

**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
OMB Control Number 1205-0457

This Information Collection Request (ICR) is seeking an extension with changes to the burden associated with the form. The proposed burden reduction to respondents associated with this ICR reflects the following changes in the program: (1) elimination of a question referencing union contacts made by the State Workforce Agencies (SWA); (2) elimination of a question located in both the H-2A and H-2B sections that prompts the SWA to list the most common deficiencies on the job order; and (3) Form ETA-9127 - *Foreign Labor Certification Activity Reporting* - Instructions have been modified in order to promote clarity because of some confusion expressed by SWAs.

A. Justification.

A1. 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 of Labor (Department or DOL) is seeking to make minor revisions to Form ETA-9127, *Foreign Labor Certification Quarterly Activity Report* (OMB control number 1205-0457). The information collection is authorized by Wagner-Peyser Act section 9 (29 U.S.C. 49(i)).

The Department, under the foreign labor certification programs administered by the Employment and Training Administration (ETA), provides funds for SWAs through annually reimbursable grants. The grants fund certain activities that support the processing of applications for temporary labor certification. These applications are filed by U.S. employers in order to hire foreign workers in the H-2B or H-2A visa categories to perform non-agricultural or agricultural 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 before the employers can fill 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.

The Department requires SWAs to report their workloads related to these activities on a quarterly basis to effectively monitor the administration of foreign labor certification activities. 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 is available to SWAs as part of their routine processing of requests from employers and is currently maintained by SWAs. The submission of this information provides a sound basis for program management, including budget and workload management.

The form and instructions can be found online at https://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf and https://www.foreignlaborcert.doleta.gov/pdf/Instructions_Form_9127.pdf respectively.

A2. 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.

The information on Form ETA-9127 is used by Department staff to track, assess, and report on 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 is used to formulate future budget estimates for both State and Federal workloads and to monitor the SWAs performance against their annual plan and grant agreement. Without such information, the budget estimates would not reflect the true workload for each SWA.

A3. 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.

Current technology makes it possible for SWAs to collect this data as part of their ongoing operations by the use of automated systems to process job orders. An electronic and fillable version of Form ETA-9127 is available on the Office of Foreign Labor Certification (OFLC) website at https://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.

A4. 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.

This is the only quarterly collection of this information from SWAs that allows the Department to monitor ongoing work of SWAs throughout the year. The information is also reported in the aggregate on SWAs Annual Plan (OMB control number 1225-0086). The Annual Plan specifically projects workload for the following year, whereas the Form ETA-9127 allows monitoring of actual SWA workload throughout the year.

A5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

SWAs complete this information collection. Small businesses are not impacted through the collection of this form.

- A6. *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 information must be collected to enable the Department to monitor the performance of foreign labor certification activities by SWAs as required under the grant agreements, which reflect the SWAs agreement to accept certain obligations under 20 CFR Part 655 Subparts A (H-2B) and B (H-2A). As mentioned in item A2, without this information, the budget estimates for Federal and State workloads would not reflect the true workload for each SWA. 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. These adjustments 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.

- A7. *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.*

There are no special circumstances that would require the information to be collected in any of the manners that require further explanation under 5 CFR 1320.5.

- A8. *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 21, 2018 (83 FR 28866).

Two public comments were received in response to the notice. One comment was not germane to the notice, because the person only raised concerns with the underlying guestworker programs. The commenter did not address the information collection.

The other comment was germane because it objects to “[u]nion contact [being] made **only** when the occupation or industry is ‘traditionally or customarily unionized’” The regulations at 20 C.F.R. 655.33 state that the Chicago National Processing Center (NPC) Certifying Officers will direct the SWA to send the job order to labor organizations “[w]here the occupation or industry is traditionally or customarily unionized.” This ICR is driven by the regulatory requirement. Upon careful consideration of the types of information that are now otherwise available to the Department, the agency has determined to remove a question regarding union contacts. This question was removed because union contacts are only made by SWAs at the direction of the Certifying Officer. Therefore, this information is available to the Department without engaging in this data collection. Continuing to collect such information would result in unwarranted data collection creating an undue burden on those filing the Form ETA-9127.

The second part of the germane comment mentions the H-2B section of ETA Form 9127 not conforming to the H-2A section of the form. Questions 9 to 15 are not included in the H-2B section because they address specific duties SWAs must conduct for the H-2A program that do not pertain to the H-2B program. SWAs do not conduct surveys or inspect housing in the H-2B program. Prompting SWAs to answer these questions is not warranted as they are not relevant. Additionally, requiring SWAs to perform such activities would place an unnecessary burden on SWAs.

