

**Appendix A to Supporting Statement for Form ETA-9141,
Application for Prevailing Wage Determination
OMB Control No. 1205-0508**

OMB Control Number 1205-0508: Comment Responses

This is an appendix to the Office of Management and Budget's (OMB) Supporting Statement for the collection of information under the Form ETA-9141, *Application for Prevailing Wage Determination*, OMB Control Number 1205-0508, which includes the Form ETA-9141 application form, a newly created Appendix A, and general instructions. This appendix includes a summary of the public comments received in response to the 60-day notice the Department of Labor's (Department) Employment and Training Administration (ETA) published in the *Federal Register* on February 12, 2019, at 84 FR 3494, which is referred to in Question 8 of the Supporting Statement. The Department received comment submissions from seven commenters.

One of the comments received was a general objection to immigration and the Department's foreign labor certification program. The comment contained abusive language and, also, is beyond of the scope of the form revision process. The other six comments have been considered, summarized, and addressed in this document.

The Department's Proposed Changes to the Form ETA-9141 and General Instructions

A. Section B – Employer Point-of-Contact Information

The Department's proposed revisions modified the Section B of the Form ETA-9141 by replacing the word "Requestor" with "Employer" in the section title so the proposed title reads "B. Employer Point-of-Contact Information." The reason for the change is to collect information of an employee authorized to act on behalf of the employer in labor certification and labor condition application matters, and to distinguish the employer's point of contact from the employer's attorney or agent. This information collection in Section B is different from the attorney or agent information listed in Section D, except when an attorney listed in Section D is in-house counsel or an employee of the employer.

During the 60-day public comment period, one commenter noted that prevailing wage determinations (PWDs) issued by the National Prevailing Wage Center (NPWC) "are sought not only in labor certification matters, but also in other matters, for example when preparing an H-1B petition," and recommended the Department broaden the language of the "Important Note" in Section B to encompass "other impacted filings."

The Department agrees with the comment and has revised the "Important Note" to read: "The information contained in this section is for an employee authorized to act on behalf of the employer in labor certification or labor condition application matters."

B. Section D – Attorney or Agent Information (if applicable)

The Department proposed a new Section D, *Attorney or Agent Information*, which will collect the contact information of the attorney or agent acting on behalf of the employer for the filing of the prevailing wage application.

One commenter asserted that the proposed information collection “is not necessary for the proper performance of the functions of the agency” and is not relevant for prevailing wage determinations. The commenter further stated the Department currently collects this information on its labor certification applications, *e.g.*, the Form ETA-9142B, and the proposed collection on the Form ETA-9141 does not appear to have immediate and practical value outweighing the collection.

The Department disagrees with the commenter’s assertions. This section was added to differentiate a filing made by an employer or the employer’s authorized agent or attorney. The Department has an interest in identifying the filer requesting the prevailing wage determination and proposes to collect information in Section D where an attorney or agent files the application on behalf of an employer.

Further, the Department’s collection of information about the employer’s authorized attorney or agent is consistent with the collection of information across labor certification programs, as the commenter acknowledged. The collection of this information on the Department’s applications is important for the integrity of the Department’s programs. In response to the comment, the Department has clarified the instructions for Section D Item 1, which previously stated the following: “Identify whether the employer is represented by an attorney or agent in the process of filing this application. If an employer is not represented by either an attorney or agent, check ‘None’. Mark only one box.” The instructions now state “Identify whether an attorney or agent is filing this application on behalf of the employer. If this application is not filed by either an attorney or agent for the employer, check ‘None.’ Mark only one box.”

C. Section E – Wage Source Information

The Department’s proposed revisions to the Form ETA-9141 replaced the current Section D, *Wage Processing Information*, to with Section E, *Wage Source Information*. The proposed Section E requires employers to indicate prevailing wage source information for the job opportunity, including the applicability of: the American Competitiveness and Workforce Improvement Act (ACWIA) wage determination; professional sports league rules or regulations; a Collective Bargaining Agreement (CBA); a Davis-Bacon Act (DBA) wage determination; a McNamara-O’Hara Service Contract (SCA) wage determination; or an employer-provided survey. Items E.1, E.2, and E.3 collect information on ACWIA, professional sports league rules and regulations, and CBA wage sources, respectively. Under a separate header for non-Occupational Employment Statistics (OES) requests, Item E.4 collects information on DBA, SCA, and employer-provided survey wage sources.

