

**SUPPORTING STATEMENT**  
**FOREIGN LABOR CERTIFICATION QUARTERLY ACTIVITY REPORT**  
**OMB Control No. 1205-0457**

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This Information Collection Request (ICR) seeks approval under the Paperwork Reduction Act of 1995 (PRA) for the extension, without change, of Office of Management and Budget (OMB) Control Number 1205-0457, *Foreign Labor Certification Activity Report*. This information collection for the Department of Labor's (Department) employment-based temporary labor certification programs includes Form ETA-9127, *Foreign Labor Certification Activity Report*, and accompanying instructions, *Foreign Labor Certification Activity Report, Instructions for Completing the Form ETA-9127*. As explained further below, the Form ETA-9127 is a quarterly collection of information from State Workforce Agencies (SWAs) to monitor the performance of foreign labor certification activities by the SWAs, as required under grant agreements, including compliance with statutory and regulatory timeframes. The Form ETA-9127 is critical to the Department's administration of the H-2A and H-2B temporary foreign labor certification programs.

**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.*

This Information Collection Request (ICR) is necessary to carry out the Department's functions under the Immigration and Nationality Act (INA), sections 101, 214(c), and 218 [8 U.S.C. 1101(a)(15)(h)(ii), 1184(c), and 1188]. This ICR is authorized by Wagner-Peyser Act, Section 9 (29 U.S.C. 49i). The Department, under the foreign labor certification programs administered by the Employment and Training Administration (ETA), provides funds for SWAs through annually reimbursable grants. These grants fund certain activities that support the processing of applications for temporary labor certification filed by U.S. employers seeking 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 H-2B or H-2A 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*, to ensure accountability and for future program management. The information 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 data for program management, including budget and workload management.

The form and instructions are available on the Office of Foreign Labor Certification's (OFLC) website at [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant\\_Form-ETA-9127-1205-0457-exp-09.30.2022.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant_Form-ETA-9127-1205-0457-exp-09.30.2022.pdf) and [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant\\_Form-ETA-9127-Instructions-1205-0457-exp-09.30.2022.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant_Form-ETA-9127-Instructions-1205-0457-exp-09.30.2022.pdf), respectively.

**Statutory Authority:** 8 U.S.C. §§ 1101(a)(15)(h)(ii), 1184(c), and 1188; 29 U.S.C. §§ 49f(a) and (d), 49i.

**Regulatory Authority:** 20 CFR part 653, subpart F; 20 CFR part 654, subpart E; 20 CFR part 655, subparts A and B.

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.*

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 uses the data collected to: (1) monitor the number of H-2B non-agricultural or H-2A agricultural job orders that are received, reviewed, and cleared; and (2) track the number of H-2A 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 SWA performances against the annual plans and grant agreements the SWAs submit. Without such information, OFLC budget estimates would not reflect the true workload for each SWA.

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.*

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. A fillable version of Form ETA-9127 is available on the OFLC website at [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant\\_Form-ETA-9127-1205-0457-exp-09.30.2022.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/508-Compliant_Form-ETA-9127-1205-0457-exp-09.30.2022.pdf). This form may be submitted electronically to OFLC through a designated email box: [FLC.Grants@dol.gov](mailto:FLC.Grants@dol.gov).

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.*

This is the only quarterly collection of this information from SWAs that allows OFLC to monitor SWA workloads related to foreign labor certification activities. The SWAs submit to OFLC fiscal year annual plans that provide a narrative plan for use of grant funding and project workloads for the following year, but only the Form ETA-9127 allows monitoring of actual SWA performance of foreign labor certification activities throughout the year, including any issues impacting those activities that the SWAs choose to report as comments on the form.

*A.5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

Only SWAs complete this information collection. Small businesses are not impacted by this information collection.

*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 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 agreement of SWAs to accept certain obligations under 20 CFR part 655, subparts A (H-2B) and B (H-2A). As mentioned in item A.2, 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.

*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.*

There are no special circumstances that would require the information to be collected or kept in a manner that requires further explanation pursuant to the regulations set forth at 5 CFR 1320.5(d) (2).

*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 PRA, the Department published this ICR in the *Federal Register* on December 16, 2021, at 86 FR 71524, for a 60-day public comment period. The Department received one substantive comment from a state employment agency. The commenter stated that the collection of information on the ETA-9127 related to H-2B special procedures may be unnecessary, as the commenter “has never utilized that column . . .” The commenter also stated the Form ETA-9127 “may in places be duplicative of entries and data already recorded and found within the FLAG system,” though the commenter did not specify which form field(s) may constitute a duplicative collection(s) and the commenter noted it considers the form “easy to use, efficient, and [not] exceptionally burdensome” and believes the “required data elements [are] appropriate and important in the overall management of the Foreign Labor Certification program.”

The Department is retaining the H-2B special procedures column in the Form ETA-9127. The Department’s 2015 H-2B Interim Final Rule, at 80 FR 24042 (April 29, 2015), removes the regulatory provision authorizing the Department to create new special procedures. However, the Department continues to accept H-2B applications under existing special procedures for occupations like professional/outdoor entertainers. After further review of the Form ETA-9127, the Department has not identified any duplicative information collection and, therefore, seeks an extension of this information collection instrument without change.

*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 collection does not involve sensitive matters.

A.12. 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. The average hourly wage for Compensation, Benefits, and Job Analysis Specialists, who the Department believes are likely to perform these functions, is \$35.49.<sup>1</sup> Including benefits averaging 29.5 percent of total employee compensation, the estimated average hourly compensation for a Compensation, Benefits, and Job Analysis Specialist is \$45.60 (\$35.49 x 1.295).<sup>2</sup>

There are 54 SWA respondents, including the 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.<sup>3</sup> The reporting burden for the collection of information by each SWA is estimated to average 1 hour and 45 minutes per quarter to prepare the 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 (in hours)	Total Annual Burden (in hours)	Avg. Hourly Compensation	Total Annual Respondent Cost
Form ETA-9127	54	4	216	1.75	378	\$45.60	\$17,236.80

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).

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

1 Occupational Employment and Wages, May 2021: 11-3121, Compensation, Benefits, and Job Analysis Specialists, U.S. Department of Labor, Bureau of Labor Statistics, available at [www.bls.gov/oes/current/oes131141.htm](http://www.bls.gov/oes/current/oes131141.htm).

2 Employer Costs for Employee Compensation – December 2021, DOL, BLS, <https://www.bls.gov/news.release/archives/ecec03182002.pdf>.

3 These 54 respondents receive funding under the Wagner-Peyser Act. The Commonwealth of the Northern Mariana Islands is not covered by the Act.

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.

*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.*

There are no federal costs associated with this ICR. This ICR does not require form development. There are no IT costs associated with this ICR because this form is not connected with an IT system. There are no mailing or printing costs associated with this ICR because the SWAs submit the electronically fillable forms to OFLC's grants email, [FLC.Grants@dol.gov](mailto:FLC.Grants@dol.gov).

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

The Department has proposed no substantive changes to the information collection.

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

*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. Collections of Information Employing Statistical Methods**

This information collection does not employ statistical methods.