

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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SUPPORTING STATEMENT

Foreign Labor Certification Activity Reporting and State Surveys on Employment Practices

A. Justification

A.1 Circumstances Necessitating Data Collection

Under the foreign labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) State Workforce Agencies (SWAs) are funded through annually reimbursable grants to conduct certain activities which support the processing of applications for temporary labor certification filed by U.S. employers in order to hire foreign workers in the H-2B or H-2A visa categories to perform agricultural or nonagricultural services or labor. Under the grant agreements, SWAs must review and transmit through the intrastate and interstate systems job orders submitted by employers in order to recruit U.S. workers prior to filling the job openings with foreign workers. SWAs are also responsible for conducting H-2A prevailing wage and practice surveys and performing H-2A related housing inspections of facilities offered to agricultural workers.

In order to effectively monitor the administration of foreign labor certification activities by the SWAs, the Department requires the SWAs to report their workloads related to these activities on a quarterly basis. This collection of information is conducted through ETA Form 9127, *Foreign Labor Certification Quarterly Activity Report*. This report is critical for ensuring accountability and for future program management. The data required by the form are available to the SWAs as part of their routine processing of requests from employers and are currently maintained by the SWAs. The submission of this information provides a sound basis for program management, including budget and workload management. This extension of the ETA Form 9127 includes revisions to the reporting requirements which correspond to changes in the division of foreign labor certification activities between ETA and the SWAs.

In conducting the prevailing wage surveys for use in the administration of the H-2A program, the SWAs are collecting information from non H-2A employers in the area of intended employment in order to determine the agricultural prevailing wage rates for the occupation and/or crop. SWAs use ETA Form 232A, *Wage Survey Interview Record*, to collect information from agricultural employers in order to generate prevailing wage findings for specific occupations and/or crops. ETA Form 232, *Domestic Agricultural In-Season Wage Report*, is used by the SWAs to report those findings to ETA. These information collections are accounted for under OMB control number 1205-0017. In addition, the SWAs collect information from agricultural employers to determine prevailing, normal, accepted or common employment practices for a specific occupational

classification. An H-2A employer must not list on the job order requirements unless they are “prevailing,” “normal,” “accepted” or “common” among non-H-2A employers who hire U. S. workers in the same area and in the same occupation. In order to arrive at determinations as to whether certain requirements meet these standards, the SWAs collect such information by either formally surveying employers’ prevailing practices or by conducting “ad hoc” surveys. The authority for these surveys comes from 8 U.S.C. § 1188(c)(3)(A), 20 CFR 653.501(d)(4), and 20 CFR 655.103. ETA does not provide or mandate the use of any particular instrument in order for the SWAs to conduct employment practice surveys. Each SWA is responsible for designing its own survey instrument(s) to collect this data. Therefore, this information collection only includes an accounting of the public burden of the time it takes to conduct the surveys.

A.2 How, by Whom, and For What Purpose the Information is to be Used

The information on the ETA Form 9127 will be used by Departmental staff to track, assess and report on the SWA use of grant funds for the purpose of administering foreign labor certification programs. The Department will use the data collected to: (1) monitor the number of agricultural and nonagricultural job orders that are received, reviewed, and cleared and to (2) track the number of agricultural prevailing wage and practice surveys conducted, housing inspections made, and job orders filed. The information on workload will be used to formulate future budget estimates for both State and Federal workloads, and to monitor a SWA's performance against the SWA's annual plan and grant agreement. Without such information, the budget estimates would not reflect the true workload for each SWA.

The prevailing practice survey information is used by the Department to determine the normal, common and/or prevailing employment practices in a specific occupational classification. Department regulations at 20 CFR 655.122(b) require that each job qualification and requirement listed in the employer's job offer must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupation and crops. Additionally, Department regulations also allow for certain terms of employment, provided that those terms constitute prevailing practice. The Department uses the collected prevailing practice survey information to ensure that an H-2A employer's job qualifications and requirements are consistent with the normal and accepted job qualifications and requirements, as required by non H-2A employers or workers employed in same or comparable occupations and crops..

