

**SUPPORTING STATEMENT**

**Agricultural Recruitment System Forms Affecting Migratory Farm Workers  
OMB Control No. 1205-0134**

**A. JUSTIFICATION.**

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

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. Wagner-Peyser Employment Service (ES) regulations at § 653.501(a), (b), (c) and (d) enumerate the contents of these orders. The Employment and Training Administration (ETA) created the Agricultural Clearance Order (Form ETA-790) for the recruitment of workers beyond the local commuting area (20 CFR 653.501). Per 20 CFR 200.334, the record retention for Form ETA-790 is three years from the date of submission of the final expenditure report as authorized by DOL.

Under this ICR, ETA is proposing to extend the current Agricultural Clearance Order Form ETA-790 and the Agricultural Clearance Order Form ETA-790B, without changes. Employers and SWAs use these forms to process non-criteria clearance orders, which are not placed in connection with the H-2A visa program. Employers seeking to use non-criteria clearance orders to recruit U.S. workers to perform farmwork on a temporary, less than year-round basis must: (1) complete Form ETA-790; (2) complete Form ETA-790B; and (3) submit both forms to the SWA.

**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.**

Form ETA-790 and Form ETA-790B are used to collect an employer's information and the employer's terms and conditions for the temporary agricultural job for which they seek U.S. workers. Therefore, Form ETA-790 and Form ETA-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 complete the Form ETA-790 and Form ETA-790B with the assistance of SWA or AJC staff. If there are insufficient workers locally or within the state (intrastate), the appropriate ETA regional office reviews and approves the forms for interstate clearance. The regional office instructs 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 clearance order before making a decision to apply for the job opening.

These forms are used to recruit U.S. workers for temporary positions in agriculture. If a sufficient supply of U.S. 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

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agricultural labor or services of a temporary or seasonal nature, using Form ETA-790A, which is a part of OMB Control Number 1205-0466.

**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 Form ETA-790 and Form ETA-790B require a signature from the employer. The forms can be downloaded in Adobe PDF format via the Internet. Employers can also submit hard copies or may scan and submit the forms electronically to SWAs.

**4. Describe efforts to identify duplication.**

The information collection covered under the ICR only applies to non-criteria clearance orders. For employers that do not place H-2A applications in connection with their clearance orders, there is no duplication of information collection. However, it is possible that employers might first submit non-criteria clearance orders and, after not finding sufficient U.S. workers, may choose to file H-2A applications. In that case, they would need to complete and submit Form ETA-790 and Form ETA-790A along with their H-2A application, which would require similar information collection as they already submitted through Form ETA-790B. The Department's current processes under the Foreign Labor Application Gateway (FLAG) system make this necessary. While SWAs do not specifically report to the Department the number of employers that place noncriteria clearance orders and later file criteria clearance orders attached to H-2A applications, the Department believes this has not occurred in the last program year.

**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.**

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 data collected in this collection must be collected each time an employer places a non-criteria clearance order to ensure the employer and SWA meet requirements for clearance order processing at 20 CFR 653, Subpart F. If the collection were not completed, employers could not place non-criteria clearance orders and SWAs would not meet the basic requirements of the Wagner-Peyser Act labor exchange.

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

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practices and missing information. Without Form ETA-790B, it may also appear that employers' only option is to place criteria 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.

**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. 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 is being provided 30 days to comment on the information collections contained in this notice directly to OMB. The Department previously published a 60-day notice in the Federal Register on April 10, 2023 (88 FR 21209) and received comments from Texas RioGrande Legal Aid. The Department notes that this submission represents a request to renew the existing Form ETA-790B without changes to the form, in order to extend the expiration date. The Department plans to submit a revision to the form with upcoming rulemaking, which will take into consideration the commenter's recommendations.

The Department trains SWA staff, who complete this form, each year and has not received information within the last three years regarding requested changes to the form.

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

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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 ETA-790 and 790B in this ICR as it relates to those employers seeking to place non-criteria job orders through the ARS. In program year 2021, SWAs reported that they processed 852 noncriteria clearance orders. 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: 852 multiplied by .33 hours = 281 hours
- ETA-790B: 852 multiplied by 1.67 hours = 1,422.84 hours

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- The total burden hours for both forms = 1,703.84
- The annual hours of 1,703.84 multiplied by the fully loaded hourly rate of \$57.90 = \$98,652.34 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](http://www.bls.gov). In calculating the cost of completing and processing of the forms, ETA used the median hourly wage of \$36.42 per hour for [Farmers Ranchers, and Other Agricultural Managers 11-9013](#)). For private sector occupations, the fringe benefit is calculated at 42% and overhead is calculated at 17% (combined total of 59%). The fully loaded hourly rate is, therefore \$57.90. 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: 852 multiplied by 78 minutes = 66,456 divided by 60 = 1,107.6 hours
- Processing and record keeping of ETA-790 and 790B: 852 multiplied by 12 minutes = 10,224 divided by 60 = 170.4 hours
- The total burden hours for the SWA review and processing of these two forms = 1,278 hours
- The annual hours of 1,278 multiplied by the hourly rate of \$51.77 = \$66,162.06 total annual burden cost.

The Department used the median hourly wage of \$28.92 for educational, guidance, and career counselors and advisors ([SOC code 21-1012](#)) employed by State governments. For public sector occupations, fringe benefits are calculated at 62% and 17% for overhead (combined total of 79%). The fully loaded hourly rate is therefore \$51.77.

**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	852	1	852	.33	281.16	\$57.90	\$16,279.164
ETA Form 790B Employer	852	1	852	1.67	1,422.84	\$57.90	\$82,382.44
ETA Form 790 SWA Employee <b>Processing</b>	852	1	852	.4	340.8	\$51.77	\$17,643.22
ETA Form 790 SWA Employee <b>Record Keeping</b>	852	1	852	.1	85.2	\$51.77	\$4,410.80

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ETA Form 790B SWA Employee <b>Processing</b>	852	1	852	.9	766.8	\$51.77	\$39,697.24
ETA Form 790B SWA Employee <b>Record Keeping</b>	852	1	852	.1	85.2	\$51.77	\$4,410.80
<b>Unduplicated Totals</b>	<b>3,408</b>	<b>1</b>	<b>3,408</b>	<b>varies</b>	<b>2,982</b>	<b>varies</b>	<b>0</b>

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.

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*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.*

There are no program changes or adjustments under this ICR. The burden estimates were updated to reflect updated staff wages and the number of non-criteria clearance orders that SWAs processed in the most recent program year.

*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.