

**U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
Supporting Statement**

Agricultural and Food Processing Clearance Order, ETA Form 790, and Agricultural and Food Processing Clearance Memorandum, ETA Form 795, expires August 31, 2009

A. Justification

- 1. Explain the circumstances that make the collection of the 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.**

State Workforce Agencies (SWAs) are required by Federal regulations at 20 CFR 653.500 to participate in the intrastate and interstate clearance system for the orderly recruitment and movement of agricultural workers. As required by Federal regulations, the Employment and Training Administration (ETA) created the Agricultural and Food Processing Clearance Order (ETA Form 790), for the recruitment of workers beyond the local commuting area. (20 CFR 653.501(f))

In order to participate in the temporary alien agricultural worker (H-2A) program, employers are required to simultaneously submit to the appropriate regional office and the SWA, an application package that includes the ETA Form 790. Over the past few years approximately 8,000 H-2A applications have been filed annually. The predominant users of the ETA Form 790 are agricultural employers filing alien labor certification applications for H-2A temporary non-immigrant agricultural workers.

- 2. 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.**

In the labor exchange process, the ETA Form 790, and the Agricultural Food and Food Processing Clearance Memorandum (ETA Form 795), are used by SWAs, One-Stop Career Centers (OSCCs), agricultural employers, and farm labor contractors to recruit workers from outside of the local commuting area. These forms are the basic building blocks upon which the Agricultural Recruitment System (ARS) functions.

ETA Form 790 is completed by an agricultural employer or farm labor contractor with the assistance of SWA or OSCC staff. ETA Form 790 explains the terms and conditions of the job offered. This form, which is reviewed and approved for clearance by the appropriate ETA regional office, is sent to the states (supply states) identified for recruitment. This allows the workers in those states to review the exact terms and conditions of the job order before making a decision to apply for the job opening.

ETA Form 795 is used to make changes to ETA Form 790 after it has been accepted by ETA and processed by the SWA.

These forms are used to recruit domestic workers for temporary positions in agriculture. If a sufficient supply of domestic workers is not available, an agricultural employer can request to import guest workers from other countries by submitting an application for H-2A workers.

- 3. 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**

Both ETA Form 790 and ETA Form 795 require an original signature from the employer. While the forms can be downloaded in Adobe PDF format via the Internet, they can not be submitted electronically. The Employment and Training Administration website provides employers with a Step-By-Step Instructions for Completing Form ETA-790, which helps them to understand the information that is being requested, and to be in compliance with the disclosure requirements of the Migrant and Seasonal Farmworker Protection Act and all assurances required by federal regulations.

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

There is no duplication of information on these forms.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.**

Collection does not have a significant impact on small businesses or other small entities. The requested information is the least burdensome necessary to ensure compliance with the law.

- 6. Describe the consequences 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 regulations require these forms to be used when an employer wants the workforce investment system to recruit temporary migrant workers outside of the local area. The Migrant and Seasonal Worker Protection Act (MSPA), requires similar information to be disclosed to workers being recruited to perform seasonal agricultural work. By fully completing ETA Form 790 an employer can meet the requirements for the ARS,

H2-A and MSPA.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- ✓ *requiring respondents to report information to the agency more often than quarterly;*
- ✓ *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- ✓ *requiring respondents to submit more than an original and two copies of any document;*
- ✓ *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- ✓ *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- ✓ *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- ✓ *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- ✓ *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Processing job orders would be diminished if data were collected less frequently. This would also decrease the number of employers utilizing the workforce investment system to recruit migrant workers for temporary agricultural employment.

8. 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 record keeping, 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.

As required by 5 CFR 1320.8(d), the Federal Register published a Notice for sixty days' public comment on February 12, 2009, page 7077 et seq, Vol. 74, No. 28. No comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than re-numeration of contractors or grantees.

There was no payment or gift to respondents.

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

There is no assurance of confidentiality of the information collected. The information is submitted voluntarily by the employers with the knowledge that it is to be disseminated to the general public in order to enhance the recruitment of workers.

11. 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 collection of information does not involve any questions that are of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- ✓ *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences*

in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Instead this cost should be included in Item 14. Generally, estimates should not include burden hours for customary and usually business practices.

- ✓ *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- ✓ *Provides estimates of annualized cost to respondents for the hour burdens for collection of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included in Item 14.*

Agricultural employers must use ETA Form 790 to utilize the workforce investment system for the recruitment of workers from beyond the local commuting area. Thereby the primary respondent is the agricultural employer. The chart below provides detailed information regarding the burden to the agricultural employer.

<u>Forms</u>	<u>Response per Year</u>	<u>Minutes Per Response</u>	<u>Annual Hours</u>
790	8,356	60 (1 hour)	8,356
795	1000	15 (.25 hour)	250
Total	9,356	75 (1.25 hours)	8,606

8,356 + 250 = 8,606 employer (private sector) hours annually for both forms.

Employers utilizing the ETA-790 may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions may vary greatly. However, 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 hourly wage rate for a Human Resources Manager (\$39.50), as published by the U.S. Department of Labor's Occupational Employment Statistics OnLine,¹ and increased by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$56.50. Total annual respondent hour costs for the two main information collections are estimated as follows:

Employer Burden 8,606 hours x \$56.50 =\$486,239

13. Provide an estimate of 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 shown in Items 12 and 14).

¹ Source: Bureau of Labor Statistics 2009 OES wage data.

The only burden cost associated with data collection is postage. Each form is mailed by the SWA to approximately five States at a cost of 60 cents per form.

Forms	Response per Year	Postage	Total Cost
Total	9,356	.63 x 5 = \$3.15	\$29,471

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

The average Federal Government cost for a year of operation is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). For State government workers working under Federal grants to perform the functions required for this collection the FLFTE factor is 1.52. The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC.

Based on the annual salary of GS-12-Step 5 National Processing Center staff person, who spends approximately 5 minutes reviewing each of the 9,356 forms, the Federal time spent equals 46,780 minutes or 780 hours. The SWAs receive grants from ETA to help employers with reviewing and translating the Form ETA 790. The cost of SWA employees is based on a Labor Relations Specialist (\$23.70) as published by the U.S. Department of Labor's Occupational Employment Statistics OnLine Wage Source and increased by a factor of 1.52 to account for employee benefits and other compensation for a total hourly cost of \$36.02. The total cost to the Federal Government for the H-2A program is estimated at \$165,717 calculated as follows:

Federal Employees	780 hours x \$51.66 per hour = \$40,295
SWA Burden	3,482 hours x \$36.02 = \$125,422

15. Explain the reasons for any program changes or adjustments in Items 13 or 14 of the OMB Form 83-I.

No program changes or adjustments have been made.

16. For collection 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.

At this present time there are no plans to publish data.

17. If seeking approval to not display the expiration date for OMB approval the information collection, explain the reasons that display would be inappropriate.

No request for approval to not display the expiration date from OMB approval of the information collection. ETA will disclose the burden estimate in a forthcoming directive (see draft attached).

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

There are no exceptions.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODOLOGY.

This collection of information does not employ statistical methodologies.