

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

**SUPPORTING STATEMENT
H-2A Temporary Agricultural Labor Certification Program
OMB Control Number 1205-0466**

Introduction: *This Information Collection Request (ICR) seeks approval under the Paperwork Reduction Act (PRA) for revisions to the H-2A Temporary Agricultural Labor Certification Program information collection. The Department of Labor (Department or DOL) respectfully requests the Office of Management and Budget (OMB) grant a delayed implementation period for the Department to perform updates to the electronic filing system resulting from the proposed changes to the H-2A forms. During the period of delayed implementation, the Department requests that the current forms remain valid for public use. To that end, this ICR includes both old and new versions of any instruments impacted, and the Department will use the non-material change process to remove the old forms and provide screenshots of the system once the system has been developed.*

This ICR seeks to revise the H-2A temporary agricultural labor certification program by:

- *Revising Form ETA-9142A, H-2A Application for Temporary Employment Certification, and the Appendix A, Attorney/Agent/Employer Declarations, to better align information collection requirements with the Department of Labor (DOL or the Department)'s current regulatory framework, provide greater clarity to employers on regulatory requirements, and promote greater transparency in the Office of Foreign Labor Certification (OFLC)'s review and issuance of labor certification decisions under the H-2A visa program.*
- *Proposing to replace the existing Form ETA-790 with a new Form ETA-790/790A, H-2A Agricultural Clearance Order, which will be attached to Form ETA-9142A to eliminate redundant data collection and promote a more efficient means for employers to file the required job order with Employment Training Administration (ETA) and State Workforce Agency (SWA) serving the area of intended employment. Accordingly, ETA is seeking to revise and consolidate under this ICR the current collection of information and burden on employers seeking H-2A temporary labor certification through the existing Form ETA-790, Agricultural and Food Processing Clearance Order, which is separately authorized under OMB Control Number 1205-0134 and expires on March 31, 2019.*
- *Proposing to eliminate the issuance of the paper-based labor certification decisions by creating a one-page Form ETA-9142A, Final Determination: H-2A Temporary Labor Certification Approval, which would be issued electronically to employers granted temporary labor certification by DOL. ETA believes this proposal will promote greater*

efficiency in issuing temporary labor certification decisions and minimize delays associated with employers filing H-2A petitions with DHS.

- *NOTE - Screenshots of the built out systems supporting electronic filing of the application forms will be cleared with OMB through the non-material change process.*

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 Department of Homeland Security (DHS) to import temporary workers as H-2A nonimmigrants. [8 U.S.C. 1184](#)(c)(1). The INA authorizes DHS to permit employers to import nonimmigrant workers to perform agricultural labor or services of a temporary or seasonal nature under the H-2A visa classification only after the employer has applied to the Department of Labor (DOL or Department) for a certification that:

- 1) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and
- 2) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1). Under the INA, DOL is also authorized to enforce “employer compliance with terms and conditions of employment” in the H-2A program. 8 U.S.C. 1188(g)(2).

The Secretary of Labor (Secretary) has delegated the responsibility of issuing temporary labor certifications, through the Assistant Secretary, Employment and Training Administration (ETA), to ETA’s Office of Foreign Labor Certification (OFLC). 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). Secretary’s Order 01-2014. This information collection, OMB Control No. 1205-0466, includes the collection of information related to an employer’s request for nonimmigrant workers, as well as the material terms, wages, and conditions of employment that facilitate the recruitment of U.S. workers and issuance of temporary labor certifications in the H-2A program.

As provided in the Department's regulations at 20 CFR 655, subpart B, the information contained in Form ETA-9142A, *H-2A Application for Temporary Employment Certification* (H-2A Application), and all supporting documentation, constitutes the basis for DOL's determination that an insufficient number of qualified U.S. workers are available to fill the employer's job opportunity and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of H-2A workers. This determination is required before a petition can be approved by DHS.

