120,280.83) x Hourly Rate (\$49.30))

Information Collection Activity	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Average Burden in hours (minutes) ¹	Total Annual Burden (in hours)	Hourly Rate	Total Burden Cost (in dollars) ²
A. Agents and recruiters							
A.1 Proof of Agent Relationship	314	19	5,966	.25 (15 min)	1,491.50	\$49.30	\$73,530.95
A.2 Agent MSPA Registration	76	1	76	.083 (5 min)	6.31	\$49.30	\$310.98
A.3 Inform of Fee Prohibitions	9,627	1	9,627	.083 (5 min)	799.04	\$49.30	\$39,392.72
Unduplicated Totals	10,017		15,669		2,296.85		\$113,234.66
B. H-2A Agricultural Clearance Order							
B.1 Determining Offered Wage	16,567	1	16,567	.033 (2 min)	546.71	\$49.30	\$26,952.80
B.2 Form ETA-790/790A	16,567	1	16,567	1 (60 min)	16,567	\$49.30	\$816,753.10
Unduplicated Totals	33,134		33,134		17,113.71		\$843,705.90
C. H-2A Application for Temporary Employment Certification							
C.1 Form ETA-9142A	16,567	1	16,567	.58 (35 min)	9,608.86	\$49.30	\$473,716.80
C.2 H-2ALC Filing Requirements	2,203	1	2,203	1.33 (80 min)	2,929.99	\$49.30	\$144,448.51
C.3. Form ETA-9142A, Appendix C	2,550	1.5847	4,041	0.33 (20 min)	1,333.53	\$49.30	\$65,742.78

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

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

C.4. Form ETA-9142A Appendix D	8	2.5	20	0.17 (10 min)	3.40	\$49.30	\$167.62
C.5 Waiver for Emergency Situations	1,255	1	1,255	.50 (30 min)	627.50	\$49.30	\$30,935.75
C.6 Modify Application/Job Order	5,196	1	5,196	.25 (15 min)	1,299	\$49.30	\$64,040.70
C.7 Amend Application/Job Order	2,480	1	2,480	.50 (30 min)	1,240	\$49.30	\$61,132.00
C.8 Herder Variance Request	5	1	5	.50 (30 min)	2.50	\$49.30	\$123.25
Unduplicated Totals	30,264		31,767		17,044.78		\$840,307.40
D. Recruitment of U.S. Workers							
D.2 SWA Wage Survey	223	19	4,237	3.30 (210 min)	13,982.10	\$49.30	\$689,317.53
D.4 Recruitment Report	16,567	1	16,567	1 (60 min)	16,567	\$49.30	\$816,753.10
Unduplicated Totals	16,790		20,804		30,549.10		\$1,506,070.63
E. Worker Guarantees & Rights							
E.1.a Provide Workers With Job Order	16,567	20	331,340	.083 (5 min)	27,501.22	\$49.30	\$1,355,810.15
E.1.b Translate Application/Job Order	16,567	1	16,567	1 (60 min)	16,567	\$49.30	\$816,753.10
E.3 Notice to Leave United States	16,567	1	16,567	.033 (2 min)	546.71	\$49.30	\$26,952.85
E.4 Petition for Higher Meal Charges	30	1	30	1 (60 min)	30	\$49.30	\$1,479.00
E.5 Substitute Housing for Workers	48	1	48	.33 (20 min)	15.84	\$49.30	\$780.91
E.6 Workers' Compensation Coverage	16,567	1	16,567	.17 (10 min)	2,816.39	\$49.30	\$138,848.03
E.7 Complaints Withholding Workers	1	1	1	.50 (30 min)	0.5	\$49.30	\$24.65
Unduplicated Totals	66,347		381,120		47,477.66		\$2,340,648.69
F. Retention Requirements							
F.1 Retention of Documents	16,567	1	16,567	.17 (10 min)	2,816.39	\$49.30	\$138,848.03
Unduplicated Totals	16,567		16,567		2,816.39		\$138,848.03
G. Post-adjudication requirements							
G.1 Abandonment/Termination Notice	15,892	1	15,892	.17 (10 min)	2,701.64	\$49.30	\$133,190.85
G.2 Redetermination Request	38	1	38	.50 (30 min)	19	\$49.30	\$936.70
G.3 Extend Period of Certified Work	332	1	332	.50 (30 min)	166	\$49.30	\$8,183.80
G.4 Administrative Appeals	102	1	102	.33 (20 min)	33.66	\$49.30	\$1,659.44
G.5 Withdrawal Request	288	1	288	.17 (10 min)	48.96	\$49.30	\$2,413.73
G.6 H-2A Worker Departure Notice	165	1	165	.033 (2 min)	5.45	\$49.30	\$268.44
G.7 Foreign Contact Information	11,449	1	11,449	0.033 (2 min)	377.82	\$49.30	\$18,626.38
Unduplicated Totals	28,266		28,266		3,352.52		\$165,279.34