The Department received two comments on this section of the proposed revisions. The first commenter expressed concern that Section E may be unclear because Items E.2 and E.3 collect

information on two non-OES wage sources, professional sports league rules and regulations and CBA, but these two sources were not included in Item E.4 under the header that addresses non-OES wage determination requests, specifically. The commenter recommended the Department merge the professional sports league rules and regulations and CBA options into Item E.4 so that they are included beneath the header that addresses non-OES wage determinations. Alternatively, the commenter recommended the Department add language to the header that clarifies Item E.4 applies only to non-OES requests that are not covered by a CBA or professional sports league rules and regulations.

The Department understands the commenter's concern, but declines to make the suggested change. The instructions to Item E.4 explain that this item requests information on a wage source "other than those deriving from a CBA or a professional sports league's rules or regulations..." The Department believes this language provides sufficiently clear instruction to employers regarding completion of Item E.4.

The second commenter supported proposed Item E.1.a, stating that it is helpful to list ACWIA eligibility classification. The commenter also supported proposed Item E.1.b, noting that it is "helpful for employers to be able to specify clearly on the Form ETA-9141 if there has been a change in ACWIA eligibility since last receiving a PWD." However, the commenter expressed concern that the NPWC "in many instances...fails to find ACWIA-eligible employers eligible...despite clear eligibility." The commenter encouraged the Department "to provide a clear point of contact within the [NPWC] with ACWIA expertise in order to assist in instances where employers are ACWIA-eligible." The commenter stated that this ACWIA expert would "increase efficiencies by reducing the number of submissions [the] NPWC receives with employers marking 'yes' to question E.1.b and having to explain ACWIA eligibility for every Form ETA-9141 submission." The commenter encouraged the Department to "add a specific and defined step within the prevailing wage redetermination process for eligible ACWIA employers to challenge" the NPWC's ACWIA eligibility determinations and suggested these "redetermination requests should be processed expeditiously and should be handled by an ACWIA expert within the NPWC." The commenter additionally recommended that the Department provide employers an opportunity to have the question of ACWIA eligibility addressed quickly in the redetermination process, when it is the only question at issue," which the commenter stated would "ensure that PWDs are accurate and may be timely obtained by all employers, including those that qualify for ACWIA classification."

The Department appreciates the second commenter's support for proposed Items E.1.a and E.1.b. The Department declines to address the commenter's recommendations to make available NPWC personnel with specialized ACWIA expertise to assist the stakeholder community in determinations of ACWIA-eligibility and to add a step to the redetermination process to address ACWIA-related issues. The recommendations are beyond of the scope of the form revision process.

D. Section F – Job offer Information

Under the Department's proposed revisions to the Form ETA-9141, Section E, *Job Offer Information* on the current form, will become Section F, *Job Offer Information*. This section

collects necessary information about the terms, conditions, and requirements of the job offer, such as job duties (Item F.a.2), including supervisory duties (Item F.a.3); minimum job requirements (Item F.b.1-5), including education (Item F.b.1-2), training (Item F.b.3), experience (Item F.b.4), and special skills or other requirements (Item F.b.5); alternative job requirements (Item F.c.1-4); and other information, including travel (F.d.4). As discussed below in further detail, in response to the public comments received, the Department has removed Item F.d.5. asking whether relocation is required to perform the job duties. The Department received several comments from six commenters on proposed Section F.

1. General Comments

Several commenters expressed concern about a lack of adequate space to respond to certain items in Section F. Two commenters expressed concern about the space provided to respond to Item F.a.2, noting that the proposed form requires employers answer this item in the free text field provided and does not permit employers to complete the answer in separate attachments. The commenters requested the Department maintain the 4,000-character limit on responses in the free text field for the electronic form.

The Department understands the commenters' concern with the size of the box for the response for Item F.a.2 Job Duties and has amended the instruction on the proposed form to allow employers to begin completion of the response for Job Duties in the space provided on the form, but to allow for employers to complete the response in a single addendum to the paper form. For stakeholders who file the form by mail, the Department will accept one addendum to the form to allow filers to also fully complete the response. For stakeholders who file the form electronically, the Department intends to maintain the 4,000-character limit for completion of Item F.a.2, which currently includes and will continue to include a system-generated addendum to the form for completion of the response.

