SUPPORTING STATEMENT
APPLICATION FOR PERMANENT EMPLOYMENT CERTIFICATION
OMB Control Number 1205-0451

Introduction: *The Department Labor's* (*Department or DOL) Employment and Training Administration (ETA) is publishing a Notice of Proposed Rulemaking (NPRM or proposed rule) that modernizes aspects of the program through which the Department certifies job opportunities offered by U.S. employers seeking to employ foreign nationals on a permanent basis. The proposed rule better aligns the Program Electronic Review Management (PERM) program with the objectives of the employment-based immigration system, and the needs of foreign workers and the U.S. employers who sponsor them for permanent positions and lawful permanent resident (LPR) status. Th proposed rule is eliminating further administration of job opportunities covered by Schedule A; improving the minimum standards of recruitment to ensure all employers seeking labor certification access the broadest pool of high-quality U.S. workers using the latest technologies and methods; strengthening safeguards to U.S. workers impacted by layoffs, including those laid off by employers using third-party staffing companies and establishing standards for employers to report layoffs; clarifying and expanding requirements for employers to provide notice of filing applications for permanent labor certification; improving employer compliance with program requirements and consideration of qualified U.S. workers that is comparable to job opportunities for which permanent labor certification is not required; and codifying the Department's practice of electronically receiving, processing, and issuing final determinations on employer requests for prevailing wages and permanent labor certifications..*

Additionally, DOL requests an amendment for this Information Collection Request (ICR), which includes Form ETA-9089, Application for Permanent Employment Certification, Appendix A: Foreign Worker Information, Appendix B: Additional Worksite Information, Appendix C: Supplemental Information, Appendix D: Special Recruitment for College and University Teachers, Appendix E: Assurances and Obligations and Form ETA-9089, Final Determination: Permanent Employment Certification Approval, along with its accompanying instructions.

A. Justification.

A1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The information collection for form OMB Control Number 1205-0451 is required by sections 203(b)(2) and (b)(3) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1153(b)(2) and (b)(3) and 1182(a)(5)(A)). The Department and the Department of Homeland Security (DHS) have promulgated regulations to implement these provisions of the INA at 20 CFR part 656 and 8 CFR 204.5, respectively.

Furthermore, the INA mandates the Secretary of Labor to certify that any foreign worker 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 an employer may request any skilled or unskilled foreign labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the regulations or, in limited circumstances, apply for a waiver thereof with DHS. The Department's foreign employment certification regulations require employers to document their recruitment efforts and substantiate the reasons no U.S. workers were hired.

Consequently, the information collected on the form is used not only by the Department, but also by other federal agencies in furtherance of meeting the requirements of the INA. The Department uses the information collected to provide employment certifications for foreign workers seeking to enter the United States on a permanent basis. DHS also uses the form to analyze the foreign worker's background and experience for Schedule A occupations and sheepherders in accordance with INA § 203(b)(2)(B)(i) (8 U.S.C. § 1153) and 8 CFR 204.5(k)(4)(ii).

The Department relies on this information collection (IC) for processing applications for the permanent labor certification (also known as PERM, or Program Electronic Review Management) program. Applications for PERM employment certification assess whether a foreign worker meets the requirements of Section 212(a)(5)(A) of the INA. DHS regulations at 8 CFR 204.5(k)(4)(ii) require foreign nationals applying for a National Interest Waiver (NIW) of the job offer requirement, under INA § 203(b)(2)(B)(i), to file the Form ETA-9089 with DHS.

The Department collects the information necessary to make the certification on the Form ETA-9089. The form and all associated documents can be found online at https://www.dol.gov/agencies/eta/foreign-labor/forms.

Regulatory Authority: 20 CFR part 656, subpart C, Labor Certification Process, and 8 CFR 204.5(k)(4)(ii)
Statutory Authority: INA, Section 203(b)(2)(B)(i) (8 U.S.C. § 1153) and Section 212(a)(5)(A), 8 U.S.C. § 1101 *et seq.* (as amended)

A2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

By the Federal Government

The established form(s) collect this information and are used not only by the Department, but also by other federal agencies, including DHS, Department of Justice (DOJ) and the Department of State (DOS), to meet INA requirements.

