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

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SUPPORTING STATEMENT

APPLICATION FOR PERMANENT ALIEN EMPLOYMENT CERTIFICATION

ETA Form 9089

A. Justification

A.1. Circumstances that make the collection of information necessary.

The information collection is required by sections 203(b)(3) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1153(b)(3) and 1182(a)(5)(A)). The Department of Labor (Department) and the Department of Homeland Security (DHS) have promulgated regulations to implement the INA. Specifically for this collection, Title 20 CFR Part 656 and Title 8 CFR § 204.5 are applicable. The INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the CFR or, in limited circumstances, apply for a waiver thereof with DHS. The CFR requires employers to document their recruitment efforts and substantiate the reasons no U.S. workers were hired. The Department recently amended its regulations to enhance program integrity and reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States. The final Rule was published in the Federal Register May 17, 2007 (72 FR 27904).

The Department collects the necessary information in order to make the certification on ETA Form 9089. The form can be found on-line at http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf.

The Department is requesting an extension of a current collection and a modified version of the ETA Form 9089 in order to better implement the requirements of the INA and the goals of the program. The modifications to the instructions to the form have been included because they are necessary for clarity and accuracy. However, until the modified form can become fully operational as a fillable and fileable electronic form, the Department will continue to use and accept the currently approved form under this control number.

A.2. How, by whom, and for what purpose the information is to be used.

By the Federal Government

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to import foreign labor. The form used to collect the information is used not only by the Department, but also other federal agencies in furtherance of meeting the requirements of the INA. The Department uses the information collected to provide labor certifications for permanent residency applications of aliens seeking to enter in the U.S. through employment. DHS utilizes the form for its National Interest Waiver of the Job Offer Requirement application process (NIW) and other employment based positions that have been determined by the Department as shortage occupations not requiring certification by the Department. Employers and individuals wishing to utilize one of the above mentioned programs submit a completed form either on-line or manually to the appropriate National Processing Center of the Department or to the DHS directly.

For those categories, which require labor certification, an employer submits the application to the Department. Once submitted, either electronically or manually, an analyst will make the final determination on whether the employer performed its recruitment as required under the regulations and whether any U.S. workers who applied were rejected for lawful job related reasons. If the form is submitted to DHS directly, DHS will utilize the form to analyze the alien's background and experience for the NIW or Schedule A occupations (known shortage occupations).

If the Certifying Officer denies certification, the regulations provide the employer the ability to apply for reconsideration or appeal. The information previously collected is made part of the record on reconsideration or appeal. If the employer appeals to the Board of Alien Labor Certification Appeals (BALCA), the request must be in writing, must clearly identify the case number from which review is sought, must set forth the particular grounds for the request, and must include all documents which accompanied the Final Determination issued by the Certifying Officer. The request for review, statements, briefs and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence which was collected to complete the ETA Form 9089.

By the Employer

The employer is required to submit evidence of its recruitment efforts to recruit U.S. workers. The Department has codified at 20 CFR § 656.17(d) and (f) the type of recruitment that should be performed to test the U.S. market. The regulations require employers to recruit for able, willing, qualified and available U.S. workers at prevailing wages and working conditions. Without such a test of the labor market the Secretary would not be in a position to issue the certification required under the law. Employers are required to test the labor market during the 180 days preceding the filing of the ETA Form 9089.

Employers are required to prepare a report of their recruitment activities. The regulations state that the employer must prepare a summary report signed by the employer describing the recruitment steps undertaken and the results achieved, including the number of U.S. workers who applied for the job opportunity, the number of hires, and, if applicable, the number of U.S. workers rejected, summarized by the lawful job-related reasons for such rejections. The Certifying Officer, after reviewing the employer's recruitment report, may request the U.S. workers' resumes sorted by the reasons they were rejected.

In any case where the Certifying Officer determines it to be appropriate, post-filing supervised recruitment may be ordered. This includes cases selected for audit and cases where serious questions arise about the adequacy of the employer's test of the labor market. At the completion of the supervised recruitment efforts, the employer is required to document that its efforts were unsuccessful, including documenting the lawful job-related reasons for not hiring any U.S. workers who applied for the position.

By the Public

The anti-fraud measures in the regulations allow any person to submit documentary evidence bearing on any allegation of misrepresentation or fraud committed by the employer. The information can include proof of discrepancies between what was filed with the Department or DHS and what was attested to on ETA Form 9089 such as the actual number of available U.S. workers, information on wages and working conditions, and information on the failure to meet terms and conditions with respect to the employment of alien workers and co-workers. The statutory requirement concerning submission of documentary evidence is reflected in 20 CFR § 656.10(e)(1) and (2). The Department uses this information to investigate the employer and, if necessary, debar the employer from the ability to apply for labor certification in the future.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, the form can be found on-line at http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf for manual typewritten submissions or can be filled in and submitted on-line at http://www.plc.doleta.gov.

The regulation provides employers the option to utilize an electronic filing system which permits employers to fill out their applications for permanent employment certification on a Department of Labor website and submit them electronically to the Department's Employment and Training Administration (ETA). Because the electronic filing system includes guidance to employers completing their applications on line, there are fewer

incomplete or inaccurate entries. The website includes detailed instructions, prompts, and checks to help employers fill out the Application for Permanent Employment Certification. In order to file electronically, the employer must become a "registered user" by creating an account having secure files within the ETA electronic filing system that can be accessed by password. Each time a registered user accesses the website to file an application, the information common to all its applications is entered automatically by the electronic filing system, thereby reducing the burden.

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information, which already exists in payroll and other records kept by most employers for other purposes. The Department contends that the recruitment requirements are those that any business would utilize to legitimately recruit workers. The only difference is that the employer must keep proof of such recruitment for a period of five years after submitting the form to the Department.

