

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

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A. JUSTIFICATION

A.1 Circumstances Necessitating Data Collection

This is a justification for the Department of Labor, Employment and Training Administration's (DOL-ETA) request for a 3-year extension, without modifications, to the Domestic Agricultural In-Season Wage Report (OMB control number 1205-0017). The Wagner-Peyser Act, as amended, specifies at section 3a that "the Secretary [of Labor] shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system."

Pursuant to the Wagner-Peyser Act, DOL has established regulations at 20 CFR 653.500 covering requirements for the acceptance and handling of intrastate and interstate job clearance orders seeking workers to perform agricultural or food processing work on a less than year round basis. Section 653.501 states, in pertinent part, that employers must assure that the "wages and working conditions are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher." Also, regulations for the temporary employment of alien agricultural and logging workers in the United States, (20 CFR, Part 655, Subparts B and C) under the Immigration Reform and Control Act of 1986, require employers to pay the workers "at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal federal or State minimum wage rate, whichever is highest."

The vehicle for establishing the prevailing wage rate is ETA Form 232, The Domestic Agricultural In-Season Wage Report. This Report contains the prevailing wage finding based on data collected by the States from employers in a specific crop area using the ETA Form 232A.

A.2 How, by Whom, and For What Purpose the Information is to be Used

Each year, State Workforce Agencies (SWAs) provide the ETA Office of Foreign Labor Certification (OFLC) with plans for conducting agricultural wage surveys. The plan identifies (1) the crop and areas to be covered by the survey, (2) the sampling procedures to be used, and (3) any additional information that may be required by the OFLC. The plan is reviewed and evaluated by OFLC staff. In the actual survey, information is obtained from a farm employer by one or more of the following methods: personal interview, mail, e-mail, fax, or telephone interview. The information obtained is recorded onto Form ETA 232-A, Wage Survey Interview Record. This record identifies by crop area and crop activity, the wage rates paid, the number of domestic and foreign workers and data related to productivity, and the hourly earnings of piece rate workers. The ETA-232-A data is evaluated, summarized, and arrayed onto Form ETA-232

by the SWA staff. The prevailing wage is then computed and listed at the top of Form ETA-232, and subject to review and approval by the OFLC.

The prevailing rate is used in implementing the Secretary's regulations on intrastate and interstate recruitment of farmworkers (20 CFR 653.500 and 655.105). An employer submitting a job order for workers to an SWA must offer the higher of prevailing wage rate or Federal or State minimum wage rate for 20 CFR 653 job orders, and the higher of the adverse effect wage rate or the prevailing wage rate or the legal Federal or State minimum wage rate for 20 CFR 655 job orders, as determined by the SWA and reviewed by the OFLC, or the order will not be accepted.

Final review of completed Form ETA-232s is conducted by the OFLC in accordance with the ETA Handbook to ensure uniformity in the operation of the program and the established agriculture wage rates.

A.3 Use of Technology to Reduce Burden

Along with collecting data by personal visits, mail and telephone, use of e-mails and faxes are now common methods of collecting information from farm employers. The OFLC has initiated the electronic transmission of certified prevailing wage surveys to its Atlanta and Chicago National Processing Centers (NPCs) to expedite the wage determination process. SWAs may also submit completed ETA Form 232 to the OFLC electronically or via fax. Information regarding the purpose, data collection procedures, and the actual prevailing wage findings, are available to the general public (including employers and workers) via the OFLC website at <http://www.foreignlaborcert.doleta.gov/> and the Agricultural On-line Wage Library.

A.4 Efforts to Identify Duplication

In our continuing efforts to identify duplication, consultations regarding Form ETA-232 have been held since the implementation of Form ETA-232 in the 1950's on a periodic and ad hoc basis, with officials and representatives of the U.S. Department of Agriculture, the Bureau of Labor Statistics, the Bureau of the Census, State agricultural and farmworker agencies, farm employers and growers associations, worker organizations and academia. It was noted that overall wage collection efforts by Federal, State, and non-governmental agencies have steadily declined and are projected to continue to decline, further decreasing any possibility of duplication. There is no similar information being collected for prevailing wage determinations as that done through the ETA Form 232 and Form 232-A. The wage report continues to be unique, in that it is the only survey conducted for a specific crop or livestock activity, for a specific wage reporting area for a specific period or point of time during the harvest or work season.