A third commenter requested the Department provide additional space to allow filers more space to respond to several items in Section F. The commenter stated that sufficient space will be especially important in Item F.a.3.a. that collects information about the occupation(s) of the employees to be supervised by the worker in the position subject to the PWD filing. The commenter expressed concern that the Department removed the item on the current Form ETA-9141 that asks for the "number of employees the worker will supervise", which the commenter believes is needed, and that the proposed F.a.3.a only provides a very small field in which to provide the "occupation(s) of the employees to be supervised."

With its original proposal, the Department modified the collection for worker supervision to collect the items the Department believes are necessary for assessment of the position and the corresponding prevailing wage. The Department modified the collection to ask in instances in which supervision occurs, the occupation(s) of the employees to be supervised. The occupations are to be entered on the form by Standard Occupational Classification (SOC) code and SOC title. The Department may consider whether additional information is needed regarding supervision in light of its experience with this proposed form, however, the Department does not believe that additional questions regarding supervision are necessary at this time.

The third commenter also expressed concern that the Department has not provided adequate space to complete items F.b.1, minimum job requirements; F.b.3, required training; and F.b.4, required employment experience. The commenter recommended the Department increase the space for responses to these items so that employers can respond fully and accurately. Finally, a fourth commenter expressed concern that the Department provided insufficient space on the form to specify requirements in Items F.b.5.a.(i)-(iv) and recommended the Department allow an addendum to answer each item.

As a result of the comments, the Department has expanded the space provided on the form for completion of these items F.b.1, F.b.3., F.b.4, and F.b.5. a. (i)-(iv). The Department believes that the form space modifications will assist employers in providing the information necessary to respond to the form items.

2. Section F.a, *Job Description*

One commenter expressed concern regarding the instructions to Item F.a.3.a, which asks employers to indicate the occupation(s) of the employee to be supervised by providing both the SOC code and SOC title. The commenter stated that the instructions do not clearly indicate who is responsible for determining the appropriate SOC code for supervised employees and that it would be difficult for employers to determine the appropriate SOC code because many jobs can be classified in any one of several SOC codes. The commenter recommended the Department revise the instructions to request a “suggested” SOC code or to permit employers to provide the employer’s designated job title and occupation name only. The commenter stated that the Department could accomplish this clarification by changing the language “i.e., SOC code and title” to “e.g., SOC code and title.”

The Department appreciates the comment, but declines to change the proposed collection to collect the employer’s own job title in lieu of the SOC code and SOC title. The Department has determined that the SOC code(s) of the supervised employee(s) is needed to assess the appropriate prevailing wage for the job opportunity in question. The original proposal requested the SOC code and title, meaning the SOC code and SOC title. The Department has clarified the form instructions to explicitly state that the title requested is the SOC title. The Department will use SOC information to determine, for example, if the occupation of supervised workers is related to or within the same occupational family as the PWD application’s job opportunity. For example, the prevailing wage for a physician job opportunity that requires supervision of a nurse will be a different assessment than the prevailing wage for a physician job opportunity that requires supervision of an attorney. The Department understands the commenter’s concern selecting an appropriate SOC code for supervised workers in some cases. However, where the employer believes the supervised workers could be classified appropriately in more than one SOC code that are similar and related, the Department requires only that the employer make a good faith effort to provide the approximate SOC code that it believes is most appropriate. In response to the comments, the Department has also modified the form instructions to indicate that the filer should approximate the SOC code and SOC title.

Another commenter recommended the Department revise Item F.a.3.a. to expressly request the supervised employees’ SOC code and title to reflect the proposed form instructions. This

commenter also noted that, currently, the Department often sends Requests for Information (RFIs) that request supervised employees' job duties, but the proposed Item F.a.3 only asks for SOC code and title. The commenter requested the Department confirm whether providing SOC codes will "obviate RFIs for subordinates' job duties." Similarly, another commenter expressed concern that Item F.a.3.a does not permit the employer to include information that describes the type of supervision involved, which the commenter believed was necessary to provide context. The commenter stated that it would be necessary, for example, for employers to provide information explaining whether the job opportunity requires supervision of "interns or more junior team members, over whom the [supervisor] may have very little personal authority," or instead requires supervision that entails "personnel authority, such as hiring, firing, coordinating employee activities, authorizing leaves, and making salary recommendations."