There are questions on the form that require the employer to perform some research in order to answer the questions, but the Department has eased the burden on the employer by making links to the appropriate websites easily accessible from the Department's website at http://www.foreignlaborcert.doleta.gov. For example, the employer must:

- categorize its business utilizing the NAICS code system
- obtain a formal determination of the prevailing wage in the area of employment
- understand and list the Metropolitan Statistical Area of the job opportunity
- understand and answer questions about "O*Net Job Zone (SVP level)

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

The Department would be in direct violation of law and regulations if this information

was not collected.

A.7. Special circumstances for conducting information collection.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act except the regulatory requirement that employers retain applications for permanent employment certifications and all supporting documentation for 5 years after submission. (20 CFR § 656.10.(f)) Employers must maintain supporting documentation because no time limit is placed on the authority of the Certifying Officer (CO) to revoke a labor certification, and because DHS may want to review the employer's supporting documentation in the course of processing the Form I-140 petition to which the ETA Form 9089 is attached. Either Department may want to review the information for the purpose of investigating possible violations of the Immigration and Nationality Act.

A.8. Summary of public comments.

The Department published a Federal Register Notice on August 24, 2007 (Vol. 72, Number 164, pg. 48689) soliciting comments from the public on the revised form. During the 60 day comment period the Department received comments on the proposed revision of Form (form) from seven different entities and agencies. Specifically, comments were provided by two individual members of the public; the United States Citizenship and Immigration Services (USCIS); one multinational employer; one immigration law firm; one specialty bar association of immigration attorneys; and one organization representing international employers. The comments received from the two individuals were related to immigration law policy generally and were, therefore, outside the scope of this effort and have not been summarized in this document.

Several of the comments pointed out spelling or grammatical errors or sought clarification of the instructions accompanying the form or the captions and instructions of specific sections on the form. Section H, Job Opportunity Information and Section J, Foreign Worker Information, received the most comments.

General Comments:

Three of the commenters praised improvements that the Department made to the Form, generally, by clarifying language in various field captions. Two commenters specifically mentioned the addition of the foreign worker's name to the Section A of the form as being useful. The other improvements that were noted include: directly addressing the suitable combination "Kellogg" language in Item H.g.25 (formerly H.17);

eliminating the ambiguous question of whether the job requirements exceed the O*Net job zone in Item H.h.27 (formerly H.22); no longer requiring the name and phone number of the foreign worker's supervisor in the job description in Section J; allowing a substitute signature for a new preparer or employer; addressing positions which are not situated at one geographic location; and providing fields to allow brief explanations of answers provided.

Two commenters suggested that the Department should develop a section on its web page or at the beginning of the form to list all of the information that is required to complete the form and include links to the sources of the information. It was suggested this would allow individuals completing the form to ensure they had assembled all of the required information prior to starting the process. While such innovations are recognized as being helpful and the Department does endeavor to make the completion of the form as user-friendly as possible, it is believed that the Department's website does provide employers with such information to aid in the completion of the form.

One commenter suggested the addition of two useful "pop-up warnings"—one that would provide a warning if the employer entered a substantial wage amount as the prevailing wage, but then marked the "hourly" rate box and a second warning that would indicate that the offered wage entered by the employer was lower than the prevailing wage indicated on the Form and could result in a denial. The Department does recognize the usefulness of providing "pop-up warnings" as evidenced by our having provided the "pop-up warnings" now in use. In fact, one requested by the commenter currently exists. It reads, "Warning. This application may not be approved for the following reason(s): Section G-1, Offered wage from is less than the prevailing wage." However, while such innovations are recognized as being helpful and the Department does endeavor to make the completion of electronic forms as user-friendly as possible, it is not possible to create a pop-up warning for every imaginable error and it is believed that the employer is ultimately responsible for the accuracy and completeness of its applications.

The USCIS suggested that all certifications be printed either one-sided or double-sided-reverse-print for ease of reading when utilizing two-hole punch top-bracketed files. This is a technical issue which is beyond the scope of form information collection and would, in any event, have to be resolved with the Department's programming department and printer vendors.

Another commenter requested clarification regarding the meaning of "Case Status" in the document footer of the Form and expressed hope that this section would not be completed until a case is certified. "Case Status" will be a system generated entry and will reflect the case status at the time the application is accessed; e.g., in progress, certified, denied, certified-expired, withdrawn, revoked, invalidated, etc. The footer and all its contents are intended for the Department's use only and "For Department of

Labor Use Only" has been added to the footer for clarity.

One commenter stated that it is difficult to see how the Department's burden estimate is, or ever can be, accurate with a form of such substantial length and further stated that it hoped that the final version of the Form could be reduced to fewer than 20 pages. The Paperwork Reduction Act allows the public to comment on the analysis used by the Department in coming up with the hourly burden. Commenters are encouraged to provide their own analyses to refute the Department's. The commenter should keep in mind that the length of the form and the time required to complete the questions therein does not, in and of itself, determine the hourly burden under the Paperwork Reduction Act. In fact, the hourly burden also includes the time required to gather the information needed to complete the questions on the form. Because the commenter's response is not specific and does not offer alternative analyses, it is difficult for the Department to respond.

Section by Section Comments:

Section B

One commenter suggested that the instructions for Section A (previously Section B) of the form concerning Schedule A or Sheepherder occupations advise the employer as to whether it should print out a blank form and complete it, or whether it can complete the form online through the PERM system, print the form, and mail it to USCIS. Additionally, USCIS requested that the instructions indicate that applications for Schedule A and sheepherder occupations must be mailed as part of the filing of a Form I-140 petition to USCIS. The Department agrees. The instructions will be redrafted to indicate that when an employer is filing for a Schedule A or sheepherder occupation, that the employer should complete an online fillable ETA Form 9089 and then print and submit the completed application to USCIS. In addition to changing the instructions, the business rules will be changed so that when an employer indicates the application is for a Schedule A or sheepherder by marking "yes" to question A.1., the computer system will prevent the user from continuing with the application and, instead, will direct the user to an online fillable ETA Form 9089 to be printed and submitted to USCIS.