H. Integrity measures							
H.2 Special Procedures	65	1	65	¹ (60 min)	65	\$49.30	\$3,204.50
Unduplicated Totals	65		65		65		\$3,204.50

OVERALL TOTAL BURDEN HOURS AND ANNUAL COST TO RESPONDENT ESTIMATES							
A. Agents and recruiters	10,017		15,669		2,296.85		\$113,234.66
B. H-2A Agricultural Clearance Order	33,134		33,134		17,113.71		\$843,705.90
C. H-2A Application for Temporary Employment Certification	30,264		31,767		17,044.76		\$840,307.40
D. Recruitment of U.S. Workers	16,790		20,804		30,549.10		\$1,506,070.63
E. Worker Guarantees & Rights	66,347		381,120		47,477.66		\$2,340,648.69
F. Retention Requirements	16,567		16,567		2,431		\$138,848.03
G. Post-adjudication requirements	28,266		28,266		3,302.75		\$165,279.34
H. Integrity measures	65		65		65		\$3,204.50
GRAND TOTALS	16,567*		527,392		120,280.83		\$5,948,102.49

**The column representing the number of respondents that complete the collection of information steps described in this table cannot be added up as not all employers or agents complete each one of the steps described. The Department estimates, that on a yearly average, 16,567 respondents will provide on average 527,392 responses in connection with this information collection.*

A. Agents and recruiters

1. *Proof of agent relationship (20 CFR 655.133(a))*. The regulations require all agents who file H-2A applications on behalf of employers to demonstrate that a bona fide relationship exists between them and the employer. The Department is not requiring any specific form of such documentation and will accept a copy of the agent – employer agreement or another document demonstrating the agent’s authority to act on behalf of the employer. These agreements must have been executed and readily available at the time of filing Form ETA-9142A, and, for that reason, the Department estimates that it takes, on average, approximately 15 minutes to prepare, print, sign, and electronically upload or deliver a copy of the agreement to the Office of Foreign Labor Certification (OFLC) confirming the relationship. Based on program data collected over the past three fiscal years, the Department estimates that 314 agent filers will likely execute agreements between themselves and their clients, which they must provide along with Form ETA-9142A. Since a copy of the agreement is required to be submitted with Form ETA-9142A and each agent represents multiple employer-client applications per year, the Department estimates that each agent will need to submit a copy of the required agreement, on average, 19 times per year.

The estimated burden hours for this collection are 1,491.50 reporting hours (314 agent filers x 19 responses x 0.25 hours (15 minutes) = 1,491.50 hours).

2. Agent's proof of MSPA registration (20 CFR 655.133(b)). The regulations require agents who are Farm Labor Contractors to provide a copy of their Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Certificate of Registration. Because these registrations must already be valid and readily available at the time of filing the Form ETA-9142A, the Department estimates it takes agents approximately 5 minutes to copy their certificates and provide them with the application. In the past, 76 agents in the H-2A program have been certified Farm Labor Contractors per year.

The estimated burden hours for this collection are 6.31 reporting hours (76 filers x 0.083 hours (5 minutes) = 6.31 hours).

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

The estimated burden hours for this collection are 799.04 third party disclosure hours (9,627 contracts x 0.083 hours (5 minutes) = 799.04 hours).