As provided above, in response to the comments received, the Department modified the wording on the form for Item F.a.3.a. to clarify that the filer must enter the relevant SOC code(s) and "SOC" title(s). In many cases, the collection of the SOC code(s) and SOC title(s) of workers to be supervised will be sufficient to indicate the nature of the supervisory duties required for the job opportunity. The Department believes that the collection of this item will lessen the need for some RFIs. In cases where this information is not sufficient, however, the Department will continue to send RFIs to collect additional information necessary to determine the nature of the supervisory duties required for the employer's job opportunity. The Department's NPWC has significant experience in conducting the assessment of supervision and believes the collection by SOC code and SOC title will add to the efficiency of the PWD process.

3. Sections F.b, *Minimum Job Requirements*

One commenter noted that the proposed Item F.b.5.a (iii) includes Residency/Fellowship as a "special skill" option and recommended the Department update the Frequently Asked Question (FAQ) that currently instructs employers to indicate residency/fellowships under the training section of the form. The Department appreciates the comment and will review the relevant FAQ and consider changes as appropriate, including any revision to FAQ guidance as a result of the Department's form proposal to ensure consistency with proposed form changes.

4. Section F.c, *Alternative Job Requirements*

One commenter expressed concern that the proposed form only permits an employer to include special skills or other requirements in the minimum requirements section (F.b), but not in the proposed alternative requirements section (F.c), and that the instructions suggest that the Department will assume the special skills listed in Item F.b.5 in the minimum requirements section also apply to the alternative requirements listed in section F.c. The commenter explained that an employer may require special skills as part of a set of alternative requirements, but may not require the special skills in a set of minimum requirements, or vice versa. As an example, the commenter stated an employer may require a license or other special skills in addition to a Bachelor's degree as a minimum requirement, but may be willing to employ a worker that does not possess the license or the special skill if the worker has a Master's degree. The commenter recommended the Department add a field similar to F.b.5 to section F.c so that an employer may list special skills it requires only as part of an alternative set of requirements.

The Department agrees with the commenter that proposed Section F.c, *Alternative Job Requirements*, should include a space that allows employers to list special skills or other requirements that apply to the employer's alternative job requirements. Therefore, the Department will add a collection item in Section F.c that mirrors Item F.b.5, requesting special skills and other requirements as a part of the alternative job requirements collection.

One commenter also expressed concern that the proposed Section F.c does not request information about experience in the job offered or experience in an alternate occupation. The commenter recommended the Department include "questions that capture both experience in the job offered and experience in an alternate occupation to mirror the Form ETA-9089."

The Department appreciates the comment, but declines to make the requested modification to the proposed form. The Department believes that it does not currently need information about experience in an alternate occupation for the purpose of assessing alternative job requirements for a PWD.

In addition to the comments above, the Department received two similar comments on the proposed collection of alternative requirements in Section F that focused on the purpose of collecting alternative requirements in determining prevailing wages and the Department's prior practices related to the use of alternative requirements in the PWD context. As noted under the header of proposed Section F.c, the NPWC will use the alternative requirements information for the purposes of determining a prevailing wage and will not assess whether the alternative requirements are substantially equivalent to the minimum requirements listed in section F.b.

One commenter noted that Section F.c and the General Instructions to this section are consistent with the Department's long standing practice not to evaluate the substantial equivalency of employer's alternative job requirements to the employer's minimum job requirements. However, the commenter stated that the Department's longstanding policy guidance also indicates it will not consider alternative requirements in PWDs, but the proposed form and instructions are silent on this issue. The commenter recommended the Department clarify, in the form or instructions, whether it now will consider alternative requirements when determining the prevailing wage. A second commenter expressed concern that the Department is changing prevailing wage policy to include consideration of listed alternative requirements, and to require employers pay the highest wage where the alternative requirements and minimum requirements produce a different prevailing wage determination. The commenter asserted that the "prevailing wage should be based on the employer's primary requirement and not what the employer would accept as an accommodation for individuals who may meet [sic] the minimum requirement." The commenter explained that in some cases the alternative requirements will produce a prevailing wage 40 percent higher than the prevailing wage based on the minimum requirements and asserted as well that the Department failed to account for this additional financial burden on U.S. employers. The commenter added that the Department did not clarify important issues, including whether it will issue "PWDs in the future to the Wage and Hour Division as part of labor condition application investigations based upon the current system, or whether it will be using the new system...." The commenter stated that the Department's issuance of a prevailing wage that is the highest of the wages for the minimum job requirements and the alternative

minimum job requirements was a change in practice, requiring notice and comment rulemaking in accordance with the Administrative Procedure Act requirements.