Section C

One commenter stated that the addition of the C.2 field to permit a trade name or doing business as (DBA) entry will prove helpful and eliminate delays that have resulted from difficulty in verifying the existence of some companies. The Department recognizes the value of this entry, as well, and has added it to allow employers to provide the more specific information, as well as to facilitate the process of verifying the employer's classification as a bona fide business.

Two comments were received for the C.12 field (formerly C.9), which asks for the number of employees currently on the employer's payroll in the area of intended employment. In both cases, the commenters believed that it was burdensome for employers with multiple worksites to determine the number of employees in a specific area. Both commenters also suggested, as an alternative, that employers be required to provide the number of employees within the U.S. The Department, however, questions the difficulty of obtaining such information, as it believes human resource departments to have it readily available. Moreover, the information obtained from this field is of value in determining the existence of a bona fide job opportunity, as it is used by the Department to determine whether there are a disproportionate number of applications in comparison to the number of employees in the area of intended employment.

One commenter noted that the caption on field C.15 (formerly C.12) states that the North American Industry Classification System (NAICS) code "must be at least 4-digits" while the NAICS provides codes ranging from two to six digits and suggested the Department allow two digits. NAICS uses a six-digit hierarchical coding system to classify all economic activity into twenty industry sectors. The first two numbers in a NAICS code represent general categories of the business sector. However, the remainder of the numbers represents specific industry groups. NAICS code information is collected for statistical analysis purposes and the Department requires a minimum of four digits in order to accurately compile analytical data regarding business type. Simply providing two digits will not provide the Department with complete information.

Two commenters suggested that space for a brief explanation should be provided for both items C.16 (formerly C.13), (Is the employer a closely held corporation, partnership, or sole proprietorship in which the foreign worker has an ownership interest?) and C.17 (formerly C.14) (Is there a familial relationship between the foreign worker and the owners, stockholders, partners, corporate officer, and/or incorporators?). Specifically, USCIS asked for the explanation to be provided if the employer answer is "Yes" to either question. Neither commenter provided any specific reason as to why a brief explanation might be necessary or useful. The Department declines to adopt this suggestion. A brief written explanation will not satisfy the regulatory requirements necessary for resolving these questions. The regulation at 20 CFR 656.17(l) requires a number of supporting documents be submitted to demonstrate the job is available to all U.S. workers. Providing for brief explanations on the form may lead employers to assume that such documentation is unnecessary and does not need to be retained in the event of an audit as is currently required.

Section E

One commenter pointed out that the accompanying instructions for item E.16 (formerly E.10) should require that the "Firm" nine-digit FEIN should be entered rather than the "agent/attorney." Item E-16 on the Form itself is appropriately captioned "Firm FEIN."

The Department agrees and has made the change to the instructions.

One commenter also requested that the accompanying instructions related to item E.17 (formerly E.12) provide guidance on what information to provide when an attorney is licensed in multiple states and suggested the following language: "If licensed in more than one state, provide only one state bar number." The Department has clarified the form and accompanying instructions to indicate that an attorney will be expected to list the name of the state, the name of its highest court, and the state bar number for the state in which the attorney is in good standing. If an attorney is licensed in more than one state, the attorney should list the above required information for just one state. Where the attorney is a member of the Bar in a state which does not issue a bar number, then the attorney must enter "N/A."

Section F

One commenter suggested that the Note in Section F of the accompanying instructions to the form should be revised to read: "Before completing this section of the form, obtain a Prevailing Wage Determination (PWD) from the State Workforce Agency (SWA) responsible for the state in which the work will be performed *as indicated in Section H 'worksite information.'*" The Department has clarified and expanded the worksite information section. The instructions are merely informational in nature and are meant to help the filer complete the application. Applicants and their representatives should always consult the regulations for the best guidance on how and where to obtain a prevailing wage determination.

Section H

One commenter recommended reordering two of the sub-sections in section H and putting the job description sub-section before the requirements sub-section. This commenter suggested moving "Worksite Information" to H.a and "Job Description" to H.b. The Department agrees with this suggestion and has implemented the necessary changes.

This commenter also proposed that question H.14, which requires "other specific skills, licenses/certificates/certifications, and other requirements" be placed after the Alternative Requirements section (H.d) and designated H.e, "Other specific skills, and licenses/certifications." The commenter believed the change would result in a more logical flow for the information being requested. The Department disagrees with relocating the section, as these are requirements for the job that are directly related to the job duties, however, the Department has reworded the question to "Other special requirements, specific skills, licenses, certificates, and certifications."

A bar association also provided detailed comments regarding the proposed new section, H.b, Additional Worksite Information (formerly labeled Worksite Information).

This commenter believed that the new section was unnecessarily complicated and did not provide sufficient guidance to employers regarding the requirements related to advertising, posting a notice, and obtaining a prevailing wage for employees who work out of their homes, do not work in one location for at least 50 percent of the time, or who have no specific worksite address. The commenter provided specific changes to question H.1 (formerly H.5, H.9, and H.9.a), meant to simplify the form and clarify the requirements in the situations noted above. In addition, the commenter recommended making the corresponding changes to the accompanying form instructions. This commenter also suggested that the company headquarters is the proper location for the posted notice, advertising, and prevailing wage in the following three scenarios: (1) when the employee works out of company headquarters at least 50 percent of the time; (2) when there is no specific worksite; or (3) when the employee works out of multiple worksites (which can include the employee's residence) but does not spend the majority of the time at any one worksite. In response to the commenter's concerns regarding complexity and insufficient guidance, changes designed to introduce simplicity have been made to the section and the instructions. With respect to the appropriateness of using company headquarters in certain instances, ETA will consider the suggestion and if necessary address this as well as other potential policy changes in FAQs or other notice to the public.

One commenter suggested that MD, representing Medical Doctor, should be added in questions H.15 (formerly H.11), H.20 (formerly H.14), and J.23 (formerly J.18), because it is a common degree requirement. A second commenter suggested that the word "Diploma" or "Degree" be added to ensure that completion of a degree program was required and not just "some" of the coursework leading to a degree. The Department agrees and has made the appropriate changes to the form and instructions, which now state that "other," which now reads "Other degree (JD, MD…)",should be marked and MD specified in the box below as the requirement. The field is also now labeled "minimum U.S. diploma/degree required."

