

**SUPPORTING STATEMENT
DOMESTIC AGRICULTURAL IN-SEASON WAGE REPORT
OMB Control No. 1205-0017**

A. Justification

Through this information collection request (ICR), the Department of Labor (Department) is requesting a 3-year extension of the *Domestic Agricultural In-Season Wage Report*, Form ETA-232, and the *Wage Survey Interview Record*, Form ETA-232A (both covered under OMB control number 1205-0017). The information collected through these forms remains unchanged.

Background Information and General Instructions:

Clearance for this ICR is sought using Paperwork Reduction Act (PRA) procedures outlined in the regulations at 44 U.S.C. § 3506(c)(2)(A). The Wagner-Peyser Act tasks the Department with “promoting uniformity in [State public employment services] administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.” 29 U.S.C. 49b(a). The prevailing rate is used to implement the Secretary of Labor’s (Secretary) regulations for the recruitment of farmworkers. 20 CFR 653.500, 653.501(c)(2)(i), 655.120 and 655.122.(l). Intrastate job orders must offer “wages and working conditions [that] are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher.” 20 CFR 653.501(c)(2)(i).

On November 26, 2019, DOL sought public comments in connection with this ICR, in order to extend the information collection, as appropriate, using traditional processes. Specifically, DOL requested comments on the burden associated with reviewing instructions, completing and filing the applications, completing practice surveys, and performing any required steps, retaining all of the required documentation supporting the *Domestic Agricultural In-Season Wage Report*, Form ETA-232, and the *Wage Survey Interview Record*, Form ETA-232A, via a 60-day notice. DOL did not receive any substantive comments.

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.*

This information collection (IC) is required under 8 U.S.C. 1188 authorizing the Department to administer the H-2A program and Section 218 of the Immigration and Nationality Act (INA), which authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. In order for the Department to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the

nonimmigrant worker will not have an adverse effect on the wages and working conditions of similarly-employed U.S. workers, employers must demonstrate the need for a specific number of H-2A workers. The section of law authorizing the Department to collect information for OMB control number 1205-0017 is the Wagner-Peyser Act at 29 U.S.C 49(f). Specifically, Congress appropriates funding through the Wagner-Peyser allocations under the State Unemployment Insurance Employment Service Operation Provisions, to meet certain obligations mandated by the INA.

The Department's Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC) is responsible for administering the H-2A program, which provides for the filing of temporary labor certification applications by employers that seek to use nonimmigrant workers in agricultural work. The Department's H-2A program regulations issued under the Immigration Reform and Control Act of 1986 for the temporary employment of nonimmigrant agricultural and logging workers in the United States, 20 CFR part 655, subpart B, require employers to pay "at least the [adverse effect wage rate], the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time the work is performed, whichever is highest[.]" 20 CFR 655.122(l). To determine prevailing wages, State Workforce Agencies (SWAs) either formally survey employers' wages or conduct "ad hoc" surveys. In addition, the Department's H-2A program regulations require that "[e]ach job qualification and requirement listed in the [H-2A] job offer... be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupation and crops." 20 CFR 655.122(b). To determine whether certain working conditions meet these standards, SWAs collect such information by either formally surveying employers' prevailing practices or by conducting "ad hoc" surveys. The Department uses Form ETA-232, which the SWA completes according to its collection of information from employers on Form ETA-232A, to collect information that will permit the Department to establish and publish H-2A program prevailing wages and prevailing practices.

Authority: 8 U.S.C. §§ 1188; 29 U.S.C 49(f); Section 218 of the INA; 20 CFR Parts 653 and 655, subpart B.

- 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.*

Prevailing wage surveys. Each year, SWAs provide OFLC with plans for conducting agricultural wage surveys for the H-2A program. Each plan identifies (1) the crop and geographic areas to be covered by the survey, (2) the sampling procedures to be used, and (3) any additional information that may be required by OFLC. OFLC staff reviews and evaluates each plan. The SWA then obtains information from farm employers by one or more of the following methods: in-person interview, mail, email, fax, or telephone interview. The SWA records the information it obtains on Form ETA-232A, *Wage Survey Interview Record*; an SWA completes one of these forms for each response. The information collected includes the wage rates paid, the number of domestic workers, data related to productivity, and the hourly earnings

of piece-rate workers by crop area and crop activity. The ETA-232A data are evaluated, summarized, and arrayed by the SWA onto Form ETA-232, *Domestic Agricultural In-Season Wage Report*; the SWA completes one of these forms for each crop and agricultural activity. The SWA computes the prevailing hourly wage rate and the prevailing piece rate for a given crop in a given geographic area and records these “findings” on Form ETA-232, which is used to report the prevailing wage rates and analysis to OFLC for establishment of the prevailing wage; SWAs submit surveys even if there are no statistically valid findings for the particular survey.