The Department will use the information collected through the form and its appendices to adjudicate PERM employment certification applications for foreign workers filed by employers

seeking to employ individuals on a permanent basis. The Department needs to reinstate this existing IC pertaining to employers seeking to import foreign labor. An employer seeking a PERM employment certification to employ an immigrant must submit the form to the Department, including all required appendices. Once submitted, the Department will determine whether the employer adequately sought available and willing U.S. workers qualified for the opportunity as required under the regulations, and whether U.S. workers who applied were rejected for lawful, job-related reasons. 20 CFR 656.24. If the Certifying Officer's (CO) Final Determination denies certification of the application, the regulations provide the employer with the ability to request reconsideration of the decision, or to request review of the denial by the Board of Alien Labor Certification Appeals. 20 CFR 656.24 and 656.26.

DHS will also use the information collected through the form and its appendices for the Job Offer Requirement of the NIW process, which exempts foreign workers from the job offer requirement if their expertise is in the national interest of the United States. The Department proposes to eliminate current alternative regulatory procedures at sections 656.15 (Schedule A) and 656.16 (Sheepherders). The NPRM proposes to establish a single set of recruitment requirements for all occupations and, except as permitted by Congress, eliminates the Department's continued management of Schedule A and Sheepherders that administratively exempts certain occupations from the statutory labor certification requirement. Additionally, this rule proposes replacing PERM's print-intensive and self-selective menu of recruitment options with a modern set of electronic recruitment requirements that leverages use of the employer website(s), job search website(s), social media platform(s), and other job fairs or on-campus recruiting methods. These provisions are intended to better align PERM's labor market test with modern recruitment practices and ensure employers conduct a more robust labor market test to access the broadest pool of qualified and available U.S. workers

<u>By the Employer</u>

A complete application consists of a Form ETA-9089, *Application for Permanent Employment Certification*, with all required fields completed with valid information, a valid prevailing wage determination (PWD), and the employer's recruitment report for the job opportunity offered on the *Application for Permanent Employment Certification*, as outlined in proposed section 656.10(a). The employer is required to submit attestations regarding the types and dates of its efforts to recruit U.S. workers. The Department has codified the type of recruitment steps that should be performed to test the U.S. labor market. 20 CFR 656.17(e) and (f). 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 able to issue the certification of U.S. worker unavailability required under the law. Pursuant to the Department's regulation, employers are required to test the labor market during the 180 days preceding the filing of the form. 20 CFR 656.17(e).

Employers are also required to prepare a report of their recruitment activities. The regulations state that the employer must prepare a 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. 20 CFR 656.17(g). This

documentation must be maintained by the employer for five years. 20 CFR 656.10(f). Upon reviewing the attestation-based form, the CO may request the recruitment documentation and recruitment report via the Audit Review process. 20 CFR 656.20. The CO requests workers' resumes sorted by the reasons they were rejected in every case that is audited. 20 CFR 656.17(g)(1). If the information provided by the employer fails to resolve the concerns of the CO, the case may be denied or inducted into supervised recruitment for closer review. 20 CFR 656.24.

In any case where the CO determines it to be appropriate, post-filing supervised recruitment may be ordered. 20 CFR 656.21. This includes cases selected for audit and cases where questions arise about the adequacy of the employer's test of the labor market. Supervised recruitment is a process whereby the Department oversees all aspects of the employer's recruitment of U.S. workers, including approving job advertisement text and informing the employer where to recruit, receiving all U.S. worker resumes, and reviewing the employer's recruitment report to ensure all U.S. worker applicants have been properly considered. Subsequently, at the completion of the supervised recruitment efforts, the employer is required to provide a report of its supervised recruitment steps, including documenting the lawful job-related reasons for not hiring any U.S. workers who applied for the position.

A3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

In compliance with the Government Paperwork Elimination Act, a fillable version of the form and its associated documents can be found on-line at https://www.dol.gov/agencies/eta/foreign-labor/forms. U.S. employers electronically submit their applications via the Foreign Labor Application Gateway (FLAG) at https://flag.dol.gov/ or may complete, print, and submit by mail a copy of the form, if they choose to do so. In circumstances where the application is filed using the traditional paper-based method, the ETA Office of Foreign Labor Certification (OFLC) staff will manually enter the data and information contained on the paper application for processing in a similar manner as those filed electronically.

Employers have the option to use FLAG, which permits employers to fill out their PERM applications on the Department's website and submit them electronically. Because FLAG includes guidance to employers completing their applications on-line, there are fewer incomplete or inaccurate entries.