One commenter provided comments on questions H.17 (formerly H.12) and H.20 (formerly H.15) in tandem, stating that employers should be able to count time spent in training toward required education or experience, in appropriate circumstances. The commenter then discussed training, certification programs, and academic degree programs offered at night or on a part-time basis by educational institutions and the commenter's understanding that the proposed form and instructions do not provide a way to recognize training a worker received in the same period during which he/she was working, e.g., working during the day and taking training courses at night. Another commenter believed this section was unclear and requested clarification. The Department is unsure why the commenter would conclude that someone receiving training or taking classes outside of normal work hours would not be able to document such training on the form to qualify for the job offer. The only question from the perspective of the labor certification program is whether or not the foreign worker completed the training before the employer filed the labor certification application. The

foreign worker must have completed any education, training, experience, or certifications prior to the employer filing the labor certification application.

Four of the commenters provided suggestions regarding questions H.18 (formerly H.13) and H.18b (formerly H.13.b). These commenters pointed out an inconsistency between the form and the accompanying instructions. Question H.18 on the form referred to employment experience while the accompanying instructions referred to employment experience "in the job offered." Two of the commenters recommended removing the reference to the job offered. A third commenter suggested that the question should ask whether experience in the job offered is required or acceptable. It was this commenter's belief that there is a logical inconsistency in this section of the form which leads to confusion because the Kellogg decision requires the employer to add special language if the foreign worker only qualifies for the job opportunity based on the employer's alternative requirements. Two of the commenters also recommended using the following language in H.18.b (formerly H.13.b): "If Yes in question 13, indicate the occupation(s) in which employment experience is required." The Department has removed the text, "in the job offered" from the form and further clarified the instructions.

Two commenters suggested that the language in the parenthetical phrase in H.e (formerly H.d), Alternative Requirements, be amended to read: "List any alternative requirements even if they duplicate portions of the primary requirements." Another commenter suggested the replacement of the parenthetical phrase with a question asking, "Do you have Alternative Requirements?" to be answered either "Yes" or "No" and followed by the instruction, "If yes, please complete the following section." One commenter sought clarification on questions H.15 (formerly H.14) through H.20.b (formerly H.16.b). This commenter believed there would be confusion because the instructions on the form indicate that the alternative requirements would be viewed as a "set." However, this commenter said that if an employer has alternative education requirements but always requires one year of experience in a particular occupation, it was not clear as to how the employer should answer this question in H.20 (formerly H.16), "Is alternative employment experience accepted?" Another commenter also found the wording confusing and suggested that the wording for primary requirements also be used for the alternative requirements. One commenter suggested that there should be more space for a response for H.15.a (formerly H.14.a). The Department acknowledges that the use of the word "alternative training" may have led to confusion. In the accompanying instructions, the Department clarifies that H.20 – H.20.j (formerly H.14–H.16) are to be considered an entire set and the employer should, therefore, list all requirements even if one or more of the requirements remains the same as those listed in the primary requirements section.

Another commenter proposed that there should be a text field in question H.20.c (formerly H.16.a) as well as the "Yes" or "No" choices. The text field would be used to refer reviewers to H.20.b (formerly H.16.b) for additional information. This commenter's example of how this field would work is as follows: "For example, an employer could

state in question H.20.c (formerly H.16.a) 'varied; see 16b below.'" This commenter also suggested that H.20.c be modified to state, "If YES in question 16, indicate the alternative requirements accepted" while a second commenter suggested the wording read, "If Yes in question 16, indicate the alternate occupation(s) in which employment experience is accepted." The Department disagrees with these comments because we need to understand the exact alternative requirements that an employer would accept in lieu of the primary requirements. We realize there can be several acceptable minimum requirements for a job, therefore, we allow the employer to submit three additional requirement sets. The Department does not believe that the requirements can be "varied." Without specific defined requirements the validity of the recruitment process is difficult if not impossible to establish.

The following revised language for question H.g.25 (formerly H.17) was suggested by one commenter:

> Is the foreign worker currently working for the employer? __Yes __No
> If yes, does the foreign worker qualify for the job opportunity only based on the employer's alternative requirements? ___Yes ___No
> If yes, please confirm the employer's willingness to accept any suitable combination of education, experience, or training by writing the applicable statement below: Write "I accept." Write "I do not accept."

This commenter also suggested that the Department remove the reference to "magic language" in the accompanying instructions for section H.g (formerly H.e) of the form. Another commenter asked for clarification regarding the term "suitable" as used in question H.g.25 (formerly H.17).

The USCIS provided the following overall comment on the suitable combination section: "The employer may state that it will accept any suitable combination of training, education and experience (a combination which is undefined). In light of the Kellogg requirements, OFLC seems to have to create a catch-all alternative to the specified alternative requirements if the alien is employed by the employer and gained his/her work experience there. It is suggested that this section of the form be modified to reflect that the employer only has to accept 'suitable combination' language when this scenario is present in the application. Therefore, the instructions and the form should further clarify that the N/A option applies to all cases where this scenario is *not* present."

The Department appreciates the suggestions and agrees that clarification is necessary to avoid confusion on the part of those for whom the Kellogg requirement does not apply. We have made the necessary changes to both the form and instructions. However, the Department does not believe that an information collection is the correct forum for setting policy and therefore, declines to respond to the request for clarification of the term "suitable combination" and refers the commenter to the Kellogg decision itself for clarification. (*In the Matters of Francis Kellogg, et. al.*, 1994-INA-465 and 544,

1995-INA-68 (Feb. 2, 1998) *en banc.)*

One commenter expressed concern that the USCIS takes a different point of view from the Department when evaluating education and defines the term “equivalent” as meaning only a singular four-year degree “equal” to a bachelor’s degree. This commenter proposed that question H.21 (formerly H.18) have a subpart where an employer could indicate whether, as a minimum requirement, it would accept a combination of degrees and suggested this language: “Our Company will accept any combination of education from any institution or institutions found equivalent to a U.S. Bachelor’s degree as determined by properly evaluated credentials.”