B. H-2A Agricultural Clearance Order

1. Determination of offered wage rate(s) (20 CFR 655.120, 122(l)). To comply with its obligation under proposed §§ 655.120(a) and .122(l), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, the Federal or State minimum wage, or any other wage the employer intends to offer, except for occupations covered by §§ 655.200 through 655.235. The proposed rule would further require, where the potential wage rates are expressed in different units of pay, the employer must list the highest applicable wage rate for each unit of pay in its job order and must offer and advertise all of these wage rates in its recruitment. To prepare the Form ETA-790A, the employer must determine the appropriate wage to offer, advertise, and pay workers to perform the agricultural services or labor. To assist employers to comply with this regulatory requirement, the Department routinely publishes the AEWRs and any prevailing hourly wage or piece rates (based on surveys conducted by SWAs) on the OFLC website at <https://www.dol.gov/agencies/eta/foreign-labor>. Because the AEWRs represent the same minimum hourly wage rate across an entire state or regional area,

irrespective of crop or agricultural activity, and SWA-conducted prevailing wage surveys are infrequently used, the estimated time required to research the applicable minimum wages and disclose a wage offer on the Form ETA-790A is estimated at 2 minutes.

The estimated burden hours for determining the required offered wage is 546.71 reporting hours (16,567 job orders x 0.033 hours (2 minutes) = 546.71 hours).

2. Form ETA-790/790A, Addendums A and B (20 CFR 655.121, 655.122). The regulatory requirement that the job order submitted to the SWA and Department must meet the content standards set forth in 20 CFR 653, Subpart F and 20 CFR 655.122 is subject to the PRA burden calculations. The Department estimates that it will take an average employer 40 minutes to complete the Form ETA-790/790A and ensure that it includes all of the required material terms and conditions of employment in compliance with regulatory requirements, including completion of the standard addendums to disclose additional crops/agricultural activities, worksites, and housing.

In the NPRM, the Department proposes to revise the Form ETA-790A various sections of the form, specifically sections E, G, and I, to reflect proposed changes from the NPRM. Such changes implement expanded questions on job duties and employer responsibilities.

The estimated burden is 16,567 reporting hours (16,567 job orders x 1hour hours (60 minutes) = 16,567 hours).

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

C. H-2A Application for Temporary Employment Certification

1. Form ETA-9142A Application for H-2A Temporary Employment Certification and Appendix A (20 CFR 655.130-132). The Department requires completion of the Form ETA-9142A when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. The Department estimates that it will take approximately 31 minutes to complete, review, and attach all required documentation associated with the employer's Form ETA-9142A. The Department also requires that an employer filing a Form ETA-9142A must also attach a signed and dated *Appendix A* and *Appendix B* attesting to compliance with all of the terms, assurances, and obligations of the H-2A program to obtain a temporary labor certification. The Department estimates the employer will take another 4 minutes to review and then sign and date the *Appendix A* and *Appendix B*. Based on recent program experience, we estimate 16,567 applications and appendices will be filed annually.

In the NPRM, the Department proposes to revise the Form ETA-9142A to add new items to section B related to the proposed provisions related to DBAs, which require employers to provide the name of an alternative name of its business other than its legal name. In addition, the Department proposes a new collection related to the proposed provisions regarding Foreign Labor Recruiters, which would require employers who use the services of a Foreign Labor Recruiter in conjunction with the Form ETA-9142A to provide such information to the Department. As a result, the Department estimates that these proposed provisions in the NPRM will take an estimated 0.55 hours is still accurate based on the overall burden adjustments we have made to better reflect time burden estimates.

The estimated burden for the filing of the Form ETA-9142A is 9,608.86 reporting hours (16,567 applications x 0.58 hour (35 minutes) = 9,608.86 hours).

2. Filing Requirements for H-2ALCs (20 CFR 655.132). The Department requires employers operating as H-2A Labor Contractors (H-2ALCs) must provide additional documentation at the time of filing the Form ETA-9142A. H-2ALC employers must submit a list of fixed-site agricultural businesses with whom they have contracted to provide H-2A workers, copies of the fully executed contracts, a valid MSPA Certificate of Registration (if applicable), surety bond, and proof that housing and transportation complies with all applicable standards. Recent program data shows that approximately 2,203 applications could be filed by H-2ALCs employers. The Department anticipates that it will take them approximately 1 hour and 20 minutes to comply with these requirements.

The estimated burden for this collection is of 2,929.99 reporting hours (2,203 H-2ALC applications x 1.33 hours (1 hour and 20 minutes) = 2,929.99 hours).

3. Form ETA-9142A, Appendix C, H-2A Owner, Operator, Manager and Supervisor Information (20 CFR 655.137). The Department requires completion of the Form ETA-9142A when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. This new form 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. Recent program experience shows that employers may use approximately 4,041 owners, operators, managers and/or supervisors could be used by employers. The Department anticipates that it will take approximately 20 minutes to comply with these requirements.