When the employer or, if applicable, its authorized attorney or agent initially enters contact information and establishes an account, the Form ETA-9089 Case Preparation Module will allow the system to automatically pre-populate all contact information from the *Application for Prevailing Wage Determination*, Form ETA-9141, significantly reducing the time and burden for repeated online data entry. The aforementioned process has resulted in the submission of all required information available at the time of filing the application, has facilitated a more efficient and consistent review of the employer's application, and has reduced the incidence of the Department returning an incomplete application without further review.

FLAG includes detailed instructions, prompts, and checks to help employers fill out the Form ETA-9089. To file electronically, the employer must become a "registered user" by creating an account that contains secure files within the 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 that user's applications is entered automatically by the electronic filing system, thereby reducing the burden on registered users. Moreover, in the response to an Audit or a Request for Information (RFI), where it is not practical to collect supporting documentation using a standard OMB-approved appendix, the system permits an employer to upload documentation supporting the application in an acceptable digitized format (*e.g.*, Adobe PDF, Microsoft Word, .TXT, etc.).

Lastly, the Department has eliminated the issuance of PERM labor certifications in paper form; now that PERM labor certifications are issued electronically through the OFLC FLAG system, employers, foreign workers, and their authorized attorneys or agents, as applicable, no longer need to request duplicate PERM labor certifications to submit to USCIS or Department of State. Through a combination of existing data sharing agreements with USCIS and Department of State and direct customer access to their authorized FLAG system accounts, OFLC makes all approved PERM labor certifications, as well as information related to any application, available real-time to USCIS and Department of State.

A4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities. No other government agency collects similar information to adjudicate this type of application.

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

The information collected under this IC is required of small businesses that need foreign workers under the PERM visa classification of the INA. Based on FY 2025 data year-to-date, only 14.5 percent of applications for PERM employment certification are submitted by small entities.[1] The Department cannot make any exemptions or eliminate forms for small entities because the statute and regulations require all employers seeking PERM employment certification to make the necessary attestations and provide the information requested. These forms ensure that the Department relies on a uniform system that allows employers to provide the information that is necessary to process their requests for PERM employment certifications.

This collection of information is not disproportionately more burdensome for small entities than it is for large ones, because the forms and accompanying appendices are easy to understand and

1 A "small entity" has been determined based on information from NAICS, which determines whether an entity is "small" based on the number of its employees.

provide all necessary attestations and assurances to minimize the need for the filing employer to find the appropriate law or regulation to know how to request a PERM labor certification. Recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes. The Department believes that the recruitment requirements are those that any business would use to legitimately recruit workers.

This IC does not impose any extra requirements on small entities. These forms collect the minimum information required from all PERM employers to determine program eligibility and allow DOL to issue an employment certification determination.

A6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

DOL would be unable to meet its statutory and regulatory mandates if this information were not collected. The information must be collected to enable DOL to meet its obligations by determining whether an employer and foreign worker meet the criteria necessary to be issued a certification and whether employment of the foreign worker will adversely affect the wages or working conditions of U.S. workers similarly employed.

A7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the PRA, except that the Department's regulations require that employers retain applications for PERM employment certifications and all supporting documentation for five years after submission. 20 CFR 656.10(f). The Department requires that employers maintain supporting documentation because the CO may decide that it is necessary to conduct an Audit Review or Supervised Recruitment of the application, and DHS may decide it is necessary to review the employer's supporting documentation in the course of processing the Form I-140, *Immigrant Petition for Alien Workers*, to which the form is attached. Either Department may want to review the information for the purpose of investigating possible violations of the INA.

A8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years—even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In accordance with the PRA, the public will be allowed 60 days to comment in response to the Department's NPRM.

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

No payments or gifts will be made to respondents in exchange for the information provided in response to this information collection.

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

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 Form ETA-9089. 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 notice, case files developed in processing employment certification applications, labor condition applications, and prevailing wage determination, are released to the employers that filed such applications and their representatives; to review Department actions in connection with appeals of denials or other wage-related final determinations before the Office of Administrative Law Judges or Federal Courts; and to participating agencies such as the DOL Office of Inspector General, DOL Wage and Hour Division, DHS, the U.S. Citizenship and Immigration Services (USCIS), DOJ DOS in connection with administering and enforcing related immigration laws and regulations. Records may also be released to named foreign worker beneficiaries or their representatives, and third-party requests under the Freedom of Information Act.