A.3 Use of Technology to Reduce Burden

Current technology makes it possible for SWAs to collect these data as part of their ongoing operations by the use of automated systems to process job orders. An electronic version of the ETA Form 9127 is available on the Office of Foreign

Labor Certification (OFLC) Web site at http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf. This form may be submitted electronically to OFLC through a designated email box - FLC.Grants@dol.gov.

A.4 Efforts to Identify Duplication

There is no other source for the collection of these data.

A.5 Methods to Minimize Burden on Small Businesses

The SWAs conduct prevailing wage and prevailing practice surveys of farms, both small and large, that employ U.S. workers. Regardless of the size of the farm, responses to the surveys are voluntary. If the SWA does not receive sufficient responses from the employer community and it cannot establish a wage finding, the SWA will inform the Department of the lack of information and the Department will issue a "No Finding" for the crop activity. If a prevailing wage determination results in a "No Finding" for the particular crop activity, the employer shall offer and pay the worker(s) the legal state or Federal minimum wage, the agreed upon collective bargaining rate, or the Adverse Effect Wage Rate (AEWR) for that State, whichever is highest.

A.6 Consequences of Less Frequent Data Collection

The collection of these data are needed on a quarterly basis in order to monitor the performance of foreign labor certification activities by the SWAs as required under the grant agreements including compliance with statutory and regulatory timeframes. The review and clearance of job orders by a SWA can vary depending on the number of job orders submitted, staffing levels, and the complexity of the individual job orders. It is essential that SWAs also timely provide to the Department the agricultural prevailing wage and prevailing practice surveys. Quarterly monitoring of workloads assists the Department in determining when technical assistance can be provided or when there may be a need to modify an annual plan. The adjustments to the grant plans contribute to the Department's ongoing effort to increase efficiencies in balancing the employers' legitimate need for workers with the statutory obligation to ensure no adverse effects on the U.S. labor force. Further, the surveys must be conducted when the workers are performing the work; the seasonality of the crop activity dictates when SWAs can collect and submit this information. Some SWAs submit no reports in the winter months, due to a lack of reportable activity, and a very few SWAs never submit these reports because they have no H-2A workers in their States.

The secondary collection of data pursuant to prevailing practice surveys is required to assess employer practices with respect to job qualifications and requirements. This provides the Department with current labor market

information necessary to process H-2A labor certification applications and make sure there is no adverse effect on U.S. workers similarly employed. Less frequent collection of this information would be contrary to the Department's statutory mandate to ensure that the employment of H-2A workers would not have an adverse effect on the employment opportunities, as well as wages and working conditions of U.S. workers who are similarly employed.

A.7 Special Circumstances for Data Collection

There are no special circumstances that would require the information to be collected in any of the manners listed under the instructions for completing this supporting statement.

The Department has proposed changes to the collection. Specifically, the form ETA-9127 has been changed to capture information currently needed to make decisions on grant fund distribution. For example, it is necessary to know how many job orders were actually processed by the SWAs, how many intrastate and interstate referrals required SWA staff assistance, how many job orders were transmitted to other SWAs as required by regulations, and how many job orders were received from other SWAs. It is also important for the Department to know how many times SWA staff contacted unions. In order to help lower the burden on the SWAs the form has been amended to request that they inform the Department about the most common deficiencies they notice so that the Department can issue FAQs or do other training for filers to help avoid the rejection of job orders due to deficiencies, making the process more efficient. In the H-2A program, it is also important for the Department to know about housing inspections and the various methods used for employers to get certified housing; therefore, the Department is now requiring the SWAs to inform it of housing inspections done by an alternative method as well as employer self-certifications. In order to prevent overcrowding, the Department intends to track the number of sleeping units the SWAs inspect and compare that to the number of H-2A foreign workers it certifies. New questions have accordingly been added to the form. Finally, the Department would like to differentiate between those employers who follow special procedures issued by the Department and those who simply follow the regulations in 20 CFR 655 parts A and B; a column has been added to the form so that the SWA can answer each question based on the type of employer (regular or those following special procedures).

