

**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-AC12, Improving Protections for Workers in Temporary Agricultural Employment in the United States (NPRM), and the Agricultural Recruitment System (ARS) administered by the U.S. Department of Labor (Department), Employment and Training Administration (ETA).

This collection will eventually be included in OMB Control Number 1205-0134, however, the Department is not submitting this ICR under that control number because the reginfo.gov database, which is OMB's system for processing requests, allows only one ICR per control number to be pending at OMB during any given time, and the Department expects the unrelated ICR under control number 1205-0134 will be pending at OMB at the same time as this rule-related ICR; thus the existing control number will be encumbered. Requesting approval for a new information collection is a workaround used for administrative convenience. Once all of the outstanding actions are complete, the Department intends to submit a non-material change request to merge the collections so that the new requirements will be added to OMB control number 1205-0134.

The ARS prescribes requirements that Employment Service (ES) offices and State Workforce Agencies (SWA) 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.

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 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, ETA describes requirements for Form ETA-790 and 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 NPRM, the Department proposes that this ICR revise Form ETA-790B, which is attached 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*). The proposed revisions are necessary to implement changes proposed in the NPRM and to align the Form ETA-790A and 790B.

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.

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.

**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.**

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.

**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 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.

**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.**

This Information Collection Request (ICR) relates to the Notice of Proposed Rulemaking RIN 1205-AC12, Improving Protections for Workers in Temporary Agricultural Employment in the United States (NPRM).

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.**

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
- 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%

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(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.

<b>Table 1: Forms ETA-790 and 790B</b>							
<b>Activity</b>	<b>Number of Respondents</b>	<b>Number of Responses per Respondent</b>	<b>Total Number of Responses</b>	<b>Time Per Response (in hours)</b>	<b>Total Burden Hours</b>	<b>Hourly Wage Rate*</b>	<b>Total Cost Burden</b>
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
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.

**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.**

The forms in the proposed collection for OMB No. 1205-0134 have all been modified from those in the current collection. Specific changes are noted below. The Form 790B is only used for employers who submit clearance orders requesting U.S. workers for temporary agricultural jobs, which are not attached to requests for foreign workers through the H-2A visa program (non-criteria clearance orders).

- The revisions align information collection requirements with the Department’s proposed regulatory framework and continue the ongoing efforts to provide greater clarity to employers on regulatory requirements.
- The revisions align information collection requirements with Wagner-Peyser Act regulations to strengthen protections for 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 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 form.

**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.