A11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information collections do not involve sensitive matters.

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

The Department is adjusting the hourly burden estimates for this information collection. The following table can be used as a guide to calculate the total information collection burden:

Activity	Number of Respondents	Frequency	Total Annual Responses	Time per Response (in minutes)	Total Annual Burden (Minutes)	Hourly Rate	Monetized Value of Respondent Time
Completion and Submission of Form ETA-9089	33,513	4.7	142,868	12	1,714,416.00	$54.43	$93,315,662.88
Appendix A	33,513	4.7	142,868	10	1,428,680.00	$54.43	$77,763,052.40
Appendix B #	3,184	5.2	16,557	2	33,114.00	$54.43	$1,802,395.02
Appendix C #	19,337	4.4	85,083	5	425,415.00	$54.43	$23,155,338.45
Appendix D #	469	4.6	2,157	2	4,314.00	$54.43	$234,811.02
Appendix E #	33,513	4.7	142,868	4	571,472.00	$54.43	$31,105,220.96
Gathering and Submission of Evidence	67	1	67	60	4,020.00	$54.43	$218,808.60
Recruitment	33,513	4.7	142,868	60	8,572,080.00	$54.43	$466,578,314.40
Retention of Supporting Documentation	33,513	4.7	142,868	5	714,340.00	$54.43	$38,881,526.20
Supervised Recruitment	19	8.2	156	240	37,440.00	$54.43	$2,037,859.20
Requests for Reconsideration and BALCA Appeals	2,106.00	2	4212	120	505,440.00	$54.43	$27,511,099.20
Professional Athlete Application	35	2	70	82	5,740.00	$54.43	$312,428.20
National Interest Waiver Qualifications $	7,103	1	7,103	12	85,236.00	$54.43	$4,639,395.48
Schedule A Applications $	1417	16.8	23,835	22	524,370.00	$54.43	$28,541,459.10
Sheepherder Applications	5	1	5	22	110.00	$54.43	$5,987.30
Notice Requirements	41,751	5.39629	178,736.33	30	5,362,089.90	$54.43	$291,858,553.26
Unduplicated Totals	**42,073**	**N/A**	**1,032,321**	**112**	**115,619,952.00**	$54.43	**$ $6,293,193,987.36**

* This figure represents the total respondents required for notice, but it does not include NIWs.
** This figure is not an aggregated total of all of the figures in this column. This total includes unique filers for applications filed with the Department as well as those submitted to DHS, including NIWs.

*** This estimate of 1.867 hours or 112minutes (or 1 hour and 52 minutes) is the average total estimated time burden incurred by respondents while performing the mandatory steps (e.g., submission, recruitment, document retention, notice, etc.) associated with this information collection for the basic labor certification process. 20 CFR 656.17. This figure is not an aggregated total of all of the figures in this column. Not all respondents must execute every step associated with this IC.
# This data is calculated o are calculated using the average of FY 2023 – 2025 data.

The Department receives PERM applications from a wide spectrum of U.S. employers. While compensation rates for the employees performing the reporting and recordkeeping functions related to the Form ETA-9089 vary, the Department believes that in most companies a human resources specialist will perform these activities. The national mean hourly wage for a human resource specialist (SOC code 13-1071) is $38.33.[2] The average percentage of benefits in total is 42%.[3] The total compensation is therefore $54.43 ($38.33 x 1.42) for a Human Resource Specialist.

1. Form ETA-9089 – *Application for Permanent Employment Certification*

Employers submit a Form ETA-9089 when they seek to employ immigrant workers. Burden calculations have been split to provide an estimate of the annual burden minutes associated with the form and each of its appendices, instead of a single figure estimating the burden for the form as a whole.

Over a period of three FYs (i.e., FYs 2023, 2024, 2025), the Department received 428,604 PERM applications.[4] These 428,604 applications were filed by 33,513 unique employers as identified by the Federal Employer Identification Number (FEIN), indicating that on average, the Department projects to receive 142,868 applications (428,604/ 3) each year.

