

SUPPORTING STATEMENT
Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation
Form
OMB Control Number 1205-0039

Through this Information Collection Request (ICR), the United States Department of Labor requests a regular three-year extension without changes to a currently approved ICR. This ICR updates the estimated public burden using up-to-date costs and data.

A. JUSTIFICATION

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 ICR supports 20 CFR §§ 653.107, 653.108(s), 653.108(i), 653.108(m), 653.109, 658 subpart E, and 658.601.

a. Services to Migrant and Seasonal Farmworkers Report, ETA Form 5148

Employment and Training Administration (ETA) regulations at 20 CFR 651, 653, and 658 set forth the requirements to ensure that MSFWs receive services that are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. 20 CFR 653.108 (p) mandates SWAs review their performance on a quarterly basis to ensure compliance with 20 CFR 653 Subparts B and F. The data collected represents the minimum information necessary to ensure SWA compliance with Federal regulations. (See 20 CFR 653.100 through 653.503).

b. Complaint/Apparent Violation Form, ETA Form 8429

The regulations at 20 CFR 658 Subpart E ensure SWAs handle complaints appropriately and uniformly. Pursuant to 20 CFR 658.411, SWAs are required to use the Complaint/Referral Form prescribed by the Department, unless another form is approved by the Department (20 CFR 658.411(a)(3)). 20 CFR 658.419 also requires SWAs to document and process information regarding suspected violations of employment-related laws or Wagner-Peyser Act Employment Service (ES) regulations by employers, which is not received as a complaint, as apparent violations. SWAs must document and process apparent violations as provided at 20 CFR 658.419. The Department developed ETA Form 8429 for SWAs to process complaints and apparent violations. ETA Form 8429 is titled “Complaint/Apparent Violation Form” instead of “Complaint/Referral Form,” as used in the regulations, to make it clear that the form may be used for apparent violations, in addition to 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, SWAs use ETA Form 5148 to submit quarterly data to ETA on the services they provide to MSFWs. ETA uses that data to monitor and measure the extent and effectiveness of SWA service delivery to MSFWs and overall compliance with 20 CFR 651, 653, and 658. Additionally, 20 CFR 658.602(e) requires the ETA National Office to develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations; and 20 CFR 658.602(f)(2) requires the National Monitor Advocate to review the performance of SWAs in providing the full range of employment services to MSFWs. The collection of data through ETA Form 5148 allows ETA to comply with these regulations and monitor SWA performance.

The regulations at 658.411(a)(3) require that staff must ensure the complainant (or their representative) submits the complaint on the Complaint/Apparent Violation Form or another complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Apparent Violation Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. Pursuant to 20 CFR 658.410(i), “State agencies must ensure any action taken by the Complaint System representative, including referral on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.” Therefore, SWAs use the ETA Form 8429 to record and process complaints. Additionally, ETA Form 8429 is helpful because it identifies whether a complainant is an MSFW which implicates additional actions that must be taken by the SWA (i.e. 20 CFR 658.410(m) requires that the State Monitor Advocate follow-up monthly on unresolved complaints submitted by MSFWs). SWAs may also use ETA Form 8429 to meet the 20 CFR 658.419 documentation requirements for apparent violations.

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.*

SWAs complete and submit ETA Form 5148 Reports electronically through ETA’s Enterprise Business Support System (EBSS), which SWAs access via the Internet. ETA previously reduced the burden for SWAs to submit ETA Form 5148 through the ICR published on July 14, 2020, for this same control number. In the 2020 ICR, ETA reduced the amount of data required for ETA Form 5148 because certain data was already reported through the Workforce Integrated Performance System (WIPS) Wagner-Peyser quarterly performance report.

At this time, ETA does not believe that automation of the Complaint/Apparent Violation– ETA Form 8429 is beneficial or cost effective. This form is available electronically and can be

accessed via the Internet at

[https://doleta.gov/mas/resources/docs/Complaint Apparent Violation Form 8429.docx](https://doleta.gov/mas/resources/docs/Complaint_Apparent_Violation_Form_8429.docx).

This allows complainants and SWA staff assisting complainants 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 duplication. To the best of the agency's knowledge, none of the information recorded on ETA Forms 5148 and 8429, or in the regulatory requirements to maintain Complaint System and outreach logs is duplicative of any other information collected anywhere else.

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 ETA Form 5148 data were not collected quarterly, SWAs and DOL would not comply with Federal regulations at 20 CFR 653.100 *et. seq.* Quarterly reporting also allows ETA to monitor SWA compliance in a timely manner, so that identified issues may be resolved while affected individuals, such as participants and complainants, are available to assist with or benefit from resolution. The quarterly nature of ETA Form 5148 corresponds to ETA's quarterly reporting requirements for the Wagner-Peyser ES grant, of which the Monitor Advocate System is a part. The ETA Form 5148 supplements Wagner-Peyser ES WIPS reports with MSFW-specific information needed to determine whether the SWA is providing equitable services to MSFWs. The quarterly submissions also facilitate ETA's quarterly desk review process, which is one of the main ways ETA monitors SWA performance on a regular basis.