As required by the INA, the Department may not issue a temporary labor certification unless the employer has conducted required recruitment "in addition to, and...within the same time period as, the circulation through the interstate employment service system of the employer's job offer." 8 U.S.C. 1188(b)(4). In accordance with the Wagner-Peyser Act of 1933, as amended by Title III of the Workforce Innovation and Opportunity Act (Pub. L. 113-128 (Jul. 22, 2014)), the Department has established regulatory standards and procedures governing the Agricultural Recruitment System (ARS), a system administered by State Workforce Agencies (SWA) facilitating the intrastate and interstate clearance recruitment of U.S. workers for temporary agricultural employment. 20 CFR 653, subparts B and F. In order to access the ARS, the employer must prepare and submit a job order (Form ETA-790) 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 is an essential component of the Department's H-2A temporary labor certification review. The employer must submit Form ETA-790 and all supporting documentation to both the SWA and OFLC, and that form and supporting documentation must satisfy both the requirements for agricultural clearance orders in 20 CFR 653, subpart F and 20 CFR 655, subpart B. In all cases, OFLC reviews the content of Form ETA-790 in conjunction with the content of Form ETA-9142A, *H-2A Application for Temporary Employment Certification* before issuing an H-2A temporary labor certification. Because OFLC simultaneously reviews both information collections before determining whether a request for temporary labor certification may be granted, and together the two collections solicit certain redundant information, the Department proposes consolidating the two information collection requests (ICRs), one for each form, into one ICR.

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 653, subparts B and F, and 20 CFR 655, subpart B

A2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

ETA uses this information collection to meet its statutory and regulatory responsibilities for administering the H-2A program. An employer seeking to employ H-2A workers must file a completed Form ETA-9142A (including all supporting documentation) and, unless a specific

exemption applies, a copy of the job order (also known as the agricultural clearance order, Form ETA-790) must be submitted to the SWA serving the area of intended employment. These forms and all supporting documentation constitute the H-2A application.

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

Upon review of the recruitment report and any other supporting documentation (e.g., workers' compensation insurance coverage, inspection of housing for workers), OFLC may grant a full or partial temporary labor certification determination or deny the employer's H-2A application. In accordance with regulatory requirements, OFLC sends all certified H-2A applications (including the applicable certification fee invoices under 20 CFR 655.163) to the employer or the employer's authorized attorney or agent.

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

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

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

An employer must include on the main Form ETA-9142A information related to its business for the purpose of determining whether the establishment operating in the United States is *bona fide*; the type of application being submitted for processing (e.g., individual employer or agricultural association filing as a joint employer), nature of temporary need, and contact information for purposes of sending and receiving communications during the course of processing an employer's H-2A application. For an employer represented by an 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 form collects additional

information, such as the names of fixed-site agricultural businesses where the workers will be placed, and fully-executed work contract(s) with each fixed-site agricultural business, which assists OFLC in determining compliance with all application filing requirements for H-2ALCs under 20 CFR 655.132.

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

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

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

The Department's regulations at 20 CFR 655.130(a) and (d), and 655.135 also require an employer and, if applicable, their attorneys or agents submit a completed *Appendix A* attesting to compliance with all of the terms, assurances, and obligations of the H-2A program in order to obtain a temporary labor certification. For two or more employers operating as joint employers of a worker seeking temporary labor certification, the Form ETA-9142A requires disclosure and submission of a signed and dated *Appendix A* completed by each employer in the joint employment relationship. However, if the application is being filed by an agricultural association operating as a joint employer with its employer-members, the agricultural association is responsible for providing a signed and dated *Appendix A* on behalf of its employer-members. 20 CFR 655.131.

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

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

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

All employers seeking to employ U.S. workers to perform agricultural services or labor on a temporary, less than year-round basis must submit a completed agricultural clearance order

(Form ETA-790) to the SWA for placement on its intrastate and interstate job clearance systems, as set forth in 20 CFR 653.500. An employer filing the Form ETA-9142A must submit to the Department a copy of the Form ETA-790 submitted to the SWA for review. 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 will be 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 will complete the Form ETA-790A requiring the disclosure of all the material terms and conditions of employment that satisfy the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the job order content requirements set forth in 20 CFR 655.122. The employer will submit the Form ETA-790/790A to the SWA, and, at the time of filing the Form ETA-9142A with the Department, the employer will attach the Form ETA-790/790A along with any other supporting documentation.

To summarize, the Form ETA-790A will collect 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 will permit OFLC to evaluate whether the employer has a bona fide need for temporary labor and whether the duties to be performed qualify as agricultural services or labor under the H-2A program. To ensure no adverse effect on the wages of similarly employed U.S. workers in the area(s) of intended employment, the form will collect 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 will be required to disclose the actual minimum qualifications or requirements of the job, including education, training, experience, and any other special requirements. This information will be 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. 20 CFR 655.122(b).