- Completion & Submission of Form ETA-9089 – *Application for Permanent Employment Certification*

The Department estimates that it takes applicants 12 minutes to complete and submit the form once program requirements have been completed. The total annual burden for completing Form ETA-9089 is estimated to be 1,714,416 minutes (142,868 respondents x 12 minutes per application). This estimate is associated solely with the completion and submission of the Form ETA-9089 as the system will allow employers to electronically file their applications and to upload their responsive documents directly to their application. As determined by the system, information that is placed on the form is auto-populated from the employer's profile in FLAG and the Form ETA-9141 to include the Employer Information, Employer Point of Contact, and Employer Worksite Information among other pertinent data associated with the form once the employer inputs their PWD tracking number for the job opportunity. This time estimate does not

2 *Occupational Employment and Wage Statistics, May 202*5 *OEWS Profiles: 13-1071 Human Resources Specialist*, U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics May 2024, Financial Analysts: https://www.bls.gov/oes/current/oes132051.htm (then input Business and Financial Operations Occupations in "Major occupational group" and "Human Resources Specialists" in "Detailed Occupations").
3 *Employer Costs for Employee Compensation – December 2024*, U.S. Department of Labor, Bureau of Labor Statistics, https://www.bls.gov/news.release/ecec.nr0.htm.
4 Figures for submissions of Form ETA-9089 applications to DHS or in support of NIWs, are addressed in Section A.12.8, below.

encompass the time estimate incurred by respondents in connection with other steps associated with this information collection. Separating Appendix A from the Form ETA-9089 also allows employers who file applications frequently for similar job opportunities to effectively reuse the same data, while only having to complete Appendix A for each foreign worker.

- Form ETA-9089 – *Appendix A: Foreign Worker Information*

The Department estimates that it will take employers an additional 10 minutes along with the completion of the form to complete Appendix A. The total annual burden for completing Appendix A is also estimated to be 1,428680 minutes (142,868 responses x 10 minutes per application).

- Form ETA-9089 – *Appendix B: Additional Worksite Information*

In circumstances where the employer needs workers to perform the services or labor at more than one specific worksite address or geographical area, the employer must complete the Appendix B. Employers already submit information disclosing all worksites, and Appendix B has established a standardized process and provided an electronic format for collecting this existing information.

The Department estimates that it will take employers an additional 2 minutes along with the completion of the Form ETA-9089 to complete Appendix B. The Department is basing its estimate on three years of data. Accordingly, the total annual burden for completing Appendix B is estimated to be 33, 114 minutes (16,557 responses x 2 minutes per application).

- Form ETA-9089 – *Appendix C: Supplemental Information*

When the employer does not have enough room in the body of Form ETA-9089 to determine the job needs and qualifications of the foreign worker, the employer uses Appendix C to provide additional information. Appendix C allows this additional information to be provided for fields G.6 through G.12.

As described in the methodology above for determining the estimated burden with the Form ETA-9089, 85,083 respondents filed 5.2 responses over three fiscal years, that would require the submission of an Appendix C, submitting on approximately 85,083 applications during that time period. The Department estimates that Appendix C should take on average 5 minutes to complete each application. This yields a total burden of 425,415 (85,083 responses x 5 minutes per application).

- Form ETA-9089 – *Appendix D: Special Recruitment for College and University Teachers*

The Department estimates that each unique employer will send, on average, 4,314 applications (2,157/ 2) requiring completion of Appendix D each year.

- Form ETA-9089 – *Appendix E: Assurances and Obligations*

This is a new form established by the proposed NPRM at 656.13 to enumerate by topic the assurances and obligations under the PERM program to which an employer must attest compliance. As this appendix has no data available for the previous three years, the Department is basing its estimate on the fact that this form is required for all applications. The Department estimates that Appendix E should take on average 4 minutes to complete (read and sign) each application. This yields a total burden of 571,472 minutes (142,868 responses x 4 minutes per application).

2. Gathering and Submission of Evidence – 20 CFR 656.10(e)

The regulations allow any person to submit to the CO documentary evidence regarding a PERM application that is filed with the Department. The Department estimates that 67 individuals or organizations will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately one hour or 60 minutes for a total annual burden of 4,020 minutes.

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 20 CFR 656.16. The Department estimates 1 individual, or organization will avail themselves of the opportunity to provide such evidence and each filing of documentary evidence will take approximately 60 minutes for a total annual burden of 4,020 minutes.

