

SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995
Foreign Labor Certification Activity Reporting; Form ETA-9127
OMB Control No. 1205-0457

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SUPPORTING STATEMENT

Foreign Labor Certification Activity Reporting; Form ETA-9127

A. Justification

A.1 Circumstances Necessitating Data Collection

The information collection is required by 29 U.S.C. 49i (the Wagner-Peyser Act) and 8 U.S.C. 1188(c)(3)(A) (section 218(c)(3)(A) of the Immigration and Nationality Act (INA)). The Department of Labor (Department) has promulgated regulations to implement these provisions of the Wagner-Peyser Act and INA at 20 CFR Parts 653.112, 654.403(e), and 655 (the regulations).

Under the foreign labor certification programs administered by the Department's Employment and Training Administration (ETA), State Workforce Agencies (SWAs) are funded through annually reimbursable grants to conduct certain activities. These grants 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 that are submitted by employers to recruit U.S. workers prior to filling job openings with foreign 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 Form ETA-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 Form ETA-9127 includes several minor revisions to the form and instructions. On the form itself an email address has been removed in the Public Burden Statement section to which SWAs have been inadvertently submitting the forms. The address, ETA.OFLC.Forms@dol.gov, is for PRA comment submission only. The instructions have been slightly reworded for clarification. The burden calculations have been updated to reflect the removal of the burden calculations for the prevailing practice surveys and ad hoc surveys

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previously accounted for in this information collection, but recently moved to OMB Control Number 1205-0017.

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

The information on the Form ETA-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 (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.

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 through the use of automated systems that process job orders. The Form ETA-9127 is available on the Office of Foreign Labor Certification (OFLC) Web site in a printable PDF format at http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf. Once filled out, 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 Form ETA-9127 does not apply to small businesses or other small entities.

A.6 Consequences of Less Frequent Data Collection

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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. 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 very few SWAs never submit these reports because they have no H-2A or H-2B workers in their States.

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 OMB instructions for completing this supporting statement.

A.8 Summary of Public Comments

The Department published a 60-day notice of the extension of this information collection in the *Federal Register* (80 FR 12039, Mar. 5, 2015). The Department received two comments; however, only one was specifically related to this information collection request. One SWA submitted a comment recommending that the Department add a line item to the form ETA-9127 to report the total number of Random Field Checks (RFCs) completed during the reporting period. The SWA also requested a separate cumulative count column be added to the form so as to enable each reporting entity to determine if they are in line with meeting or exceeding their annual goals. In addition, the SWA suggested the Department include a "Yes/No" option to question #12 and #15 of the form to indicate if a State performs this function.

The Department will not be implementing these suggestions for the following reasons. RFCs conducted by the SWA are not a requirement under the H-2A

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regulations and thus not part of the reporting requirements. The data is reported separately by the SWA pursuant to 20 CFR 653.503, and is outside the reporting requirements of the H-2A program.

Form ETA-9127 is to be completed on a quarterly basis by SWAs responsible for performing foreign labor certification activities. Data transmitted on the ETA-9127 is used to report activities completed during the course of each fiscal quarter and a cumulative count per quarter is not necessary as it will serve to increase the reporting burden to the SWA.

The Yes/No option is not necessary for reporting alternate methods used by the SWA for housing inspections and for the use of self-certified housing. OFLC maintains information provided in the Cost Reimbursable Grant packages on those states utilizing alternate housing methods. In similar fashion, OFLC maintains information on those states utilizing self-certified housing.

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

Form ETA-9127, Foreign Labor Certification Quarterly Activity Report

There are 54 SWAs in the United States. The reporting burden for the collection of information by each SWA is estimated to average 2 hours for the preparation of the report, which must be submitted quarterly. Therefore, the overall hours needed for each respondent to produce the required information and prepare and

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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 Form ETA-9127.

Total Burden and Cost:

The total annual cost of collecting information (\$9,910) is based on the average hourly rate of \$22.94 for Survey Researchers based on the median national wage as published by the Bureau of Labor Statistics in O*Net Online at <http://www.onetonline.org/link/summary/19-3022.00>.

The estimated total hourly burden and cost is:

Reporting Hours	432
Burden Cost (432 x \$22.94)	\$9,910
Number of Respondents:	54
Number of Responses:	216

Burden Summary Table

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Filling out Report	54	4	216	2 hours	432	\$22.94	\$9,910
Unduplicated Totals	54	4	216	2 hours	432	\$22.94	\$9,910

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 form.

A.14 Estimates of Annualized Costs to the Federal Government

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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 **\$7,571** calculated as follows:

Form ETA-9127	\$7,571
54 SWAs x 4 quarterly reports = 216 forms received	
<u>Analyst Review</u> = 1/2 hour	
<u>Estimated Cost</u>	
Staff (GS-12, Step 5 x 1.69 FLFTE) ¹	
41.48 x 1.69 x 216 x 0.5 hours = \$7,571	

A.15 Changes in Burden

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

The burden hours and the number of responses and respondents have changed to reflect the recent movement of the burden for prevailing practice surveys and ad hoc surveys to OMB Control Number 1205-0017, Domestic Agricultural In-Season Wage Report. OMB approved that the change to the 1205-0017 control number via a Notice of Action dates 09/26/2013. See ICR reference number 201305-1205-002.

Also minor changes were made to the form ETA-9127 and instructions. These changes did not result in any burden change.

A.16 Publication of Results

¹ The Federal Government cost estimate for the staff review is based on the U.S. Office of Personnel Management 2015 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: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/DCB_h.pdf

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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 Form ETA-9127.

A.18 Explain each exception to the certification statement

There are no exceptions.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.