

SUPPORTING STATEMENT
Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation
Form
OMB CONTROL No. 1205-0039
Associated with Rulemaking – RIN: 1205-AB73

A. JUSTIFICATION

This ICR is being submitted in association with the Workforce Innovation and Opportunity Act (WIOA); Final Rule. This ICR adds the regulatory citations from the Final Rule.

1. *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.*

Employment and Training Administration (ETA) regulations at 20 CFR 651, 653, and 658, authorized by the Wagner-Peyser Act, set forth requirements to ensure that migrant and seasonal farmworkers (MSFWs) receive services that are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. The regulations at 20 CFR 653.109 require State Workforce Agencies (SWAs) to report on a quarterly basis, their compliance with the appropriate regulations at 20 CFR 653 and 658. Such reporting helps DOL monitor SWA compliance with the regulations. The data collected represents the minimum information necessary to assure SWA compliance with federal regulations. (See 20 CFR 653.100 through 653.113).

The Workforce Innovation and Opportunity Act (WIOA) Title III section 302 uses the term, “employment service” instead of “job service.” The updates to the federal regulations at 20 CFR 658, Subpart E, would change the name of the Job Service Complaint System to the Employment Service and Employment-Related Law Complaint System (Complaint System). Therefore, DOL intends to simplify and update the name of the Job Service Complaint Form, to “Complaint/Apparent Violation Form.”

The regulations at 20 CFR 658 ensure that SWAs handle complaints appropriately and uniformly. SWAs are required to use the Complaint Form, ETA- 8429 to process complaints pursuant to 20 CFR 658 Subpart E. A revised definition of *complaint* will align with language in section 2 of the Wagner-Peyser Act, as amended by WIOA Title III section 302, to refer to “employment service” offices rather than “job service” offices. The revised definition specifies that complaints are representations or referrals of *alleged* violations of employment service regulations, Federal laws enforced by DOL’s Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), or Federal, State or local employment-related laws. DOL adds language in the definition clarifying that the complaints filed are alleging a violation occurred, rather than confirming that a complaint represents an actual violation—which may be determined after the complaint is under investigation pursuant to 658 Subpart F.

More specifically, the WIOA Final Rule sections containing information collections approved under this control number are: 20 CFR § 653.107, § 653.108(g)(6), § 653.108(s), § 653.108(i), §

Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form
OMB Control No. 1205-0039

June 2016

653.108(m), § 658.601. These regulations ensure that SWAs handle complaints appropriately and uniformly. The Complaint/Apparent Violation Form, ETA- 8429, is used by SWAs to process complaints.

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.*

Pursuant to 20 CFR 653.109, DOL uses ETA Form 5148 to collect information on SWAs' provision of services to MSFWs. This helps DOL monitor SWA regulatory compliance. SWAs must submit ETA Form 5148 quarterly to report the level of services provided to MSFWs through the One-Stop Career Centers and to demonstrate the degree to which MSFWs are offered services that are "qualitatively equivalent and quantitatively proportionate" to the services provided to non-MSFWs, as required in the Judge Richey Court Order.

SWAs use the Complaint Form, ETA Form 8429 to record and process complaints and apparent violations. MSFW complaints are coded to expedite the process which ensures that complaints and apparent violations have a greater probability of being resolved before MSFWs move to another area.

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.*

Reports are produced electronically through ETA's Enterprise Business Support System (EBSS) which can be accessed by SWAs via the Internet. Some data elements are generated from the ETA's 9002 Report (i.e., number of applicants and types of services) others items such as outreach contacts and complaints are manually compiled at the state level.

ETA does not believe that the automation of Complaint/Apparent Violation Form, ETA -8429 is beneficial or cost effective. This form is available electronically and can be accessed via the Internet at <http://www.doleta.gov/programs/MSFW.cfm>. This allows individuals to access the electronic version for downloading, faxing, or e-mailing to SWAs for review and processing.

4. *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.*

Efforts are continually underway to identify and eliminate duplication. None of the information recorded on ETA Form 8429 is duplicative of any other information that is already captured by the SWAs. Likewise, the information captured on Parts 1, 2, & 4 of the Services to MSFW Report ETA 5148 is unique and not currently captured elsewhere. There is some duplication on the collection of information on Part 3 of ETA Form 5148. Some of the data elements that comprise the Equity Indicators (Part 3) are derived from the current ETA 9002 reporting system. The burden to the states of extracting data from ETA 9002 reporting system and inserting it into the Services to MSFW, ETA Form 5148 is minimal and allows State Monitor Advocates, states and federal staff to have a complete view of services to MSFWs in one document.

June 2016

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

There is no impact to small businesses or other small entities.

6. *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.*

If data were not collected quarterly, SWAs and DOL would not be in compliance with federal regulations at 20 CFR 653.100 *et. seq.* and the Department would not be able to track SWA compliance with the Judge Richey Court Order.

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

There are no special circumstances concerning the information collection process.

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 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.

Concurrent with submission of this ICR submission April 16, 2015, ETA issued a Notice of Proposed Rulemaking (80 FR 20689) that provided a 60-day period for the public to comment.

Section 653.109 Data collection and performance accountability measures.

During the NPRM, the Department received some comments on the data collection section.

