

SUPPORTING STATEMENT
Agricultural Recruitment System Forms Affecting Migrant and Seasonal Farmworkers
OMB Control No. 1205-0NEW

A. JUSTIFICATION.

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

This Information Collection Request (ICR) relates to the Notice of Proposed Rulemaking RIN 1205-AC02, Wagner-Peyser Act Staffing (NPRM), and the Agricultural Recruitment System (ARS) administered by the U.S. Department of Labor (Department), Employment and Training Administration (ETA).

The ARS prescribes requirements that Employment Service (ES) offices and State Workforce Agencies (SWAs) must follow when placing intrastate and interstate job clearance orders seeking U.S. workers to perform agricultural labor on a temporary, less than year-round basis. 20 CFR 653.500. It is governed by the regulations set forth at 20 CFR part 653, subpart F.

a. Non-Criteria Agricultural Clearance Order (Form ETA-790B)

ETA has promulgated regulations that require ES offices and SWAs to post agricultural clearance orders on the Form ETA-790 (or a subsequently issued form) and ensure that this form and any required attachments are complete. *See* 20 CFR 653.501(b)(1). The required contents of these orders are set forth in the regulations at 20 CFR 653.501.

The predominant users of the Form ETA-790 series are agricultural employers seeking to employ H-2A temporary nonimmigrant agricultural workers. In order to hire such workers, agricultural employers must complete a multi-step process before several Federal agencies. The first step in this process is to file an H-2A *Application for Temporary Employment Certification* with the Department. Before an agricultural employer may file this application, however, it must submit a Form ETA-790 to the SWA serving the area of intended employment for intrastate clearance. 20 CFR 655.121(a).

Because agricultural clearance orders placed in connection with H-2A *Applications for Temporary Employment Certification* are subject to both the requirements of the ARS and the requirements governing H-2A temporary labor certification, they are known as “criteria” clearance orders. By contrast, agricultural clearance orders that are *not* placed in connection with an H-2A *Application for Temporary Employment Certification* are known as “non-criteria” clearance orders.

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 ETA-790A, H-2A Agricultural Clearance Order, which is attached to Form ETA-9142A *H-2A Application for Temporary Employment Certification*. The Form ETA-790A pertains only to criteria clearance orders (*i.e.*, agricultural clearance orders placed in connection with an H-2A *Application for Temporary Employment Certification*).

In the associated NPRM, the Department proposes creating a new ICR for Agricultural Clearance Order Form, Form ETA-790B, to attach to the Form ETA-790 for non-criteria clearance orders (*i.e.*, agricultural clearance orders that are *not* placed in connection with an H-2A *Application for Temporary Employment Certification*). Form ETA-790B was previously approved under OMB Control Number 1205-0134, which is an expired ICR for which a submission requesting reinstatement is currently pending at OMB. The Department proposes to withdraw OMB Control Number 1205-0134 and include Form ETA-790B, with additional revisions, to this new ICR.

Under this ICR, ETA is proposing to add the **Agricultural Clearance Order** Form ETA-790B, which will be attached to the **Agricultural Clearance Order** Form ETA-790. As noted above, Form ETA-790B will only be used by employers who submit non-criteria clearance orders requesting U.S. workers for temporary agricultural jobs. However, ETA is including the estimated burden to the public for the completion of Form ETA-790, in addition to the estimated burden for the Form ETA-790B, because employers submitting non-criteria agricultural clearance orders must complete both forms.¹

If an employer seeks to use the ARS to recruit U.S. workers to perform farmwork on a temporary, less than year-round basis, it must: 1) complete the Form ETA-790; 2) complete the Form ETA-790B; and 3) submit both forms to the SWA serving the area of intended employment.

b. Checklist Summarizing Wages, Working Conditions, and Other Material Specifications

The NPRM also proposes to add a new IC to address the requirement that SWA applicant-holding offices provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. Pursuant to proposed 20 CFR 653.501(d)(6), ES staff will be required to provide farmworkers with “checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order.” In addition, pursuant to proposed 20 CFR 653.501(d)(10), applicant-holding offices will be required to provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The checklist that an applicant-holding office will have to provide pursuant to proposed 20 CFR 653.501(d)(10) must include language notifying the worker that a copy of the original clearance order is available upon request. ETA does not prescribe a required form for this requirement, therefore, no instrument is provided.

