

SUPPORTING STATEMENT
Agricultural Clearance Order
ETA Form 790B
OMB Control No. 1205-0134

A. JUSTIFICATION.

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

The Workforce Innovation and Opportunity Act (WIOA) Final Rule section pertaining to the information collection approved under this control number is found at: 20 CFR 653 Subpart F—Agricultural Recruitment System for U.S. Workers (ARS).

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), (c) and (d) enumerate the contents of these orders. As required by Federal regulations, the Employment and Training Administration (ETA) created the Agricultural Clearance Order (ETA Form 790) for the recruitment of workers beyond the local commuting area (20 CFR 653.501). Per 29 CFR 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.

ETA Form 795 is now obsolete and is no longer part of this information collection request (ICR).

Under this ICR, ETA is proposing to rename the current ETA Form 790 to the **Agricultural Clearance Order** Form 790B, which will be attached to the **Agricultural Clearance Order** Form 790. Under the ICR for OMB Control Number 1205-0466, which OMB approved on August 22, 2019, ETA replaced the existing Form ETA-790 with a revised Form ETA-790 and a new Form 790A, H-2A Agricultural Clearance Order, which will be attached to Form ETA-9142A *H-2A Application for Temporary Employment Certification*. Under this ICR (1205-0134), ETA is only requesting approval for the **Agricultural Clearance Order** Form 790 and 790B.

Employers seeking to recruit U.S. workers to perform farmwork on a temporary, less than year-round basis must: 1) complete the 790; 2) complete the 790B; and 3) submit both forms to the SWA. ETA is proposing to extract information currently in the 790 and replace it in

the 790B, with additional information to assist the employers and the SWAs in the recruitment of U.S. workers.

- 2. Explain how, by whom, how frequently, and for what purpose the information will be used. If 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.*

ETA Forms 790 and 790B would be used to collect an employer's information (such as address), and the employer's terms and conditions for the temporary agricultural job for which they seek U.S. workers. Therefore, ETA Forms 790 and 790B would be used by SWAs, American Job Centers (AJCs), agricultural employers, and farm labor contractors to recruit workers from outside of the local commuting area. Specifically, agricultural employers and/or farm labor contractors would complete the ETA Forms 790 and 790B with the assistance of SWA or AJC staff. If there are insufficient workers locally or within the state (intrastate), the forms would then be reviewed and approved for clearance by the appropriate ETA regional office. The regional office would instruct the SWA to send the forms to supply states for further labor recruitment (interstate). 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.

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 790B 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.

- 4. Describe efforts to identify duplication.*

By fully completing ETA Forms 790 and 790B, an employer would meet the requirements for the Agricultural Recruitment System (ARS). The information collection covered under the ICR only applies to employers seeking to recruit temporary agricultural employees; consequently, there is no duplication of information collection requirements.

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

Agricultural Recruitment System Forms Affecting Migratory Farm Workers

OMB Control No. 1205-0134

Xx/xx/xxxx

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.*

Federal regulations at 20 CFR 653.501(b) require the ETA Form 790 “(or its subsequently issued form), and its attachments” (in this case, the 790B) to be used when an employer requests assistance from the Employment Service (ES) office in recruiting temporary agricultural 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 ES office to recruit agricultural 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:*

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.*

In accordance with the Paperwork Reduction Act of 1995, the public was allowed 60 days to comment through the *Federal Register* notice posted on 03/15/2019 (84 FR 9561). ETA received comments from Farmworker Justice and the following signatories:

- Columbia Legal Services
- Justice at Work (formerly Friends of Farmworkers) Justice in Motion
- Legal Aid Society of MFS
Michigan Immigrant
Rights Center
- Michigan Migrant Legal Assistance
Project Inc. New Mexico Legal Aid
- Texas Rio Grande Legal Aid, Inc

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

Agricultural Recruitment System Forms Affecting Migratory Farm Workers

OMB Control No. 1205-0134

Xx/xx/xxxx

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.
- ✓ 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.

ETA is including the burden to the public for the completion of Form 790 and 790B in this ICR as it relates to those employers seeking to place job orders through the ARS, and not those employers participating in the H-2A program.