3. Recruitment – 20 CFR 656.17(e), (f) and (g)

Job advertisements. Recruitment activities, including advertising for workers and placing job orders, is the usual and customary activity of employers. Therefore, under OMB regulations at 5 CFR 1320.3(b)(2), the resources expended by employers to comply with the recruitment provisions at 20 CFR 656.17(e) and (f) are excluded from the paperwork burden estimates for this ICR.

Employer's recruitment report. All employers that file applications under the basic process at 20 CFR 656.17 must prepare a summary report under section 656.17(g) 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 CO, 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 employer an average of one hour to prepare a recruitment report for each application it files, and, if resumes are requested by the CO, there should be no additional burden as an employer would already have reviewed and sorted the resumes it received for the application as part of completing the recruitment report. Since the Department anticipates that142,868 applications for PERM employment certification will be filed under the basic process, which requires advertising, the total annual burden for preparing

recruitment reports is estimated to amount to 8,572,080 recordkeeping minutes (142,868 responses x 60 minutest).

4. Retention of Supporting Documentation – 20 CFR 656.10(f)

The regulations require employers to retain records demonstrating their compliance with the advertising requirements, as well as records they used to prepare the required recruitment report. Employers already have an obligation to maintain such records.[5]

The records that employers must maintain pursuant to 29 CFR 1627.3(b) that are promulgated pursuant to the Age Discrimination in Employment Act, include 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 for 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; and
- Company generated referral procedures.

As noted, employers are already required to keep recruitment and hiring documents for one year under various equal opportunity federal laws, and the Department's regulations require that they be kept for five years. Therefore, the Department estimates that employers will spend: 714,340 minutes per application per year to retain an application and required supporting documentation in the four-year PERM regulations required for retention beyond the one-year retention period mandated under Title VII and other equal employment opportunity laws noted above. This results in an annual burden of XX recordkeeping minutes (142,868 respondents x . 5 minutes per application).

5. Supervised Recruitment – 20 CFR 656.21

In a case where the CO determines it to be appropriate, post-filing recruitment may be required of the employer. As described in the methodology above for determining the estimated burden with the Form ETA-9089, 156 applications over the three-year period from FY 2023 through FY 2025 were filed under supervised recruitment procedures. The Department estimates that the

5 The burden to maintain such records can be excluded in compiling the burden under this ICR. *See, e.g.*, Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1602.14 (OMB Control No. 3046-0040), promulgated pursuant to Title VII of the Civil Rights Act, the American With Disabilities Act, and the Genetic Information Nondisclosure Act; and at 29 CFR 1627.3(b) (OMB Control No. 3046-0018), promulgated pursuant to the Age Discrimination in Employment Act.

time to complete all the requirements necessary for supervised recruitment is 37,440 minutes. Accordingly, the total burden is 37,440 minutes (156 responses x 240 minutes per application).

This burden is included in the estimate of the total paperwork burden for this ICR.

6. Requests for Reconsideration and BALCA Appeals – 20 CFR 656.24

Employers may request reconsideration of a denial by the CO of a PERM application. If the reconsideration is denied, they may appeal to the Board of Alien Labor Certification Appeals (BALCA). Employers may also choose to forego a request for reconsideration and appeal directly to BALCA if an application is denied. The employer is expected to retain all evidence relating to the submitted form and is not allowed to submit new evidence while going through this process.

As described in the methodology above for determining the estimated burden with the Form ETA-9089, 2,106 respondents filed 2 requests for reconsideration or appeals over the three-year period from FY 2023 through FY 2025. Similarly, the Department estimates that the time to complete all requirements necessary to file an appeal takes, on average, 120 minutes. Accordingly, the total annual burden is 505,440 minutes (4,212 respondents x 120 minutes per appeal).

7. Professional Athlete Applications

The Form ETA-9089 serves as the sole document, for not only the Department to certify that any foreign worker seeking to enter the United States for the purpose of performing skilled or unskilled labor that 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, but also for an employer needing to file an application for a professional athlete or coach. As described in the methodology above, the filing requirements in proposed section 656.10 would apply to employers seeking to permanently employ foreign workers as professional athletes or professional sports team coaches in job opportunities subject to the EB-2 or EB-3 visa classifications requirements, including those currently covered by Schedule A, which would require a PERM labor certification under this proposed rule. For determining the estimated burden with the Form ETA-9089, 35 respondents filed 2 applications over the three-year period from FY 2023 through FY 2025. Accordingly, the Department estimates this burden to be 5, 5740 minutes (70 responses x 82 minutes).