Because the INA mandates that employers participating in the H-2A program provide housing to workers that meets applicable housing standards prior to occupancy, the form will also collect 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. 8 U.S.C. 1188(c)(4). Finally, the employer will provide 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 will complete Form ETA-790A by reading and then attesting (i.e., sign and date) to compliance with the required conditions of employment and assurances for H-2A agricultural clearance orders, as set forth under 20 CFR 653, subpart F, and 20 CFR 655, subpart B.

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

In circumstances where work is expected to be performed in different agricultural activities, crops, and/or varieties within a single crop other than what is disclosed on the main Form ETA-790A, the employer will have to 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. Employers already submit information related to the different crops or agricultural activities that workers are expected to perform, including appropriate wage offer(s), in a variety of paper-based formats, and this *Addendum A* will standardize the process and provide an electronic format for collecting this type of information. OFLC will use this information to ensure that (1) all duties to be performed in the crops or agricultural activities qualify under the H-2A program, (2) all crops and/or agricultural activities cover the same occupation or represent comparable work, and (3) the employer is offering wages that will not create adverse effect on the wages of U.S. workers who are similarly employed.

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

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

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

As described further in A8, in response to comments received in the 60-day comment period, the Department developed a new proposed addendum (i.e., *Addendum C*) to alleviate space limitations on the form and support full disclosure of material terms and conditions of employment in the job order. This addendum will facilitate full disclosure of job opportunity information within the four corners of the ETA-790A and in a standardized format, as opposed to employer-created “attachments.”

- A3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.*

In accordance with 20 CFR 655.130(c) and 77 Fed. Reg. 59670, 59570 (Sept. 28, 2012), an employer or, if applicable, its authorized attorney or agent, seeking temporary labor certification must submit the Form ETA-9142A and all documentation supporting the application to OFLC

either electronically or by U.S. mail. Since December 2012, the electronic filing of the Form ETA-9142A and all supporting documentation is maintained in the Department's iCERT Visa Portal System (iCERT System) at <http://icert.doleta.gov>. Although not mandated by regulation, approximately 84 percent of H-2A applications were filed electronically by employers during Fiscal Year (FY) 2017. In circumstances where the application is filed using the traditional paper-based method, OFLC staff manually enters the data and information contained on the paper application into the iCERT System's internal case management system for processing in a similar manner as those filed electronically.

The iCERT 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 iCERT 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 these electronically uploaded documents include copies of the agent agreement with the employer, fully-executed work contracts between the H-2ALCs and fixed-site employers, surety bond, 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.

ETA intends to make the proposed Form ETA-790/790A, *H-2A Agricultural Clearance Order*, and all addenda available for electronic filing in a manner similar to the Form ETA-9142A. The system will permit 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 directly to the SWA serving the area of intended employment electronically without the need to use U.S. mail or overnight courier. For employers that have recurring seasonal job opportunities, the system will allow an employer to prepare multiple Form ETA-790/790As and reuse previously filed job orders, which will automatically pre-populate

information into a new draft Form ETA-790/790A. Similar to the preparation of the Form ETA-9142A, the “reuse” capability will significantly reduce 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 to the SWA and is prepared to file the H-2A application, the system will permit the employer to attach an electronic copy of 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.foreignlaborcert.doleta.gov/form.cfm>) and electronically fillable and fileable.

The Department will seek OMB approval of the electronically fileable forms and all appendices prior to making them available for public use. However, the proposed revised Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval*, will not be made available in an electronically fillable format, because it is for the Department’s use only and not to be completed by the employer and, if applicable, its authorized attorney or agent. Where the employer’s application has met all regulatory requirements, the system will release the one-page Form ETA-9142A, *Final Determination: H-2A Temporary Labor Certification Approval*, to the employer and, if applicable, its authorized attorney or agent, using electronic mail (email) and pre-populated with 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, *Final Determination: H-2A Temporary Labor Certification Approval*, along with any other required documentation to support the filing of an H-2A petition to the USCIS for processing.

A4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. No other government agency collects similar information to adjudicate this type of application.

