

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

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**SUPPORTING STATEMENT
ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS FOR
LONGSHORE ACTIVITIES IN U.S. PORTS
AND
LONGSHORE ACTIVITIES AT LOCATIONS IN THE STATE OF ALASKA**

The Department of Labor (Department or DOL) is requesting a 3-year approval for revisions to the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in U.S. Ports (ETA Form 9033 – OMB Control Number 1205-0309, expiration date 10/31/2013) and the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in the State of Alaska (ETA Form 9033A - OMB control number 1205-0352, expiration date 10/31/2014). The information collection is required by section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1288) and 20 CFR 655 Subpart F. DOL's Employment and Training Administration (ETA) collects the attestations from shipping companies seeking to use foreign crewmembers for longshore work when no U.S. workers are available. The Department is proposing to combine these two collections, and to make changes to the forms that include both substantive and non-substantive revisions.

The Department is streamlining the process under the Paperwork Reduction Act (PRA) by combining the two collections into one, which will simplify the process for both the stakeholder community interested in these collections and the Federal staff reviewing and enforcing the attestations. The Department is also proposing changes to the layout of the forms for ease of review and completion. Finally, the Department has added a few new collection fields that will more accurately capture employer and job-related information. The update of the forms will, for example, reflect current communications methods by requesting email addresses rather than fax numbers. The substantive changes are explained in detail below

**ETA Form 9033, Employers' Attestation to Use Alien Crewmembers for
Longshore Activities in U.S. Ports**

ETA Form 9033 is the form used by shipping companies seeking to employ foreign workers for longshore work. Under the prevailing practice exception in sec. 258(c) of the INA, and in those cases where it has been determined that an attestation is required under the automated vessel exception for longshore work to be performed at locations other than in the State of Alaska, employers must file an attestation with the Department that: (1) the use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port; (2) the use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and (3) notice of the attestation has been provided to the bargaining representative of longshore workers in the local port, or, where there is none, notice has been provided to longshore workers employed at the local port. 8 USC 1288(c)(1) (B); 20 CFR 655.500(b); 655.510(c)(4). ETA Form 9033 implements these statutory and regulatory requirements by setting forth the attestations employers must make in order to employ foreign workers.

As noted above, the Department has made both substantive and non-substantive revisions to the form, which includes the following:

- A revised layout that organizes the form into lettered parts and numbered subparts for ease of reading, review and completion;
- In the new subpart A that requests specific information about the employer, the Department proposes to add a field to obtain the employer's trade name or "Doing Business As" (DBA) name so that the attestation properly reflects the name that will be on the cargo ship and on relevant documents. This additional information enhances the Department's ability to accurately identify the employer and avoids confusion.
- Also in the new subpart A, the Department proposes to add a field to obtain the employer's point of contact name and the contact's job title so contacting the employer will be easier. The Department also proposes to add a field for collection of the employer's email address so that the Department has an additional means of contacting the employer.
- In the new subpart B that requests information about the employer's U.S. agent or representative, the Department has replaced the request for a fax number with a request for the agent's email address because email has become the Department's preferred method of communication.
- In the new subpart C that requests information about the job, including its location, the Department proposes to include a field for the total number of crewmembers being requested. The addition of this question will allow the Office of Foreign Labor Certification (OFLC) to track the total number of workers requested for longshore activities. The longshore activity program is currently the only program in which the total number of workers requested by employers is not maintained and made available to the general public as part of the OFLC's disclosure data.
- Also in the new subpart C, the Department is proposing to add new item 5.e., which collects information about the use of alien crewmembers on a vessel with automated equipment. Under the INA, where the longshore activity involves the use of automated self-unloading conveyor belt or vacuum actuated system, the employer attestations are only required where the Secretary of Labor, or his or her designee, finds based on a preponderance of evidence, which may be submitted by any interested party, that the use of foreign workers is not a prevailing practice. 8 U.S.C. 1288(c)(1)(B).