Prevailing practice surveys. The prevailing practice survey information is used by the Department to determine the normal, common, and/or prevailing employment practices in a specific occupational classification. The Department uses the collected prevailing practice survey information to ensure that an H-2A employer’s job qualifications and requirements and certain practices or benefits (i.e., family housing, frequency of pay, advanced transportation, and use of labor contractors) are consistent with those normally required by employers or available to workers employed in the same or comparable occupations and crops. When the Chicago National Processing Center (CNPC) finds that a certain practice listed in an application is not something an SWA has previously reported on, the CNPC may order an ad hoc survey to determine whether the stated practice is truly the normal, common, and/or prevailing practice in the area of intended employment.

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.*

Along with collecting data by personal visits, mail, and telephone, emails and faxes are common methods of collecting information from farm employers. SWAs may submit a completed Form ETA-232 to OFLC electronically or by mail. OFLC electronically transmits established prevailing wage surveys to its CNPC to expedite the wage determination process. Information regarding the purpose, data collection procedures, and resulting prevailing wage findings are available to the general public (including employers and workers) via OFLC’s website at <http://www.foreignlaborcert.doleta.gov/> and the Agricultural On-line Wage Library at <http://www.foreignlaborcert.doleta.gov/aowl.cfm>.

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.*

The procedures and documentation requirements are sufficiently specific to avoid duplication of collection activities. No information collected could be used to determine prevailing wages or practices other than through Form ETA-232 and Form ETA-232A. The reporting is unique as the survey is conducted for a specific crop or livestock activity, in a specific area, for a specific period of time during the agricultural work season.

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

The efforts to streamline the information collection and reporting process and to reduce the total employer respondent burden described above in item A.3 also apply to any small businesses responding to this information collection effort.

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.*

Prevailing wage data. The wage data collected assist the Department in administering provisions of 20 CFR part 653, subpart F and part 655, subpart B. Because the vast majority of H-2A applications seeking temporary labor certification for agricultural workers under these regulations occur on an annual basis, current prevailing wage data are needed for intrastate and interstate H-2A job orders.

Prevailing practice data. The secondary collection of data for prevailing practice surveys is required to assess employer practices with respect to job qualifications, requirements, and certain benefits and practices. This provides the Department with current labor market information necessary to process H-2A temporary labor certification applications and ensure that there is no adverse effect on U.S. workers similarly employed. The prevailing practice information is collected consistent with the Department's statutory mandate to ensure that the employment of H-2A workers will not have an adverse effect on the employment opportunities, wages, and working conditions of U.S. workers who are similarly employed.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.*

These data collection efforts do not involve any special circumstances.

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.

In accordance with the Paperwork Reduction Act of 1995, the Department provided the public with 60 days to comment on the extension of this information collection through a notice published in the *Federal Register* on November 26, 2019. See 84 FR 65189. The Department received comments from two commenters. The first commenter called for the Department to “shut down” the H-2A program for reasons ranging from the program “is a fraud” to “it has zero merit.” This comment is beyond the scope of this form collection. See *id.* The second comment, submitted by a commenter on behalf of themselves and four other entities, agreed with the continuation of the information request, but requested that the forms “be substantially changed” to “ensure that the provided information is accurate and complete” and to “collect relevant data about prevailing practices that is currently overlooked.” The commenter provided specific recommendations on how to change and augment portions of the forms. The commenter also requested that the Department require all SWAs to use and submit the forms and provided suggestions on penalties for SWAs that fail to do so. While the Department welcomes substantive suggestions on improving the H-2A program, the Department is not able to incorporate the commenter’s recommendations at this time as this ICR only concerns a proposed extension without change, rather than a proposed revision, of the forms. Consistent with this extension, the Department did not provide the public adequate notice of the extensive substantive changes contemplated by the commenter during its 60-day comment period. In addition, the Department is currently undergoing rulemaking to propose changes to the H-2A program, including changes that relate to the suggestions provided by the commenter. Given this ongoing rulemaking, the Department is not able to comment on or address the changes requested by the second commenter in this proposed ICR extension.

DOL requested comments on the burden associated with the *Domestic Agricultural In-Season Wage Report*, Form ETA-232, and the *Wage Survey Interview Record*, Form ETA-232A, through the 60-day notice it published in the *Federal Register*. The second commenter suggested numerous revisions to the forms as well as to the overall process of obtaining prevailing wage rates and conducting prevailing practice surveys. As mentioned above, the Department is currently undergoing rulemaking related to these issues and is therefore unable to address or comment on the requested changes in this proposed ICR extension.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

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

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

Although SWAs collect data about individual employers’ practices, including name and address of employer, wage rates, units of production, and average hourly earnings, using Form ETA-

232A, the Department does not receive individually identifiable employer data. The Department receives aggregate summary data of all employers responding to a wage report contained in Form ETA-232. The instructions for Form ETA-232A state that the form “should be maintained in a confidential manner since it identifies specific employers and contains information which is confidential in nature.”

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 sensitive questions included in the proposed data collection.

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

This information collection has the following components: (1) Form ETA-232A; (2) Form ETA-232; and (3) prevailing practice surveys. This response provides a separate assessment of the estimated burden for each component.