To provide employers with a more efficient means of filing H-2A job orders and applications using the proposed Form ETA-790/790A, ETA is proposing to eliminate duplicative collection on the current Form ETA-9142A, including all fields related to the employer’s need for temporary workers, job opportunity and requirements, worksite locations (including names of fixed-site agricultural businesses), and wage offer information. Consequently, this information would be collected solely through the proposed Form ETA-790/790A without the need for employers to repeat the same information on Form ETA-9142A. With these proposed revisions, information requested on the proposed Form ETA-9142A and accompanying *Appendix A* is sufficiently diverse to avoid duplication of activities within the Department for the H-2A program. Any other duplicative information such as the name(s), address(s), and contact information of the employer and, if applicable, its authorized attorney or agent would be

eliminated once all of the form revisions are incorporated into the iCERT System (or any successor electronic filing system). The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. The information collections covered under OMB Control No. 1205-0466 only apply to entities seeking H-2A workers; consequently, there is no duplication of information collection requirements.

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

The information collected under this information collection is required of small businesses that 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 information requested. These forms ensure that the Department relies on a uniform system that allows for these employers to provide the information that is necessary to process their requests for temporary labor certifications.

This 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 necessary attestations and assurances to minimize the need for the filing employer to find the appropriate law or regulation to know how to request a temporary labor certification.

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

In addition, through this ICR, the Department is proposing additional changes that aim to lessen the burden collection activities might generally impose on small entities. *See* Question 3, above, for further information.

A6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information collected under this information collection will need to be provided at the time an employer needs to submit a job order to the SWA serving the area of intended employment (i.e., Form ETA-790/790A) and temporary labor certification to employ nonimmigrant workers under the H-2A visa classification.

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

workers. Additionally, in the absence of this information collection, the Department would be unable to efficiently enforce the rights and obligations of workers and employers under the H-2A program.

- A7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.*

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d)(2). The Department's regulations, however, require that employers retain applications for temporary employment certifications and all supporting documentation for three years from the date of certification (for approved applications) or date of determination if the application is denied or withdrawn. 20 CFR 655.167(b). The Department requires that employers retain and maintain supporting documentation, because it is essential information in post-adjudication audit examinations and/or program integrity proceedings (e.g., revocation or debarment actions) and in the Department's WHD investigations or enforcement proceedings.

- A8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In accordance with the Paperwork Reduction Act of 1995, the Department solicited comments on this proposed collection for 60 days. The Department published the 60-day notice on October 25, 2018 (83 Fed. Reg. 53911) and the public comment period expired December 24, 2018. The Department received 17 public comment submissions, some consolidating input from multiple commenters. Supporting Statement Appendix B summarizes the public comments received and the Department's responses to the comments. The comments have also been uploaded into the [reginfo.gov](https://www.reginfo.gov) database.

In response to the public comments received, the Department proposes additional changes to the Form ETA-9142A, *Appendix A*, and *General Instructions*, Form ETA-790A and its addenda, and Form ETA-790/790A *General Instructions*. As described in greater detail in Supporting

Statement Appendix B, the Department addressed comments by clarifying instructions, modifying language to better reflect requirements, simplifying the forms and fields to facilitate information collection, and proposing a new *Addendum C, Additional Material Terms and Conditions of the Job Offer*, to allow employers to disclose all the material terms and conditions of employment that they currently provide through employer-created “attachments” to the current Form ETA-790. The burden estimates accommodating these changes are provided in Section A12 and A15 of this document and Supporting Statement Appendix A.

A9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be made to respondents in exchange for the information provided in response to this information collection.

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

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

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 collection tools covered under OMB Control No. 1205-0466 do not involve sensitive matters.

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

The Department receives applications requesting temporary labor certification under the H-2A visa program from employers operating across a wide spectrum of agricultural activities and commodities in the U.S. economy. While it is difficult to estimate the costs involved, the Department believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$59.38), as published by the Department’s Occupational Employment Statistics survey,¹ and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$84.91.² The

¹ Source: *Bureau of Labor Statistics May 2017 National Occupational Employment and Wage Estimates; Management Occupations.*

² DOL believes that in most companies, a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$59.38), as published

total compensation is \$84.91 ($\$59.38 \times \1.43) for a Human Resources manager. The Department estimates the total cost by multiplying the compensation for a Human Resources manager by the total time to complete and retain the forms and supporting documentation in the amount of 52,384.81³ hours.

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 Control Number 1205-0466.

Based on recent program experience, the Department estimates it will receive, on average, approximately 8,783⁴ Form ETA-9142A submissions and 8,783 Form ETA-790/790A submissions for the H-2A program. 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 Breakdown of Hourly Estimates Appendix to this supporting statement for a detailed breakdown of time reporting burden estimates, including adjustments based on modifications to the collection in response to public comments.