Proposed Section F.c provides a more effective format to collect information the Department currently receives in a less efficient way. Currently, when employers will accept U.S. workers that possess alternative requirements, they normally list such requirements in the free text field in the “Special Requirements” (Item E.b.5) or the “Job Duties” (Item E.a.5) of the current Form ETA-9141. In its original proposal, the Department created a new section for alternative job requirements to provide employers a standardized field to capture the alternative job requirements, in lieu of the current free-text field. Section F.c is not required and will be used only by those employers who have alternative job requirements.

These two commenters expressed concern regarding the use of alternative requirements to provide a PWD. The Board of Alien Labor Certification Appeals (BALCA) has expressed concerns about the Department’s prior practice of issuing a PWD only for the employer’s primary requirements, not for the employer’s alternative requirements. BALCA decisions¹ address how employers use the current practice to obtain multiple Forms ETA-9141 for the same job opportunity. The employer presents its various sets of requirements in different ways on each Form ETA-9141 and chooses the Form ETA-9141 with the lowest prevailing wage to support the later-filed Form ETA-9089. For example, in a case before BALCA, *Take Solutions, Inc.*, 2010-PER-00907 (Apr. 28, 2011), the employer obtained two separate PWDs for the same job opportunity: (1) a prevailing wage of \$46.16/hr based on its minimum job requirements of a Bachelor’s degree with five years of experience; and (2) a prevailing wage of \$34.67/hr based on its alternative job requirements of a Master’s degree with one year of experience. The Employer’s Form ETA-9089 listed the minimum job requirements of a Bachelor’s degree with five years of experience and submitted the Form ETA-9089 using the prevailing wage of the alternative job requirements. In its decision, BALCA affirmed the Certifying Officer’s denial of certification, in accordance with the current PERM processing procedures. BALCA reasoned that “[b]ecause an employer can easily manipulate whether job requirements are ‘primary’ [minimum] or ‘alternative,’ it would be arbitrary to simply find that the PWD listed on the employer’s application must correspond to the employer’s ‘primary’ job requirements. The proper PWD in such a situation is not the PWD that matches the ‘primary’ or ‘alternative’ job requirements; rather, the proper PWD is the higher of the two PWDs.” BALCA opined that the current PERM procedures of requiring the highest PWD serve to protect the wages of U.S. workers against the adverse effect of hiring foreign workers.

However, in response to public comments, the Department has modified its proposal. Under the original proposed form, the Department would issue only the highest prevailing wage based on the minimum requirements or the alternative requirements. Instead, the Department with this proposal will issue two prevailing wages: one prevailing wage based on the minimum job requirements and one prevailing wage based on the alternative job requirements. Currently, where an employer seeks prevailing wages based on both minimum job requirements and alternative job requirements, the employer completes two separate Form ETA-9141 applications and receives two separate PWDs. The Department proposes to still collect both the minimum

¹ See *Sana Health Inc.*, 2015-PER-00448 (June 6, 2017); *IBN Construction, Corp.*, 2013-PER-02295 (Mar. 30, 2018); and *Timothy Belcher Farms*, 2012-PER-01164 (Mar. 30, 2018).

job requirements and the alternative minimum job requirements from employers who seek prevailing wages based on both sets of requirements. Under the modified proposal, the employer will still receive the both PWDs; the only difference from current practice is that the Department will issue both prevailing wages on a single PWD. Under current Department practice, as affirmed by BALCA, the employer is already required to use the higher of the prevailing wage determination based on its minimum requirements or its alternative requirements for the subsequent program application filing. This form change does not change this policy; the employer will use the higher of the two wages as the determined prevailing wage when completing the PERM application filing. The Department believes that allowing both sets of requirements on a single form and, in turn, issuing two prevailing wages on a single PWD is a more efficient process that will assist employers with their PWD filings by reducing the burden of filing two Form ETA-9141 applications for the same information. Further, by displaying both prevailing wages for both sets of requirements, the Department believes the proposed modification assists employers in their determination of the proper prevailing wage for use with the job requirements, in accord with current Department policy, including BALCA case law.