The USCIS suggested that some of the items in the section regarding alternative requirements should be arranged differently to provide a more logical flow. It suggested that question H.21 (formerly H.18) regarding foreign educational equivalencies might fit better in the section about educational requirements and that question18 should be where question15 is. The USCIS also suggested that it might be better to clarify whether foreign educational equivalencies might qualify a job applicant for the proffered position before the Department takes the “any suitable combination” of education, training and experience statement from the employer. It also suggested that the foreign education equivalency question might be clearer if it were broken down according to the following: “If a post-secondary degree is required, is a foreign equivalent degree acceptable?” and an additional question added, “If a high school diploma is required, is the foreign equivalent to the U.S. high school diploma acceptable?”

The Department can only be responsible for its own program and, therefore, cannot ask additional information that may appear to be helpful to the USCIS, but serves no purpose in making determinations within the purview of the Department. The Department has made the appropriate changes to the form to include the words “degree/diploma” in the requirements section and the foreign equivalency section.

One commenter proposed the following wording for H.h.27 (formerly H.22): “Do the employer’s job requirements assigned to the occupation identified in Section F, Item 4 exceed those as shown in the O*Net Job Zone (SVP level)?” The Department agrees with this suggestion and has made the necessary changes to the form to reflect the language in the regulations. This commenter also suggested that the accompanying instructions for H.h.27 be modified as follows: “If the employer’s requirements for the job opportunity exceed those assigned to the occupation *by the SWA on the PWD using* the O*Net Job Zone…” The Department declines to use this wording because the ultimate responsibility for determining the occupation lies not with the SWA, but with the employer.

Section I

The accompanying instructions for the form indicate that if question I.1 is marked "No" then I.1.a should be answered "N/A." One commenter questioned the need for "N/A" and what would happen if it was left blank or something different was entered. The Department has attempted to create reliable forms so that applications are not denied over minor technicalities. Requiring the entering of a value in every field ensures that the employer does not inadvertently leave a field blank. When filing electronically, a pop-up will warn the employer that no entry was made and, if the employer chooses not to completely the field, it does so at its own risk. The system auto-fill all fields left blank with N/A prior to submission of the form. For employers filing non-electronically, entering "N/A" will help prevent unintentional blank fields which may lead to a denial of the application. Where there is, in actuality, no need to make an entry and the employer fails to do so, the employer will not be penalized, however, if the Department determines an entry is required, the responsibility for having left it blank will rest with the employer.

One commenter questioned whether "None of the above apply" would ever be a valid response in I.b.3d (formally I.4) and, if it was selected, what the consequences might be. The "None of the above apply" box should be selected only for programs that do not require a labor certification, but are required by USCIS to submit the ETA 9089 or those that have special procedures within DOL. Examples of such programs are the sheepherders and schedule A professions, as well as professional athletes and national interest waiver petitions. Further clarification has been added to question 3d.

One commenter made a suggestion that the accompanying instructions for I.6 should be revised to include guidance regarding what to enter if the job order runs for more than thirty (30) days. This commenter provided suggested wording: ". . . you can enter an end date which reflects a 30 day period." The Department acknowledges that there are companies who have continuous job postings. In those circumstances the employer should list the date of filing of the ETA 9089 as the end date in I.7. The instructions have been changed to make this clear.

For item I.10, one commenter believed that the language of the NOTE in the accompanying instructions does not accurately depict when an employer can use a journal ad. This commenter suggested the following revised language: "If the job involved in the application requires experience and an advanced degree, and a professional journal normally would be used to advertise the job opportunity, the employer may, in lieu of one of the Sunday advertisements, place an advertisement in the professional journal most likely to bring responses from able, willing and qualified available U.S. workers." The Department has made the necessary changes to the note to reflect the wording of the regulation.

One commenter pointed out that the instructions for I.e and for questions I.f. 22, 23, 23.a and 24 are inconsistent because the overall instructions for I.e state that only employers who recruited under 20 CFR 656.18 should complete the section, but the

instructions for the specific items state “Otherwise, enter ‘N/A.’” The commenter points out that if the employer did, in fact, conduct recruitment under 20 CFR 656.18, none of these blocks should be “N/A.” The Department agrees with this commenter and has made the necessary changes to clarify the instructions.

One commenter also raised questions regarding both the accompanying instructions and the form question I.25. This commenter believed that “None of the above apply” would never be used and questioned what the consequences would be if this response were selected. This commenter also suggested that the text in the second option be modified as follows: “There is no bargaining representative, so a notice of this filing has been posted for 10 consecutive business days in a conspicuous location at the place of employment *as determined in Section H.b Worksite Information.”* Further, this commenter suggested that the accompanying instructions for I.25 should also be modified as suggested above (see italics). To provide clarification, the Department has replaced the “none of the above apply” option with a new box which states, “Employer did not post the notice of filing.” As for providing additional language to clarify “place of employment,” the Department encourages employers with several worksites to review our regulations and policy guidance for clarification.

Section J

One commenter stated that questions J.a.16, 17 and 18 (formally 11, 12, and 13) (A#, Class of Admission, and I-94#) should be removed from the form because this information is not required by the regulation. The Department utilizes this information for statistical purposes and to provide the reports requested by Members of Congress.

One commenter proposed that question J.21 (formerly J.16) be changed to state, “Did the foreign worker beneficiary gain any of the qualifying experience with the petitioning employer?” This commenter believed that the question itself and the guidance below it on the form are contradictory. Another commenter proposed similar language plus the additional further questions: “If the answer to Question 16 is ‘Yes’ was the foreign worker beneficiary’s experience gained in a position that was substantially comparable to the job opportunity identified in section H? Y/N” and “If the answer to Question 16 is ‘Yes’ is it no longer feasible for the employer to train a worker to qualify for the position? Y/N.” The Department agrees and has made the necessary revisions.