- In the new subpart D that sets out the facts to which employers must attest, the Department proposes to add an additional attestation that confirms that the use of alien crewmembers for longshore work is the prevailing practice of the port in question.
- The Department proposes to update the instructions to reflect the new layout of the form and the additional fields, and to correct the address to which the forms should now be sent. The forms should be sent to the Chicago National Processing Center rather than the National Office in Washington, DC. The Department has also made a technical revision to the instructions in order to correct a typographical error in one paragraph referring to the percent of longshore workers that must be covered by a collective bargaining agreement in a port in order to be eligible for the program.

ETA Form 9033A, Employers' Attestation to Use Alien Crewmembers for Longshore Activities in the State of Alaska

The ETA Form 9033A is used by shipping companies seeking to employ foreign workers for longshore work in the State of Alaska. Under the INA, 8 U.S.C 1288(d)(1), an employer seeking to use foreign workers for longshore activity in Alaska must attest that (1) with some limited exceptions, the employer will make a bona fide request for U.S. longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided as required under attestation 4 below; (2) the employer will employ all qualified and available U.S. longshore workers; (3) the use of alien crewmembers is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and (4) notice been provided to particular bargaining representative, contract stevedoring companies, and dock operators. The ETA Form 9033A collects the necessary information from employers and includes the necessary attestations. As noted above, the Department has made both substantive and non-substantive revisions to the form, which includes the following:

- A revised layout that organizes the form into lettered parts and numbered subparts for ease of reading, review and completion;
- In the new subpart A that requests specific information about the employer, the Department proposes to add a field to obtain the employer's trade name or "Doing Business As" (DBA) name so that the attestation properly reflects the name that will be on the cargo ship and on relevant documents. This additional information enhances the Department's ability to accurately identify the employer and avoids confusion.

- Also in the new subpart A, the Department proposes to add a field to obtain the employer's point of contact name and the contact's job title so contacting the employer will be easier. The Department also proposes to add a field for collection of the employer's email address so that the Department has an additional means of contacting the employer.
- In the new subpart B that requests information about the employer's U.S. agent or representative, the Department has replaced the request for a fax number with a request for the agent's email address because email has become the Department's preferred method of communication.
- In the new subpart C that requests information about the job, including its location, the Department proposes to include a field for the total number of crewmembers being requested. The addition of this question will allow the Office of Foreign Labor Certification (OFLC) to track the total number of workers requested for longshore activities. The longshore activity program is currently the only program in which the total number of workers requested by employers is not maintained and made available to the general public as part of the OFLC's disclosure data.
- Also in the new subpart C, the Department is proposing to add an additional field for those employers filing less than 30 days before the date of the first work performed to notify employers of the need to provide documentation in support of their emergency filing.
- Also in the new subpart C, the Department is proposing to add an additional field that requires employers to provide the job qualifications necessary to perform each requested activity. This is being added to comply with the statute and regulations that require employers utilizing the Alaska exception to recruit longshore workers in the port who are "qualified." Because this application is used as notice, this addition will allow U.S. workers to make an informed decision about their interest and eligibility for the available job opportunities.
- The Department proposes to update the instructions to reflect the new layout of the form and the additional fields, and to correct the address to which the forms should now be sent. The forms should be sent to the Chicago National Processing Center rather than the National Office in Washington, DC.

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) and 20 CFR 655 Subpart F. The INA generally prohibits the performance of longshore work by foreign crew members, but will permit it where the use of foreign workers is a prevailing practice at the port in question. 8 U.S.C. 1288(a), (c). Under the prevailing practice exception, before any employer may use foreign 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.

The INA also contains an "Alaska exception" to the general prohibition on the performance of longshore work by foreign crewmembers in U.S. ports. 8 U.S.C. 1288(d). Under the Alaska exception, before any employer may employ foreign 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.

The information is being collected to ensure that no employer uses foreign crewmembers to perform longshore activities in the U.S. unless that employer meets the exceptions outlined by Congress in INA section 258, 8 U.S.C. 1288(c), (d). The attestations required by section 258 are collected by the Secretary of Labor through his or her designee, the Employment & Training Administration, on ETA Form 9033, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* (OMB Control Number 1205-0309) and ETA Form 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska* (currently under OMB Control Number 1205-0352).