The continued collection of the alternative job requirements along with the minimum job requirements and the issuance of a prevailing wage for each will also afford transparency to the Department's prevailing wage process and provide employers with pertinent information for the subsequent labor certification filing. Employers are required to request and receive PWDs for PERM recruitment and application filing. The issuance of prevailing wages for both sets of requirements on a single PWD, reflective of both minimum job requirements and alternative job requirements, will assist the Department in its evaluation of PERM application filings for the appropriate prevailing wage as compared to the job duties provided on the Form ETA-9089.

5. Section F.d, *Other Information*

One commenter expressed support for the Department's proposed Item F.d.1 that permits employers to enter up to eight digits for SOC codes, but the commenter recommended the Department provide these items in drop-down menus "to ensure the most accuracy for employers when completing the form."

The Department believes the allowance of SOC codes up to and including eight digits will allow employers to enter as much information as available, with specificity, for the job opportunity. Where an eight digit SOC code is requested, and appropriate, the Department will issue an eight digit SOC code with the PWD. In terms of the commenters' request for the electronic form technology to provide drop-down menus, the Department will consider the commenter's suggestion in design of the electronic filing system for the proposed form.

The same commenter also expressed concern regarding items F.d.3 and F.d.4, stating that, as drafted, "it is unclear how employers should complete" the items "if both domestic and international travel is required." The commenter recommended the Department merge items F.d.3 and F.d.4. The commenter also stated that the Department should not increase the employer's wage level by two if the employer requires "both domestic and international travel."

For clarity and to avoid any unintended duplication, the Department has removed Item F.d.4 from the proposed form, which asks if international travel will be required in order to perform the job duties, because item F.d.3.a requires the employer to indicate the geographic location(s) for travel.

Another commenter also expressed concern about proposed Item F.d.4, which required the employer to indicate whether the job opportunity requires international travel. Specifically, the commenter stated that whether travel is international, as opposed to domestic or regional, is not relevant to a PWD. The commenter asserted that only the frequency and extent of travel was necessary to a determination and, in support of its contention, the commenter noted an FAQ the Department published on February 6, 2013, which stated that “extensive travel outside the local area is not normal to most occupations and a point is almost always added in such circumstances.” The commenter, therefore, requested the Department remove Item F.d.4.

The Department appreciates the comment, but reiterates that the information collection is not new, as the current Form ETA-9141 requires the employer to “provide the details of the travel required, such as the area(s)...” Instead, proposed Item F.d.4 more clearly specified that the employer must indicate if the job opportunity requires travel to areas outside of the United States. The Department disagrees with the commenter’s assertion that the geographic scope of required travel for the job opportunity is not material to the issuance of a PWD for the job opportunity. The FAQ the commenter cited correctly notes that in most occupations travel outside the local area is not a normal requirement. However, some occupations may commonly require travel outside of the local area, but may not require international travel. For example, it may be common in some occupations to travel outside the local area to client sites, or to travel regionally or nationally for certain purposes like product sales, but these occupations may not commonly require international travel. While factors like the frequency of travel will be relevant to a wage determination more often than will the geographic scope of required travel, the geographic scope nonetheless will be relevant in some cases and the Department, therefore, must collect this information. However, the Department does agree with the commenter that Item F.d.4 is unneeded at this time. Item F.d.3.a requires the employer to provide the “geographic location” of the required travel, and, therefore, Item F.d.4 is removed from this most recent proposal.

The above commenter also expressed concern about the proposed collection of information regarding relocation in Item F.d.5. The commenter asserted that there is no regulatory basis for this information collection and that it is not clear why the Department proposed the collection. The commenter stated that if the information collection is necessary and will be retained, the Department should clarify, in the instructions or in the Form ETA-9141, what the term “relocation” means and if this would include situations in which the employer would require the prospective employee to relocate to the employer’s location, but the job opportunity would not require a worker to relocate to perform the duties of the position. The commenter also recommended the Department “provide further clarification as to what circumstances” constitute relocation for the purposes of responding to Item F.d.5. The commenter more specifically requested the Department clarify if relocation refers to the requirement that workers “relocate to commence working for the job opportunity” or only to situations in which “relocation is required

throughout the job opportunity.” The commenter also recommended the Department provide a free text field in which employers can provide further details about relocation requirements.