A.5 Methods to Minimize Burden on Small Businesses

The involvement of small businesses or other small entities for reporting purposes is extremely limited. Efforts to streamline the information collection and reporting process and to reduce total employer respondent burden are described above in item A.3, and also apply to any small businesses responding to the collection effort.

A.6 Consequences of Less Frequent Data Collection

If the wage information collected in the ETA Form 232 and Form 232-A is not collected on an annual basis, DOL will be unable to administer the provisions of 20 CFR 653.500 and 20 CFR 655 Subpart B and Subpart C. Since the vast majority of H-2A applications seeking temporary labor certification for agricultural workers under 20 CFR 653 and 655 occurs on an annual basis, current prevailing wage data are required each year in order to process the intrastate and interstate job orders. The use of wage data from earlier surveys results in inaccurate wage determinations, wage distortions, and potential legal issues from the farmworker advocacy groups and the employer community.

A.7 Special Circumstances for Data Collection

These data collection efforts do not involve any special circumstances.

A.8 Federal Register Notice and Consultation Outside the Agency

In accordance with the Paperwork Reduction Act of 1995, the public was given 60 days to review the Federal Register Notice (February 8, 2007, Vol. 72, No. 6). Two organizations sent comments.

The State of New Jersey, Department of Labor and Workforce Development (NJDL) agrees that Form ETA-232 is a good reporting tool, but suggests that the Department of Labor (Department) should develop new software so that Form ETA-232 will be compatible with Form ETA-232A and that both reports can be submitted electronically.

Response: The Department remains committed to greater efficiency of its web-based programs, in order to relieve the burden on the citizenry and local and state agencies that utilize these programs. We appreciate the comments of NJDL and have forwarded their concerns to our technology department.

The NJDL and the National Council of Agricultural Employers (NCAE) suggest deleting irrelevant information from the forms. NJDL suggested that information such as farm acreage was irrelevant, whereas the NCAE suggested that ETA eliminate the distinction between intrastate and interstate workers and merge them into one category of legal U.S. workers.

Response: ETA is reviewing the wage finding process and corresponding forms outlined in ETA Handbook 385. Therefore, ETA will consider the above comments in reference to changes to the Forms ETA-232A and ETA-232 when revisions to the ETA Handbook are finalized.

NCAE believes that the Department's agricultural industry prevailing wage survey program is very seriously flawed, and needs to be carefully and completely reviewed and restructured.

Response: The purpose of requesting public comment on the Notice of Proposed Information Collection is to obtain information that will 1) evaluate whether the proposed collection of information is necessary and will have practical utility; 2) evaluate the agency's estimate of the burden associated with the collection of information; 3) enhance the quality, utility, and clarity of the information to be collected; and 4) provide an outlet for suggestions for minimizing the burden associated with the collection of information. Most of the suggestions and comments by the NCAE are accordingly beyond the scope and purpose of the request for public comment, such as improving training for the State Workforce Agencies or eliminating the "40-percent rule" which are post-collection issues.

NCAE made several points on the actual data collection. NCAE opined that the ETA 232A is not a survey instrument or questionnaire. According to the NCAE, there are no questions to which to respond and no definition of terms, occupations, or crop activities provided with sufficient specificity. NCAE points out that it is also not clear that the information to be collected is about seasonal workers who are legally entitled to work in the United States. According to NCAE, this leads to discrepancies in the reporting because each respondent conceivably can interpret the requests differently, producing inaccurate data then used to determine the prevailing wage.

NCAE proposed OMB provide a very limited extension on ETA's request for continued data collection under this program to allow for review of ETA's prevailing wage survey methodology, by an interagency task force.

Response: The Office of Foreign Labor Certification (OFLC) is continuing to review ways to improve its conduct of these prevailing wage surveys, we will take NCAE's thoughtful comments under full consideration as we determine what amendments are most appropriate for the form and the wage survey process.

A.9 Payment of Gifts to Respondents

There is no payment to respondents involved with this information collection.

A.10 Confidentiality Assurances

Although State agencies collect data on individual employers using ETA Form 232-A, the ETA-OFLC does not receive personally identifiable employer data. The ETA-OFLC receives only aggregate summary data of all employers responding to a wage report on the ETA Form 232.

A.11 Additional Justification for Sensitive Questions

There are no sensitive questions included in the proposed data collection.