The estimated burden for this collection is of 1,333.53 reporting hours (20 owners, operators, managers and/or supervisors x 0.33 hours (20 minutes) = 1,333.53 hours).

4. Form ETA-9142A, Appendix D – H-2A Foreign Labor Recruiter Information (20 CFR 655.137). The Department requires completion of the Form ETA-9142A when

an employer seeks a temporary labor certification to employ nonimmigrant workers under the H-2A visa classification. This new form reflects the new requirements of the NPRM. 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*. *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. The Department also proposes to use 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. Recent program experience shows that approximately 20 FLRs could be used by employers. The Department anticipates that it will take approximately 10 minutes to comply with these requirements.

The estimated burden for this collection is of 3.40 reporting hours (20 FLRs x 0.17 hours (10 minutes) = 3.40 hours).

5. *Waiver of filing timeframes due to emergency situations (20 CFR 655.134)*. The Department permits an employer who did not make use of temporary H-2A workers during the prior year's agricultural season or who has other good and substantial cause (which may include unforeseen changes in market conditions), to request a waiver of the regulatory timeframe for filing the Form ETA-9142A, provided that the Department has sufficient time to test the domestic labor market on an expedited basis to make the labor certification determination. This request must be made at the time of application filing and can be done electronically through the FLAG System. Based on recent program data, collected over the last three fiscal years, the Department estimates it will receive 1,255 such requests for waivers. The Department estimates it will take employers 30 minutes to write a letter addressed to the Department explaining why they need such a waiver.

The estimated burden for this collection is of 627.50 reporting hours (1,255 requests x 0.50 hours (30 minutes) = 627.50 hours).

6. *Submission of a modified application or job order (20 CFR 655.141(b)(2), 655.142)*. The Department permits employers to modify and resubmit their applications and/or job orders, as appropriate, according to the insufficiencies listed in the Notice of Deficiency. Based on program data gathered over the last three fiscal years, the Department estimates that approximately 35.6 percent of the applications (5,196 applications) will require modification per year. Because the vast majority of deficiency issues are non-substantive corrections and employers can upload modified applications or job orders associated with an H-2A application electronically using

the FLAG System, the Department estimates it takes on average 15 minutes to respond to a Notice of Deficiency by submitting a modified application or job order.

The estimated burden for this collection is of 1,299 reporting hours (5,196 modifications x 0.25 hours (15 minutes) = 1,299 hours).

7. *Amending the application or job order (20 CFR 655.145)*. The Department permits employers to amend their applications and/or job orders at any time before the Department makes a final determination to grant or deny the application. The Department anticipates receiving 2,480 such amendments and that it takes an employer approximately 30 minutes on average to prepare and file an amendment request.

The estimated burden for this collection is of 1,240 reporting hours (2,480 amendments x 0.50 hours (30 minutes) = 1,240 hours).

8. *Variance Request by Employers in Herding Occupation (20 CFR 655.235)*. The Department's regulations for employers requesting foreign workers for herding and livestock production on the range³ allow employers to request a variance from the requirements to provide potable water and separate sleeping facilities for each worker. The variance requests must be in writing and submitted at the time of filing the Form ETA-9142A. The Department estimates it will take employers 30 minutes to write a letter requesting the variance(s). The Department anticipates receiving 5 such variance requests and that it takes an employer 30 minutes on average to prepare and file a variance request.

The estimated burden for this information collection is of 2.5 reporting hours (5 amendments x 0.50 hours (30 minutes) = 2.5 hours).

D. Recruitment of U.S. Workers

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

1. *Proof of recruitment*. The employers are required to keep proof of recruitment to demonstrate compliance with the advertising requirements under 20 CFR 655.167(b), which must also be retained by employers under the regulations of the Equal Employment Opportunity Commission at 29 CFR 1602.14 (OMB Control No. 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act and the Americans with Disabilities Act, and 29 CFR 1627.3 (OMB Control No. 3046-0018),

³ Range is defined in the Department's H-2A regulations at 20 CFR 655.201.