One commenter proposed additional questions following J.21 (formerly J.17) to state, “If yes, was the training part of a professional licensing requirement (e.g., medical residency)?” and “Did you initiate employment in the offered position prior to the completion of the training?” These questions were proposed to eliminate a conflict that could result if training for the job opportunity was required, but the training was prior to the person actually qualifying for the position, such as medical residency training at the employer’s site prior to the resident being eligible for the job position. The Department does not believe it is necessary to add additional language for situations which occur

very infrequently.

Two commenters requested that J.23 (formerly J.18) be expanded to provide entry of more than one relevant degree and recommended that the form provide space for the employer to add an additional education section in J.d since there may be positions where an employer is requiring two specific degrees. Another commenter asked that "MD" be specified as a choice. The Department agrees and has made the necessary changes such that the "other" category will now read "Other degree (JD, MD…)"and an applicant will be able to designate up to three sets of relevant degrees obtained by the foreign worker from different institutions. Clarification has been included in the instructions.

A commenter also suggested that it would be helpful to allow for specifying a college within a larger institution in J.23 (formerly J.22) of the form. The Department believes the space available on the form is sufficient to enter this information.

One commenter also recommended that the Note under Section J.e be amended to read: "List all experience (other than training) including paid and unpaid work experience . . ." This commenter believed this language provided a more clear statement that section J.e relates to employment experience, but can include unpaid experience such as apprenticeships and internships. The Department accepts unpaid employment as work experience. The instructions will now reflect the employer's ability to accept unpaid experience.

This commenter also asked that the Department require entry of only the month and year in response to questions (J.24 and 25 (formally J.36 and J.37), work experience start date and end date. The Department agrees and has clarified this requirement by adding "(mm/yyyy)" to the form.

One commenter recommended that the Note under section J.f be changed to read: "If applicable, list all training programs and coursework (other than employment) completed that qualify. The language has been changed to reflect that the Department accepts training other than employment experience that was completed prior to the filing of the application for labor certification.

Section M

The following language change as part of the declarations in M.1 was recommended: "The offered wage equals or exceeds the prevailing wage from the time U.S. permanent residence status is granted through adjustment of status within the U.S. or from the time the foreign worker is admitted to the U.S. pursuant to an immigrant visa to take up the certified employment." The Department has adopted language to address the concern presented.

Based on the comments received and the focus group with the American Immigration

Lawyers Association, American Council on International Personnel, NAFSA: Association of International Educators, and the American Bar Association conducted on March 4, 2008, the Department has made additional changes in order to clarify the points raised. We have also made changes to the instructions to comport with the changes in the information collection.

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

The information collected is not exempt from disclosure under the Freedom of Information Act. In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the information provided is protected under the Privacy Act. The extent of privacy that applicants can expect is delineated on the form. The Department maintains a System of Records titled Employer Application and Attestation File for Permanent and Temporary Alien Workers (DOL/ETA-7) that includes this record.

Under routine uses for this system of records, case files developed in processing labor certification applications, labor condition applications, or labor attestations may be released as follows: in connection with appeals of denials before the DOL Office of Administrative Law Judges and Federal courts, records may be released to the employers that filed such applications, their representatives, to named foreign workers or their representatives, and to the DOL Office of Administrative Law Judges and Federal courts; and in connection with administering and enforcing immigration laws and regulations, records may be released to such agencies as the DOL Office of Inspector General, Employment Standards Administration, the Department of Homeland Security, and the Department of State.

A.11. Justification for any sensitive questions.

The information collections do not involve sensitive matters.

A*.12. Estimated hourly burden*.

The Department is revising its hourly burden for the current version of the form and delineating the hourly burden for the modified form. The Department previously estimated that it would receive 105,000 applications for PERM and DHS would receive 6,500 for Schedule A positions or as sheepherders. However, program experience has shown that approximately 120,000 submissions a year will be submitted either to the Department or to DHS. The Department estimates that 100,000 applications will be

submitted per year to ETA for the PERM program; and DHS has estimated that approximately 13,000 will be submitted to DHS for its National Interest Waiver (NIW) application process and 7,000 for Schedule A and Sheepherder applications. This figure has increased over the last two and a half years since the form was first introduced because DHS has begun allowing NIW applicants to use the ETA Form 9089 instead of the ETA 750B (OMB control number 1205-0015) (an additional use of the instrument that the Department did not anticipate 2.5 years ago).

A. Application for Permanent Employment Certification (ETA Form 9089)

Employers submit an Application for Permanent Employment Certification when they wish to employ an immigrant alien worker. The current form takes approximately 1.25 hours to complete. The Department now estimates, based on its operating experience, that in the upcoming year employers will file approximately 100,000 applications for basic alien employment certification with the Department and an estimated 20,000 applications will be filed with the DHS on behalf of aliens who qualify for NIW, Schedule A, or who are immigrating to work as sheepherders for a total burden of 150,000 hours (120,000 applications x 1.25 hours = 150,000 hours).

[The modified form, when it becomes operational, will take approximately 2 hours to complete for those applying for the PERM process. The burden will remain the same for those who will be filing directly with DHS because they will be able to mark many of the fields as “not applicable.” Therefore, the burden for the modified form is estimated to be 225,000 hours (100,000 applications x 2 hours) + (20,000 applications x 1.25 hours), an increase of 75,000 hours from the current form and 100,000 hours from the Departments estimate in 2005.]

B. Submission of Inculpatory Evidence to the Department -- 20 CFR §656.10(e)

The regulations allow any person to submit to the Certifying Officer documentary evidence bearing on an application for permanent labor certification that is filed with the Department of Labor. The Department estimates that 50 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 1 hour for a total annual burden of 50 hours.

Individuals or organizations may provide to the appropriate DHS office documentary evidence of fraud or willful misrepresentation in a Schedule A application filed under 20 CFR § 656.15 or a sheepherder application filed under § 656.16. The Department estimates 15 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 1 hour for a total annual burden of 15 hours.