A.8 Summary of Public Comments

The Department published a 60-day notice of the extension of this information collection in the *Federal Register* on March 27, 2012 (77 FR 18267). The Department received three comments. One comment was unresponsive as it dealt with general immigration issues and not the subject collection of information. Another comment from one of the SWAs was submitted after the due date, however, the Department took the comment into consideration. The

SWA suggested that more space be added to the form so that SWAs could inform the Department of additional pertinent information. It also suggested that the form be amended further to account for the amount of time and staff used to complete the surveys. Finally, the SWA suggested deleting the Prevailing Wage Determination requirement as moot, however, the Department does still require this function in the H-2A program and it is correctly listed under the H-2A section of the form.

The third comment, received on the last day of the comment period from a farm labor advocacy organization, was responsive to the request. The overall tenor of the comment was positive for the proposed changes to the form. The comment was specifically directed to the part of the form dealing with the H-2A temporary agricultural worker program. The advocacy group suggested that the Department add a requirement to have SWAs report on the number of U.S. workers actually hired by employers as a result of the referrals as well as the number of U.S. workers terminated before the end of the H-2A contract period. They also suggested that employment practice surveys be separated from prevailing practice surveys. Finally, the advocacy group suggested that the responses from the SWAs be published online so that advocacy groups such as the commenter could easily access this information without filing a Freedom of Information Act Request.

The Department has taken the two substantive commenters proposals under advisement and is considering the costs and benefits of implementing such requirements. The Department continues to discuss the issues raised with the SWAs. The Department is unable to implement the suggestions at this time, but will reconsider these comments during the next extension process. While the Department appreciates the concerns raised by the desire for some of the information the commenters suggested, the Department is cognizant of the additional burden such requirements would place on the SWAs.

A.9 Payment of Gifts to Respondents

No respondent is provided with a payment or a gift for providing information related to this form. As part of a separate application process, SWAs are provided with reimbursable grants each year.

A.10 Confidentiality Assurances

Information provided in response to this information collection is not exempt from disclosure under the Freedom of Information Act.

A.11 Additional Justification for Sensitive Questions

This information collection does not involve sensitive questions.

A.12 Estimates of the Burden of Data Collection

ETA Form 9127, Foreign Labor Certification Quarterly Activity Report

The reporting burden for the collection of information by each SWA is estimated to average 2 hours to prepare the report.

The overall hours needed for each respondent to produce the required information, prepare and submit the report is 432 reporting hours (54 respondents x 2 hours x 4 times a year = 432 hours)

SWAs are funded under reimbursable annual grants. The grants allow for costs related to the preparation and submission of all required financial and programmatic reports, including the quarterly submission of the ETA Form 9127.

Employment Wage and Practice Surveys

The basis of the information that SWAs use to complete the ETA Form 9127 comes from surveys they conduct of employers in their States. There are three different kinds of surveys that SWAs conduct: prevailing wage surveys, prevailing employment practice surveys, and “ad hoc” employment practice surveys. The first two surveys are formal surveys conducted on a set schedule as delineated in each SWA’s Grant Request Package sent to the Department. The third, ad hoc employment practice surveys, are done at the request of OFLC’s Chicago National Processing Center (NPC) when there are no prevailing practice survey results and the Chicago NPC needs to verify whether or not an employment practice is common among non H-2A employers.

Prevailing wage surveys.

The prevailing wage survey burden is accounted for in OMB control number 1205-0017.

Prevailing practice surveys

There are 54 SWAs in States and territories that conduct prevailing employment practice surveys of agricultural employment, but not necessarily each year. On average 30 States and territories conduct prevailing employment practice surveys at least once each year; however some SWAs conduct over 300 surveys per year. The average is 15 surveys per SWA per year. On average 20 employers respond to each survey. It is estimated that it takes employers 30 minutes to fill out and return the written survey. The total burden is 4,500 third-party disclosure hours (15 surveys x 30 SWAs x 20 employers x 30 minutes = 4,500 hours).

It is also estimated that it takes SWA staff 30 minutes after each survey to tally the results and either retain them for future use or forward them to the Chicago NPC. The total burden is 225 reporting hours (15 surveys x 30 SWAs x 30 minutes = 225 hours).

Ad hoc employment practice surveys.