promulgated pursuant to the Age Discrimination in Employment Act. Therefore, the burden to maintain such records can be excluded in compiling the paperwork burden under OMB's regulations. See 5 CFR part 1320. For example, 29 CFR 1602.14 requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to ... application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later." 29 CFR 1627.3 of the Age Discrimination in Employment Act requires employers to keep the following for a period of one year:

- Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.
 - Promotion, demotion, transfer, selection for training, layoff, recalls or discharges of any employee.
 - Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.
 - Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.
2. State Workforce Agencies (SWAs) postings, distribution, and referrals (20 CFR 655.150, 655.155). The Department requires SWAs to post the employer's approved job orders, distribute the job orders to other SWAs, where applicable, and refer prospective U.S. applicants to the employer. This function is exempt from the paperwork burden calculations under 5 CFR 1320.3(d), because it is a normal function of the SWAs and does not increase their burden.

SWAs also respond to the Department's information collection regarding wages paid to U.S. workers engaged in particular agricultural crops and agricultural activities. Currently, SWAs gather wage data using Form ETA-232A and complete Form ETA-232 to report the survey results to OFLC. The Department has eliminated the Form ETA-232A, which required collection of individual employer data directly from the employer via interview and made significant revisions to the Form ETA-232 to reflect the revised wage survey methodology in the Final Rule. As a result, the burden on employers to respond to the Form ETA-232A is eliminated, although the data would be collected from employers through other means. Therefore, the Department does not consider this a cost savings for employers, although it is no longer a burden associated with the ICR. By permitting SWAs to conserve resources and costs by using modernized methods of collecting wage data for its own survey or leveraging compliant surveys conducted by other state agencies, the Department estimates the

SWA's burden might be reduced by 70 percent. A SWA using another state agency's survey would be relieved of the time required to collect and aggregate individual results by area and by crop activity for reporting to the Department. For those SWAs that continue to collect and aggregate individual results, the methods used will be less resource intensive (e.g., email rather than in-person interviews). In response to comments concerning the confusion surrounding the Form ETA-232 and survey methodology, the Department has clarified and rearranged questions on the form. Additionally, the Department has clarified text on the form and instructions in light of changes provided in the Final Rule. Those changes are negligible and do not result in an increase or decrease in the burden stated in the Final Rule.

On average, the Department estimates a SWA currently takes approximately 11 hours completing, validating, and submitting information using the Form ETA-232. As a result of the changes to this collection, the Department estimates a SWA would take 3 hours and 18 minutes (3.30 hours) to comply with the collection request. The Department has received, on average, 223 Form ETA-232 from SWAs over the past two years. On average, a SWA submits 19 responses per year. Therefore, the Department anticipates receiving 4,237 responses to this collection annually.

The estimated burden for this collection is 13,982.10 reporting hours (4,237 responses x 3.30 hours = 13,982.10 hours).

3. *Electronic Job Registry (20 CFR 655.144)*. The Department posts an employer's approved job order on the Department's Electronic Job Registry which serves as a public repository for approved H-2A job orders for the duration of the referral period and serves to improve the visibility of H-2A jobs to U.S. workers. This third-party disclosure is performed by the Department and is, therefore, not included in the calculation of the public burden.
4. *Recruitment Report (20 CFR 655.156)*. The time needed to prepare the recruitment report in 20 CFR 655.156 of the regulations is not excludable in compiling the burden. Under this provision, employers must prepare, sign, and retain a written summary report describing the recruitment steps undertaken to recruit for U.S. workers and the results achieved, including the number of hires, and, if applicable, the number of U.S. workers rejected, summarizing the lawful job-related reasons for such rejection. The employer is required to provide a report of its recruitment efforts to the Department prior to certification and must continue to accept U.S. worker referrals until 50 percent of the work contract period has elapsed. Employers are required to update the recruitment report for the duration of the regulatory recruitment period. Additionally, under the audit process detailed in 20 CFR 655.180, the Department may request the employer submit the final recruitment report contained in the employer's files along with the resumes or applications of U.S. workers sorted by the lawful job-related reasons they were rejected. The Department estimates that it takes employers 1 hour to prepare such recruitment report.

The estimated burden for this collection is of 16,567 reporting hours (16,567

recruitment reports x 1 hour = 16,567 hours).