8. National Interest Waivers

Form ETA-9089 and Appendix A now serve as the sole documents to collect more detailed information about the NIW application process that includes the job opportunity, specific worksite locations, foreign workers' qualifications, and other pertinent information filed by a petitioner or self-petitioner with USCIS. As described in the methodology above for determining the estimated burden with the Form ETA-9089, 7,103 respondents filed 7,103 applications on average over the three-year period from FY 2023 through FY 2025 under the National Interest Waiver program, submitting on average approximately 7,103 applications during that time

period. Additionally, an employer needing to complete an application for an NIW would only need to complete Appendix A. Accordingly, the Department estimates this burden to be 85,236 total minutes (70 respondents x 82 minutes).

9. Sheepherders – 20 CFR 656.16

Prior to this proposed NPRM, the Form ETA-9089 was used by employers under Schedule A and for sheepherding positions, who previously submitted the application directly to DHS. Under the proposed rule, the frequency of unique filers was not available in data provided by USCIS. The Department is making a good faith estimate that 5 respondents will complete one Sheepherder application annually and submit it to DHS for these positions, and the time it will take to complete the application is the combined time to complete Form ETA-9089 and appropriate appendices as well as requirements or 22 minutes. This estimate is in line with prior submissions and general application data. The Department invites comments on how this figure can be more accurately calculated based on publicly available data. Accordingly, the Department estimates this burden to be 110 minutes (5 responses x 22 minutes).

10. Schedule A – 20 CFR 656.15

Additionally, the Department estimates that DHS would receive 23,835 applications each year, from 1,417 unique employers and that each unique employer sent on average approximately 16.8 applications. Accordingly, the Department estimates the total burden to be 524,370 total minutes (23,835 applications x 22 minutes per respondent).

11. Notice Requirements – 20 CFR 656.10(d)

Employers must provide notice of the filing of the Form ETA-9089 to either their employees directly or to their employees' bargaining representative in a manner specified in 20 CFR 656.10(d). This requirement does not apply to individuals using the form to apply for a NIW, but will for every other application, For employers covered by the requirement, the notice must be posted in a conspicuous place for 10 business days. Producing a notice, posting it, and documenting the dates of posting takes approximately 30 minutes for a total of 5,362,089 third party disclosure minutes (178,736.33 applications x 30 minutes).

A13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet)

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

b) Annual costs: There are no annual costs involved with the operation and maintenance of the forms because the Department will be responsible for the annual maintenance costs for the free downloadable forms. There is also no filing fee involved with filing a Form ETA-9089 or associated appendices. The Department assumes that employers would incur preliminary costs,

such as advertising, even if they were not filing applications for employment certification because 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 the above response to A.12.5, the Department estimates that 17 employers will file an annual average of 138.66 applications to conduct supervised recruitment. The Department estimates that the annual cost of an advertisement over all types of publications and geographic locations will average $500.00 for a total annual burden cost of $69,330 (138.66 * $500.00).

A14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of minutes, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Department estimates that the annual costs to the Federal government associated with the ICR are $12,883,902. This total is comprised of $4,635,236 in OFLC federal administration costs, $8,016,230 in state-level costs funded by Wagner-Peyser grants, and $232,446 in USCIS case-review costs. The total annual costs to the Federal government have been revised downward from $24,357,149 due to a decrease in OFLC federal administration and based on Department PRA guidance, removing the salary and benefits costs of federal employees ($9,255,616).

Federal administrative costs include IT systems that support application-filing and case-processing operations; rent; supplies; equipment; and agency indirect costs, which include support for human resources, financial and administrative oversight, and contracts management. The table below provides a detailed breakdown by major cost category of OFLC's annualized costs to administer the permanent employment certification program.