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

| | |
|--------------------|-----------|
| Total Burden Hours | 52,384.81 |
| Total Responses | 273,537 |
| Total Respondents | 8,783 |

by DOL's Occupational Employment Statistics survey, and increased it by a factor of 1.43 to account for employee benefits and other compensation, for a total hourly cost of \$84.91.

³ The total estimate number is the sum of the total burden hours for each information collection activity listed in the table on page 1 of the Breakdown of Hourly Estimates Appendix to this supporting statement. This number is rounded.

⁴ The numerical estimation of 8,783 is derived from the average submissions of H-2A applications from three previous fiscal years based on the Department's experience implementing the 2010 H-2A Final Rule. (FY 2015: 7,567; FY 2016: 8,684; and FY 2017: 10,097). The Department estimates that 8,783 respondents will submit, on average, 273,537 responses.

A13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

1. *Start-up/Capital Costs*: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC in order to file an application. To participate in the program, the employer is required to generate records and retain them. Employers may retain these records in the manner they regularly choose to retain employment records, including electronic format. The Department estimates that the initial cost to employers is minimal because it is a customary and usual business practice for businesses to have storage space whether physical or electronic.
2. *Maintenance and Operational Costs*: There is also a fee that employers are assessed when the Form ETA-9142A is certified by the Department. In accordance with 20 CFR 655.163, the fee is comprised of \$100 plus \$10 for each H-2A worker position certified under the Form ETA-9142A, with an overall cap of \$1,000. In the case of an agricultural association acting as a joint employer applying on behalf of its employer-members, there is no additional fee to the agricultural association filing the Form ETA-9142A, and the aggregate fees for all employer-members of H-2A workers under the certified Form ETA-9142A must be paid by one check or money order. All fees must be received by OFLC no more than 30 days after the date of certification. Those fees are deposited into the General Treasury and not available to the Department to offset any Federal Government costs for administering the H-2A program.

Based on program data over the last three fiscal years, the Department estimates that 96 percent of all employers' requests for temporary labor certification will be certified for the full number of H-2A worker positions requested. We estimate that the aggregate annual fee costs to employers will be approximately \$2,521,940((8,431 certified applications X \$100) + (167,884 certified H-2A worker positions X \$10)).

A14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Department estimates that the annual costs to administer the H-2A program amount to \$27,014,264. This total is comprised of \$15,796,450 in federal administration costs and \$11,217,814 in state-level costs funded by federal grants.

Federal administrative costs include salaries and expenses for the staff who process H-2A applications; IT systems that support application-filing and case-processing operations; rent; supplies; equipment; and agency indirect costs, which include support for human resources,

financial and administrative oversight, and grants and contracts management. Estimated annual costs for the federal administration of the H-2A program are \$15,796,450. This estimate is based on recurring annual costs to administer the program in recent fiscal years and does not include costs associated with funding appropriated on a one-time occurrence basis. Based on past obligations and expenditures, the table below provides a detailed breakdown of the annualized costs associated with federal administration of the H-2A program by major cost category. Some of these costs are offset by the fees identified in Section 13.

| Major Cost Category | Cost Activities | Annualized Costs (estimated) |
|--|---|---------------------------------|
| Federal Salaries & Benefits | <u>Chicago National Processing Center</u> <ul style="list-style-type: none"> GS-12/13 staff processing applications and job orders GS-14/15 operations management Other federal administrative support <u>OFLC Headquarters</u> <ul style="list-style-type: none"> Management support, policy development, and stakeholder training Budget, contract procurements, and grants management | \$6,161,136 |
| Contracts for Services (not technology related) | <ul style="list-style-type: none"> Mail, data entry, and other clerical support services Case processing and administrative support for operations | \$5,100,651 |
| Technology Contracts for Services (O&M) | <ul style="list-style-type: none"> Application development services & network infrastructure support Hardware & software updates | \$1,090,297 |
| GSA & DHS Services | <ul style="list-style-type: none"> Rent payments for office space Security clearance services | \$806,310 |
| DOL Working Capital Assessment | <ul style="list-style-type: none"> Indirect costs associated with ETA and DOL administrative and executive management services | \$2,394,981 |
| Supplies & Equipment | <ul style="list-style-type: none"> General office supplies Computers, printers, and other office related equipment | \$60,331 |
| Mail & Telecommunications | <ul style="list-style-type: none"> Mail or overnight delivery services Phone and other telecommunication related charges | \$76,848 |
| Other Costs | <ul style="list-style-type: none"> Travel Printing and other Government Agency Services | \$106,096 |
| TOTAL COSTS - FEDERAL ADMINISTRATION | | \$15,796,450 |