E. Worker Guarantees & Rights

1. *Provide copy of job order or work contract to workers (20 CFR 655.122(q)).* The Department requires employers to provide H-2A workers (no later than the time at which the workers apply for the visa with the Department of State) or to workers in corresponding employment (no later than on the day work commences) a copy of the work contract between the employer and the workers in a language understood by the worker as necessary or reasonable. For H-2A workers going from one certified H-2A employer to a subsequent certified H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent certified H-2A employer. In the absence of a separate written work contract, the employer may provide copies of the certified Form ETA-9142A and Form ETA-790A.

The Department has no available means of calculating how many workers are in corresponding employment. However, the Department does not always approve the total number of H-2A workers requested by the employer, because it may find, for example, that the employer failed to hire qualified U.S. workers. Therefore, the Department assumes that the total number of requested workers (527,392)⁴ serves as a reasonable proxy for the total number of workers hired by employers, including both H-2A workers certified/hired and workers in corresponding employment.

- a. The Department estimates it takes employers an average of 5 minutes to provide each worker with a copy of the Form ETA-9142A and Form ETA-790A. **The estimated burden for this collection is of 27,501.22 hours** (331,340 workers x .083 hours (5 minutes) = 27,501.22 hours)
 - b. In addition, the Department estimates that all employers will need to translate Form ETA-9142A and their responses entered on Form ETA-790A into a language other than English (e.g., Spanish), when using the application and job order as its work contract. The Department estimates that all employers need to translate their job orders for a total of 16,567 translations. The Department estimates that a typical translation takes 1 hour, to complete. **The estimated burden for this collection is of 16,567 hours** (16,567 job orders x 1 hour = 16,567 hours).
2. *Post notice of worker rights (20 CFR 655.135(l)).* The regulations require employers to post and maintain in a conspicuous location at the place of employment a poster provided by the Department that sets out the rights and protections for H-2A workers and workers in corresponding employment. However, this burden is exempt from the PRA under 5 CFR 1320.3(c)(2).

⁴ The numerical estimation of 469,824 is the average number of workers requested by employers for temporary labor certification on H-2A applications from three previous full fiscal years based on the Department's experience implementing the 2022 H-2A Final Rule. (FY 2020: 286,900; FY 2021: 330,486; and FY 2022: 382,354).

3. Notify workers of duty to leave the United States (20 CFR 655.135(i)). The regulations require the employer to inform H-2A workers employed under the certified Form ETA-9142A and Form ETA-790A of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, unless the H-2A worker is being sponsored by another subsequent H-2A employer. The Department estimates that it will take each employer approximately 2 minutes to inform its H-2A workers of their duty to leave the U.S. during the workers' orientation at the beginning of the contract period.

The estimated burden associated with third party disclosures is of 546.71 hours (16,567 applications x 0.033 = 546.71 hours).

4. Petition for higher meal charges (20 CFR 655.173). Pursuant to 20 CFR 655.122(g), the employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. Employers who provide three meals a day for their workers may deduct the cost of the meals from the employee's pay checks up to the maximum allowed by 20 CFR 655.173. The Department annually publishes the H-2A allowable meal charges through a notice in the *Federal Register* and through the OFLC website at <http://www.foreignlaborcert.doleta.gov/>. If an employer's cost to provide meals is higher than the published amount, the employer may request approval to charge more, based on evidence of allowable costs. The time to retain the necessary information as required under 20 CFR 655.167(c)(5) and 655.122(j) is accounted for under the burden for retention of supporting documentation at 20 CFR 655.167 of this supporting statement. The Department anticipates receiving 30 such requests and that it will take employers approximately 1 hour to prepare this type of request.

The estimated burden for this collection is of 30 reporting hours (30 petitions x 1 hour = 30 hours).

5. Substitute Housing for Workers (20 CFR 655.122(d)(6)). The regulations require that the employer provide housing that meets applicable standards at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. However, if after a request to certify housing, such housing becomes unavailable for reasons outside the employer's control, the employer may substitute other rental or public accommodation housing that complies with the applicable local, State, or Federal housing standards. The employer must promptly notify the SWA in writing of the change in accommodations and the reason(s) for such change and provide the SWA evidence of compliance with the applicable housing standards. The Department estimates that approximately 48 employers might change the housing for their employees and will inform the SWA in writing of this change and provide all required information. The Department estimates it takes an employer 20 minutes to compose an email or letter to the SWA

explaining the changes and the modified housing option that it will provide to foreign workers.