Comments: A couple commenters recommended the Department revise the references to the pre-WIOA performance measures.^[1] Another commenter noted that some of the proposed performance measures in § 653.109 are not in line with the WIOA measures to track participants in unsubsidized employment in the second quarter after exit, participants in unsubsidized employment in the fourth quarter after exit, and median earnings. Therefore, this commenter

^[1] Texas Workforce Commission; Workforce Solutions Borderplex.

June 2016

recommended the Department bring those measures in line with WIOA to ensure consistency across all programs.^[2]

Department's Response: The Department agrees and has changed § 653.109(a) to be consistent with the WIOA performance indicators listed in sec. 116 of the law.

9. *Explain any decision to provide any payment or gift 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 the assurance in statute, regulation, or agency policy.*

There is no assurance of confidentiality of the information collected. There are no individuals identifiers on the report submitted to the National Office.

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.*

There are no questions of a sensitive nature.

12. *Provide estimates of the hour burden of the collection of information.*

Estimates of the following burden hours of collection of information were derived after consultations with a number of State Monitor Advocates that are intensively involved with these activities. State Monitor Advocates have determined from years of experience that they spend 3.428 hours annually doing the recordkeeping involved for ETA-5148.

COMPLAINT LOG (ETA-8429)

a. Third Party Disclosure:	
▪ Annual average number of complaints:	3500*
▪ Annual minutes per intake:	30
▪ Total burden hours:	1750
b. Reporting:	
▪ Annual average number of forms:	3500*
▪ Minutes per form:	120
▪ Total reporting hours:	7,000

*Note - all complaints that are logged utilize the Complaint/Apparent Violation Form, ETA Form 8429, or another form approved by DOL. The SWAs are only required to utilize this form

^{[2][2]} CareerSource Florida;

June 2016

for MSFW complaints and apparent violations and ES related complaints from non-MSFWs. Based upon contacts with those states with the highest level of reported complaint activity, we believe that approximately 3,536 complaints were captured on the ETA- 8429 according to the most recent program year for which data is available.

The estimate above is based on the Bureau of Labor Statistics data provided by the SWAs as reported in the Occupational Employment Statistics (OES) National Monitor Advocate Annual Report for PY 2012 located at: <http://www.bls.gov/oes/current/oes434061.htm>.http://doleta.gov/programs/nat_mon_advocate_annual_rep.cfm

TOTAL burden hours for ETA- 8429: 1,750 (third party disclosure) + 7,000 (reporting) = 8,750 hours

OUTREACH LOG (ETA- 5148)

a. Recordkeeping:

- Number of record keepers: 208
- Estimated annual hours per record keeper 3.428
- o Estimated annual hours for all 200 record keepers = 713.024
or 4 quarterly reports per state (52 states (respondents)
= 685.6 (686) divided by 4 = 171.4
x 50 (states, respondents) = 685.6 or 686 annual recordkeeping hours

b. Reporting, ETA 5148 Reports:

- Annual number of reports: 208
(4 reports multiplied by 52 respondents)
- Estimated minutes per report: 70
- Total record keeping hours: 242.6528
(50 x 5 x 70 minutes divided by 1 hour (60 minutes)

Estimated total Burden Hours for ETA- 5148 = 956 (713 + 243)

Any differences in ROCIS are due to rounding off to whole numbers.

TOTAL respondents for ETA- 5148: 52

TOTAL burden hours for ETA- 8429 (8,750 hours)
plus ETA- 5148 (713 + 243) = (956 hours)

8,750 hours + 956 hours = 9,706 hours.

The following table can be used as a guide to calculate the total burden of an information collection.

Estimated Annualized Respondent Hour and Cost Burdens

Activity	Number of Respondents	Number of Responses per	Total Number of	Time Per Response	Total Burden	Hourly Wage	Total Cost Burden
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Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form
 OMB Control No. 1205-0039
 June 2016

		Respondent	Responses	(in hours)	Hours	Rate*	
ETA 8429, Third Party Disclosure	3,500	1	3,500	.5	1,750	\$45.33	\$79,328
ETA 8429, Reporting	52	67.3	3,500	2	7,000	\$45.33	\$317,310
ETA 5148 Record Keeping	52	4	208	3.43	713	\$45.33	\$32,320
ETA 5148, Reporting	52	4	208	1.1666	243	\$ 45.33	\$11,015
Unduplicated Totals			7,416		9,706		\$439,973

State monitor advocates and SWAs are estimated at the average hourly pay level of GS 13 step 5, or \$45.33. 8,521 hours x \$45.33 = \$386,257 annualized.

http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/RUS_h.pdf

13. 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).

There are no annual reporting and recordkeeping cost burdens under this collection.

14. 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.

Based on the basic hourly rate of Monitor Advocates at the GS-13 step 5 level in each region (computed for GS-13 step 5, \$39.31 in 2014), who spend approximately 40 hours or 40 x \$39.31 (\$1,572) per year to review the complaint form, the average Federal cost of \$1,572 x 6 regions = \$9,434. (Source: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/salhr1.pdf>)

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The annual burden for these information collections increased from 8,992 hours to 9,706 hours resulting in an increase of 714 hours over ETA's previous estimate. The burden hours have increased due to the agency realizing that it takes longer to complete Form ETA 8429. The number of responses has increased by 94 from 7,322 to 7,416.

16. 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.

There are no plans to publish this data at this time.

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

ETA will display the OMB control number and expiration date.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions,"

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methodologies.