The Department has removed Item F.d.5, the relocation collection, from this proposed revision. In light of the comment, the Department will consider whether future guidance regarding relocation is needed for future collection.

6. Section F.e, *Place of Employment Information*, and Appendix A, *Request for Additional Worksites*

The Department received several comments on proposed Section F.e and some of these comments related to proposed Appendix A, as well. One commenter expressed support for the Department’s efforts to ensure that the places of employment are appropriately listed in order to ensure that an accurate prevailing wage can be assigned. However, the commenter expressed concerns that the revisions to the form may contravene existing regulatory requirements and definitions. The comment requested the Department clarify on the form itself, or at least in the accompanying instructions, that “place of employment” continues to have the same definition as provided in the Department’s regulations and that certain exceptions or changes to work being performed at the specific street address listed in this section of the Form ETA-9141 do not affect the validity of a PWD.

Three additional commenters expressed concern about Item F.e.7, specifically. The first commenter recommended the Department clarify whether an employer must answer “Yes” to this field if the employer has multiple worksites, but all worksites are within the same area of intended employment as the worksite listed in Item F.e.1. This commenter also asked the Department to clarify whether an employer that has worksites in multiple metropolitan divisions within large metropolitan statistical areas must include all metropolitan divisions in Appendix A or if the employer can identify only the metropolitan division in which the primary worksite is located. In addition, the commenter noted that some employers have “multiple ‘shop’ locations within an [Metropolitan Statistical Area or MSA]” and lists these locations on the current Form ETA-9141, but the proposed Appendix A does not permit employers to include information at “that level of specificity.” The commenter asked if the Department no longer expects employers to lists these locations. Finally, the commenter also noted that the Department has made similar, but slightly different changes to the collection of worksite information in the Form ETA-9142B Appendix A proposal and recommended the Department ensure the proposed changes to the Form ETA-9141 are consistent with the proposed changes to the Form ETA-9142B. Specifically, the commenter stated that the Form ETA-9141 Appendix A requests the county and state or MSA area, while the Form ETA-9142 Appendix A requests the county, state, and Bureau of Labor Statistics (BLS) area.

The Department appreciates the comments, but declines to make the suggested changes. The Department’s proposed changes are limited to form changes only. The proposed changes do not alter any of the Department’s regulatory provisions, including those for places of employment. Regarding proposed Item F.e.7, the Department collects information in this item to determine if there are multiple worksites and if those worksites would require different prevailing wage rates. The Department’s determination of the prevailing wage is based on the BLS area or county in

which the job is located. That is, different counties may have different wage rates. Therefore, if there are multiple worksites in different counties and employers are unsure which BLS area these counties are in, the employers should mark “Yes” and complete Appendix A. The primary purpose of the proposed Appendix A is to provide a standardized format for employers to list multiple worksites when the prevailing wage may differ across worksites. In the current Form ETA-9141, for paper applications, the Department provides employers a free text field to provide additional worksites when necessary. Proposed Appendix A better organizes the collection of information in a more usable and efficient format to codify into a standardized appendix information the Department currently receives from employers as paper-based attachments. For electronic filers, filers will be prompted to enter additional worksites by the system when they have indicated work will be performed at multiple worksites or a worksite other than the location indicated in Section F.e. In terms of Appendix A completion, if the employer knows that work will be performed in a specific BLS area other than the primary worksite area, they must mark “Yes” in response to Item F.e.7 and must complete Appendix A, using the BLS option.

In response to the first commenter, the proposed Appendix A does not impose any new regulatory requirements, but rather provides a new standardized format for collecting additional worksites, if applicable. The Department respectfully disagrees with the commenter’s assertion that the proposed form and appendix request more specific information regarding employers’ worksites and thus may constitute modification of regulatory provisions regarding “non-worksite” locations in the H-1B regulations. The proposed form and appendix do not request information on non-worksite locations and they expressly request information about worksite locations. Neither the form nor the appendix include a definition of the term “place of employment” and neither includes any language that alters the definition of that term. The Department’s proposed revisions are consistent with its longstanding approach that a “worksite” is any location where the worker performs one or more duties of the job opportunity, and the proposals do not alter or address language in the Department’s H-1B regulations regarding non-worksite locations.