The Department also provides annual grants to the SWAs in 50 states and 5 U.S. territories for required employment-based immigration activities in support of the foreign labor certification program. Estimated annual costs for the H-2A portion of these activities are \$11,217,814 and supported by Federal funds appropriated into the State Unemployment Insurance and Employment Service Operations Account. 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; performing the prevailing practice and wage surveys used to set wages and standards for a number of occupations; and conducting inspections of employer-provided housing. SWAs submit annual work plans to OFLC to establish continued eligibility for these grants, in accordance with the requirements of their foreign labor certification grant agreements. These work plans describe the specific activities and workload expectations of each SWA during the upcoming year.

The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2017 GS locality pay schedules for Chicago, Illinois, and the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA area). See relevant GS Scales:

Chicago-Naperville-IL-IN-WI- <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/CHI.pdf>

Washington- Baltimore-Arlington, DC-MD-VA-WV-PA- www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf

* Bureau of Labor Statistics in O*Net Online – Job title: Benefits, Job Analysis Specialists
<http://www.onetonline.org/link/summary/13-1141.00>

The average Federal Government cost for one year of operation is estimated on an hourly basis multiplied by an index of 1.74 to account for employee benefits and proportional operating costs, otherwise known as “Fully Loaded Full Time Equivalent.” The index is derived by Departmental analysis of current personnel and overhead cost data.

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

| OMB Control Number (1205-0466) | Previous Estimates | Current Estimates | Change |
|--------------------------------------|-----------------------|----------------------|--------------|
| Annual Responses | 160,773 | 273,537 | + 112,764 |
| Burden Hours | 49,194 | 52,385 | + 3,191 |
| Annual Cost Burden | \$1,608,700 | \$2,521,940 | + \$913,2404 |

There has been an increase of total burden hours. There are three main reasons why the estimated numbers of annual responses, burden hours, and monetized cost of respondent time associated with this ICR have increased from previous estimates. First, employer use of the H-2A program has significantly increased over the last three fiscal years. In FY 2017, the Department received approximately 10,097 employer applications requesting temporary labor certification, a 33 percent increase over the workload received during FY 2015.⁵ To estimate the

⁵ The number of workers requested by respondents is provided only for informational purposes about the scope of the program. Although respondents requesting large numbers of workers are more likely to have more complicated collections, only a few collection steps are significantly increased for respondents with requesting a large number of workers (e.g., providing each worker with a copy of the job order) and those may be minimized (e.g., group distribution).

annual burden hours under this ICR, the Department utilized a three-year average of the total number of respondents that file applications during the three precedent fiscal years (8,783, compared to the previous estimate of 6,062 respondents provided during the last renewal cycle). This increase in filings is outside the control of the Department. As a result, based on this increase in the number of respondents (from 6,062 respondents to 8,783), the Department estimates that the total annual burden hours will increase from the previously approved 49,194 annual burden hours to 52,385 annual burden hours. This shows an increment of 3,191 estimated average burden hours per year for the next validity period.

Second, although the Department estimates cost savings in respondent time associated with preparing and submitting the proposed revised Form ETA-9142A and acknowledged more efficient methods of providing required responses to the Department and notifications to workers (e.g., using email, group distribution at worker orientations), this submission to OMB requests approval for additional responses, burden hours, and costs associated with integrating the burden and costs related to Form ETA-790. These are currently authorized under ICR 1205-0134, and we request approval to revise the collection to create a new Form ETA-790/790A for use in the H-2A program under OMB Control No. 1205-0466. Finally, the Department has considered whether an extra burden exists with the requirement for employers to provide their responses in Form ETA-790/790A in a language that is understood by the workers when using the job order as its work contract. The Department previously did not disclose this burden or explain why it was not included. However, the Department now realizes it should address the additional burden that typically exists to translate the job order. As the SWAs are required by regulation to translate job order information to facilitate necessary communication between employers and farmworkers, employers have translation support at no cost. *See* 20 CFR 653.501(d)(6). Since more than 97 percent of all H-2A workers originate from Mexico or other Central American countries, the Department assumed that the average employer would only need to translate the job order in one language — Spanish. The SWAs will be performing these translations, so the employers will not incur any burden associated with this requirement.