A.12 Estimates of the Burden of Data Collection

The annual national burden for this information collection has the following two components: (1) the ETA Form 232-A reporting burden and (2) the ETA Form 232 reporting burden. This response provides a separate burden for each of the components.

(1). ETA Form 232-A: This report format is completed by the respondent during the actual prevailing survey and then transferred, along with other respondents in the same area and crop activity, to the ETA Form 232 in aggregate. All items on the ETA Form 232-A are to be completed with no change in the format. This form is used to interview the employers and obtain accurate farm and ranch wage data which are essential to the effective operation of the Job Service in serving farm and ranch employers and workers. The hourly burden for this report is based on the actual experience of agricultural employers and remains unchanged from previous OMB packages. On average, agricultural employers spend approximately 15 minutes, or ¼ hour, completing information on the ETA Form 232-A (38,805 X .25 hours = 9,701 total burden hours). The total annual cost of collecting information on the ETA Form 232-A (\$260,084) is based on the average hourly rate of \$26.81 for Farm, Ranch, and Other Agricultural Managers published by the Bureau of Labor Statistics (Occupational Employment and Wages, May 2005).

(2). ETA Form 232: The information contained on ETA Form 232 is compiled within two weeks after the completion of the ETA Form 232-A's and entered onto the ETA Form 232. All the items on ETA Form 232 are to be completed with no change in the format. The hourly burden for this report is based upon the actual experience of State Workforce Agency staff in collecting the ETA Form 232-A, and aggregate the individual results by area and by crop activity for reporting to the Department. On average, State Workforce Agency staff spends approximately 11 hours completing, validating, and submitting information on the ETA Form 232 (600 X 11 = 6,600 total burden hours). The total annual cost of collecting information on the ETA Form 232 (\$214,500) is based on the average hourly rate for state-run programs (\$32.50) for employees in state Unemployment Insurance (UI) agencies in FY2003 (as used for FY2003 UI budget formulation purposes).

Report Item	Number of Respondents	Responses Per Year	Total Responses	Hours Per Response	Annual Burden Hours	Annual Cost
ETA Form 232-A	38,805	1	38,805	.25	9,701	\$260,084
ETA Form 232	50	1	600	11	6,600	\$214,500
TOTALS	38,855	1	39,405	11.25	16,301	\$474,584

A.13 Estimated Cost to Respondents

There is no cost burden associated with this data collection for the respondents.

A.14 Estimates of Annualized Costs to Federal Government

ETA will continue to collect and maintain all aggregate reports through the OFLC. It is estimated that the OFLC and National Processing Center (NPC) staff spend the following time each year reviewing state wage reports, updating the Agricultural On-Line Wage Library, and using wage results in processing H-2A temporary labor certification applications.

	<u>GS-Level/Step</u>	<u>Total Staff</u>	<u>Hourly Rate</u>	<u>Total Hours</u>	<u>Total Cost</u>
OFLC Staff:					
	GS-15/1	1	\$44.59	100	\$4,459
	GS-14/1	1	\$37.91	200	\$7,582
	GS-13/1	1	\$32.08	720	\$23,098
NPC Staff:					
	GS-12/1	4	\$30.74	1,2001	\$36,888

The total estimated annual cost to the Federal government for this data collection is \$72,027. The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2005 GS locality pay schedules [http://www.opm.gov/oca/07tables/.](http://www.opm.gov/oca/07tables/))

A.15 Changes in Burden

The total annual burden hours requested for this collection of information are 16,301 hours and remain unchanged from the current OMB approved inventory.

A.16 Tabulation of Publication Plans and Time Schedules for the Project

Product	Submission Date	Publishing Date
Wage Survey Results (aggregate)	On-going through the calendar year	Published throughout the year on the Agricultural On-Line Wage Library at http://www.foreignlaborcert.doleta.gov/aowl.cfm as SWAs report aggregate data to OFLC

¹ This figure reflects the cumulative time spent by four NPC staff members. Each staff member spends approximately 300 hours each year reviewing state wage reports, updating the Agricultural On-Line Wage Library, and using wage results in processing H-2A temporary labor certification applications.

A.17 Approval Not to Display OMB Expiration Date

The expiration date for OMB approval will be displayed. We are not seeking approval to have this concealed.

A.18 Exceptions to OMB Form 83-I

No exceptions are requested in the “Certification of Paperwork Reduction Act Submissions.”

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This data collection does not employ any statistical methods.