Previously, the Department of Labor (Department) accounted for the hourly burdens for each of these information collections under two different OMB control numbers – 1205-0309 and 1205-0352. The Department is proposing to merge the two OMB control numbers into one for purposes of efficiency and clarity for both the Federal Government and the public.

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

As noted above, the attestations required by section 258 of the INA are collected by the Secretary of Labor through her designee, the Employment & Training Administration, on ETA Form 9033 *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* (OMB Control Number 1205-0309) and on ETA Form 9033A,

Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska (currently under OMB Control Number 1205-0352).

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, or 30 days in the case of longshore activities performed in Alaska, unless delay is 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.

For longshore work at U.S. ports other than those in Alaska, 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 these attestations to determine the following: 1) whether the Administrator, Wage and Hour Division, has found that the use of foreign workers to perform particular activities is not in fact the prevailing practice at that port; 2) whether the Administrator, Wage and Hour Division, has notified ETA of a determination that within the last year an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing; 3) whether the Administrator, Wage and Hour Division, has issued a cease and desist order with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation; or 4) whether the Administrator, Wage and Hour Division, has advised ETA that the employer has failed to comply with any penalty, sanction, or remedy assessed by the agency.

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 foreign 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 pursuant to DHS regulations.

For ports in Alaska, ETA will review an attestation to assure that the attestation form is properly filled out, includes the accompanying documentation required by the Department's regulations at 20 CFR 655.53, and does not fall within one of the categories set forth in 20 CFR 655.538(b). ETA shall accept the attestation form for filing, notify DHS in writing of the filing, and return to the employer one copy of the submitted attestation form with ETA's acceptance indicated thereon. Before using foreign crewmembers to perform the longshore work attested to on ETA Form 9033A, the employer must make a bona fide request to the local union, stevedoring companies, and operators of private docs as required in 20 CFR 655.537(a)(1) for U.S. workers, and must employ United States longshore workers pursuant to 20 CFR 655.534 and 655.535. Where such a request for dispatch of U.S. longshore workers is unsuccessful, foreign 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, the ETA-9033 and ETA-9033A are available via the Internet through ETA's home page at <http://www.foreignlaborcert.doleta.gov/pdf/eta9033.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/d1.pdf>. The Department receives so few of these forms that it is not economically viable to spend taxpayer funded government resources making them fillable and fileable.

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 that: 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.

This information does not have a significant impact on a substantial number of small businesses or other small entities. The Department only receives approximately seven applications a year on both ETA Forms 9033 and 9033A, and their completion, including reviewing instructions, compiling necessary information, submitting the form, providing the required notice, and maintaining documents, requires only 3 to 4 hours, depending on the form. However, ETA's Office of Foreign Labor Certification (OFLC) has made additional information, such as a copy of the regulations and frequently asked questions, available on our web-site at <http://www.foreignlaborcert.doleta.gov/d-1.cfm> to assist employers with compliance. These sources provide tips and general information on the program that utilizes these forms.

The Department has reviewed the memorandum issued to all heads of departments and agencies by the Office of Budget and Management on June 22, 2012 about Reducing Reporting and Paperwork Burdens. The Department concludes that it cannot make any exemptions for small entities (including small businesses) or streamline the forms, because the statute and regulations require employers of foreign crewmembers to make the necessary attestations and provide the information requested. The collection is not disproportionately more burdensome for small entities than large ones because the form is easy to understand and provides all of the necessary attestations on the form, so that the employer does not need to find the appropriate law to know how to apply for permission to use foreign crewmembers. It is not possible to reduce the burden on small entities by shortening the form because the form collects only the minimum information needed to process the form and gather the necessary information for administration of the program. The use of fillable and fileable forms is also not feasible in this program because only a handful of forms are submitted each year, making it economically prohibitive to spend taxpayer money on making the forms fillable and fileable. The Department, has however, redesigned the form to request email addresses to enhance electronic communication, which it believes will reduce the burdens on respondents and increase efficiency.