The chart below provides detailed information regarding the burden to complete and process the 790 and the 790B.

Activity	Number of Respondents	Number of Responses	Total Number of	Time Per Response	Total Burden	Hourly Wage	Total Cost
----------	-----------------------	---------------------	-----------------	-------------------	--------------	-------------	------------

Agricultural Recruitment System Forms Affecting Migratory Farm Workers

OMB Control No. 1205-0134

Xx/xx/xxxx

		per Respondent	Responses	(in hours)	Hours	Rate*	Burden
ETA Form 790 Employer	900	1	900	.33	297	\$38.67	\$11,485
ETA Form 790B Employer	900	1	900	1.67	1,503	\$38.67	\$58,121
ETA Form 790 SWA Employee Processing	900	1	900	.4	360	\$41.07	\$ 14,785
ETA Form 790 SWA Employee Record Keeping	900	1	900	.1	90	\$41.07	\$3,696
ETA Form 790B SWA Employee Processing	900	1	900	.9	810	\$ 41.07	\$33,267
ETA Form 790B SWA Employee Record Keeping	900	1	900	.1	90	\$ 41.07	\$3,696
Unduplicated Totals	3,600		3,600		3,150		\$125,050

For the employers completing both forms, the burden is estimated to be 120 minutes for Forms 790 and 790B:

- ETA-790: 900 multiplied by 19.8 minutes = 17,820 divided by 60 = 297
- ETA -790B: 900 multiplied by 100.2 minutes = divided by 60 = 1,503
- The total burden hours for this form = 1,800;
- The annual hours of 1,800 multiplied by the hourly rate of \$38.67 = \$69,606 total annual burden cost.

The cost 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, ETA estimated the hourly rate to be \$38.67/hr.

It represents the May 2018 hourly wage for General and Operations Managers (11-1021) who fall under NAICS code 115100 - Support Activities for Crop Production (OES Designation https://www.bls.gov/oes/current/naics4_115100.htm#11-0000). By multiplying the total burden hours of a given program by their applicable hourly rate, the total burden cost can be calculated.

For the SWA officials reviewing and processing both forms, the burden is estimated to be 120 minutes for Forms 790 and 790B:

- Reviewing the ETA-790 and 790B: 900 multiplied by 78 minutes =70,200 divided by 60 = 1,170;
- Processing and record keeping of ETA -790 and 790B: 900 multiplied by 12 minutes = 10,800 divided by 60 = 180
- The total burden hours for the SWA review and processing of these two forms = 1350;
- The annual hours of 1,350 multiplied by the hourly rate of \$41.07 = \$55,445 total annual burden cost.

State Monitor Advocates (SMA) and SWAs are estimated at the average hourly pay level of GS 13 step 5, or \$41.07.

[\(https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/\)](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/)

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 record-keeping burden is addressed in the burden table above.

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

Based on the annual salary of GS-13 Regional Monitor Advocate, who spends approximately one hour reviewing each of the 1,800 forms, the total Federal time spent equals 1,800 hours.

- ✓ 1,800 hours times \$41.08 (GS 13 step 5 hourly rate as of January 2018) = \$73,944 total Federal cost. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/GS_h.pdf

15. Explain the reasons for any program changes or adjustments.

This ICR requests a change of responses per year, from 9,356 to 3,600, because most of the 790s and 790As are completed by employers participating in the H-2A program, and the responses to those forms are covered under OMB Control # 1205-0466. For this same reason, the total cost from the last time this ICR was approved decreased from \$298,628 to \$125,051.

This ICR also requests the following:

1. Removal of the Agricultural and Food Processing Clearance Memorandum from this ICR.
2. The request to rename the Agricultural Clearance Order Form 790B.
3. The proposal to extract information currently in the 790 and replace it in the 790B, with additional information to assist the employers and the SWAs in the recruitment of U.S. workers.

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

Currently, there are no plans to publish data. States publish the information obtained through the 790s and the 790Bs in their labor exchange systems for the purposes of recruiting U.S. workers.

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.

ETA displays the OMB control number and expiration date on the forms.

18. Explain each exception to the certification statement

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This collection information does not employ statistical methods.