

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



September 12, 2024

Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington, DC 20503

Dear Dr. Revesz:

Pursuant to Office of Management and Budget (OMB) procedures established at 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, I request that the proposed information collection, *Criteria and Non-Criteria Agricultural Clearance Order Forms and H-2A Application for Temporary Employment Certification in States and by Employers Covered by Injunction of the Farmworker Protection Final Rule*, Forms ETA-9142A, ETA-790, ETA-790 A, and ETA-790 B, (1205-NEW), be processed as an Emergency Clearance Request in accordance with section 1320.13, Emergency Processing.

I have determined that this information must be collected prior to the time periods established under Part 1320 of the Paperwork Reduction Act (PRA) and that this information is essential to the mission of the Employment and Training Administration's (ETA) Office of Foreign Labor Certification to administer the labor certification process for the H-2A program, as well as ETA's Office of Workforce Investment to administer the agricultural recruitment system.


Specifically, ETA is requesting emergency clearance of an information collection request (ICR) that supports its compliance with a preliminary injunction issued by the United States District Court for the Southern District of Georgia in the case *Kansas, et al. vs. U.S. Department of Labor* that prohibits the Department of Labor from enforcing the final rule "Improving Protections for Workers in Temporary Agricultural Employment in the United States" (Farmworker Protection Rule) in certain respects. Specifically, the injunction prohibits DOL from enforcing the Farmworker Protection Rule in the states of Georgia, Kansas, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia, and against Miles Berry Farm and the Georgia Fruit and Vegetable Growers Association. The Department will enforce the final rule in all other states and territories as the Court Order does not impose a nationwide injunction. This emergency request ultimately seeks to establish a new information collection to reinstate Forms ETA-9142A, ETA-790, ETA-790 A, and ETA-790 B, in the OMB approved form in which they existed, prior to the effective date of the Farmworker Protection Rule. These forms will only be used in the 17 states of Kansas, Georgia, South Carolina, Arkansas, Florida, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, Virginia, as well as by Miles Berry Farm and Georgia Fruit and Vegetable Growers Association ("Kansas plaintiffs"). The remainder of the states will continue to use these forms, as established through OMB Control Numbers 1205-0466 and 1205-0134.

ETA cannot reasonably comply with the normal clearance procedures under the PRA and ensure the implementation of the regulatory requirements under the H-2A program and agricultural recruitment system. To comply with the court's unanticipated order and to ensure against disruption of its collections of information consistent with the court's order, the Department has requested emergency approval to continue use of the information collection tools in use prior to the Farmworker Protection Rule by employers performing work in a state where the injunction applies or that are one of the entities to whom the injunction applies. Thus, to be able to implement the Farmworker Protection Rule while fully complying with the court's order, the Department must reinstate Forms ETA-9142A, ETA-790, ETA-790 A, and ETA-790 B.

Therefore, ETA requests a 180-day emergency clearance to establish the *Criteria and Non-Criteria Agricultural Clearance Order Forms and H-2A Application for Temporary Employment Certification in States and by Employers Covered by Injunction of the Farmworker Protection Final Rule*, Forms ETA-9142A, ETA-790, ETA-790 A, and ETA-790 B, (1205-NEW).

Please provide an approval/disapproval determination of this request to collect information under an emergency clearance by September 12, 2024.

Respectfully,



José Javier Rodríguez

Assistant Secretary

Employment and Training Administration