Despite the estimated increase in burden hours overall, due in part to the increased volume of responses, the proposed forms are intended to reduce the burden and costs of each individual information collection response. Proposing to attach Form ETA-790/790A to Form ETA-9142A for OFLC's review eliminates approximately 50 redundant information collection fields. These fields appear on each of the current forms, requiring the respondent to provide redundant information. In addition, the new fields added to the Form ETA-9142A do not collect new information. Requiring simple "Yes", "No", and "N/A" responses, these fields clarify and guide respondents in attaching currently required information to the forms (e.g., an original surety bond from an H-2ALC). On the proposed Form ETA-790/790A, free text fields and free form attachments would be replaced by prepared language that confirms compliance with required assurances. Adding prepared language for required assurances relieves employers of the burden of writing free-form language that complies with regulatory requirements. Finally, the proposed forms simplify the information collection by adding two addenda for respondents with complex cases (e.g., multiple worksites, crop activities, and/or wages). Those addenda would not be completed for respondents with cases involving simple scenarios.

In response to the public comments received during the 60-day notice period beginning on October 25, 2018 (83 Fed. Reg. 53911), which are summarized in Supporting Statement Appendix B, the Department has made changes to the proposed Form ETA-9142A, *Appendix A*, and *General Instructions*, Form ETA-790A and its addenda, and Form ETA-790/790A *General Instructions*. The Department's proposed revisions primarily involve wording changes to clarify instructions or better reflect statutory or regulatory requirements that do not affect the estimated burdens for form completion. Also, the Department proposes the addition of a third checkbox option for Field E.8 (i.e., "N/A") on Form ETA-9142A, which does not affect estimated burdens for completion. On the Form ETA-790A, the Department proposes to consolidate the crop and agricultural activity information collection in Field A.7a with the job duties collection in Field A.7b; the resulting new field is Field A.8a (Job Duties – Description of the specific services or labor to be performed). Although the Department anticipates employers will find the single-field format simpler to complete than the earlier two-field format, the change does not affect the estimate burdens for form completion, as the information collected remains the same. In addition, the Department proposes to eliminate Field A.10 (Additional conditions about the wage offer(s)), finding it redundant after the creation of the new *Addendum C*. Again, the collection remains unchanged, although it is housed in a different location. Finally, in response to a comment recommending the Department add a check box to simplify disclosure of work hours and schedule information for jobs requiring workers to be on-call up to 24 hours a day, 7 days a week (e.g., jobs in herding or production of livestock on the range), the Department proposes to add a new check box field at A.5. This field reduces form completion burden for a small group of employers, who can disclose work hours and schedule with one check mark, and minimally increases burden to other employers who will mark "no" before providing the job's work hours and days in Field A.6 and work schedule in Field A.7, which the Department accounted for in its previous estimates. Therefore, the changes to the Form ETA-790A do not affect the estimated burdens for form completion.

In response to commenters concerns about the format of *Addendum A* and *Addendum B* of the Form ETA-790A, the Department proposes simplified versions of these addenda. Although the information collected on these addenda remains unchanged, the new collection format may reduce burden from earlier estimates by requiring less time to become familiar with the new collection format and simplifying the preparation of complex job orders (e.g., involving diversified crops and/or multiple places of employment). Also, in response to comments stating that the proposed ETA-790A and addenda would not allow employers to disclose all the material terms and conditions of employment that they currently provide through employer-created "attachments" to the current Form ETA-790, the Department proposes a new *Addendum C*, *Additional Material Terms and Conditions of the Job Offer*. Based on the comments received, this *Addendum C* will not collect new or additional information; rather, it collects the detailed information employers currently provide and which the Department intended to collect through the originally proposed ETA-790A and addenda. As explained in more detail in the Appendix B to this supporting statement, *Addendum C* permits an employer to expand its response to a Form ETA-790A collection field or to disclose material terms and conditions of employment beyond those specifically identified on the ETA-790A. Thus, the new *Addendum C* collects information the Department accounted for in previous burden estimates. However, the Department revised its burden estimate for the Form ETA-790A and its addenda to afford the employer time to

familiarize itself with the new *Addendum C* and transition its current “attachment” information into the standardized format of *Addendum C*.

The changes the Department made in response to the public comments received are more thoroughly discussed in the Supporting Statement Appendix B. The burden estimates accommodating these changes are provided in greater detail Supporting Statement Appendix A.

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.