

OMB CONTROL NO. 1205-0134; SUPPORTING STATEMENT

Agricultural and Food Processing Clearance Order, ETA Form 790, and Agricultural and Food Processing Clearance Memorandum, ETA Form 795

A. JUSTIFICATION.

1. Explain the circumstances that make the collection of information necessary.

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. Regulations 653.501(a), (b) and (d) enumerate the contents of these orders. 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)). Per 29 C.F.R. 95.53 (b) the record retention for Form 790 is three years from the date of submission of the final expenditure report as authorized by DOL.

In order to participate in the temporary alien agricultural worker (H-2A) program, employers are required to submit to the SWA a job order (ETA Form 790) in the area of intended employment between 60 and 75 days before the date of need for workers. 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.

This information collection also includes the Agricultural and Food Processing Clearance Memorandum (ETA Form 795), which is used to make changes to ETA Form 790 after it has been accepted and processed by the SWA.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. 1If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

In the labor exchange process, the ETA Form 790 and 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 and processed by the SWA. Specifically, ETA Form 795 is used by SWAs to extend job orders beyond their jurisdictions, give notice of action on a clearance order, request additional information, amend the order, report results, and accept or reject the extended job order.

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 bring nonimmigrant foreign workers to the U.S. through the H-2A program to perform agricultural labor or services of a temporary or seasonal nature.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Both ETA Form 790 and ETA Form 795 require a signature from the employer. While the forms can be downloaded in Adobe PDF format via the Internet, they are normally submitted as a hard copy or they can be scanned and submitted electronically to the SWAs. The ETA website provides employers with 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.

By fully completing ETA Form 790, an employer can meet the requirements for the ARS and H-2A.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This 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 the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The regulations require these forms to be used when an employer requests assistance from the workforce investment system in recruiting temporary migrant workers outside of the local area. The ability to process and fill job orders would be significantly diminished if data were collected less frequently and would also decrease the employers utilizing the workforce investment system to recruit migrant workers for temporary agricultural employment.

7. **Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines:**

- ✓ *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.*

The collection of this information is consistent with OMB guidelines.

8. **Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the 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.**

As required by 5 CFR 1320.8(d), the Federal Register published a Notice for sixty days' public comment on May 15, 2012 (Vol. 77, page 28625). One comment was received, suggesting changes in the "step by step instructions" for completing ETA 790 to more closely reflect the language in the ETA 790; ETA has incorporated these helpful suggestions in the ETA 790 instructions.

| COMMENT | AGENCY RESPONSE |
|---|--|
| <p>Suggest the following changes to the Agricultural and Food Processing Clearance Order, ETA 790, Instructions:</p> <ul style="list-style-type: none"> • Item #2 of the instructions states: “<i>Provide the location of and directions to your work site and workers housing,</i>” Delete “and workers’ housing.” • In Item #3 of the instructions, replace the current language with: “Provide the location of and directions to your workers’ housing. Use commonly understood street or highway numbers and accurate distances.” | <p>These changes have been incorporated into the instructions for ETA 790.</p> |

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There is no payment or gift to respondents.

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

There is no assurance of confidentiality of the information collected. The information is submitted 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.

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

12. Provide an estimate in hours of the burden of the collection of information:

- ✓ *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 OMBForm 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 to ETA Form 790 is the agricultural employer, although sometimes SWAs assist employers in the completion of the form, such as providing Spanish translation. SWAs are respondents for ETA Form 795. The chart below provides detailed information regarding the burden to complete and process the forms.

| Forms | Responses per Year | Minutes Per Response | Annual Hours |
|--------------|---------------------------|-----------------------------|---------------------|
| ETA-790 | 8,356 | 60 | 8,356 |
| ETA-795 | 1,000 | 15 | 250 |
| Total | 9,356 | 75 | 8,606 |

The burden is estimated to be 60 minutes for Form 790 and 15 minutes for Form 795:

- ETA-790 - 8,356 multiplied by 60 minutes = 501,360 divided by 60 = 8,356;
- ETA-795 - 1,000 multiplied by 15 minutes = 15,000 divided by 60 = 250;
- The total burden hours for both forms = 8,606;
- The average state worker works 8 hours per day multiplied by 10 days for 26 bi-weeks = 2,080 hours worked in a year;
- The average median salary of a state worker is \$69,992 divided by 2,080 hours = \$33.65 P/Hr.;
- The annual hours of 8,606 multiplied by the hourly rate of \$33.65 = \$289,592 total annual burden cost.

The estimate above is based on the Bureau of Labor Statistics data provided in the Occupational Employment Statistics (OES) at www.bls.gov. In calculating the cost of completing and processing of the forms, the hourly rate of \$33.65/hr. was used.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

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 63 cents per form. (Some states have begun e-

mailing forms, but ETA does not have an accurate count of the number of forms sent by mail versus e-mail, and therefore the maximum amount of postage is calculated).

| Forms | Responses per Year | Postage | Total Cost |
|------------------|--------------------|------------------|------------|
| ETA-790, ETA-795 | 9,356 | .63 x 5 = \$3.15 | \$29,471 |

14. Provide estimates of annualized cost to the Federal government.

Based on the annual salary of GS-13 Regional Monitor Advocate, who spends approximately 5 minutes reviewing each of the 9,356 forms, the total Federal time spent equals 46,780 minutes or 780 hours.

- ✓ 780 hours times \$62.40 per hour (GS 13 step 5 at \$44.43 with 40% fringe included in the calculation) = \$4,867 total Federal cost.

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

No program changes or adjustments were made that would affect burden. However, the following *clarifying* changes were made to ETA 790: (1) In **Box 1**, added types of contact information for employer or agent. (2) In **Box 2**, changed the word “Location” to request the exact address to the worksite. (3) In **Box 3**, added directions to housing. (4) In **Box 4**, removed “Industry Code” and replaced with “occupational code and title,” formerly in another location. (5) In **Box 6**, included information on address of order holding office and name of local office representative, formerly in another location, to clarify that states (not employers) provide this information. (6) Added **Box 12** for the anticipated range of hours for different seasonal activities. (7) In **Box 13**, eliminated collect calls accepted from the local office. (8) In **Box 14**, replaced reference to “boarding arrangements” with a more specific request for information on how the employer intends to provide meals or cooking facilities for workers. (9) In **Box 15**, added information on how applicants are to be hired. (10) In **Box 16**, added information on work experience and job requirements. (11) In **Box 17**, which provides for wage rates, pay information and deductions, added a “Monthly,” pay period option. (12) In **Box 26**, inquired if job order is to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers. (13) In **Box 27**, provided the Spanish translation for the Public Burden Statement. (14) Added a new **Box 28** for the purpose of providing additional information where necessary. A new addition to ETA Form 790 is the Intrastate and Interstate Clearance Order Assurance statement for employers’ signature. Also, the Spanish translation was added and/or corrected throughout the form.

16. For collections whose results will be published, outline the plans for tabulation and publication.

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

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

No request for approval to not display the expiration date from OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This collection information does not employ statistical methods.