The Department’s existing regulations at 20 CFR 653.501(d)(6) and (10) already required ES staff to provide checklists to farmworkers, as described in the NPRM. The NPRM proposes minor revisions to those regulations. However, neither requirement is currently covered by an

¹ This ICR only includes burden related to completing Form ETA-790 in cases where users complete Form ETA-790B. The Form ETA-790 burden in this ICR is separate and apart from the burden captured in OMB Control Number 1205-0466, which captures Form ETA-790 burden for users who complete Form ETA-790 in connection with Form ETA-790A. No burden in this ICR is duplicated or double counted in OMB Control Number 1205-0466.

approved IC. Accordingly, in the NPRM, the Department proposes to add a new IC to address these requirements.

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.*

a. Form ETA-790B

Forms ETA-790 and 790B would be used to collect an employer's information (such as address) and the terms and conditions for the temporary agricultural job for which the employer seeks U.S. workers. These forms would be used by SWAs, ES staff, and agricultural employers to recruit U.S. workers from outside of the local commuting area. Specifically, agricultural employers would complete the Forms ETA-790 and ETA-790B with the assistance of ES staff. If there are insufficient workers locally or within the state (intrastate), the forms would then be reviewed and approved for interstate 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 clearance). This allows the workers in the supply 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.

b. Checklist Summarizing Wages, Working Conditions, and Other Material Specifications

The regulations at 20 CFR 653.501(d)(10) require all applicant-holding offices to provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The regulation applies to any SWA that refers applicants to temporary agricultural clearance orders placed through the Agricultural Recruitment System (ARS), including both "criteria" orders attached to applications for H-2A *Temporary Employment Certification* (filed through the Form ETA-790A), and "non-criteria" orders that are not attached to such applications (filed through Form ETA-790B). SWAs reported processing approximately 14,580 clearance orders in program year 2019.

The purpose of the checklist is to help ensure farmworkers recruited through the ARS are aware of the material terms and conditions of a job opportunity before they choose to apply. The checklists contribute to a prospective applicant's ability to be well-informed regarding the employer's job requirements and benefits, to the benefit of the applicant and the employer. This is especially important where, as here, employers are recruiting migrant workers from outside of their regular commuting distance. In such situations, migrant workers rely on

employers to provide adequate housing and other benefits, which must be described in the clearance order.

Additionally, proposed regulation 20 CFR 653.501(d)(6) would require ES staff to provide farmworkers with checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order. This may include farmworkers who are not referred to clearance orders but who request information on the orders.

- 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 Forms ETA-790 and ETA-790B require a signature from the employer, which may be completed electronically. The forms can be downloaded in Adobe PDF format via the Internet and they may be submitted to the SWA through e-mail or postal mail as a hard copy.

SWAs may develop and use automated, electronic, or other technological techniques to provide workers referred to clearance orders with the required checklist. Proposed 20 CFR 653.501(d)(6) and (10) do not prescribe a required form or format for the checklists; therefore, no instrument is attached to this ICR.

- 4. Describe efforts to identify duplication.*

The information collection covered under this ICR applies only to “non-criteria” ARS clearance orders, *i.e.*, those ARS clearance that are not filed in connection with H-2A applications; consequently, there is no duplication of information collection requirements between the ETA Form-790A and ETA Form-790B.

The checklist requirement is a safeguard designed for worker protection under ETA’s ARS regulations. The full information documented in Forms ETA-790 and 790B is primarily intended for SWA staff to process clearance orders and to ensure compliance with ETA regulations and applicable laws. Separately, the information in the checklists serve a critical role to ensure applicants understand the material terms and conditions of the job opportunity to which they may be referred. The checklists are likely to be shorter and more readable to applicants than the Forms ETA-790 and 790B. For these reasons, the checklists serve a distinct purpose and are not duplicative of the ETA forms.

- 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.*

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Federal regulations at 20 CFR 653.501(b) require the Form ETA-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. In the absence of Form ETA-790B, SWAs would not have a prescribed instrument to collect the information required for non-criteria clearance orders, which may result in inconsistent practices and missing information. Without Form ETA-790B, it may also appear that employers' only option is to place clearance orders in connection with the H-2A program, which is not accurate. Form ETA-790B is critical to facilitating the orderly movement of temporary agricultural workers throughout the United States, in a manner that promotes worker protection.