The estimated burden for this information collection is of 15.84 reporting hours (48 housing notifications x 0.33 hours (20 minutes) = 15.84 hours).

6. *Workers' Compensation (20 CFR 655.122(e))*. The regulations require that the H-2A employer provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. Prior to issuance of the temporary labor certification, the employer must provide the Department with proof of workers' compensation insurance coverage meeting regulatory requirements and, if necessary, provide a signed statement attesting that it will renew coverage to ensure the insurance policy is valid during the entire period of employment. The Department estimates that it will take employers an average of 10 minutes to copy their insurance policy and, in some cases, write a note attesting their intention to renew or extend the policy and electronically upload or attach it to their application.

The estimated burden for this information collection is of 2,816.39 reporting hours (16,567 applications x 0.17 hours (10 minutes) = 2,816.39 hours).

7. *Complaint related to withholding U.S. workers*. The regulations provide several avenues for aggrieved parties to complain to the Federal Government. The hourly burdens for three of those methods are calculated under other information collections. The hourly burden in utilizing the Job Service Complaint System in 20 CFR 655.185 and 29 CFR 501.2 is accounted for under OMB Control Number 1205-0039. The hourly burden associated with filing complaints with the Wage and Hour Division (WHD) is accounted for under OMB Control Number 1215-0001. Complaints of immigration discrimination in hiring practices can be filed with the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices on either that office's Charge Form or in a letter addressed to the Special Counsel.

However, if any employer who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the worksite of H-2A workers in order to force the hiring of U.S. workers during the recruitment period, the employer may submit a complaint to the Department and clearly identify the person or entity who the employer believes has withheld the U.S. workers and provide all relevant facts to support the allegation. See 20 CFR 655.157. There is no particular form for this type of complaint. The Department estimates it would take an individual 30 minutes to prepare and send such a complaint. Based on past experience, the Department expects to receive one complaint each year.

The estimated burden for this requirement is half of a reporting hour (1 x 0.50 hours = .5 hours).

F. Retention Requirements

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

This results in an estimated annual burden of 2,816.39 recordkeeping hours (16,567 applications x 0.17 hours= 2,816.39 hours).

G. Post-adjudication requirements

1. *Notification of abandonment or termination (20 CFR 655.122(n))*. To negate a continuing liability for wages and benefits for a worker who is terminated for cause or voluntarily abandons employment and to document exemption from contacting the worker and soliciting the worker's return to work the following season, employers are required to notify the Department and the Department of Homeland Security (DHS), as applicable, no later than two working days after the termination or abandonment. Based on recent experience, the Department estimates it takes employers an average of 10 minutes to notify the Departments in writing to meet this requirement. The Department receives approximately 15,892 such notifications each year and estimates that it will receive the same approximate volume of notifications during the next validity cycle.

The estimated burden for this information collection is of 2,701.64 reporting hours (15,892 notifications x 0.17 hours (10 minutes) = 2,701.64 hours).

2. *Redeterminations (20 CFR 655.166)*. The regulations permit an employer to petition the Department for a redetermination if U.S. workers recruited as a result of the labor market test become unavailable on or during the 30-day period before the date of need. The Department estimates it takes employers approximately 30 minutes to call or email the Department with its request and then follow-up with a written request. Based on recent experience, the Department estimates that it will receive approximately, on average, 38 such requests each year.

The estimated burden for this collection is of 19 hours reporting hours (38 requests x 0.50 hours (30 minutes) = 19 hours).

3. *Extension of the certified period of employment (20 CFR 655.170)*. The regulations permit employers, under certain circumstances involving weather conditions or other factors beyond the control of the employer, to request in writing an extension of the

certified period of employment for more than two weeks (i.e., long-term requests). All requests for an extension of two weeks or less (i.e., short-term requests) are submitted directly to DHS U.S. Citizenship and Immigration Services and not subject to the burden disclosure in connection with this ICR. The Department estimates that it will receive, on average, approximately 332 long-term extension requests each year. The Department also estimates that it takes the employer approximately 30 minutes to comply with this requirement.

The estimated burden for this collection is of 166 reporting hours (332 notices x 0.50 hours (30 minutes) = 166 hours).

