

## SUPPORTING STATEMENT

### ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES AT LOCATIONS IN THE STATE OF ALASKA

#### A. Justification

##### *A.1. Circumstances that make the collection of information necessary.*

The information collection is required by § 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1288). The INA has an "Alaska exception" to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the Alaska exception, before any employer may use alien crewmembers to perform longshore activities in the State of Alaska, it must submit an attestation to the Secretary of Labor containing the elements prescribed by the INA.

##### *A.2. Purpose of information collected, how collected, and by whom.*

The information is being collected to ensure that no employer engages alien crewmembers to perform longshore activities in the State of Alaska unless that employer meets the exceptions outlined by Congress in INA section 258. The attestations required by § 258 are collected by the Secretary of Labor through her designee the Employment & Training Administration on form ETA 9033A.

ETA will review an attestation to ensure that it is received at least 30 days before the date of the first performance of the longshore activity, unless due to an unanticipated emergency. In no case, however, will ETA accept an attestation received later than the date of the first performance of the activity.

ETA will review an attestation to assure that it is signed, completed, contains no obvious inaccuracies, and is not, on its face, inconsistent with the documentation submitted in support thereof.

If the attestation is properly filled out and includes the required accompanying documentation as required by the Department's regulations at 20 CFR 655.537 and does not fall within one of the categories set forth in § 655.538(b), ETA shall accept the attestation for filing, notify the U.S. Department of Homeland Security (DHS) in writing of the filing, and return to the employer one copy of the attestation form submitted with ETA's acceptance indicated thereon. Before using alien crewmembers to perform the longshore work attested to on Form ETA 9033A, the employer must make a bona fide request for and employ United States longshore workers pursuant to §§ 655.534 and 655.535. Where such a

request for dispatch of U.S. longshore workers is unsuccessful, alien crewmembers may be used in accordance with DHS regulations.

ETA shall make available for public examination in Washington, DC a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

*A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.*

In compliance with the Government Paperwork Elimination Act, this form is available via the Internet through ETA's home page at <http://www.foreignlaborcert.doleta.gov/pdf/d1.pdf>

*A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.*

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. At the same time, the procedures establish a process that will facilitate investigations of complaints against employers and enforcement of sanctions where necessary. The statute and regulations set forth a process which: 1) Requires attestations that are specific with respect to employer statements and promises; 2) limits the Department's review of an attestation to a simple check to assure that it is signed, completed, contains no obvious inaccuracies, and is not, on its face, inconsistent with the documentation submitted in support thereof; 3) describes the information that employers must retain to document the validity of their statements; and 4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted.

*A.5. Efforts to minimize burden on small businesses.*

The burden on small business concerns is minimal. The main users of the program are large foreign shipping companies.

*A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.*

The Department would be in direct violation of law and regulations if this information was not collected.

*A.7. Special circumstances for conducting information collection.*

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

*A.8. Summary of public comments.*

In accordance with 5 CFR 1320.8(d), ETA solicited comments on the proposed extension of approval for this data collection through publication in the Federal Register (volume 73, No. 45, pages 12219-12220), March 6, 2008. No comment relevant to the data collection was received.

*A.9. Explanation of decision to provide any payment or gift to respondents.*

No payments or gifts will be made to respondents.

*A.10. Assurance of confidentiality provided to respondents.*

The information collected is not exempt from disclosure under the Freedom of Information Act. Public law requires that all attestations be available for public inspection at the Department.

*A.11. Justification for any sensitive questions.*

The information collections do not involve sensitive matters.

*A.12. Estimated hourly burden.*

The public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing the notice of filing as required in § 655.537(a)(1)(i) and making a bona fide request for U.S. workers as required in § 655.534. The Department receives an average of 20 applications a year.

The total burden hours is computed as follows:

1 X .5 hour (review instructions)	= 0.5
1 X 1 hours (compile information)	= 1.0
1 X 1 hour (complete/submit/provide notice)	= 1.0
1 X .5 hour (documentation/maintenance)	= 0.5
Total Hours	3.0

It is difficult to estimate the hourly wage of the employees tasked with completing and maintaining the attestation form. However, the Department estimates the average to be \$25 per hour. The estimated total cost of \$25 x 1 attestation x 3 hours per response = \$75 for a total burden of \$1,500.

Total annual Burden Hours for all Information Collections - 60 hours  
Average Time per Application – 3 hours

*A.13. Estimated cost burden to respondents.*

There are no other costs than those mentioned in item A.12 above.

*A.14. Estimated cost burden to the Federal Government.*

The average Federal Government cost for a year of operation is estimated on 20 received applications a year at an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC. The total cost to the Federal Government is estimated at \$1,550.00 calculated as follows:

The Department receives an average of 20 applications a year. Applications require 1.50 hours of DOL staff time. The average hourly wage of the reviewer is estimated to be \$30.57 (GS 12, step 5) for a total cost burden of \$1,550.00 ( $\$30.57 \times 1.69 \times 1.5 \times 20$ ).

Total Cost to the Federal Government: \$1,550.00

*A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.*

The reduced burden reflects the lower amount of applications received over the last three years.

*A.16. Method for publishing results.*

No collection of information will be published.

*A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.*

The Department will display the expiration date for OMB approval

*A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.*

The Department is not seeking any exception to the certification requirements.

**B. Collection of Information Employing Statistical Methods**

No statistical methods are employed.