If ES offices do not provide checklists of material terms and conditions to all applicants who are recruited through ARS clearance orders, there is a significant risk that applicants would not understand important information about job opportunities to which they may be referred. This could result in disputes between workers and employers. Workers might also experience financial injury related to migrating for work, which may be different than they expect.

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.*

This Information Collection Request (ICR) relates to the Notice of Proposed Rulemaking RIN 1205-AC02, Wagner-Peyser Act Staffing (NPRM). Concurrent with this information collection submission, the Department issued a Notice of Proposed Rulemaking (NPRM) that provides a 60-day period for the public to comment on the proposed changes to the collection of information.

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.*
- ✓ *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.*

a. Forms ETA-790 and 790B

ETA is including the burden to the public for the completion of Form ETA-790 and 790B in this ICR as it relates to those employers seeking to place non-criteria job orders through the ARS. The chart below provides detailed information regarding the burden to complete and process the Form ETA-790 and the 790B.

For the employers completing both forms, the combined burden is estimated to be 120 minutes for Forms ETA-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 \$34.50 = \$62,100 total annual burden cost.

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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 \$34.50/hr. It represents the May 2020 average hourly wage for Farmers Ranchers, and Other Agricultural Managers (11-9013) who fall under NAICS code 115100 - Support Activities for Crop Production (OES Designation https://www.bls.gov/oes/current/naics4_115100.htm#11-0000). The total burden cost is calculated in the table below.

For the SWA officials reviewing and processing both forms, the burden is estimated to be 90 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 = 1,350;
- The annual hours of 1,350 multiplied by the hourly rate of \$47.79 = \$64,517 total annual burden cost.

The Department used a fully loaded hourly wage of \$47.79 for educational, guidance, and career counselors and advisors (SOC code 21-1012) employed by State governments, NAICS 999200 (OES Designation https://www.bls.gov/oes/current/naics4_999200.htm).

Table 1: Forms ETA-790 and 790B

Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
ETA Form 790 Employer	900	1	900	.33	297	\$34.50	\$10,247
ETA Form 790B Employer	900	1	900	1.67	1,503	\$34.50	\$51,854
ETA Form 790 SWA Employee Processing	900	1	900	.4	360	\$47.79	\$17,204.40
ETA Form 790 SWA Employee Record Keeping	900	1	900	.1	90	\$47.79	\$4,301.10
ETA Form 790B SWA Employee Processing	900	1	900	.9	810	\$ 47.79	\$38,709.90
ETA Form 790B SWA Employee Record	900	1	900	.1	90	\$ 47.79	\$4,301.10

Keeping							
Unduplicated Totals	3,600	1	3,600	varies	3,150	varies	\$126,618

b. Checklist Summarizing Wages, Working Conditions, and Other Material Specifications

The Department anticipates that it would take an ES staff member an average of 35 minutes to read the clearance order, create a checklist, and provide the checklist to applicants. To estimate this cost, the Department used a fully loaded hourly wage of \$47.79 for educational, guidance, and career counselors and advisors (SOC code 21-1012) employed by State governments (NAICS 999200). Assuming 14,580 clearance orders per year (based on the number of clearance orders reported by SWAs in Program Year 2019), the annual cost is estimated at \$404,131 (= 14,580 clearance orders × .58 hours × \$47.79 per hour).

Table 2: Checklist

Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
Checklist creation, provision, and recordkeeping	14,580	1	14,580	.58	8,456	\$47.79	\$406,454
Unduplicated Totals	14,580	1	14,580	.58	8,456	\$47.79	\$404,112

Table 4: Total Burden

Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Total Cost Burden
Forms ETA-790 and 790B	3,600	1	3,600	varies	3,150	varies	\$126,618
Checklist creation, provision, and recordkeeping	14,580	1	14,580	.58	8,456	\$47.79	\$404,112
Unduplicated Totals	18,180	1	18,180	varies	11,606	varies	\$530,730

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There is no other annual cost burden to respondents or recordkeepers resulting from this collection of information.

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

There are no costs to the Federal Government.

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

This is a new information collection.

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

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the Forms ETA-790 and the ETA-790B 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.