4. Administrative Appeals (20 CFR 655.141, 142, 164, 165, 181, and 182). Several aspects of the H-2A labor certification process provide the employer with administrative appeal rights including expedited administrative review or a *de novo* hearing. See, e.g., 20 CFR 655.141 (deficiencies); 655.142 modifications; 655.164 (denials); 655.165 (partial certifications); 655.181 (revocation); 655.182 (debarment). The employer may request an expedited administrative appeal or a *de novo* hearing to the Board of Alien Labor Certification Appeals in writing in accordance with the procedures prescribed by the specific regulatory provision authorizing the appeal. See generally 20 CFR 655.171. Based on past experience, the Department estimates that it will receive approximately 102 appeals annually and that it will take employers 20 minutes to prepare and send the Notice of Appeal.

The estimated burden for this collection is of 33.66 reporting hours (102 appeals x 0.33 hours (20 minutes) = 33.66 hours).

5. Request for withdrawal (20 CFR 655.172). The regulations permit employers to request withdrawal of an application after it has been accepted for processing, but before it is adjudicated. Based on program data over the last three fiscal years, the Department estimates that it will receive, on average, approximately 288 such requests each year. The Department also estimates that it takes the employer 10 minutes to comply with this requirement.

The estimated burden for this collection is of 48.96 reporting hours (288 requests x 0.17 hours (10 minutes) = 48.96 hours).

6. H-2A worker departure date (20 CFR 655.135(c)). The Department's regulations require employers to continue to consider for employment and hire any qualified and eligible U.S. worker who applies to the position until the end of the first half of the contract period. This program component is referred to as the "50 percent rule." Pursuant to 20 CFR 655.135(c), employers are also required to inform the SWA if the H-2A workers will be leaving their home country later than the third day preceding the employer's date of need. This regulatory notification requirement is necessary so that the SWA can understand when it can cease active recruitment of U.S. workers, and the employer can understand when positive recruitment will end.

Based on program experience, employers rarely have a need to provide such notification to the SWA, because all employers conduct their positive recruitment activities well in advance of the third day preceding the employer's date of need. Thus, the Department assumes that only 1 percent of 16,567 employer applications will have to provide the required notification to the SWA of the actual departure date, or about 165 applications per year. It is estimated that it takes employers about 2 minutes for an employer to provide an email notification to the SWA in compliance with the departure date notification requirements.

The Department estimates that it will take employers approximately 5.45 reporting hours to provide the notification required under the regulation (145 applications x 0.033 hours (2 minutes) = 5.45 hours).

7. *Foreign Contact Information in Earnings Records (20 CFR 655.122(j))*. The Final Rule would require employers to collect and maintain an H-2A worker's email address and phone number in the worker's home country, when available, while collecting other currently required contact information (e.g., permanent address) related to the employer's earning records obligations. The Department estimates that it will take each certified employer approximately 2 minutes to collect and maintain these two additional pieces of contact information from its H-2A workers.

The estimated burden associated with this additional foreign contact information collection is of 377.82 hours (11,449 certified employers x 0.033 hours = 377.82 hours).

H. Integrity measures

1. *Audit, revocation, and debarment (20 CFR 655.180, 655.181, and 655.182)*. The regulations authorize the Department at its discretion to audit applications or conduct investigations through WHD to ensure program integrity. Based on the results of these audits, investigations, or other information, the Department may revoke a certified application and/or place an employer, agent, or attorney in debarment proceedings. These processes require employers to respond to notices sent by the Department. However, such responses are exempt from the paperwork burden under 5 CFR 1320.3(h)(6) & (9) and 5 CFR 1320.4(a)(2).
2. *Special procedures for less than substantial violations (20 CFR 655.183)*. In cases where OFLC determines the employer (or attorney or agent) has committed less than substantial violations, the OFLC Administrator may require the employer to conform to special procedures before and after the temporary labor certification determination. These special procedures may include special on-site positive recruitment and streamlined interviewing and referral techniques. The special procedures must be reasonable and designed to enhance U.S. worker recruitment and retention in the next year as a condition for receiving a temporary agricultural labor certification. Based on its program experience, the Department estimates that employers will be required to undergo assisted recruitment in approximately 0.45% of employer applications

received in a year. The time required to conduct recruitment is already accounted for in the recruitment burden calculation above. In addition, the Department estimates that an employer will spend an additional 1 hour in additional reporting incident to this manner of recruitment.

The Department estimates that such additional reporting results in 65 reporting hours (65 applications x 1 hour = 65 hours).