(1) Form ETA-232A: This report is completed by SWAs on behalf of agricultural employers or by the employers themselves. On average, SWAs or employers spend approximately 15 minutes either completing the form or providing information to the SWA for inclusion on the Form ETA-232A. The SWAs receive approximately 9,600 survey responses annually, for a total of 2,400 employer reporting hours (9,600 responses x .25 hours per response). At the average hourly rate for Farm, Ranch, and Other Agricultural Managers of \$32.67 published by the Bureau of Labor Statistics¹, the total estimated cost to respondents for collecting information on the Form ETA-232A is \$78,408 (2,400 hours x \$32.67 per hour).

(2) Form ETA-232: SWAs aggregate the information collected on Form ETA-232A onto Form ETA-232. The information on Form ETA-232 is compiled within two weeks after completing Form ETA-232A. On average, SWA employees spend approximately 11 hours collecting information on Form ETA-232A and compiling, validating, and submitting the information on Form ETA-232. OFLC receives an average of 400 consolidated Form ETA-232s per year, equating to an estimated 4,400 annual reporting hours for the SWAs (400 reports x 11 hours per report). At the average hourly rate for Survey Researchers of \$27.74 published by the Bureau of Labor Statistics,² the total estimated cost to SWAs for collecting information from respondents, compiling the information onto Form ETA-232, and submitting the information to OFLC is \$122,056 (4,400 hours x \$27.74 per hour).

1 “Summary Report for: 11-9013.02 - Farm and Ranch Managers.” Bureau of Labor Statistics, U.S. Department of Labor, 24 September 2019, www.onetonline.org/link/summary/11-9013.02.

2 “Summary Report for: 19-3022.00 - Survey Researchers.” Bureau of Labor Statistics, U.S. Department of Labor, 24 September 2019, www.onetonline.org/link/summary/19-3022.00.

(3) Prevailing practice surveys: The Department receives prevailing employment practice surveys from an average of 20 SWAs annually, with each reporting SWA conducting an average of 10.3 surveys per year, for an estimated annual total of 206 surveys. An average of 20 employers respond to each survey, with each employer needing approximately 30 minutes to fill out and return the survey. An estimated total of 4,120 employer responses are collected (206 surveys x 20 employers per survey). Estimated reporting hours for employers total 2,060 hours (4,120 employer responses x 0.5 hours per response). The estimated annual cost to employers for collecting information related to prevailing practice surveys is \$67,300, based on the average hourly rate of \$32.67 for Farm, Ranch, and Other Agricultural Managers (\$32.67 x 2,060 hours).

SWA staff require an estimated 30 minutes after each survey to tally the results and either retain them for future use or forward them to OFLC for review by the CNPC, equating to 103 estimated annual reporting hours (206 surveys x 0.5 hours). Estimated annual SWA costs for collecting the information total \$2,857, based on the average hourly rate of \$27.74 for survey researchers (103 hours x \$27.74).

Activity	Number of Respondents	Number of Responses per Respondent	Annual Responses	Time Per Response (in hours)	Annual Burden Hours	Hourly Wage	Annual Cost
Form ETA-232A – SWA Interviews of Employers	9,600	1	9,600	.25	2,400	\$32.67	\$78,408
Form ETA-232 – SWA Completion	36	11.11	400	11	4,400	\$27.74	\$122,056
Prevailing Practice Surveys – SWA Interviews of Employers	4,120	1	4,120	.5	2,060	\$32.67	\$67,300
Prevailing Practice Surveys – SWA Completion	20	10.3	206	.5	103	\$27.74	\$2,857
Ad hoc –Employer	0	0	0	0	0	0	0
Ad hoc – SWA	0	0	0	0	0	0	0
Ad hoc SWA to OFLC	0	0	0	0	0	0	0
Total	13,766		14,326		8,963		\$270,621

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).*

a) Start-up/capital costs: There are no start-up costs.

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs of the free downloadable forms.

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.*

OFLC estimates annual costs of \$198,562 for activities related to Forms ETA-232 and ETA-232A. A breakdown of these estimated costs is provided in the table below.

Activity	GS Grade - Location	Hourly Rate³	Factor for Benefits & Overhead⁴	Total Hours	Total Cost
Reviewing ETA-232 Reports:	GS-15 - DC	\$66.05	1.74	100	\$11,493
	GS-14 - DC	\$56.15	1.74	200	\$19,540
	GS-13 – DC	\$47.52	1.74	720	\$59,533
	GS-12 – DC	\$39.96	1.74	1,200	\$83,436
Analyzing Prevailing Practice Surveys:	GS-13 – Chicago	\$47.05	1.74	300	\$24,560
Total:				2,520	\$198,562

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

The annual burden hours have decreased by an estimated 7,514 hours (from 16,477 to 8,963) due to a reduction in the estimated number of surveys that have been submitted to OFLC, for the past three years. OFLC has not requested ad hoc surveys from SWAs and employers in the past three years.

³ Based on the FY 2019 GS pay schedules for Chicago and Washington, DC, where the pertinent staff are located.

⁴ The hourly rate is multiplied by a factor of 1.74 to account for employee benefits and proportional operating costs.

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.*

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

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.*

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

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

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

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.