To assist filers with the format and utility of the proposed Appendix A, the Department has reorganized Appendix A to achieve an appendix that provides greater efficiencies for employers with multiple worksite locations. The Department proposes to continue to collect from filers the county, state, or BLS area, without change. The burden to the filing community will not change or increase as a result of the Department’s proposed reorganization of the appendix. The Department will collect the same information, but has modified the proposed appendix to now, also, include sections of the appendix for government use only for the Department’s issuance of PWD details to the requestor. With the added sections, the Department will provide filers requesting prevailing wages for additional worksites with the associated SOC code, prevailing wage, and prevailing wage source for each of the additional worksite location. The Department will display those specified prevailing wage details for both the employer’s minimum job requirements and the employer’s alternative job requirements, as applicable. The Department believes the changes to Appendix A will provide employers who request prevailing wages for additional worksites with more information on the prevailing wages the Department issues for the additional worksite locations and will provide the information in a standardized format to assist employers with the completion of the subsequent program application filing for which the PWD is used.

The Department respectfully disagrees with the suggestion that the proposed Appendix A should be consistent with the Form ETA-9142B Appendix A to the extent possible. Information on places of employment is collected on the Form ETA-9142B Appendix A for different purposes than information collected in the Form ETA-9141. The Department has determined that the level of detail of information collected in proposed Appendix A is sufficient for the purpose of determining prevailing wages and the Department declines to require employers to provide more specific geographic information than is necessary for the sole purpose of ensuring consistency with another form that serves a different purpose.

In terms of the information needed for the Form ETA-9141 Item F.e., Address 2 field, the Department agrees that the newly added parenthetical form instruction for “*apartment/suite/floor and number*” is not needed. The Department has therefore removed that parenthetical text from the Address 2 field.

Another commenter expressed concern that the proposed Form ETA-9141 and *Appendix A* collections of worksite information are unclear for instances in which an employer seeks a PWD for a company’s headquarters. The commenter stated that the form needs to clearly specify that filers may enter headquarters locations and receive prevailing wages based on those locations. The commenter stated that the form poses challenges for the later visa petition, which it states has resulted in denials in the past two years by the U.S. Citizenship and Immigration Services (USCIS). To remedy the matter, the commenter proposed the use of either of two sets of modifications to the Department’s proposal.

The commenter first recommended the Department amend Item F.e.1 to request the “Worksite or headquarters address,” adding a new item which would ask if the employer’s prevailing wage is based on its headquarters location, and renumbering the proposed form to make Item F.e.7 conditionally required. Secondly, in the alternative, the commenter recommended the Department revise *Appendix A* to include an “Important Note” asking whether the employer is seeking a prevailing wage based on its headquarters location and stating that the employer must complete *Appendix A* if the employer is not requesting a wage based on the headquarters location.

The Department declines to make either change to this proposal, because based on the Department’s interpretation of the comment, the commenter requests a change in the Department’s policy due to recent USCIS denials. While the Department appreciates the comment, the proposed Form ETA-9141 and *Appendix A* require the worksite locations for the PWD. The proposed Item F.e.7 on Form ETA-9141 asks whether work will be performed in a BLS area or, where applicable, a county other than the BLS area or county indicated in Item F.e.1. In any case where the job opportunity will be performed at a location other than the location identified in Item F.e.1, the employer must answer “Yes” to Item F.e.7 and complete *Appendix A*. *Appendix A* requires the employer to “identify any additional worksite(s) for which the employer is requesting a prevailing wage.”

The Department issues a PWD for an occupation and area of intended employment to protect worker wages, including for any resulting recruitment of U.S. workers for the job opportunity.

Employers can request and receive multiple PWDs, as needed, for their worksite locations, which may include the headquarters' address.

E. Section G – Prevailing Wage Determination

One commenter noted that this proposed form revision conflicts with the Department's previous statement, in a June 21, 2012 PWD FAQ, that it will base prevailing wage determinations only on the employer's minimum requirements and will not consider the employer's alternative job requirements. The commenter recommended the Department ensure consistency between the FAQ guidance and the form instructions.

As discussed in D.4, *supra*, the Department currently issues multiple PWDs for the same job opportunity, based on an employer's request for minimum job requirements and alternative job requirements. Therefore, this is not a change of practice; instead, the Department will now issue two prevailing wages on the same PWD, one for the minimum job requirements and one for the alternative job requirements, as requested by the employer. In terms of the FAQ, the Department will review its FAQs in light of the form proposal.