

SUPPORTING STATEMENT: OMB Control No. 1205-0309

**ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS FOR
LONGSHORE ACTIVITIES IN U.S. PORTS**

A. Justification

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

The information collection is required by section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. §1288). The INA has a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to the Secretary of Labor containing the elements prescribed by the INA. The INA further requires that the Secretary of Labor make available for public examination in Washington, DC a list of employers that have filed attestation and for each of these employers, a copy of the employer's attestation and accompanying documentation received by the Secretary.

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

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

ETA will review an attestation to ensure that it is received at least 14 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. In addition, ETA will review attestations to determine the following: 1) whether the Administrator, Wage and Hour Division, has found that a particular activity of longshore work for a port is not a prevailing practice of the use of alien crewmembers; 2) whether the Administrator, Wage and Hour Division, has notified ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and

accepted for filing, barring the employer from entry to any U.S. port for up to one year; 3) whether the Administrator has issued a cease and desist order that would affect the attesting employer and location at which longshore work is to be performed; and 4) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

If the attestation is properly filled out and includes the required accompanying documentation as required by the Department's regulations at 20 CFR § 655.510(d) through (f) and does not fall within one of the categories set forth in § 655.510(g)(2), 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. The employer may then utilize alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with subpart F of part 655 and 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/eta9033.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 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. Consultation with Persons Outside the Agency and Summary of Public Comments

In accordance with the Paperwork Reduction Act of 1995, a Federal Register notice was published on June 10, 2010 (Vol. 75, No. 111, p 32971 et seq.). The Department received no comments.

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 4 hours per response, including the time for reviewing instruction, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing the notice of filing by posting said notice as required in § 655.510(f)(2).

The total burden hours is computed as follows:

1 X .5 hour (review instructions)	= 0.5
1 X 2 hours (compile information)	= 2.0
1 X 1 hour (complete/submit/provide notice)	= 1.0
1 X .5 hour (documentation/maintenance)	= <u>0.5</u>
Total Hours	4.0

It is difficult to estimate the costs involved in completing and maintaining the attestation form. Each individual employer that files an attestation may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a CEO of a business. Therefore, the hourly salaries of an employer preparing an attestation could be more than \$300 per hour. However, we estimate the average to be \$25 per hour. The estimated total cost of \$25 x 1 attestation x 4 hours per response = \$100.

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 the year of operation is estimated at \$0 because ETA has not received any attestations under the prevailing practice exception within the last three years and thus, has not incurred any costs associated with the operation of the program. An information collection request will be submitted to increase the burden should activities recommence.

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

There is no change in burden.

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.