Ad hoc employment practice surveys are conducted by the SWAs at the request of the Chicago NPC. On average, the Chicago NPC requests approximately 100 such surveys from various SWAs. Of those 100 requests, only half require 10 or more employers to reply, in which case 20 employers are surveyed. The surveys are usually conducted telephonically; therefore, both the employer and SWA staff are burdened, and the average time is 30 minutes per employer. The total burden is 1,000 third-party disclosure hours (50 surveys x 20 employers x 30 minutes = 500 hours, plus 50 surveys x 20 SWAs x 30 minutes = 500 hours, for a total of 1,000 hours).

It is estimated that it then takes SWA staff 15 minutes to write an email to the Chicago NPC with the results of the surveys, for a total burden of 13 reporting hours (50 surveys x 15 minutes ÷ 60 = 12.5 hours).

Total Burden and Cost:

It is difficult to estimate the costs involved in completing and maintaining the report. Each individual SWA employee that prepares this report may have a salary range that varies widely. The hourly salaries of a SWA employee preparing the report could be as high as \$40 per hour, with an estimated average of \$30. The same is true of farmers who answer the surveys. According to the Bureau of Labor Statistics (<http://www.bls.gov/k12/nature03.htm>), for those farms that pay a salary to a manager, the average salary is also \$30 per hour. The estimated total hourly burden and cost is:

Reporting Hours	1,045 x \$30 = \$31,350
Recordkeeping	125 x \$30 = \$3,750
Third-Party Disclosure hours	5,000 x \$30 = \$150,000
Total	6,170 x \$30 = \$185,100
Number of Respondents:	10,054
Number of Responses:	11,716

A.13 Estimated Cost to Respondents

a) Start-up/capital costs: There are no start-up costs.

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms.

A.14 Estimates of Annualized Costs to the Federal Government

The average Federal Government cost for a year of operation is estimated on 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 annual cost to the Federal Government is **\$ 39,208** calculated as follows:

ETA Form 9127 **\$7,421**

54 SWAs x 4 quarterly reports = 216 forms received

Analyst Review = 1/2 hour

Estimated Cost

Staff (GS-12, Step 5 x 1.69 FLFTE)¹
\$40.66 x 1.69 x 216 x 0.5 hours = \$7,421

Prevailing Wage and Prevailing Practice Surveys **\$30,922**

Prevailing Wage survey burdens are accounted for in 1205-0017
15 surveys x 30 SWAs = 450 prevailing practice reports received

Analyst Compilation and Review: = 1 hour

Estimated Cost

Staff (GS 12, Step 5 x 1.69 FTE)¹
\$40.66 x 1.69 x 450 x 1 hour] = \$30,922

Ad hoc surveys **\$865**

50 surveys
Analyst Review = 15 minutes

Estimated Cost

Staff (GS 12, Step 5 x 1.69 FTE)²
\$40.95 x 1.69 x 50 x .25 hour] = \$865

1 The Federal Government cost estimate for the staff review is based on the U.S. Office of Personnel Management 2012 locality pay schedule for the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA area to reflect the location of the OFLC National Office which carries the responsibility for the monitoring of OFLC SWA grants, including the receipt and review of Quarterly Activity Reports. .Please see: http://www.opm.gov/oca/12tables/pdf/dcb_h.pdf .

2 The 2012 Chicago locality pay schedule is used for this function because these are specifically requested by the Chicago NPC.

A.15 Changes in Burden

This ICR requests a change of 11,500 responses (from 216 to 11,716), 10,450 respondents (from 54 to 10,504), and 5,738 burden hours (from 432 to 6,170). The burden costs remain the same.

The burden hours and the number of responses and respondents have changed to reflect better calculations of cost estimates and include the sponsored collection of information by the SWAs conducting prevailing practice surveys in accordance with Federal grant funding.

This extension of the ETA Form 9127 includes revisions to the reporting requirements that correspond to recent changes in the division of foreign labor certification activities between ETA and the States.

A.16 Publication of Results

No collection of information will be published.

A.17 Approval Not to Display OMB Expiration Date

ETA will display the OMB approval number and expiration date on the ETA Form 9127. Because the SWAs create their own survey instruments to conduct employment practice surveys, these instruments do not display an approval number.

A.18 Exceptions to OMB Form 83-I

There are no exceptions.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.