Major Cost Category	**Cost Activities**	**Annualized Costs** *(estimated)*
Contracts for Services *(not technology related)*	▪ Mail, data entry, and other clerical support services ▪ Case processing and administrative support for operations	$599,658
Technology (IT) Contracts	▪ Application development services & network infrastructure support ▪ Hardware & software updates	$1,663,706
GSA & DHS Services	▪ Rent payments for office space ▪ Security services	$59,797
DOL Working Capital Assessment	▪ Indirect costs associated with DOL administrative and executive management services	$2,252,756
Supplies & Equipment	▪ General office supplies ▪ Computers, printers, and other office related equipment	$2,973
Mail, Printing and Telecommunications	▪ Mail services ▪ Phone and telecommunication charges ▪ Security Paper for transmission of approved applications	$19,318

Other Costs	▪ Travel ▪ Training and other Government Agency Services	$37,018
TOTAL COSTS – OFLC FEDERAL ADMINISTRATION		**$4,635,236**

The Department estimates that staff in the State Workforce Agencies (SWAs) spend one hour on average to process job orders associated with Form ETA-9089. States' costs related to these job orders are funded through Wagner-Peyser grants. The Department also estimates that USCIS staff spend twelve minutes (0.2 hours or XX minutes) on average to read and analyze the information contained in Form ETA-9089, which is attached to applications to USCIS for permanent residency. The table below summarizes the estimated state and USCIS costs associated with Form ETA-9089.

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

OMB Control Number *(1205-0451)*	**Previous Estimates**	**Current Estimates**	**Change**
Total Annual Responses	954,186.66	1,032,321	+78,134,34
Burden Hours (Minutes)	342,449.42 hours	115,619,952.00 minutes)	Using minutes instead of hours
Cost of Time	$18,639,521.42 (multiplied by hours)	$$6,293,193,987.36 (multiplied by minutes)	Previous year, multiplied by hours, now multiplied by minutes.

The estimated burden minutes and associated costs have changed due to updated projections based on more recent programmatic experience and now implemented processing efficiencies due to technology improvements, as well as adjustments to anticipated annual application volumes. The answer provided to A.12 provides more information regarding this burden.

ETA recognizes the significant increase in annual responses and burden minutes. These changes are due to a number of factors, including: (1) being able to rely on actual figures for respondents and responses to the Form ETA-9089, its appendices, and related burdens, rather than making a good faith estimate that was necessary for the previous ICR, in which ETA changed its forms to create a new appendix, and are now accepting applications that previously was sent directly to USCIS, etc.; (2) greatly increased overall filing volumes for PERM applications since the previous ICR, which has seen baseline Form ETA-9089 applications rise over 38.6% over the previous ICR, and accordingly, has led to much larger increases in overall responses (35.13% increase) for all related downstream PERM requirements; (3) lower figures than previously estimated for USCIS-related figures, due to USCIS being able to provide more accurate and complete data, for Form ETA-9089 applications filed directly with USCIS; and (4) a marginal decrease in the total cost of time of 2.87%, due to factors explained below.

Although the number of responses and burden substantially increased, OFLC has standardized its ICs, as the job duties required for the burdens identified in the IC more appropriately fall under the Standard Occupational Classification (SOC) Code 13-1071, Human Resources (HR) Specialist, rather than SOC Code 11-3121, HR Manager. As the difference in the mean hourly wages between the two occupations is substantial, the change in the hourly rate has resulted in marginally reduced burden costs of time, despite the substantial increase in program burdens in responses received and total burden minutes. In addition, ETA is also standardizing the applicable benefits factor that applies for its ICs. The benefits factor is determined by dividing the most recent BLS Employer Costs for Employee Compensation (ECEC) by the wages and salary costs for a worker population. BLS provides three ECEC rates based on the worker population: (1) civilian workers; (2) private sector workers; and (3) state and local (*i.e.*, certain public sector) workers. OFLC has determined that the private sector worker ECEC is correct, as the burdens listed in A.12 being performed by HR Specialists are almost exclusively performed by employers in the private sector. Accordingly, as it relates to this rulemaking, the ECEC has been adjusted in our calculations. (*See* Section A.12 above.) Accordingly, for this PRA package, as explained above, the hourly rate changed from $81.91 in the previous Supporting Statement for HR Directors to the new rate of $54.43 for HR Specialists. This reduction in the hourly rate of $27.48 ($81.91 - $54.43) per hour for human resources activities is responsible for the overall slight reduction in total burden costs, despite significant increases in both responses and burden minutes, by $551,642.32, under this ICR. ETA will ensure that the HR Specialist SOC is the basis for calculating all of its future burden costs in all future ICs requiring human resources functions. Additionally, where the Department used hourly calculation to assess the burden in section A.12 above, to accurately reflect burden, the Department is calculating burden by minutes.

A16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

No collection of information will be published.

A17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

A18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

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

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.

Application for Permanent Employment Certification
OMB Control No. 1205-0451
Month, day, year