If the information in ETA Form 8429 were not collected, SWAs would not be in compliance with 20 CFR 658 Subpart E. Additionally, the form documents minimum information SWAs must collect for complaints. Absent the form, there would be a risk that complaint information would not be documented uniformly and would lack necessary information for Complaint Specialists and enforcement agencies to investigate. This might result in fewer complaint investigations and resolutions, to the detriment of MSFW and non-MSFW worker protection.

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.*

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.

In accordance with the Paperwork Reduction Act of 1995, the public was given 60 days to review and comment on this information collection by way of a Federal Register notice published on March 2, 2023 ([88 FR 13150](#)). No public comments were received. The Department trains SWA staff, who complete these forms, each year and has not received information within the last three years regarding requested changes to the forms.

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 through these instruments within grantee staff and ETA. However, Federal law, OMB Guidance, and Departmental and ETA policies require that Protection of Personally Identifiable Information (PII) and other sensitive information be protected. In collecting and handling information collected through these instruments, SWAs must adhere to Training and Employment Guidance Letter 39-11, which provides guidance on handling PII. Additionally, 20 CFR 658.411(a)(3) requires that SWAs keep the identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.

Pursuant to 20 CFR 658.411(a)(3), the following language is on the ETA Form 8429, “the identity of the complainant(s) and any persons who furnish information relating to, or assisting

in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.”

There are no individual identifiers on the reports 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.

a. ETA Form 8429

In program year (PY) 2021, 3,082 complaints were filed on average per year. We estimate that it takes a complainant 30 minutes to complete the ETA Form 8429 and two hours for the SWA to process the complaint. The Department used the median hourly wage of \$29.09 for educational, guidance, and career counselors and advisors (SOC code 21-1012) employed by State governments (NAICS 999200). The Department used a 61-percent benefits rate and a 17-percent overhead rate, so the fully loaded hourly wage is \$51.78 [= \$29.09 + (\$29.09 × 61%) + (\$29.09 × 17%)].

Table 1							
Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate	Monetized Value of Time
ETA Form 8429, Third Party Disclosure	2,617	1	2,617	.5	1,309	\$51.78	\$67,780.02
ETA Form 8429, Reporting	2,617	1	2,617	2	5,234	\$51.78	\$271,016.52
Form Subtotal	2,617	2	5,234	2.5	6,542.5	\$51.78	\$338,796.54

b. ETA Form 5148

Estimates of the following burden hours for the collection of information were derived after consultations with State Monitor Advocates (SMA) who are closely involved with these

activities. SMAs represented that it takes 4.43 hours for quarterly recordkeeping and one hour quarterly for reporting.

Table 2							
Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Monetized Value of Time
ETA Form 5148 Recordkeeping	54	4	216	4.43	957	\$51.78	\$49,547
ETA Form 5148, Quarterly Reporting	54	4	216	1	216	\$51.78	\$11,184.48
Form Subtotal	54	--	486	5.43	1,173	\$51.78	\$60,731.48

The following table is used as a guide to calculate the total burden of an information collection:

Activity	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Time Per Response (in hours)	Total Burden Hours	Hourly Wage Rate*	Monetized Value of Time
ETA Form 8429, Third Party Disclosure	2,617	1	2,617	.50	1,309	\$51.78	\$67,780
ETA Form 8429, Reporting	2,617	1	2,617	2	5,234	\$51.78	\$271,017
Unduplicated Total	2,617	--	5,234	--	6,543	--	\$338,796
ETA Form 5148, Record Keeping	54	4	216	4.43	957	\$57.78	\$49,547
ETA Form 5148, Reporting	54	4	216	1	216	\$ 51.78	\$11,184
Unduplicated Total	54	-	432	5.43	1,173	--	\$60,731
Grand Total	2,671	--	5,666	--	7,716	--	\$399,527

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

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.

There are no costs to the Federal Government.

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

There are no program changes to the forms in this ICR. However, the estimated burden calculations have been adjusted for increased accuracy. Specifically, the burden estimates were updated to account for the number of SWAs that should have SMAs, rather than the number of SWAs that currently have SMAs. The prior burden estimates included only the number of SWAs that have traditionally had SMAs, rather than the number of SWAs required to comply with Monitor Advocate System regulations at 20 CFR 653, including appointment of an SMA. Previously, the District of Columbia, Guam, and the Virgin Islands have not had SMAs and were left out of burden estimates. However, Section 2 of the Wagner-Peyser Act defines “state” as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. Therefore, there should be 54 SMAs, instead of 51 as used in prior versions of this ICR.

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.

The Department publishes data collected through Form ETA-5148 periodically on its performance reporting pages, including the Monitor Advocate System webpage at <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/performance> and the Quarterly Workforce Systems Results webpage at <https://www.dol.gov/agencies/eta/performance/results/qwsr>. The National Monitor Advocate also uses data from Form ETA-5148 to assess SWA compliance with ES regulations regarding services to MSFWs. Data from the report is often used in the National Monitor Advocate’s Annual Report, which is published annually on the Monitor Advocate System performance and reporting webpage. The Department does not publish any personally identifiable information and does not publish any information that is necessary to keep the identities of complainants confidential or that might compromise investigations. The Department’s use of information from this ICR does not create burden for respondents.

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

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.