A9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be made to respondents in exchange for the information provided in response to this information collection. As part of a separate application process, SWAs are provided with reimbursable grants each year.

A10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Department does not assure confidentiality to SWAs responding to this information collection. The documents provided are subject to the provisions of the Freedom of Information Act (FOIA), and, if requested, could be disclosed under that statute if not found to be exempt from disclosure under one of the nine FOIA exemptions.

A11. 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.

A12. Provide estimates of the hour burden of the collection of information.

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 Form ETA-9127. This analysis uses an estimated average hourly rate of \$30.14 based on the median national wage for Compensation, Benefits, and Job Analysis Specialists, as published by the Bureau of Labor Statistics (<http://www.onetonline.org/link/summary/13-1141.00>). The fully loaded wage of \$52.44 is computed by taking the hourly wage rate of \$30.14 and multiplying it by the benefit and overhead of 74 percent ($\$30.14 \times 1.74 = \52.44).

The reporting burden for the collection of information by each SWA is estimated to average 1 hour and 45 minutes to prepare Form ETA-9127. The estimated costs associated with preparing the report are summarized in the table below:

Activity	Number of Respondents	Annual Responses per Respondent	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
Form ETA-9127	54	1 (Once a quarter)	216	1.75 hours	378	\$52.44	\$19,822.32

A13. 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).

a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC.

b) Annual costs: There are no annual costs involved with operation and maintenance of the form itself because ETA will be responsible for the annual maintenance costs for the free downloadable form. There is also no filing fee involved with filing a Form ETA-9127.

A14. 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.

The estimated Federal costs associated with Form ETA-9127 are summarized in the table below. This estimate is based on the 2018 General Schedule hourly rates for the positions conducting the review and the average time required to perform each review and ensure compliance with

applicable regulations. The average Federal Government cost for a year of operation is estimated on an hourly basis multiplied by an index of 1.74 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by Departmental analysis of current personnel and overhead cost data. There will be no form development or IT costs associated with this ICR because this form is not connected with an IT system.

Estimated Cost

GS-Level/Step	Reports (annual)*	Hourly Rate (Salary)**	FLFTE Hourly Rate***	Hours per Report	Total Cost
GS 12/5	216	\$44.28	\$77.05	0.25	\$4,161
GS 13/5	216	\$52.66	\$91.63	0.25	\$4,948
<i>Total estimated cost to the Federal government:</i>					\$9,109

*See item A12.

**Source: 2018 General Schedule for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA area (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf).

***Salary rate multiplied by 1.74 FLFTE rate.

A15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The Department has proposed changes to the collection. Specifically, Form ETA-9127 has been changed to capture information currently needed to make decisions on grant fund distribution.

Two questions were removed from Form ETA-9127. The first question removed referenced union contacts made by SWA. This question was removed because this data is not currently reviewed by the grants management unit of ETA’s OFLC. Union contacts are made by SWAs when the Chicago NPC Certifying Officers have determined that the occupation or industry is traditionally or customarily unionized. In such circumstances, the Certifying Officer collects this information when confirming referrals with SWAs during the certification process. Therefore, this information is available to the Department without engaging in this data collection. Continuing to collect such information would result in unwarranted data collection creating an undue burden on those filing Form ETA-9127.

The second question removed is located in both the H-2A and H-2B sections and prompts SWA to list the most common deficiencies on the job order. The collection of this data is no longer needed because the Chicago NPC, which receives the job orders from the SWA, has addressed previously common deficiencies found on job orders in published *Frequently Asked Questions* and outreach to SWAs and employers. Again, continuing to collect such information would result in unwarranted data collection creating an undue burden on those filing Form ETA-9127.

Form ETA-9127 instructions have been modified in order to promote clarity because of some confusion expressed by SWAs. Two terms, interstate and intrastate, have been segmented and defined in plain language to reduce this confusion and minimize the burden to SWAs.

The burden hours for respondents have been reduced from 2 hours per report to 1.75 hours per report to reflect the removal of the two questions discussed above. This amounts to a total burden reduction of 54 hours (from 432 hours to 378 hours), with corresponding savings in the value of respondent time of \$2,832. Similarly, the burden for the government has been reduced from .5 hours per report to .25 hours per report resulting in an annual Federal savings of \$8,229.

A16. 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.

A17. 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 displays the expiration date for OMB approval on the form and instructions.

A18. 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. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.