The total annual burden for submission of evidence to Certifying Officers and DHS offices would come to 65 hours. [This burden is the same as in 2005 and we do not anticipate a change with the modified form.]

C. Recruitment -- 20 CFR § 656.17(d) and (f)

Recruitment activities, including advertising for workers and placing job orders is a usual and customary activity of employers. Therefore, under the regulations of the Office of Management and Budget at 5 CFR §1320.3(b) the resources expended by employers to comply with the recruitment provisions at §§ 20 CFR 656.10(d)(1) and 656.20(d) of the proposed rule is excluded in compiling the paperwork burden estimates under the proposed rule.

Similarly, since the records required to be kept by the employer to demonstrate compliance with the advertising requirements or to prepare the required recruitment report must be retained by employers under the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR §1602.14 (OMB Control No. 3046 -- 0040), promulgated pursuant to Title VII of the Civil Rights Act and the American With Disabilities Act, and 29 CFR §1627.3(b)(3) (OMB Control No. (3046 -- 0018), promulgated pursuant to the Age Discrimination in Employment Act, at 29 CFR §1627.3(b)(3), the burden to maintain such records can be excluded in compiling the paperwork burden under the proposed rule. For example, § 1602.14 requires the employer to keep "(a)ny personnel or employment record made or kept by an employer (including but not limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be kept for a period of one year from the date of making of the record or the personnel action involved, whichever occurs later. . . ."

The records that employers must maintain pursuant to 29 CFR §1627 (b)(3)(a)(1) that was promulgated pursuant to the Age Discrimination in Employment Act, includes but are not limited to the following:

- Job applications, resumes or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual.

- Promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee.

- Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel and job openings.

- Any advertisement or notice to the public or to employees relating to job openings, promotions, training programs, or to opportunities for overtime work.

However, the time required to prepare the required recruitment report is not excludable in compiling the burden under the regulation. Section 1602.14 does not require an employer to create any records, but rather requires an employer to preserve all personnel or employment records which the employer "made or kept". Once made or kept (i.e., records received from others which are not immediately discarded) EEOC regulations requires that these records be preserved.

All employers that file applications under the basic process at 20 CFR § 656.17 must prepare a summary report under § 656.17(f) signed by the employer describing the recruitment steps undertaken and the results achieved, including the number of hires, and if applicable the number of U.S. workers rejected, summarized by the lawful job related reasons. Further, the Certifying Officer, after reviewing the employer's recruitment report, may request the resumes or applications of U.S. workers sorted by the reasons they were rejected. The Department estimates that it will take an average of 1 hour for an employer to prepare a recruitment report for each application it files, and, if requested by the Certifying Officer, sort the resumes or applications it received by the reasons they were rejected. Since the Department anticipates that 100,000 applications for permanent labor certification will be filed under the basic process, which requires advertising, with the Department of Labor, the total annual burden for preparing recruitment reports is estimated to amount to 100,000 hours (100,000 applications x 1 hour). [This burden is the same as in 2005 and we do not anticipate a change with the modified form.]

D. Retention of Supporting Documentation

The Department estimates that employers will spend about 5 minutes per year per application to retain an application and required supporting documentation in the four years following the mandated retention under Title VII. This results in an annual burden of 8,333 hours (100,000 applications X 5 minutes ÷ 60 minutes = 8,333 hours). [This burden is the same as in 2005 and we do not anticipate a change with the modified form.]

E. Optional Special Recruitment and Documentation Procedures for College and University Teachers – 20 CFR § 656.18

The Department consulted with representatives of major universities in developing the documentation requirements for the competitive recruitment and selection process. The employers agree that the requirements are reasonable and can be easily documented by colleges and universities. See 45 FR at 83931.

Information available to the Department indicates colleges and universities customarily advertise for faculty positions. Therefore, placement of such advertisements can be considered usual and customary under OMB regulations at 5 CFR §1320(b)(2). Accordingly, the resources expended by employers to prepare and place the required advertisements in professional journals are excluded in compiling the burden required by 20 CFR § 656.18 of the regulation. Additionally, colleges and universities are required to maintain the records and documents received pursuant to their recruitment activities under the EEOC regulations cited above at 5 CFR § 1602.14 and § 1627.3. The hourly burden is included in 12A of this supporting statement.

F. Supervised Recruitment – 20 CFR § 656.21

In a case where the Certifying Officer determines it to be appropriate, post-filing recruitment may be required of the employer. The Department estimates that employers will be required to conduct supervised recruitment with respect to 5,000 applications and the time required to conduct such recruitment will average 2.2 hours per application for an annual burden of 11,000 hours. Some employers will expend 10 hours, while the majority will expend one hour to place the advertisement, receive and analyze resumes and interview candidates. Employers will also be required to provide a recruitment report to the certifying officer that on average will take about 1 hour to prepare for an annual burden of 5,000 hours. Therefore, it is estimated that the total annual burden associated with conducting supervised recruitment will amount to 16,000 hours. [This burden is the same as in 2005 and we do not anticipate a change with the modified form.]

G. Labor certification determinations -- 20 CFR § 656.24 and Board of Alien Labor Certification Appeals review of denials of labor certification -- 20 CFR § 656.24

Employers may request reconsideration of a denial by the Certifying Officer of an application for permanent labor certification. If the reconsideration is denied, they may appeal to the Board of Alien Labor Certification Appeals. Due to program experience the Department estimates that 5,000 employers will request reconsideration and or appeals and that it will take two hours on average to prepare the requests for an annual burden of 10,000 hours. [This burden has increased since the Department's first estimate in 2005 of 200 hours and will

remain the same as the new estimate with the modified form.]

