

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

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SUPPORTING STATEMENT
ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR
LONGSHORE ACTIVITIES IN U.S. PORTS
OMB Control No. 1205-0309

The Department of Labor (Department or DOL) is requesting a 3-year approval for extension of the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in U.S. Ports (ETA Form 9033 – OMB Control Number 1205-0309, expiration date 12/31/2016) and the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in the State of Alaska (ETA Form 9033A - OMB control number 1205-0309, expiration date 12/31/2016). 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.

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.

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 has 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.

A. Justification

A.1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Department is requesting a 3- year extension without change, of the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in U.S. Ports, Form ETA 9033, and the Employers' Attestation to Use Alien Crewmembers for Longshore Activities in the State of Alaska, Form ETA 9033A (OMB control number 1205-0309).

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 Form ETA 9033, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* and Form ETA 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska* (OMB Control Number 1205-0309).

A.2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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 Form ETA 9033 *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* and on Form ETA 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska* (OMB Control Number 1205-0309).

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 (form ETA-9033), or 30 days in the case of longshore activities performed in Alaska (form ETA-9033A), 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 as indicated within both forms.

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 Form ETA 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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce 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 https://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9033.pdf and https://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9033A.pdf. The Department receives so few of these forms that it is not economically viable to spend taxpayer funded government resources to enable electronic filing.

A.4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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 electronically filed 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 to enable electronic fil. The forms collect email addresses to enhance electronic communication, which it believes will reduce the burdens on respondents and increase efficiency.

A.6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing 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. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5:

These data collection efforts do not involve any special circumstances.

A.8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years—even if the collection of

information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In accordance with the Paperwork Reduction Act of 1995, the public was allowed 60 days to comment through the Federal Register Notice posted on June 30, 2016 (81 FR 42730). No public comments were received.

A.9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no payment to respondents involved with this information collection.

A.10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

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. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information collections do not involve sensitive matters.

A.12. Provide estimates of the hour burden of the collection of information.

The public reporting burden for the Form 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). 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 3 hours (review instructions/compile information/ complete/submit)	= 3.0	(Reporting)
1 X .5 hours (provide notice)	= 0.5	(Third-party disclosure)
1 X .5 hours (documentation/maintenance)	= 0.5	(Recordkeeping)
Total Hours	4.0	

The public reporting burden for the Form 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. 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 2 hours (review instructions/compile information/ complete/submit)	= 2.0 (Reporting)
1 X .5 hours (provide notice)	= 0.5 (Third-party disclosure)
1 X .5 hours (documentation/maintenance)	= 0.5 (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 (\$56.29), 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 \$80.49. 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 \$644 annually (\$80.49 x 2 applications received per year x 4 hours per response = \$644) and an average of five (5) ETA-9033A applications a year for a cost of \$1,207 (\$80.49 x 5 applications received per year x 3 hours per response = \$1,207). The total cost for both applications (after rounding) is \$1,851.

The following table can be used as a guide to calculate the total burden of an information collection.

Estimated Annualized Respondent Burden Hours and Costs

Forms	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden	Hourly Rate*	Monetized Value of Respondent
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¹ Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2015 National Occupational Employment and Wage Estimates; Management Occupations.
http://www.bls.gov/oes/current/oes_nat.htm#11-0000.

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports
 OMB Control No. 1205-0309
 December 2016

					(Hours)		Time
ETA Form 9033 Reporting	2	1	2	3.0	6.0	\$80.49	\$482.94
ETA Form 9033 Recordkeeping	2	1	2	0.5	1.0	\$80.49	\$80.49
ETA Form 9033 Third Party Disclosure	2	1	2	0.5	1.0	\$80.49	\$80.49
ETA Form 9033A Reporting	5	1	5	2	10	\$80.49	\$804.90
ETA Form 9033A Recordkeeping	5	1	5	0.5	2.5	\$80.49	\$201.23
ETA Form 9033A Third Party Disclosure	5	1	5	0.5	2.5	\$80.49	\$201.23
Unduplicated Totals	7		7		23.0		\$1,851

* Bureau of Labor Statistics. Occupational Employment Statistics: May 2015 National Occupational Employment and Wage Estimates; Management Occupations. http://www.bls.gov/oes/current/oes_nat.htm#11-0000.

A.13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

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

A.14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

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</u>	<u>Step</u>	<u>Applications</u>	<u>Hourly Rate</u>	<u>Hours/App</u>	<u>Total</u>
GS-14/5	7	\$59.44	.75		\$312.06

The total estimated annual cost to the Federal government for this data collection is \$312.06.

The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2016 GS locality pay schedules for Chicago, Illinois (http://archive.opm.gov/oca/12tables/pdf/chi_h.pdf) (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/CHI_h.pdf)).

A.15. Explain the reasons for any progr2am changes or adjustments reported on the burden worksheet.

The burden hours for OMB control number 1205-0309 remain the same. The chart below shows that there is no change in burden hours.

OMB Control Number	Previous Estimated Burden Hours	Current Estimated Burden Hours	Change in Burden Hours
1205-0309	23	23	0

There are no changes in other burden costs, which continue to be \$0.

A.16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

No collection of information will be published.

A.17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Department will display the expiration date for OMB approval.

A.18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions,"

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

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.