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 unable to meet its legally mandated administrative responsibilities if this information was not collected. The information must be collected to enable to Department to meet its statutory obligations to obtain attestations from companies wishing to utilize foreign labor to perform longshore work.

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 the Paperwork Reduction Act of 1995, a Notice was published in the *Federal Register* on August 8, 2013 (Vol. 78, p. 48463) and the public was given 60 days to comment on the information collection, including the proposed revisions. No comments were 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 confidential because attestations are required to be made available for public inspection pursuant to 8 U.S.C. 1288(c)(4)(A).

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 the ETA-9033 is estimated to average 4 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 by posting said notice as required in § 655.510(f)(2). The Department does not believe that the additional fields being added to the collection will increase the time required to complete the form in any significant amount because ETA has, in previous years, has overestimated the amount of time it would take to fill in the form. ETA records indicate that it receives an average of two applications per year for a total burden of 8 burden hours (6 reporting hours, 1 third-party disclosure hour, and 1 recordkeeping hour)

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

The public reporting burden for the ETA 9033A 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, providing the notice of filing as required in 20 CFR 655.537(a)(1)(i), and making a bona fide request for U.S. workers as required in 20 CFR 655.534. The Department does not believe that the additional fields being added to the collection will increase the time required to complete the form in any significant amount because ETA has, in previous years, has overestimated the amount of time it would take to fill in the form. ETA records indicate that it receives an average of five applications per year

for a total of 15 burden hours (10 reporting hours, 2.5 third-party disclosure hours, and 2.5 recordkeeping hours).

The total burden hours is computed as follows:

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

Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required under this OMB Control Number may vary, but the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$52.69), based on the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data¹ and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$75.35. This number was multiplied by the total hourly annual burden for the information collections under this OMB Control Number in order to arrive at total annual respondent hourly costs for all information collections under this request. The total annual respondent hourly costs are estimated as follows:

The estimated total cost of this collection is based on the Department receiving an average of two (2) ETA-9033 applications a year for a cost of \$603 annually (\$75.35 x 2 application received per year x 4 hours per response = \$603) and an average of five (5) ETA-9033A applications a year for a cost of \$1,130 (\$75.35 x 5 applications received per year x 3 hours per response = \$1,130). The total cost for both applications is \$1,733.

A.13. Estimated cost burden to respondents.

1. Start-up/capital costs: There are no start-up costs.
2. Annual costs: There are no annual costs to respondents.

¹ Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2012 National Occupational Employment and Wage Estimates; Management Occupations.

A.14. Estimated cost burden to the Federal government.

It is estimated that the OFLC and National Processing Center (NPC) staff spend the following time each year reviewing the applications to ensure compliance with the regulations:

<u>GS-Level/Step</u>	<u>Applications</u>	<u>Hourly Rate</u>	<u>Hours/App</u>	<u>Total Cost</u>
GS-14/1	7	\$50.77	.75	\$266.54

The total estimated annual cost to the Federal government for this data collection is \$266.54.

The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2012 GS locality pay schedules for Chicago, Illinois (http://archive.opm.gov/oca/12tables/pdf/chi_h.pdf))

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

This ICR requests an increase of six responses for this control number from one to seven. However, this is due to the Department combining control numbers 1205-0309, which had only one response previously, and 1205-0352, which had 20 responses previously. Responses for control number 1205-0309 increased by one additional response, whereas responses for control number 1205-0352 decreased by 15 responses.

The burden hours for OMB control number 1205-0309 have also increased. The chart below shows the changes in burden hours.

OMB Control Number	Previous Estimated Burden Hours	Current Estimated Burden Hours	Change in Burden Hours
1205-0309	4	8	+4
1205-0352	60	15	-45
Combined	64	23	-41

The increase in burden for 1205-0309 is due to the merger of two OMB control numbers into 1205-0309. However, if looking at 1205-0352 alone, there was a decrease in burden from the time of the previous extension request in 2011 because of a decrease in use of the D-1 program in U.S. Ports in Alaska. There are no changes in other burden costs, which continue to be \$0.

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.