H. Determination of prevailing wages for labor certification purposes -- 20 CFR § 656.40(g)(6) and (h)

In order to complete the ETA Form 9089, an employer must obtain a prevailing wage from the State Workforce Agency (SWA) in the state where the alien will work either by asking the SWA to determine the correct wage or by submitting its own survey and asking the SWA to validate it. If the SWA finds the survey provided by the employer to be unacceptable, the employer may submit supplemental information for the SWA's consideration. Program experience has shown that the majority of employers will accept the SWA's determination and will, therefore, only spend 30 minutes preparing and submitting a prevailing wage request to the appropriate SWA. The Department has found that employers challenge the SWA's determination and submit supplemental information in approximately 7,500 prevailing wage determination requests and that it will take employers 45 minutes to prepare such requests. The total annual burden of the prevailing wage determinations is (100,000 x .5 hours) + (7,500 x .75 hours) = 55,625 hours. [This burden has increased since the Department's first estimate in 2005 of 5,625 hours and will remain the same as the new estimate with the modified form.]

I. Certifying Officer Review of Prevailing Wage Determinations

Employers may request review of a SWA's prevailing wage determination by filing a request for review within 30 calendar days of receiving the SWA's determination. The request for review must clearly identify the particular wage determination (PWD) from which review is sought, set forth the particular grounds for the request, and include all materials pertaining to the PWD submitted to the SWA up to the date of the PWD received from the SWA. Program experience has shown that approximately 750 requests for review will be filed with the ETA prevailing wage panel and it will take employers 45 minutes to prepare each request for a total annual burden of 562 hours. [This burden is the same as in 2005 and we do not anticipate a change with the modified form.]

Total Annual Burden Hours for All Information Collections under the Current Form – 340,585 Hours [An increase of 76,342 over the 2005 estimate.]
Average Time Per Application – 2.84 Hours [An increase of 0.37 hours over the 2005 estimate.]

Total Annual Burden Hours for All Information Collections under the Modified Form – 415,585 Hours [An increase of 75,000 over the current form estimate.]
Average Time Per Application – 3.46 Hours [An increase of 0.62 hours over the

current form estimate.]

Employers filing applications for permanent alien employment certification may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs were estimated in the proposed rule at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $8,514,625 (340,585 x $25.00 = $8,514,625).

A.13. Estimated cost burden to respondents.

There is no filing fee involved with filing an ETA Form 9089. However, there are other costs involved with preparation of the form and filing fees charged by DHS for the principle application to which the ETA Form 9089 is attached as supporting documentation. The Department assumes that employers would incur the preliminary costs such as advertising even if they were not filing for labor certification since they are required to make good faith efforts to recruit U.S. workers and it is assumed that advertising their job openings is a normal cost of doing business. Therefore, the Department is not including any out-of-pocket expenses as part of its burden estimates for the majority of cases. However, as indicated in item A12F above, the Department estimates that 5,000 employers will be required to conduct supervised recruitment. The Department estimates that cost of an advertisement over all types of publications and geographic locations will average $500.00 for a total annual burden of $2,500,000.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost for a year of operation is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC. The total cost to the Federal Government is estimated at $13,729,165, calculated as follows:

The Department estimates SWA staff spend one (1) hour on average to process job orders and determine the prevailing wage. The average hourly rate for SWA staff is

estimated to be $30.57 per hour for a total cost burden of $5,166,330 ($30.57 x 1.69 x 1 x 100,000).

The Department estimates that 70 percent of the applications are “clean” and do not raise any audit flags. “Clean” applications require 0.25 hours of DOL staff time. The average hourly wage of the reviewer is estimated to be $30.57 (GS 12, step 5) for a total cost burden of $904,108 ($30.57 x 1.69 x .25 x 100,000 x 70%).

The Department estimates that 30 percent of the applications will be audited and will require, on average, four (4) hours of DOL staff time. An analyst will spend three hours reviewing an application that is being audited and a manager will be spend an hour. The average hourly wage of an analyst is estimated to be $30.57 (GS 12, Step 5) and for a manager is estimated to be $42.96 (GS 14, Step 5) for a total cost of $6,827,769 [($30.57 x 1.69 x 3 x 100,000 x 30%) + ($42.96 x 1.69 x 1 x 100,000 x 30%)]

The Department estimates DOL staff spends one (1) hour on average to analyze a request for reconsideration of a denial. An Analyst will spend 45 minutes reviewing a request and a manager will spend 15 minutes. The average hourly rate for an analyst is estimated to be $30.57 per hour (GS-12 Step 5) and for a manager is estimated to be $42.96 (GS 14, Step 5) for a total cost burden of $284,490 [($30.57 x 1.69 x .75 x 5,000) + ($42.96 x 1.69 x .25 x 5,000)].

The Department estimates DOL staff spends three (3) hours on average to prepare a case for transfer to BALCA. The average hourly rate for DOL staff is estimated to be $14.60 per hour (GS-6 Step 3) for a total cost burden of $333,099 ($14.60 x 1.69 x 3 x 4,500).

The Department estimates DOL staff spends two (2) hours on average to analyze the inculpatory evidence received. The average hourly rate for DOL staff is estimated to be $30.57 per hour (GS-12 Step 5) for a total cost burden of $6,716 ($30.57 x 1.69 x 2 x 65).

The Department estimates USCIS staff spends twelve minutes (.2 hours) on average to read and analyze the information contained in the form, which will be attached to applications for permanent residency. The average hourly rate for USCIS staff is estimated to be $30.57 per hour (GS-12 Step 5) for a total cost burden of $206,653 ($30.57 x 1.69 x .2 x 20,000).

Total Cost to the Federal Government: $13,729,165

A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.

The annual burden for these information collections is expected to increase from 264,243 hours to 340,585 hours, resulting in an increase of 76,342 hours. The increase in burden hours is attributed to DHS now utilizing this form for their NIW program and the number of requests for the prevailing wages from SWAs inadvertently not included in the previous burden calculation.

The annual burden is expected to increase once the modified form becomes operational from 340,585 hours to 415,585 hours, resulting in an increase of another 75,000. The increase in burden hours is attributed to the additional length of the modified form, which increased from 10 pages for the current form to 17 pages.

A.16. Method for publishing results.

No collection of information will be published.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

The Department will display the expiration date for OMB approval on the form and instructions.

A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.

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

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.